

**CAPACITY PURCHASE AGREEMENT RELATING TO THE
OLIVEHURST PUBLIC UTILITY DISTRICT WASTEWATER TREATMENT PLANT**

THIS CAPACITY PURCHASE AGREEMENT RELATING TO THE OLIVEHURST PUBLIC UTILITY DISTRICT WASTEWATER TREATMENT PLANT (the “Agreement”) is made effective as of the [] day of [], 2023, by and between the **CITY OF WHEATLAND**, a municipal corporation duly organized and existing under the laws of the State of California (the “City”) and the **OLIVEHURST PUBLIC UTILITY DISTRICT**, a public utility district duly organized and existing under the laws of the State of California (the “District”). The District and the City may be referred to together herein as the “Parties”.

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

WHEREAS, in order 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 regional approach to wastewater treatment and conveyance in South Yuba County; and

WHEREAS, in furtherance of the foregoing objectives, the Parties are working collaboratively to design, plan and construct a conveyance system capable of delivering 1.5 MGD average dry weather flow and 3.3 MGD peak flow to the Facility; and

WHEREAS, the District warrants that the Facility has adequate existing and future expansion capacity to receive and treat the City’s flow under the terms and conditions set forth herein; and

WHEREAS, the City desires to purchase and secure capacity in the Facility according to the terms and conditions set forth herein; and

WHEREAS, the City and the District have entered into a separate Wastewater Treatment an Operations Agreement addressing the Parties’ responsibilities related to the operations, maintenance and treatment costs associated with the Facility; an

WHEREAS, the City and the District shall equitably share in the allocation of treatment capacity, capital costs and repair and replacement costs of the Facility under the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, the Parties hereto agree as follows:

1. Purpose and Intent of Agreement

(A) The purpose and intent of this Agreement is to (1) provide for the City's purchase of Initial Purchased Capacity in the Facility of .75 MGD, and to provide for the purchase of additional Capacity by the City up to a guaranteed total amount of 1.5 MGD average annual dry weather flow and 3.3 MGD peak flow capacity in the Facility (including the Shared Transmission Main and Shared Collector Sewer System); (2) allocate between the Parties the costs of Capital Repair and Replacement Projects and Capital Projects; and (3) allocate the District's and City's use of the wastewater treatment capacity of the Facility.

(B) The Parties further intend that their total respective financial contributions to Capital Improvement Projects and Capital Repair and Replacement Projects (whether funded by Capacity Charges, grant funding, bond financing or otherwise) shall be proportional to their respective actual capacity purchased in the Facility (as such as may be expanded in the future, either through technological treatment advances or the construction of additional capacity).

(C) This Agreement sets forth the rights and responsibilities of the Parties with respect to the City's purchase of 1.5 MGD in treatment Capacity in the Facility in the manner described below. Nothing herein shall obligate the City to purchase or participate in the financing of any future expansions of the Facility. If the City chooses to participate in any future Facility expansion, then such participation (if any) shall be governed by a future written agreement to be negotiated between the Parties.

2. Term and Termination

Term. This Agreement shall be effective as of the date first above written and shall remain in effect for the full useful life of the Facility unless earlier terminated by the Parties pursuant to this Section.

Early Termination. This Agreement may be terminated before the expiration of the Term by mutual agreement of the Parties. Upon termination of this Agreement, unless otherwise agreed by the Parties, the City shall be responsible for the payment of any outstanding O&M Costs owed by the City to the District. Payment reconciliation shall be made over a period of time agreed to by the Parties.

Termination in the Absence of Sufficient State Revolving Fund Participation. This Agreement is contingent upon the Parties' receipt of anticipated grant and forgivable loan funding from the California Clean Water State Revolving Fund ("SRF") administered by the California State Water Resources Control Board, in an amount sufficient to support this Agreement, and in any event not less than \$50,000,000. In the event such funding is not received, this Agreement shall automatically

terminate and neither Party shall have any further obligation hereunder.

Conditions Precedent. This Agreement is expressly conditioned upon the completion of a rate analysis and rate stabilization method satisfactory to the City, and the City's satisfaction with the condition of the Facility upon completion of a condition assessment. These conditions are satisfied only by the delivery of an executed waiver of conditions precedent by the City approved by a resolution adopted by the City Council. If the City declines to deliver the waiver of conditions, then this Agreement shall automatically terminate and neither Party shall have any further obligation hereunder.

3. Responsibilities of the District and the City

(A) The District shall be responsible for the planning, permitting (including all necessary environmental compliance), design, expansion and construction of the Facility, the Shared Transmission Main and Shared Collector Sewer System for the mutual benefit of the District and the City. The District guarantees and ensures that, upon the City providing reasonable and sufficient notice for planning, construction and design work, sufficient Capacity in the Facility, Shared Transmission Main and Shared Collector Sewer System will be available to the City to meet the City's 1.5 MGD (including 3.3 MGD of peak flow capacity) of current and anticipated treatment capacity demand contemplated in this Agreement.

(B) The District shall operate and maintain the Facility for the mutual benefit of the District and City, so long as the City pays its proportionate share of the amounts required to be paid under this Agreement and the Treatment and Operations Agreement. The District shall be entitled to be reimbursed by the City for its proportionate share of Operation and Maintenance Costs (as determined pursuant to the terms of the Treatment and Operations Agreement).

(C) The City shall be obligated to make an initial payment to the District for [] MGD of estimated initial plant capacity, which is anticipated to account for the diversion of existing City wastewater flows to the Facility. This amount shall be adjusted to reflect actual initial connections to the Facility. Thereafter, the City shall be obligated to pay to the District its then-existing connection fee for each additional EDU connected, up to a guaranteed amount of 1.5 MGD. The City shall be entitled to the use of this Capacity for connections within or outside of the City's jurisdictional boundary (as such may be changed from time to time).

4. Local Service Areas; Initial Purchased Capacity at the Facility; Purchase of Additional Capacity; Use of Shared Transmission Main and Shared Collector Sewer System; Future Facility Expansions; Establishment of Joint Planning Advisory Committee; Effect of Insufficient Capacity Prior to Expansion; Existing Developer Prepayment Agreements

(A) Each of the Parties has the responsibility to provide Local Services within its Local

Service Area according to its own rules. Capacity for such service by the City is limited by the portion of the total Facility Capacity allocated to the City by this Agreement and any amendments.

(B) The City shall purchase up to .75 MGD (based on Average Daily Dry Weather Flow) of Initial Purchased Capacity based upon its anticipated initial flows to the Facility upon connection, calculated at the District's connection fee per EDU in effect at the time of connection. The City shall adopt the same definition of EDU (including waste strength) as used by the District. Payment shall be made to the District at the time of connection of the City's existing wastewater flows to the District at the Point of Delivery. If the available Capacity at the time of purchase is less than 1.5 MGD, then the City's Initial Purchased Capacity shall be 50% of the remaining Capacity. This Initial Purchased Capacity is exclusive to the City for the duration of this Agreement and may not be diminished as a result of any additional connections to the Facility, including the Shared Transmission Main and Shared Collector Sewer System, by any other party.

(C) The City and District anticipate the City sending up to 1.5 MGD to the Facility based on the City's conveyance capacity in the Wheatland Transmission Main and Shared Transmission Main. The District guarantees that this additional Capacity shall be made available to the City as First Come, First Served Capacity as defined in this Agreement, upon the City's payment of the District's connection fees in effect upon the City's issuance of a building permit for each EDU (or portion thereof) to be connected, whether such Capacity is currently available or made available by the District's expansion of the Facility's Permitted Capacity, up to a maximum total use by the City of 1.5 MGD of Capacity. Each additional EDU purchased by the City under this section shall be included in the City's Purchased Capacity total, and shall be for the exclusive use of the City for the duration of this Agreement. Once Capacity is expanded beyond the current 3.0 MGD Capacity, any new connections from the District or the City will pay the District's connection fee then in effect on a first come, first served basis. All will-serve letters issued by the City and the District will clearly state that connection is made on a first come, first served basis upon the issuance of a building permit. After the City's Initial Capacity Purchase, neither Party will permit any customer to purchase and reserve Capacity in advance of the issuance of a building permit.

(D) Notwithstanding anything to the contrary herein, the total financial obligation of the City for the purchase of Capacity under this Agreement is limited to: 1) the cost of its Initial Purchased Capacity; 2) payment of the District's connection fee per EDU then in effect upon the City's connection of additional EDUs totaling 1.5 MGD of Capacity; and 3) the City's proportionate share of CRRP. Absent the express, written agreement of the Parties, the cost of any expansion required to ensure the availability of 1.5 MGD of Capacity to the City, which exceeds the City's financial obligation described in this section, shall be borne exclusively by the District.

(E) The Parties acknowledge that the 1.5 MGD capacity in the Shared Transmission Main has been sized to accommodate the City's anticipated growth over the next 40 years. Until such time as it is needed by the City, the capacity in the Shared Transmission Main shall be equally available to the Parties. The District guarantees the availability to the City of its full 1.5 MGD capacity when needed and at no additional cost to the City. The District shall collect connection fees from any third

party utilizing capacity in the Shared Transmission Main in an amount reasonably expected to be sufficient to replace that capacity, or otherwise secure alternative funding, so that the full capacity of the Shared Transmission Main will be available to the City when needed and at no cost. Except for existing homes or improved lots within the District's service area, or non-residential building within the District's service area, use of the Shared Transmission Main by any party other than the City shall require the City's prior, written consent, and be subject to a separate agreement between the City and such party.

(F) The District may not enter into any agreement with another party or take any action that would decrease the City's entitlement to the use of 1.5 MGD of Capacity.. As of the effective date of this Agreement, the Parties' Initial Purchased Capacity and First Come, First Served Capacity as a percentage of the total Permitted Capacity of the Facility is as follows:

Facility Treatment Capacity Allocation Average Dry Weather Flow Million Gallons per Day		
	Initial Purchased Capacity and FCFS Capacity*	Percentage of Total Treatment Capacity
District	[_]MGD	%
City	[_]MGD	%
FCFS Capacity	[_]MGD	%
Total	[_]MGD	100%

* The allocated treatment capacity expressed in millions of gallons per day is based on the rated treatment capacity of the Facility as of the date of this Agreement ([_] MGD). If the rated treatment capacity changes for the Facility, District and City will meet and confer concerning the appropriate wastewater treatment capacity allocation for each Party.

Planning for the expansion of the Facility shall begin when the Average Daily Dry Weather Flows reach 70% of the Facility's Permitted Capacity, when either Party is using 50% or more of their Initial Purchased Capacity or when growth projections indicate a need to begin planning for an expansion. Planning, design and construction of expansion or improvement of Capacity to meet the District's obligation to provide 1.5 MDG of Capacity to the City shall be at the District's sole expense. The District shall notify the City of its intention to begin planning and design of Capacity expansion.

(G) Any future expansions of the Facility in which the City chooses to participate (including increases in its Permitted Capacity) shall take into account the City's anticipated growth

projections, which shall be incorporated in the design and planning process for the Facility expansion and any additional Jointly Owned Infrastructure which may be required in connection therewith. The City and District agree to work collaboratively with the County of Yuba to plan for future plant capacity needs as determined by projected growth in the City's and District's service areas.

(H) The Parties acknowledge that the 1.5 MGD capacity in the Shared Transmission Main has been sized to accommodate the City's anticipated growth over the next 40 years. Until such time as it is needed by the City, the capacity in the Shared Transmission Main shall be equally available to the Parties. The District guarantees the availability to the City of its full 1.5 MGD capacity when needed and at no additional cost to the City. The District shall collect connection fees from any third party utilizing capacity in the Shared Transmission Main in an amount reasonably expected to be sufficient to replace that capacity, or otherwise secure alternative funding, so that the full capacity of the Shared Transmission Main will be available to the City when needed and at no cost. The District shall begin planning for an expansion of capacity in the Shared Transmission Main when it reaches 50% utilization.

(I) Upon the effective date of this Agreement and throughout its Term, the District and the City shall each designate two elected representatives (two from the City Council and two from the District Board of Directors) to serve on a Joint Planning Advisory Committee for the purpose of reviewing Facility usage and participating in discussions with District and City staff regarding anticipated growth, Facility expansions, upgrades and anticipated Capital Repair and Replacement Projects. The Joint Planning Advisory Committee shall meet with City and District staff quarterly each year. The Joint Planning Advisory Committee is an advisory committee only and shall have no independent jurisdiction over the ownership and management of the Facility, which is reserved to the District. On the third anniversary of this Agreement, the Joint Planning Advisory Committee, in consultation with each of the City Council and District Board of Directors, shall engage in discussions concerning the potential formation of a joint powers authority to facilitate the financing and expansion of regional wastewater treatment facilities serving the City and the District.

(J) At such time as insufficient capacity remains in the Facility to treat additional flows, the District shall impose a moratorium on additional connections, pending the expansion of treatment capacity. Any moratorium necessitated by an exhaustion of treatment capacity shall apply equally and simultaneously to the District, the City and any future participants in the Facility. Notwithstanding the foregoing, no such moratorium shall apply to the City unless and until the City's Capacity usage has reached 1.5 MGD. In the event insufficient treatment Capacity is available for the City to connect additional EDUs up to 1.5 MGD as guaranteed by this Agreement, then the District and City shall agree to the immediate formation of a joint powers authority to govern the Facility and provide for the financing and expansion thereof.

(K) The District has executed connection fee prepayment agreements with certain developers, whereby in exchange for a lump sum prepayment of connection fees at the District's rates per EDU in effect in 2004, such developers are entitled to connect to the Facility at any time in the future on a first come, first served basis without payment of an additional fee. The District

warrants and represents that such prepayment agreements confer no additional entitlement to treatment capacity on the signatories thereto, and that the existence of such prepayment agreements in no way impairs or prevents the District from entering into this Agreement and committing itself to the described obligations for the benefit of the City. This District agrees to defend, indemnify and hold harmless the City from and against any and all claims or litigation that may be brought by such signatories (including their successors and assigns) or arising out of such prepayment agreements, to the extent any challenges are made to the enforceability of this Agreement and the allocation of Capacity to the City under the terms and conditions set forth herein.

5. Capital Repair and Replacement Project (CRRP) Costs

(A) CRRP Costs are for Capital Improvement Projects at the Facility that involve an asset specifically used to provide treatment and conveyance of the City's Wastewater. These are costs for projects that are not otherwise included in O&M Costs. The Joint Planning Advisory Committee will review on an annual basis the District's plan for CRRP within the next five (5) years of each review, in order to prepare for how such CRRP will be funded. Prior to the execution of this Agreement, District shall provide City a five-year projection of CRRP, which is incorporated by reference herein as Exhibit B. The District, at its sole cost and expense, may (but is not required to) engage a consultant to review the condition of the Facility to provide an opinion on the District's ability to meet the conditions of this Agreement.

(B) Prior to receiving the City's flows, the District will complete a rate analysis for sewer treatment which will be funded equally by the City and the District. That rate analysis will include a factor for CRRP based on the total number of connections expected during the rate cycle, including both projected District and City connections. The total cash value of all treatment plant CRRP costs included in the rate analysis will be spread equally across the entire combined rate base of the District and the City.

(C) The City agrees to include in its own rate for sewer treatment the same treatment plant CRRP factor used by the District. The City will transfer the amount collected for CRRP with each periodic payment to the District to be credited to the City's CRRP share.

(D) The Parties agree that the City and District will each be responsible for their respective share of CRRP related to the Shared Transmission Main which will be calculated based upon average actual flow over the previous calendar year. The projected basis for CRRP will be agreed to by both Parties, and the Parties shall include that amount *pro rata* in the calculation of both their respective sewer collection rates and sewer collection impact fees. The City will transfer the amount collected for Shared Transmission Main CRRP with each periodic payment to the District. The City and District will each be responsible for their proportionate share of CRRP based upon actual capacity usage in the Shared Transmission Main.

(E) Before commencement of a CRRP, the District shall meet and confer with the City regarding its intent to commence a CRRP project if the District expects the City to share in the cost for such project. The District shall supply the City with sufficient information, as determined by the City, to establish that the project is, in fact, a CRRP for the Facility (for which the City shall be responsible for the payment of its pro rata share) and not a Capital Improvement Project, for which

the City is not financially obligated absent the City's express written consent

(F) Prior to the District incurring costs for a CRRP which is subject to contribution by the City pursuant to this Agreement, the District shall provide a description of the project, including an explanation of the association of the project to assets at the Facility supporting Wastewater service to the City, the total cost of the project, and when the project is anticipated to be completed.

(G) The City's Proportionate Share of approved CRRP Costs shall be calculated based on the ratio of the City's Purchased Capacity versus the Permitted Capacity of the Facility. If any form of grant funding shall be available for the project that the District shall not be required to repay, the Parties agree that the grant funding contribution shall be subtracted from the project cost prior to the calculation of the City's Proportionate Share of the cost.

(H) The City is not obligated to pay a Proportionate Share of any CRRP if the District fails to provide the City with this information as required by this Agreement. Notwithstanding the foregoing, the District retains exclusive authority and management over all CRRP and CIP projects regarding the Facility.

Accordingly, as of the date of this Agreement each Party's Proportionate Share shall be as follows:

<u>Party</u>	<u>Proportionate Share</u>	
City:	[]%	<i>Note: Does this need a % or can it be written differently?</i>
District:	[]%	
TOTAL:	----- 100%	

The foregoing initial percentages shall be adjusted to reflect each Party's current Purchased Capacity in order to allocate each Party's Proportionate Share of a CRRP project.

(I) The City agrees to maintain a separate CRRP fund for purposes of paying its fair share of CRRP costs.

(J) All CRRP Costs are subject to adjustment based on the District's audited financial statements.

6. Miscellaneous

(A) Insurance. Each Party covenants that it shall at all times maintain such insurance on its Collector Sewer System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. No Party shall be required to maintain earthquake insurance. If any useful part of the Collector Sewer System shall be damaged or destroyed, such part shall be restored to use. The net proceeds of insurance against accident to or destruction of the Collector Sewer System shall be used for repairing or rebuilding the damaged or destroyed portions of the Collector Sewer System (to the extent that such repair or rebuilding is determined by the Party to be useful or of continuing value to the Party's System) and to the extent not so applied, shall be applied as the Party determines. Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the Party, or may be in the form of self-insurance by the Party or participation in a joint powers insurance authority or similar risk pool. The Party shall establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance.

(B) Relationship of Parties. This Agreement is not intended to and shall not be construed as creating a new joint powers authority or other entity, or relationship of joint venturers, partners, or employer-employee between the Parties. Each Party shall make its personnel and resources reasonably available as required to achieve the purposes of this Agreement.

(C) Entire Agreement. This Agreement and each of the attachments referred to herein, which are incorporated by this reference, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and/or obligations concerning these obligations which are merged into this Agreement. Each Party has made its own independent investigation of the subject matters of this Agreement and is not relying upon any representation not specified herein.

(D) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be

(D) affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

(E) Headings for Convenience Only. The headings, subheadings, and captions contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.

(F) Construction of Agreement. This Agreement is the product of negotiation and preparation between the Parties and their representatives, and the Parties agree that this Agreement shall not be deemed to have been prepared or drafted by any one party. Accordingly, the normal

rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(G) Modification of Agreement. 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.

(H) Waiver; Cumulative Rights. Any waiver of any provision or of any breach of any provision of this Agreement must be in writing, and any waiver by a Party of any breach of any provision of this Agreement shall not constitute, operate as, or be construed to be a continuing waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The single or partial exercise of a right held by any Party shall not preclude any other or future exercise thereof or the exercise of any other right.

(I) Equitable Relief. Given the important public policy considerations underlying this Agreement involving the health, welfare and safety of the Parties' residents, the District and the City acknowledge and agree that money damages alone are inadequate, and that either Party hereto may obtain equitable and injunctive relief to enforce this Agreement and each of its terms, including specific performance.

(J) Government Authority. The Parties shall comply with any and all applicable federal, state, and local laws, and regulations covering the subject of this Agreement, and any and all valid orders and regulations issued pursuant to any federal, state, or local law, or regulation governing the subject of this Agreement.

(K) Mutual Indemnification. It is understood and agreed that, pursuant to Government Code Section 895.4 and except as otherwise provided by this Agreement, each Party shall fully defend, indemnify and hold each other Party harmless from any liability imposed for injury (as defined by Government Code Section 810.8), and liability of any nature imposed by noncompliance with regulatory requirements (including, but not limited to, accidental wastewater discharges), occurring by reason of anything done or omitted to be done by said indemnifying Party under or in connection with any work, authority or jurisdiction delegated to said Party under this Agreement.

The City agrees that this indemnity provision shall not operate to avoid or limit any City obligation to make payments to the District under this Agreement, except to offset the costs of indemnified liability as provided herein.

(L) Applicable Law. This Agreement shall be construed under and shall be governed by the laws of the State of California. Any action to interpret or enforce any aspect of this Agreement shall be brought in the Superior Court of the State of California in the County of Yuba.

(M) Further Acts. The Parties shall reasonably cooperate with each other and take such further actions as may be reasonably necessary, including any necessary approvals and the

execution of any necessary further documents, to carry out the purpose and intent of this Agreement.

(N) Notice to Parties. Any notice or other communication given under the terms of this Agreement shall be in writing and shall be given personally, by email, by facsimile, or by certified mail, postage prepaid and return receipt requested. Any notice shall be delivered or addressed to the Parties at the addresses, email addresses, or facsimile numbers set forth below or at such other address, email address, or facsimile numbers as shall be designated by notice in writing in accordance with the terms of this Agreement. The date of receipt of the notice shall be the date of actual personal service, email confirmation of receipt from the Party receiving email notice, or facsimile transmission with written confirmation of successful transmission, or three (3) days after the postmark on certified mail. All notices required under or regarding this Agreement shall be made in writing addressed as follows:

Olivehurst Public Utility
District
1970 9th Avenue
Olivehurst, CA 95961
Attn: General Manager
Facsimile No.:
Email:

City of Wheatland
111 C Street
Wheatland, CA 95692
Attn: City Manager
Facsimile No.:
Email:

(O) Binding Effect. This Agreement shall be of binding legal effect only once it has been duly approved and signed by each of the Parties. No rights or duties under this Agreement may be assigned or delegated by a Party to a non-party without the express written consent of the other Party, which may be withheld in the sole and absolute discretion of such other Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the authorized successors and assigns of the Parties.

(P) No Third-Party Beneficiaries. This Agreement does not create, and shall not be construed to create any rights enforceable by any person, partnership, corporation, joint venture, limited liability company, district or other form of organization or association of any kind that is not a party. Without limiting the generality of the foregoing, landowners, developers, residents, water users and ratepayers of the parties are not intended to be third-party beneficiaries of this Agreement.

(Q) Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by non-binding mediation before commencing litigation. The mediator shall be mutually selected by the Parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each Party. All costs and fees required by the mediator shall be split equally by the Parties, otherwise each Party shall bear its own costs and attorney's fees for the mediation. If mediation fails to resolve the dispute within 60 days after a mediator has been selected and a date set for the mediation, either Party may pursue litigation to resolve the dispute.

(R) Demand for mediation shall be in writing and delivered to the other Party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute, breach, or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute, breach, or other matter in question would be barred by applicable California statutes of limitations.

(S) Counterparts. This Agreement may be signed in any number of counterparts by the Parties such that the signatures may appear on separate signature pages. Facsimile or other electronic signatures shall be binding in the same manner as originals. A copy or an original, with all signatures appended together, shall be deemed to be a fully executed original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date provided herein.

OLIVEHURST PUBLIC UTILITY DISTRICT CITY OF WHEATLAND

By: _____
Board President

By: _____
Mayor

Date Signed: _____

Date Signed: _____

ATTEST:

ATTEST:

By: _____
Secretary

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Counsel for the District

By: _____
Special Counsel to the City

Exhibit A
Definitions

“Allocable Operation and Maintenance Costs” or “Allocable O&M Costs” mean all O&M Costs that the City is agreeing to pay a proportionate share under the TOA, and includes all O&M Costs *other than* Excluded Costs. The City’s share of Allocable O&M Costs attributable to the Facility will generally be determined by evaluating the proportionate share of flow, BOD and TSS from each party. Allocable O&M Costs attributable to the pipeline system will be determined by calculating that portion of flow of the District’s Collector Sewer System between the Point of Delivery and the Facility compared to the City’s portion of the Average Annual Flow through that portion using agreed-to flow meters for determination of respective flows.

“Authorities Having Jurisdiction (AHJ)” means any state, federal or local regulatory authority (other than the State Water Board or Regional Water Board) having jurisdiction over the District or any District facility (with respect to the District) or over the City or any City facility (with respect to the City).

“Average Annual Flow” or “AAF” is the daily flows of Wastewater averaged over a 365 day period (e.g., total flow for the entire year in millions of gallons divided by 365).

“Average Daily Dry Weather Flow” or “ADDWF” means the flow calculated by computing the average daily influent flow over the ninety (90) day consecutive period with the lowest measured influent flow within the last 365 days.

“BOD” means biochemical oxygen demand.

“Capacity” means the Wastewater Treatment Facility treatment and disposal capacity in Average Daily Dry Weather Flow, as described in more detail in Section ___ of the Capacity Purchase Agreement. Capacity also includes the capacity required in the Shared Transmission Main and Shared Collector Sewer System required to convey City Wastewater to the Facility.

“Capacity Purchase Agreement” or “Capacity Agreement” means that certain Capacity Purchase Agreement, dated on or about **[the Effective Date]**, between the City and District, including any amendments.

“Capital Improvement Project” or “CIP” means a project that is determined by the District to be a new, fixed asset, generally depreciated over ten years or more, that is primarily intended to increase the System’s Permitted Capacity and is not an upgrade required by regulatory requirements.

“Capital Improvement Project Costs” or “CIP Costs” means the costs associated with Capital Improvement Projects. Capital Improvement Project Costs are *not* included in Operations and Maintenance Costs.

“Capital Project” means a Capital Improvement Project or Capital Repair and Replacement Project.

“Capital Repair and Replacement Project” or “CRRP” means a project at the System, generally depreciated over ten years or more, that involves repair, renovation, improvement, replacement, upgrade and/or modification that does not expand the Permitted Capacity of the System but that is necessary or appropriate to extend its useful life, maintain Permitted Capacity, preserve it in good, safe, and efficient repair and working order, improve its efficiency, repair damage, or maintain or meet applicable (including new and different) permit, statutory, regulatory and/or other governmental requirements. CRRP does not include projects for the District’s potable water system or for any portion of the District’s Collector Sewer System not included in the definition of System, or for Capital Improvement Project Costs.

“Capital Repair and Replacement Project Costs” or “CRRP Costs” means the costs associated with Capital Repair and Replacement Projects. Capital Repair and Replacement Project Costs *are* included in Operations and Maintenance Costs but are tracked separately by the District.

“City” means the City of Wheatland.

“City Allocable Operation and Maintenance Costs” or “City Allocable O&M Costs” mean the Allocable O&M Costs payable by the City under this TOA.

“City Collector Sewer System” means the City’s publicly operated sanitary sewer collection system, including piping, pumping, and in-line treatment facilities appurtenant thereto, whose primary purpose is the collection of Wastewater exclusively within the service area of the City.

“Direct City Costs” are specific costs incurred by the District on account of acts, omissions, or circumstances attributable to the City, as provided in Schedule 3, for which the City shall be 100% responsible.

“District” means Olivehurst Public Utility District.

“District Collector Sewer System” means the District’s publicly operated sanitary sewer collection system, including piping, pumping, and in-line treatment facilities appurtenant thereto, whose primary purpose is the collection of Wastewater exclusively within the service area of the District.

“Equivalent Dwelling Unit” or “EDU” is the typical volume and strength of the Wastewater generated by a single family home built after _____, 2015. As of the Effective Date, one OPUD EDU generates 260 gallons of wastewater per day (during the dry weather season), and includes approximately 0.67 lbs of BOD per day and 0.5 lbs of TSS per day. (Wheatland understands OPUD engineers are reconsidering the calculation of EDU. To be discussed.)

“Excluded Costs” are (i) the O&M Costs that the City is *not* agreeing to pay any portion

under the TOA, and (ii) District costs *not* allocated to the System in any fiscal year under the District's customary and proper accounting principles and means the items identified in Schedule 2.

"Facility" means the District's Wastewater Treatment Facility located at 3908 Mary Avenue, Olivehurst, California, including all associated buildings, structures, property, equipment, and facilities owned and controlled by the District, but not including District facilities that make up the District's Collector Sewer System and used to provide Wastewater collection services within the District's jurisdiction.

"First Come, First Served Capacity" (or "FCFS Capacity") means the treatment capacity of the Facility over and above the Initial Purchased Capacity of the City and District, and which is available for purchase by the City or District after the allocation of the Initial Purchased Capacity. Upon the payment of the District's connection fee for the Facility, each EDU of FCFS Capacity shall be included with the purchasing Party's Purchased Capacity.

"I and I" means Infiltration and Inflow.

"Infiltration" means any water entering a Collector Sewer System from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls.

"Inflow" means any water discharged into a Collector Sewer System from such sources as, but not limited to, roof leaders, cellars, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers and combined sewers, catch basins, storm waters, surface runoff, street wash waters or drainage.

"Initial Purchased Capacity" means the initial treatment capacity in the Facility, including capacity in the Shared Transmission Main and Shared Collector System, purchased and used by the City and the District under the terms and conditions set forth in this Agreement, as depicted in the chart in Section hereof.

"Local Services" means all District or City services that are necessary or appropriate for the collection, conveyance, and transfer of wastewater originating within the respective jurisdiction of the District or the City to the System.

"Local Service Area" means that area in which a Party has the statutory authority for the collection and transmission of Wastewater, whether inside or outside of its exterior service area boundary.

"MGD" means million gallons per day.

"Operation and Maintenance" or "O&M" means the management, operation, maintenance, repair, replacement (including Capital Repair and Replacement Projects but excluding Capital Improvement Projects), inspection, and other actions necessary or appropriate to operate and

maintain the System in good, safe, and efficient repair and working order.

“Operation and Maintenance Costs” or “O&M Costs” include all costs allocated to the System in any fiscal year under the District’s customary and proper accounting principles, including without limitation all items identified in TOA Schedule 1. O&M Costs include CRRP Costs (although District must track them separately) but do not include CIP Costs.

“Operation and Maintenance Payments” or “O&M Payments” is defined in Section 8(A) of the TOA.

“Party” or “Parties” shall mean each of the City of Wheatland or the Olivehurst Public Utility District, individually or together.

“Permitted Capacity” means the permitted average annual sewage treatment flow to be processed by the Facility as permitted by the Regional Board or other applicable **AHJ**.

“Point of Delivery” means the District’s proposed Pump Station #21 directly north of the intersection of Ostrom Road and Rancho Road or such other place aligned upon by the Parties as reflected in the diagram attached hereto as Exhibit B.

“Purchased Capacity” means the Initial Purchased Capacity plus the First Come, First Served Capacity purchased and used by the City and the District under the terms and conditions set forth in this Agreement, as depicted in the chart in **[REDACTED]**. Purchased Capacity also includes the capacity in the Shared Transmission Main and Shared Collector System necessary to convey Wastewater from the City to the Facility.

“Regional Board” means the Central Valley Regional Water Quality Control Board.

“Shared Collector Sewer System” means the District’s publicly operated sanitary sewer collection system, including piping, pumping, and in-line treatment facilities appurtenant thereto, whose primary purpose is the collection of Wastewater from both the District and the City, including piping and pumping facilities, between the Point of Delivery and the Facility.

“Shared Transmission Main” means the portion of the transmission main constructed and jointly owned by the Parties to convey City Wastewater from Ostrom Road to the Point of Delivery. “Start Date” means the date (determined as provided in Section 2(B) of the TOA) whereby the City is able to deliver City Wastewater to the System via the Point of Delivery, the District is obligated to convey and treat that Wastewater, and the City is obligated to begin paying its share of Allocable O&M Costs as provided in the TOA.

“System” means the Facility and the portion of District’s Collector Sewer System between the Point of Delivery and the Facility.

“TSS” means total suspended solids.

“Wastewater” means the liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter a Party’s Collector Sewer System, including Infiltration and Inflow.

“Wastewater Transmission Line Construction Agreement” or “WTLCA” means that certain Wastewater Transmission Line Construction Agreement, dated on or about **[the Effective Date]**, between the City and District, including any amendments.

“Wheatland Transmission Main” means the portion of the transmission main constructed by the Parties to convey City Wastewater to the Point of Delivery. The Wheatland Transmission Main is exclusively owned by the City from the City limits to Ostrom Road.

DRAFT

WASTEWATER TREATMENT AND OPERATIONS AGREEMENT

THIS WASTEWATER TREATMENT AND OPERATIONS AGREEMENT (“Agreement” or “TOA”) is made effective as of _____, 2023 (“Effective Date”), by and between the Olivehurst Public Utility District, a political subdivision of the State of California (“District”), and the City of Wheatland, a California municipal corporation (“City”). District and City are collectively referred to herein as the “Parties”, or singularly by their individual names or as a “Party”.

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 (as further defined below, “Facility”) located at 3908 Mary Avenue, Olivehurst, California, and certain other facilities (together with the Facility and as further defined below, the “System”) and which is capable of accepting flows from the City; 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, in order 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 for the City to participate in the funding, use, operation and expansion of the System for the treatment of City wastewater flows; and

WHEREAS, in furtherance of the foregoing objectives, the Parties, pursuant to a separate Wastewater Transmission Line Construction Agreement (as further defined below, “WTLCA”), will, before the Start Date (as defined below), have jointly designed, planned and constructed a wastewater transmission pipeline within the Parties’ service areas, to be owned by the City and to connect to the System at the Point of Delivery (as defined below) in which the City will have access to 1.5 MGD average daily dry weather flow and have access to 3.3 MGD peak flow of pipeline capacity in order to transport wastewater through the System; and

WHEREAS, the Parties have determined that they shall equitably share in the allocation of treatment capacity, capital costs and operations and maintenance costs of the System by entering into this Agreement, a separate Capacity Purchase Agreement and the WTLCA.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, the mutual advantages accruing to the parties, the performance of promises contained herein, and other good and valuable consideration, the Parties agree as follows:

1. Definitions. Unless otherwise provided elsewhere in this Agreement or the context otherwise requires, the following terms, as used in this Agreement, shall have the meanings set forth in Exhibit A.

2. Term. This Agreement shall be effective as of the date first above written and shall remain in effect for the full useful life of the Facility unless earlier terminated by the Parties pursuant to this Section.

3. Early Termination. This Agreement may be terminated before the expiration of the Term by mutual agreement of the Parties. Upon termination of this Agreement, unless otherwise agreed by the Parties, the City shall be responsible for the payment of any outstanding O&M Costs owed by the City to the District. Payment reconciliation shall be made over a period of time agreed to by the Parties.

4. Termination in the Absence of Sufficient State Revolving Fund Participation. This Agreement is contingent upon the Parties' receipt of anticipated grant and forgivable loan funding from the California Clean Water State Revolving Fund ("SRF") administered by the California State Water Resources Control Board, in an amount sufficient to support this Agreement, and in any event not less than \$50 million. In the event such funding is not received, this Agreement shall automatically terminate and neither Party shall have any further obligation hereunder.

5. Conditions Precedent. This Agreement is expressly conditioned upon the completion of a rate analysis and rate stabilization method satisfactory to the City, and the City's satisfaction with the condition of the Facility upon completion of a condition assessment. These conditions are satisfied only by the delivery of an executed waiver of conditions precedent by the City approved by a resolution adopted by the City Council. If the City declines to deliver the waiver of conditions, then this Agreement, and the Capacity Purchase Agreement executed contemporaneously by the Parties, shall automatically terminate and neither Party shall have any further obligation hereunder.

6. City Connection to System. Upon the completion of the construction of the Shared Transmission Main, , pump stations, and associated appurtenances and equipment as necessary and appropriate to deliver Wastewater from the City's Collector Sewer System to the System at the Point of Delivery, the City shall connect to the System (which shall be the Start Date for the purposes of this Agreement). The City shall obtain and maintain all applicable federal, state, and other permits, licenses and entitlements required to construct and operate such improvements, which are part of the City Collector Sewer System. The District will construct, own, operate and maintain continuous metering and sampling facilities to measure City flows at the Point of Delivery.

7. Ownership, Operation, and Maintenance of System and Collector Sewer Systems.

(A) System. Throughout the term of this Agreement, the District shall own, operate and maintain the System with the cost and expense to be equitably allocated between the Parties, for the mutual benefit of the District and the City pursuant to this Agreement, all in accordance with applicable federal, state, and local laws, rules, and regulations, as the same now exist or may hereafter be amended or implemented from time to time. The District has obtained, and during the term of this Agreement shall maintain, a National Pollutant Discharge Elimination System (NPDES) permit issued by the Regional Board for the operation of the System, including treatment and discharge of all District and City Wastewater. Within such requirements, and in accordance with this Agreement, the District shall retain sole discretion to determine the method and manner of its

operation of the System, including without limitation, potential System improvements and expansion. Notwithstanding the foregoing, the District shall meet and confer with the City regarding potential System improvements, expansions and upgrades. The City shall not be responsible for the payment of any costs associated with a Capital Improvement Project, except (if applicable) as provided in a Capacity Purchase Agreement providing for the financing of future plant expansions and capacity allocation to be executed concurrently with this Agreement.

(B) City Sewer Collector System. Throughout the term of this Agreement, the City shall own, operate, repair, and maintain the City Collector Sewer System within the City's Local Service Area (which will extend into the District's Local Service Area), including the Wheatland Transmission Main, in accordance with applicable federal, state, and local laws, rules, and regulations, as the same now exist or may hereafter be amended or implemented from time to time. The City will also obtain and comply with all required permits related to the foregoing. Within such requirements, and in accordance with this Agreement, the City shall retain full discretion to determine the method and manner of its operation of its Sewer Collection System.

(C) District Sewer Collector System. Throughout the term of this Agreement, the District shall own, operate, repair, and maintain District's Collection Sewer System in accordance with applicable federal, state, and local laws, rules, and regulations, as the same now exist or may hereafter be amended or implemented from time to time. The District shall also operate, repair and maintain the Shared Transmission Main, with associated costs shared by the District and City proportionately based upon each Party's percentage of Wastewater flow. Within such requirements, and in accordance with this Agreement, the District shall retain full discretion to determine the method and manner of its operation of its Sewer Collection System.

(D) Personnel. The District shall provide all personnel appropriate for the administration, operation, and maintenance of the System, the District Sewer Collector System, its Local Services, and the performance of its obligations pursuant to this Agreement. The City shall provide all personnel appropriate for the administration, operation, and maintenance of the City Sewer Collector System, its Local Services, and the performance of its obligations pursuant to this Agreement.

(E) Rules and Regulations Concerning Use of Sewers. Each Party shall adopt and enforce ordinances, resolutions, rules, and regulations to control the discharge of Wastewater into their respective Sewer Collector Systems, the Shared Transmission Main and Wheatland Transmission Main that could be detrimental to the System, which shall include appropriate discharge limitations and prevent unauthorized connections and users. Further, the City acknowledges that direction for regulatory compliance may come through the District, as the District holds necessary permits for the operation of the System. Each Party shall notify the other of any violation occurs in that Party's Sewer Collector System.

(F) Testing. **[for completion/consideration]**

(1) No later than **90** days prior to the Start Date, the City will provide adequate water quality testing data to the Regional Board (with a copy to the District) to allow the Regional Board to perform a Reasonable Potential Analysis.

(2) After the Start Date, the City shall have primary responsibility for frequently testing City influent entering the System prior to the Point of Delivery to confirm it is appropriate for discharge into the System and has no contaminants not allowed by the City's ordinances or other AHJ. The City shall provide District with periodic testing reports confirming the same (at least **quarterly** or as otherwise requested by District). Additionally, the District may at any time test City influent entering the System at the Point of Delivery. If any test results reveal contaminants not allowed by the City's ordinances or other AHJ, the Party performing the test shall provide written notification to the other, and the City shall promptly correct the violation. Subsequent tests shall be performed to confirm whether the violation has been corrected.

(3) Each Party's waste strength (BOD and TSS) will remain within the parameters specified in Schedule 4 hereto and shall be tested monthly. The City's waste strength measured by BOD and TSS shall be measured at the Point of Delivery.

(4) Each Party shall be responsible for any fines imposed on the District by any AHJ as a direct result of a violation attributable solely to that Party and for costs associated with increased regulatory evaluation / review, as included in the updated NPDES permit; and costs associated with constituents in influent sewage, if any, that cause an increased treatment cost at the Facility. Such costs shall be the sole responsibility of the Party whose violation resulted in such costs. Any dispute with regard to testing, test results and alleged violations shall be subject to the Alternative Dispute Resolution provision in Section [26] of this Agreement.

(G) Peaking Factors. City will be responsible to OPUD, as a Direct City Cost, for District costs incurred on account of the City exceeding the following peaking factors:

(1) Initially when the City's ADWF is less than 0.75 mgd, flow equalization facilities would be installed by the City to ensure the City's peaking factor shall not exceed 3.0.

(2) When the City's ADWF exceeds 0.75 mgd, the City's peaking factor shall be reduced to 2.8.

(3) When the City's ADWF exceeds 0.90 mgd, the City's peaking factor shall be reduced to 2.6.

(4) When the City's ADWF exceeds 1.26 mgd, the City's peaking factor shall be reduced to 2.2.

(H) Meet and Confer. If, at any time, the District believes that the City's operation of the Sewer Collection System within the City's Local Service Area is not in compliance with then-applicable federal, state, and local laws, rules, and regulations and that such non-compliance is adversely affecting the quantity or quality of Wastewater delivered the System or is affecting the operation of the System, the District shall notify the City and the Parties shall schedule a meeting to meet and confer on the problem and attempt to reach a resolution of it within 30 days after delivery of the District's written notice, notwithstanding Section [] above. The Parties may

continue meeting and conferring on the issue for as long as they mutually agree, but if the Parties are unable to resolve the issue by negotiation, either Party may invoke the Alternative Dispute Resolution provision in Section [REDACTED] of this Agreement.

8. Regional Board and State Water Board Approvals of Agreement. The Parties acknowledge that the delivery, treatment, and discharge of the City's Wastewater at the Point of Delivery must comply with the NPDES permit for the System. To the extent such delivery, treatment, and discharge obligations under this Agreement may require an amendment to the NPDES permit, the District shall apply to the Regional Board at City's expense, as necessary, to amend its NPDES permit for the System to address the changes in the capacity needed at the System for the acceptance, treatment, and disposal of the City's Wastewater. The City shall promptly cooperate with all District information or documentation requests connected to any required District application to the Regional Board or other AHJ.

9. General Scope of Services Performed by the District. Except as otherwise provided herein, the District shall operate and maintain the System to accept, treat, and dispose of the Wastewater originating from within the City's Local Service Area and received at the Point of Delivery. The District shall have sole discretion and decision-making authority concerning the Operation and Maintenance of the System, except as otherwise provided by this Agreement. The District shall meter and maintain accurate records of the quantity (using flow, BOD, and TSS as measures) of City Wastewater received at the System through the Point of Delivery.

10. General Scope of Services of the City. Except as otherwise provided herein, the City shall operate and maintain the City Collector Sewer System to deliver Wastewater originating within the City's Local Service Area to the System at the Point of Delivery. The District shall have no operation, maintenance, or other responsibility for the City's Collector Sewer System, other City Wastewater treatment and disposal facilities, or any other facilities "upstream" from the Point of Delivery; except, however, that the District may request that the City reduce or limit flows to the Point of Discharge, to the extent possible, during an emergency or other temporary cessation of operations in the District's System in order to limit the City Wastewater flow to the System as provided by Section 8(E) herein.

11. Cost Components, Budgeting, Billing and Collection. Beginning on the Start Date, the City shall pay the City's share of Allocable O&M Costs to the District, plus other amounts specified herein, for acceptance, treatment, and disposal of the City's Wastewater at the System by the District in accordance with State of California Revenue Program requirements entitled Revenue Program Guidelines for Wastewater Agencies, dated April 1983, and Revenue Program Guidelines for the Small Community Wastewater Grant (SCWG) Program, dated [REDACTED]. Details of the payment components follow, including identified attachments to this Agreement:

(A) City Share of Allocable Operation and Maintenance Costs (Allocable O&M Costs). Upon connection to the System on the Start Date, the City shall make monthly O&M payments ("O&M Payments") to the District. O&M Payments are calculated to compensate the District for the reasonable amount of Allocable O&M Costs incurred by the District for the System attributable to the acceptance, treatment, and discharge of the City's Wastewater. The City shall pay (i) a proportionate share of Allocable O&M Costs based on the City's percentage of total wastewater flow entering into the System plus (ii) Direct City Costs. The City's flow volume will be metered

continuously at the Point of Delivery. Annual flow will be calculated for each fiscal year (July 1 to June 30).

(1) **Calculation of Baseline Flow Percentage.** The initial baseline percentage of flow for each Party shall be determined by an independent consultant mutually agreed upon by the District and the City, which shall be based upon an analysis of the most recent District fiscal year eligible costs and the median from the immediately preceding five (5) years of flow from each Party. The Parties shall equally share in the cost for this review. The Baseline Charge shall remain in effect during the first two (2) fiscal years of operation and will not change prior to the July following the second full fiscal year. The District will provide the City with the District's annual audited financial statements and annual flow data for the five (5) years immediately preceding the Start Date to enable the City to determine its sewer rate structure.

(2) **Annual True-Up.** On an annual basis, within ninety days of the end of each calendar year, the Parties shall meet and confer and align upon any revisions necessary to the allocation of Allocable O&M Costs between the Parties, taking into account additional costs required of the System by, inter alia, new users, new or expanded uses by existing users, and/or changed regulations. Any increase or decrease in Allocable O&M Costs resulting from the true up process will be reflected in the following Fiscal Year. The Joint Planning Advisory Committee shall meet in November of each year with staff from the District and the City to review and discuss the flow and expense reports and the results of the annual true up.

(3) **Shared Transmission Main Costs.** Allocable O&M Costs for the Shared Transmission Main shall be based upon each Party's percentage of flow. The share of flow shall be determined by calculating the difference between total flows from the Shared Transmission Main into the Facility and the City's flow entering Pump Station 21 at Ostrom Road.

(B) Budgeting/Adjustments to Components of Applicable Operation and Maintenance Costs (Allocable O&M Costs).

(1) On an annual basis, within ninety days of the end of each calendar year, the District shall establish the proposed flow, BOD and TSS rates for the upcoming year based on historical data and projected use including considering whether or not to add, eliminate, or amend specific cost elements.

(2) Within thirty days after the District has established proposed flow, BOD and TSS rates for the upcoming year, District shall provide City with notice of any changes to existing rates and invite the City's feedback.

(C) Rate Setting.

(1) After the District has provided the City with the State's draft revenue program (that includes, inter alia, the District's proposed allocation of Allocable O&M Costs), the City shall have 30 days to review and approve the proposed allocation. If the

City objects to any part of the allocation, it shall deliver its objections with supporting justification and data no later than the end of the 30-day review period provided herein. The District then shall have 30 days to determine whether to agree with the City's objection and adjust the accounting accordingly or reject the City's objection and instead demand that the Parties promptly meet and confer in an attempt to reach a resolution of the issue within 30 days. The Parties may continue meeting and conferring on the issue for as long as they mutually agree, but if the Parties are unable to resolve the issue by negotiation, either Party then may invoke the Alternative Dispute Resolution provision in Section 26 of this Agreement. If the matter is not resolved by the date on which City is otherwise required to make payments based on the District's **proposed allocation of Allocable O&M Costs**, City shall make payments on that basis with a reservation of rights until the matter is resolved. All calculations of Allocable O&M Costs done by the District payable by to the City shall be subject to revision based on audited financial statements of the District. Either Party may request a review and adjustment based on audited financial statements. Upon request of the City, the District shall provide detailed accounting reports used to support values in audited statements. To the extent the District provides information to the City that is not subject to disclosure under the California Public Records Act or other applicable disclosure law, the District may condition delivery of the information on its receipt of a reasonable confidentiality agreement from the City. Adjustment of Allocable O&M Payments resulting from any variance in the Allocable O&M Costs identified in audited financial statements shall be paid by or credited to the City over twelve (12) months beginning **in the next fiscal year**, or as mutually agreed by the Parties.

(2) The City's percentage of Allocable O&M Costs will be calculated by multiplying the City's flow percentage by the approved O&M Expenses as shown in the District's financial statements at the end of each Fiscal Year. The District will send the City an annual invoice for the coming Fiscal Year based upon the City's share of Allocable O&M Costs.

(3) The City may, at its sole cost and expense, inspect or audit the District's books and records regarding Allocable O&M Costs, and the District shall cooperate reasonably with any such inspection and/or audit.

(D) Billing and Collection. On a monthly basis, the District shall issue a billing statement to the City showing the amount of each category of payment due. The District agrees to maintain a workbook containing spreadsheets to track accounting of Allocable O&M Costs, City Direct Costs, any charges for additional services resulting from the periodic true-up process, and all other amounts payable by City to District under this Agreement. The monthly statements shall include the most recent version of the workbook and may include other charges that may be due under the terms of this Agreement. The City shall pay its share of Allocable O&M Costs quarterly (in June, September, December and March) based upon the monthly statements provided by the District. Billing to the City will commence on the first day of the month following the Start Date of this Agreement.

(E) Subject to the provisions of Article XIII D of the California Constitution, the City shall fix, prescribe, adjust, and collect charges for its Local Services during each fiscal year that are at least sufficient, after making allowance for contingencies, reserves and error in the estimates,

to pay to the District monthly Allocable O&M Costs and all other amounts due City as required by this Agreement, and to pay other City costs and obligations, including Direct City Costs and any applicable debt service coverage, that may be required to pay the amounts due under this Agreement.

12. Early Termination. This Agreement may be terminated before the expiration of the Term by mutual agreement of the Parties, each in their sole and absolute discretion. Upon termination of this Agreement, unless otherwise agreed by the Parties, the City shall be responsible for the payment of any outstanding Allocated O&M Costs, its share of any capital investment in the System not yet fully defeased in accordance with the terms of the Capacity Purchase Agreement, or other amounts owed by the City to the District. Payment reconciliation shall be made over a period of time agreed to by the Parties.

13. Insurance. Each Party covenants that it shall at all times maintain such insurance on its Collector Sewer System in such amounts as the Parties shall align upon from time to time in connection with works and properties of like character against accident to, loss of or damage to such works or properties. Each party shall cause the other to be named as an additional insured on all liability policies applicable to the activities under this Agreement. Unless otherwise required by the Regional Board or other AHJ, no Party shall be required to maintain earthquake insurance. If any useful part of the Collector Sewer System shall be damaged or destroyed, such part shall be restored to use. The net proceeds of insurance against accident to or destruction of the Collector Sewer System shall be used for repairing or rebuilding the damaged or destroyed portions of the Collector Sewer System (to the extent that such repair or rebuilding is determined by the Party to be useful or of continuing value to the Party's System) and to the extent not so applied, shall be applied as the Party determines. Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the Party, or may be in the form of self-insurance by the Party or participation in a joint powers insurance authority or similar risk pool. The Party shall establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance. Each party will provide the other with annual certificates of insurance confirming compliance with this Section, together with such related information as each may reasonably request.

14. Relationship of Parties. This Agreement is not intended to and shall not be construed as creating a new joint powers authority or other entity, or relationship of joint venturers, partners, or employer-employee between the Parties. Each Party shall make its personnel and resources reasonably available as required to achieve the purposes of this Agreement. Neither Party shall be deemed co-employer or joint employer of the other's employees, nor have any liability or responsibility for the other's independent contractors.

15. Entire Agreement. This Agreement and each of the attachments referred to herein, which are incorporated by this reference, together with the CPA and WTLCA, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and/or obligations concerning these obligations which are merged into this Agreement. Each Party has made its own independent investigation of the subject matters of this Agreement and is not relying upon any representation not specified herein.

16. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

17. Headings for Convenience Only. The headings, subheadings, and captions contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.

18. Construction of Agreement. This Agreement is the product of negotiation and preparation between the Parties and their representatives, and the Parties agree that this Agreement shall not be deemed to have been prepared or drafted by any one Party. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

19. Modification of Agreement. 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 following (if needed) approval by the City's City Council and the District's Board of Directors.

20. Waiver; Cumulative Rights. Any waiver of any provision or of any breach of any provision of this Agreement must be in writing, and any waiver by a Party of any breach of any provision of this Agreement shall not constitute, operate as, or be construed to be a continuing waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The single or partial exercise of a right held by any Party shall not preclude any other or future exercise thereof or the exercise of any other right.

21. Government Authority. The Parties shall comply with any and all applicable federal, state, and local laws, and regulations covering the subject of this Agreement, and any and all valid orders and regulations issued pursuant to any federal, state, or local law, or regulation governing the subject of this Agreement.

22. Mutual Indemnification. It is understood and agreed that, pursuant to Government Code Section 895.4 and except as otherwise provided by this Agreement, each Party shall fully defend, indemnify and hold each other Party harmless from any liability imposed for injury (as defined by Government Code Section 810.8), and liability of any nature imposed by noncompliance with regulatory requirements (including, but not limited to, accidental wastewater discharges), occurring by reason of anything done or omitted to be done by said indemnifying Party under or in connection with any work, authority or jurisdiction delegated to said Party under this Agreement. The City agrees that this indemnity provision shall not operate to avoid or limit any City obligation to make payments to the District under this Agreement, and that notwithstanding any claim or alleged claim by the City against the District all amounts otherwise due by the City to District shall be paid without offset or setoff.

23. Applicable Law. This Agreement shall be construed under and shall be governed by the laws of the State of California. Any action to interpret or enforce any aspect of this Agreement shall be brought in the Superior Court of the State of California in the County of Yuba.

24. Further Acts. The Parties shall reasonably cooperate with each other and take such further actions as may be reasonably necessary, including any necessary approvals and the execution of any necessary further documents, to carry out the purpose and intent of this Agreement.

25. Notice to Parties. All notices, demands and other formal communications hereunder shall be deemed given if: (a) delivered personally or by courier, (b) sent by overnight express delivery, (c) mailed by registered or certified mail (return receipt requested), postage prepaid, or (d) sent by email in PDF format (“Email Notification”) provided that (i) notice received after 5:00 p.m. on a business day or on a non-business day shall be deemed received on the next business day and (ii) any sender of an Email Notification also delivers the notice by one of the methods listed in (a)-(c) (the “Secondary Notice”) (provided that if the recipient of the Email Notification responds with an email acknowledgement of receipt (an automatic “read receipt” does *not* constitute acknowledgement), Secondary Notice is not required), to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party(ies):

Olivehurst Public Utility
District
1970 9th Avenue
Olivehurst, CA 95961
Attn: General Manager Email:

City of Wheatland
111 C Street
Wheatland, CA 95692
Attn: City Manager
Email:

23. Binding Effect. This Agreement shall be of binding legal effect only once it has been duly approved and signed by each of the Parties. No rights or duties under this Agreement may be assigned or delegated by a Party to a non-party without the express written consent of the other Party, which may be withheld in the sole and absolute discretion of such other Party, provided that no City consent shall be required for any District transfer, assignment or delegation of all or substantially all of the District’s rights and obligations under this TOA and the Capacity Agreement to another public agency that assumes all or substantially all of the District’s obligations relating to the operation and maintenance of the System. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the legal successors and authorized and assigns of the Parties.

24. No Third-Party Beneficiaries. This Agreement does not create, and shall not be construed to create any rights enforceable by any person, partnership, corporation, joint venture, limited liability company, district or other form of organization or association of any kind that is not a Party. Without limiting the generality of the foregoing, landowners, residents, customers, users, water users and ratepayers of the parties are not intended to be third-party beneficiaries of this Agreement.

25. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by non-binding mediation before commencing

litigation. The mediator shall be mutually selected by the Parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each Party. A mediation may, if agreed by both Parties in their sole discretion, include engagement of an independent expert to render a non-binding opinion on any subject in dispute. All costs and fees required by the mediator or independent expert shall be split equally by the Parties, otherwise each Party shall bear its own costs and attorney's fees for the mediation. If mediation fails to resolve the dispute within 60 days after a mediator has been selected and a date set for the mediation, either Party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other Party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute, breach, or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute, breach, or other matter in question would be barred by applicable California statutes of limitations.

Notwithstanding the foregoing, no mediation shall be required (i) as a precedent to any action for injunctive relief brought in a court of competent jurisdiction, or (ii) to prevent either Party from seeking any other judicial remedy (provisional or otherwise) involving actual or imminent threats to public health or safety.

26. Counterparts. This Agreement may be signed in any number of counterparts by the Parties such that the signatures may appear on separate signature pages. Facsimile or other electronic signatures shall be binding in the same manner as originals. A copy or an original, with all signatures appended together, shall be deemed to be a fully executed original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date provided herein.

OLIVEHURST PUBLIC UTILITY DISTRICT CITY OF WHEATLAND

By: _____

By: _____

Board President

Mayor

Date Signed: _____

Date Signed: _____

ATTEST:

ATTEST:

By: _____

By: _____

Secretary

City Clerk

APPROVED AS TO FORM:

By: _____

Counsel for the District

APPROVED AS TO FORM:

By: _____

Special Counsel to the City

DRAFT

List of Exhibits and Schedules

Exhibit A: Definitions

Exhibit B: Point of Delivery Diagram (if applicable)

Schedule 1: Operations and Maintenance Costs

Schedule 2: Excluded Costs

Schedule 3: Direct City Costs

Schedule 4: Permissible Waste Strength Profile

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Exhibit A Definitions

“Allocable Operation and Maintenance Costs” or “Allocable O&M Costs” mean all O&M Costs that the City is agreeing to pay a proportionate share under the TOA, and includes all O&M Costs *other than* Excluded Costs. The City’s share of Allocable O&M Costs attributable to the Facility will generally be determined by evaluating the proportionate share of flow, BOD and TSS from each party. Allocable O&M Costs attributable to the pipeline system will be determined by calculating that portion of flow of the District’s Collector Sewer System between the Point of Delivery and the Facility compared to the City’s portion of the Average Annual Flow through that portion using agreed-to flow meters for determination of respective flows.

“Authorities Having Jurisdiction (AHJ)” means any state, federal or local regulatory authority (other than the State Water Board or Regional Water Board) having jurisdiction over the District or any District facility (with respect to the District) or over the City or any City facility (with respect to the City).

“Average Annual Flow” or “AAF” is the daily flows of Wastewater averaged over a 365 day period (e.g., total flow for the entire year in millions of gallons divided by 365).

“Average Daily Dry Weather Flow” or “ADDWF” means the flow calculated by computing the average daily influent flow over the ninety (90) day consecutive period with the lowest measured influent flow within the last 365 days.

“Baseline Flow Percentage” means each Party’s share of Wastewater flow into the System at the Start Date for the purposes of calculating Allocable Operations and Maintenance Costs for the first two Fiscal Years of this Agreement.

“BOD” means biochemical oxygenation demand.

“Capacity” means the Wastewater Treatment Facility treatment and disposal capacity in Average Daily Dry Weather Flow, as described in more detail in Section ___ of the Capacity Purchase Agreement. Capacity also includes the capacity required in the Shared Transmission Main and Shared Collector Sewer System required to convey City Wastewater to the Facility.

“Capacity Purchase Agreement” or “Capacity Agreement” means that certain Capacity Purchase Agreement, dated on or about **[the Effective Date]**, between the City and District, including any amendments.

“Capital Improvement Project” or “CIP” means a project that is determined by the District to be a new, fixed asset, generally depreciated over ten years or more, that is primarily intended to increase the System’s Permitted Capacity and is not an upgrade required by regulatory requirements.

“Capital Improvement Project Costs” or “CIP Costs” means the costs associated with Capital Improvement Projects. Capital Improvement Project Costs are **not** included in Operations and Maintenance Costs.

“Capital Project” means a Capital Improvement Project or Capital Repair and Replacement Project.

“Capital Repair and Replacement Project” or “CRRP” means a project at the System, generally depreciated over ten years or more, that involves repair, renovation, improvement, replacement, upgrade and/or modification that does not expand the Permitted Capacity of the System but that is necessary or appropriate to extend its useful life, maintain Permitted Capacity, preserve it in good, safe, and efficient repair and working order, improve its efficiency, repair damage, or maintain or meet applicable (including new and different) permit, statutory, regulatory and/or other governmental requirements. CRRP does not include projects for the District’s potable water system or for any portion of the District’s Collector Sewer System not included in the definition of System, or for Capital Improvement Project Costs.

“Capital Repair and Replacement Project Costs” or “CRRP Costs” means the costs associated with Capital Repair and Replacement Projects. Capital Repair and Replacement Project Costs **are** included in Operations and Maintenance Costs but are tracked separately by the District.

“City” means the City of Wheatland.

“City Allocable Operation and Maintenance Costs” or “City Allocable O&M Costs” mean the Allocable O&M Costs payable by the City under this TOA.

“Collector Sewer System” means the District or City publicly operated sanitary sewer collection system including piping, pumping, and in-line treatment facilities appurtenant thereto, whose primary purpose is the collection of Wastewater exclusively within the service area of the City or District, as applicable. The District’s Collector Sewer System also includes piping and pumping facilities between the Point of Delivery and the Facility.

“Direct Extraordinary Costs” are specific costs incurred by the District on account of acts, omissions, or circumstances attributable to the City, as provided in Schedule 3, for which the City shall be 100% responsible.

“District” means Olivehurst Public Utility District.

“Equivalent Dwelling Unit” or “EDU” is the typical volume and strength of the Wastewater generated by a single family home built after _____, 2015. As of the Effective Date, one OPUD EDU generates 260 gallons of wastewater per day (during the dry weather season), and includes approximately 0.67 lbs of BOD per day and 0.5 lbs of TSS per day.

“Excluded Costs” are (i) the O&M Costs that the City is **not** agreeing to pay any portion under the TOA, and (ii) District costs **not** allocated to the System in any fiscal year under the

District's customary and proper accounting principles and means the items identified in Schedule 2.

"Facility" means the District's Wastewater Treatment Facility located at 3908 Mary Avenue, Olivehurst, California, including all associated buildings, structures, property, equipment, and facilities owned and controlled by the District, but not including District facilities that make up the District's Collector Sewer System and used to provide Wastewater collection services within the District's jurisdiction.

"Fiscal Year" means the period July 1 through June 30.

"I and I" means Infiltration and Inflow.

"Infiltration" means any water entering a Collector Sewer System from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls.

"Inflow" means any water discharged into a Collector Sewer System from such sources as, but not limited to, roof leaders, cellars, yard and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers and combined sewers, catch basins, storm waters, surface runoff, street wash waters or drainage.

"Local Services" means all District or City services that are necessary or appropriate for the collection, conveyance, and transfer of wastewater originating within the respective jurisdiction of the District or the City to the System.

"Local Service Area" means that area in which a Party has the statutory authority for the collection and transmission of Wastewater, whether inside or outside of its exterior service area boundary.

"MGD" means million gallons per day.

"Operation and Maintenance" or "O&M" means the management, operation, maintenance, repair, replacement (including Capital Repair and Replacement Projects but excluding Capital Improvement Projects), inspection, and other actions necessary or appropriate to operate and maintain the System in good, safe, and efficient repair and working order.

"Operation and Maintenance Costs" or "O&M Costs" include all costs allocated to the System in any fiscal year under the District's customary and proper accounting principles, including without limitation all items identified in TOA Schedule 1. O&M Costs include CRRP Costs (although District must track them separately) but do not include CIP Costs.

"Operation and Maintenance Payments" or "O&M Payments" is defined in Section 8(A).

“Permitted Capacity” means the permitted average annual sewage treatment flow to be processed by the Facility as permitted by the Regional Board or other applicable AHJ.

“Point of Delivery” means the District’s proposed Pump Station #21 directly north of the intersection of Ostrom Road and Rancho Road or such other place aligned upon by the Parties as reflected in the diagram attached hereto as Exhibit B.

“Regional Board” means the Central Valley Regional Water Quality Control Board.

“Shared Collector Sewer System” means the District’s publicly operated sanitary sewer collection system, including piping, pumping, and in-line treatment facilities appurtenant thereto, whose primary purpose is the collection of Wastewater from both the District and the City, including piping and pumping facilities, between the Point of Delivery and the Facility.

“Shared Transmission Main” means the portion of the transmission main constructed and jointly owned by the Parties to convey City Wastewater from Ostrom Road to the Point of Delivery.

“Start Date” means the date whereby City connects and begins to deliver City Wastewater to the System via the Point of Delivery, at which time the District is obligated to convey and treat that Wastewater, and the City is obligated to begin paying its share of Allocable O&M Costs as provided in the TOA.

“System” means the Facility and the portion of District’s Collector Sewer System between the Point of Delivery and the Facility.

“TSS” means total suspended solids.

“Wastewater” means the liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter a Party’s Collector Sewer System, including Infiltration and Inflow.

“Wastewater Transmission Line Construction Agreement” or “WTLCA” means that certain Wastewater Transmission Line Construction Agreement, dated on or about **[the Effective Date]**, between the City and District, including any amendments.

“Wheatland Transmission Main” means the portion of the transmission main constructed by the Parties to convey City Wastewater to the Point of Delivery. The Wheatland Transmission Main is exclusively owned by the City from the City limits to Ostrom Road.

Exhibit B Point of Delivery Diagram

[To be provided if applicable]

Schedule 1
Operations and Maintenance Costs

[All for consideration and review]

Items included in Operations and Maintenance Costs include the following relating to the System (without duplication):

- the reasonable expenses of management, operation, maintenance, repair, and inspection of the System to keep it in good, safe and efficient working order, including without limitation
 - electricity, gas, labor, chemicals, sludge disposal costs, and the like.
- Reasonable costs for general administration, permitting compliance, overhead, insurance, permitting, taxes (if any), and other similar costs.
- Fines, penalties, assessments and/or charges levied by the Regional Board or other governmental agency with jurisdiction and relating to the operation of the System
- Costs of upgrades required for legal compliance, including CRRP's
- Costs of insurance, including deductibles and SIR's.
- [Debt service on System elements, including on CRRP's, to the same extent allocated to District customers]
- [Depreciation and capital recovery or replacement costs on System elements, including on CRRP's, to the same extent allocated to District customers.]

Schedule 2
Excluded Costs

[All for consideration and review]

Excluded Costs include:

- (i) The following Operation and Maintenance Costs that the City is not agreeing to pay any portion under the TOA:
 - All costs associated with OPUD customer billing for wastewater
 - Interest paid for District customer deposits, banking charges, customer billing expenses including postage and printing, and the portion of general and administrative labor costs including staff development and training, employee retirement benefits, payroll taxes, attributable to administrative tasks dealing directly with the District's customers, separate from addition to administrative tasks that may include operation and maintenance of the System
 - General overhead associated with operation of the District's Collector Sewer System that does not convey City wastewater flows.

- (ii) The following District costs *not* allocated to the System in any fiscal year under the District's customary and proper accounting principles
- All costs associated with OPUD customer billing for utilities other than wastewater
 - All costs associated with OPUD facilities not included in the System

Schedule 3
Direct City Costs

[All for consideration and review]

Direct City Costs are (i) any item specifically identified as a Direct City Cost in the TOA and (ii) the following specific costs incurred by the District on account of acts, omissions, or circumstances attributable to the City:

- Penalties, fines, and other costs assessed by the Regional Board or other AHJ (including without limitation relating to excess I&I).
- District costs associated with spills or other adverse consequences arising from City violation of the agreed peaking factors **[from time to time]**.
- District costs associated with (i) new testing, and (ii) treatment, that is required as a result of new constituents in the City's flow as established by the Reasonable Potential Analysis.