

PHASE 1B COMPLETION AND OPERATIONS AND MAINTENANCE PASS-THROUGH AGREEMENT

THIS PHASE 1B COMPLETION AND OPERATIONS AND MAINTENANCE PASS-THROUGH AGREEMENT (this "Agreement") is made effective as of [REDACTED], 2026 (the "Effective Date"), by and between the Olivehurst Public Utility District, a political subdivision of the State of California and a public utility district (the "District"), and the City of Wheatland, a California municipal corporation (the "City" or the "Recipient"). The District and the City are collectively referred to herein as the "Parties," or singularly by their individual names or as a "Party." This Agreement is entered into to satisfy Exhibit D.1, Technical Special Condition 4 of Grant Agreement No. D2505004.

RECITALS

WHEREAS, the City is the recipient of a Clean Water Construction Grant from the State Water Resources Control Board (the "State Water Board"), acting through its Division of Financial Assistance (the "Division"), under Agreement No. D2505004, Project No. C-06-8753-110 (the "Grant Agreement"), providing up to \$75,000,000 in grant funds to finance the Regional Wastewater Transmission and Treatment Facilities Project (the "Project"), which will convey wastewater from the City to the District's wastewater treatment plant for regional treatment; and

WHEREAS, the Project is divided into phases, and Phase 1B consists of improvements within the District System that are to be constructed and owned by the District ("Phase 1B"), subject to the terms of this Agreement; and

WHEREAS, the Parties acknowledge their shared understanding that the scope of the Project financed by the Grant includes District System improvements consisting of Pump Station No. 2 and the downstream conveyance piping that was upsized to accommodate flows from Pump Station No. 2 and the sanitary sewer overflow (SSO) flow diversions at Mary Avenue and McGowan Parkway, and the Parties intend that this Agreement, which is submitted for review in a form satisfactory to the Division's counsel under Exhibit D.1, Technical Special Condition 4 of the Grant Agreement, memorialize that understanding; and

WHEREAS, the District is a participating agency to the Grant Agreement and is not a recipient of the grant funds, which are disbursed to and controlled by the City; and

WHEREAS, Exhibit D.1, Technical Special Condition 4 of the Grant Agreement requires the City, before requesting reimbursement of any Project costs, to execute a legally binding agreement with the District, in a form satisfactory to the Division's counsel, obligating the District to complete Phase 1B no later than the Completion of Construction Date and to operate and maintain the Project components within the District System through the useful life of the Project; and

WHEREAS, the City and the District have entered into, or will enter into concurrently herewith, a Capacity Purchase Agreement and a Wastewater Treatment and Operations Agreement (together, the "Companion Agreements"), and have entered into that certain OPUD – Wheatland Term Sheet dated September 3, 2026 (the "Term Sheet") setting forth the controlling deal terms that the Companion Agreements implement, and the Parties intend that this Agreement be read consistently with, and not in conflict with, the Companion Agreements, the Term Sheet, and the Grant Agreement; and

WHEREAS, the District is a public utility district organized under the California Public Utility District Act that acts through its Board of Directors, and the District's execution and performance of this Agreement are subject to authorization by resolution of its Board of Directors and to the District's rate-setting authority and the requirements of Article XIII D of the California Constitution (Proposition 218); and

WHEREAS, the Parties enter into this Agreement to satisfy Technical Special Condition 4 while fairly allocating the risks, costs, and liabilities of Phase 1B and the long-term operation and maintenance of the District System between them.

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.** Capitalized terms used but not defined in this Agreement have the meanings given to them in the Grant Agreement. As used herein: "Completion of Construction Date" means the date established on the Cover Page of the Grant Agreement (currently December 1, 2030), as it may be extended by the Division; "District System" means the wastewater conveyance, pumping, and related facilities within the District's service area that comprise Phase 1B and the other Project components owned or operated by the District; "Project Components within the District System" means the Phase 1B facilities and any other Project facilities located within or operated as part of the District System; "Useful Life" means the economically useful life of the Project (not less than 40 years from Project Completion); "District Revenues," "District Operations and Maintenance Costs," "District Net Revenues," and "Event of Default" have the meanings given in Exhibit D of the Grant Agreement; and "WWTP Connection Fees" is defined in Section 6.

2. **Incorporation of Grant Agreement; Compliance.** The District acknowledges that it has received and reviewed the Grant Agreement. The District shall perform Phase 1B and operate and maintain the Project Components within the District System consistent with all applicable terms and conditions of the Grant Agreement. This Agreement is intended to include and enforce those terms of the Grant Agreement necessary for the City to comply with its obligations thereunder as they relate to the District System, and the specific flow-down obligations set forth in this Agreement control the scope of the District's undertaking. In the event of a conflict between a general reference to the Grant Agreement and a specific allocation of risk or liability expressly set forth in this Agreement, the specific allocation in this Agreement governs as between the City and the District.

3. **Grant-Funded Project Scope.** The Parties acknowledge and agree that, subject to the terms of the Grant Agreement and the Division's determination of eligible costs, the scope of the Project eligible for funding under the Grant includes the following District System improvements: (a) Pump Station No. 2; and (b) the downstream conveyance piping that was upsized to accommodate flows from Pump Station No. 2 and the sanitary sewer overflow (SSO) flow diversions at Mary Avenue and McGowan Parkway (collectively, the "PS 2 Scope Items"). This Section records the Parties' shared understanding of the Project scope reviewed by the Division's counsel in connection with this Agreement and is intended to confirm that the PS 2 Scope Items were disclosed as part of the grant-funded Project. Nothing in this Section (i) expands the Grant or the eligible costs determined by the Division, (ii) obligates the District to fund any

PS 2 Scope Item from its own operating revenues, reserves, or ratepayer charges, or (iii) constitutes a representation or warranty by the District as to the ultimate eligibility determination, which rests with the Division and the State Water Board.

4. **Completion of Phase 1B.** The District shall complete construction of Phase 1B (the District System conveyance facilities, pump stations, force mains, and related improvements) consistent with all applicable terms and conditions of the Grant Agreement no later than the Completion of Construction Date. The District shall own Phase 1B, with the exception of the 18-inch force main and other improvements designed by the City and included at the Pump Station No. 21 site, as described in the Wastewater Treatment and Operations Agreement. If the District reasonably anticipates a delay, it shall notify the City in sufficient time for the City to request an extension of the Completion of Construction Date from the Division under the Grant Agreement, and the City shall use good-faith efforts to obtain any such extension. A delay caused by an event of force majeure or by the act or omission of the City, the Division, or the State Water Board shall not constitute a default by the District.

5. **Operation and Maintenance; Assumption of Costs.** The District shall operate and maintain the Project Components within the District System in good repair and working order, consistent with the Grant Agreement, through the Useful Life of the Project. As between the City and the District and as to the District System, the District assumes the operations and maintenance costs of the Project Components within the District System, and the State Water Board shall not be liable for any such cost. Nothing in this Section modifies the cost-sharing and cost-allocation provisions of the Companion Agreements, which govern the allocation of shared System costs between the Parties. Without limiting the foregoing, and as further set forth in the Wastewater Treatment and Operations Agreement, the City shall bear one hundred percent (100%) of the operations and maintenance costs of the 18-inch force main within the Phase 1, Contract 2 facilities that solely serves the City at all times, and one hundred percent (100%) of the operations and maintenance costs of the remaining Phase 1, Contract 2 conveyance facilities until Phase 2 of the Project is completed and the Sports & Entertainment Zone is connected to the System, after which the operations and maintenance costs of those remaining facilities shall be prorated between the Parties based on use. Upon the connection of the Tribe and/or the Sports & Entertainment Zone to, and their commencement of use of, those facilities, the City shall receive a prospective credit so that it no longer bears operations and maintenance costs properly attributable to the Tribe's or the Zone's use, consistent with the Wastewater Treatment and Operations Agreement.

6. **Rates, Fees, and Charges.** To the extent permitted by law, and subject to Article XIII D of the California Constitution and all other applicable constitutional and statutory procedures, the District shall fix, prescribe, and collect rates, fees, and charges for the District System during each Fiscal Year that are reasonable, fair, and nondiscriminatory and sufficient to generate District Revenues in the amounts necessary to cover District Operations and Maintenance Costs, and shall ensure that District Net Revenues are in an amount necessary to meet its obligations under this Agreement. The District may make adjustments to, and classifications of, such rates, fees, and charges as it deems necessary, but shall not reduce them then in effect unless District Net Revenues from the reduced rates, fees, and charges will at all times remain sufficient to meet the requirements of this Section. Nothing in this Agreement obligates the District to impose or maintain any rate, fee, or charge in violation of Article XIII D or other applicable law, and the District's compliance with the notice, hearing, and protest procedures of Article XIII D shall not constitute a default under this Agreement. Notwithstanding the foregoing, the District shall use reasonable, good-faith efforts to establish and maintain lawful rates, fees, and charges sufficient to satisfy its obligations under this Agreement, and shall not

invoke Article XIII D or other applicable law as a basis to decline to pursue a rate, fee, or charge adjustment that is otherwise lawful and necessary to meet those obligations.

7. **Protection of District WWTP Revenues; Fee Definitions.** "Conveyance Fees" means the connection fees charged to new development for capacity in the regional wastewater conveyance facilities, to be adopted by the City and the District. "WWTP Connection Fees" means the District's wastewater treatment plant capacity and connection fees, and any repair-and-replacement component thereof, imposed for capacity in or improvements to the District's treatment facility. WWTP Connection Fees do not constitute Conveyance Fees or District Revenues pledged under this Agreement, and shall not be swept, diverted, or applied to repayment of the grant, any principal-forgiveness amount, or any Project loan. Consistent with the Term Sheet, the District's WWTP capacity and connection fees shall be deposited exclusively into the District's WWTP Capital Connection Fee Fund and shall not be pledged, assigned, or applied to repay the Tribal loan, the County of Yuba loan, or any other debt, and any repair-and-replacement component shall be held in a segregated capital-preservation subaccount, in each case consistent with Government Code section 66013 and the Companion Agreements. Nothing in this Agreement grants the City, the State Water Board, or any lender any lien on, security interest in, or right to direct the use of the District's WWTP Connection Fees, which the District shall be entitled to impose, collect, and expend for their lawful capital purposes.

8. **Insurance.** The District shall procure and maintain, or cause to be maintained, insurance on the District System and the Project with responsible insurers, or as part of a reasonable system of self-insurance meeting the requirements of Exhibit D.11 of the Grant Agreement, in such amounts and against such risks as are usually covered in connection with systems similar to the District System and the Project. For any policy covering construction of Phase 1B, the District shall cause a certificate of insurance to be issued naming the State Water Board, the City, their officers, agents, employees, and servants as additional insureds, and shall provide the City with copies prior to commencement of construction.

9. **Continuous Use; No Lease, Sale, Transfer, or Disposal.** Except as provided in the Grant Agreement, the District shall not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project Components within the District System during the Useful Life without the prior written approval of the Division and the City's prior written consent. This Section does not restrict the District's transfer, assignment, or delegation of its rights and obligations to another public agency that assumes them, to the extent permitted by the Companion Agreements and approved by the Division.

10. **Labor and Federal and State Compliance.** In its construction contracts and subcontracts for Phase 1B, the District shall include and comply with the federal and state requirements flowed down under the Grant Agreement, including Davis-Bacon prevailing-wage requirements, California Department of Industrial Relations public-works contractor registration (Labor Code sections 1725.5 and 1771.1) and state prevailing-wage rules, American iron-and-steel sourcing (absent a USEPA waiver), SAM Unique Entity Identifier and debarment/suspension compliance, applicable CEQA and other state cross-cutter requirements, and conflict-of-interest disclosure. These obligations continue for the term of the Grant Agreement and the Useful Life of the Project to the extent so required by the Grant Agreement.

11. **Fiscal Sustainability Plan; Conveyance Fees.** To the extent applicable to the District, the District shall develop and implement a Fiscal Sustainability Plan meeting the requirements of the Grant Agreement in time to permit the City to certify to the Division no later

than December 31, 2028, and shall reasonably cooperate with the City and the District in adopting Conveyance Fees no later than completion of construction.

12. **Notice of Certain Events; Cultural Resources.** The District shall notify the City promptly (and in sufficient time to permit the City to satisfy its notice obligations to the Division under Exhibit D.13 of the Grant Agreement) upon the occurrence of any District-side event requiring notice under the Grant Agreement, including bankruptcy or insolvency, threatened litigation materially affecting the District System, loss of permits, a change in Project scope, or a construction delay or work stoppage of the duration specified in the Grant Agreement. Within 24 hours of discovering any potential tribal cultural, archaeological, or historical resource or human remains in the Phase 1B work area, the District shall notify the City and comply with any applicable mitigation, monitoring, and reporting program; upon discovery of human remains, the District shall cease construction and comply with Health and Safety Code section 7050.5 and Public Resources Code section 5097.98.

13. **Records; Access; Audit.** The District shall maintain Project records and provide site access to federal and state inspectors, and shall cooperate with audits, through the Records Retention End Date under the Grant Agreement. Any audit disallowance attributable to the District's costs or conduct shall be borne by the District as provided in Section 13.

14. **Allocation of Repayment and Clawback Liability.** The District acknowledges that under Exhibit D.8 of the Grant Agreement the City may be required, upon a determination that an Event of Default has occurred, to return grant or principal-forgiveness amounts to the State Water Board with interest at the highest legal rate. As between the City and the District, the District shall be responsible for and shall reimburse the City for any repayment, clawback, interest, penalty, or cost to the extent attributable portion attributable to (a) a District-side event as defined in Exhibit D.4 of the Grant Agreement and (b) the District's failure to perform its obligations under this Agreement.

The District shall not be liable for, and the City shall not seek to pass through to the District, any repayment, clawback, interest, penalty, or cost arising from an Event of Default caused by the City, the Division, or the State Water Board, or by unforeseeable circumstances outside the District's reasonable control. If a repayment or other liability is caused by the concurrent acts or omissions of both Parties, responsibility shall be allocated between the Parties in proportion to their respective fault. Prior to allocating liability to the District, the District shall have a reasonable opportunity to cure, consistent with any cure period established by the Division or Grant Agreement. This Section allocates repayment risk solely as between the Parties and does not enlarge the District's obligations to the State Water Board beyond those imposed under this Agreement or at law. The District's liability under this Section is limited to the repayment, clawback, interest, penalties, and costs actually attributable to the District's own acts or omissions. The remedies provided in this Section 14 are cumulative and do not limit any other rights or remedies available under this Agreement or at law.

15. **Indemnification.** Except as otherwise provided in this Section, and pursuant to Government Code section 895.4, each Party shall defend, indemnify, and hold the other Party harmless from any liability imposed for injury (as defined in Government Code section 810.8) and any liability imposed for noncompliance with regulatory requirements, occurring by reason of anything done or omitted to be done by the indemnifying Party under or in connection with any work, authority, or jurisdiction delegated to that Party under this Agreement. To the extent the City is required by Section 21 of the Grant Agreement to indemnify the State Water Board and

the other Indemnified Persons, the District shall, to the extent permitted by law, indemnify, defend, and hold harmless the Indemnified Persons, but solely with respect to losses, claims, damages, liabilities, or expenses arising out of the Phase 1B work, the District System, or the District's acts or omissions, and excepting in all cases any loss arising from the sole negligence or willful misconduct of the City or the Indemnified Persons. The District does not assume, and shall not be deemed to have assumed, any indemnity obligation with respect to the City System, Phase 1A, or the City's acts or omissions, and no one-way indemnity of the City by the District is created by this Agreement. Each Party's indemnity obligation is limited to the extent permitted by law and is subject to the immunities and defenses available to public entities.

16. District Suspension and Termination Rights. If the funding necessary to support the Project fails to materialize, the District shall have the following protective rights, exercisable in addition to any rights under the Companion Agreements: (a) the District may suspend its performance of Phase 1B construction obligations upon 60 days' written notice if a legally binding commitment for the funding necessary to complete the Project has not been secured within 180 days after the date such commitment was required; and (b) the District may terminate this Agreement if the conditions precedent to the Project funding remain unsatisfied for 12 months through no fault of the District. Any termination under this Section is subject to Section 17 (prior written consent of the State Water Board). The District shall not be obligated to expend District operating revenues, or to commit ratepayer funds beyond amounts lawfully available and appropriated, to perform obligations for which corresponding Project funding has not been secured. Before exercising any suspension or termination right under this Section, the District shall provide the City written notice and the Parties shall meet and confer in good faith for a period of not less than thirty (30) days to develop a joint funding plan. The District shall provide the City prompt written notice upon determining that the funding necessary to support the Project may not be secured, and a suspension or termination under this Section arising solely from a failure of Project funding shall not constitute a breach by, or default of, either Party.

17. Conditions Precedent; Funding Contingency. Consistent with the Companion Agreements, this Agreement and the District's construction obligations are contingent upon receipt of Clean Water State Revolving Fund grant and forgivable-loan funding in an amount not less than \$75,000,000, and upon satisfaction (or waiver) of the conditions precedent set forth in the Companion Agreements. If such funding is not received, the District's obligations to construct Phase 1B shall be suspended and, as provided in the Companion Agreements, the affected agreements may terminate, subject to Section 17.

18. State Water Board as Third-Party Beneficiary; Amendment and Termination. The Parties agree that the State Water Board is a third-party beneficiary of this Agreement. This Agreement shall not be amended or terminated without the prior written consent of the State Water Board, which consent may require an amendment to the Grant Agreement. Except for the State Water Board's rights as expressly stated in this Section, this Agreement creates no rights enforceable by any person who is not a Party.

19. Term. This Agreement is effective as of the Effective Date and, unless earlier terminated in accordance with its terms and with Section 17, remains in effect through the later of the Useful Life of the Project and the expiration of the District's obligations under the Grant Agreement flowed down hereunder. The indemnification and repayment-allocation provisions of Sections 13 and 14 survive termination or expiration.

20. **Board Authorization; Binding Effect.** This Agreement is of binding legal effect only once it has been duly approved and signed by each of the Parties, including, as to the District, approval by resolution of its Board of Directors designating the authorized signatory and confirming the rate covenant in Section 5. Neither Party may assign or delegate its rights or duties without the other Party's written consent, except that no City consent is required for a District transfer to another public agency that assumes the District's obligations, to the extent permitted by the Companion Agreements and approved by the Division.

21. **Relationship of Parties.** This Agreement does not create a joint powers authority or any partnership, joint venture, or employer-employee relationship between the Parties, and neither Party is the agent of the other.

22. **Governing Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought in the Superior Court of the State of California, County of Yuba.

23. **Amendment.** Subject to Section 17, this Agreement may be modified or amended only by a writing duly authorized and executed by both Parties following approval by the City's City Council and the District's Board of Directors, as applicable, and with the prior written consent of the State Water Board.

24. **Notices.** All notices under this Agreement shall be given in writing to the District at 1970 9th Avenue, Olivehurst, CA 95961, Attn: General Manager, and to the City at 111 C Street, Wheatland, CA 95692, Attn: City Manager, or to such other address as a Party may designate by like notice, and shall be effective upon personal delivery, overnight delivery, certified mail (return receipt requested), or email with confirmation of receipt in each case using the contact information set forth below:

Olivehurst Public Utility
District
1970 9th Avenue
Olivehurst, CA 95961
Attn: General Manager
Email: jtillotson@opud.org

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

25. **Further Acts; Severability; Construction; Waiver.** The Parties shall take such further actions and execute such further documents as may be reasonably necessary to carry out this Agreement. If any provision is held illegal, invalid, or unenforceable, the remaining provisions remain in effect and a valid provision as similar as possible shall be substituted. This Agreement is the product of negotiation and shall not be construed against either Party as drafter. No waiver of any provision or breach is effective unless in writing, and no waiver operates as a continuing waiver.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which is deemed an original and all of which together constitute one instrument. Facsimile or electronic signatures are binding as originals.

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:

APPROVED AS TO FORM:

By: _____

Deirdre Joan Cox
Counsel for the District

By: _____

City Attorney