

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: November 18, 2021

Item description/summary:

MOU Amendment 2 for the MOU between the Tribe and OPUD for fire and EMT services at the Hard Rock facility. This item has been discussed in committee and Board meetings and by the ad-hoc committee. The Tribe agreed in principal to fund two additional firefighters based on triggered growth at the Fire Mountain facility such as a gas station and live entertainment venue. They also agreed to look at funding another firefighter in the business quarter following the completion of their improvements. The attached amendment to the original MOU memorializes these actions.

Fiscal Analysis:

See attached amendment 2

Employee Feedback

None

Sample Motion:

Move to approve the amendment number two to the MOU between the Tribe and OPUD for fire and EMT services at the Hard Rock at Fire Mountain facilities.

Prepared by:

John Tillotson, P.E., General Manager

SECOND AMENDMENT TO MOU

THIS SECOND AMENDMENT TO MOU (this “**Second Amendment**”) is made and entered into as of _____, 2021 and is by and between OLIVEHURST PUBLIC UTILITY DISTRICT, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) and the ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**”).

RECITALS

A. District and Tribe are parties to that certain Memorandum of Understanding Between the Olivehurst Public Utility District and the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, dated for convenience April 19, 2018 (“**Original MOU**”), as amended by that certain Amendment to MOU, dated as of March 21, 2019 (“**First Amendment**” and, together with the Original MOU, the “**Amended MOU**”).

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

C. The Project is currently being expanded to include an indoor live music venue, additional back-of-house office space and small warehouse, and a gas station and convenience store consisting of a total of approximately 99,200 square feet (collectively, the “**Improvements**”).

D. The Tribe agreed in the Amended MOU to mitigate impacts of any future Project expansions on each of the District and the Wheatland Fire Authority, a Joint Powers Agency comprised of the City of Wheatland and the Plumas Brophy Fire Protection District (“**Wheatland/Plumas Brophy**”), through the payment of fire mitigation fees and is currently making such payments for the Improvements.

E. In addition to the Tribe’s other payments, the District has requested that the Tribe fund additional District personnel for the provision of fire and emergency medical services to maintain safety and handle the expanded square footage and patronage associated with the Improvements.

F. Based on the foregoing, the parties hereto wish to amend the Amended MOU as provided in this Second Amendment.

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

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

2. **Amendments.**

(a) Section 4 of the Amended MOU is hereby amended by adding the following as a new Section 4(f):

(f) **Additional Fire and Emergency Medical Personnel**

Commencing January 1, 2022, the Tribe shall pay the District one hundred eighty thousand dollars (\$180,000) per annum to hire and train two additional fire and emergency medical personnel for the District in addition to the fire and emergency medical personnel identified in the Amended MOU. The Tribe will pay this amount in four equal quarterly payments to be made thirty (30) days after the beginning of each calendar quarter. At the beginning of the next full calendar quarter following the completion of the Improvements ~~and anytime thereafter~~, the Tribe ~~shall elect whether may agree~~ to pay the District an additional ninety thousand dollars (\$90,000) to hire and train one additional fire and emergency medical personnel. The Tribe shall notify the District in writing of its any determination whether the Tribe ~~elects may make~~ to fund the additional position. Upon the District's receipt of such written notification, the Tribe shall thereafter pay the District two hundred seventy thousand dollars (\$270,000) per annum on a quarterly basis as set forth herein. The District shall use the payments made by the Tribe under this subdivision (f) to employ additional fire and emergency medical personnel as specified herein and not for any other purpose.

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

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

5. **Miscellaneous.** All Recitals and Exhibits to this Second Amendment, and any defined terms herein and therein, are incorporated into this Second Amendment by this reference. Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not a part of this Second Amendment. No provision of this Second Amendment may be modified or amended, nor shall any term be waived, except expressly in a writing signed by all parties hereto. This Second Amendment shall be governed by, and construed in accordance with, the laws of the State of California.

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

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: _____, 2021

By: _____
~~Mary Jane Griego~~ John Floe
Board President

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

Date: _____, 2021

By: _____
Deirdre Joan Cox
Burke, Williams & Sorensen, LLP

ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA

Date: _____, 2021

By: _____
Glenda Nelson
Tribal Chairperson

APPROVED AS TO FORM BY LEGAL COUNSEL FOR THE TRIBE

Date: _____, 2021

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