

# Olivehurst Public Utility District



## Agenda Item Staff Report

Meeting Date: December 21, 2020

### Item description/summary:

**Consider Pick-Up Resolution and Side Letter Amendment to OE3 Utility Unit MOU (Strategic Plan Goal 6.1: Recruit and Retain a High Performing Workforce):** Article 10, Section 2 of the existing OE3 MOU advises that the OE 3 Pension Plan is undergoing reassessment, and that changes to the OE 3 Plan, ordered by its Trustees, may substantially increase the costs of the OE 3 Plan, and that OPUD does not commit to paying any increased costs associated with the changes to the OE 3 Plan, but that rather such changes may necessitate the reopening of the MOU and continued meet and confer regarding the treatment and responsibility for such costs. The OE3 Pension Plan Trustees have notified OPUD of the obligation to make contributions to the OE3 Plan's Funding Improvement Plan and Rehabilitation Plan. Pursuant to the OE3 Funding Improvement Plan and Rehabilitation Plan, the total monthly OE3 Plan contribution required is 19.96% of the total salary of each covered employee. The MOU presently requires OPUD to pay into the OE3 pension fund 12% of each OE3 employee's base hourly rate and to match up to 2.5% of any employee contribution. The attached Resolution and Side Letter contain an agreement whereby OPUD OE3 employees will, commencing January 1, 2021, contribute 7.96% of their monthly salary, which contributions will be picked up and paid by OPUD to the OE-3 pension fund together with the OPUD 12% monthly payments to the OE-3 pension fund. Importantly, moving forward, employees will not have the option of choosing to receive such contributions instead of having them paid by the District to the OE3 Pension Trust. This Side Letter of Agreement and Pick-Up Resolution shall be effective as of the 21st day of December, 2020, and will remain in effect until the 30th day of June 2021. All other provisions of the MOU remain unchanged. At the Board's direction, legal counsel has prepared the attached draft Side Letter and Step-In Resolution for review and consideration.

### Fiscal Analysis:

No fiscal impact to OPUD.

### Employee Feedback

Employees have previously indicated their assent to the approach proposed by the Side Letter and the Resolution.

### Sample Motion:

Move to direct adoption of the Pick-Up Resolution and execution of the Side Letter.

Prepared by:

Deirdre Joan Cox, OPUD Legal Counsel

**OLIVEHURST PUBLIC UTILITY DISTRICT**

**RESOLUTION NO. 2370**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
OLIVEHURST PUBLIC UTILITY DISTRICT APPROVING THE  
EMPLOYER PICK-UP OF MANDATORY EMPLOYEE CONTRIBUTIONS  
TO THE PENSION TRUST FOR OPERATING ENGINEERS**

**WHEREAS**, the Olivehurst Public Utility District (District) Business and Utility Unit (Unit) is represented by the Operating Engineers Local No. 3 of the International Union of Operating Engineers, AFL-CIO (Union); and

**WHEREAS**, the Union's most recent Memorandum of Understanding (MOU) with the District, which was effective July 1, 2018, and will expire on June 30, 2021, provides that the District will contribute 12% of each Unit-represented employee's base hourly rate and up to 2.5% of employee contributions to the Pension Trust for Operating Engineers (OE3 Pension Trust) or the District's Internal Revenue Code (Code) section 457(b) eligible deferred compensation plan (457(b) Plan), and that the employee may apportion that contribution between those plans; and

**WHEREAS**, the District agreed in an Agreement by and between the District and the OE3 Pension Trust, dated October 29, 2020, that, as a condition of the District's continued participation in the OE3 Pension Trust, the District would contribute 19.96% of total salary for each covered employee, consisting of 13% on-benefit contributions and 6.96% in additional funding improvement plans contributions; and

**WHEREAS**, the Board of Directors of the District (Board) has approved a Side Letter of Agreement with the Union on or about December 21, 2020 (Side Letter), which Side Letter provides that employees who participate in the OE3 Pension Trust will, effective January 1, 2021, contribute 7.96% of each such employee's salary each month towards the total contribution referenced in the preceding paragraph required to be made to the OE3 Pension Trust; and

**WHEREAS**, under Code section 414(h)(2) and related guidance from the Internal Revenue Service, such deductions from employees' compensation qualify for pre-tax treatment only if the District takes formal action to designate the deductions, for tax purposes, as contributions "picked-up" by the District; and

**WHEREAS**, the Board wishes to adopt this resolution in order to, in accordance with Code section 414(h)(2), designate amounts deducted from employees' compensation to fund benefits under the OE3 Pension Trust as pick-up contributions; and

**WHEREAS**, District will pick up all mandatory employee contributions to the OE3 Pension Trust in accordance with Code section 414(h)(2) and all guidance issued thereunder.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF  
THE OLIVEHURST PUBLIC UTILITY DISTRICT AS FOLLOWS:**

1. This Resolution applies to all contributions that are required to be made by any employees of the District as participants in the OE3 Pension Trust in accordance with the MOU and the Side Letter, and deducted on a regular, payroll deduction basis, and that are designated by the District as required employee contributions.
2. Although designated as employee contributions and deducted from employees' compensation, the contributions shall, for tax purposes, be characterized as "picked up" by the District in accordance with Code section 414(h)(2), and shall be treated as paid by the District in lieu of contributions by the employee.
3. Employees shall not have the option of choosing, directly or indirectly, to receive the contributions instead of having them paid by the District to the OE3 Pension Trust.
4. The District shall pay to the Plan the contributions designated as employee contributions from the same source of funds as used in paying salary.
5. Employee contributions that are picked up in accordance with this Resolution shall result in the tax deferral of these contributions to the extent provided under the Code, Treasury regulations and other guidance issued thereunder.
6. This Resolution establishes and adopts the District's pick-up practices in accordance with Revenue Ruling 2006-43.

**PASSED AND ADOPTED** by the Olivehurst Public Utility District Board of Directors at a Special Meeting held on the 21st day of December, 2020.

OLIVEHURST PUBLIC UTILITY DISTRICT

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President, Board of Directors

ATTEST:

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District Clerk & ex-officio Secretary

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

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Deirdre Joan Cox, Legal Counsel

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I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly adopted and passed by the Board of Directors of the Olivehurst Public Utility District, Yuba County, California, at a meeting thereof held on the 21<sup>st</sup> day of December, 2020, by the following vote:

AYES, AND IN FAVOR THEREOF :

NOES :

ABSTAIN :

ABSENT :

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District Clerk and ex-officio Secretary

**Side Letter of Agreement  
Between the Olivehurst Public Utility District  
and Operating Engineers Local Union No. 3 Public Employees Division,  
on Behalf of the Utility Unit,  
December 21, 2020**

Pursuant to the provisions of the Meyers-Milias-Brown Act (“MMBA”) and the Memorandum of Understanding between the Olivehurst Public Utility District (“District”) and Operating Engineers Local No. 3 of the International Union of Operating Engineers, AFL-CIO (“Union”), on behalf of the Utility Unit, effective July 1, 2018 through June 30, 2021 (“MOU”), this Side Letter of Agreement is entered into as of December 21, 2020, between the District and the Union (“Side Letter Agreement”) as an amendment to the MOU. The District and the Union are collectively referred to herein as the “parties.” It is understood and agreed that the specific provisions contained in this Side Letter Agreement shall supersede any previous agreements, whether oral and written, regarding the matters contained herein. Except as provided herein, all wages, hours and other terms and conditions of employment presently enjoyed by the Union in this MOU shall remain in full force and effect.

The District and the Union have met and conferred in good faith concerning the terms and conditions of this Side Letter Agreement and its implementation and agree to the following:

The parties mutually consent to add the following provision to the end of ARTICLE X, Section 2. Pension:

(e) Employees understand that as anticipated by section 2.(d) of this MOU, the OE3 Plan has notified OPUD of the obligation to make contributions to the OE3 Plan’s Funding Improvement Plan and Rehabilitation Plan. Employees understand that pursuant to the Funding Improvement Plan and Rehabilitation Plan, the total monthly OE3 Plan contribution required is 19.96% of the total salary of each covered employee. Employees hereby agree that commencing January 1, 2021, the monthly employee contribution to the OE3 Plan referenced in section 2.(a) above shall be 7.96% of such employee’s monthly salary. In accordance with that certain Pick-Up Resolution adopted by OPUD on or about December 21, 2020, employees understand that such employee contribution portion will be designated as employee contributions, which contributions will be picked up and paid by OPUD to the OE-3 pension fund together with the District monthly payments to the OE-3 pension fund made in accordance with section 2.(a) of this MOU. Employees further understand that moving forward, Employees shall not have the option of choosing, directly or indirectly, to receive such contributions instead of having them paid by the District to the OE3 Pension Trust.

This Side Letter Agreement shall be effective as of the 21st day of December, 2020, and will remain in effect until the 30th day of June 2021.

[Signatures follow on next page]

**OLIVEHURST PUBLIC UTILITY  
DISTRICT**

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

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President of Board of Directors

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District Clerk

**OPERATING ENGINEERS LOCAL  
UNION NO. 3 of the International Union of  
Operating Engineers, AFL-CIO  
(BUSINESS OFFICE UNIT)**

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

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Business Representative, OE3

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Negotiating Team Member