

# Olivehurst Public Utility District



## Agenda Item Staff Report

**Meeting Date: September 5, 2018**

### Item description/summary:

**Consider establishing Joint Powers Agency with Enterprise Rancheria.** This item has been discussed by the ad-hoc committee assigned to the item. If approved, this action would establish an independent special agency known as the Enterprise Rancheria Fire Protection Authority (“**Authority**”), that will have as its mission, to provide fire protection and emergency medical services for the gaming facility and hotel (“**Project**”) on that certain acres of land in Yuba County, California (the “**County**”) held by the United States of America in trust for the Tribe, located approximately 4 miles southeast of the community of Olivehurst, on the eastern side of Forty Mile Road approximately one mile south of the intersection of Forty Mile Road and State Route 65, with an expected street address of 3317 Forty Mile Road. This item seeks approval of a draft Joint Powers Agreement and Bylaws, together with an Assignment of the existing MOU between OPUD and Enterprise Rancheria, which will become the Operating Agreement for the Authority. If this action is approved, the Authority will be required to transmit a copy of the Joint Powers Agreement to Yuba County LAFCo. Transmittal of the Joint Powers Agreement to Yuba County LAFCo should fulfill the request by Yuba County LAFCo that OPUD transmit an application to extend services to the Project.

### Fiscal Analysis:

No cost to the Olivehurst taxpayers for these services.

### Employee Feedback

Very positive

### Sample Motion:

Move to approve the Joint Powers Agreement and Bylaws establishing the Enterprise Rancheria Fire Protection Authority and move to approve the Assignment to the Authority of the existing MOU between OPUD and Enterprise Rancheria.

Prepared by:

John Tillotson, P.E., General Manager

**DRAFT**

**JOINT EXERCISE OF POWERS AGREEMENT**

This Joint Exercise of Powers Agreement (“**Agreement**”) is dated for convenience \_\_\_\_\_, 2018 and entered into 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**”). The District and the Tribe are referred to in this Agreement individually as an “**Authority Member**” and collectively as the “**Authority Members.**”

**RECITALS**

A. California Government Code sections 6500 and following (the “**Joint Exercise of Powers Act**” or “**Act**”) provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties.

B. Each of the Authority Members is a public agency as defined in Government Code section 6500.

C. The Authority Members desire by this Agreement to establish an independent special agency known as the Enterprise Rancheria Fire Protection Authority (“**Authority**”), that will have as its mission, to provide fire protection and emergency medical services for the gaming facility and hotel (“**Project**”) on that certain acres of land in Yuba County, California (the “**County**”) held by the United States of America in trust for the Tribe, located approximately 4 miles southeast of the community of Olivehurst, on the eastern side of Forty Mile Road approximately one mile south of the intersection of Forty Mile Road and State Route 65, with an expected street address of 3317 Forty Mile Road, as generally located as indicated in Exhibit A attached hereto and as specifically located as indicated in Exhibit A-1 attached hereto (“**Yuba Site**”).

D. The Authority possesses the power to provide fire protection and emergency medical services to the Project and Yuba Site.

E. The Authority Members each desire to exercise those powers as provided in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Authority Members as follows:

**I. DEFINITIONS**

As used in this Agreement, the meaning of the terms used hereafter will be as follows:

1.1 **Agreement:** This Joint Exercise of Powers Agreement as it currently exists or as it may be amended or revised from time to time.

- 1.2 **Authority:** The legal entity established by this Agreement to be known as the Enterprise Rancheria Fire Protection Authority.
- 1.3 **Authority Member:** The signatories to this Agreement.
- 1.4 **Board of Directors or Board:** The governing body of the Authority as established in Article IV of this Agreement.
- 1.5 **Bylaws:** Additional requirements to those contained in the Agreement related to decision-making and dispute resolution; budgeting; and cost management.
- 1.6 **Member:** An Authority Member or another entity that meets the applicable requirements defined for each membership type established in the Bylaws.

## II. PURPOSES AND POWERS

- 2.1 **Creation:** Pursuant to the Act a public entity is created to be known as the Enterprise Rancheria Fire Protection Authority, which will be a public agency that is separate from the Authority Members.
- 2.2 **Purposes:** The purpose of this Agreement is to establish an independent joint powers authority (“**JPA**”) to exercise powers common to the Authority Members to, among other things, to provide fire protection services and emergency medical services to the Project and the Yuba Site, as required by the record of decision issued by the Bureau of Indian Affairs of the United States Department of the Interior pursuant to the National Environmental Policy Act of 1969, 42. U.S.C. §§ 4321-4347 (“**NEPA**”), which approved the proposed action in the final environmental impact statement prepared by the Bureau of Indian Affairs of the United States Department of the Interior pursuant to NEPA for the acquisition of approximately 40 acres of land located in the County in trust for the Tribe for a gaming facility and hotel fee-to-trust acquisition project, noticed on August 6, 2010 (75 Fed. Reg. 47618) (“**EIS**”) and was noticed on December 3, 2012 (77 Fed. Reg. 71612) and January 2, 2013 (78 Fed. Reg. 114) (“**Record of Decision**” or “**ROD**”).
- 2.3 **Powers:** The Authority will have the power to pursue the purposes described above and to perform all acts necessary for the exercise of such powers, including, but not limited to, the ability to:
  - 2.3.1 make and enter into contracts necessary for the full exercise of its powers;
  - 2.3.2 contract for the services of engineers, attorneys, scientists, planners, financial consultants, and to employ such professionals as it deems necessary;
  - 2.3.3 acquire, hold, lease and dispose of any property, including acquisition by eminent domain;
  - 2.3.4 apply for, accept, and receive permits, licenses, grants, loans, or other funding from any federal, state or local public agency;
  - 2.3.5 incur debts, liabilities, and obligations;

- 2.3.6 to sue and be sued in its own name;
  - 2.3.7 to perform all acts necessary or proper to carry out fully the purposes of this Agreement;
  - 2.3.8 to exercise any independent or supplementary powers of a joint powers agency, as provided by the Act or other law; and
  - 2.3.9 adopt Bylaws, rules, regulations, procedures, and operating plans, governing the operation of the Authority.
- 2.4 Manner of Exercise of Powers: To the extent not specifically provided for in this Agreement or the Act, the Authority will exercise its powers subject to the restrictions upon the manner of exercising the powers under the laws applicable to the District.

### III. AUTHORITY MEMBERSHIP

- 3.1 Generally: Authority membership is comprised of the public agencies (as defined in Section 6500 of the Act) that are authorized to be Authority Members and are signatories to this Agreement.

### IV. GOVERNANCE AND INTERNAL ORGANIZATION

- 4.1 Board of Directors: The governing body of the Authority is a Board of Directors (“**Board**”) that will conduct all business on behalf of the Authority consistent with this Agreement and applicable law. The Board consists of two representatives of each Authority Member and the General Manager of the District. To remain in an active status, each Authority Member having representation on the Board must be in good standing as defined in the Bylaws.
- 4.2 Exercise of Authority: All the power and authority of the Authority will be exercised by the Board, subject however to the rights reserved by the Authority Members as set forth in this Agreement; provided, however, that the Board may delegate such powers and authority to the Chair or (if there is one) a Chief Executive Officer as the Board may determine by motion, resolution or ordinance. The Board may also appoint and delegate such powers and authority to advisory or subcommittees as the Board may determine by motion, resolution or ordinance.
- 4.3 Appointment: Each Authority Member must appoint two Directors to the Board. Each Authority Member must also appoint one or more Alternate Directors to the Authority (and if more than one, the order in which they will serve). The role of an Alternate Director will be to assume the duties of an Authority Member’s Director in case of the absence or unavailability of such Director.

Should a Director who is an officer of the Board not be in attendance, the Authority Member’s Alternate Director may assume the duties of such officer. Should the Chair be absent, the Vice-Chair will assume the Chair’s responsibilities until the Chair is present, and if both are absent the Board may appoint a temporary Chair.

Directors and Alternates all serve at the pleasure of the governing body of their respective Authority Member agency. Each Authority Member must communicate its

initial Director and Alternate selections (and if more than one Alternate the order in which they will serve), and any subsequent changes in representatives, to the Authority and other Authority Members in writing.

Each Director is entitled to one vote, either individually or by an Alternate, at a meeting of the Board.

A Director and Alternate Director office will be declared vacant if the person serving dies, resigns, the Member for which the Director or Alternate Director serves withdraws from this Agreement, the membership of the Member for which the Director or Alternate Director serves is terminated, or whenever, at the discretion of the particular Authority Member, the Director or Alternate Director is incapable of serving. Upon the Director office becoming vacant, an Alternate Director, if the office is not vacant (in the order appointed if more than one), will serve as Director until the Member appoints a new Director.

- 4.4 Meetings: The Board must hold at least one regular meeting per year, and may hold regular or special meetings at more frequent intervals. All meetings of the Board will be called, held, noticed, and conducted subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950 and following).
- 4.5 Quorum: A majority of the total number of Directors will constitute a quorum.
- 4.6 Voting: Unless otherwise indicated in this Agreement or any Bylaws, the Board will take action only upon an affirmative vote of a majority of the total number of Directors.
- 4.7 Officers:
  - 4.7.1 The Board will select, from among the Directors, a Chair, who will be the presiding officer for all Board meetings, and a Vice-Chair, who will preside in the absence of the Chair.
  - 4.7.2 The Board, or its designated representative, will contract either with an independent certified public accountant or the treasurer or chief financial officer of any Authority Member, to serve as Treasurer of the Authority. The Treasurer will be the depository of and have custody of funds, subject to the requirements of Government Code sections 6505-6505.6. The Treasurer will have custody of all money of the Authority from whatever source and will perform the duties specified in Government Code section 6505.5. The Treasurer will be bound in accordance with Government Code section 6505.1 and will pay demands against the Authority that have been approved by the Board.
  - 4.7.3 The Board will also select a Secretary, who will be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority. The Board may combine the positions of Secretary and Treasurer.
  - 4.7.4 The Bylaws may further address the duties, responsibilities and administrative requirements for the respective officers. Absent any such provisions, all officers will serve at the pleasure of the Board, subject to any separate employment contract.

- 4.7.5 Chief Executive Officer: The Board may appoint a Chief Executive Officer or assign staff of one or more Authority Members to conduct the business of the Authority in accordance with the policies of the Board; provided that no Authority Member's staff will be so assigned without the consent of that Authority Member. The Chief Executive officer will serve at the pleasure of the Board and may be an employee or a contractor of the Authority.
- 4.7.6 General Counsel: The Board may retain general counsel, who reports to the Board and serves at the pleasure of the Board.
- 4.7.7 Staff: If and to the extent authorized by the Board, the Chief Executive Officer (if any) may employ such full-time and part-time employees, assistants and independent contractors as may be necessary from time to time to accomplish the purposes of the Authority.
- 4.8 Liability of Authority, Officers, and Employees: The Directors, officers, and any employees of the Authority must use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Director, officer, employee or agent will be responsible for any act or omission by another Director, officer or employee. The Authority will indemnify and hold harmless the individual Directors, officers, employees, and agents of the Authority for any action taken lawfully and in good faith pursuant to this Agreement, to the fullest extent permitted by applicable law. Nothing in this section may be construed to limit the defenses available under the law, to the Authority Members, the Authority, or its Directors, officers, employees or agents.

## V. FINANCIAL PROVISIONS

- 5.1 Fiscal Year: The fiscal year will run concurrent with the calendar year, unless the Directors decide otherwise.
- 5.2 Depository: All funds of the Authority will be held in separate accounts in the name of the Authority and not commingled with the funds of any Member or any other person or entity. Regular reports will be made as directed by the Board, but at least quarterly, to the Board of all receipts and disbursements. The books and records will be open to inspection by the Board and individual Directors upon reasonable notice.
- 5.3 Budgets: A draft budget will be prepared for the Member agencies to review at least 45 days before the beginning of the Authority's next fiscal year. The Board will approve the budget no later than 15 days before the beginning of the fiscal year.
- 5.4 Recovery of General and Administrative Costs:
- 5.4.1 The Board may assess each Authority Member for the general and administrative costs to operate the Authority. Payments of public funds may be made to defray the costs incurred in carrying out such purposes, and advances of funds may be made for use in doing so, to be repaid as provided in this Agreement. Personnel, equipment or property of one or more of the Authority Members may be used in lieu of other contributions or advances, upon Board approval, and will be treated as a contribution from that Authority Member.

- 5.4.2 General and administrative costs incurred by the Authority in carrying out its purposes, as described in Section 5.3.1, will be shared by the Authority Members as determined by the Board.
- 5.1.1. The Authority will periodically, as necessary, issue an invoice to each Member reflecting the expenses attributable to that Member in accordance with this Agreement or the applicable Project Agreement, respectively. The Authority must receive payment within 60 days of the date listed on the invoice. Delinquent sums will bear interest at a rate established in the Bylaws, which may include additional requirements.
- 5.4.3 Upon request of any Member, the Authority will produce and allow the inspection of all documents relating to the computation of expenses attributable to the Members under this Agreement. If a Member does not agree with the amount listed on the invoice, it must make full payment and provide a cover letter accompanying payment to the Authority specifying the amount in dispute and providing a detailed explanation of the basis for the dispute. The Authority will advise the disputing Member of the Authority's determination within 30 business days.
- 5.5 Auditor: An auditor will be chosen annually by, and serve at the pleasure of, the Board. The auditor will make an annual audit of the accounts and records of the Authority. A report will be filed as a public record with the Auditor of the county where the Authority is domiciled, consistent with Section 6505 of the Act, and with each agency or entity that is a Member. Such report will also be filed with the California Secretary of State or State Controller within 12 months of the end of the fiscal year.
- 5.6 Bonds: The Board will, from time to time, designate the officers or other persons who have charge of, handle, or have access to any property of the Authority and will require such officers or persons to file an official bond, at the Authority's expense, in an amount to be fixed by the Board.
- 5.7 Authority Members Limited Liability: As provided by Government Code section 6508.1, the debts, liabilities, and obligations of the Authority will be the debts, liabilities, and obligations of the Authority only, and not of the constituent Authority Members of the Authority.

## **VI. TERMINATION, WITHDRAWAL, AND SUSPENSION**

- 6.1 Termination: This Agreement may be terminated by the mutual agreement of the Members.
- 6.2 Disposition of Assets Upon Termination: Upon termination of this Agreement, any surplus money or assets in the possession of the Authority for use under this Agreement, after payment of liabilities, costs, expenses and charges incurred under this Agreement, and all other liabilities and obligations of the Authority (including without limitation any agreements with Authority Members), will be returned to the then-existing Members in proportion to the contributions made by each. Unless otherwise agreed, all other property, works, rights and interests of the Authority will be allocated to the then-existing Members in the same manner upon termination. Notwithstanding the foregoing, at the time of termination of this Agreement, upon a vote of the Board of Directors

consisting of no less than a majority of the the Board, the Authority may sell the property, works, rights and interests of the Authority to a public utility, governmental agency, or other entity or entities for good and adequate consideration, the Authority will have the power to consummate such a sale and the net proceeds from the sale will be distributed in the same manner as set forth above.

## VII. MISCELLANEOUS PROVISIONS

- 7.1 Amendment of Agreement: This Agreement may be amended only by approval of at least seventy-five percent (75%) of the Members. The Authority will provide notice to all Members of amendments to this Agreement, including the effective date of such amendments.
- 7.2 Adoption and Amendment of Bylaws, etc.: Any Bylaws, rules, regulations, procedures, or operating plans, may be adopted or amended only by an affirmative vote of at least seventy-five percent (75%) of the total number of Directors. The Authority will provide notice to all Members of amendments to the Bylaws or other items, which includes the effective date of such amendments.
- 7.3 Severability: If one or more clauses, sentences, paragraphs or provisions of this Agreement is be held to be unlawful, invalid or unenforceable, the remainder of the Agreement will not be affected. Such clauses, sentences, paragraphs or provisions will be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.
- 7.4 Execution in Counterparts: This Agreement may be executed in any number of counterparts and upon execution by all Authority Members, each executed counterpart will have the same force and effect as an original instrument and as if all Authority Members had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but have attached to it one or more signature pages. Facsimile and electronic signatures will be deemed valid and binding.

Authority Members to be Served Notice: Any notice authorized to be given pursuant to this Agreement shall be in writing and may be personally delivered, or delivered via the U.S. Postal Services, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each party may designate by subsequent written notice to each.

### For the Tribe:

Estom. Yumeka Maidu Tribe of the Enterprise Rancheria  
2133 Monte Vista Ave. Oroville, CA 95966  
Attn: Tribal Chairperson

With a copy to:

Maier Pfeffer Kim Geary & Cohen, LLP  
1970 Broadway, Suite 825



Oakland, CA 94612  
Attn: John Maier

For the District:

Olivehurst Public Utility District  
P.O. Box 670  
Olivehurst, California 95961  
Attn: General Manager

With a copy to:

Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Suite 900  
Oakland, CA 94612  
Attn: Deirdre Joan Cox

**VIII. LIMITED WAIVER OF SOVEREIGN IMMUNITY**

- 8.1 Pursuant to General Council Resolution GC-18-     attached hereto as Exhibit B, and subject to the provisions of this Article, the Tribe expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under this Agreement and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Authority; or (ii) disputes between the Authority Members which do not specifically arise under this Agreement. The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Article VIII.
- 8.2 Aside from the foregoing Limited Waiver, nothing in this Agreement constitutes, nor shall it be construed as constituting, a waiver of the sovereign immunity of the Tribe, including sovereign immunity from suit.

The Authority Members have executed this Agreement as of the respective dates shown below:

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
James Carpenter  
Board President

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

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_

Deirdre Joan Cox  
Burke, Williams & Sorensen, LLP

ESTOM YUMEKA MAIDU TRIBE OF THE  
ENTERPRISE RANCHERIA

Date: \_\_\_\_\_, 2018

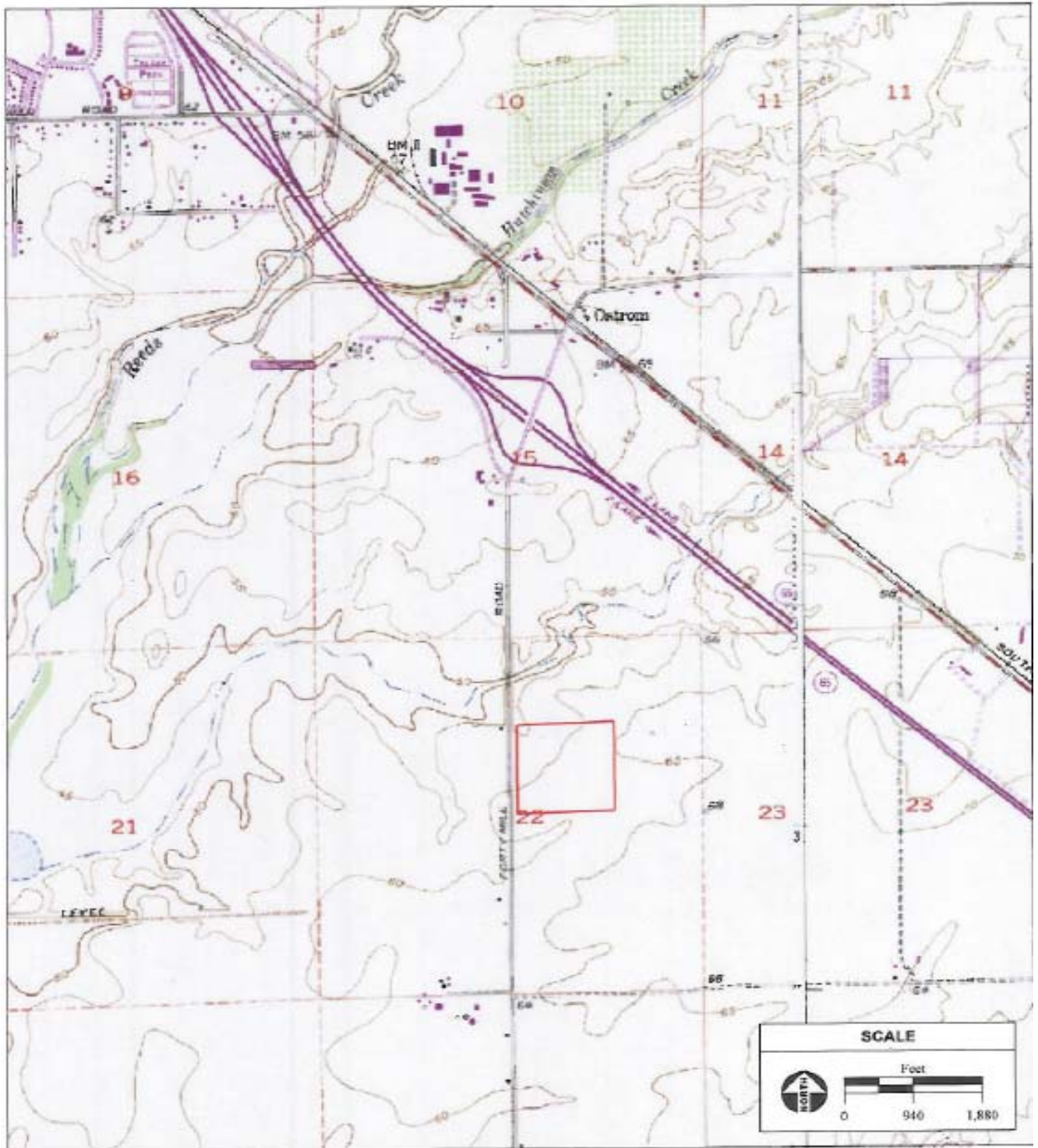
By: \_\_\_\_\_  
Glenda Nelson  
Tribal Chairperson

APPROVED AS TO FORM BY LEGAL COUNSEL  
FOR THE TRIBE

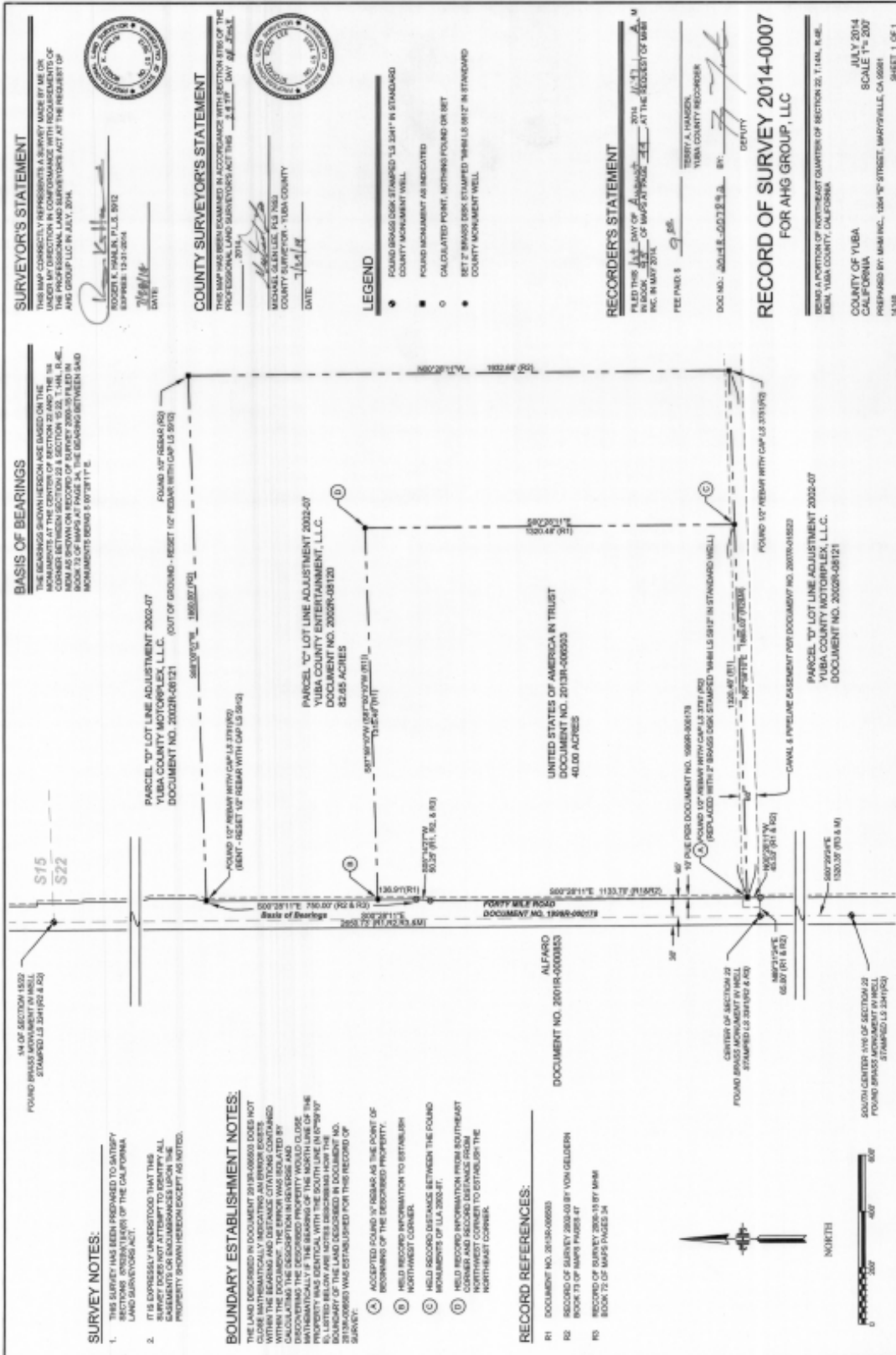
Date: \_\_\_\_\_, 2018

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

EXHIBIT A  
GENERAL LOCATION MAP YUBA SITE



# EXHIBIT A-1 SPECIFIC LOCATION OF YUBA SITE



BK 95 Pg 4A

EXHIBIT B  
RESOLUTION GC-18-■

(ATTACHED)

DRAFT

# **ENTERPRISE RANCHERIA FIRE PROTECTION AUTHORITY**

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## **BYLAWS**

**Adopted: \_\_\_\_\_ 2018**

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**BYLAWS OF THE  
ENTERPRISE RANCHERIA FIRE PROTECTION AUTHORITY**

**ARTICLE I. AUTHORITY POWERS**

All powers for the management, government and control of the Enterprise Rancheria Fire Protection Authority (the “**Authority**”) and its affairs, not conferred on any other person, office or official by law, the then-current Joint Powers Agreement (“**JPA**”), or these Bylaws are reserved in the Board of the Authority to the maximum extent permitted by law.

**ARTICLE II. OFFICE**

The principal office for the transaction of business of the Authority is 1970 9th Avenue, Olivehurst, California, 95961. The Board of Directors (“**Board**”) may change the principal office of the Authority if necessary.

**ARTICLE III. MEETINGS**

Section 1. COMPLIANCE WITH BROWN ACT.

All meetings of the Board and every committee subject to the Ralph M. Brown Act (California Government Code section 54950 and following)(“**Brown Act**”) will be called, held, noticed and conducted according to the provisions of the Brown Act. All meetings of the Board and every committee subject to the Brown Act are open to the public. All Authority committees subject to the Brown Act must comply with the applicable provisions of this Article III, with regard to conducting their meetings.

Section 2. ANNUAL MEETING.

The Authority will hold an annual meeting on the third Thursday of each December at the principal office of the Authority, starting at 6:00 p.m.

Section 3. REGULAR MEETINGS.

If the Board determines that regular (in addition to annual) meetings are required, it will amend this Bylaw to so provide.. The Board will cause an agenda for its meetings to be posted in accordance with all applicable requirements of the Brown Act.

Section 4. CHANGE OF TIME AND PLACE OF ANNUAL OR REGULAR MEETINGS.

The Board, by majority vote recorded and entered in its minutes, may change the place, date, and time of the annual or regular meetings at any time.

Section 5. ADJOURNED MEETINGS.

The Board, or any members of the Board if less than a quorum, may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment in accordance with Government Code section 54955.

Section 6. SPECIAL MEETINGS.

Special meetings of the Board may be called at any time by the Chair of the Board (“**Chair**”), the Vice Chair of the Board (“**Vice Chair**”) in the absence of the Chair, or by a majority of the Board by delivering written notice personally or by any other permitted means to each member of the Board in accordance with Government Code section 54956. The written notice may be dispensed with as to any member of the Board who, prior to the time the meeting convenes, files with the Secretary a written waiver of notice or as to any member who is actually present at the meeting at the time it convenes. The written notice must also be given personally or by any other permitted means to each local newspaper of general circulation, radio or television station requesting notice in writing and must be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice must specify the time and place of the special meeting and the business to be transacted or discussed. No other business may be considered at such special meeting.

The agenda and its posting, and the conduct of the special meeting must comply with all applicable provisions of the Brown Act with respect to special meetings, specifically Government Code section 54956.

Section 7. CLOSED SESSIONS.

The Board may enter into a closed session during a regular, adjourned regular, special or adjourned special meeting to consider matters as may lawfully be considered in such sessions. Prior to any closed session, the item(s) to be discussed will be disclosed and only those matters covered in such disclosure may be considered in such closed session. Disclosure may take the form of a reference to the item(s) as listed by number or letter on the agenda. The Board may find that the participation of the Authority's Directors and their Alternates in closed sessions of the Board meetings is essential in order to allow the alternate directors to be able to keep abreast of these matters so that they may vote meaningfully upon issues presented at meetings when they are called on to do so. After a closed session, the Board will report publicly, orally or in writing, any action taken in closed session, as well as the vote or abstention of every member present as provided by law.

Section 8. CONDUCT OF MEETINGS.

The Chair, or in his or her absence the Vice Chair, will preside at and conduct all meetings of the Board. In the absence of the Chair and Vice Chair at any meeting where a quorum is present, the Board will appoint a director as the Chair Pro Tempore, who will preside at the meeting.

Any Director abstaining from a vote will be counted for purposes of determining the existence of a quorum, but will not be deemed to be voting.

**ARTICLE IV. DIRECTORS AND OFFICERS**

Section 1. QUALIFICATIONS.

Each Member of the Authority will be responsible for selecting two Directors to serve on the Authority Board; provided, however, that such Directors must be an elected or appointed official of the Member.

Section 2. DUTIES.

The Board and the officers and employees of the Authority (if any) will perform all duties established by California law, the Joint Powers Agreement and these Bylaws, and will at all times comply with the Constitution and the laws of the State of California.

Section 3. OFFICERS.

The officers of the Authority Board will be the Chair, Vice Chair, and Secretary-Treasurer. The Chair and the Vice-Chair must be Directors. Except as otherwise provided in the current JPA, no one person may hold more than one office. The Chair and Vice-Chair must be from different Members.

Section 4. CHAIR.

The Chair will preside at all meetings of the Board. The Chair will be an ex-officio member of all Authority committees but will not be entitled to participate in the votes of any committee unless the committee has a tie. The Chair will have the right to vote on all matters coming before the Board and will have only one vote, just as the other Board members. The Chair will ensure engagement of Directors and that clear policy direction is provided to Authority staff, consistent with the positions taken by the Board. The Chair is responsible for leadership, control, and content of Board meetings, and the Chair will enforce protocol at meetings, such as designating who can speak and when. As authorized by the Board or these Bylaws, the Chair is empowered to represent the Authority at all times, consistent with Board policy. The Chair will work with the Chief Executive Officer or General Manager (if any) to ensure that Board policy and directions are implemented. The Chair also will have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 5. VICE CHAIR.

In the absence or disability of the Chair, the Vice Chair will perform all the duties of the Chair and when so acting will have all the powers of, and be subject to all the restrictions upon, the Chair. The Vice Chair will have such other powers and perform such other duties as may from time to time be prescribed by the Board or these Bylaws. The Vice Chair will have the right to vote on all matters coming before the Board and will have only one vote, just as the other Board members. As authorized by the Board or these Bylaws, the Vice Chair will have the authority to act on behalf of the Authority.

Section 6. SECRETARY-TREASURER.

The Secretary-Treasurer will keep, at the principal office of the Authority, or such other place as the Board may order, a record of all proceedings had at meetings of the Board. Such record will include the time and place of the meetings, whether regular or special, and if special, how authorized, the notice given, the names of those present at the meetings, and the proceedings of the meeting. The Secretary-Treasurer will cause to be filed all documents pertaining to the Authority's affairs at the office of the Authority and such records will be open to inspection at all times by any person. The Secretary-Treasurer will give, or cause to be given, notice of all meetings of the Board and committees of the Authority as required by California law or these Bylaws, and she/he will keep the seal of the Authority (if any) in safe custody and will have such other powers

and perform such other duties as may from time to time be prescribed and required by the Board or the Bylaws.

Furthermore, the Secretary-Treasurer will be the depository and have custody of all money of the Authority from whatever source, subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent. The Secretary-Treasurer will perform or cause to be performed the duties specified in Government Code section 6505.5. The Secretary-Treasurer will cause the Authority to contract with a certified public accountant to make an annual audit of the accounts and records of the Authority which will be conducted in compliance with Government Code section 6505. Except as delegated by the Board, the Secretary-Treasurer will have no authority to act on behalf of the Authority without Board approval.

#### Section 7. ELECTION OF OFFICERS.

7.1. Initial Election. The Chair, Vice Chair, and Secretary-Treasurer will be chosen at the Authority Board meeting at which these Bylaws are adopted. Their term of office will be for the remainder of the calendar year following their election, plus one full calendar year, and each will hold office until he or she resigns, is removed, or is otherwise disqualified to serve, or until his or her successor is elected and qualified to serve. Resignation, removal or disqualification as a Director will automatically result in the resignation, removal or disqualification, respectively, as an officer.

7.2. Subsequent Elections. The term of the Chair, Vice Chair and Secretary-Treasurer will expire at the end of the annual Authority Board meeting in each even numbered years beginning 2020, and new officers will be elected at each such meeting.

7.3. Selection of Replacement. If any officer resigns or otherwise fails to complete the remainder of his or her term, the Board will nominate a candidate to stand for election to serve out the remainder of that member's term of office to be voted on at the next Board meeting following the event ending the officer's term of service.

#### Section 8. COMPENSATION OF OFFICERS.

8.1. Directors. Unless otherwise provided by a resolution adopted by the Board, no Director will receive compensation from the Authority for his or her attendance at meetings of the Board or any committee or for any other services rendered as a Director. The amount of any Director compensation provided under any resolution adopted by the Board may not exceed the amount permitted by law for each day's attendance at meetings of the Board and for each day's service rendered as a director by request of the Board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of duties required or authorized by the Board.

8.2. Secretary-Treasurer. Unless otherwise determined by the Board, the Secretary-Treasurer of the District will serve without compensation, other than to receive such allowance as may be authorized by the Board from time to time to cover expenses incurred by the Secretary-Treasurer in the performance of his or her duties on behalf of the Authority.

Section 9. BONDS OF OFFICERS.

The Board may require a bond in an amount to be determined by the Board for any Board officer. The premium for any such bond will be paid by the Authority.

Section 10. REMOVAL OF OFFICERS.

The Board may remove any officer, with or without cause, at any regular or special meeting of the Board by concurrence of 75% of the Directors present and voting on such matter.

**ARTICLE V. COMMITTEES**

Section 1. FORMATION AND STAFFING.

The Board may establish any standing or ad hoc committees it deems necessary to carry out the purposes of the Authority. All committees and their members serve at the pleasure of the Board and may be reconstituted, re-formed, reconfigured or disbanded at any time at the discretion of the Board. Every Authority committee will be comprised of an odd number of members and will be chaired by a member of the Board appointed by the Chair of the Board. Every Authority committee will be advisory to the Board, and the power to determine the Authority's course of action will remain with the Board.

The chair of each committee will be responsible for leadership, control and content of committee meetings. Every committee will also have a vice chair that is appointed by the Chair of the Board.

Section 2. TERMS OF OFFICE.

The Board will establish the term of office of every member of a committee.

If any committee member resigns, or otherwise fails to complete the remainder of his or her term, the Chair of the Board will nominate candidate(s) to stand for election to serve out the remainder of that committee member's term of office. Nominations of additional candidates will also be taken from the Board at the time of consideration of filling a vacancy.

Section 3. PURPOSE.

At the time the Board establishes a committee, and thereafter from time-to-time, the Board will establish the purposes of the committee, designate whether it is a standing or ad hoc committee, and identify the reporting requirements of the committee to the Board. At the time the Board establishes a committee, the Board may also establish the frequency of the meetings of the committee, but if it does not do so, the committee itself will set its own meeting schedule.

Section 4. SELECTION OF COMMITTEE MEMBERS.

The Chair of the Board will appoint members of all committees, subject to approval of the Board. Unless otherwise determined by the Board when the committee is established, the terms for each committee member will be end at the end of the same Board meeting in which officers are regularly required to be elected.

If any committee member resigns, or otherwise fails to complete the remainder of his or her term, the Chair of the Board will nominate candidate(s) to stand for election to serve out the remainder of that member's term of office to be voted on at the next Board meeting. Nominations of additional candidates will be taken from the Board at the time of consideration of the appointment.

At all times, the number of Directors participating in a committee meeting must be less than a majority of the Directors of the Authority; however, in accordance with the Brown Act, other Directors may attend committee meetings provided that they act only as observers.

Section 5. VOTING.

Each committee member will have one vote. There will be no proxy or absentee voting on Authority committees. Committee recommendations will be determined by a majority vote of the committee members present and voting at the meeting.

Section 6. COMMUNICATION AND STAFF COORDINATION.

All recommendations and minutes of every committee will be presented in writing to the Board.

Committees and Authority staff (if any) will coordinate meeting schedules and work efforts to allow the maximum time possible for preparation and distribution of committee reports and recommendations before their presentation to the Board. If a committee is to prepare a written report containing recommendations or otherwise make recommendations to the Board, those recommendations will be clearly and concisely stated, with supporting facts and analyses.

**ARTICLE VI. EMPLOYEES AND AGENTS**

Section 1. AUTHORITY TO EMPLOY STAFF AND AGENTS.

The Board may employ and appoint such employees and agents (including consultants and contractors) as the business of the Authority may require. Each such employee will have such authority and perform such duties, and receive such salary, as the Board may from time-to-time determine is appropriate to advance the interests of the Authority. The Board reserves the right to change an employee's or agent's job duties at any time.

Section 2. CHIEF EXECUTIVE OFFICER.

If engaged, the Chief Executive Officer of the Authority will, subject to the control and policy direction of the Board, have general supervision, direction and control of all aspects of the administration and operations of the Authority, including regional and statewide matters that may impact the Authority's interests; development and management of the Authority's budget; and compliance with all laws and regulations; and further if engaged, the Chief Executive Officer is the employee with primary responsibility for ensuring that the Board's policy direction is implemented.

Any Chief Executive Officer will communicate with the Chair of the Board between Board meetings, attend all Board meetings, ensure that the Board and the Members are kept educated on pertinent issues, and make recommendations to the Board as appropriate.

Except as the Board otherwise reserves these powers for itself, a Chief Executive Officer will supervise and direct all Authority staff and have sole power to hire and terminate Authority employees and to direct their work.

Any Chief Executive Officer reports to the Board and serves at the pleasure of the Board.

**Section 3. COMPENSATION OF EMPLOYEES.**

The Board will compensate the Authority's employees with such sums and benefits as may be fixed by the Board consistent with applicable law.

**Section 4. BONDS OF EMPLOYEES.**

The Board may require a bond in an amount to be determined by the Board for any employee. The premium for any such bond will be paid by the Authority.

**ARTICLE VII. DISCLOSURE OF CLOSED SESSION INFORMATION**

The Directors, including their staff, that attend a closed session of the Board or any committee may disclose information obtained in a closed session that has direct financial or liability implications for that Member agency to the following individuals: (a) legal counsel of a Member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member; and (b) other members of the legislative body of the Member present in a closed session of that Member.

**ARTICLE VIII. GOOD STANDING DEFINED**

A Member will be in "good standing" under the JPA so long as it has paid all amounts due to and complied with all of its material obligations to the Authority, except for amounts and obligations (if any) it is disputing in good faith, providing it is complying with its obligations under Article IX of these Bylaws.

**ARTICLE IX. DISPUTE RESOLUTION**

**Section 1. GENERAL**

The Members agree to the dispute resolution procedures set forth in this Article for all disputes arising under the JPA or these Bylaws.

**Section 2. MEETING AND MEDIATION**

The Members shall make their best efforts to resolve any dispute specifically arising under the JPA or these Bylaws by good faith negotiations whenever possible. The Members shall meet and confer in good faith to resolve any disputes arising under the JPA or these Bylaws or concerning their terms or administration as follows:

- (a) A Member shall give the other Member, as soon as possible after the dispute arises, written notice setting forth, with specificity, the Member's claims.

(b) The Members shall meet and confer in a good faith attempt to resolve such dispute through negotiation not later than 10 days after receipt of notice, unless the Members agree in writing to an extension of time.

(c) If such dispute is not resolved to the satisfaction of the Members within 30 calendar days after the first meeting, then either Member may request the dispute to be mediated. Mediation shall be confidential, non-binding and utilize the services of a mediator mutually acceptable to the Members and, if the Members cannot agree, a mediator selected by JAMS. The mediation shall be held at the JAMS office in Sacramento, California, or at such other location as is mutually agreeable to the Members. The cost of mediation shall be equally shared by both Members.

### Section 3. ARBITRATION

If the dispute is not resolved to the satisfaction of the Members within either sixty (60) calendar days after the first meeting or forty-five (45) days after a request for mediation, then the Members may seek to have the dispute resolved by arbitration in accordance with the following procedures:

(a) Upon the request of a Member in writing, the dispute shall be submitted to binding arbitration in accordance with this Section 3.

(b) The disputes to be submitted to arbitration shall be limited to disputes specifically arising under this the JPA or these Bylaws and (if any) any other agreement between the Authority members which contains a similar arbitration provision.

(c) In the event that there is any dispute as to whether a matter is subject to the arbitration provisions of these Bylaws, or any dispute concerning the scope of the matter or matters to be arbitrated, the disagreement as to whether the dispute is subject to the arbitration provisions of these Bylaws or the scope of such arbitration shall be resolved by the courts referenced in Section 4 of this Article.

(d) The arbitration shall be held before a JAMS arbitrator in Sacramento, California, or at such other location as is mutually agreeable to the Members.

(e) The arbitration shall be administered in accordance with the Streamlined Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent) as modified by the provisions of this Article. Service of any document on the Members may be made and shall be effective as provided in such rules.

(f) The provisions of section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.

(g) Each side shall bear its own costs, attorneys' fees and one-half the costs and expenses of the arbitrator.

(h) Subject to the provisions of this Article, the arbitrator shall be empowered to grant compensatory and declaratory relief only.



- (i) The decision of the arbitrator shall be in writing and shall give reasons for the decision.

#### Section 4. CONFIRMATION OF DECISIONS

Any Member to an arbitration in which a decision has been made pursuant to this Article may petition the federal District Court for the Eastern District of California or the State Superior Court for the County of Yuba to affirm the decision. The Members expressly consent to be sued in such courts for affirmation of any such decision and as otherwise provided in Section 5 of this Article. A decision shall be affirmed, provided that:

- (a) Except as otherwise provided in Section 3(b) of this Article, the decision is limited to matters specifically arising under the JPA or these Bylaws.

- (b) No monetary damages may be awarded except those which require the payment of sums pursuant to breaches of obligations of the Members under the JPA or these Bylaws and which are not inconsistent with Article X of these Bylaws and the Tribe's limited waiver of sovereign immunity as set forth in the JPA.

- (c) No person or entity other than the Members is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Members in respect to any such third party.

- (d) If an award is affirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced like any other judgment of the court in which it is entered.

#### Section 5. ACTIONS

The express waivers and consents provided for in this Article shall only extend to the following: civil actions specifically arising under the JPA or these Bylaws; civil actions to compel arbitration; civil actions to determine whether a matter is subject to arbitration or determine the scope of the arbitration; any arbitration proceeding as provided herein; any action to confirm or enforce any judgment or arbitration award as provided herein; and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in these Bylaws, no other waivers or consents to be sued, either express or implied, are granted by either Member.

#### Section 6. OTHER DISPUTE RESOLUTIONS

This Article may not be construed to waive, limit, or restrict the ability of the Members to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, utilization of a technical advisor to the Members; provided, however, that no Member is under an obligation to agree to such alternative method of dispute resolution.

### **ARTICLE X. DAMAGES**

The Members hereby agree that, in the event of default, any damages awarded or arising under this Agreement shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. In no instance shall the Members be entitled to special, incidental, indirect, consequential or punitive damages, lost profits or attorney's fees. By acceptance and execution of the JPA and approval of these Bylaws, the Members hereby agree that the only monetary damages contemplated by the Members as arising from the JPA or these Bylaws are actual or direct damages which do not, in any event, exceed the contribution amounts expressly stated in the JPA or these Bylaws and that the Members are precluded from asserting any claims for additional or other monetary damages.

#### **ARTICLE XI. AMENDMENT OR REPEAL OF BYLAWS**

These Bylaws may be repealed or amended or new Bylaws adopted by the vote of 75% of a quorum of the Board present and voting. Any representative abstaining from a vote will be counted for purposes of determining the existence of a quorum, but will not be deemed to be voting.

#### **ARTICLE XII. SAVINGS CLAUSE**

Should any provision of these Bylaws be inconsistent with the laws of the State of California, such laws (and not these Bylaws) will govern and these Bylaws will be interpreted to be consistent with such laws.

Adopted on \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
\_\_\_\_\_, Chair of the Board

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION (“**Assignment**”) is dated and effective as of \_\_\_\_\_, 2018 (the “**Effective Date**”) 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 “**Assignor**” or “**District**”) and the ENTERPRISE RANCHERIA FIRE PROTECTION AUTHORITY, a joint powers authority pursuant to the Joint Exercise of Powers Act, California Government Code sections 6500 and following (“**Authority**” or “**Transferee**”), and that certain Joint Exercise of Powers Agreement dated \_\_\_\_\_, 2018 (“**JPA**”).

### RECITALS

A. District is the “District” under that certain Memorandum of Understanding, dated April 19, 2018 (“**MOU**”), between 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**”). The District and the Tribe are all of the “Authority Members” of the Authority pursuant to the JPA.

B. Under the MOU, (a) the District agreed to provide fire protection services, emergency medical services, and other services (collectively “**Services**”) in connection with the Tribe’s “Project” and the “Yuba Site” and (b) the Tribe agreed, among other things, to install on the Yuba Site certain water storage facilities, to provide certain access and egress to the Project, and to pay for the Services.

C. Unless otherwise indicated, all capitalized terms not otherwise defined in this Assignment shall have the respective meanings provided in the MOU.

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. **Assignment and Assumption.** The District hereby bargains, transfers and assigns to the Authority all of its right, title and interest in and to, the MOU. The Authority hereby accepts the MOU and assumes all of the District’s obligations and duties arising from or relating to the MOU.

2. **Representations, Warranties and Covenants.**

(a) Each party hereby represents and warrants that it is fully authorized to execute and carry out the transactions described in this Assignment.

(b) Authority represents and warrants that it has had full opportunity to review and examine the MOU, and all matters relating thereto, and is fully satisfied with the results thereof.

(c) By execution of this Assignment, Authority hereby ratifies, approves, accepts and assumes, on its own behalf, all of District’s representations, warranties, covenants and agreements contained in the MOU.

3. **Miscellaneous.** This Assignment represents the entire agreement between the parties with respect to the subject matters hereof and supersedes any prior oral or written

agreement, offer, letter of intent or understanding relating to the subject matters hereof. All of the recitals and Exhibits of this Assignment, and the defined terms set forth therein, are incorporated into and made a part of this Assignment by this reference. The provisions contained herein shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Assignment. This Assignment may be modified, amended or terminated only by a writing executed by all parties hereto indicating such an intention. If any provision of this Assignment or any application thereof shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of other provisions of this Assignment or of any other application of such provision shall in no way be affected thereby. The waiver by any party of a right or remedy hereunder shall not be deemed to be a waiver of any other right or remedy or of any subsequent right or remedy of the same kind. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same Assignment. This Assignment, and all disputes arising from or relating to this Assignment including, without limitation the negotiation, performance, breach or enforcement thereof, shall be governed solely by California law, including statutes of limitation but excluding the California law of conflicts of law.

IN WITNESS WHEREOF, District and Authority have executed this Assignment and Assumption as of the date set forth above.

**“District”**

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_

James Carpenter  
Board President

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

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_

Deirdre Joan Cox  
Burke, Williams & Sorensen, LLP

**“Authority”**

ENTERPRISE RANCHERIA FIRE PROTECTION  
AUTHORITY

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_