

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT OF GENERAL MANAGER  
OF OLIVEHURST PUBLIC UTILITY DISTRICT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT OF GM OF OPUD  
(Amended Agreement) is made between OLIVERHUST PUBLIC UTILITY DISTRICT  
("District" or "OPUD") and TIMOTHY R. SHAW ("Employee") this 18th day of September  
2008.

RECITALS

WHEREAS, the District entered into an employment agreement (Agreement) with  
Employee as General Manager of Olivehurst Public Utility District (District), effective December  
1, 2005

WHEREAS, by its terms said Agreement expires on January 1, 2009, and District and  
Employee desire to amend said Agreement to provide for an extension thereof, and changes in  
wages and terms and conditions of employment as set forth hereinafter.

WHEREAS, Employee and District desire that Employee continue to serve as General  
Manager of Olivehurst Public Utility District, from and after the term of said Agreement.

WHEREAS, the Board of Directors of District, as appointing power, and Employee have  
met and negotiated acceptable terms and conditions of this Amended Agreement and desire to set  
forth the terms and conditions of Employee's continuing employment as District General  
Manager.

AGREEMENT

NOW, THEREFORE, OPUD and TIMOTHY R. SHAW agree as follows:

1. DUTIES.

(a) OPUD hires and retains Employee to perform the services of General

Manager of OPUD.

(b) Employee will report to the Board of Directors of OPUD and shall carry out and implement the Board's policies, directives and general goals as reasonably established.

(c) The Board invests direct supervisory control over all operations and departments of the District subject to the policies established by the Board. Employee will report to the Board regularly as to the condition of operations.

(d) Employee shall be responsible for the preparation of an annual budget for all divisions of the District. All District expenditures must be approved by the Board as part of its budget review and approval, and Employee will have no independent authority to expend District funds, except as expressly authorized by the Board. This provision does not limit Employee from entering into and carrying out routine agreements necessary for the customary and usual operation of the District.

(e) Employee will be responsible for personnel management including hiring, supervision, direction, discipline, promotion, demotion and termination of all employees of the District, subject to any applicable memorandums of understanding and to the direction, supervision by and review of the Board of Directors, and in accordance with Board-established policies and state and federal law.

(f) In accordance with applicable grievance and/or meet and confer agreements, Employee will determine appropriate disciplinary action to be taken regarding District employees and will conduct preliminary hearings and issue determinations, as required. This will be done pursuant to the District's policies and procedures, the applicable memorandum of understand, and applicable laws.

(g) Employee will represent the District at conferences, conventions, hearings,

administrative procedures, and in litigation and at settlement conferences as may be necessary to represent the District and to protect its interests. Employee may in his discretion consult with and give direction to District agents, consultants, attorneys and advisors as the Employee may deem necessary in order to carry out his responsibilities to the District.

2. SALARY.

(a) Effective September 22, 2008, District will pay Employee Ninety-One Thousand Eight Hundred Ninety Eight dollars (\$91,898) in salary per annum for his services, payable in installments at the time as other employees of the District are paid and subject to required withholdings. Employee will not be entitled to overtime pay, compensating time off, or other compensation or reimbursement for hours worked for the District.

(b) Subject to an evaluation of performance on each anniversary date hereof, District may increase Employee's compensation and the term hereof shall be extended one year. Said evaluation shall be conducted as follows: Not later than April 1 of each year, Employee shall prepare a memorandum to the Board setting forth Employee's self evaluation of his accomplishment of goals as established jointly by the Board and Employee for the current year, and Employee's intended goals for the coming year. The Board shall, as soon as feasible thereafter, but no later than the regular meeting of May, schedule an evaluation of Employee's performance. If performance is considered satisfactory, the Board shall conclude the evaluation, advise Employee in writing that his performance is satisfactory, and the termination date of this Amended Agreement shall be extended for one year, and the District will implement a Cost of Living increase in Employee's salary equivalent to the Consumer Price Index, May to May Index, Western States B/C, or the amount of 3%, whichever is less to be made effective on the

succeeding July 1st. If the Board believes that the performance of the General Manager is not satisfactory, then the Board, in writing, shall set forth those areas of performance where improvement is required, to be included in an Improvement Plan for Employee to guide such improvement. At the conclusion of six calendar months, the Board shall conduct an evaluation to consider Employees performance under the Improvement Plan. If Employee has satisfactorily implemented such plan, the COLA shall be implemented retroactively to the preceding July 1. If Employee has not substantially rectified those areas required for improvement specified in the Plan, then Employee shall be considered in breach hereof and this Agreement may be terminated for cause. In no event shall Employee be subject to termination for cause without notice, an Improvement Plan, and an opportunity to remedy such deficiencies in performance as set forth herein. Notwithstanding the foregoing, the Board shall not be precluded hereby from terminating Employee's services without cause, provided a severance payment is made as set forth in Paragraph 10 below.

3. VACATION/ADMINISTRATIVE LEAVE .

(a) Employee is entitled to 20 vacation days per year, which may be carried over each year of this Agreement, but not to exceed a total accumulation of 50 days. As of the effective date of this Amended Agreement, Employee has 50 days of accrued vacation. In any year, at Employee's discretion, Employee may "sell" to District up to five (5) days of accrued vacation for a cash allowance, equal to the number of days traded times the straight time rate of pay, determined on an hourly basis (assuming 2080 hours per year) that Employee is compensated. In addition, Employee may take advantage of the "Use a Week/Sell a Week" policy described in Exhibit A. Upon termination, resignation, or retirement, unused Vacation

shall be compensated at Employee's then current rate. Employee is also entitled to 6 days of paid Administrative Leave each year to be credited on the date of this Agreement and on each anniversary thereafter. Unused Administrative Leave will not carry over to the next year, and no payment for unused Administrative Leave will be made upon resignation, termination or retirement.

4. SICK LEAVE.

Employee will accrue 12 days of sick leave per year, not to exceed a total accumulation of 125 days. Upon resignation, termination, or retirement, except for resignation without the notice prescribed in Paragraph 9 hereof, Employee will be paid for 25% of unused sick leave up to a maximum unused sick leave of 31.25 days.

5. SUPPLEMENTAL BENEFITS.

The District will provide Employee with those supplemental employment benefits described in Exhibit A, attached. As used herein, "supplemental benefits" is defined as paid holidays, retirement benefits and payments, health insurance, vision insurance, dental insurance, disability insurance and life insurance. It is intended that the supplemental benefits provided Employee shall reflect those benefits provided to some or all of the represented employees, and District shall not be obligated to provide such benefits if they are not provided to at least a majority of the non fire department personnel.

6. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

(a) Employee will perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all applicable rules and regulations established by the District. Employee's performance shall at all

times be subject to evaluation by the Board of Directors in accordance with the provisions of Government Code 54957.

(b) Employee will remain exclusively in the full-time employ of the District during the term of this Agreement.

(c) Employee shall not have regular hours, or days, of work, but shall be available at all times to insure that the general management of the District is properly performed.

Notwithstanding the foregoing, Employee may adjust his work schedule to accommodate personal needs, including holidays and vacations, but this schedule must not interfere with Employee's performance or obligations. The District may, at any time, specify those times when Employee must be available at the District office or within the District during the workday.

(d) Employee may not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined by California law and District code, policy or regulations. Annually, Employee must complete required disclosure forms.

(e) The Board of Directors, by resolution, may fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law, or Employee's duties to the District.

## 7. TERM.

The term of this Amended Agreement is intended to be a rolling term that will extend forward upon the annual determination of satisfactory performance. The initial term of this Amended Agreement will be January 1, 2009, and continue for three years thereafter. However,

the termination date of this Amended Agreement will be extended as described in Paragraph 2b above. This Agreement is subject to resignation/termination by either party in accordance with the provisions set forth in Paragraphs 9 and 10 hereof and will be terminated by the event of the death or permanent disability of Employee, subject to Employee's use of available leave time.

8. RESIGNATION BY EMPLOYEE.

Provided District is in compliance with the terms hereof, Employee may only resign his position on six months advance written notice to the Board of Directors. Such resignation, once given, shall be final and may not be revoked without the express written consent of the Board of Directors. If Employee is otherwise physically able to perform his duties but resigns his position on less than six months notice, then District shall not be obligated to make payment for unused sick leave described in Paragraph 4 above.

9. TERMINATION WITHOUT CAUSE BY DISTRICT/SEVERANCE PAY.

District may at any time terminate Employee without cause, effective upon 30 days advance written notice, subject to the payment to Employee of six months salary, and benefits, as defined in Paragraphs 3, 4, and 5 above. Provided Employee is in compliance with the terms hereof, if Employee is terminated by the Board without cause, while still willing and able to perform the duties of General Manager, District agrees to pay Employee a cash severance payment equal to 6 months base salary from the effective date of termination, and to continue payment of medical, dental, and vision supplementary benefits, as defined in Paragraph 5 above, for a period of six months from the effective date of termination. Base salary may be paid, at the option of the Employee, in lump sum upon the effective date of termination or in six equal monthly installments on the first workday of each succeeding month. Supplemental benefits shall

be paid by the District in the normal course of its funding of such benefits for all employees. Such payment will release District from any further obligations under this Agreement, except payment of any unused vacation leave or unused sick leave (up to the maximum allowed herein) as of the date of termination.

If Employee is terminated for cause (provided that District has provided the evaluation, Improvement Plan, and cure period set forth in Paragraph 2b above) or because of conviction of any criminal offense involving moral turpitude, then the District will have no obligation to continue the employment of Employee or to pay the severance set forth in this paragraph.

10. ARBITRATION.

Any controversy or claim arising out of or pertaining to this Agreement, or breach thereof, shall be settled by binding arbitration in accordance with the rules of judicial arbitration established by the Superior Court of Yuba County.

11. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein this Agreement cannot be modified except by written mutual agreement signed by both parties.

12. ASSIGNMENT.

This Agreement is not assignable by either District or Employee.

13. SEVERABILITY.

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement

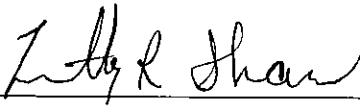



shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

14. COUNTERPARTS.


This Agreement may be executed in two counterparts which shall be identified by number and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the District has caused this Agreement to be signed and executed in its behalf by its President and duly attested by the secretary. It has also been executed by the Employee.

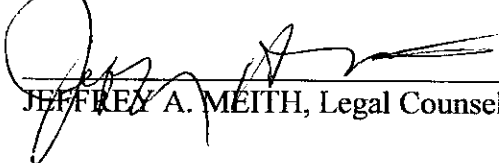
  
\_\_\_\_\_  
TIMOTHY R. SHAW

  
\_\_\_\_\_  
Phillip R. Miller, President  
Olivehurst Public Utility District

ATTEST:

  
\_\_\_\_\_  
Deputy Clerk & ex-officio Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JEFFREY A. MEITH, Legal Counsel

## **Exhibit A**

### **HOLIDAYS**

**Section 1.** The following days are recognized as paid holidays by the District:

- The 1<sup>st</sup> day of January (New Year's Day)
- The 3<sup>rd</sup> Monday in January (Martin Luther King Day)
- The 3<sup>rd</sup> Monday in February (Presidents' Day)
- Friday before the 31<sup>st</sup> day in March (Cesar Chavez Day)
- The last Monday in May (Memorial Day)
- The 4<sup>th</sup> Day of July (Independence Day)
- The 1<sup>st</sup> Monday in September (Labor Day)
- The 11<sup>th</sup> day of November (Veterans' Day)
- The day in November proclaimed as Thanksgiving Day
- The day after Thanksgiving Day
- Christmas Eve Day
- The 25<sup>th</sup> day of December (Christmas Day)
- New Year's Eve Day
- Any day designated as a holiday by proclamation of the Governor of the State of California or the President of the United States when affirmatively made a holiday by Resolution of the Board.

### **BEREAVEMENT LEAVE**

**Section 1.** Death of Member in Employee's Immediate Family – The immediate family is defined as a person related by blood or marriage who is a husband, wife, son, daughter, sister, brother, mother, father, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, or son-in-law. Each such absence shall be charged to bereavement leave and shall not exceed 3 days, or 5 days for out-of-state death. If such absence requires additional time away from work, the employee has the option to charge additional leave time with pay to his/her sick leave or annual vacation leave, to the extent that such leave time has been accumulated by the employee.

**Medical, Dental and Vision Insurance**

**Section 1. Health & Welfare –**

- (a) The District will pay one hundred percent of the premium(s) for a policy, or policies, of medical, dental, and vision insurance for Employee and immediate family (i.e. spouse and dependent children). The scope of coverages provided shall be no greater than those generally provided to other District employees, and the scope of coverage offered under any such policy or policies shall be subject to change by the Board consistent with changes in coverage provided to District employees generally. .

**Retirement :**

- (a) District shall pay ten percent (10%) of employee’s base salary into an employee 457 deferred compensation fund. District is currently engaged in evaluation of a switch to PERS Retirement, subject to successful resolution of its termination of participation in the retirement plan sponsored by the Operating Engineers, Local 3, and Employee understands that changes in his retirement plan may be made as a result of such evaluation and resolution, and Employee understands and agrees that any modification or change in the retirement plan for Employee shall be consistent with changes made for employees generally.

**LONGEVITY SALARY PLAN**

**Section 1. The longevity rate per years of service will be as follows:**

- (a) 5 years of service =2% of base salary
- (b) 10 years of service =4% of base salary
- (c) 15 years of service =6% of base salary
- (d) 20 years of service =8% of base salary
- (e) 25 years of service =10% of base salary

**Use a week/Sell a week.**

To encourage the use of vacation, the District will allow a vacation leave sell-back policy whereby employees with at least 180 hours of accrued vacation may sell back up to one week of leave provided that the leave tendered for sell back is offered in conjunction with the employee taking a week of leave.