

**Memorandum of Understanding**  
**Relating to the Annexation and Provision of Electric Service**  
**by SMUD in the Cities of West Sacramento, Davis and Woodland and**  
**Nearby Areas of Yolo County**

This Memorandum of Understanding Relating to the Annexation and Provision of Electric Service by the Sacramento Municipal Utility District ("SMUD") in the Cities of West Sacramento, Davis and Woodland and Nearby Areas of Yolo County ("MOU") is entered into and effective this \_\_\_\_ day of March, 2006 between SMUD and the City of Woodland. SMUD and the City of Woodland are each referred to as a "Party" and are collectively referred to as the "Parties."

**Recitals**

A. In April 2005, the governing bodies of the Cities of West Sacramento, Davis and Woodland ("Cities") and Yolo County unanimously requested that SMUD undertake the actions necessary to provide electric service in the Cities and nearby areas of Yolo County.<sup>1</sup> On May 19, 2005, the SMUD Board of Directors found that the annexation was prudent and in the best interest of existing SMUD customers and customers in the Cities and nearby areas of Yolo County. On August 1, 2005 SMUD filed with the Sacramento Local Agency Formation Commission ("LAFCo") an application for approval of annexation of the Cities and nearby areas of Yolo County (the "Annexation Territory") and a concurrent related sphere of influence amendment (the "SMUD Application").

B. SMUD has determined that the annexation will result in substantial benefits for SMUD's existing and Annexation Territory customers.

C. The Policies, Standards and Procedures for LAFCo generally require that proposals for annexations be revenue neutral.

D. Pacific Gas & Electric Company ("PG&E") is the current provider of electric service in the Annexation Territory. PG&E presently pays franchise fees and property taxes to the Cities and Yolo County. Because SMUD is not required to pay such fees and taxes, annexation by SMUD could result in a loss of revenues to the Cities and Yolo County.

E. In the SMUD Application, SMUD proposes that LAFCo include as a condition of any approval it may issue a requirement that a mechanism to defray the reasonably calculated costs and impacts to the Annexation Territory associated with the provision of electric service by SMUD be implemented pursuant to an agreement between SMUD and the local jurisdictions and/or in accordance with conditions or mitigation imposed by LAFCo.

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<sup>1</sup> Woodland Mayor Matt Rexroad recused himself from the vote due to a potential conflict of interest.

F. The purpose of this MOU is to set forth the Parties' understanding and agreement, with respect to: (i) ensuring that the Cities and Yolo County realize the benefits of annexation by SMUD as soon as practicable, (ii) complying with LAFCo policies regarding revenue neutrality, and (iii) implementing a mechanism for defraying the reasonably calculated costs and impacts to the Annexation Territory associated with the provision of electric service by SMUD.

### Understandings

1. *LAFCo Authority.* The Parties hereby acknowledge that LAFCo has sole and exclusive authority over the terms and conditions of the proposed annexation and that nothing in this MOU shall be construed so as to interfere in any way with the full and free exercise of that authority by LAFCo. It is the intent of the Parties that the terms of this MOU and the future agreement(s) described in Paragraph 2 below be construed so as to best implement any decision that LAFCo may make regarding the potential annexation by SMUD. In the event that any provision of this MOU or the future agreement(s) described in Paragraph 2 below is found to materially interfere with the implementation of LAFCo's decision on the services to be provided by SMUD, the Parties shall negotiate in good faith to preserve the balance of benefits and burdens contemplated by the Parties when they entered into this MOU, consistent with the implementation of LAFCo's decision.
  
2. *Scope of Agreement.* Within 90 days of the date LAFCo records a certified copy of the certificate of completion of the annexation with the Yolo County Recorder, SMUD and the City of Woodland agree to negotiate in good faith one or more Customer Tailored Electric Service Agreement(s) that definitively identifies the benefits of annexation for and obligations of the City of Woodland, and in the view of the Parties achieves the goal of revenue neutrality. Such Customer Tailored Electric Service Agreement(s) shall become effective upon the date SMUD begins providing electric service in the Annexation Territory. In establishing the term of the Customer Tailored Electric Service Agreement(s), the Parties shall take into consideration the length of the surcharge period necessary to recover the costs of annexation and the nature of the obligations undertaken by the Parties. In general, it is anticipated that the term of the Customer Tailored Electric Service Agreement(s) will be approximately ten (10) years. The Parties may also mutually agree to include within the scope of the Customer Tailored Electric Service Agreement(s), or by separate Customer Tailored Electric Service Agreement, public agencies under the direct control of the City of Woodland and/or certain joint powers authorities of which the City of Woodland is a member.
  - a. *Benefits of Annexation.* Revenue neutrality and the benefits of annexation may be achieved through a variety of SMUD programs and services including, but not limited to, the following:

- (i) Tailored electric rates set above SMUD's marginal cost of providing electric service to the Annexation Territory and below PG&E's then-effective electric rates.
- (ii) Incentive funds to be spent on energy efficiency projects that exceed Title 24 requirements by at least 20%.
- (iii) Economic Development electric rates for new businesses or expanding businesses that bring new load and create new jobs for the Annexation Territory. Economic Development electric rates will offer an additional discount below PG&E's then-effective electric rates and will be set above SMUD's marginal cost of providing electric service to the Annexation Territory.
- (iv) Purchase by SMUD of power generated by facilities owned by the City of Woodland.
- (v) Purchase or lease back by SMUD of electrical services infrastructure owned by the City of Woodland that would be beneficial to SMUD.
- (vi) Incentive funds to be spent on solar projects and other clean distributed generation.
- (vii) Incentive funds to purchase "green energy" for public buildings.
- (viii) Support by SMUD of the use by the City of Woodland of advanced transportation technologies (e.g., electric vehicles, hydrogen fuel cells).
- (ix) Other items agreed to by the Parties.

b. *City of Woodland's Obligations.* In exchange for and in consideration of the benefits of annexation determined in a Customer Tailored Electric Service Agreement, the City of Woodland agrees, at a minimum, to:

- (i) Work cooperatively with SMUD to identify energy efficiency measures that exceed Title 24 standards by at least 20% in connection with the construction of new and retrofitting of existing City of Woodland buildings and, where feasible, implement such measures.
- (ii) Curtail load during the period June through September as mutually agreed to by the Parties.
- (iii) Provide at least one public site for a clean renewable energy project.
- (iv) Work in partnership with SMUD on outreach activities and efforts to educate Annexation Territory customers regarding SMUD's programs and services.

- (v) Explore co-location of SMUD customer service sites in public buildings.
  - (vi) Work cooperatively with SMUD to identify and implement other feasible projects that improve air quality through beneficial electrification.
  - (vii) Follow Best Management Environmental Practices.
  - (viii) Other items agreed to by the Parties.
3. *Term.* This MOU shall become effective upon execution by both Parties and shall continue in effect unless cancelled in writing by both Parties.
4. *Dispute Resolution.* As a condition precedent to bringing any claim or cause of action in a court of competent jurisdiction, the Parties shall use the following dispute resolution process:
- a. In the event of any dispute under this MOU, the Party raising the dispute shall send written notice to the other Party that a dispute has arisen and shall describe the dispute. Within ten (10) days after delivery of the Notice of Dispute, the Parties shall each designate an Authorized Representative and shall meet and attempt to informally resolve the dispute.
  - b. In the event the dispute is not informally resolved within thirty (30) days after delivery of the Notice of Dispute, the Parties shall promptly submit the dispute to mediation. The mediator shall be selected by mutual agreement of the Parties, and the cost of the mediator shall be borne on an equal basis by the Parties. In the event the Parties are unable to agree on a mediator, the dispute shall be submitted to JAMS and JAMS shall select a mediator with civil judicial experience. In the event, for whatever reason, JAMS is not available or lacks the necessary expertise, the Parties shall use the services of another judicially oriented mediation service, which shall then appoint a mediator with civil judicial experience.
  - c. Following selection of a mediator, the Parties shall meet and confer prior to the mediation and provide to the mediator an agreed list of matters to be resolved by the mediation. Unless the Parties to the mediation agree otherwise, the only matters to be discussed at the mediation are those matters submitted to the mediator following the meet and confer meeting of the Parties. Time shall be of the essence during the process and the Parties shall cooperate to promptly complete the process.
  - d. In the event the Parties are unsuccessful in resolving any or all of the disputed issues presented to the mediator, either Party shall have the right to file for relief in a court of competent jurisdiction.

5. *Miscellaneous.*

- a. *Third Party Beneficiaries.* There are no third party beneficiaries, intended or unintended, of this MOU.
- b. *Notices.* Any notices required or made under this MOU shall be in writing and delivered by U.S. mail or facsimile as follows:

SMUD:

With copy to:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

City of Woodland:

With copy to:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- c. *Entire Agreement.* This MOU supersedes any other prior writings and prior or contemporaneous oral agreements or understandings between the parties related to the subject matter of this MOU. This MOU fully integrates the Parties' agreement and understanding with respect to all matters covered herein. Each Party agrees that it has not relied on any fact, statement or representation other than as specifically recited herein.
- d. *Amendments.* No agreement to vary, modify or amend this MOU shall be effective unless in writing and executed by persons duly authorized by the Parties.

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e. *Effective Date.* This MOU shall be effective as of the date first written above.

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
Name  
Title

**CITY OF WOODLAND**

By: \_\_\_\_\_  
Name  
Title

**Attest:**

By: \_\_\_\_\_  
Name  
*Woodland City Clerk*