



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

January 24, 2023

SUBJECT: Council Consideration of Resolution No. 05-23 approving an Agreement with Settlers Village LLC regarding water and sewer service

PREPARED BY: Jim Goodwin, City Manager

Recommendation

Staff recommends adopting Resolution No. 05-23 approving an agreement with Settler's Village LLC regarding water and sewer service.

Background/Discussion

Settlers Village, located at 1912 and 1920 State Highway 65 was constructed with a master water meter for service to the buildings and a separate irrigation meter. The water lines from the master meter, serving the buildings, were constructed partially inside the buildings and are not the responsibility of the city.

In approximately 2014, the city agreed to provide Settler's Village with submeters for the suites to measure the water use of individual tenants. At the time, the parties did not enter into a formal agreement defining the responsibilities of each party. In addition, beginning in 2018, commercial sewer rates are now determined based upon water use, making it more important for individual tenant accounts to be metered in order to fairly apportion sewer charges.

Adoption of the attached Resolution will approve the agreement (Attachment 1) negotiated with the property owner. The agreement was drafted by the City Attorney. The agreement includes the following terms:

1. The city will replace meters already in services as part of the meter replacement included in the Comprehensive Drinking Water Project.
2. All suites leased at the center require a water and sewer account. Any new meters required will be installed by the owner according to city specifications and, once accepted by the city, dedicated to the city.
3. The city will own and operate all submeters.
4. The owner is responsible for any difference in water use between the master meter and the submeters for individual tenants.

5. The owner is responsible for the operation and maintenance of all water lines serving the property past the master meter.

Alternatives

Council could choose not to adopt Resolution No. 05-23.

Fiscal Impact

There is no fiscal impact associated with approval of Resolution No. 05-23.

Attachments

1. Resolution No. 05-23

RESOLUTION NO. 05-23

APPROVING AN AGREEMENT WITH SETTLERS VILLAGE LLC REGARDING WATER AND SEWER SERVICE FOR SETTLERS VILLAGE LOCATED AT 1912 AND 1920 STATE HIGHWAY 65, WHEATLAND, CALIFORNIA

WHEREAS SETTLERS VILLAGE CENTER, LLC ("OWNER") is the owner of a commercial shopping center commonly known as Settlers Village consisting of two buildings with street addresses of 1912 and 1920 Highway 65 ("Property") located within the City of Wheatland ("CITY"); and

WHEREAS CITY provides water and sewer service to the Property; and

WHEREAS, the Property includes numerous suites, some of which the OWNER has rented to tenants and some of which are currently unoccupied; and

WHEREAS, the Property has a master meter ("Master Meter") that measures the amount of water delivered for indoor use to the Property, and a separate meter that measures the amount of water delivered for landscaping irrigation use ("Irrigation Meter") to the Property; and

WHEREAS the Master Meter and the Irrigation Meter are the points of delivery of the water to the Property, and the CITY does not own, operate, or maintain any of the plumbing or water service lines on the Property that are used to convey water from these points of delivery to the places where the water is used; and

WHEREAS submeters have been installed on the Property to measure the amount of water delivered to certain occupied individual suites; and

WHEREAS other occupied and unoccupied suites do not have submeters; and

WHEREAS CITY is in the process of replacing all of its existing water meters but has not yet replaced the Master Meter, Irrigation Meter, or any of the submeters at the Property.

WHEREAS CITY and OWNER wish to enter into an agreement (Attachment 1) regarding this matter and that agreement is attached.

THEREFORE...the City Council Approves the Agreement with Settler's Village (Attachment 1) and directs the Mayor to sign the agreement.

AYES:

NOES:

ABSENT:

ABSTAIN:

Rick West, Mayor

ATTEST:

Lisa J. Thomason

ATTACHMENT 1

**AGREEMENT BETWEEN THE CITY OF WHEATLAND
AND SETTLERS VILLAGE CENTER, LLC
REGARDING WATER AND SEWER SERVICE
FOR THE SHOPPING CENTER COMMONLY KNOWN AS SETTLERS VILLAGE,
LOCATED AT 1912 AND 1920 STATE HWY 65, WHEATLAND, CALIFORNIA**

THIS AGREEMENT BETWEEN THE CITY OF WHEATLAND and SETTLERS VILLAGE CENTER, LLC REGARDING WATER AND SEWER SERVICE FOR THE SHOPPING CENTER COMMONLY KNOWN AS SETTLERS VILLAGE, is made and entered into effective January 24, 2023, by and between the **CITY OF WHEATLAND**, a municipal corporation, and **SETTLERS VILLAGE CENTER, LLC**, a California limited liability company. This Agreement will become effective on the date that it is signed by the last party to sign as indicated by the date associated with that party's signature below. The parties agree as follows:

1. Recitals. The parties make this Agreement with reference to the following background recitals:

(A) WHEREAS, **SETTLERS VILLAGE CENTER, LLC** ("OWNER") is the owner of a commercial shopping center commonly known as Settlers Village consisting of two buildings with street addresses of 1912 and 1920 Highway 65 ("Property") located within the City of Wheatland ("CITY"); and

(B) WHEREAS, CITY provides water and sewer service to the Property; and

(C) WHEREAS, the Property includes numerous suites, some of which the OWNER has rented to tenants and some of which are currently unoccupied; and

(D) WHEREAS, the Property has a master meter ("Master Meter") that measures the amount of water delivered for indoor use to the Property, and a separate meter that measures the amount of water delivered for landscaping irrigation use ("Irrigation Meter") to the Property; and

(E) WHEREAS, the Master Meter and the Irrigation Meter are the points of delivery of the water to the Property, and the CITY does not own, operate or maintain any of the plumbing or water service lines on the Property that are used to convey water from these points of delivery to the places where the water is used; and

(F) WHEREAS, submeters have been installed on the Property to measure the amount of water delivered to certain occupied individual suites; and

(G) WHEREAS, other occupied and unoccupied suites do not have submeters; and

(H) WHEREAS, CITY is in the process of replacing all of its existing water meters but has not yet replaced the Master Meter, Irrigation Meter, or any of the submeters at the Property.

2. Replacement of Existing Meters During Water Meter Conversion Project. As part of CITY's water meter conversion project, CITY will provide replacement meters for all

existing meters and submeters in service at the Property. CITY anticipates completing this task in 2023.

3. Future Installation of Submeters. For any individual suites within the Property that do not receive replacement submeters as part of CITY'S water meter conversion project as set forth in Paragraph 1, OWNER agrees to furnish and install, at its own expense, a submeter prior to any new tenant occupying the suite. All submeters installed under this Paragraph 2 shall be approved by CITY, shall comply with Section 12500.5 of the Business and Professions Code, and shall be installed and operated in compliance with regulations established pursuant to Section 12107 of the Business and Professions Code. All proposed meter and submeter installations, meter and submeter box enclosures, and connection of meters or submeters to associated plumbing shall be reviewed and approved by CITY prior to installation of any new meter or submeter.

4. Dedication of Submeters. Upon CITY's approval of the meter or submeters installed under Paragraph 3, OWNER shall dedicate the meter or submeters to CITY.

5. Ownership of Meters and Submeters. CITY will own, operate and maintain each meter, meter data transmitter and meter box enclosure that has been installed by CITY under the meter conversion project, as well as each meter, meter data transmitter and meter box enclosure that has been installed by the OWNER and dedicated to CITY under this Agreement.

6. Operations and Maintenance Responsibilities of Parties.

6.1. CITY is responsible for operating and maintaining CITY's domestic water system up to the points of delivery, which are the Property's Master Meter for the water supplied for indoor use and the Irrigation Meter for the water supplied for outdoor use.

6.2. OWNER owns, and is responsible for operating and maintaining, all water service lines and plumbing, including any backflow devices, from the points of delivery at the Master Meter and the Irrigation Meter to any water delivery location within the Property. CITY does not own any of these water service lines or plumbing features, has no control over them, and is not responsible for any operations or maintenance related to them.

7. Establishment of Separate Water and Sewer Service Accounts for All Occupied Suites at Property.

7.1. Each tenant that occupies a suite of the Property will be required to obtain a water and sewer service account from CITY for that suite. These accounts will be separate from and independent of OWNER's accounts for the Property.

7.2. OWNER will require all existing tenants of the Property to establish with the CITY individual water and sewer service accounts for their respective suites.

7.3. Any suites occupied by OWNER, including any office(s), will require a separate water and sewer service account.

8. Responsibility for Fees and Charges.

8.1. OWNER is responsible for all fees and charges resulting from readings of the Irrigation Meter.

8.2. OWNER will be responsible for payment of all fees and charges, including fees or charges resulting from reading of the meter) and submeters, that are associated with accounts related to suite(s) that are occupied by OWNER.

8.3. Once the separate account is established for a suite, OWNER will not be responsible for payment of any fees or charges related to that tenant's account. However, OWNER will continue to be responsible for all water fees and charges resulting from any difference between the readings reflected on the Master Meter and the sum of all separate accounts established for the Property.

9. Term and Termination. This Agreement shall take effect on the date set forth at the top of the Agreement and shall remain in effect until terminated as provided in this section. This Agreement may be terminated by: (a) the mutual written consent of the parties, which shall specify the termination date, or (b) a party for any reason upon providing at least thirty days prior written notice of termination to the other party. In the event of termination, CITY will close the separate water and sewer service accounts for each occupied suite in the Property, and OWNER will be responsible for all fees and charges as recorded on the Master Meter and the Irrigation Meter following the effective date of termination.

10. General Provisions.

10.1. Entire Agreement. The parties intend this document to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their agreement concerning the subject matter of this document. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Agreement, except those other documents that may be expressly referenced in this Agreement.

10.2. Construction and Interpretation. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

10.3. Waiver. The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any subsequent default or matter.

10.4. Amendment. This Agreement may be modified or amended only by a later writing approved and signed by all parties.

10.5. Assignment. This Agreement and all rights and obligations under it are personal to the parties. The Agreement may not be transferred, assigned, or delegated, in whole or in

part, whether by assignment, merger, operation of law, or otherwise, by a party without the prior written consent of the other parties. Any transfer, assignment, or delegation in violation of this provision is null and void.

10.6. Force Majeure.

(A) "Force Majeure" means an act, event or condition that (1) is beyond the reasonable control of the party claiming force majeure, (2) materially interferes with or delays performing an obligation of the party under this Agreement, and (3) the party, by the exercise of due diligence, is unable to prevent or overcome. Subject to the foregoing, Force Majeure includes a labor dispute such as a strike or lockout, failure or refusal of any person or entity (other than a party) to comply with an agreement to obtain or ship material or equipment, industrial disturbance, act of a public enemy, war, blockade, insurrection, riot, epidemic, civil disturbance, explosion, sabotage, threat of physical harm or damage resulting in the evacuation or shutdown of a party's facilities, landslide, lightning, earthquake, volcanic eruption, fire, flood, washout, other natural disaster (except weather conditions normal for the area), and restraint by order of a court or government agency (other than a party) having jurisdiction over the party. Force Majeure does not include any act, event or condition that is the result of the party's willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement.

(B) A party is excused from an obligation under this Agreement in the event that the party is rendered unable, wholly or in part, by Force Majeure to carry out the obligation. A party's performance will be suspended only during the continuance of the Force Majeure condition and the party will perform all other obligations not affected by the Force Majeure condition. Upon the occurrence of an event of Force Majeure, the party claiming Force Majeure must give notice and full particulars of the Force Majeure in writing to the other party and, to the extent reasonably practical, use its best efforts to promptly implement a plan to ensure the continued ability to perform its obligations and promptly bring to an end the Force Majeure condition.

10.7. No Third-Party Beneficiaries. This Agreement does not create and shall not be construed to create any third-party beneficiaries and this Agreement is for the sole benefit of the parties. No other person or entity has enforceable rights or remedies under the Agreement.

10.8. Relationship of Parties. This Agreement does not create and should not be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties.

10.9. Further Assurances and Cooperation. In order to carry out and give full effect to this Agreement, each party will use all reasonable efforts to provide such information, sign and deliver such further instruments and documents, and take such actions as may be reasonably requested by the other party, so long as not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from, in excess of, or in addition to those expressly provided for in this Agreement. The parties will reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

10.10. Notices. Any notice, consent, approval, or other communication (collectively "Notice") required or permitted to be given under this Agreement shall be in writing and delivered or sent: (a) in person, (b) by prepaid, first-class U.S. mail, (c) by a nationally-recognized commercial overnight courier service that guarantees next-day delivery and provides a receipt, or (d) by email with a confirmed receipt. Any Notice so delivered or sent will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first-class U.S. mail, (c) on the date of delivery as shown on the overnight courier service receipt, or (d) upon the sender's receipt of an email from the other party confirming the receipt of the emailed Notice. Notices required or permitted to be given under this Agreement shall be addressed as follows:

<p>CITY: City Manager 111 C St Wheatland, CA 95692</p>	<p>OWNER: Cary Neal Wilson 1814 Lewis Road Wheatland, CA 95692</p>
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Any party may change its contact information by notifying the other party of the change in the manner provided above.

10.11. Electronic Signatures. This Agreement may be executed by electronic signatures (e.g., using DocuSign or e-SignLive) or signatures transmitted in portable document format ("pdf"), and copies of this Agreement executed and delivered by means of electronic or pdf signatures shall have the same force and effect as an agreement executed and delivered with original manually executed signatures. The parties may rely upon electronic and pdf signatures as if such signatures were manually executed originals and agree that an electronic or pdf signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original manually executed signature page.

CITY

OWNER

By: _____

Rick West, Mayor

By: _____

Cary Neal Wilson [name]

Attest: _____

_____ [title]

Lisa Thomason, City Clerk

