



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

February 23, 2021

SUBJECT: Discussion and Consideration of Resolution No. 28-21 Approving a Reimbursement Agreement with Olivehurst Public Utility District (OPUD) for Costs Incurred for Design of Regional Wastewater Infrastructure: Update on Regional Sewer Design Project

PREPARED BY: Jim Goodwin – City Manager
Adam Brown, Special Counsel

Recommendation

Adopt Resolution No. 28-21 approving a reimbursement agreement with OPUD related to the regional sewer project.

Background

On February 23, 2021 the City Council directed the City Manager, working with the Sewer Ad-hoc Committee, to negotiate a reimbursement agreement with OPUD regarding design costs for the regional wastewater project. At that time, staff informed the City Council that OPUD would seek an amendment to their design and environmental clearance funding agreement with Yuba Water Agency (YWA) for the additional design costs related to Wheatland's participation in the regional project. YWA approved those amendments to the OPUD contract.

The Reimbursement Agreement is for Wheatland's share of the additional design costs that will be paid by OPUD. The agreement establishes the formula for determining the appropriate cost share for each jurisdiction. The agreement also includes the same "loan forgiveness" protections that are included in both the OPUD and Wheatland design funding contracts with YWA. The provision allows for potential forgiveness of the loan portion of the design funding if growth necessary to support loan repayment does not occur.

The City Engineer will also provide an update on the regional sewer design project.

Fiscal Impact

The reimbursement agreement determines the calculation methodology for determining the actual reimbursement. Wheatland's share of design costs is estimated at \$780,000.

Attachments

1. Resolution No. 28-21
2. Reimbursement Agreement

RESOLUTION NO. 28-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHEATLAND APPROVING AN AGREEMENT BETWEEN THE CITY OF WHEATLAND AND THE OLIVEHURST PUBLIC UTILITY DISTRICT FOR THE REIMBURSEMENT OF COSTS IN CONNECTION WITH THE OPUD CONVEYANCE DESIGN PROJECT

WHEREAS, on or about July 7, 2020, the City executed the "Yuba County Water Agency – City of Wheatland Grant & Loan Agreement", whereby the Yuba Water Agency ("YWA") provided the City with a grant in the amount of \$1,300,000 and a loan in the amount of \$1,300,000 (the "YWA-City Grant/Loan Agreement"). The purpose of the YWA-City Grant/Loan Agreement was to fund design and engineering improvements to the City's wastewater collection system to connect to the OPUD wastewater collection and treatment system (the "City Conveyance Design Project"); and

WHEREAS, on or about June 8, 2020, OPUD executed the "Yuba County Water Agency – Olivehurst Public Utility District Grant & Loan Agreement" (the "OPUD/YWA Design Funding Agreement"), as amended, pursuant to which YWA has provided OPUD with a grant in the amount of \$2,353,236.50 and a loan in the amount of \$2,353,236.50 for the purpose of design and engineering improvements to the OPUD wastewater collection and treatment system to allow for the conveyance of 3.3 MGD (peak flow) of City sewage in the OPUD service area (the "OPUD Conveyance Design Project"); and

WHEREAS, on or about July 31, 2020, OPUD entered into a professional services contract with Jacobs Engineering for the design, engineering and environmental review of certain wastewater collection and conveyance improvements to facilities located within the OPUD service area for the conveyance of City peak flows (the "Jacobs Engineering Contract"); and

WHEREAS, subsequent to OPUD entering into the Jacobs Engineering Contract, the anticipated OPUD Conveyance Design Project expanded into the current regional project that includes design of infrastructure to be shared by, or used solely by, the City; and

WHEREAS, OPUD has entered into an amendment of the Jacobs Engineering Contract ("Amendment #3") to provide for additional design and engineering services to include the anticipated interceptor, force main and other collection and conveyance infrastructure to be included within the OPUD Conveyance Design Project for the conveyance of City peak flows; and

WHEREAS, OPUD has entered into an amendment to the OPUD/YWA Design Funding Agreement to include the full costs of Amendment #3; and

WHEREAS, both the City and OPUD have determined that it is in their mutual interest for the City to participate in the design of the OPUD Conveyance Design Project by reimbursing OPUD for the City's share of costs that are attributable to the design and engineering of the OPUD Conveyance Design Project from loan and grant funds provided by YWA; and

WHEREAS, the City Council has determined it is in the best interests of the City to enter into the proposed Agreement Between the City Of Wheatland and the Olivehurst Public Utility District for the Reimbursement of Costs in Connection with the OPUD Conveyance Design Project (the "City/OPUD Reimbursement Agreement").

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Wheatland does hereby approve the City/OPUD Reimbursement Agreement in substantially the form of Attachment A hereto, and further authorizes and directs the City Manager to execute said City/OPUD Reimbursement Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the 13th day of July, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Rick West, Mayor

Lisa J. Thomason, City Clerk

**AGREEMENT BETWEEN THE CITY OF WHEATLAND AND THE OLIVEHURST PUBLIC
UTILITY DISTRICT FOR THE REIMBURSEMENT OF COSTS IN CONNECTION WITH THE
OPUD CONVEYANCE DESIGN PROJECT**

This Agreement dated as of July 13, 2021, is made and entered into by and between the City of Wheatland, a municipal corporation ("the City") and the Olivehurst Public Utility District, a special district formed and existing under the California Public Utilities Code ("OPUD") (each separately at "party" and together, the "parties").

WHEREAS, on or about July 7, 2020, the City executed the "Yuba County Water Agency – City of Wheatland Grant & Loan Agreement", whereby the Yuba Water Agency ("YWA") provided the City with a grant in the amount of \$1,300,000 and a loan in the amount of \$1,300,000 (the "YWA-City Grant/Loan Agreement"). The purpose of the YWA-City Grant/Loan Agreement was to fund design and engineering improvements to the City's wastewater collection system to connect to the OPUD wastewater collection and treatment system (the "City Conveyance Design Project"); and

WHEREAS, on or about June 8, 2020, OPUD executed the "Yuba County Water Agency – Olivehurst Public Utility District Grant & Loan Agreement" (the "OPUD/YWA Design Funding Agreement"), as amended, pursuant to which YWA has provided OPUD with a grant in the amount of \$2,353,236.50 and a loan in the amount of \$2,353,236.50 for the purpose of design and engineering improvements to the OPUD wastewater collection and treatment system to allow for the conveyance of 3.3 MGD (peak flow) of City sewage in the OPUD service area (the "OPUD Conveyance Design Project"); and

WHEREAS, on or about July 31, 2020, OPUD entered into a professional services contract with Jacobs Engineering for the design, engineering and environmental review of certain wastewater collection and conveyance improvements to facilities located within the OPUD service area for the conveyance of City peak flows (the "Jacobs Engineering Contract"); and

WHEREAS, subsequent to OPUD entering into the Jacobs Engineering Contract, the anticipated OPUD Conveyance Design Project expanded into the current regional project that includes design of infrastructure to be shared by, or used solely by, the City; and

WHEREAS, OPUD has entered into an amendment of the Jacobs Engineering Contract ("Amendment #3") to provide for additional design and engineering services to include the anticipated interceptor, force main and other collection and conveyance infrastructure to be included within the OPUD Conveyance Design Project for the conveyance of City peak flows; and

WHEREAS, OPUD has entered into an amendment to the OPUD/YWA Design Funding Agreement to include the full costs of Amendment #3; and

WHEREAS, both the City and OPUD have determined that it is in their mutual interest for the City to participate in the design of the OPUD Conveyance Design Project by reimbursing OPUD for the City's share of costs that are attributable to the design and engineering of the OPUD Conveyance Design Project from loan and grant funds provided by YWA;

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the City and OPUD agree as follows:

Definitions

- a. **Basis of Design Report (BODR):** Basis of Design Report means the preliminary design submittal for the OPUD Conveyance Design Project deliverable.
- b. **City Conveyance Design Project:** The City Conveyance Design Project means the design and engineering improvements to the City's wastewater collection system to connect to the OPUD wastewater collection and treatment system.
- c. **Design Costs:** Design Costs means those costs associated with the preliminary and final engineering design, environmental review and processing, land surveying, geotechnical engineering and permitting efforts attributable to the OPUD Conveyance Design Project.
- d. **MGD:** MGD means "millions of gallons per day".
- e. **Opinion of Probable Construction Costs (OPCC):** The Opinion of Probable Construction Costs ("OPCC") means the total project construction cost developed at the conclusion of the design as prepared by the OPUD Design Project Engineer.
- f. **OPUD Conveyance Design Project:** The OPUD Conveyance Design Project means the design and engineering phase of the OPUD wastewater collection system to allow for the conveyance of 3.3 MGD (peak flow) of City sewage in the OPUD service area.
- g. **Project Management Fees:** Project Management Fees means those costs directly related to the OPUD Conveyance Design Project, as set forth in Exhibit A hereto.
- h. **Proportionate Capacity Share:** Proportionate Capacity Share means the percentage allocation of pipeline conveyance capacity between the City and OPUD based upon the percentage of design capacity attributable to each party in the OPUD Conveyance Design Project, as more particularly set forth in Exhibit A hereto.

AGREEMENT

1. This Agreement provides for the allocation and reimbursement of Design Costs between the City and OPUD in connection with the design and engineering of the City Conveyance Design Project and the OPUD Conveyance Design Project. The construction and financing of the OPUD Conveyance Design Project shall be the subject of a separate agreement between the City and OPUD. The methodology for calculation of each party's Proportionate Capacity Share of Design Costs related to the OPUD Conveyance Design Project is confirmed and set forth in the attached Exhibit A. Any amendment to Exhibit A shall require the prior review and written approval of the City's Engineer and is subject to the approval of the City Council and OPUD Board of Directors.
2. OPUD agrees to provide the City's Engineer the opportunity to review the OPUD Conveyance Design Project and to work collaboratively with the City's Engineer to ensure the City's satisfaction with the work product for which the City will reimburse OPUD as set forth below. Design plans and related expenses incurred shall be submitted to the City's Engineer for review and comment as set forth in the Basis of Design Report, 60% design submittal and 90% design submittal as described in the Jacobs Engineering Contract.
3. Each party shall be solely responsible for Design Costs which are exclusively related to its own infrastructure. Neither party hereto shall be required to reimburse the other for any costs or expenses of any kind which apply only to each party's respective service areas and are unrelated to the OPUD Conveyance Design Project. The City shall be solely responsible for Design Costs associated with the City Conveyance Design Project.
4. Neither this agreement nor any provision thereof shall be construed to require or obligate the City to expend funds for the exclusive benefit of OPUD unrelated to its Proportionate Capacity Share of the OPUD Conveyance Design Project, or to require OPUD to expend funds that are for the exclusive benefit of the City which are not subject to reimbursement under the terms of this Agreement.
5. The parties hereto agree that the City's obligation to reimburse OPUD for its Proportionate Capacity Share of costs is subject to and limited by the terms and conditions of the YWA-City Grant/Loan Agreement, a copy of which is attached hereto as Exhibit B. Notwithstanding any provision in this Agreement to the contrary, the City's reimbursement obligation to OPUD shall be limited to the City's obligation to repay YWA from sewer connection fees collected from new development as it occurs, as set forth in Section 3.6 of the YWA-City Grant/Loan Agreement or from grant funding received from YWA pursuant to Section 2 thereof. Otherwise, the City shall be under no obligation to reimburse OPUD for its Proportionate Capacity Share.
6. This Agreement is limited to the reimbursement to OPUD of expenses for the design and engineering services related to the OPUD Conveyance Design Project. Nothing herein shall obligate the City or OPUD to finance or construct the infrastructure being designed through the OPUD Conveyance Design Project or apportion the costs thereof, which shall be subject to a separate agreement between the parties as indicated above.
7. The City and OPUD agree that a separate financing agreement must be entered into between the parties prior to bidding the construction of the OPUD Conveyance Design Project, and that such financing agreement will specify City's Proportionate Capacity Share of

conveyance infrastructure jointly owned and used by the parties and of infrastructure to be wholly owned by the City for its sole use, specifically the anticipated force main for the City from the City's new Pump Station #3 and along Rancho Road to OPUD's new pump station near Ostrom Road.

MISCELLANEOUS PROVISIONS

- a. Time is of the Essence: Time is of the essence of this Agreement.
- b. Amendments/Supplemental Agreements: This Agreement contains all the known and reasonably foreseeable covenants and Agreements between the parties with respect to the subject matter herein; provided, however, that this Agreement may be amended by, and/or supplemental agreements entered into between, the parties as may be necessary to further carry forward the purposes and intents contained herein. Any such amendment or supplemental agreement shall be in writing and be approved by the District's Board of Directors and the City Council. The signatories hereto warrant and represent that they have the authority and are duly authorized to enter into this Agreement on behalf of the City and District, as applicable.
- c. Assignment: Neither Party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- d. Severability: If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the Parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining.
- e. Entire Agreement: This Agreement is freely and voluntarily entered into by the Parties after having the opportunity to consult with their respective attorneys. The Parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. This Agreement represents the entire agreement of the Parties. Each individual executing this Agreement represents that he or she is duly authorized to enter its terms and conditions and to execute it on behalf of the Party represented.
- f. Indemnity: Each Participant (the "Indemnitor") agrees to hold harmless, defend and indemnify the other Participants, their officers, agents and employees, from and against any and all liabilities, claims, or damages of any nature, including, without limitation, personal injury, including death, or property damage, resulting from the negligent actions or inaction of the Indemnitor, its officers, agents, or employees, under the terms of this Agreement, including, without limitation, accidental wastewater discharges.
- g. Dispute Resolution: All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to the breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding. Mediation shall be conducted under the Mediation Rules of the American Arbitration Association. All applicable

statutes of limitation and defenses based upon the passage of time shall be tolled from the time a written demand for mediation is served by a Party hereto and for a period of 15 days after the conclusion of the mediation process. Any action arising out of this Agreement shall be brought in the Superior Court of the State of California for the County of Yuba, regardless of where else venue may lie.

h. Interpretation of this Agreement: The Parties acknowledge that each Party has reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any Party in connection with the transactions contemplated by this Agreement.

i. Waiver of Rights: Any waiver at any time by either Party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

j. Remedies Not Exclusive: The use by either Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the Party using such remedy of, or limit the application of, any other remedy provided by law.

k. Successors/Assigns: This Agreement shall be binding upon and shall inure to the benefit of the City and the District, and their respective successors and assigns.

l. Counterparts: This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DATE ABOVE WRITTEN.

CITY OF WHEATLAND

By: _____
Name: Jim Goodwin
Title: City Manager

ATTEST:

BY: _____
Lisa J. Thomason
City Clerk

APPROVED AS TO FORM:

BY: _____
Jennifer Buckman
City Attorney

OLIVEHURST PUBLIC UTILITY DISTRICT

BY: _____
General Manager

APPROVED AS TO FORM:

BY: _____
General Counsel

ATTEST:

BY: _____
Secretary to the Board of Directors

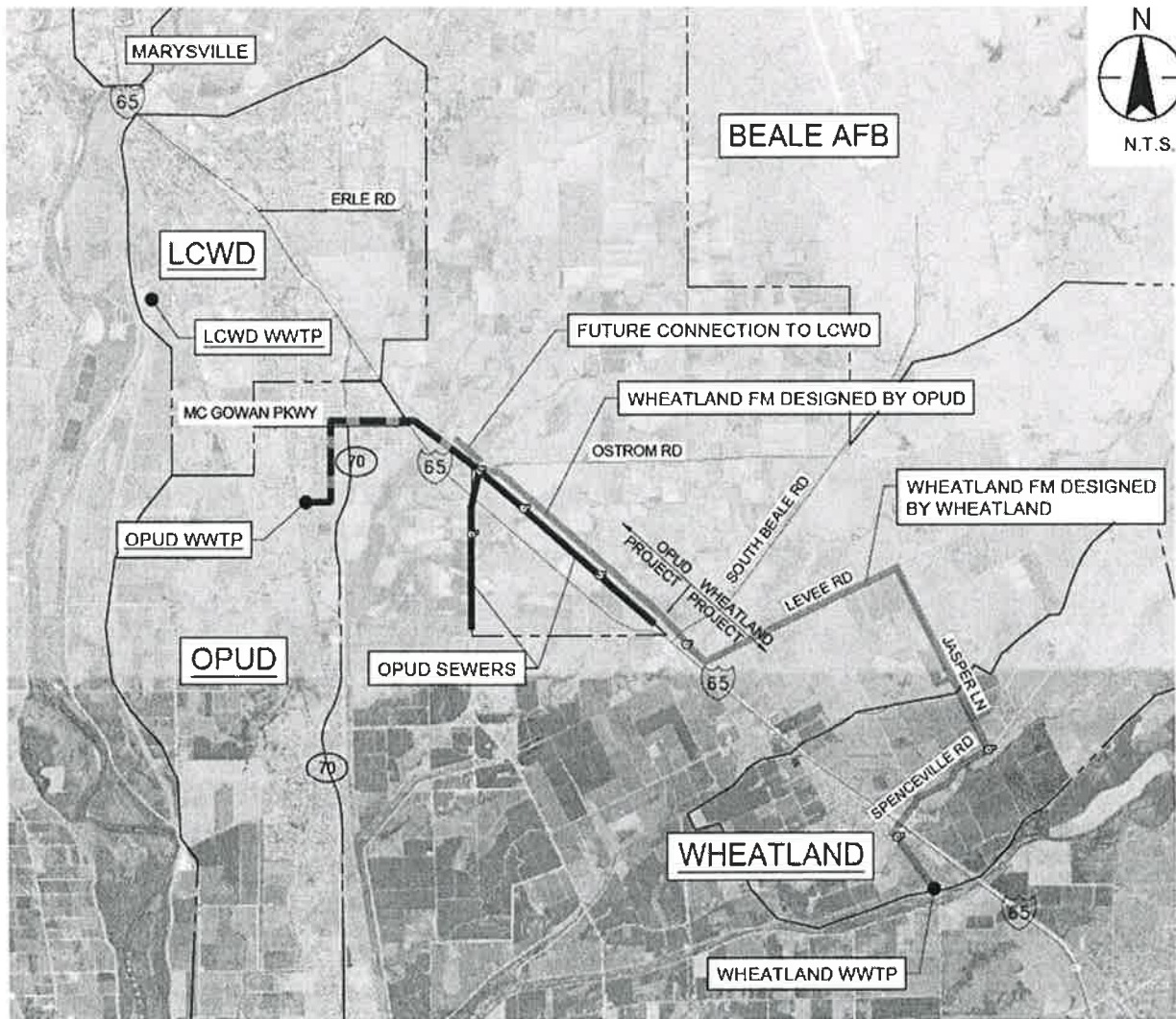
EXHIBIT A

Calculation Methodology of Shares of OPUD Design Costs

The purpose of this Exhibit A is to describe how Design Costs borne by OPUD will be allocated between the City and OPUD.

SCOPE

As shown in the figure below, OPUD will design the City's force main pipe along Rancho Road between the City's new Pump Station #3 near S. Beale Road and OPUD's new pump station near Ostrom Road. Also, OPUD will design shared pipeline and pump station facilities from its Ostrom Road Pump Station to the OPUD wastewater treatment plant (WWTP).



ASSUMPTIONS

1. For the purposes of Design Cost calculations OPUD's peak flow will be 4.47 and the City's design peak flow will be 3.3 MGD.
2. Upon completion of the design of Project, OPUD's design engineer will prepare an Opinion of Probable Construction Costs (OPCC) itemizing the estimated construction costs of various bid items of the OPUD project.
3. All cost assumptions, quantities, costs, bid items and general construction cost items will be subject to review and approval by the parties.

CALCULATION OF SHARED DESIGN COSTS

A. CITY FORCE MAIN COSTS

The OPCC shall itemize the costs of City force main (the Rancho Road to Ostrom Road force main) items of work as unique and separate line items. The City's force main construction costs will be the sum of those items and will be assigned exclusively to the City.

B. SHARED PIPELINE COSTS

Costs of the shared pipeline infrastructure will be determined based on an incremental cost basis as follows:

- a. OPUD will calculate the pipeline diameter needed to convey its peak flow at the same velocities used in the design.
- b. OPUD will calculate the pipeline diameter to convey its peak flow plus Wheatland (3.3 MGD).

The OPCC costs will then be allocated between OPUD and the City in proportion to the pipeline diameter required for each party's anticipated peak flow. For example, if a 12-inch diameter pipe is required for OPUD's peak flow and an 18-inch pipe is required for the combined City and OPUD peak flows, then the City would be responsible for the 6/18 (33%) of the OPCC costs and OPUD would be responsible for 12/18 (66%) of the OPCC cost.

C. SHARED PUMP STATION AND DUAL PIPELINE SEGMENT COSTS

The OPCC shall list all items of work for each shared pump station. Shared pump station costs and dual pipeline segment costs will be allocated to the City and OPUD based on the ratio of peak flows originating from each party entering each pump station or pipeline at design conditions. The City's peak flow will be constant at 3.3 MGD, whereas OPUD's peak flows will increase with each downstream pump station.

D. DESIGN COST SHARE CALCULATION

The following formula will be used to determine the City's percentage share of reimbursable Design Costs in Tasks 2 - 5 of the Jacobs Engineering Contract:

$$\% \text{ Design Cost} = \frac{\text{CITY FORCEMAIN OPCC} + \text{SHARED PIPELINE OPCC} + \text{SHARED PUMP STATION \& DUAL PIPELINE OPCC}}{\text{TOTAL PROJECT OPCC}}$$

CALCULATION OF CITY'S SHARE OF PROJECT MANAGEMENT FEES

Since the Jacobs Engineering Contract includes items not associated with wastewater conveyance, the Project Management Fees shall be reduced by all costs unrelated to the OPUD Conveyance Design Project.

Task 1 of the Jacobs Engineering Contract includes project management for the design of water, sewer conveyance and wastewater treatment facilities (\$549,000). Tasks 2 – 5 are the design tasks for sewer conveyance (\$3,758,000). Tasks A and B in the Jacobs Engineering Contract involve Olivehurst SSO Improvements and WWTP Improvements (\$1,135,000). The total fees for these tasks is \$4,893,000. Using the above task budgets, the Project Management Fees associated with both OPUD and City sewer conveyance design activities is:

$$\$549,000 \times (\$3,758,000 / \$4,893,000) = \$421,000$$

The City's share of Project Management will be calculated by taking the calculated percentage Design Cost (described above) multiplied by \$421,000 (or such different sum in the event the Jacobs Engineering contract is subsequently amended and agreed by the Parties).

CALCULATION OF TOTAL REIMBURSEMENT FROM CITY TO OPUD

The total reimbursement due from the City to OPUD shall be the sum of the City's Design Costs plus the City's share of Project Management Fees.