



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

December 12, 2017

SUBJECT: Approve a Process for Recovering Costs Associated with Non-Standard Development Projects

PREPARED BY: Susan Mahoney, Finance Director

Recommendation

Staff recommends Council approve the attached Project Funding Agreement template which establishes a process for recovering staff and consultant costs associated with non-standard development projects.

Background/Discussion

The City has adopted fees to recover the costs of issuing building permits and the costs of planning and engineering reviews associated with development project applications. From time to time, certain development projects include tasks or services that are unique to the project, have no applicable fee, and therefore require an alternative method for recovering costs. In the past, the City has used various deposit and reimbursement methods (funding agreements) as needed to address this issue. The most recent funding agreement (October 2017) was for Johnson Rancho development processing. It is anticipated that funding agreements will continue to be needed in the future.

Staff is recommending that Council consider approving the attached Project Funding Agreement template (Exhibit "A"). The Agreement establishes a process to recover costs associated with development projects that include tasks or services that are unique to the project. The benefits of having a Council approved Project Funding Agreement template are:

- Establishes a method of cost recovery that can be used for all non-standard development projects
- Provides a means for the applicant to be aware of and budget in advance, the monies that will be needed to reimburse the City for work performed
- Directs the City Manager to execute agreements in substantial conformity with the template, resulting in a savings of staff and consultant costs associated with creating a new agreement for each project
- Provides reasonable assurance that the City will recover all staff and consultant costs associated with a project

Alternatives

Continue to bring individual agreements to Council for approval.

Fiscal Impact

Approval of the Project Funding Agreement template will save the time and costs associated with creating individual agreements for Council approval.

Attachments

1. Exhibit A – Project Funding Agreement template

CITY OF WHEATLAND
PROJECT FUNDING AGREEMENT

THIS PROJECT FUNDING AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 20XX, by and between the CITY OF WHEATLAND, a general law city ("City"), and _____
a _____.

RECITALS

- A. Landowner owns certain real property located within the City of Wheatland, Yuba County, California (the "Landowner Property").
- B. Landowner intends to seek various entitlements associated with the development of the Landowner Property.
- C. City and Landowner desire to enter into this funding agreement for City staff costs and City Consultant costs incurred from and after the Effective Date (as defined below), for the tasks set forth herein associated with Landowner's seeking and processing various entitlements for the Landowner Property as such tasks may be amended in the future by mutual agreement of the parties hereto.

AGREEMENT

- 1. Effective Date and Term. This Agreement shall be effective as of the date first shown above (the "Effective Date"). This Agreement shall remain in full force and effect until five (5) years from the Effective Date, unless extended in writing by mutual consent of the City and the Landowner, or until terminated pursuant to Section 8, below. The parties agree that City shall be reimbursed under this Agreement for costs incurred after _____, for City costs to review and process this Agreement for approval, which costs are set forth in Exhibit A.
- 2. Initial Scope of Work and Approved Budget. The initial scope of work ("Initial Scope of Work"), including the approved budget therefor, approved by Landowner and City pursuant to this Agreement, is set forth in Exhibit "A" attached hereto and incorporated herein by this reference. Any additional tasks and/or budget adjustments shall be evidenced by written requests executed by the City Manager and Landowner's representative.
- 3. Governing Principles for Funding Obligations Incurred by Landowner. All costs incurred to complete the Initial Scope of Work, as may be hereafter amended by mutual written agreement of the parties hereto, shall be subject to the following provisions:
 - a. City Staff Costs. Landowner shall be obligated to pay only those amounts approved in advance pursuant to Exhibit "A" and any subsequent agreed upon changes pursuant to Section 2. The City will reimburse itself for City staff costs and expenses from monies deposited by the Landowner as incurred by the City. The current billing rates for City staff are attached hereto as Exhibit "B" and incorporated herein by this reference. City shall provide Landowner with thirty (30) days written notice in advance of staff billing rate adjustments.
 - b. City Consultant Invoices. Landowner shall be obligated to pay only those amounts approved in advance pursuant to Exhibit "A" and any subsequent changes approved pursuant to Section 2. A ten percent (10%) City processing fee will be added to all consultant invoices.

- c. Single Point of Contact. The City and Landowner believe it is beneficial for each party to designate a single point of contact for the purpose of facilitating communications. The designated persons shall assist to facilitate necessary meetings and communications between City departments, consultants, and the Landowner to resolve any issues that arise in completing approved tasks set forth in this Agreement. The parties designate the following individuals as their designated single point of contact which may be changed upon notice to the other part as provided in Section 11 hereof.

CITY:

LANDOWNER:

- d. City Invoices. City shall provide invoices to Landowner within thirty (30) days from the end of each month by transmitting them electronically via email to the individual designated by Landowner to receive invoices for Landowner as set forth in Section 11 below. Landowner shall have ten (10) calendar days after receipt of electronic copy of such invoices to notify the City in writing of any disputed amounts. If the City is not so notified, then City shall pay the full amount of such invoice from Landowner deposited monies. If Landowner disputes such invoices within said ten (10) day period, City and Landowner shall meet and confer within five (5) calendar days thereafter to resolve any dispute. Such meetings may take place telephonically. City shall pay any undisputed amount of such invoices during the dispute resolution process. This subsection (d) shall be limited to invoices from City consultants and shall exclude invoices for City staff costs and expenses. The City shall provide an accounting for its hours charged and costs incurred but is not required to provide invoices to the Landowners for City staff costs and expenses prior to withdrawing monies for such costs and expenses from the deposits paid by the Landowner under this Agreement.
4. Deposits and Accounting. Landowner shall submit an initial deposit for the Initial Scope of Work, as set forth in Exhibit "A", made payable to the City of Wheatland. The amount of deposit shall be based on the total amount of budget in the Initial Scope of Work and the duration of the tasks. If the work is estimated by the City to be completed in less than six (6) months, then the initial deposit shall be the entire approved budget. If the work is estimated by the City to take six (6) months or more then Landowner shall deposit fifty percent (50%) of the total approved budget. City shall establish a separate account for the purpose of accounting separately for this deposit and any future deposits and the charges against the deposits. City shall provide within thirty (30) days of the end of any given month, a monthly accounting report to Landowner of the prior month's expenditures paid by Landowner pursuant to this Agreement. In the event that the Initial Scope of Work is increased pursuant to Section 2 of this Agreement, the Landowner shall deposit the corresponding increased amount of budget for such increased Initial Scope of Work with the City within ten (10) calendar days after execution of the change as provided in Section 2 addressing such budget increase.
- When expenditures for approved tasks under this Agreement reach sixty (60%) of the approved budget set forth in Exhibit "A", or any change is approved pursuant to Section 2 of this Agreement, City and Landowner shall meet and confer on the status of work on the approved tasks and remaining tasks to be completed, and adjust the approved budget pursuant to mutual written agreement of City and

Landowner. No work will occur on any task or scope of work for which the required deposit from Landowner has not been received. At no time will the deposit fall below twenty-five (25%) of the total approved budget. Landowner shall not be entitled to interest on deposits made hereunder.

Payments by Landowner to City shall be transmitted to City, as follows:

City of Wheatland
Attention: Finance Department
111 C Street
Wheatland, CA 95692

5. No Guaranty of City Performance. The parties agree that the intent of this Agreement is to provide a means for the Landowner to be aware of, and budget in advance, the monies that it will be expending to reimburse the City for the Work performed by the City and its consultants on the tasks specified in this Agreement. The parties agree and understand that it is not the intent of this Agreement to create an obligation on the part of the City to perform such tasks to completion or approval for a certain cost. In no event does the City, by entering into this Agreement, promise to complete the tasks for a set fee. City's work is performed on an at-cost basis, drawn from deposits by the Landowners.
6. No Influence on City Decisions Regarding Planning, Zoning, Development, or Public Improvements. The Landowner expressly understands and agrees that all charges against deposits paid to the City pursuant to this Agreement represent reimbursement for processing costs, and shall in no way influence the decision of the City concerning the planning, zoning, or development of any real property within the City or any decision concerning any public improvements, whether publicly or privately financed. No promises, representations, or warranties have been made, expressly or impliedly, by the City, its officers, agents, or employees, regarding the processing of the tasks under this Agreement. It is further specifically understood and agreed that no person has the authority to make any such promise, representation, or warranty. The parties hereto understand and agree that the funds paid to the City by the Landowner under this Agreement shall not influence any decision of the City, or guarantee any recommendation which is favorable to, or which benefits, the Landowner.
7. Refunds of Unexpended Funds/Payment Upon Termination. After completion of the tasks set forth above in Exhibit "A" and any changes approved pursuant to Section 2 of the Agreement, and after full satisfaction of all financial obligations incurred by the City in performance of such tasks, and upon final resolution of any claim, litigation, or proceeding identified in Section 15, if unexpended funds paid by Landowner to City remain, City shall, within thirty (30) calendar days, refund such unexpended funds to the Landowner.

In the event this Agreement is terminated as provided in Section 8, below, City shall refund any unexpended funds as provided for above. If the unexpended funds are insufficient to satisfy in full the obligations incurred pursuant to the Agreement, City shall within thirty (30) calendar days of termination of this Agreement present a written demand to Landowner of the amount due. The Landowner shall have fifteen (15) calendar days upon receipt of such written demand from City to pay such demand.

8. Termination. This Agreement may be terminated by (a) expiration of the Term set forth in Section 1, above, without extension of the parties by mutual written agreement, (b) either City or the Landowner for any reason upon providing thirty (30) days' written notice to the other party, subject to the payment

obligation of the Landowner set forth in Section 7, above, or (c) City for failure by Landowner to make required payments hereunder within ten (10) days of written demand by City, provided the parties first meet and confer and follow the dispute resolution procedures set forth in Section 15 below.

9. City Expenditures Under Agreement Following Receipt of Termination Notice from Landowner. In the event the City receives a termination notice from the Landowner pursuant to Section 8 above, the City shall thereafter only pay consultant invoices and City staff costs and expenses from the Landowner deposits pursuant to the terms and provisions set forth hereinabove in the ordinary course as necessary and shall not fund any new tasks not otherwise approved by the Landowner pursuant to the Agreement or any amendment thereto.
10. Reimbursement Agreement. City acknowledges and agrees that the planning documents and/or studies funded by this Agreement may benefit other development projects located within the City. At such time as requested by Landowner, City shall consider a reimbursement agreement with Landowner whereby City shall adopt a developer fee to be charged against such benefitted development projects in order for those development projects to share on a proportional basis in the costs incurred by Landowner to prepare and adopt the planning documents and/or studies funded by this Agreement. Nothing in the Agreement or in any reimbursement agreement shall be deemed to obligate City to use general fund monies to satisfy any claim for reimbursement by Landowner.
11. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other party as required hereby) of the party for whom such notice or communication is intended:

City Manager
City of Wheatland
111 C Street
Wheatland, CA 95692
greeson@wheatland.ca.gov

Notice required to be given to the Landowner shall be addressed as follows:

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; by email; or by facsimile transmission. Any notice given by facsimile transmission or email shall be deemed given on the day sent, provided (a) it is sent on a business day during normal business hours, otherwise it will be deemed sent on the next business day, and (b) the sender has a confirmation showing actual delivery of the facsimile transmission or email to the intended recipient. Any notice given by registered or certified mail, return receipt requested, shall be deemed to have been given on the date receipt was acknowledged to the postal authorities. Either party may, by written notice to the other in the manner aforesaid, change the address to which notices addressed to it shall thereafter be mailed.

12. No Joint Venture. No partnership, joint venture or other association of any kind with the City is formed or intended by this Agreement.
13. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Landowner and City and their successors and assigns. No person who is not a party to this Agreement shall have any right of action based upon any provision in this Agreement.
14. Indemnification. Landowner shall defend, indemnify and hold harmless the City and its agents, officers and employees from any claims, actions or proceedings based on any grounds against City, its agents, officers and employees including, but not limited to, attorneys' fees arising in any way out of approval and implementation of this Agreement. Landowner shall not be obligated to defend, indemnify and hold harmless the City, its agents, officers, and employees to the extent the court finds there is willful misconduct or gross negligence on the part of City, its agents, officers, or employees. This indemnification section shall survive termination of the Agreement and shall continue in full force and effect until final resolution of any and all claims and/or litigation relating to this Agreement.

The City shall notify the Landowner promptly of any claim, action, or proceeding and cooperate fully in the defense. Upon receipt of such notification, the Landowner shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to the City and the Landowner, and the prompt payment of the attorneys' fees and costs of such counsel. In the event of a disagreement between the City and the Landowner over litigation issues, City shall have the authority to control the litigation and litigation decisions, including but not limited to, settlement or other disposition of the matter. If City reasonably determines that having common counsel would present such counsel with a conflict of interest, or if the Landowner fails to promptly employ counsel reasonably satisfactory to City, then City may employ separate counsel to represent or defend the City, and the Landowner shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing therefore. At its sole discretion, the City may participate at its own expense in the defense of any claim, action, or proceeding, but such participation shall not relieve the Landowner of any obligation imposed by this Agreement.

In the event that Landowner fails to comply with this indemnification provision, the City shall have no obligation to defend any suit, claim, litigation, complaint, or action of any kind.

15. Dispute Resolution. In the event of any dispute between the Landowner and City regarding implementation of this Agreement, the parties hereto shall first meet and confer, with Landowner attempting to resolve any dispute first with the City Manager. Any such dispute then still outstanding shall be presented by Landowner and the City Manager or their respective designee to the City Council.
16. Amendments. Modifications or amendments to this Agreement shall be in writing, and executed by all parties hereto, provided such amendment is approved by the City Manager.
17. Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of California. In addition to any other rights or remedies, either City or Landowner may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. All legal actions shall be instituted in the Superior Court of the County of Yuba, State of California.

18. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and be enforced to the fullest extent permitted by law.
19. Assignment. Should Landowner sell, transfer or convey the Landowner Property, or any portion thereof, Landowner shall, subject to providing fourteen (14) days advance written notice of such assignment to City, have the full right to assign this Agreement upon the express written assignment by the Landowner and assumption by the assignee of such assignment in the form attached as Exhibit C.
20. Exhibits. The following exhibits are hereby made a part of this Agreement and incorporated herein by this reference:
- Exhibit "A" – Initial Scope of Work and Budget
 Exhibit "B" – Current List of City Employee Billing Rates
 Exhibit "C" – Sample Assignment and Assumption Agreement
21. Entire Agreement. Except as may be amended as set forth in Section 16, above, this Agreement, inclusive of its Recitals and Exhibits, constitutes the sole agreement between City and Landowner pertaining to funding of the tasks set forth in Section 2, above, and supersedes any other oral or written understanding.

IN WITNESS WHEREOF, the City of Wheatland has authorized the execution of this agreement in duplicate by its City Manager and attested to by its City Clerk.

CITY:

LANDOWNER:

CITY OF WHEATLAND
 A general law city

By: _____
 Greg Greeson
 City Manager

By: _____
 Name: _____
 Title: _____

Date: _____

Date: _____

ATTEST:

By: _____
 Lisa J. Thomason, MMC
 City Clerk

Date: _____

EXHIBIT A

Scope of Work

(to be attached)

EXHIBIT B

Current Hourly Billing Rates for City Staff

(to be attached)

EXHIBIT C

Sample Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO CITY OF WHEATLAND
PROJECT FUNDING AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this _____ day of _____, 20XX, by and between _____ (hereinafter "Landowner"), and _____, a _____ (hereafter "Assignee").

RECITALS

- A. On _____, 20XX, the City of Wheatland (hereafter "City") and Landowner, entered into that certain agreement entitled City of Wheatland Project Funding Agreement (hereinafter the "Project Funding Agreement"). Pursuant to the Project Funding Agreement, the Landowner agreed to provide funding for City staff costs and City consultant costs incurred from and after the Effective Date (as defined in the Project Funding Agreement) for certain tasks related to processing entitlements for Landowner's property, all as more specifically described and set forth in the Project Funding Agreement.
- B. In accordance with the Project Funding Agreement, Landowner has notified City of its intent to convey a portion or all of Landowner's property that is subject to the Project Funding Agreement described below to Assignee.
- C. Landowner intends to convey a portion of Landowner's property to Assignee, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").
- D. Landowner desires to assign and Assignee desires to assume all of Landowner's right, title, interest, burdens, and obligations under the Project Funding Agreement with respect to and related to the Assigned parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Landowner and Assignee hereby agree as follows:

- 1. Landowner hereby assigns, effective as of Landowner conveyance of the Assigned parcel to Assignee, all of the rights, title, interest, burdens, and obligations of Landowner under the Project Funding Agreement with respect to all other property owned by Landowner that is subject to the Project Funding Agreement.

2. Assignee hereby assumes all of the rights, title, interest, burdens, and obligations of Landowner under the Project Funding Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligation of Landowner under the Project Funding Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Landowner as the Landowner under the Project Funding Agreement with respect to the Assigned Parcel.
3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, successors and assigns.
4. The Notice Address described in Section 11 of the Project Funding Agreement for the Landowner with respect to the Assigned Parcel shall be:

X _____

X _____

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

LANDOWNER:

By: _____

Print Name: _____

Title: _____

ASSIGNEE:

By: _____

Print Name: _____

Title: _____