



# CITY OF WHEATLAND

## CITY COUNCIL MEETING STAFF REPORT

July 9th, 2019

**SUBJECT:** Council discussion and consideration of Resolution Resolution No. 25-19 approving an agreement to accept a donation from David Creps for Operations and Maintenance of a Community Swimming Pool in Wheatland and providing staff direction

**PREPARED BY:** Jim Goodwin, City Manager

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### **Recommendation**

Staff recommends:

Adopt Resolution No. 25-19 as presented.

### **Background/Discussion**

David Creps, a long-time Wheatland resident, believes a public swimming pool to be a great addition to the City of Wheatland. Mr. Creps understands there are two essential parts of the equation that could establish a pool to the community, those parts being the one-time investment to build a pool and the ongoing obligations associated with operating and maintaining a pool. The ability to sustain ongoing operations and maintenance is the more difficult part of the equation.

Public swimming pools do not operate at break-even and are usually subsidized as a component of a community's parks and recreation services, typically a General Fund expense. Ongoing maintenance costs include labor, utilities chemicals and repair. Daily operational costs include lifeguards, supervision and administration. A survey of surrounding communities demonstrates that pool operations and maintenance costs in smaller communities is approximately \$100,000 per year.

Cost-recovery varies greatly by community and is largely dependent on the demographics of the community, the types of programming, and the qualities and features of the pool facility. Cost recovery comes in the form of fees for lessons, day use, sponsorship, events and facility rentals.

Currently, Wheatland's General Fund could not fund the difference between operations and maintenance costs of a pool and the expected cost recovery. That fact has prevented any serious discussion regarding establishing a pool in the community.

The donation, once invested according to the City of Wheatland's conservative investment policy, could be expected to generate approximately 5 percent per year in today's market, yielding approximately \$50,000 annually to underwrite pool operations and maintenance costs, prior to any cost recovery generated from future pool operations. Even under a best-case scenario where a pool could be constructed quickly, the city could expect a minimum of two years of earnings prior to opening of a pool.

The attached agreement outlines the terms of the gift. The use of the funds is specifically limited to operation and maintenance of the pool and aquatic recreational programming at the pool. As no pool currently exists in Wheatland, the donation is conditioned upon construction of a pool within 7 years. If a pool is not in operation in that time frame, the gift, plus any investment earnings, must be returned to Mr. Creps or his estate. After 25 years the restrictions on use of the funds are removed.

The acceptance of the gift does not trigger environmental review under the California Environmental Quality Act (CEQA) because this is merely a financial transaction.

Resolution No. 25-19 approves the agreement to accept the gift and provides direction to the Finance Director regarding acceptance and investment of the gift.

Once received, staff would begin serious efforts toward establishing a pool within the 7-year time frame allowed by the agreement.

**Fiscal Impact**

No General Fund Impact.

**Attachments**

1. Resolution No. 25-19
2. Agreement

**RESOLUTION NO. 25-19**

**ACCEPTING A GIFT FOR OPERATION AND MAINTENANCE OF A COMMUNITY SWIMMING POOL IN THE CITY OF WHEATLAND**

**WHEREAS** Mr. David Creps wishes to make a generous gift of \$1,000,000 (one million dollars) to the City of Wheatland for purposes of maintaining and operating a community swimming pool; and

**WHEREAS** the City Council wishes to accept the gift; and

**WHEREAS**, the attached agreement (Exhibit 1) has been developed by both parties to state clearly the purpose of the gift and the conditions regarding acceptance of the gift; and

**WHEREAS**, the City Council must formally accept the gift and provide staff direction regarding acceptance of the gift.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Wheatland hereby:

1. Accepts the gift, with great appreciation; and
2. Approves the attached agreement regarding disposition of the gift and directs the Mayor to sign the agreement; and
3. Determines that the acceptance of the gift does not trigger environmental review under the California Environmental Quality Act (CEQA) because this is merely a financial transaction; and
4. Directs the Finance Director to establish a Fiduciary Fund titled Community Pool Operations and Maintenance; and
5. Directs the Finance Director to accept the gift and deposit the funds immediately in the City of Wheatland's state Local Agency Investment Fund (LAIF) account and record the gift in the Community Pool Operations and Maintenance Fund; and
6. Directs the Finance Director to place, within a reasonable time period, all funds in the Community Pool Operations and Maintenance Fund into investment accounts separate from LAIF and specifically for the fund.

**PASSED AND ADOPTED** by the City Council of City of Wheatland, State of California this 9<sup>th</sup> day of July 2019, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Joseph Henderson, Mayor

**AGREEMENT BETWEEN THE CITY OF WHEATLAND  
AND DAVID CREPS  
REGARDING DONATION WITH CONDITIONS  
TO OPERATE AND MAINTAIN COMMUNITY SWIMMING POOL**

This Agreement ("Agreement") is made and entered into this 3 the day of July, 2019, by and between the City of Wheatland, a municipal corporation ("City") and David Creps, an individual ("Mr. Creps"), who agree as follows:

1. **Donation.** Mr. Creps will donate to the City, and the City agrees to accept \$1,000,000.00. This gift is subject to the following conditions:
  - a. The City will place the \$1,000,000.00 into a separate fund, which fund, including the principal and interest or other investment earnings, shall be used by the City to maintain and operate a community swimming pool in the City, and operate an aquatic recreational program for the swimming pool.
  - b. This pool will be constructed and will begin operations within seven (7) years of the Effective Date of this Agreement, or the \$1,000,000.00 plus any earnings thereon, less any losses from investments, will be returned by the City to the David Creps Revocable Trust u/t/d 5/10/05, as amended.
2. **Term.** This Agreement shall remain in effect for twenty-five (25) years after its Effective Date, unless sooner terminated as provided by the termination provision below.
3. **Termination.** This Agreement may be terminated prior to its expiration date in any one of the following ways:
  - a. By Mr. Creps or his successor in interest, if, in violation of Section 1.a., the City uses the Donation for an unauthorized purpose or the City fails to use the Donation for its stated purpose, and the City fails to correct the breach after being given 30 days' notice of the demand for correction.
  - b. By Mr. Creps or his successor in interest, pursuant to Section 1.b., upon giving the City not less than 30 days prior written notice of termination.
  - c. By the City, if the City Council has determined that circumstances preclude the City from using the Donation for the purposes set forth in Section 1.a, thereby frustrating or rendering impossible the objectives of this Agreement.
  - d. Twenty-five (25) years after the Effective Date of this Agreement, the Agreement shall terminate automatically, and the restrictions on the use of any amount remaining in the fund will expire, and the City may use any remaining funds for any valid City purpose.

- e. If the Agreement is terminated under Section 3.a, 3.b., or 3.c., the City will return within 60 days, the amount of the fund, including all income earned by the fund, unless the Parties have agreed otherwise in writing. When returning the funds, the City will not be liable for any diminution in value due to market conditions.
4. **Entire Agreement.** The Parties intend this writing to be the sole, final, complete, exclusive, and integrated expression and statement of the terms of their contract concerning the subject matter addressed in the Agreement. 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.
5. **Notices.** An annual statement of the status of the funds shall be mailed to the following individuals within 60 days after each calendar year, showing the status of the account at the end of the said calendar year. Any notice to be given to Mr. Creps shall be sufficiently served if given to him personally or if deposited in the United States Mail, regular pre-paid mail, addressed as follows:
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| David Creps<br>P.O. Box 152<br>Wheatland, CA 95692 | Irene Creps<br>883 Urbano Drive<br>San Francisco, CA 94127 | Guth & Changaris, APLC<br>474 Century Park Drive,<br>Suite 300<br>Yuba City, CA 95991 |
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- Any notice to be given to the City shall be addressed to the City Manager and delivered or mailed to the City Clerk at City Hall.
6. **Successors and Assigns.** This Agreement shall bind, and inure to the benefit of, the successors, assigns, heirs and legal representatives of the Parties.
7. **Amendments.** This Agreement may be amended only by a subsequent writing approved and signed by both Parties. Any amendment by City must be approved by the City Council at a noticed public meeting. Individual City Council members do not have the authority, express or implied, to amend, modify, waive, extend or in any way alter this Agreement.
8. **Waiver.** The waiver at any time by either party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.
9. **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. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

11. **Governing Law and Venue.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court jurisdiction and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or construction of this Agreement.
  
12. **Attorney's Fees.** If any litigation is commenced between the parties to this Agreement or their personal representatives concerning any matter relating to this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for their attorney's fees. This sum shall be determined by the Court in such litigation or in a separate action brought for that purpose.

DATED: July 9, 2019

  
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DAVID CREPS

DATED: \_\_\_\_\_, 2019

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CITY OF WHEATLAND