

**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:
- | | | |
|----------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------------------------|
| David Creps
P.O. Box 152
Wheatland, CA 95692 | Irene Creps
883 Urbano Drive
San Francisco, CA 94127 | Guth & Changaris, APLC
474 Century Park Drive,
Suite 300
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


DAVID CREPS

DATED: July 9, 2019


CITY OF WHEATLAND