

## **RESOLUTION NO. 2010-711**

Adopted by the Sacramento City Council

December 14, 2010

### **AWARDING SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT (SRCSD) SEWER CONNECTION FEE CREDITS TO HYDROX-ELMHURST LLC. FOR THE ELMHURST TERRACE HOUSING PROJECT LOCATED AT 34<sup>TH</sup> AND U STREET (APN: 010-0141-047, 059-062, 066).**

#### **BACKGROUND**

- A. On March 20, 2001, City Council approved a Memorandum of Understanding (MOU) to initiate City participation in the Sacramento Regional County Sanitation District Economic Development Treatment Capacity Bank (Agreement No. 2001-177).
- B. On June 20, 2006, City Council approved Resolution 2006-457, approving criteria for the granting of Treatment Capacity Bank Credits (Credits) for commercial development, Downtown, low-income, and infill / transit-oriented development projects, and approved amending the Memorandum of Understanding (MOU) between the Sacramento Regional County Sanitation District (SRCSD) and the City to increase the amount of credits that may be awarded to housing projects.
- C. The City of Sacramento has been awarded a total of 8,727 Credits. As of June 2010, the City of Sacramento has issued 2,007 Credits to eligible projects.
- D. Elmhurst Terrace housing project was previously approved by City Council on June 24, 2007 (Resolution Number 2007-464) for 25 sewer credits. Because housing units were located on the project site, the SRCSD quote was reduced from 33 estimated single-family dwellings (ESD) to 25 ESDs. After City Council's approval, one housing unit was built before the project's guarantor went bankrupt and the project was foreclosed upon. Currently, Hydrox-Elmhurst, LLC is recommencing the project. The Economic Development Treatment Capacity Bank Sewer Credit Program qualifications require any and all credits awarded to expire if applicant has not paid its requisite sewer impact fee to SRCSD within one year from the date of approval. Since the project built one housing-unit after Council's initial approval, the current SRCSD quote was reduced from 25 ESDs to 24 ESDs. Therefore, the applicant, Hydrox-Elmhurst, LLC. has re-applied for 24 sewer credits for the Elmhurst Terrace housing project.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Council finds that award of Credits for the Elmhurst Terrace housing project meets the approved criteria for granting of Credits pursuant to Resolution 2006-457, and hereby awards a maximum of 24 SRCSD Credits to Hydrox-Elmhurst, LLC. ("Recipient") for this 33-unit infill housing project located at the 34<sup>th</sup> and U Street (APN: 010-0141-047, 059-062, 066).

Section 2. Any and all Credits awarded herein shall expire if said Recipient has not paid its requisite sewer impact fee to SRCSD within one year from the date of approval of this Resolution.

Section 3. Any and all Credits awarded herein to said Recipient will expire if all building permits for the 33 housing units at the Elmhurst Terrace housing project are not issued within one year from the date of approval of this Resolution.

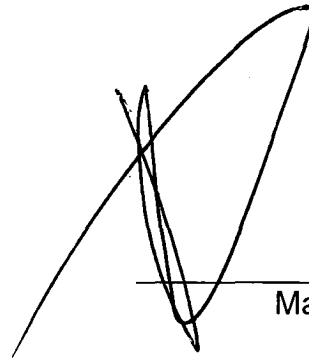
Adopted by the City of Sacramento City Council on December 14, 2010 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SACRAMENTO  
AND THE COUNTY OF SACRAMENTO REGARDING THE REIMBURSEMENT TO  
CITY FOR CONSULTANT AND STAFF COSTS FOR  
PHASE IV OF THE NATOMAS JOINT VISION**

This Memorandum of Understanding ("Reimbursement MOU"), dated \_\_\_\_\_ for purposes of identification, is between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as "County", and the City of Sacramento, a charter municipal corporation, hereinafter referred to as "City".

**RECITALS**

- A. City and County entered into a Memorandum of Understanding, hereinafter referred to as Joint Vision MOU, on December 10, 2002, agreeing to principles of urbanization, open space preservation and revenue sharing for unincorporated Natomas.
- B. The County entered into the Funding Agreement With The Natomas Landowners Group For County Of Sacramento Participation In The Development Of A Vision Plan For Natomas, dated September 24, 2008, and as amended from time to time (Funding Agreement), which provides landowner funding to County and City to undertake a unified and comprehensive land use planning effort for the Natomas Joint Vision area.
- C. The City and County have determined that the Visioning Plan (Phase II) process provided for in the Memorandum of Understanding dated October 29, 2008 has been completed.
- D. The City and County have determined that the Technical Phase III process provided for in the Memorandum of Understanding dated June 24, 2009 has been completed.
- E. City and County entered into a third MOU, dated February 16, 2010, to continue to work cooperatively toward completion of Phase IV of the planning process.
- F. City has determined that its costs to complete Phase IV are likely to exceed the amounts anticipated for this work in the February 16, 2010, MOU, but remains similarly interested with the County in the completion of the Phase IV. Therefore, City and County desire to enter into this Reimbursement MOU to share the cost to complete Phase IV, with those costs being paid for by the Natomas Landowners Group under the Funding Agreement.
- G. City, through the City Attorney's office, has retained legal consultants to assist in the planning process. As of October, 2010, the total amount incurred for outside legal services for the Visioning Plan planning process was \$82,706.21. The City expects to

incur legal consultant costs in the amount of up to \$30,000 over the 2011 twelve month work program.

H. City anticipates that it will incur non-legal staff costs in 2011 of up to \$30,000 to continue working on the preparation and processing of Phase IV over the twelve month work program.

I. County has executed the Fourth Amendment to the Funding Agreement, attached hereto as Exhibit A and incorporated herein by this reference, whereby the Natomas Landowners Group will pay the County a dollar amount sufficient to pay for the City's and County's costs of Phase IV.

J. City and County now desire to enter into this reimbursement agreement ("Reimbursement MOU") for the City to be reimbursed by the County for costs the City incurs for legal consultant services and staff time for the preparation and processing of Phase IV.

## AGREEMENT

Now, therefore, City and County agree as follows:

### 1. Defined Terms

All defined terms in the 2002 Memorandum of Understanding shall be deemed incorporated herein. Phase IV shall mean those planning, engineering, environmental, habitat, and other activities that shall be necessary to establish the fundamental elements of a land use master plan for the Joint Vision Area and a conservation strategy in sufficient detail to lead to the completion of the appropriate Habitat Conservation Plan. Phase IV shall also include such activities, studies or other analyses necessary to initiate the CEQA process by the County or City.

### 2. Cost of Legal Consultant.

County acknowledges that City, through the City Attorney's Office, will retain a legal consultant to assist in the preparation and processing of Phase IV for a total of up to \$30,000 for the 2011 twelve month work program.

### 3. Staff Support and Responsibilities.

a. City and County staff shall provide staff support for the preparation and processing of Phase IV as described in the Fourth Amendment to the Funding Agreement. Pursuant to the Joint Vision MOU, the Scope of Work's focus will be on the portion of the Natomas Basin within Sacramento County that includes the entire Joint Vision Area. The Scope of Work may only be amended in writing and signed by both parties. City and County staff will provide for multiple check-in points with City and County elected officials and the consultants as necessary.

City and County shall work together to provide direction to their consultants. City shall act as the primary contact for the City's consultant.

b. County acknowledges that the cost of City staff time to assist in the preparation and processing of Phase IV is estimated to be up to \$2,500 per month for twelve months, for a total of up to \$30,000 for the 2011 twelve month work program. City and County agree and acknowledge that the City's estimates for staff time and legal consultant are estimates only and are not binding on the City.

c. City and County agree that neither party has made any promises, representations or warranties to the Natomas Landowners Group, express or implied, as to the outcome of the Visioning Plan, and that the use of landowner funds in no way influences the content of the final product. The City and County acknowledge that pursuant to Section 9 of the Funding Agreement, the Natomas Landowners Group also agrees that neither the City nor County have made any promises, representations or warranties to the Natomas Landowners Group, express or implied, as to the outcome of Phase IV, and acknowledges that reimbursement of the City's and County's expenses with landowner funds will in no way influence the content of the final product.

4. Payment of the Consultant by City.

Upon receiving periodic invoices from its legal consultant, for assistance in preparing and processing Phase IV, City shall be responsible for paying said invoiced amounts.

5. Reimbursement of Consultant and Staff-time Costs to City by County.

a. County acknowledges that it has executed the Fourth Amendment to the Funding Agreement. The Natomas Landowners Group will pay the County, in accordance with the amended Funding Agreement, a dollar amount sufficient to pay for the City's and County's costs of preparing and processing Phase IV. County further acknowledges that the City is not a party to the amended Funding Agreement in anticipation that the County will reimburse the City for its consultant and staff costs incurred in Phase IV under this separate Reimbursement MOU.

b. The City shall submit to County its cost estimates for the following quarter in a timely fashion so that the County can submit its cost estimates to the Natomas Landowners Group as required by Section 5 of the amended Funding Agreement. The City and the County shall confer and agree upon the amount of the estimates to be included in the quarterly estimates delivered to the Natomas Landowners Group in accordance with the amended Funding Agreement. Within 30 days after the end of each month, the City shall prepare and submit to County a summary of any invoices from its legal consultant in connection with

the preparation and processing of Phase IV and a summary invoice for the City's staff time, each in sufficient detail to establish the costs incurred by City for Phase IV for that month. County shall remit to City the amounts invoiced within 30 days of receiving the City's summary invoices. The City shall submit both the quarterly estimates and the summary of invoices to County at the address listed below:

County of Sacramento  
Planning Department  
827 7th Street, Room 230  
Sacramento, CA 95814  
Attn: Sheryl Lenzie

County shall remit to City all payments required under this Reimbursement MOU at the address listed below:

City of Sacramento  
Community Development Department  
300 Richards Blvd, 3<sup>rd</sup> Floor  
Sacramento, CA 95811  
Attn: Scot Mende

c. If at any time the City anticipates that its total costs are likely to exceed \$30,000 for legal consultant services or \$30,000 for staff time, it shall bring this fact to the attention of County and the parties shall negotiate as to any additional amounts that shall be paid to City, or as to what services the County and Natomas Landowners Group are willing to forego in order to avoid such additional costs. This Reimbursement MOU shall then be amended to reflect any additional reimbursement that will be allowed.

d. The payments required to be made to City under subsection 5 b. are required to be made within 30 days only if County has received the necessary funding from the Natomas Landowners Group pursuant to the amended Funding Agreement.

e. City reserves the right to take any necessary action to ensure reimbursement for work performed under this Reimbursement MOU, including but not limited to, suspending work or filing a lawsuit against County or the Natomas Landowners Group, or both, to recover payment.

6. Amendments.

This Reimbursement MOU may be amended only in writing, signed by both parties.

7. Additional Work or Changes in Work.

This Reimbursement MOU shall apply to all additional work or changes in work that are necessary to complete Phase IV. Prior to executing any supplemental agreement or other agreement that will increase the costs associated with Phase IV City and County shall confer regarding the necessity of the proposed supplemental agreement or other agreement.

8. Notices.

Any notice or other correspondence to a party to this Reimbursement MOU shall be deemed given on the date it is placed in the United States mail, first class, postage prepaid, and addressed to the party at the following address:

Notices to City:

David Kwong, Planning Director  
Community Development Department  
300 Richards Blvd, 3<sup>rd</sup> Floor  
Sacramento, CA 95811

Notices to County:

Leighann Moffitt  
Planning Manager  
827 7th Street, Room 230  
Sacramento, CA 95814

9. Effective Date.

This Reimbursement MOU shall be effective upon the date it is fully executed by both parties.

10. Term and Termination.

a. This Reimbursement MOU shall terminate immediately upon termination of the Funding Agreement.

b. Unless terminated earlier, this Reimbursement MOU shall terminate on December 31, 2011, unless extended in writing by the parties.

*(Signature Page Follows)*

COUNTY OF SACRAMENTO

By: \_\_\_\_\_  
County Executive

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_  
County Counsel

CITY OF SACRAMENTO

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

ATTEST

By: \_\_\_\_\_  
City Clerk