

AGREEMENT BETWEEN CITY OF MT. SHASTA AND MR. JIM FREEZE

This agreement is entered into between City of Mt. Shasta (“City”) and Jim Freeze, (“Applicant”) for the purpose of providing funding for an environmental analysis, including an Initial Study (IS) and Mitigated Negative Declaration (MND) for the Freeze Mini-Storage and Car Wash Project (“Project”).

1. RESPONSIBILITIES OF APPLICANT

- A. During the term of this agreement, the Applicant shall be responsible for supplying all supplemental information as may be needed to complete the IS and MND; and
- B. The Applicant shall cause funds to be transferred to City in accordance with Paragraph 3

2. RESPONSIBILITIES OF CITY

During the term of this agreement, the City will be responsible for administration of the IS and MND consultant contract, and review of the documents produced by the consultant. On a monthly basis any costs incurred shall be deducted from the deposit and an accounting status of the deposit shall be provided to the Applicant. In the case of costs expended against billings from the outside consultant, the amount of such billing statements shall be provided to the Applicant on a monthly basis. The Applicant shall not be entitled to any detail revealing the substantive contents or “detail of billings” pertaining to advisement to the City by contract attorneys or City Counsel, but shall be entitled to an accounting of the total amounts paid to such attorneys or reimbursement to the City General Fund.

3. COMPENSATION

- A. Applicant shall make an initial deposit to the City in the sum of \$20,000 for the preparation of the IS, MND, and administration of the environmental analysis, at any time prior to commencement of the preparation of the IS and MND. If necessary, the City shall bill the Applicant for additional administrative costs.
- B. City and Applicant agree that the initial deposit constitutes an initial estimate of the costs associated with the preparation of the IS, MDN, and related administration costs.
- C. The use of the initial deposit funds, and all future deposits, shall include costs of administrative review, consulting fees, legal review, and any other actual costs incurred in support of the IS and MND preparation. Costs shall include the total dollar amount of all City personnel time (computed on the basis of hours spent multiplied by the salary and benefit rate paid by the City), all fees and costs charged by outside consultants and contract personnel, amounts expended for photocopies, telephone calls, fax charges, postage, trip

expenses, and any and all other costs incurred or expended by the City in direct connection with the project.

- D. Applicant shall be responsible for any extraordinary costs in connection, and any extraordinary costs resulting from the processing of the land use applications. In the event that costs exceed, in the opinion of the City Planner and Director of Finance are expected to exceed, the amount of the deposit as set forth in Section 3.A. above, the City shall make a written request for an additional deposit of funds to cover such costs, or may bill the Applicant for costs accrued but unpaid, or both. In the event the Applicant refuses to make deposits or pay costs incurred, the City may close the project application processing and may seek recovery from the Applicant for costs incurred, and the Applicant's rights and responsibilities shall be governed under Section 3.E. below. Recovery of costs shall be limited to the initial deposit plus 20% of such deposit, or if a subsequent deposit has been made, recovery of costs shall be limited to the most recent deposit plus 20% of such subsequent deposit.
- E. In the event that the Applicant does not make deposits as requested pursuant to the terms hereof, the processing of IS and MND may be suspended by the City. The refusal or failure to make a requested deposit within sixty (60) days after written request shall constitute an abandonment of the project by the Applicant and shall terminate all processing of the IS and MND. The City shall not be liable for such termination and the Applicant hereby agrees to indemnify and hold the City harmless from any and all claims arising out of such termination including those of the Applicant.
- F. If the actual costs of the IS, MND, and contract administration are less than the deposit, the excess amount will be returned to the Applicant less any other extraordinary costs incurred with the processing of the land use application.

4. TERM OF AGREEMENT

This agreement shall commence on the date of signing this agreement by the Applicant and the City and shall terminate upon certification of the Final Design Review and Conditional Use Permit Approval, and the termination of any applicable project approval/denial appeal time frames.

5. TERMINATION OF AGREEMENT

If the Applicant fails to perform its obligations under this agreement, or if the Applicant violates any of the terms or provisions of the agreement, City shall have the right to terminate this agreement upon the City giving ten (10) business days written notice thereof

to Applicant. Applicant shall have the right to cure any deficiencies within said ten (10)-day period and thereby reinstate the agreement.

Either party may terminate this agreement on thirty (30) days written notice. City shall pay the IS and MND consultant from the funds deposited for all work satisfactorily completed as of the date of notice.

City may terminate this agreement upon ten (10) business days written notice should funding cease or be materially decreased. Applicant shall have the right to cure such deficiency within said ten (10) day period and thereby reinstate the agreement.

6. ENTIRE AGREEMENT; MODIFICATION

- A. This agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. Applicant shall be entitled to no other benefits other than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. Applicant specifically acknowledges that in entering into and executing this agreement, the Applicant relies solely upon the provisions contained in this agreement and no others.
- B. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. However, minor amendments which do not result in a substantial or functional change to the original intent of the agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between Applicant and the Director of Resource Management.

7. INDEMINIFICATION

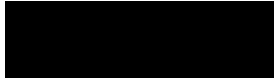
The Applicant agrees to indemnify, defend, and hold harmless the City, its agents, officers, attorneys, employees, volunteers, and Boards and Commissions, from an claim, action, or proceeding brought against the City, the purpose of which is to attack, set aside, void, or nullify the City's approval of this development entitlement or approval or certification of the environmental document which accompanies it, or to obtain damages relating to such actions. This indemnification shall include, but not limited to, damages, costs, expenses, attorney's fees, and expert witness fees that may be asserted by any person or entity, including the Applicant, arising out of or in connection with the approval of this application, whether or not there is or has been concurrent passive or active negligence on the part of the City. If for any reason any portion of this agreement is held to be void or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. Furthermore, nothing set forth in this Agreement shall prohibit the City from participating in the defense of any claim, action, or proceeding if the City elects to bear its own attorney's fees and costs and defends the action in good faith.

8. NOTICES

Any notice required to be given pursuant to the terms and provisions of this agreement shall be in writing and shall be sent first-class mail to the following address:

If to the City: City Manager
 City of Mt. Shasta
 305 N. Mt. Shasta Blvd.
 Mt. Shasta, CA 96067

If to the Applicant: James Michall Freeze



Notices shall be deemed to be effective two days after mailing.

IN WITNESS WHEREOF, City and Consultant have executed this agreement on the day and year set forth below.

CITY OF MT. SHASTA

Date: _____

By: _____

Parish Cross, Interim City Manager

ATTEST

City Clerk

APPLICANT

Date: _____

Jim Freeze