



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, January 6, 2009,
7:30 p.m.
AGENDA

Members of the City Council

*Michael Martin, Mayor
Woody Fridae, Mayor Pro Tempore
Harold Anderson
Cecilia Aguiar-Curry
Tom Stone*

*John W. Donlevy, Jr., City Manager
John Wallace, City Attorney
Nanci Mills, City Clerk*

PLEASE NOTE – The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Mayor or Councilmembers. Public comments time may be limited and speakers will be asked to state their name.

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

At this time, any member of the public may address the City Council on matters, which are not listed on this agenda. Citizens should reserve their comments for matter listed on this agenda at the time the item is considered by the Council. An exception is made for members of the public for whom it would create a hardship to stay until their item is heard. Those individuals may address the item after the public has spoken on issues that are not listed on the agenda. Presentations may be limited to accommodate all speakers within the time available. Public comments may also be continued to later in the meeting should the time allotted for public comment expire.

CONSENT CALENDAR

All matters listed under the consent calendar are considered routine and non-controversial, require no discussion and are expected to have unanimous Council support and may be enacted by the City Council in one motion in the

form listed below. There will be no separate discussion of these items. However, before the City Council votes on the motion to adopt, members of the City Council, staff, or the public may request that specific items be removed from the Consent Calendar for separate discussion and action. Items(s) removed will be discussed later in the meeting as time permits.

- A. Minutes of the Regular Meeting of the City of Winters City Council Held on Tuesday, December 16, 2008 (pp 1-6)
- B. Kelly Group – Contract Extension (pp 7-14)

PRESENTATIONS

DISCUSSION ITEMS

- 1. Notice of Public Hearing and Second Reading to Take Action on Ordinance 2008-15, Second Amendment to Development Agreement By and Between the City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030220-17, 030-220-19, 030-220-40, and 030-220-50) (pp 15-34)

COMMUNITY DEVELOPMENT AGENCY

- 1.

CITY MANAGER REPORT

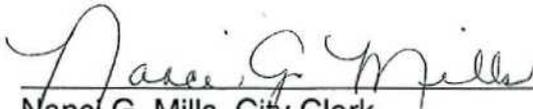
INFORMATION ONLY

EXECUTIVE SESSION

Real Estate Negotiation Per Government Code Section 54956.8 – 11 Main Street, Winters – APN 003-204-09

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the January 2, 2009, regular meeting of the Winters City Council was personally delivered to each Councilmember's mail boxes in City Hall and posted on the outside public bulletin board at City Hall, 318 First Street on December 23, 2008, and made available to the public during normal business hours.


Nanci G. Mills, City Clerk

Questions about this agenda – Please call the City Clerk's Office (530) 795-4910 ext. 101. Agendas and staff reports are available on the city web page www.cityofwinters.org/administrative/admin_council.htm

General Notes: Meeting facilities are accessible to persons with disabilities. To arrange aid or services to modify or accommodate persons with disability to participate in a public meeting, contact the City Clerk.

Staff recommendations are guidelines to the City Council. On any item, the Council may take action, which varies from that recommended by staff.

The city does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

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View on the internet: www.cityofwinters.org/administrative/admin_council.htm
Any attachments to the agenda that are not available online may be viewed at the City Clerk's Office or locations where the hard copy packet is available.

Email Subscription: You may contact the City Clerk's Office to be placed on the list. An agenda summary is printed in the Winters Express newspaper.

City Council agenda packets are available for review or copying at the following locations:

Winters Library – 201 First Street

City Clerk's Office – City Hall – 318 First Street

During Council meetings – Right side as you enter the Council Chambers

City Council meetings are televised live on City of Winters Government Channel 20 (available to those who subscribe to cable television) and replayed following the meeting.

Wednesday at 10:00 a.m.

Videotapes of City Council meetings are available for review at the Winters Branch of the Yolo County Library.



**Minutes of the Winters City Council Meeting
Held on Tuesday, December 16, 2008**

Mayor Michael Martin called the meeting to order at 7:30 p.m.

Those present were Council Members Cecilia Aguiar-Curry, Harold Anderson, Tom Stone, and Mayor Martin. Also present were City Manager John Donlevy, City Attorney John Wallace, Community Development Director Nellie Dyer, Redevelopment and Economic Development Director Cas Ellena, Management Analyst Carol Scianna, Housing Programs Manager Dan Maguire, Linn Myer and Contract Planner Kate Kelly. Absent was Council Member Fridae.

Tyler Wade of Granite Bay Holdings (GBH)-Winters Highlands led the Pledge of Allegiance.

Council Member Aguiar-Curry made a motion to approve the agenda with no changes. Seconded by Council Member Anderson. Motion carried unanimously, with Council Member Fridae absent.

COUNCIL/STAFF COMMENTS: Council Member Anderson recently attended an annual Unmet Transit Needs meeting, to which nobody attended. SACOG will be taking comments through December, 2008. Council Member Aguiar-Curry commended the Winters Chamber of Commerce, who have several events planned through next year to promote Winters: AMGEN Bike Race in February; Deborah LeMoore will be holding a Photography event in March; and a Quilting Event sponsored by Jan Bawart at the Cloth Carousel in June. Council Member Aguiar-Curry also indicated the League of California Cities is requesting attendance at their next meeting to be held in Corning on January 9th and 10th, 2009.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the City of Winters City Council Held on December 2, 2008
- B. ~~Street Closure – Amgen Tour of California Bike Race – February 15, 2009~~

- C. Resolution No. 2008- 49 of the City Council of the City of Winters Receiving from the Community Development Agency the Annual Redevelopment Report to Legislative Body, State Controllers Office and State Housing & Community Development Department for Fiscal Year Ending June 30, 2008 and Authorizing its Transmittal to the State Department of Housing and Community Development and the State Controller's Office
- D. Authorize the City Manager to Execute a Settlement and Release Agreement with ECO Resources Dba Southwest Water Services regarding the Administrative Civil Liability Complaint, no. R5-2007-0502
- E. Authorize the City Manager to Execute an Addendum to the City Services Contract with Southwest Water Services Company, Inc.
- F. Award of Contract for 2008 Water and Sewer Main Rehabilitation, Project No. 0801, to TerraCon Pipelines

City Manager Donlevy gave a brief overview. Council Member Aguiar-Curry inquired about the 15% contingency regarding Item F, the Award of Contract for 2008 Water & Sewer Main Rehabilitation to TerraCon Pipelines, Inc. She requested that Council be kept apprised of the status of any change orders and that Council is able to review them. City Manager Donlevy indicated all change orders are approved by the City Manager and Director of Financial Management and that any change orders would come before Council.

Council Member Stone made a motion to approve the Consent Calendar. Seconded by Council Member Aguiar-Curry. Motion carried unanimously, with Council Member Fridae absent.

PRESENTATIONS

Janice Critchlow of the Yolo County Homeless Coalition presented to Council 10-Year Plans to End Homelessness.

DISCUSSION ITEMS

1. **Public Hearing To Take Action on Proposed Resolution 2008-46, A Resolution of the City Council of the City of Winters, Rescinding Resolution 2006-03, Establishing a Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program**

Contract Planner Kate Kelly gave an overview and recommended the program's Qualifying Land mitigation 7-miles radius to include Solano County as well as Yolo County.

Mayor Martin opened the public hearing at 7:57 p.m. Tyler Wade of Granite Bay Holding (GBH)-Winters Highlands spoke in support of the recommended changes, which would open opportunities and simplify the program guidelines. Council Member Aguiar-Curry said it was wise to make the changes in order to create opportunities. Mayor Martin added the holding of easements was important. Mayor Martin closed the public hearing at 7:58 p.m.

Council Member Stone made a motion to approved Resolution 2008-46, Rescinding Resolution 2006-03, Establishing a Citywide Habitat Mitigation Program and Adopting the Amended Citywide Habitat Mitigation Program. Seconded by Council Member Anderson. Motion carried with the following roll call vote:

AYES: Council Members Aguiar-Curry, Anderson, Stone, and Mayor Martin
NOES: None
ABSENT: Council Member Fridae
ABSTAIN: None

2. Notice of Introduction and Waive the First Reading of Ordinance 2008-15, An Ordinance of the City Council of the City of Winters, the Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50)

Contract Planner Kate Kelly gave an overview. Tyler Wade of GBH-Winters Highlands indicated he had worked diligently and in good faith and is grateful to staff for their efforts. Council Member Anderson indicated he didn't see the need for an increase of the building allocation for dwelling units in the first year from 69 to 118. Council Member Stone asked if the one-time advancement or deferment of up to 50% of building allocation would be spread out over one year. City Manager Donlevy replied yes, 50% in any one year. Council directed staff to bring this ordinance back to Council to hold the public hearing at the 1/6/09 City Council meeting.

3. Resolution 2008-48, Establishing a Formal Procedure for Processing General Plan Amendment Proposals

Community Development Director Nellie Dyer gave an overview of Resolution 2008-48, whose intent is to consider general plan amendments on a quarterly basis to allow the City to evaluate the impact of any proposed amendments. Mayor Martin opened the public hearing at 8:40 p.m. and closed the public

hearing at 8:40 p.m. with no public comment. Council Member Anderson made a motion to approve Resolution 2008-48, establishing a formal procedure for processing general plan amendment proposals. Seconded by Council Member Aguiar-Curry. Motion carried with the following roll call vote:

AYES: Council Members Aguiar-Curry, Anderson, Stone, and Mayor Martin
NOES: None
ABSENT: Council Member Fridae
ABSTAIN: None

4. Chamber of Commerce Request to Waive Past Due and Future Rent at the City Community Center for Chamber of Commerce Office

Redevelopment and Economic Development Director Cas Ellena gave an overview and introduced Nancy Meyer, Chamber Board President, who requested Council to waive past due rents totaling \$3,150 and waive future rent of \$150/month or \$1,800 year. Council Member Anderson indicated one factor would be whether the Community Center was operating in the black. City Manager Donlevy confirmed it was not. Mayor Martin asked if the original lease agreement had been terminated. City Manager Donlevy indicated the Chamber of Commerce was considered a month-to-month tenant after contract expiration. Nancy Meyer confirmed there were 127 business members who are Chamber of Commerce members, whose annual dues are \$135, a \$10 increase from 2007. Nancy Meyer asked the Council to make a small 'financial' investment in the business community. Council agreed to waive past rents, funds of which will come from the Council fund, and to continue leasing on a monthly basis at \$100/month.

COMMUNITY DEVELOPMENT AGENCY

Due to the absence of Mayor Pro Tem Fridae as Agency Director, Agency Member Martin opened the CDA at 9:13 p.m.

1. Resolution No. 2008-50 of the Community Development Agency Submitting the Annual Redevelopment Report to Legislative Body, State Controller's Office and State Housing & Community Development Department for Fiscal Year Ending June 30, 2008

Redevelopment and Economic Development Director Cas Ellena gave a brief overview of the items included in the Annual Redevelopment Report, which is a

sister item to City Council Consent Item C. City Manager Donlevy commended Finance and Redevelopment staff members for their hard work on this report. Agency Member Aguiar-Curry made a motion to approve Resolution 2008-50, authorizing the submittal of the annual Redevelopment Report to Legislative Body, State Controller's Office and State Housing & Community Development Department for Fiscal Year Ending June 30, 2008. Seconded by Council Member Stone. Motion carried with the following roll call vote:

AYES: Council Members Aguiar-Curry, Anderson, Stone, and Mayor Martin
NOES: None
ABSENT: Council Member Fridae
ABSTAIN: None

2. Facade Improvement Application from Winters Printing Company for Facade Improvement at 310, 310 ½ Railroad Avenue and Alley Behind Same

Agency Member Anderson stepped down due to a possible conflict of interest.

Redevelopment and Economic Development Director Cas Ellena gave a brief overview of the proposed improvements. The estimated costs for the total project is \$20,000. As per the guidelines, this project is eligible for up to \$10,500, as the project meets the façade improvement guidelines. Applicant Charley Wallace of the Winters Express described the proposed improvements of the project in more detail.

Agency Member Stone made a motion to approve the Façade Improvement Application from Winters Printing Company for façade improvement at the locations specified within the application. Seconded by Council Member Aguiar-Curry. Motion carried unanimously 3-0, with two absent.

Council Member Anderson returned to the dais at this time.

CITY MANAGER REPORT

City Manager Donlevy gave a brief overview of the Investment and Treasurer Reports contained in the "Information Only" portion of the agenda. The City had budgeted for a 1% increase in overall assessed valuation of property taxes, but it actually increased by .08%. He also indicated building permit fees were not included. In February, 2009, mid-year adjustments will be made, the City will be rolling some things back, and we won't be moving money around. Some of our money comes to us through the State of California, who expects to run out of

money in February, 2009. He indicated we are OK for now, with cash flow for key funds as specified in the Treasurer Reports.

INFORMATION ONLY

1. July 2008 Investment Report
2. July 2008 Treasurer Report
3. August 2008 Investment Report
4. August 2008 Treasurer Report
5. September 2008 Investment Report
6. September 2008 Treasurer Report
7. October 2008 Investment Report
8. October 2008 Treasurer Report

EXECUTIVE SESSION: None

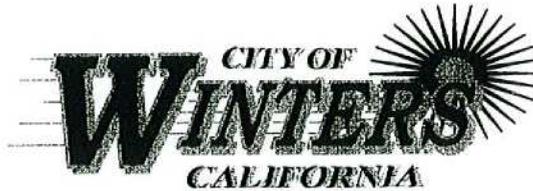
ADJOURNMENT

Mayor Martin adjourned the City Council and Community Development meetings simultaneously at 9:40 p.m.

Michael Martin, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE : January 6, 2009
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Nelia C. Dyer, Community Development Director
SUBJECT: Kelly Group – Contract extension

RECOMMENDATION:

Staff recommends that the City Council approve the Consultant Services Agreement between the City of Winters and Kathryn Kelly (Kelly Group) for Planning Services.

BACKGROUND:

In February 2007, the City Council approved a consultant services agreement with Kathryn Kelly (Kelly Group) for contract planning services. The contract expired on April 30, 2008. On April 15, 2008, the City Council approved a contract extension that expired on December 31, 2008. Staff authorized the continuation of consulting services, subject to the terms and conditions set forth in the Agreement for the contract extension, between January 1, 2009 and the day the next contract extension is executed, not to exceed \$5,000 in total costs during this interim period.

DISCUSSION:

Since May 2007, Kathryn Kelly has assisted the City in a variety of planning-related projects including, but not limited to, development agreements with the major subdivisions, the downtown form based code, and the processing of commercial development projects.

The current consultant services agreement has expired, and staff is recommending a six (6) month extension to complete work on a few projects, which are currently in progress. These projects include:

- St. Anthony's Catholic Church and Rectory
- Public Safety Center Mitigation
- Form Based Code
- Winters Highlands Development Agreement (DA) Amendment
- Callahan DA Amendment
- Hudson-Ogando DA Amendment
- Habitat Mitigation Program
- General Planning Assistance (as requested)

The billing rate for the Kelly Group will remain at \$95 per hour. Ms. Kelly will continue to provide her own office and support toward the services provided.

The contract limits the billing amount to \$23,000 for the duration of the agreement. The weekly billable hours will decrease from 17 hours to 10 hours.

Staff is recommending approval of the agreement to allow the progression of key programs and projects in support of the Community Development Department.

FISCAL IMPACT:

The billable rate for the agreement will remain at \$95 per hour. However, the weekly billable hours will change from 17 to 10 hours. In addition, the contract extension for the proposed six month period is less than half of the previous contract extension.

Staff has identified sufficient funds in the General Fund to pay the estimated hours for the Catholic Church project as well as the Habitat Mitigation Program. The remaining hours for the other listed projects and programs will be funded with the accounts established for the projects.

ATTACHMENT:

Agreement

MAYOR:
Woody Fridae
MAYOR PRO TEM:
Michael Martin
COUNCIL:
Tom Stone
Harold Anderson
Cecilia Curry



MAYOR EMERITUS:
J. Robert Chapman
TREASURER:
Michael J. Sebastian
CITY CLERK:
Nanci G. Mills
CITY MANAGER:
John W. Donlevy, Jr.

**CONSULTANT SERVICES AGREEMENT
AGREEMENT No. 001-09**

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and Kathryn Kelly "(CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the City the Services in the areas of Land Use and Public Policy, Organizational and Project Management and Community Relations. Services shall include but not be limited to assistance with processing the land use entitlements for St. Anthony's Catholic Church and Rectory, coordination of the mitigation for the Public Safety Center, and general development processing.

2. PAYMENT. The Consultant shall be paid for the actual costs, for all time and materials expended, in accordance with the Fee Schedule included in the letter included as Exhibit "B", but in no event shall total compensation at \$95 per hour at a total cost not to exceed \$23,000, without the City's prior written approval. City shall pay consultant for services rendered pursuant to the Agreement and described in Exhibit "A".

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. TERM. Agreement shall commence January 12, 2009 and end June 30, 2009 unless extended by the mutual agreement of both parties.

6. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

By: _____
John W. Donlevy, Jr., City Manager

CONSULTANT

By: _____

ATTEST:

By: _____
Nanci G. Mills, CITY CLERK

Scope of Work for Contract Project Management
Kate Kelly dba Kelly Group

The major tasks to be performed by Kate Kelly are anticipated to be as follows:

- Scope of Work – Serve on a time and materials basis as Contract Planner/Project Manager for processing and implementation of development projects, mitigation monitoring, planning efforts, development of Form-Based Code, conservation transactions, community relations, planning grants, and economic development activities. Serve subject to the oversight and direction of the Community Development Director and City Manager.
 - Coordinate the work effort necessary for all assigned projects.
 - Coordinate consultant preparation of associated planning documents, environmental analysis, and technical reports.
 - Keep the staff informed regarding the progress of project and adherence to project schedule. Coordinate with the applicant, various agency representatives, and members of the public.
 - Maintain overall schedule of tasks and milestones.
 - Prepare miscellaneous correspondence and staff reports.
 - Provide general planning assistance and support as requested
 - Ms. Kelly will utilize City support staff for GIS and clerical tasks such as meeting scheduling, public noticing, and file maintenance. Budget management and contract management to be performed by City Staff.
- Labor Rate – Discounted rate of \$95.00 per hour. Invoices will include the billing period, and total hours spent on the project during the billing period.
- Period of Engagement – January 12, 2009 through June 30, 2009, subject to cancellation by either party with 30-day prior written notice.
- Time Commitment – Estimated to average 10 hours per week over the life of the assignment. Actual hours will vary based on project activity. All hours subject to the discretionary control of the City.
- Budget – Total budget shall not exceed \$23,000 unless subsequently amended by both parties.
- Other Terms – Other terms, including non-labor expenses, shall be as identified in the attached Compensation Schedule.

Compensation Schedule
2009

Principal.....	\$120/hour
Support Services.....	\$50 to \$100/hour
Mileage.....	\$0.505/mile
Expenses.....	cost plus 10 percent
Per Diem for Meals.....	\$60/day

Terms Applicable to All Contracts:

1. All work is completed on a time and materials basis. Standard rates and administrative charges are negotiable depending on the type of service provided and the terms of the contract. All work on the job is billable. Where follow-up consulting services are required after the close of a job, these rates apply.
2. Expert witness rates (court trials, administrative hearings; case research; depositions; subpoenas; etc.) are 120 percent to 200 percent of the standard rates, dependent on the type of work and whether testimony is required. Where expert witness services are requested after the close of a job, or if deposed for a job, the client will be billed at these rates.
3. Labor is billed by the quarter-hour. Gas mileage within a 25-mile radius, communication expenses, incidental copying and postage, and certain other similar incidental expenses are included with the labor rates quoted above. Other direct expenses such as outside printing, special purchases, subconsultant services, travel outside of a 25-mile radius, air and hotel charges, conference calls, delivery fees, filing fees, extra insurance requirements, custom accounting or detailing of labor/expenses beyond normal company practice, costs associated with public noticing and hearings, special business licenses, or other permits to operate that are determined to be required, or any other extraneous cost of doing business for the purpose of serving a particular client or job are not included in the compensation rates and are billed directly at cost plus a ten (10) percent administrative charge.
4. Invoices will be submitted at a maximum, on a monthly basis. Clients must provide notification in writing of any objections to an invoice within ten days of the date of the invoice. Absent objection, the invoice shall be deemed acceptable by the client.
5. Invoices are due and payable immediately upon receipt. The account will be considered delinquent if full payment is not received within 30 day of the date of the invoice. Invoices are not itemized unless requested by the client and specific arrangements have been made prior to the agreement to the project rates and budget. Preparation of invoice detail is billed to the job as a labor charge at full labor rates.
6. Delinquent accounts are subject to a ten (10) percent service and carrying charge, compounded monthly.
7. Travel time, preparation time, and/or "wait" time are billed to the job as a labor charge at full labor rates. Travel outside of the Sacramento region is subject to travel time charges, hotel charges, mileage, and a pro-rated per-diem for meals. Hotel, mileage, and per-diem are charged as an expense and are subject to a ten (10) percent administrative charge.
8. Rates are subject to change with advance notice.

Kelly Group
PO Box 868
Winters, CA 95694
(530) 902-1615

EXHIBIT "C"

GENERAL PROVISIONS

(1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC.. CONSULTANT represents to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement.

(4) INSURANCE.

- (a) WORKER'S COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation.
- (b) GENERAL LIABILITY AND AUTOMOBILE INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement broad form property damage, personal injury, automobile, employer, and comprehensive form liability insurance in the amount of \$1,000,000 per occurrence; provided (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured under the policy; and (2) that the policy shall stipulate that this insurance will operate as primary insurance; and that (3) no other insurance effected by the CITY or other names insured will be called upon to cover a loss covered there under; and (4) insurance shall be provided by an, at least, A-7 rated company.
- (c) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, CONSULTANT shall maintain an Errors and Omissions Insurance policy in the amount of not less than \$1,000,000.
- (d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with CITY'S City Clerk's office upon the execution of this agreement, certificates of insurance which shall provide that no cancellation will be made during the term of this agreement, without thirty (30) days written notice to the Certificate Holder prior to the effective date of such cancellation.

(5) CONSULTANT NOT AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

(7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, at its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by CITY or CONSULTANT for its convenience upon 30 days written notification to the other party. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of the CITY.

(10) PRODUCTS OF CONSULTING. All products of the CONSULTANT resulting from this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, hold harmless the CITY, its officers, agents and employees from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property to the extent arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the City, its officers, agents or employees.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

(13) LOCAL EMPLOYMENT POLICY. The City of Winters desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Yolo County.

The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: January 6, 2009
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Kate Kelly, Contract Planner
SUBJECT: Notice of Public Hearing and Second Reading to Take Action On Ordinance 2008-15 - Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50).

RECOMMENDATION: Staff recommends that the City Council take the following actions:

- 1) Receive the staff report;
- 2) Conduct Public Hearing;
- 3) Hold Second Reading of Proposed Ordinance 2008-15 - Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision]; and
- 4) Adopt Ordinance 2008-15 - Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50).

BACKGROUND: In April 2006, the City Council approved the Winters Highlands Subdivision project and its accompanying Development Agreement (DA) which would result in 413 single family residential lots, 30 apartments, 10.43 acres of park land, 7.43 acres of open space and wetlands, and associated infrastructure. In December 2006 the City Council approved the first Amendment to the Winters Highlands Subdivision DA which: 1) changed the start of the phasing plan for construction of market-rate residential units from September 1, 2006 to September 1, 2007; 2) advanced the payment of \$1,250,000 for the construction of the new Bobbie Greenwood Community Swimming Pool from March 31, 2007 to January 1, 2007; and 3) limited the financial obligation for expansion of the City's Wastewater Treatment Plant to \$8,000,000.

Since 2007 the housing market has rapidly declined and recently the economy has plummeted. It has become difficult for developers, builders, and homebuyers to obtain financing. As a result, most development projects cannot be implemented at this time. Because of these factors the applicant has been forced to delay the development of Winters Highlands. Given the changed economy and delayed development, the project timing and funding structure in the DA is obsolete. This is not a circumstance limited to the Winters Highlands Place project. In light of the changed real estate market and economy, the City Council approved an amendment to the Anderson Place DA earlier this year and is currently processing amendments to Hudson-Ogando Subdivision and Callahan Estates DAs to address timing and funding structure issues.

Amendments to DAs are provided for under California Government Code Section 65868 and Chapter 15.72.210 of the City of Winters Municipal Code. The following amendments are proposed for the Winters Highlands Subdivision DA:

1. Extending term of DA to 12/31/2016.
2. Updating the subject property's Assessor Parcel Numbers.
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Shifting filing of final map for Phase I from October June 17, 2007 to the discretion of the developer.
5. Elimination of same number of days extension provision.
6. Revision of building allocation for dwelling units as follows:

Year	Current	Proposed
1	69	118
2	127	132
3	54	83
4	83	44
5	44	25
6 through 10	25 per year	25 per year

Note: The total of the above units is not reflective of the total number of residential units within the Winters Highlands Subdivision.

7. Affirmation that issuance of building permits shall be governed by the DA.
8. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
9. Deferred payment of impact fees for building permits issued on or before June 30, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
10. Provision for the City to provide developer with conceptual design for linear park and well site within 12 months from recordation of the Second Amendment.
11. Shifting completion of linear park construction from December 1, 2009 or Phase I final map to construction concurrently with each Phase of the Subdivision.
12. Shifting payment of \$250,000 for off-site park improvements from recordation of Phase II final map to no later than issuance of the 118th building permit.
13. Shifting payment of police, fire and general municipal facilities fees from filing of final map to either concurrently with issuance of first building permit for all 443 residential units or payment with each building permit at the then current fees.

14. Shifting payment to library fund from Phase I final map to issuance of the first Phase I building permit.
15. Shifting the dates funding is due for the waste water treatment plant (WWTP) expansion from 2007 to 2010 for design costs, from 2008 to 2012 for land acquisition costs, and from 2009 to 2013 for construction costs.
16. Shifting provision of sewer connections for Phases I, II, and III from 2010 to 2014.
17. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 118th market rate building permit.
18. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer of well design documents, the potential funding by the City for the completion of the well, and the reimbursement of costs for the completion of the well.
19. Shifting payment of Miscellaneous Contributions for environmental education programs, Putah Creek Park Development Fund, high school cafeteria, and the evaluation of growth impacts and bringing jobs to the community from recordation of Phase I final map to no later than issuance of 118th building permit.
20. Provision for any payments by Developer to City for economic development projects to be credited against the Miscellaneous Contribution for evaluation of growth impacts and bringing jobs to the community.
21. Revised Exhibit F to reflect location of Public Safety Center.

DISCUSSION: Given the extraordinary economic climate, Staff supports the amendments to the DA. The amendments maintain substantial public benefit provided to the City by the DA, allow time for the housing market and economy to adjust and provide needed flexibility for the applicant to meet the changed economic climate. Without these amendments the DA would be in default and the significant public benefits diminished.

This situation is not unique to the Winters Highlands Subdivision project or even Winters. The development community as a whole is struggling and the City is in the process of amending the development agreements for several of our projects.

The proposed Amendments have been generated by City and applicant. The way all types of projects are financed in the future is forever changed. The proposed Amendments enable the applicant to be better positioned to move forward in more feasible economic times.

Staff has advanced these to provide for significant City infrastructure needs and economic goals. The Amendments reflect a new financial and economic reality. The projects advance the City's General Plan and will serve as catalysts for improving the community. The proposed Amendments preserve the entitlements for quality projects for which the City, developer and community have made significant investment. Literally thousands of hours and millions of dollars have been spent toward these projects.

The proposed Amendments enable key infrastructure to move forward during an advantageous economic period for doing so. All projects of moderate size which will bring economic development and to the City are contingent on Well #7 being completed and brought on-line. The development of the Public Safety Facility and Water Well #7 will be more cost effective by building now while the bidding climate is advantageous for the City.

APPLICABLE REGULATIONS: This project is subject to several regulations:

- State Planning and Zoning Law
- City of Winters General Plan
- City of Winters Municipal Code
- City of Winters Zoning Ordinance

ENVIRONMENTAL ASSESSMENT: The proposed amendment to the DA for the Winters Highlands has been reviewed in accordance with the California Environmental Quality Act (CEQA). On April 4, 2006 the City of Winters City adopted Resolution No. 2006-08 approving CEQA findings of fact, adopting a statement of overriding considerations, adopting a mitigation monitoring plan, and certifying the final environmental impact report for the Winters Highlands Project. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement.

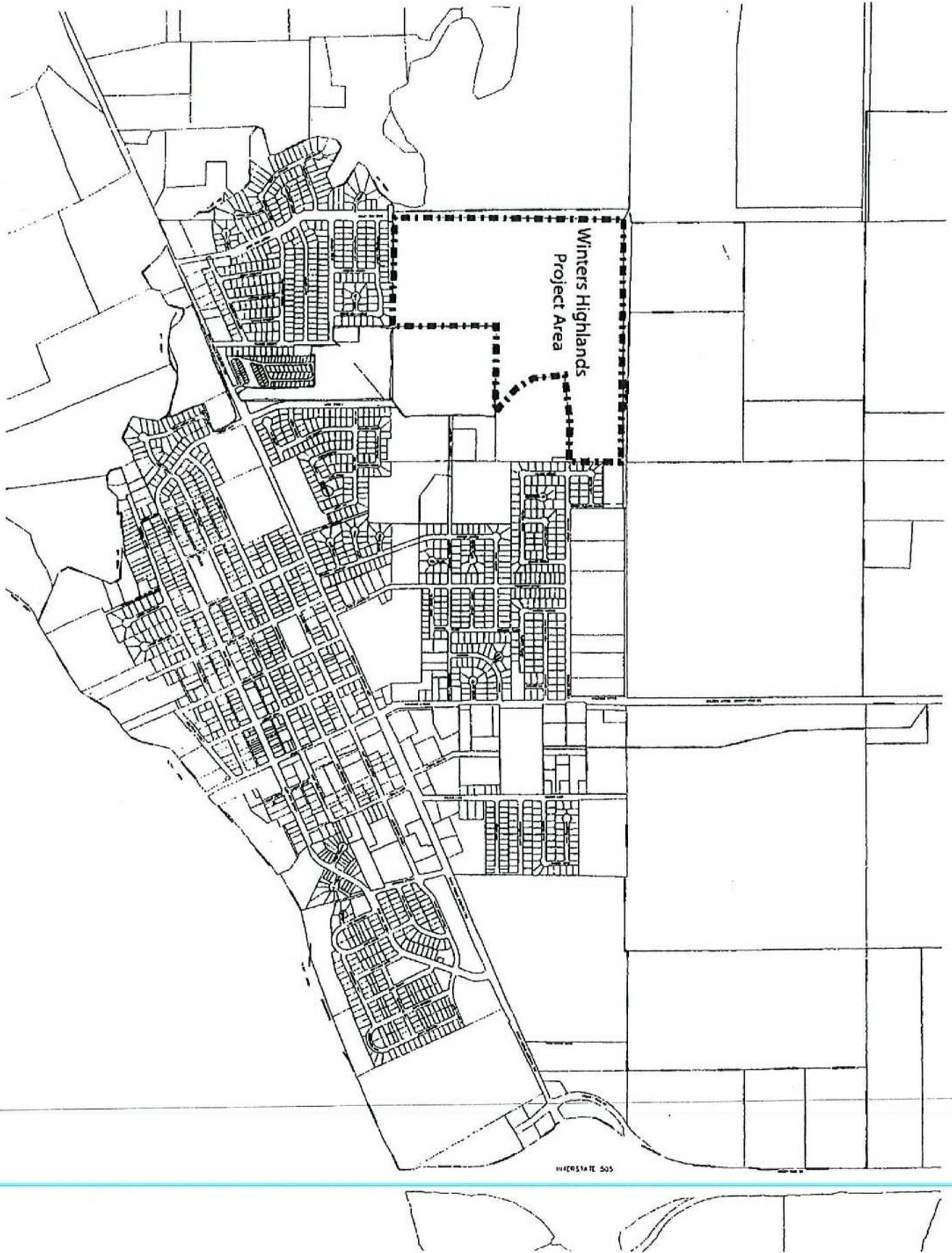
PLANNING COMMISSION ACTION: The proposed amendments to the Winters Highlands DA were heard and considered by the Planning Commission on November 25, 2008. The Planning Commission unanimously recommended Councils approval of the proposed amendments as presented.

RECOMMENDATION:

Adopt Ordinance 2008-15 - Second Amendment to Development Agreement By and Between The City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, 030-220-40, and 030-220-50).

ATTACHMENTS:

1. Location Map for Project
2. Proposed Second Amendment to the Winters Highlands Development Agreement
3. Proposed Ordinance 2008-15 – Second Amendment to Development Agreement by and between the City of Winters and GBH-Winters Highlands, LLC [Winters Highlands Subdivision] (APN 030-220-17, 030-220-19, and 030-220-50)
4. Winters Highlands Development Agreement – recorded May 30, 2006 and amended January 16, 2007



**SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF WINTERS
AND
GBH-WINTERS HIGHLANDS, LLC
[WINTERS HIGHLANDS SUBDIVISION]**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "**Second Amendment**") is entered into as of November _____, 2008 ("**Effective Date**"), by and between the CITY OF WINTERS, a municipal corporation, (the "**City**"), and GBH-WINTERS HIGHLANDS, LL C, a California limited liability company (the "**Developer**").

Recitals

A. The City and the Developer have heretofore entered into a Development Agreement executed as of May 25, 2006 (the "**Development Agreement**"), and a First Amendment to Development Agreement executed as of December 21, 2006 (the "**First Amendment**"), providing for the residential development of certain real property commonly referred to as the Winters Highlands property (the "**Project**") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this Second Amendment shall have the meanings given in the Development Agreement.

B. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement by the City and Developer has threatened the economic viability of the Project.

C. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City and the Developer desire to enter into this First Amendment to make certain modifications to the Development Agreement as set forth herein.

D. City has given the required notice of its intention to adopt this Second Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, the City has found that the provisions of this Second Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.

E. On _____, 2008, the City of Winters Planning Commission (the "**Planning Commission**"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Second Amendment. On _____, 2008, the City of Winters City Council adopted its Ordinance No. _____ approving this Second Amendment and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on _____, _____.

Agreement

Section 1. Amendment to Sections 1.1.23, 1.1.25, and 2.2 "Property"

Sections 1.1.23, 1.1.25 and 2.2 of the Development Agreement are amended by replacing the old Yolo County Assessor's Parcel Numbers 030-220-17, 030-220-19 and 030-220-33 with the new Yolo County Assessor's Parcel Numbers 030-220-17, 030-220-19, 030-220-49 and 030-220-50 to reflect updated Yolo County Assessor's Parcel Numbers. The project acreage remains the same.

Section 2. Amendment to Section 2.3, Agreement to be Recorded; Effective Date; Term.

Section 2.3, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

- b. The term of this Agreement shall expire on December 31, 2016, unless extended by mutual consent of the Parties. It may be terminated as provided in Article 5 of the Development Agreement.

Section 3. Amendment to Section 2.7, Whole Agreement; Conflict with Municipal Code.

Section 2.7, paragraph b., of the Development Agreement is replaced in its entirety and shall read as follows:

- b. The provisions of Title 15, Chapter 15.72 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 4. Amendment to Section 3.6, Commencement of Development.

Section 3.6, paragraphs a. and b., of the Development Agreement are replaced in their entirety and shall read as follows:

- a. The Developer shall have sole discretion to determine when the final map for Phase I of the Winters Highlands Subdivision, and accompanying subdivision improvement plans, are submitted for City review and approval.
- b. Deleted.

Section 3.6, paragraphs c. and d., of the Development Agreement shall remain unchanged.

Section 5. Amendment to Section 3.7, Maximum Number of Building Permits Per Year; Non-Market Rate Units.

Section 3.7. of the Development Agreement, as previously amended in the First Amendment, is replaced in its entirety and shall read as follows:

a. To provide for orderly growth within the City of Winters, the Developer shall be entitled to apply for and receive no more than the following number of single family residential building permits per year for the 413 market rate residential units (including the forty-one (41) lots to be offered for sale to local builders) in the Winters Highlands Subdivision. For purposes of this section, the first year commences upon the date that the first final map is recorded.

1. Year 1: 118
2. Year 2: 132
3. Year 3: 83
4. Year 4: 44
5. Year 5: 25
6. Years 6 through 10: 25 per year

The total of the above number of units is not reflective of the total number of residential units within the Winters Highlands Subdivision.

b. No building permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement, unless and until the City and Developer enter into a subsequent Development Agreement. This provision shall survive the termination of this Agreement.

c. Sixty-six (66) deed restricted affordable housing units shall be constructed in the Winters Highlands Subdivision pursuant to the City's land use regulations. Such affordable housing units are comprised of twenty-six (26) units for very low income households, twenty-five (25) units for low income households, and fifteen (15) units for moderate income households. The Developer may apply for and receive building permits for these units at any time during the term of the Agreement, provided however; the Developer must complete the construction of the affordable units within each Phase of the subdivision prior to the issuance of building permits for market rate units within any subsequent Phases. The permits for the affordable housing units are in addition to, and not part of, the number of units per year set forth in Section 3.7, paragraph a., above.

d. The purpose of limiting the number of building permits issued in any year is to allow the City to meter growth in such a manner that the total number of new units built per year, within the Winters Highlands Subdivision and within other properties, does not exceed the number which can reasonably be served with municipal and educational services without unduly impacting those existing units which receive such services.

e. In order to allow the Developer the flexibility to adjust to changing economic conditions, or other circumstances, and notwithstanding the provisions of Section 3.8b, the Developer may advance or defer up to fifty percent (50%) of its allocation of building permits in any one (1) year. For example, if Developer selects Year 3, then, up to 41 units can be advanced to Year 2 or deferred to Year 4.

Section 6. Addition of Section 3.15, Deferral of Impact Fees.

Section 3.15 of the Development Agreement is added to read as follows:

In order to assist the Developer during these critical economic times, and to encourage the Developer to proceed with construction of new affordable and market rate housing within the City of Winters, except as otherwise provided for herein, the City hereby agrees to defer all development impact fees imposed by the City on building permits issued by the City on or before June 30, 2010, such that fifty percent (50%) of the impact fees shall be due at time of issuance of the building permit, and fifty percent (50%) shall be due at time of issuance of a certificate of occupancy. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable Conditions of Approval.

Section 7. Amendment to Section 4.2, On-Site Park Improvements.

Section 4.2, paragraphs b. and c., of the Development Agreement are replaced in their entirety and shall read as follows:

b. The City, through a public process, has or will create a conceptual design for the linear park, including improvements to the well site, and will provide the Developer with the conceptual design within twelve months from the recordation of the Second Amendment.

c. The Developer shall improve and construct the linear park concurrently with the construction of each Phase of the Subdivision, such that Lot X shall be developed concurrently with Phase I; Lot W shall be developed concurrently with Phase II; and Lot V shall be developed concurrently with Phase III. The park shall be constructed in accordance with the design provided and approved by the City, and in accordance with the City Public Works Improvement Standards and Construction Specifications. Any changes to the design or timing of construction shall be approved in writing by the City. If actual costs will exceed the estimated cost set forth in paragraph d. below, the parties will either (i) cooperate on a re-design of the improvements such that the actual cost does not exceed the estimated cost, or (ii) the City may elect, in its sole and absolute discretion, to fund the difference between the actual cost and estimated cost, for construction of the improvements as initially designed.

Section 4.2, paragraphs a. and d., of the Development Agreement shall remain unchanged.

Section 8. Amendment to Section 4.3, Off-Site Park Improvements.

Section 4.3, paragraph b., of the Development Agreement is amended by replacing the old phrase "prior to the recordation of the Final Map for Phase II of" with the new phrase, "no later than the issuance of the 118th building permit for."

Section 9. Amendment to Section 4.4, Funding For Police/Fire/Municipal Facilities.

Section 4.4 of the Development Agreement is replaced in its entirety and shall read as follows:

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel, a portion of which is shown on Exhibit F of the Development Agreement. In order to provide sufficient funds for the City to construct this facility, the Developer agrees to pay to the City the police facilities fee, the fire facilities fee, and the general municipal facilities fee for the Winters-Highlands Subdivision in either of the following manners, at the option of the Developer: (1) concurrently with the issuance of the first building permit, pay the above development impact fees at the then current rates for all 443 residential units, or (2) concurrently with the issuance of a building permit, pay the above development impact fees at the then current rates for only that unit.

b. If the Developer elects to pay the development impact fees for all 443 residential units concurrently with the issuance of the first building permit, then each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit. If at the time of the issuance of a subsequent building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

Section 10. Amendment to Section 4.6, Payment to Library Fund and Community Pool Fund.

Section 4.6, paragraph a., of the Development Agreement is replaced in its entirety and shall read as follows:

a. Concurrently with the issuance of the first building permit for Phase I, the Developer shall pay to the City the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) and concurrently with the issuance of the first building permit for Phase II, the Developer shall pay to the City the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000), for an aggregate payment of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000). This amount shall be kept in a separate account designated for library improvement funds by the City and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

Section 4.6, paragraph b., of the Development Agreement, as amended in the First Amendment, shall remain as set forth in the First Amendment.

Section 11. Amendment to Section 4.7, Wastewater Treatment Plant Expansion.

Section 4.7 of the Development Agreement, and as previously amended in the First Amendment, is replaced in its entirety to read as follows:

a. An expanded and upgraded Wastewater Treatment Plant ("WWTP") is needed in order to treat the wastewater from the Winters Highlands Subdivision, and other developing properties within the City. The Developer shall be required to fund the cost of the expansion and upgrade project (referred to as "WWTP Phase II"), which would expand the capacity of the WWTP to approximately 1.2 million gallons per day, in accordance with the terms of this Section 4.7.

b. The Developer shall be required to provide funding for WWTP Phase II in excess of the Developer's fair share obligation, and shall receive credit and/or reimbursement for such excess funding, pursuant to the terms of a credit and/or reimbursement agreement, which agreement shall be negotiated and executed by the Parties prior to the approval of the Final Map for Phase I for the Winters Highlands Subdivision.

c. Notwithstanding any provision to the contrary, Developer's funding obligation pursuant to this Section 4.7 shall not be greater than EIGHT MILLION DOLLARS (\$8,000,000). Developer agrees to work with City to create a financing plan and mechanism for WWTP Phase II. The Developer shall provide funding as follows:

1. On or before June 1, 2011, the Developer shall provide funding to the City in the amount estimated as necessary by the City Engineer to fully pay for the cost of designing the WWTP Phase II. Sixty (60) days prior to June 1, 2011, the City shall provide written notification to the Developer of the estimated amount needed for design costs.

2. On or before June 1, 2012, the Developer shall provide funding to the City in the amount estimated as necessary to fully pay for the acquisition of land necessary for the construction of the WWTP Phase II. This amount shall include the estimated cost of the land (based upon an appraisal) and administrative, legal and environmental review costs directly related to the land acquisition. Sixty (60) days prior to June 1, 2012, the City shall provide written notification to the Developer of the estimated amount needed for land acquisition costs.

3. On or before June 1, 2013, the Developer shall provide funding to the City in the amount estimated by the City Engineer as necessary to pay for the cost of constructing the WWTP Phase II, up to the funding limit specified above. One hundred and twenty (120) days prior to June 1, 2013, the City shall provide written notification to the Developer of the estimated amount needed for construction of the WWTP Phase II.

d. In consideration of Developer's commitment to provide funding as set forth in this Section 4.7, City agrees to provide sewer connections for each residential unit within Phases I, II and III of the Winters Highlands Subdivision prior to completion of WWTP Phase II, subject to the following conditions, which must be satisfied prior to the issuance of a Building Permit for each residential unit:

1. Developer is in compliance with the terms of this Agreement, including this Section 4.7;

2. The Building Permit for the applicable residential unit has been issued prior to June 1, 2014; and

3. No circumstances beyond the control of the City have occurred. For the purposes of this subsection d.3., "circumstances beyond the control of the City" shall

include, but are not limited to, acts of God, natural disasters, and acts of the State and/or federal government.

e. The Developer acknowledges and agrees that the City shall not be required to approve or record a Final Map for Phase IV and Phase V of the Winters Highlands Subdivision until and unless the City Engineer determines, in his/her sole and absolute discretion, that the WWTP has adequate capacity to serve all residential units and other buildings to be constructed within that Phase of the Winters Highlands Subdivision, provided, however, if the WWTP Phase II is then completed and operational, City shall reserve from the capacity represented by such expansion the amount needed to serve the remaining residential units within the Winters Highlands Subdivision. This reservation of capacity shall expire upon the termination of the Development Agreement.

Section 12. Amendment to Section 4.9, Urban Water Management Plan.

Section 4.9 of the Development Agreement is amended by replacing the old phrase "Prior to the recordation of the Final Map for Phase I" with the new phrase, "No later than the issuance of the 118th building permit."

Section 13. Amendment to Section 4.10: Water Well.

Section 4.10 of the Development Agreement is replaced in its entirety and shall read as follows:

a. A water well is required in order to provide water service to the Winters Highlands Subdivision and other developing properties. A second water well may be required, depending upon the productivity of the first water well.

b. Conditions of Approval No. 37.- (Mitigation Measure 15) and No. 140, in part, require the Developer to advance the costs for the design and construction of a water well if not already constructed by others, and alternatively, to pay its fair share obligation if the first water well is constructed by others. In addition, the Conditions of Approval require the Developer to advance the costs for the design and construction of a second water well, if the City Engineer determined that a second well is necessary in order to serve the Winters Highlands Subdivision.

c. The City Engineer has determined that the water well, referred to as "Well No. 7", shall be located at the southern portion of the Hudson-Ogando Subdivision. Another developer has completed the first phase of construction of Well No. 7, which includes the actual development of the well. Acceptance of these improvements by the City is contingent upon (1) conveyance of the property by such developer to City in accordance with Section 4.2, and (2) assignment by such developer to City of all design plans for the construction of the second phase of Well No. 7.

d. City intends to fund, but is not obligated to fund, the construction of the second phase of Well No. 7, which includes the pump station and site improvements, subject to the availability of funds. Should the City fund the construction of Well No. 7 from sources other than water development impact fees, the City shall be reimbursed from

water development impact fee funds, when available, and prior to the reimbursement of any costs incurred by Developer. Funding of the second phase of Well No. 7 by the City is contingent upon (1) available funding, (2) conveyance of the property by another developer to City, and (3) assignment by such other developer to City of all design plans for the construction of the second phase of Well No. 7.

e. Developer acknowledges and agrees that it will be required to pay the full amount of water development impact fees at the time of issuance of each building permit for the development, which shall be used, in part, to reimburse City for the costs of constructing Well No. 7.

f. The amount and timing of reimbursement for funds advanced by Developer and related to the construction of Well No. 7 shall be set forth in a separate reimbursement agreement in accordance with the provisions of section 3.10 of the Agreement.

g. The Developer understands and acknowledges that Building Permits shall not be issued for any residential unit within the Winters Highlands Subdivision until the construction of Well No. 7 is completed, accepted and placed in service by City. In the event that the City does not fund the construction of the second phase of Well No. 7, Developer will be required to fund and construct the second phase of Well No. 7 prior to the issuance of Building Permits, if it desires to proceed with the development of the Winters Highlands Subdivision.

h. The Developer agrees to dedicate a second well site acceptable to the City and at no cost to the City. Developer also agrees to construct a second water well or pay its *pro rata* share of the cost of such facility, upon demand by the City Engineer. If Developer fails to dedicate the site, construct or pay for such facility upon demand and as determined by the City Engineer, then the City may withhold the issuance of Building Permits for the Winters Highlands Subdivision, in addition to other remedies available to the City.

Section 14. Amendment to Section 4.15; Miscellaneous Contributions.

Section 4.15, paragraphs a., b., c., and d., of the Development Agreement are amended by replacing the old phrase "Prior to the recordation of the Final Map for Phase I" with the new phrase, "No later than the issuance of the 118th building permit."

Section 4.15, paragraph d. of the Development Agreement is amended to add the following new sentence to the end of the paragraph: "Any payments by Developer to City for economic development projects shall be a credit against the above amount."

Section 15. Amendment to Exhibit F, Phasing Schedule.

Exhibit F to the Development Agreement is replaced in its entirety with new Exhibit F, attached to this Second Amendment.

Section 16. Force and Effect

The effective date of this Second Amendment shall be the date that this Second Amendment is signed by the City as written above. Except as modified and amended by this Second Amendment, all other provisions of the Development Agreement and the First Amendment shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment as of the date first above written.

CITY:	DEVELOPER:
CITY OF WINTERS _____ Mayor	GBH-WINTERS HIGHLANDS, LLC a California limited liability company By: _____ Its: _____
APPROVED AS TO FORM: _____ JOHN C. WALLACE CITY ATTORNEY	
ATTEST: _____ NANCI MILLS CITY CLERK	

EXHIBIT F

EXHIBIT A-1

LEGAL DESCRIPTION
for
PARCEL "A"
DEDICATION TO THE CITY OF WINTERS
for
HOFFMAN LAND DEVELOPMENT COMPANY

That real property situate in the City of Winters, Yolo County, State of California, lying in the South half of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, being a portion of that Parcel described in Doc-2004-0007937-00, Yolo County Records, also being a portion of Lot 3, Bank of Yolo Subdivision, Book 3 of Maps and Surveys, at Page 23, more particularly described as follows:

BEGINNING at a point on the Eastern line of said Parcel described in Doc-2004-0007937-00, said point bears North 00°00'23" East 159.85 feet from the Southwest corner of Lot A, as said Lot appears on Subdivision Map No. 4284 "CARTER RANCH PHASE 1", filed for record in the Yolo County Recorder's Office, in Book 2000 of Maps, at Page 170; thence, from said POINT OF BEGINNING, leaving said Eastern line, North 89°59'37" West 161.78 feet to the Westerly line of said Parcel; thence North 00°03'41" East 374.65 feet; thence South 89°59'37" East 162.22 feet to a point on the Eastern line of said Parcel, said point also being the Western line of Main Street, as shown on said Subdivision Map No. 4284; thence, along said line and the Western line of said Lot A, South 00°00'23" West 374.65 feet, more or less, to the POINT OF BEGINNING.

The parcel of land described above contains 1.39 acres, more or less.

End of description.



EXHIBIT A-2

LEGAL DESCRIPTION
for
PARCEL "B"
DEDICATION TO THE CITY OF WINTERS
for
HOFFMAN LAND DEVELOPMENT COMPANY

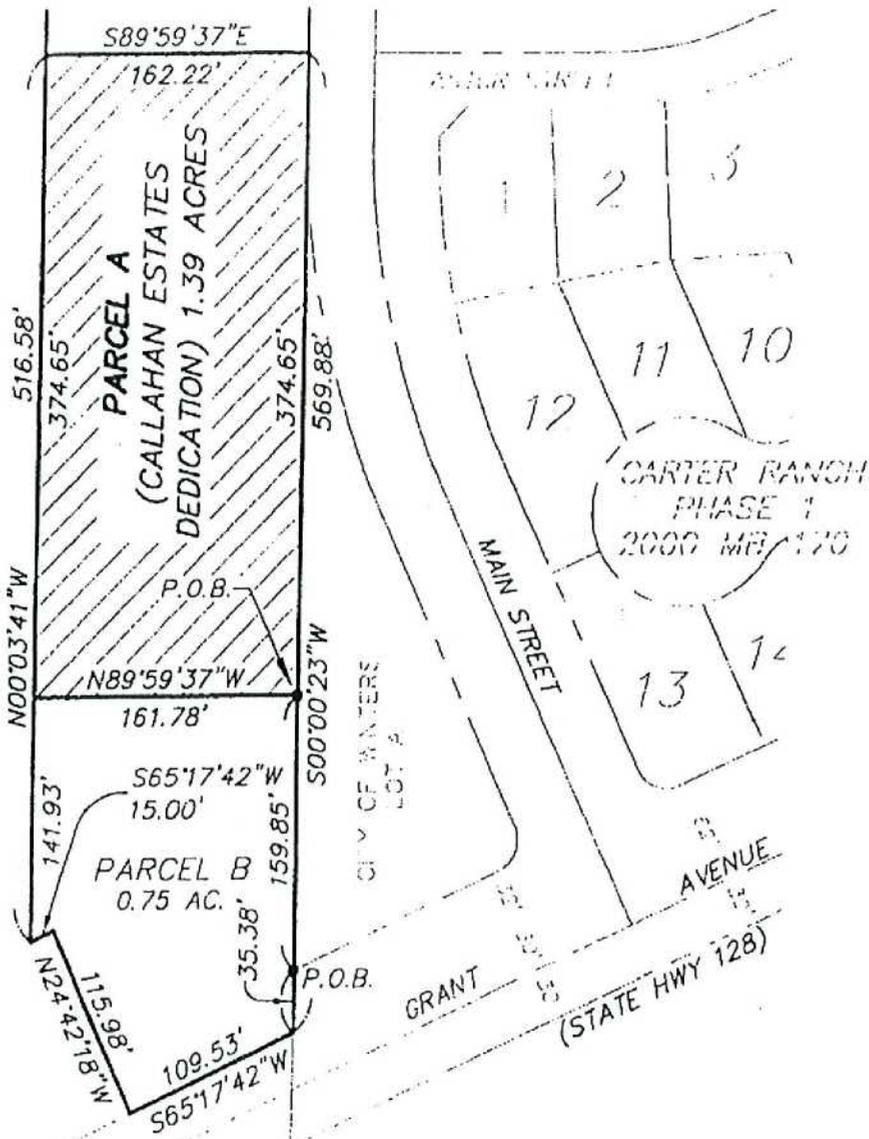
That real property situate in the City of Winters, Yolo County, State of California, lying in the South half of Section 21, Township 8 North, Range 1 West, Mount Diablo Meridian, being a portion of that Parcel described in Doc-2004-0007937-00, Yolo County Records, also being a portion of Lot 3, Bank of Yolo Subdivision, Book 3 of Maps and Surveys, at Page 23, more particularly described as follows:

BEGINNING at a point on the Eastern line of said Parcel described in Doc-204-0007937-00, said point also being the Southwest corner of Lot A, as said Lot appears on Subdivision Map No. 4284 "CARTER RANCH PHASE 1", filed for record in the Yolo County Recorder's Office, in Book 2000 of Maps, at Page 170; thence, along said Eastern line, South $00^{\circ}00'23''$ West 35.38 feet to the Southeast corner of said Parcel; thence, along the boundary line of said Parcel, South $65^{\circ}17'42''$ West 109.53 feet; thence North $24^{\circ}42'18''$ West 115.98 feet; thence South $65^{\circ}17'42''$ West 15.00 feet; thence North $00^{\circ}03'41''$ West 141.93 feet; thence, leaving said boundary line, South $89^{\circ}59'37''$ East 161.78 feet to the Easterly boundary line of said parcel; thence, along said line, South $00^{\circ}00'23''$ West 159.85 feet, more or less, to the POINT OF BEGINNING.

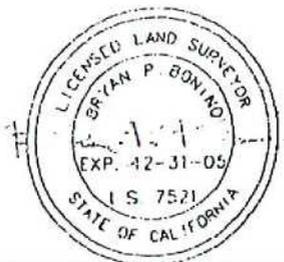
The parcel of land described above contains 0.75 acres, more or less

End of description.





SCALE: 1" = 100'



LM
 LAUGENOUR AND MEKLE
 CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING
 608 COURT STREET, WOODLAND, CA 95693
 PHONE (530) 867-1725
 FAX (530) 667-4617

EXHIBIT A-3
DEDICATION TO THE CITY OF WINTERS

A PORTION OF LOT 3, BANK OF YOLO
 SUBDIVISION, BOOK 3, MAPS & SURVEYS,
 PAGE 23 BEING A PORTION OF SECTION 21,
 TOWNSHIP 8 NORTH, RANGE 1 WEST, M.D.M.
 YOLO COUNTY, CALIFORNIA

SHEET 1 OF 1

NOVEMBER 22, 2005

DEDICATION EXHIBIT

CITY OF WINTERS

ORDINANCE NO. 2008-15

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF WINTERS ADOPTING A SECOND AMENDMENT TO THE
DEVELOPMENT AGREEMENT FOR THE WINTERS HIGHLANDS SUBDIVISION**

The City Council of the City of Winters hereby ordains as follows:

Section 1: Recitals

- A. To strengthen the public planning process and encourage private participation in comprehensive planning, the Legislature of the State of California adopted Section 65864 *et seq.*, of the Government Code ("Development Agreement Statute"), which authorizes the City of Winters and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in property subject to a development agreement.
- B. On May 25, 2006, the City of Winters and GBH-Winters Highlands, LLC, a California limited liability company ("the Developer"), executed a development agreement ("Development Agreement") providing for the residential development of certain real property commonly referred to as the Winters Highlands property (the "Project") located at Yolo County Assessor's Parcels No. 030-220-17, No. 030-220-19 and No. 030-220-33, within the boundaries of the City of Winters (the "Property").
- C. On Dec 21, 2006, the City and the Developer executed the first amendment to the Development Agreement ("First Amendment") making certain modifications related to the expansion of the wastewater treatment plant.
- D. The severe and adverse change in economic conditions that has occurred subsequent to the execution of the Development Agreement and First Amendment by the City and Developer has threatened the economic viability of the Project.
- E. In an effort to restore the economic viability of the Project, encourage Developer to invest in the City of Winters, and provide new housing, the City of Winters, and the Developer desire to enter into a second amendment to the Development Agreement ("Second Amendment") to make certain modifications to the Development Agreement, pursuant to Section 65868 of the Government Code and Chapter 15.72.210 of the City of Winters Municipal Code.
- F. The City of Winters Planning Commission conducted a noticed public hearing on the Second Amendment on _____, and has recommended the approval of the Second Amendment.

- G. The City Council of the City of Winters has given the required notice of its intention to adopt the Second Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867.
- H. In accordance with Section 65867.5 of the Government Code, the City Council finds that the provisions of the Second Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- I. The Second Amendment has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

Section 2: Approval

Pursuant to the provisions of Government Code §65864 *et seq.* and Chapter 15.72 of Title 15 of the Winters Municipal Code, the City Council of the City of Winters hereby:

- 1. Adopts and approves that certain document entitled, "Second Amendment to Development Agreement By and Between the City of Winters and GBH-Winters Highlands, LLC" relating to the development of the Property commonly know as the "Winters Highlands Subdivision," attached hereto as Exhibit A and incorporated herein by reference.
- 2. Authorizes and directs the Mayor to sign the document on behalf of the City after the effective date of this Ordinance and after it has first been signed by the duly authorized representatives of GBH-Winters Highlands, LLC.
- 3. Authorizes and directs the City Clerk to record the document, after it is signed by both parties, in the Office of the Recorder of Yolo County.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Winters hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 4. Effective Date.

This Ordinance shall be in full force and effect 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this

Ordinance to be posted and published in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on _____, 2009 and was passed and adopted at a regular meeting of the City Council held on _____, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk