



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, January 20, 2009,  
7:30 p.m.  
**AGENDA**

*Members of the City Council*

*Michael Martin, Mayor  
Woody Fridae, Mayor Pro Tempore  
Harold Anderson  
Cecilia Aguilar-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, January 6, 2009 (pp 1-4)
- B. Minutes of the Special Meeting of the City of Winters City Council Held on Tuesday, January 13, 2009 (pp 5-8)
- C. Personal Injury Claim Against the City of Winters – Thomas (pp 9-12)
- D. Winters Historical Photo Collection Exhibit – Donation (pp 13-15)
- E. Resolution 2009-04, A Resolution of the City of Winters, Authorizing the City Manager to Execute Master Agreement No. 03-5110R with the State Department of Transportation (Caltrans) for Federal-Aid Funded Projects (pp 16-44)
- F. Resolution 2009-05, A Resolution of the City of Winters Authorizing the City Manager to Execute All Program Supplemental Agreements to Administering Agency-State Agreement for Federal-Aid Projects No. 03-5110R (pp 45-50)
- G. Authorization to Solicit Bid for Construction of a New Motor Control Center at the East Street Sewer Pump Station (pp 51-52)

## PRESENTATIONS

## DISCUSSION ITEMS

- 1. Notice of Public Hearing and Second Reading to Take Action on Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49) (pp 53-68)
- 2. Notice of Public Hearing and Second Reading to Take Action on Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33 (pp 69-84)
- 3. Notice of Public Hearing to Take Action on Resolution 2009-01 - Credit and Reimbursement Agreement By and Between the City of Winters and Winters Investors Relating to Water Well Number 7 Improvements (pp 85-98)
- 4. Public Hearing to Take Action on Resolution 2009-02 Amending Resolution 2005-48 and Amending Resolution 2005-49 Establishing

- Fees, Rates and Charges for Maintenance, Replacement and Repair of the City's Water and Sewer Systems (pp 99-107)
5. Resolution 2009-03 Allocating Redevelopment Tax Increment for the required ERAF (Education Revenue Augmentation Fund) as required by the 2008-2009 California State Budget (pp 108-110)
- 

#### COMMUNITY DEVELOPMENT AGENCY

1. Lease Agreement for 11 Main Street (pp 111-119)
  2. Approval of Consultant Services Agreement By and Between the City of Winters Community Development Agency and Rick Engineering Company for the Downtown Streetscape Improvements, Phase 2 (pp 120-131)
- 

#### CITY MANAGER REPORT

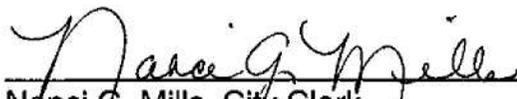
#### INFORMATION ONLY

#### EXECUTIVE SESSION

Real Estate Negotiation Per Government Code Section 54956.8 –  
311 First Street, Winters – APN 038-070-12

#### ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the January 20, 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 January 15, 2009, 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](http://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.*

How to obtain City Council Agendas:

View on the internet: [www.cityofwinters.org/administrative/admin\\_council.htm](http://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 Regular Meeting of the  
Winters City Council  
Tuesday, January 6, 2009,

Mayor Michael Martin called the meeting to order at 7:30 p.m. Those present were Council Members Cecilia Aguiar-Curry, Harold Anderson, Woody Fridae, Tom Stone and Mayor Michael Martin. Also present were City Manager John Donlevy, City Attorney John Wallace, Community Development Director Nellie Dyer, Contract Planner Kate Kelly, and City Clerk Nanci Mills.

Pledge of Allegiance

Approval of Agenda: Council Member Fridae made a motion to approve the agenda as presented. Seconded by Council Member Stone. Motion carried unanimously.

**COUNCIL/STAFF COMMENTS:** Council Member Stone noted the upcoming Citizen of the Year Dinner scheduled for January 24<sup>th</sup>.

**PUBLIC COMMENTS:** None

**CONSENT CALENDAR**

- A. Minutes of the Regular Meeting of the City of Winters City Council Held on Tuesday, December 16, 2008
- B. Kelly Group – Contract Extension

City Manager Donlevy gave a brief overview. Council Member Aguiar-Curry made a motion to approve the consent calendar. Seconded by Council Member Anderson. Motion carried unanimously.

**PRESENTATIONS:** None

**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)**

Contract Planner Kate Kelly gave an overview, noting there were questions regarding phasing and phasing allocation during the first reading of the Ordinance, the deferment of units and the ability to go forward 50% one year or back one year, and what the start date of the project would be. She stated the developer may choose a start date based on the developer's choice, so long as it fits within the Development Agreement (DA) guidelines.

Mayor Martin opened the public hearing at 7:40 p.m.

Tyler Wade of Granite Bay Holdings (GBH) indicated they would wait out the first two quarters of 2009 and reassess the start date at that time. He would like to demonstrate the ability to keep up with the market regarding infrastructure. Mayor Martin inquired whether there was enough cash flow for 49 units. Tyler Wade responded they would market both the 49 units as well as the alley. Council Member Fridae appreciated GBH's willingness to wait. Council Member Anderson stated that GBH has made a significant contribution to this city and thanked them for that. Tyler Wade spoke of his appreciation for the City's commitment to GBH.

Gail Wingard, 910 Apricot, spoke of his concern regarding the closure of City Hall during the Christmas holiday and the inability to review the publication of the GBH project. How does the extension of time affect the general plan? In 8 or 9 years from now, the hands of the new faces of those sitting on the Council will be tied, where no function changes can be made to the conditions of the agreement. How will this affect the General Plan? Mr. Wingard asked the Council to clarify the classification of 30 apartments. Units or Buildings? If the map is sold, will the City be able to review the conditions and reconsider? What happens if GBH files bankruptcy?

Contract Planner Kate Kelly indicated the public hearing notice included her cell phone number if any contact during the holidays was warranted. The proposed extending term of the DA is 12/31/2016, which is only a 6 month extension. Kate confirmed the DA is consistent with the General Plan. This DA amendment changes the timing and financing, not the number or types of apartment units. The actual original DA identifies a 2.0 acre parcel for 30 apartments. This language was carried forward from the original DA, but for all intents and purposes it means 30 apartment units. If GBH sold the property, all entitlements, terms and conditions would run with the land and be applied to the future land owner. The City would not be able to have a "do-over" with the new land owner. Regarding the filing of bankruptcy, the package of entitlements are part of the asset of a development company and would be working directly with the bank, managing the assets and trying to recover their value of the property. City Attorney John Wallace indicated anyone could file bankruptcy at anytime.

Council Member Fridae responded to Mr. Wingard's concern regarding future Council Members who have not yet been elected, indicating that a project of this magnitude will go through several Councils and not be completed before the term of the current Council ends. Two years is not a realistic project span. The contract extends to 2016, and yet the housing allocation goes for a 10 year period, or until 2020, so that the housing allocation will go beyond the scope of the contract. Contract Planner Kate Kelly referred to per Page 3 of the DA Amendment, where it states that in light of the changing time frames, no building permit shall be issued for any residential lot that the developer is not made application for at the time of the expiration of the agreement unless or until the City and Developer enter into a subsequent Development Agreement. This provision shall survive termination agreements. This is intended to make it clear that all the development has to occur underneath the auspices of the Development Agreement.

Council Member Fridae asked for clarification regarding the agreement, which says it will terminate in 2016, but there is a provision within the agreement that says that this agreement will survive the termination of the agreement. This represents a "use them or lose them" set up for them, unless you come back and negotiate.

City Manager Donlevy indicated Item B is two things: It says you have to come back; the second is a protection clause for the City that says no permits are going to be issued outside the framework of this unless you come back to us. The terms of the agreement will also survive the life of the agreement, and in many ways we're protecting ourselves from someone who just doesn't let the clock run and let things expire.

Council Member Stone confirmed the entitlements would be transferred with the sale of the map, along with the obligations.

Council Member Anderson, in going back to the bankruptcy filing, had some discussions about securing the second half of the impact fee payments, which will be secured by lien recording on the property. This would protect the City.

Mayor Martin asked whether a new council would have to go through another development agreement process after 2016? Or would an extension go beyond 2016? As per Kate, the City of Winters has a policy that states major development projects require development agreements. So if this project didn't get built for any reason, some form of development agreement would be required. They could possibly look at a project re-design. A new development agreement would be required none the less.

Mayor Martin closed the public hearing at 8:17 p.m.

Council Member Stone made a motion to approve 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). Seconded by Council Member Aguiar-Curry. Motion carried unanimously.

---

**COMMUNITY DEVELOPMENT AGENCY**

1.

---

**CITY MANAGER REPORT:** The special City Council meeting scheduled for January 13<sup>th</sup> and the regular City Council meeting scheduled for January 20<sup>th</sup> will both begin at 7:30 p.m. The furniture for the Downtown Streetscape has been delivered and installed and the increase of the number of street lights in the Downtown area have brightened the intersection, making pedestrians more visible.

**INFORMATION ONLY**

**EXECUTIVE SESSION**

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

The Mayor, Council Members and City Manager went into Executive Session at 8:20 p.m. The Community Development Agency authorized City Manager Donlevy to enter into lease negotiations at 11 Main Street, APN 003-204-09.

**ADJOURNMENT**

Mayor Martin adjourned the meeting at 9:32 p.m.

---

Michael Martin, MAYOR

ATTEST:

---

Nanci G. Mills, City Clerk



Minutes of a Special Meeting of the  
Winters City Council  
Held on Tuesday, January 13, 2009,

Mayor Michael Martin called the meeting to order at 7:30 p.m. Those present were Council Members Cecilia Aguiar-Curry, Harold Anderson, Woody Fridae, and Mayor Michael Martin. Also present were City Manager John Donlevy, City Attorney John Wallace, Community Development Director Nellie Dyer and Contract Planner Kate Kelly. Absent was Council Member Tom Stone.

Pledge of Allegiance

Approval of Agenda: Council Member Aguiar-Curry made a motion to approve the agenda without changes. Seconded by Council Member Fridae. Motion carried unanimously.

**COUNCIL/STAFF COMMENTS:** Council Member Anderson attended a Transportation District Meeting and forewarned the Council of upcoming changes to the shuttle bus service due to lack of use. Council Member Aguiar-Curry attended a recent Chamber of Commerce meeting, where it was suggested the City consider placing a stop sign at Railroad and Abbey. The Hispanic Advisory Committee will be sponsoring a Wills/Trusts workshop along with City Attorney John Wallace, which will open to the entire community. The HAC will also be participating in the upcoming AMGEN Tour by hosting a raffle and hosting a Community Awareness Meeting in April. Council Member Aguiar-Curry also recently attended the League of CA Cities held in Corning and has been appointed to the League's Policy Committee for Environmental Quality. There will be a legislative reception held on January 21<sup>st</sup> at the Citizen's Hotel in Sacramento. She also asked if the City would consider speaking with the Mariani's about overnight parking in their lot for an upcoming quilting event to be held in June. City Manager Donlevy indicated he would contact the Mariani's to discuss.

**PUBLIC COMMENTS:** JoAnn Larkey, 26272 Co. Rd. 34, Winters, has asked Council for project participation regarding photographs from the Winters Historical Collection to receive framed images, appoint a 3-member committee, and to develop a procedure to transport photos from one exhibit location to another. She requested a monetary fund be established at the City to receive and disperse funds. City Manager Donlevy indicated this item would be presented as an action item at the next meeting on 1/20/09.

**CONSENT CALENDAR**

**PRESENTATIONS**

**DISCUSSION ITEMS**

- 1. Introduce and Waive First Reading of Proposed Ordinance 2008-13, First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC (Callahan Estates) (APN 030-220-49)**

Contract Planner Kate Kelly gave an overview and reviewed the proposed amendments to the Callahan Estates Development Agreement (DA). Due to recent economy and market changes, staff is recommending several amendments to the Callahan Estates Development Agreement (DA), which are outlined in the Staff Report. The Planning Commission recommended the approval of these changes at their December 23, 2008 meeting. Kate requested the public hearing and second reading of this ordinance be scheduled for the 1/20/09 City Council meeting.

Council Member Anderson inquired if the City was deferring payment of the impact fees, as the time frame (12/31/10) is relatively short. Kate responded there are liens in place to protect the City.

Council Member Aguiar-Curry inquired whether the Planning Commission vote was unanimous. Kate indicated one PC member (Martinez) voted "present."

Mayor Martin inquired about the transfer of the property where the Public Safety Facility will be built, and if the land will be transferred before the project goes out to bid. City Manager Donlevy said the transfer of the property will coincide with the construction, which will be going out to bid in late February, 2009. The land has been deeded to the City and is not tied to the filing of a map.

Council Member Fridae made a motion to approve Ordinance 2008-13, First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC (Callahan Estates), (APN 030-220-49). Seconded by Council Member Aguiar-Curry. Motion carried with the following roll call vote:

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

**2. Introduce and Waive First Reading of Proposed Ordinance 2008-14, First Amendment to Development Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APN's 003-430-13 and 003-430-33)**

Contract Planner Kate Kelly gave an overview and reviewed the proposed amendments to the Hudson-Ogando Development Agreement (DA). Council Member Fridae thanked Kate for being concise and brief while presenting the DA amendments.

Council Member Fridae made a motion to approve Ordinance 2008-14, First Amendment to Development Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APN's 003-430-13 and 003-430-33).

Seconded by Council Member Aguiar-Curry. Motion carried with the following roll call vote:

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

---

**COMMUNITY DEVELOPMENT AGENCY**

---

**CITY MANAGER REPORT:** The will be a 2X2 meeting with the County on 1/29/09. Please forward any ideas or issues to John by 1/18/09 to be included on the agenda, where they will be addressed at the meeting. There will be a project kick-off for the replacement of the water and sewer lines on Russell Street, and will also involve parts of East Abbey, Baker and Walnut Streets. The pre-construction meeting was held last week and went well. The project timeline is 90 days from the start date. John confirmed that door hangers will be distributed to those residences that will be affected by the construction. It was agreed that the project will begin in the worst area first (Russell Street). Tom Johnson will be the on-site inspector for this project. Also, the library project is moving along.

**INFORMATION ONLY**

**EXECUTIVE SESSION**

**ADJOURNMENT**

Mayor Martin adjourned the meeting at 8:15 p.m.

\_\_\_\_\_  
Michael Martin, MAYOR

**ATTEST:**

\_\_\_\_\_  
Nanci G. Mills, City Clerk



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE :** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager *JWD*  
**FROM:** Nanci G. Mills, Director of Administrative Services/City Clerk  
**SUBJECT:** Claim Against the City of Winters - Thomas

---

**RECOMMENDATION:**

It is recommended that the City Council deny the claim and refer to Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA).

**BACKGROUND:**

Anytime the City of Winters has a claim filed, we deny and refer to YCPARMIA to handle the investigation.

**FISCAL IMPACT:**

Not to exceed the City's \$1,000 deductible, with any costs in excess to come from funds pooled at the JPA.

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



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

01/07/09

**CLAIM FORM**

CLAIM AGAINST: City of Winters  
(For damages to persons or personal property)

DATE RECEIVED: (Stamp and Initial)

CITY OF WINTERS  
JAN 07 2009  
RECEIVED

RECEIVED VIA:

U.S. Mail:  
Over the counter 01/07/09 TN

\*\*\*\*\*  
A claim must be filed within SIX (6) MONTHS after which the incident or event occurred. Be sure your claim is against the City of Winters and not another public entity. Where space is insufficient, please use additional paper and identify information by paragraph number. Completed claims must be mailed or delivered to (do not fax or email):

City of Winters  
City Clerk's Office  
318 First St.  
Winters, CA 95694

\*\*\*\*\*  
The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

A. Claimant's Name: James R. Thomas  
Address: 423 Russell Street  
City/State/Zip: Winters, CA 95694

B. Address to which the claimant desires notices to be sent:

James R. Thomas  
423 Russell Street  
Winters, CA 95694

C. Date of the occurrence or transaction which gave rise to the claim asserted: July 12, 2008

Place of occurrence: (Provide specific address if known and a description of the location.)

Sidewalk in front of the private residence at  
307 Main Street, Winters CA (Open excavation in sidewalk)

D. The name or names of the public employee(s) causing the injury, damage, or loss, if known

\_\_\_\_\_

E. A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of claim. (Please be specific with your information and the actions leading up to the occurrence. Failure to provide a general report of the occurrence that allows the City to ascertain the events leading up to the indebtedness, obligation, injury, damage or loss may result in your claim being returned to you as initially denied due to incompleteness. Use additional paper as necessary.)

I was walking after dark (approx. 10:30 P.M), on the north side of  
main street and fell due to an "open" trench that had been  
excavated across the sidewalk. I sustained injuries to my face/head,  
neck and back as well as abrasions/bruises to my arms chest and  
knees

F. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of presentation of the claim, together with the basis of computation of the amount claimed:

Damages claimed:

- |                                      |          |
|--------------------------------------|----------|
| 1. Amount claimed as of this date:   | \$ _____ |
| 2. Estimated amount of future costs: | + _____  |
| 3. Total amount claimed:             | = _____  |

(Include copies of all bills, invoices, estimates, etc.)

\* I have insufficient information at present to estimate amount of future costs or total amount claimed. Total amount of costs for injuries sustained will be provided once ascertained.

G. Names and addresses of all witnesses, hospitals, doctors, etc.:

1. Dr. Takakuwa - Kaiser Permanente, Davis CA
2. Kaiser Permanente Hospital, Sacramento CA
3. \_\_\_\_\_
4. \_\_\_\_\_

H. Any additional information that might be helpful in considering claim: This incident was reported to Carol Scianna at Winters City Hall. Also, I talked to a Winters Police officer who stopped at the scene. I explained that I fell due to the excavated sidewalk and pointed to the excavation. Three men were assisting me when the officer arrived. One of the men  
*verified* that there was an open excavation with no light or barriers. also, due to darkness and shadows from large trees it was virtually impossible to see the excavation.

WARNING:

IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM:  
 (penal code 72; insurance code 556.1)

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 7<sup>th</sup> day of January, of the year 2009 at

Winters, California  
 (location)

James R. Thomas  
 CLAIMANT'S SIGNATURE



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Council Members  
**DATE:** January 20, 2009  
**FROM:** John W. Donlevy, Jr., City Manager *JWD*  
**SUBJECT:** Winters Historical Photo Collection Exhibit- Donation

---

**RECOMMENDATION:**

That the City Council:

1. Accept a donation of a historical photo collection for an administered exhibit to be established by the City;
2. Establish a City Photo Collection Committee to administer the collection and exhibit; and
3. Appoint Councilmember Woody Fridae as a liaison to the Committee.

**BACKGROUND:**

At the January 13 Special Meeting of the City Council, Winters Historian JoAnn Larkey made a presentation offering a historical photo collection as a donation to the City. In her discussion, she suggested that the City Council approve the establishment of a committee to administer the exhibit.

**DISCUSSION:**

Staff is recommending that the City accept the exhibit collection and authorize the establishment of an ad-hoc committee to administer the collection. The committee would be advisory to the City Council and a liaison will report back to the Council on the activities.

Additionally, the City will assist in the receipt and accounting of funds donated toward the exhibit.

**ATTACHMENT:**

Goals and Mission Statement

# **WINTERS**

## **A Taste of Northern California History**

### **Heritage of Northern California Horticulture**

#### **Goals & Mission**

The WINTERS historic photo exhibit's primary goals and mission provide historical context and a profound Sense of Place for all residents and visitors through the celebration of horticultural legacy in WINTERS, CA.

Benefits of the exhibit include the interactive and progressive collaboration of residents, merchants, businesses and civic organizations along with several display venues - adding to the marketing and promotion of historic downtown WINTERS as a creative Historic Destination. A permanent exhibit venue may be the result of this collaborative process.

#### **Summary & Overview**

- Exhibit WINTERS selection from archival photo collection and historic artifacts with Joann L. Larkey's publication and summary text
- Joann Larkey, exhibit curator and author of *WINTERS: A Heritage of Horticulture - A Harmony of Purpose*, published in 1991 by the Yolo County Historical Society
- Provide historic context for WINTERS through Sense of PLACE
- Feature WINTERS' contributions to Northern CA horticulture since 1842
- Develop Interactive process with the city's residents, merchants, businesses and civic organizations along with multiple exhibit venues
- Celebrate ethnically diverse contributions to the horticultural and business development of the area
- Encourage marketing and promotion of downtown WINTERS as a creative Historic Destination
- Collaborate with historic Main St. WINTERS venues for a progressive tour to three or more linked locations
- Enhance core "kernel" exhibit with additional historic perspectives, artifacts and contributions
- Create events to compliment photo history exhibit
- Examples of events include historic enactments, "old time" music, etc.
- Determine permanent venue through collaborative exhibit process

PHOTOGRAPHS FROM THE WINTERS HISTORICAL COLLECTION

For "A Taste of History" Exhibit at the Winters Center for the Arts

January-February, 2009

1. c. 1890 Earliest Pioneer Settlers, Milton and John R. Wolfskill and their wives
2. 1875 Original Map of the Town of Winters.
3. 1875 First Train of the Vaca Valley Railroad crosses the new bridge on Putah Creek at Winters
4. 1879 Lithograph of Farm & Residence of Benjamin Ely (former site of Buckeye)
5. 1879 Lithograph of Town and Main St. of Winters, Cal.
6. 1891 Frank and A.B. Wilson who completed a 251-mile bicycle ride from Winters to San Jose
7. 1892 Aftermath of April 19 Earthquake, Main St., looking east from First St.
8. 1892 Local citizens survey earthquake damage to the Hotel DeVilbiss, Winters Main St.
9. 1893 New Refrigerated Fruit Car at Earl Fruit Co. Packing Shed in Winters
10. 1897 Interior of the Winters Opera House, decorated for a Farmers' Institute
11. 1897 New Masonic Hall on the NE corner of Main and First streets, Winters
12. c. 1900 Men gathered in front of the Winters Post Office at Main Street, Winters
13. c. 1903 Members of the Winters Cycling Club prepare for a ride to Folsom and back
14. 1906 Can label depicting 3 Winters children, used on the Rivalry brand of canned peaches
15. 1906 Lug Box Label for Royal Apricots shipped from the ranch of William Brinck and Sons
16. 1908 Dedication of new Railroad & County bridges over Putah Creek at Winters
17. 1908 View of Main Street, looking west from Railroad Street.
18. 1910 Harvest Crew in the Apricot Dry Yard on the Joseph G. Young Ranch
19. 1911 Citizens enjoying boating and swimming on Lake Winters, above the Putah Creek  
19b 1911 4<sup>th</sup> of July Parade on Main Street
20. 1911 Map of Fruit Packing, Canning & Shipping District, east of the railroad tracks
21. 1930 Japanese Funeral Gathering shows Buddhist Temple and Asian Business Community
22. c. 1930 56 members of the Winters Japanese Community, photographed in front of the Winters Opera House, on Main Street.
23. c. 1940 Producer Crate Label used by Winters Members of the California Fruit Exchange
24. c. 1950 Produce Crate Label for Carl Holmes, Winters Grower and Packer
25. 1975 Yolano Harvest Trails Produce Crate Label for Lindeman Valley Royal Apricots, a direct marketing promotion in Yolo and Solano counties during the mid 70s
26. Ransdell Crate Label for Winters Apricots, c. 1975
27. Ransdell Crate Box Label for Organic Royal Apricots, c. 1976
28. Winters Apricots, generic Produce Crate Label
29. 1998 P. O. Cachet commemorating the centennial of Winters' incorporation as a city
30. (to selected) Photo representing Spanish immigrants i.e. Olive School c.1935
31. (to be selected) Mexican workers at Mariani Nut Co. or Lester Farms



## STAFF REPORT

**TO:** Honorable Mayor and Council Members  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Nick Ponticello, City Engineer  
**SUBJECT:** Resolution No. 2009-04 Authorizing the City Manager to execute Master Agreement Administering Agency-State Agreement for Federal Aid Projects No. 03-5110R.

**RECOMMENDATION:** The City Engineer recommends the City Council by Resolution authorize the City Manager to execute through signature the Master Agreement No. 03-5110R with the State Department of Transportation (Caltrans) for Federal-Aid Funded Projects.

**BACKGROUND:** The Putah Creek Bridge (Bridge No. 23C-234) on the south end of Railroad Avenue was put on the State's list of bridges eligible for replacement or upgrade. The City of Winters and County of Solano entered into an Agreement specifying that Solano County will sponsor the HBP-funded bridge replacement through the MTC and manage the project through completion. In 2005, MGE Engineering out of Sacramento was selected to perform design services associated with the bridge replacement project. An alignment for the new bridge was approved in 2006, which is included in the Appendix. The environmental phase has been underway and is scheduled for completion in 2009 with design to follow. Construction of the new bridge should commence in 2011.

In 2006, the City received approval of SAFETEA-LU High Priority/Demonstration funds in the amount of \$2,000,000, which were sponsored through Congressman Thompson's office. The federal funds are identified to implement a project that is tied to the bridge replacement project and will compliment those improvements. The components of the project are proposed to address the following:

- Provide access for bicycles and pedestrians to new bridge, rehabilitated railroad trestle bridge, neighborhoods and commercial centers;
- Provide for elderberry mitigation should existing elderberry bushes be disturbed during new bridge construction;
- Provide maintenance access for possible elderberry mitigation should existing elderberry bushes be disturbed during new bridge construction.

Staff issued a Request for Proposals in October 2008 and Callander Associates Landscape Architecture was selected. Staff is awaiting an audit of Callander's contract by the State, which is a requirement of the federal-aid process. Once the audit is completed, staff will bring the contract to council for approval, which will start the design and environmental processes.

The City has received authorization to proceed with the environmental and design tasks.

**DISCUSSION:** A Master Agreement is required between the State and local agency whenever Federal funds or State funds are used for a project. In the Master Agreement, which is prepared by the State, the local agency (Winters) agrees to comply with all Federal and State laws, regulations, policies and procedures relative to the design, land acquisition, construction, and maintenance of the improvements.

Master Agreement No. 03-5110R has been issued to the City of Winters by the State, for the project, and they require the City to execute the Agreement before federal funds can be reimbursed.

Resolution No. 2009-04 authorizes the City Manager to execute the Master Agreement No. 03-5110R on the City's behalf.

**ALTERNATIVES:** None recommended by staff.

**FISCAL IMPACT:** The project is funded by City (Park Impact) and Federal Funds (Safety-Lu).

Attachments: Master Agreement No. 03-5110R with the State Department of Transportation

**RESOLUTION NO. 2009 – 04**

**A Resolution Authorizing the City Manager to execute Master Agreement Administering Agency-State Agreement for Federal Aid Projects No. 03-5110R**

WHEREAS, the City of Winters is responsible for the maintenance and upgrade of the City's transportation system; and

WHEREAS, the City establishes various projects to maintain and upgrade the City's transportation system; and

WHEREAS, the City has received an allocation for Putah Creek Bridge Replacement and Approaches, Project No. HPLUL-5110(024); and

WHEREAS, Federal and State Share funds will be used for improvements associated with the various projects, including Project No. HPLUL-5110(024); and

WHEREAS, the City must enter into a Master Agreement in order to receive federal or state funds for projects; and

WHEREAS, the State has prepared a Master Agreement Administering Agency-State Agreement for Federal-Aid Projects No. 03-5110R; and

WHEREAS, the State requires local agencies adopt a Resolution authorizing a responsible agency official to execute the Master Agreement.

NOW THEREFORE BE IT RESOLVED that the City Council authorizes the City Manager of Winters to execute the Master Agreement Administering Agency-State Agreement for Federal-Aid Projects No. 03-5110R.

PASSED AND ADOPTED on January 20, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Michael Martin, MAYOR

ATTEST:

\_\_\_\_\_  
Nanci Mills, City Clerk

**MASTER AGREEMENT  
ADMINISTERING AGENCY-STATE AGREEMENT FOR  
FEDERAL-AID PROJECTS**

03 City of Winters

-----  
District Administering Agency

Agreement No. 03-5110R

This AGREEMENT, is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Winters, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE, and together referred to as "PARTIES" or individually as a "PARTY."

**RECITALS:**

- 1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs. These transportation programs include, but are not limited to, the Surface Transportation Program (STP), the Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation Enhancement Program (TE), Highway Safety Improvement Program (HSIP) and the Highway Bridge Program (HBP) (collectively the "PROGRAMS"); and
- 2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
- 3. WHEREAS, before federal-funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

**ARTICLE I - PROJECT ADMINISTRATION**

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific Program Supplement to this AGREEMENT for federal-aid projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.

2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE or the Federal Highway Administration (FHWA).

3. The E-76/E-76(AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.

4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these Federal Funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.

5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.

6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of Federal Funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.

7. Federal, State and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no Further Federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".

9. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.

11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its' contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.

12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY to: Department of Transportation, Division of Accounting Local Programs Accounting Branch, MS #33, PO Box 942874, Sacramento, California 94274-0001.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty(180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

## ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from Federal Funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT- displaced persons as provided in 49 CFR,

**Part 24.**

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, shall also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of the AGREEMENT, as appropriate.

### ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

#### ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of Federal Funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed duplicate invoices in arrears for reimbursement of participating PROJECT costs on a monthly or quarterly progress basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. Invoices must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. An Indirect Cost Rate Proposal and Central Service Cost Allocation Plan and related documentation are to be provided to STATE (Caltrans Audits & Investigations) annually for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect cost incurred within each fiscal year being claimed for federal reimbursement.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess Federal Funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all Federal Funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

11. The estimated total cost of PROJECT, the amount of Federal Funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of Federal Funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-Federal Funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with Federal Funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal Funds encumbered for PROJECT are available for liquidation for a period of seven (7) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for five (5) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

19. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

20. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under OMB Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE. Should ADMINISTERING AGENCY fail to reimburse moneys due STATE within thirty 30 days of demand, or within such other period as may be agreed in writing between the PARTIES hereto, STATE is authorized to intercept and withhold future payments due ADMINISTERING AGENCY from STATE or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

21. Upon written demand by STATE, any overpayment to ADMINISTERING AGENCY of amounts invoiced to STATE shall be returned to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

**ARTICLE V**  
**AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS**

- 1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.**
- 2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.**
- 3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance of ADMINISTERING AGENCY's contracts with third parties, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.**
- 4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of OMB Circular A-133 if it receives a total of \$500,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research.**
- 5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with OMB Circular A-133.**
- 6. ADMINISTERING AGENCY shall not award a construction contract over \$10,000 or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.**

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of ARTICLE IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS, and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.
8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.
9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.

**ARTICLE VI -FEDERAL LOBBYING ACTIVITIES CERTIFICATION**

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

## ARTICLE VII - MISCELLANEOUS PROVISIONS

1. **ADMINISTERING AGENCY** agrees to use all State funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This **AGREEMENT** is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this **AGREEMENT** in any manner.
3. **ADMINISTERING AGENCY** and the officers and employees of **ADMINISTERING AGENCY**, when engaged in the performance of this **AGREEMENT**, shall act in an independent capacity and not as officers, employees or agents of **STATE** or the federal government.
4. Each project-specific **PROGRAM SUPPLEMENT** shall separately establish the terms and funding limits for each described **PROJECT** funded under the **AGREEMENT**. No federal or state funds are obligated against this **AGREEMENT**.
5. **ADMINISTERING AGENCY** certifies that neither **ADMINISTERING AGENCY** nor its principals are suspended or debarred at the time of the execution of this **AGREEMENT**. **ADMINISTERING AGENCY** agrees that it will notify **STATE** immediately in the event a suspension or a debarment occurs after the execution of this **AGREEMENT**.
6. **ADMINISTERING AGENCY** warrants, by execution of this **AGREEMENT**, that no person or selling agency has been employed or retained to solicit or secure this **AGREEMENT** upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **ADMINISTERING AGENCY** for the purpose of securing business. For breach or violation of this warranty, **STATE** has the right to annul this **AGREEMENT** without liability, pay only for the value of the work actually performed, or in **STATE**'s discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, **ADMINISTERING AGENCY** hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against **ADMINISTERING AGENCY** within the immediate preceding two (2) year period because of **ADMINISTERING AGENCY**'s failure to comply with an order of a federal court that orders **ADMINISTERING AGENCY** to comply with an order of the National Labor Relations Board.
8. **ADMINISTERING AGENCY** shall disclose any financial, business, or other relationship with **STATE**, **FHWA** or **FTA** that may have an impact upon the outcome of this **AGREEMENT**. **ADMINISTERING AGENCY** shall also list current contractors who may have a financial interest in the outcome of this **AGREEMENT**.
9. **ADMINISTERING AGENCY** hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of **PROJECT** under this

**AGREEMENT.**

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

City of Winters

By \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_

Chief, Office of Project Implementation  
Division of Local Assistance

City of Winters  
Representative Name & Title  
(Authorized Governing Body Representative)

Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A****FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

**(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.**

**EXHIBIT B****NONDISCRIMINATION ASSURANCES**

**ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.**

**More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:**

- 1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.**
- 2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:**

**ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.**

- 3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.**
- 4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.**

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Race-Neutral Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Race-Neutral Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

## APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) **Compliance with Regulations:** ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) **Nondiscrimination:** ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

**APPENDIX B TO EXHIBIT B**

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

**(GRANTING CLAUSE)**

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) \*

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is

necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

### APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**APPENDIX D TO EXHIBIT B**

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

---

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.



**STAFF REPORT**

**TO:** Honorable Mayor and Council Members  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Nick Ponticello, City Engineer  
**SUBJECT:** Resolution No. 2009-05 Authorizing the City Manager to execute all Program Supplemental Agreements to Administering Agency-State Agreement for Federal-Aid Projects No. 03-5110R.

**RECOMMENDATION:** The City Engineer recommends the City Council by Resolution authorize the City Manager to execute all Program Supplemental Agreements to Administering Agency-State Agreement for Federal-Aid Projects No. 03-5110R.

**BACKGROUND:** Council previously authorized the City Manager to execute Master Agreement No. 03-5110R, which is required between the State and City of Winters whenever Federal funds or State funds are used for projects.

**DISCUSSION:** A Program Supplemental Agreement is a project-specific agreement between the City and the State, and formalizes the financial responsibilities and provisions for a specific project with Federal or State funds. The Supplemental Agreement identifies reimbursable phases of work in addition to the types and amounts of Federal, State, and local funds used to finance the locally sponsored project.

Program Supplement No. N005 has been issued to the City of Winters by the State, for the Putah Creek Bridge Replacement, North Bank Improvements, Project No. HPLUL-5110(024), and they require the City to execute the Agreement before federal funds can be reimbursed.

Resolution No. 2009-05 authorizes the City Manager to execute Program Supplement No. N005 and all future Program Supplements to Master Agreement No. 03-5110R, on the City's behalf.

**ALTERNATIVES:** None recommended by staff.

**FISCAL IMPACT:** The project is funded by City (Park Impact) and Federal Funds (Safety-Lu).

Attachments: Program Supplement No. N005

PROGRAM SUPPLEMENT NO. N005  
to  
ADMINISTERING AGENCY-STATE AGREEMENT  
FOR FEDERAL-AID PROJECTS NO. 03-5110R

Date: October 17, 2008  
Location: 03-YOL-0-WIN  
Project Number: HPLUL-5110(024)  
E.A. Number: 03-928895

This Program Supplement hereby incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on / / and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. , approved by the Administering Agency on (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by State of any funds derived from sources noted below obligated to this project, the Administering Agency accepts and will comply with the Special covenants or Remarks setforth on the following pages.

PROJECT LOCATION:

Railroad Avenue over Putah Creek, between Wolfskill and Putah Creek Road

TYPE OF WORK: Bridge Replacement

LENGTH: 0.1 (MILES)

Estimated Cost	Federal Funds		Matching Funds		
	HY10 LY10	\$273,751.00 \$37,719.00	LOCAL \$88,530.00	\$0.00	OTHER \$0.00
\$400,000.00					

CITY OF WINTERS

STATE OF CALIFORNIA  
Department of Transportation

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Chief, Office of Project Implementation  
Division of Local Assistance

Attest \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer Mary Bucklamer Date 10/20/2008 \$311,470.00

Chapter	Statutes	Item	Year	Program	EC	Category	Fund Source	AMOUNT
171	2007	2660-102-890	2007-2008	20.30.010.680	C	262042	892-F	311,470.00

03-YOL-0-WIN

10/17/2008

HPLUL-5110(024)

**SPECIAL COVENANTS OR REMARKS**

1. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.
2. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days after the project contract award. A copy of the award package shall also be included with the submittal of the ADMINISTERING AGENCY's first invoice for the construction contract to:

Department of Transportation  
Division of Accounting  
Local Programs Accounting Branch, MS #33  
P. O. Box 942874  
Sacramento, CA 94274-0001.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

3. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).
4. Any State and Federal funds that may have been encumbered for this project are only available for disbursement for a period of five (5) years and seven (7) years, respectively, from the start of the fiscal year(s) that those funds were appropriated within the State Budget Act. All project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested and is approved by the California Department of Finance per Government Code Section 16304. The exact date of each fund reversion will be reflected in the approved finance letter(s) issued for this project.

Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement that is not submitted to the Department on or before 60 days after that applicable fixed fund

03-YOL-0-WIN

10/17/2008

HPLUL-5110(024)

**SPECIAL COVENANTS OR REMARKS**

reversion date will not be paid from that fiscal year's encumbered funds because all of these unexpended funds will be irrevocably reverted by the Department's Division of Accounting on that date.

Pursuant to a directive from the State Controller's Office and the Department of Finance, the last date to submit invoices for reimbursed work in each fiscal year is May 15th in order for payment to be made out of those then current appropriations. Project work performed and invoiced after May 15th will be reimbursed only out of available funding that might be encumbered in the subsequent fiscal year, and then only when those funds are actually allocated and encumbered as authorized by the California Transportation Commission and the Department's Accounting Office.

5. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

6. The Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-assisted contract or in the administration of its DBE Program Implementation

03-YOL-0-WIN

10/17/2008

HPLUL-5110(024)

**SPECIAL COVENANTS OR REMARKS**

Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

**RESOLUTION NO. 2009 -05**

**A Resolution Authorizing the City Manager to Execute all Program Supplemental Agreements to "Administering Agency-State Agreement For Federal-Aid Projects No. 03-5110R"**

WHEREAS, the City of Winters is responsible for the maintenance and upgrade of the City's transportation system; and

WHEREAS, the City establishes various projects to maintain and upgrade the City's transportation system; and

WHEREAS, the City has received an allocation for Putah Creek Bridge Replacement and Approaches, Project No. HPLUL-5110(024); and

WHEREAS, Federal and State Share funds will be used for improvements associated with the various projects, including Project No. HPLUL-5110(024); and

WHEREAS, the City has entered into a Administering Agency-State Agreement for Federal-Aid Projects No. 03-5110R; and

WHEREAS, the State has prepared a Program Supplement No. N005 to the Administering Agency-State Agreement; and

WHEREAS, the State requires local agencies adopt a Resolution authorizing a responsible agency official to execute all Program Supplements.

NOW THEREFORE BE IT RESOLVED that the City Council authorizes the City Manager of Winters to execute all Program Supplement Agreements, including Program Supplement No. N005.

PASSED AND ADOPTED on January 20, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Michael Martin, MAYOR

ATTEST:

---

Nanci Mills, City Clerk



## STAFF REPORT

**TO:** Honorable Mayor and Councilmembers  
**THROUGH:** John W. Donlevy, City Manager  
**FROM:** Nicholas J. Ponticello, City Engineer *NJP*  
**DATE:** January 20, 2009  
**SUBJECT:** Authorization to solicit bid for construction of a new motor control center at the East Street Sewer Pump Station.

---

**RECOMMENDATION:** Staff recommends the City Council approve the PBS and authorize staff to solicit bids for construction of a new motor control centers at the East Street Pump Station.

**BACKGROUND:** On April 15, 2008, City Council authorized the City Manager to prepare designs and specification for replacement of the motor control centers (MCC) at the East Street Pump Station (ESPS) and the El Rio Villa Pump Station through ZSI, Inc. Design of the East Street Pump Station is complete and the engineering estimate for construction is \$126,000. The attached PBS shows the total project cost breakdown of \$156,000 which includes construction, construction management, and contingency.

The MCC at the ESPS was evaluated 2007 by Wyatt Murray Electric and West Yost & Associates. Both reports recommend replacement and/or significant modification to the control system because of its age and condition. A budget for replacement of the MCC was approved by council in 2007.

The design of a replacement MCC at the El Rio Villa Sewer Pump Station is complete. However, construction is not recommended at this time while staff is in contract negotiations with the owner of the system, Yolo Housing Authority.

Staff recommends that Council approve the attached PBS developed for this specific project and authorize bidding for construction of the Motor Control Center at the East Street Sewer Pump Station.

**ALTERNATIVES:** ZSI, Inc. is currently contracted with the City to install a Citywide SCADA System. ZSI has the experience and capability to perform this work. Council could amend ZSI's contract to perform the work as designed. However, due to the current competitive environment, the City may pay more by sole sourcing the project to ZSI.

**FISCAL IMPACT:** The project will be funded through the Sewer Bond.

Attachment: PBS – East Street Pump Station Motor Control Center.

City of Winters  
**East Street Pump Station Motor Control Center**  
**Project Budget Sheet**

CIP#: 09-01

MPFP#(s):

Last Updated:

Original Approval: January 2009

Project Owner: Public Works

Project Manager: Jim Fletter

Project Resource: Ponticello Enterprises

**Description:**

Installation and relocation of a new motor control center (MCC) at the East Street Sewer Pump Station. This MCC replaces the aging unit.

**Authority:**

The city is responsible for major repairs and maintenance of this sewer pump stations. SouthWest Water Company is contracted to operate the station.

<b>Budget:</b>							
	Item		Amount		Item		Amount
	Project Management		\$ 7,000		Other		
	Design				Construction		\$ 126,000
	CM, Testing, Insp.		\$ 10,000		Contingency		\$ 13,000
<b>Project Total:</b>							<b>\$ 156,000</b>

<b>Financing Schedule:</b>		Project Start: 2009		Project Completion: 2009	
Phases: Pre-Design, Design, Bid, and Construction					
<b>Fund Code:</b>	626				
<b>Name:</b>	Sewer				
<b>FY 06/07:</b>					\$ -
<b>FY 07/08:</b>	\$ -				\$ -
<b>FY 08/09:</b>	\$ 156,000				\$ 156,000
<b>FY 09/10:</b>					\$ -
<b>Fund Totals:</b>	\$ 156,000	\$ -	\$ -	\$ -	\$ -
<b>Ratios:</b>	100.0%	0.0%	0.0%	0.0%	0.0%

Recommended for Submittal

Jim Fletter, Project Engineer

Jan-09

Recommended for Approval (Dept. Head)

Nicholas Ponticello, City Engineer

(date)

Finance Department Approval

Shelly Gunby, Director of Finance

(date)

City Manager Approval

John Donlevy, City Manager

(date)

**CITY OF**  
**WINTERS**  
**CALIFORNIA**  
**CITY COUNCIL**  
**STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Kate Kelly, Contract Planner  
**SUBJECT:** Public Hearing and Second Reading to Take Action on Proposed Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49).

---

**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 2008-13 – First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49)
4. Adopt Ordinance 2008-13 – First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49)

**BACKGROUND:** In April 2005, the City Council approved the Callahan Estates project and its accompanying Development Agreement (DA) which would result in 120 single family residential lots and associated infrastructure.

Since that time 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 Callahan Estates. 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 Callahan Estates 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 Winters Highlands 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 Callahan Estates DA:

1. Extending term of DA to 12/31/2016 with possible extension to 2018.

2. Updating the subject property's Assessor Parcel Numbers
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Correcting error in reference to Rights Retained by the City.
5. Shifting filing of final map from October 30, 2005 to the discretion of the developer. All development is to occur under the provisions of a DA.
6. Affirmation that issuance of building permits shall be governed by the DA.
7. Tying the construction of the required number of affordable dwelling units to one affordable unit per the construction of every five market rate units.
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 December 31, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
10. Shifting conveyance of land for Public Safety Center from filing of final map to within 30 days of effective date of the First Amendment of the DA.
11. Shifting payment of park fees from filing of final map to a pro-rata basis at building permit and the valuation date for the park land appraisal from recording of DA to recording date of the First Amendment DA.
12. Shifting payment of the additional 50% of park fees from within 30 months of recording of the first final map to payment within 30 months for Phases 1 and 2 respectively.
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 120 residential units or payment with each building permit at the then current fees.
14. Shifting payment to library fund from final map to issuance of the first building permit.
15. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50<sup>th</sup> market rate building permit.
16. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer to the City of the 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.

**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 Callahan Estates 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.

The proposed Amendments also set the stage for the construction of affordable housing construction.

**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:** A Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-08) was adopted on April 5, 2005 for the Callahan Estates Development Agreement. 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 Callahan Estates DA were heard and considered by the Planning Commission on December 23, 2008. The Planning Commission recommended Councils approval of the proposed amendments.

**RECOMMENDATION:**

**Adopt Ordinance 2008-13 – First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49)**

**ATTACHMENTS:**

1. Location Map for Project
2. Proposed Amendment to the Callahan Subdivision Development Agreement.
3. Proposed Draft Ordinance 2008-13 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC [Callahan Estates] (APN 030-220-49).
4. Callahan Estates Development Agreement – recorded June 3, 2005



**FIRST AMENDMENT  
TO  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF WINTERS  
AND  
WINTERS INVESTORS, LLC  
[CALLAHAN ESTATES]**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (hereinafter referred to as the "**First Amendment**") is entered into as of February \_\_\_\_\_, 2009 ("**Effective Date**"), by and between the CITY OF WINTERS, a municipal corporation, (the "**City**"), and WINTERS INVESTORS, LLC, a California limited liability company (the "**Developer**").

**Recitals**

- A. The City and the Developer have heretofore entered into a Development Agreement, executed as of June 3, 2005 (the "**Development Agreement**"), providing for the residential development of certain real property commonly referred to as the Callahan Property (the "**Project**") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this First 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 First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in 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 First Amendment. On \_\_\_\_\_, 2009, the City of Winters City Council adopted its Ordinance No. \_\_\_\_\_ approving this First Amendment and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on \_\_\_\_\_, 2009.

**Agreement**

**Section 1. Amendment to Sections 1.4 and 2.2 "Property"**

Sections 1.4 and 2.2 of the Development Agreement are amended by replacing the old Yolo County Assessor's Parcel Number 030-220-22 with the new Yolo County Assessor's Parcel Number 030-220-49 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. Except as otherwise provided in Section 2.3c. below, 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 2.3, paragraph c., of the Development Agreement is added and shall read as follows:

- c. On or before December 31, 2014, City agrees to extend the term of this Agreement from December 31, 2016 to December 31, 2018, if building permits have been issued for at least fifty-one (51) single-family market rate residential units and Developer is in substantial conformity with the terms and conditions of this 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 3.4, Rights Retained by the City.**

Section 3.4, paragraph a., shall be amended to reference section 3.3, instead of section 3.2 in the first line.

**Section 5. Amendment to Section 3.6, Commencement of Development.**

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

The Developer shall have sole discretion to determine when the final map for the Callahan Estates Subdivision, or first phase thereof, and accompanying subdivision improvement plans, are submitted for City review and approval.

**Section 6. Amendment to Section 3.7, Maximum Number of Building Permits Per Year; Non-Market Rate Units.**

Section 3.7. of the Development Agreement 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 (12 month period) for the 102 market rate residential units (including the twelve (12) units to be offered for sale to local builders) in the Callahan Estates Subdivision. For purposes of this section, the first year commences upon the date that the first final map creating market rate lots is recorded.

1. Year 1: 51
2. Year 2: 51
3. Year 3: 25
4. Year 4: 25
5. Year 5: 25
6. Year 6: 27

The total of the above number of units is not reflective of the total number of residential units within the Callahan Estates 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. Eighteen (18) deed restricted affordable housing units shall be constructed in the Callahan Estates Subdivision pursuant to the City's land use regulations. The Developer may apply for and receive building permits for these units at any time during the term of the Agreement, provided however, that not less than one (1) affordable unit shall be built and completed for every five (5) market rate

units, until all eighteen (18) units have been constructed. 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, as allowed per section 3.7 and within the Callahan Estates 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 3.8, paragraph b., 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 12 units can be advanced to Year 2 or deferred to Year 4.

Section 7. Addition of Section 3.14, Deferral of Impact Fees.

Section 3.14 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, City hereby agrees to defer all development impact fees imposed by the City on building permits issued on or before December 31, 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. This provision is not intended to restrict, limit or waive any rights which Developer may acquire pursuant to subsequently enacted state legislation.

Section 8. Amendment to Section 4.2, Conveyance of 1.39 +/- Acres of Land.

Section 4.2 of the Development Agreement is replaced in its entirety and shall read as follows:

Within thirty (30) days of the Effective Date of this First Amendment, Developer shall grant to the City, free and clear of all encumbrances, a 1.39 +/- acre parcel of land. This parcel of land is a portion of a parcel of land consisting of 2.15 +/- acres. This 2.15 +/- acres parcel, when combined with other property, shall be used for a City Public Safety Facility by the City. A map showing the location of the parcel to be conveyed is attached as Exhibit F to the Agreement. If required by the City Engineer, the Developer shall have a metes and bounds legal description prepared and submitted to the City Engineer.

**Section 9. Amendment to Section 4.3, 2.7 Acre Park.**

Section 4.3, paragraph c.1, of the Development Agreement is amended to read as follows:

1. At the time of the issuance of a building permit for each unit within the Callahan Estates Subdivision, by paying a pro-rata share of the amount calculated by the City Engineer as set forth in Section 4.3.e., below.

Section 4.3, paragraph e.1, of the Development Agreement is amended to read as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to the Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City prior to the recordation of the final map for the Callahan Estates Subdivision, or first phase thereof. The appraisal shall determine the fair market value of 2.7 +/- acres of the Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this First Amendment to Development Agreement.

Section 4.3., paragraph c.2.b., of the Development Agreement is amended to read as follows:

- b) If at the end of thirty (30) months from the recording of the final map for Phase 1 of Callahan Estates, the full amount under this subsection 2. has not been fully paid for the market rate units in Phase 1, then the Developer shall pay the remaining amount owing for Phase 1 market rate units within ten (10) business days of being notified by the City to do so. If at the end of thirty (30) months from the recording of the final map for Phase 2 of Callahan Estates, the full amount under this subsection 2. has not been fully paid for all market rate units in Callahan Estates, then the Developer shall pay the remaining amount owing for all market rate units within ten (10) business days of being notified by the City to do so.

**Section 10. Amendment to Section 4.4, Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility.**

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 Callahan 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 120 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 noted in paragraph 4.4a for all 120 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 subject 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 11: Amendment to Section 4.6, Payment to Library Fund.**

Section 4.6 of the Development Agreement is amended by replacing the old phrase "Prior to recording of the final map" with the new phrase, "Concurrently with the issuance of the first market rate building permit."

**Section 12. Amendment to Section 4.8, Urban Water Management Plan.**

Section 4.8, paragraph a., of the Development Agreement is amended by replacing the old phrase "no later than the date upon which the final map for Callahan Estates (or the first phase, as the case may be) is recorded" with the new phrase, "no later than the issuance of the 50th market rate building permit."

**Section 13. Amendment to Section 4.9; Water Well.**

Section 4.9 of the Development Agreement is replaced in its entirety and shall read as follows:

a. A water well is required to be constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision and other developing properties.

b. Conditions of Approval Nos. 119 and 45- (Mitigation Measure 18), in part, requires Developer to advance the costs for the design and construction of a water well, subject to reimbursement in accordance with the provisions of section 3.10.

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. 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 Developer to City in accordance with Section 4.2, and (2) assignment by Developer to City of all design plans ( including a well site plan and facilities elevations) 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 Developer to City in accordance with Section 4.2, and (3) assignment by Developer to City of all design plans for the construction of the second phase of Well No. 7.

e. City acknowledges that Developer has advanced funding for partial construction of Well 7 in the amount of \$\_\_\_\_\_ [insert amount], which amount shall entitle Developer to receive fee credits, in accordance with section 3.10(f) of the agreement. 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 subsequent building permits 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 Credit and Reimbursement Agreement in accordance with the provisions of section 3.10(f) of the Agreement, and shall include the same annual inflationary adjustment used to calculate the City's impact fees on any outstanding amount still owed to Developer.

g. The Developer understands and acknowledges that Building Permits shall not be issued for any residential unit within the Callahan Estates 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 Callahan Estates Subdivision .

**Section 14. Force and Effect**

The effective date of this First Amendment shall be the date that the ordinance approving this First Amendment becomes effective. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and in full force and effect.

**FINAL 12/04/08**

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

<b>CITY:</b>	<b>DEVELOPER:</b>
CITY OF WINTERS  _____ Mayor	WINTERS INVESTORS, LLC a California limited liability company  By: _____ Its: _____
APPROVED AS TO FORM:  _____ JOHN C. WALLACE CITY ATTORNEY	
ATTEST:  _____ NANCI MILLS CITY CLERK	

1176228.1

**CITY OF WINTERS**

**ORDINANCE NO. 2008-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF WINTERS ADOPTING A FIRST AMENDMENT TO THE DEVELOPMENT  
AGREEMENT FOR THE CALLAHAN ESTATES**

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 \_\_\_\_\_, 2006, the City of Winters and Winters Investors, 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 Callahan Property (the "Project") located at Yolo County Assessor's Parcel No. 030-220-22 within the boundaries of the City of Winters (the "Property").
- C. 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.
- D. 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 an amendment to the Development Agreement ("First 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.
- E. The City of Winters Planning Commission conducted a noticed public hearing on the First Amendment on \_\_\_\_\_, and has recommended the approval of the First Amendment.
- F. The City Council of the City of Winters has given the required notice of its intention to adopt the First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867.

- G. In accordance with Section 65867.5 of the Government Code, the City Council finds that the provisions of the First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- H. The First 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, "First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC" relating to the development of the Property commonly know as the "Callahan Estates," 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 Winters Investors, 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

  
**CITY OF**  
**WINTERS**  
**CALIFORNIA**  
**CITY COUNCIL**  
**STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager.   
**FROM:** Kate Kelly, Contract Planner  
**SUBJECT:** Public Hearing and Second Reading to Take Action on Proposed Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33).

---

**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 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33)
4. Adopt Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33)

**BACKGROUND:** In January 2006, the City Council approved the Hudson-Ogando Subdivision project and its accompanying Development Agreement (DA) which would result in 72 single family residential lots and associated infrastructure.

Since that time 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 Hudson-Ogando Subdivision. 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 Hudson-Ogando Subdivision 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 Callahan Estates and Winters Highlands 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 Hudson-Ogando Subdivision DA:

1. Extending term of DA to 12/31/2016 with possible extension to 2018.
2. Updating the subject property's Assessor Parcel Numbers
3. Correcting error in reference to City of Winters Municipal Code for DAs.
4. Correcting error in reference to Rights Retained by the City.
5. Shifting filing of final map from December 10, 2006 to the discretion of the developer. All development is to occur under the provisions of a DA.
6. Changing building permit allocation from 30 units in year two to 31 units.
7. Affirmation that issuance of building permits shall be governed by the DA.
8. Tying the construction of the required number of affordable dwelling units to one affordable unit per the construction of every six market rate units.
9. Provision for advancement or deferment of up to 50% of building allocation per year to adjust to changing economic conditions.
10. Deferred payment of impact fees for building permits issued on or before December 31, 2010 to payment of 50% at issuance of building permit and 50% at issuance of certificate of occupancy.
11. Shifting conveyance of land for Public Safety Center from filing of final map to within 30 days of effective date of the First Amendment of the DA.
12. Shifting payment of park fees from filing of final map to a pro-rata basis at building permit and the valuation date for the park land appraisal from recording of DA to recording date of the First Amendment DA.
13. Shifting payment of the additional 50% of park fees from within 30 months of recording of the first final map to December 31, 2014.
14. 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 72 residential units or payment with each building permit at the then current fees.
15. Shifting payment to library and pool funds from final map to issuance of the first building permit.
16. Shifting payment for Urban Water Management Plan from recordation of final map to issuance of the 50<sup>th</sup> market rate building permit.
17. Provision for reimbursement of costs advanced for the construction of Well No. 7, transfer to the City of the 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.

18. Provision for the City's construction and reimbursement of the required masonry wall and landscaping.

**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 Hudson-Ogando 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:** A Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-56) was adopted on November 15, 2005 for the Hudson Ogando Development Agreement. 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 Hudson-Ogando Subdivision DA were heard and considered by the Planning Commission on

December 23, 2008. The Planning Commission recommended Councils approval of the proposed amendments.

**RECOMMENDATION:**

**Adopt Ordinance 2008-14 - First Amendment to an Agreement By and Between the City of Winters and Winters Investors Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APNs 003-430-13 and 003-430-33)**

**ATTACHMENTS:**

1. Location Map for Project
2. Proposed Amendment to the Hudson-Ogando Subdivision Development Agreement
3. Proposed Draft Ordinance 2008-14 - First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC Relating to the Development of the Property Commonly Known as the Hudson-Ogando Property (APN 030-220-49).
4. Hudson-Ogando Subdivision Development Agreement – recorded July 14, 2006



**FIRST AMENDMENT  
TO  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF WINTERS  
AND  
WINTERS INVESTORS, LLC  
[HUDSON-OGANDO SUBDIVISION]**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (hereinafter referred to as the "**First Amendment**") is entered into as of February \_\_\_\_\_, 2009 ("**Effective Date**"), by and between the CITY OF WINTERS, a municipal corporation, (the "**City**"), and WINTERS INVESTORS, LLC, a California limited liability company (the "**Developer**").

**Recitals**

- A. The City and the Developer have heretofore entered into a Development Agreement, executed as of July 14, 2006, (the "**Development Agreement**"), providing for the residential development of certain real property commonly referred to as the Hudson-Ogando property (the "**Project**") located within the boundaries of the City of Winters. Capitalized terms used but not defined in this First 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 First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in 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 First Amendment. On \_\_\_\_\_, 2009, the City of Winters City Council adopted its Ordinance No. \_\_\_\_\_ approving this First Amendment and authorizing its execution, and that Ordinance ("**Enacting Ordinance**") became effective on \_\_\_\_\_, 2009.

## Agreement

### Section 1. Amendment to Sections 1.4, and 2.2 "Property"

Sections 1.4 and 2.2 of the Development Agreement are amended by replacing the old Yolo County Assessor's Parcel Numbers 030-430-13 and 030-43-29 with the new Yolo County Assessor's Parcel Numbers 030-430-13 and 030-430-33 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. Except as otherwise provided in Section 2.3c. below, 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 2.3, paragraph c., of the Development Agreement is added and shall read as follows:

- c. On or before December 31, 2014, City agrees to extend the term of this Agreement from December 31, 2016 to December 31, 2018, if building permits have been issued for at least thirty-one (31) single-family market rate residential units and Developer is in substantial conformity with the terms and conditions of this 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 3.4, Rights Retained by the City.

Section 3.4, paragraph a., shall be amended to reference section 3.3, instead of 3.2 in the first line.

### Section 5. 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:

The Developer shall have sole discretion to determine when the final map for the Hudson-Ogando Subdivision, or first phase thereof, and accompanying subdivision improvement plans, are submitted for City review and approval.

Section 6. Amendment to Section 3.7, Maximum Number of Building Permits Per Year; Non-Market Rate Units.

Section 3.7 of the Development Agreement 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 (12 month period) for the 61 market rate residential units (including the seven (7) units to be offered for sale to local builders) in the Hudson-Ogando Subdivision. For purposes of this section, the first year commences upon the date that the first final map creating market rate lots is recorded.

1. Year 1: 31
2. Year 2: 31
3. Year 3: 15
4. Year 4: 15
5. Year 5: 15
6. Year 6: 15

The total of the above number of units is not reflective of the total number of residential units within the Hudson-Ogando 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 a subsequent Development Agreement is negotiated between the City and Developer. This provision shall survive the termination of this Agreement.

c. Eleven (11) deed restricted affordable housing units shall be constructed in the Hudson-Ogando Subdivision pursuant to the City's land use regulations. The Developer may apply for and receive building permits for these units at any time during the term of the Agreement, provided however, that not less than one (1) affordable unit shall be built and completed for every six (6) market rate units, until all eleven (11) units have been constructed. 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, as allowed per Section 3.7 and within the Hudson-Ogando 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 3.8, paragraph b., 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 7 units can be advance to Year 2 or deferred to Year 4.

Section 7. 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 herein, City hereby agrees to defer all development impact fees imposed by the City on building permits issued by the City on or before December 31, 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. This provision is not intended to restrict, limit or waive any rights which Developer may acquire pursuant to subsequently enacted state legislation.

Section 8. Amendment to Section 4.2, Conveyance of .75 +/- Acres of Land.

Section 4.2 of the Development Agreement is replaced in its entirety and shall read as follows:

Within thirty (30) days of the Effective Date of this First Amendment, Developer shall grant to the City, free and clear of all encumbrances, a 0.75 +/- acre parcel of land. This parcel, when combined with other property, shall be used for a City Public Safety Facility by the City. A map showing the location of the parcel to be conveyed is attached as Exhibit F to the Agreement. If required by the City Engineer, the Developer shall have a metes and bounds legal description prepared and submitted to the City Engineer.

Section 9. Amendment to Section 4.3, 1.64 +/- Acre Park.

Section 4.3., paragraph c.1., of the Development Agreement is amended to read as follows:

1. At the time of the issuance of a building permit for each unit within the Hudson-Ogando Subdivision, by paying a pro-rata share of the amount calculated by the City Engineer as set forth in Section 4.3, paragraph e., below.

Section 4.3, paragraph e.1, of the Development Agreement is amended to read as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and

members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to the Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City prior to the recordation of the final map for the Hudson-Ogando Subdivision, or first phase thereof. The appraisal shall determine the fair market value of 1.64 +/- acres of the Property with the development entitlements specified in the Agreement. The date of value shall be the date of the recording of this First Amendment to Development Agreement.

Section 4.3., paragraph c.2.b., of the Development Agreement is amended to read as follows:

b) If by December 31, 2014, the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining amount owing within ten (10) business days of the being notified by the City to do so. (Example: If by December 31, 2014, the Developer has obtained fifty (50) building permits for market rate units and has paid fees under this subsection 2., then the Developer, upon notice from the City, shall pay the fees owed under this subsection 2. for the remaining eleven (11) market rate units.)

Section 10. Amendment to Section 4.4, Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility.

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 Hudson-Ogando 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 72 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 noted in paragraph 4.4a for all 72 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 subject 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 11. Amendment to Section 4.6, Payment to Library Fund and Community Pool Fund.

Section 4.6, paragraph a., of the Development Agreement is amended by replacing the old phrase "Prior to recording of the final map" with the new phrase, "Concurrently with the issuance of the first market rate building permit."

Section 4.6, paragraph b., of the Development Agreement is amended by replacing the old phrase "Prior to recording of the final map" with the new phrase, "Concurrently with the issuance of the first market rate building permit."

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

Section 4.9, paragraph a., of the Development Agreement is amended by replacing the old phrase, "no later than the date upon which the final map for the Hudson-Ogando Subdivision is recorded" with the new phrase, "no later than the issuance of the 50th market rate 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 to be constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision and other developing properties.
- b. Conditions of Approval No. 119 and 40 - (Mitigation Measure 18), in part, requires Developer to advance the costs for the design and construction of a water well, subject to reimbursement in accordance with the provisions of section 3.11.
- 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. 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 Developer to City in accordance with Section 4.2, and (2) assignment by 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 Developer to City in accordance with Section 4.2, and (3) assignment by Developer to City of all design plans (including a well site plan with facility elevations) for the construction of the second phase of Well No. 7.
- e. City acknowledges that Developer has advanced funding for partial construction of Well 7 in the amount of \$ \_\_\_\_\_ [insert amount], which amount shall entitle

Developer to receive fee credits, in accordance with section 3.11(f) of the Agreement. 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 subsequent building permits 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 Credit and Reimbursement Agreement in accordance with the provisions of section 3.11(f) of the Agreement, and shall include the same annual inflationary adjustment used to calculate the City's impact fees on any outstanding amount still owed to Developer.

g. The Developer understands and acknowledges that Building Permits shall not be issued for any residential unit within the Hudson-Ogando 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 Hudson-Ogando Subdivision .

Section 14. Amendment to Section 4.15; Masonary Wall and Landscaping.

Section 4.15 of the Development Agreement is replaced in its entirety and shall read as follows:

If prior to the issuance of the first building permit for the Hudson-Ogando Subdivision, the City has constructed the six-foot masonry wall and installed landscaping along all or any portion of the north and east sides of the mobile home park, then Developer shall reimburse the City for the cost of such improvements concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47. If the City has not fully constructed the masonry wall and installed landscaping prior to the issuance of the first building permit for the Hudson-Ogando Subdivision, then Developer shall pay City the estimated cost for such construction of the masonry wall and installation of landscaping concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47.

Section 15. Force and Effect

The effective date of this First Amendment shall be the date that the ordinance approving this First Amendment becomes effective. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and in full force and effect.

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

<b>CITY:</b>	<b>DEVELOPER:</b>
--------------	-------------------

<p>CITY OF WINTERS</p> <hr/> <p>Mayor</p>	<p>WINTERS INVESTORS, LLC a California limited liability company</p> <p>By: _____ Its: _____</p>
<p>APPROVED AS TO FORM:</p> <hr/> <p>JOHN C. WALLACE CITY ATTORNEY</p>	
<p>ATTEST:</p> <hr/> <p>NANCI MILLS CITY CLERK</p>	

1176227.1

**CITY OF WINTERS**

**ORDINANCE NO. 2008-14**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF WINTERS ADOPTING A FIRST AMENDMENT TO THE DEVELOPMENT  
AGREEMENT FOR THE HUDSON-OGANDO 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 December 19, 2005, the City of Winters and Winters Investors, 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 Hudson-Ogando property (the "Project") located at Yolo County Assessor's Parcels No. 030-430-29 and No. 030-430-13 within the boundaries of the City of Winters (the "Property").
- C. 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.
- D. 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 an amendment to the Development Agreement ("First 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.
- E. The City of Winters Planning Commission conducted a noticed public hearing on the First Amendment on \_\_\_\_\_, and has recommended the approval of the First Amendment.
- F. The City Council of the City of Winters has given the required notice of its intention to adopt the First Amendment and has conducted public hearings thereon pursuant to Government Code Section 65867.

- G. In accordance with Section 65867.5 of the Government Code, the City Council finds that the provisions of the First Amendment and its purposes are consistent with the goals, policies, standards and land use designations specified in the City's General Plan.
- H. The First 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, "First Amendment to Development Agreement By and Between the City of Winters and Winters Investors, LLC" relating to the development of the Property commonly know as the "Hudson-Ogando 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 Winters Investors, 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

1168348.2



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Kate Kelly, Contract Planner  
**SUBJECT:** Public Hearing to Take Action on Proposed Ordinance 2009-01 – Authorizing the Execution of a Credit and Reimbursement Agreement for Water Well No. 7 Improvements with Winters Investors, LLC.

---

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

1. Receive the staff report
2. Conduct Public Hearing
3. Adopt Resolution 2009-01 to Authorize Execution of a Credit and Reimbursement Agreement for Water Well No. 7 Improvements with Winters Investors, LLC.

**BACKGROUND:** The construction of Well No. 7 is required in order to provide water service to Callahan Estates, Hudson-Ogando Subdivision, Winters Highlands and other development properties. The Development Agreements (DAs) for Callahan Estates and the Hudson-Ogando Subdivision require Winters Investors to design, develop, construct and/or fund a new water well, adjacent improvements, pump station, and requisite water conveyance system. The DAs for Callahan, Hudson-Ogando, Winters Highlands and other projects provide for the credit and/or reimbursed for some of the costs of constructing the Well.

In anticipation of developing the Callahan Estates and Hudson-Ogando Subdivision, Winters Investors began work on the Well in 2006. The Well design was "oversized" so that it would meet the needs of multiple projects. Since commencing work on Well No. 7 in early 2006, Winters Investors have spent \$615,313.03 on the design and construction of the Well including drilling, casing and testing of the Well.

**DISCUSSION:**

The proposed Credit and Reimbursement Agreement is a companion item to the DA Amendments for the Hudson-Ogando and Callahan Estates projects. The agreement provides for:

- Conveyance of the Well No. 7 to the City
- Documentation of funds expended on Well No. 7 by Winters Investors
- Assignment of Well design documents from Winters Investors to the City for the

completion of the Well. Completion of the Well includes construction of the pump station, and site improvements.

- Reimbursement and/or Credit against fees for Winters Investors' allowable expenditures toward the construction of Well No. 7

The total amount of credit and/or reimbursement for Winters Investors work on Well No. 7 is \$615,313.03 plus an annual consumer price index (CPI) adjustment. This amount represents the actual amount for design and construction which Winters Investors has spent toward the construction of Well No. 7 as shown on Exhibit A of the proposed Credit and Reimbursement Agreement. This amount has been verified and agreed upon by the City's Engineer and Financial Director.

The proposed Credit and Reimbursement Agreement provides for credit to be applied on a unit-by-unit basis for the full amount of the applicable fee at the time building permits are issued. Reimbursement would be made from the Water System Impact Fee Fund and is contingent upon availability of funds as determined by the City Council. Winters Investors will have no claim to any other source of City revenue, including but not limited to, general fund moneys.

Authorization of the proposed Credit and Reimbursement Agreement will enable the Amendments to the Hudson-Ogando and Callahan DAs to be executed. These DA 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 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.

#### **RECOMMENDATION:**

**Approve Resolution 2009-01 Authorizing Execution of a Credit and Reimbursement Agreement for Water Well No, 7 Improvements with Winters Investors, LLC.**

#### **ATTACHMENTS:**

1. Proposed Credit and Reimbursement Agreement for Water Well No. 7 Improvements with Winters Investors, LLC
2. Proposed Draft Resolution 2009-01 Authorizing the Execution of a Credit and Reimbursement Agreement for Water Well No. 7 Improvements with Winters Investors, LLC.

**CITY OF WINTERS  
CREDIT AND REIMBURSEMENT AGREEMENT  
[Water Well No. 7 Improvements]**

---

This Credit and Reimbursement Agreement ("**Agreement**") is entered into as of this \_\_\_\_ day of January, 2009, by and between the CITY OF WINTERS, a California municipal corporation ("**City**"), and WINTERS INVESTORS, LLC, a California limited liability company ("**Developer**"). City and Developer are sometimes referred to herein as a "**Party**" and collectively as "**Parties**."

**RECITALS:**

**WHEREAS**, Developer is currently developing properties within the City, known as the Callahan Estates Subdivision and the Hudson-Ogando Subdivision (collectively, "**Projects**"); and

**WHEREAS**, City and Developer have entered into a statutory Development Agreement (the "**Callahan Development Agreement**"), providing for the residential development of the Callahan Estates Subdivision recorded on June 3, 2005; and

**WHEREAS**, City and Developer have entered into a statutory Development Agreement (the "**Hudson-Ogando Development Agreement**"), providing for the residential development of the Hudson-Ogando Subdivision recorded on July 14, 2006; and

**WHEREAS**, the Callahan Development Agreement and the Hudson-Ogando Development Agreement both require the Developer to design, develop, construct and/or fund a new water well, adjacent improvements, pump station, and requisite water conveyance system (the "**Facilities**"), and all of the Facilities may exceed in size and/or capacity that which is needed to serve the Projects; and

**WHEREAS**, both Development Agreements provide that the Developer may be credited and/or reimbursed for some of the costs of constructing the Facilities; and

**WHEREAS**, Developer has constructed all or part of the Facilities, as described in Exhibit A, hereinafter referred to as the "**Constructed Facilities**"; and

**WHEREAS**, the City and Developer desire to enter into an agreement to provide for the credit and/or reimbursement by the City to Developer of certain costs of the Constructed Facilities.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

**ARTICLE I - REIMBURSEMENT**

**1.1 CONSTRUCTION.** Developer has designed and constructed the Constructed Facilities described in Exhibit A and Developer represents that it has completed the construction of the Constructed Facilities in accordance with plans approved by City Engineer and in accordance with City's Standard Construction Specifications, City's Improvement Standards and this Agreement. City has not accepted the Constructed Facilities as of the date of execution of this Agreement, but will accept the Constructed Facilities upon conveyance of the underlying real property and satisfactory testing of the Constructed Facilities. City shall make a good faith effort to complete the testing of the Constructed Facilities within six (6) months of the execution of this Agreement, and assuming satisfactory testing, shall accept the Constructed Facilities no later than December 31, 2010.

**1.2 PAYMENT.** Upon acceptance of the Constructed Facilities, Developer shall be entitled to receive credit against fees and/or reimbursement for the Constructed Facilities, subject to the provisions set forth in this Agreement, in the following manner: the Developer shall be entitled to a credit against water impact fees and/or reimbursement from the water impact fee fund for construction of the Constructed Facilities. The Developer shall first receive credits against water impact fees for all development within the Projects before being eligible to receive a reimbursement. The total amount of credit or reimbursement for the construction of all Constructed Facilities identified in Exhibit A shall be Six Hundred and Fifteen Thousand Three Hundred and Thirteen Dollars and 03/100 (\$615,313.03), plus an annual consumer price index ("CPI") adjustment. The CPI adjustment shall be made on January 15<sup>th</sup> of each year, commencing in 2010, and shall be based upon the percentage equal to the rise in the Engineers News Record Construction Cost Index for the preceding twelve (12) months, which is the same index utilized by the City for adjusting the water impact fee. This amount represents the actual cost for design and construction as the result of a competitive bidding process for the Constructed Facilities, including but not limited to, those documents prepared by the engineering firm of Luhdorff & Scalmanini, under Luhdorff Job No. 05-03-093, and as further described in Exhibit B. The credit or reimbursement of any amount in excess of the amount specified above is not authorized under this Agreement; however, this Agreement shall not preclude or prohibit City from entering into a subsequent agreement or amending this Agreement to provide credit or reimbursement to Developer for any future work on Water Well No. 7, or other work which is eligible for credit or reimbursement pursuant to the applicable impact fee nexus report.

**1.3 CREDIT.** Credit shall be applied on a unit-by-unit basis for the full amount of the applicable fee at the time of issuance of building permits. The credit for each unit shall be based upon the current amount of the fee at the time of issuance of the building permit for the unit. City shall only apply credits for units constructed within the Projects.

**1.4 REIMBURSEMENT.** Reimbursement for Constructed Facilities shall be made exclusively from the Water System Impact Fee Fund ("**Fund**"). City's obligation to Developer, and the timing of any reimbursement, is expressly conditioned and contingent upon the availability of moneys within said Fund taking into account pending and future obligations or expenses of such Fund, as determined by the City Council, in its sole and absolute discretion. Developer shall have no claim

against any other source of City revenue, including but not limited to, general fund moneys.

## **ARTICLE II - CONVEYANCE**

**2.1 CONVEYANCE OF FACILITY.** Developer agrees to take any and all actions necessary to convey and vest full, complete and clear title in the Constructed Facilities to City.

**2.2 COST DOCUMENTATION.** Developer has submitted documentation to City evidencing the cost of the Constructed Facilities or portion thereof constructed. Developer shall keep full and accurate books of account and records of such costs in accordance with generally accepted accounting practices consistently applied for a period of two (2) years from the effective date of this Agreement. City and its representatives shall have the right to audit during regular business hours, upon City's reasonable prior notice, Developer's records of the construction costs of such Constructed Facilities.

**2.3 LIENS.** Developer shall provide a guarantee and assurance to City that there are no liens on the Constructed Facilities prior to the payment of any reimbursements or application of any credits by City, together with releases from all contractors and/or material suppliers for the Constructed Facilities. Notwithstanding any other provision or term of this Agreement, City shall have no obligation to apply any credits or make any reimbursement payments until Developer has cleared any and all liens and encumbrances from a Facility, and provided the required guarantee and assurance in writing, to the satisfaction of City.

**2.4 ASSIGNMENT OF DOCUMENTS.** Developer hereby assigns, transfers and sets over to City all rights of ownership, title and interest held by Developer of any and all design documents, and plans and specifications, for the Constructed Facilities, including but not limited to, those documents prepared by the engineering firm of Luhdorff & Scalmanini, under Luhdorff Job No. 05-3-093, and as further described in Exhibit B.

## **ARTICLE III - LIABILITY**

**3.1 INDEMNIFICATION.** Developer, by execution of this Agreement, specifically agrees to assume the defense of, indemnify and hold harmless City, its officers, employees, and agents from and against all actions, damages, claims, losses or expenses, including payment of attorneys' fees, relating to the construction of those Constructed Facilities completed by Developer, or arising out of or in any way related to the performance of the terms of this Agreement.

**3.2 PREVAILING WAGES.** City affirmatively identifies the Constructed Facilities identified in Exhibit A as "public works" as that term is defined by California Labor Code section 1720, and the construction of the Constructed Facilities was, therefore, subject to prevailing wages under Labor Code section 1771. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and

DRAFT 12/22/08

to the extent required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulation of the Department of Industrial Relations in connection with construction of the Constructed Facilities.

**3.3 THIRD PARTIES.** City does not assume any liability, duty or obligation to Developer's contractors, subcontractors or agents by execution or performance of this Agreement and no contractors, subcontractors or agents or any parties are third party beneficiaries of this Agreement.

**3.4 WARRANTY.** Developer hereby warrants the Constructed Facilities as to materials and workmanship and should any failure of the Constructed Facilities or any parts thereof occur on or before December 31, 2010 or within a period of one (1) year after the Constructed Facilities are placed into operation by City, whichever occurs sooner. Developer shall promptly cause the needed repairs to be made without any expense or cost to City. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the aforesaid repairs within twenty (20) days after it is given written notice of such failure. In case of emergency where in the opinion of the City Engineer delay would cause serious hazard to the public, the necessary repairs may be made by City without prior notice to Developer. In all cases of failure of the Constructed Facilities within the warranty period where City has taken action in accordance with this paragraph, Developer shall reimburse City for any and all costs or expenses, direct and indirect, incurred by City.

**ARTICLE IV - MISCELLANEOUS**

**4.1 NOTICE.** Any notice or other communication to be given to any party pursuant to this Agreement shall be given by delivering same in writing to the Parties at the addresses set forth below:

Developer: Winters Investors, LLC  
1380 Galaxy Way  
Concord, CA 94520  
Attn: David Lennon

City: City Manager  
City of Winters  
318 First Street  
Winters, CA 95694

Such notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the Parties at the addresses above. Nothing shall preclude the giving of personal notice.

**4.2 TERM.** The term of this Agreement shall start on the day and year duly executed by all Parties and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied. Notwithstanding any provisions to the contrary, this Agreement shall expire no later than fifteen (15) years from the date executed by both Parties.

DRAFT 12/22/08

**4.3 MODIFICATION.** Modifications or amendments to this Agreement shall be in writing and executed by all Parties.

**4.4 ASSIGNMENT.** (A) This Agreement and all of the terms and conditions contained herein shall inure to the benefit of and bind the successors and assigns of City and Developer. Nothing contained herein restricts or prohibits the sale or other transfer of property.

(B) Developer may assign credits only to builders of lots located within the Project, subject to providing prior written notice to City. Said notice shall indicate the assignee, the amount of credits assigned, the lot(s) purchased by the assignee, and the address and telephone number of the assignee. Such assignees may only utilize said credits in fulfilling the fee obligation for the fee identified above.

**4.5 ENTIRE AGREEMENT.** This Agreement along with Exhibit A and Exhibit B constitute the entire Agreement of the Parties relating to the subject matter herein and no other representations or promises have been made by the Parties relating to the matters contained in this Agreement.

**SIGNATURE PAGE FOLLOWS**

DRAFT 12/22/08

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first above written.

CITY OF WINTERS, a political subdivision of the State of California ("City")

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

By: \_\_\_\_\_  
Mayor

WINTERS INVESTORS, LLC.,  
a California limited liability company ("Developer")

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

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

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

ATTEST:

\_\_\_\_\_  
City Clerk

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

DRAFT 12/22/08

**CONSENT TO ASSIGNMENT**

The undersigned, \_\_\_\_\_, as authorized agent for Luhdorff & Scalmanini, hereby consents to the assignment of the rights only under the Contract for Professional Consulting Services (Contract No. 1736-01-00), dated December 7, 2005, to the City of Winters. Winters Investors, LLC retains any and all obligations to Luhdorff & Scalmanini, under the identified contract.

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

**LUHDORFF & SCALMANINI**

By: \_\_\_\_\_

Its: \_\_\_\_\_

DRAFT 12/22/08

**EXHIBIT "A"**

**List of Facilities Eligible for  
Credit and/or Reimbursement  
[Constructed Facilities]**

Exhibit A

**EXHIBIT "B"**

**WINTERS WEST MAIN STREET WATER WELL #7  
DOCUMENTS DESCRIPTION**

1. Specifications and Contract Documents for Construction and Testing of the Highlands Water Supply Well Winters, CA, prepared by Luhdorff & Scalmanini, Consulting Engineers, Woodland, CA, dated August 2006 (also referred to as Winters West Main Street Water Well #7)
2. Well Construction and Testing Summary of the City of Winters Highlands Production Well, prepared by Luhdorff & Scalmanini, Consulting Engineers, Woodland, CA, dated February 2007 (also referred to as Winters West Main Street Water Well #7)
3. Specifications and Contract Documents for 95% Construction and Testing of the Grant Ave. Well Pump Station, Winters, CA, prepared by Luhdorff & Scalmanini, Consulting Engineers, Woodland, CA, dated November 2006 (also referred to as Winters West Main Street Water Well #7)
4. 95% Submittal- Construction Plans for City of Winters Grant Ave. Well Pump Station, Winters, CA, prepared by Luhdorff & Scalmanini, Consulting Engineers, Woodland, CA, dated November 2006 (also referred to as Winters West Main Street Water Well #7)

1176266.5

1176266.1

Exhibit B

**RESOLUTION NO. 2009-01**

**RESOLUTION OF THE CITY OF WINTERS AUTHORIZING THE EXECUTION OF A CREDIT AND REIMBURSEMENT AGREEMENT FOR WATER WELL NO. 7 IMPROVEMENTS WITH WINTERS INVESTORS LLC**

**WHEREAS**, Winters Investors, LLC., is currently developing properties within the City, known as the Callahan Estates Subdivision and the Hudson-Ogando Subdivision (collectively, "Projects"); and

**WHEREAS**, City and Developer have entered into a statutory Development Agreement (the "Callahan Development Agreement"), providing for the residential development of the Callahan Estates Subdivision recorded on June 3, 2005; and

**WHEREAS**, City and Developer have entered into a statutory Development Agreement (the "Hudson-Ogando Development Agreement"), providing for the residential development of the Hudson-Ogando Subdivision recorded on July 14, 2006; and

**WHEREAS**, the Callahan Development Agreement and the Hudson-Ogando Development Agreement both require the Developer to design, develop, construct and/or fund a new water well, adjacent improvements, pump station, and requisite water conveyance system (the "Facilities"), and all of the Facilities may exceed in size and/or capacity that which is needed to serve the Projects; and

**WHEREAS**, both Development Agreements provide that the Developer may be credited and/or reimbursed for some of the costs of constructing the Facilities; and

**WHEREAS**, Developer has constructed all or part of the Facilities, as further described in the Credit and Reimbursement Agreement for Water Well No. 7 Improvements, which is attached hereto as Exhibit A and incorporated herein by reference; and

**WHEREAS**, the Credit and Reimbursement Agreement provides for the Developer to take any and all actions necessary to convey and vest full, complete and clear title in the Facilities constructed by Developer to City, and further to assign and transfer to City those design documents, and plans and specifications, for the Facilities constructed by Developer; and

**WHEREAS**, the City and Developer desire to enter into an agreement to provide for the credit and/or reimbursement by the City to Developer of certain costs of the Facilities in the total amount of Six Hundred and Fifteen Thousand Three Hundred and Thirteen Dollars and 03/100 (\$615,313.03).

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Winters as follows:

1. That the City Manager is authorized to execute the Credit and Reimbursement Agreement for Water Well No. 7 Improvements, substantially in the form attached hereto as Exhibit A and in a form as approved by the City Attorney.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Nanci G. Mills, City Clerk

\_\_\_\_\_  
John W. Donlevy, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
John Wallace, City Attorney

1184444.2

1184444.1

**EXHIBIT "A"**  
**FUNDING AUDIT**  
**HOFFMAN DEVELOPMENT COMPANY**  
**WINTERS WEST MAIN WATER WELL #7**

Blender Tab No.	Category	Check Date	Developer Check #	Vendor Invoice #	Vendor	Water Well #/ Item Description	Agreement- Amendment- Date	Complete	Scope Amount	Amount to Date	Revised Total Amount Funded to Date by Developer	Planning & Administrative	Design	Construction
	PLNG	1/29/2006	35271		Winters	Well Design Review & City Consulting		XX	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ -
	PLNG	2/27/2006	34550	21114	Lundorff	Well & Pump Station Design Planning		XX	\$ 7,325.00	\$ 7,325.00	\$ 7,325.00	\$ -	\$ -	\$ -
	PLNG	2/27/2006	34550	21201	Lundorff	Pump Station Concept Design		XX	\$ 4,709.20	\$ 4,709.20	\$ 4,709.20	\$ -	\$ -	\$ -
	DSGN	4/16/2006	34532	21286	Lundorff	Well Pans & Specs, Pump Station Concept Design		XX	\$ 4,834.00	\$ 4,834.00	\$ 4,834.00	\$ -	\$ -	\$ -
	PLNG	4/16/2006	34532	21379	Lundorff	Pump Station Concept Design		XX	\$ 8,151.00	\$ 8,151.00	\$ 8,151.00	\$ -	\$ -	\$ -
	PLNG	4/20/2006	34532	21286	Lundorff	Reproduction		XX	\$ 23.52	\$ 23.52	\$ 23.52	\$ -	\$ -	\$ -
	PLNG	4/20/2006	34532	21376	Lundorff	Reproduction		XX	\$ 16.20	\$ 16.20	\$ 16.20	\$ -	\$ -	\$ -
	DSGN	5/26/2006	35079	21483	Lundorff	Well & Pump Station Design		XX	\$ 25,089.74	\$ 25,089.74	\$ 25,089.74	\$ -	\$ -	\$ -
	DSGN	5/30/2006	35079	21483	Lundorff	Reproduction		XX	\$ 33.02	\$ 33.02	\$ 33.02	\$ -	\$ -	\$ -
	DSGN	6/12/2006	35149	21572	Lundorff	Well & Pump Station Design		XX	\$ 445.92	\$ 445.92	\$ 445.92	\$ -	\$ -	\$ -
	DSGN	6/12/2006	35149	21572	Lundorff	Reproduction		XX	\$ 10,510.20	\$ 10,510.20	\$ 10,510.20	\$ -	\$ -	\$ -
	DSGN	6/22/2006	35244	21667	Lundorff	Well Design		XX	\$ 70,245.00	\$ 70,245.00	\$ 70,245.00	\$ -	\$ -	\$ -
	DSGN	8/22/2006	35572	21770	Lundorff	Well & Pump Station Design		XX	\$ 7,733.50	\$ 7,733.50	\$ 7,733.50	\$ -	\$ -	\$ -
	DSGN	8/22/2006	35572	21770	Lundorff	Well & Pump Station Design		XX	\$ 2,487.84	\$ 2,487.84	\$ 2,487.84	\$ -	\$ -	\$ -
	DSGN	10/4/2006	36940	21859	Lundorff	Well & Pump Station Design		XX	\$ 4,886.97	\$ 4,886.97	\$ 4,886.97	\$ -	\$ -	\$ -
	DSGN	10/4/2006	36940	21940	Lundorff	Well & Pump Station Design		XX	\$ 4,799.40	\$ 4,799.40	\$ 4,799.40	\$ -	\$ -	\$ -
	CONST	1/21/2006	36195	22207	Lundorff	Well & Pump Station Design		XX	\$ 11,822.34	\$ 11,822.34	\$ 11,822.34	\$ -	\$ -	\$ -
	CONST	1/21/2006	36283	22115	Lundorff	Well Construction PM & Some Well Const Bid Prep		XX	\$ 11,790.69	\$ 11,790.69	\$ 11,790.69	\$ -	\$ -	\$ -
	DSGN	1/26/2007	36244	21667	Lundorff	Test Hole & Evaluation		XX	\$ 62,445.00	\$ 62,445.00	\$ 62,445.00	\$ -	\$ -	\$ -
	CONST	1/26/2007	36244	22203	Lundorff	Well Construction PM		XX	\$ 5,276.12	\$ 5,276.12	\$ 5,276.12	\$ -	\$ -	\$ -
	DSGN	1/31/2007	36244	21667	Lundorff	Reproduction		XX	\$ 238.92	\$ 238.92	\$ 238.92	\$ -	\$ -	\$ -
	CONST	1/31/2007	36285	22203	Lundorff	Well Construction PM		XX	\$ 14,066.51	\$ 14,066.51	\$ 14,066.51	\$ -	\$ -	\$ -
	CONST	1/31/2007	36553	22286	Lundorff	Well Construction PM & Some Pump Station Design		XX	\$ 8,026.94	\$ 8,026.94	\$ 8,026.94	\$ -	\$ -	\$ -
	DSGN	1/31/2007			Lundorff	Well Design & PM			\$ (70,245.00)	\$ (70,245.00)	\$ (70,245.00)	\$ -	\$ -	\$ -
	DSGN	1/31/2007			Lundorff	Well Design & PM			\$ 7,800.00	\$ 7,800.00	\$ 7,800.00	\$ -	\$ -	\$ -
	CONST	3/22/2007	34265		Zim	Well Drilling & Construction		XX	\$ 383,745.90	\$ 383,745.90	\$ 383,745.90	\$ -	\$ -	\$ -
	CONST	4/20/2007			Zim	Restoration of Well Drilling by Zim		XX	\$ 39,305.10	\$ 39,305.10	\$ 39,305.10	\$ -	\$ -	\$ -
						Costs paid by Developer			\$ 615,313.03	\$ 615,313.03	\$ 615,313.03	\$ -	\$ -	\$ -
						Unpaid Project Cost Incurred to date to be paid by City		XX	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
						Unpaid Project Cost Incurred to date to be paid Lundorff by City			\$ 23,715.27	\$ 23,715.27	\$ 23,715.27	\$ -	\$ -	\$ -
						Unpaid Project Cost Incurred to date to be paid Lundorff by City			\$ 639,028.30	\$ 639,028.30	\$ 639,028.30	\$ -	\$ -	\$ -
									\$ 142,876.85	\$ 142,876.85	\$ 142,876.85	\$ -	\$ -	\$ -
									\$ 432,211.26	\$ 432,211.26	\$ 432,211.26	\$ -	\$ -	\$ -

Category Format:  
 PLNG - Planning Related Cost  
 DSGN - Design Related Cost  
 CONST - Construction Related Cost



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Council Members  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager *John*  
**FROM:** Shelly Gunby, Director of Financial Management *Shelly*  
Elliot Landes, Intern  
Carol Scianna, Management Analyst  
**SUBJECT:** 2008 Water and Sewer Rate Increase

---

**RECOMMENDATION:**

Staff recommends the City Council:

1. Hold a Public Hearing on the proposed increase in water and sewer rates
2. Approve Resolution 2009-02 Amending Resolution 2005-48 and Amending Resolution 2005-49 Establishing fees, Rates and Charges for maintenance, replacement and Repair of the City's Water and Sewer Systems
3. Authorize staff to Amend City of Winters code section 13.04.320, Installation of Water Meters to provide for developing a program for the installation of water meters for all non-single family residential customers( Commercial, Industrial, Retail and Multi-family and Schools) by January 1, 2010.
4. Authorize staff to amend the City of Winters code section 13.04.320, Installation of Water Meters to provide for developing a program for the installation of water meters for all customers by January 1, 2011.

**BACKGROUND:**

On November 18, 2008 staff submitted the results of the latest water and sewer rate analysis to the Council and received authorization to proceed with the Proposition 218 noticing requirements to all property owners. Notices were mailed on November 1, 2008 and the Public Hearing schedule for January 20<sup>th</sup>, the first council meeting after the end of the 45 day noticing period. As of the January 7, 2009, two written protests have been received regarding the proposed increase in rates.

On November 18, 2008 staff also recommended that all non-single family residential units be required to install meters if not already installed, and begin billing on a metered basis. This would include all business and apartment buildings. Duplexes and Granny Flats (second units on same parcel as a house) would be treated as single family residential units, as is the practice per our research. Our records show that

approximately 60 businesses and schools currently are on a flat rate basis for water billing. Ordinance 93-04(Section 13.04.320 of the City of Winters Municipal Code) currently requires meters to be installed only when new buildings are constructed or property transfers ownership. The ordinance would need to be amended to require all non-single family residential units to install meters by January 1, 2010 and begin being billed on a consumption basis effective February 1, 2010.

Staff also advised the City Council that we would bring an example of the impact of billing single family residential units on a consumption basis so that the City Council could provide direction on implementing a city-wide metering program. Staff has conducted a meter reading program on 100 homes (see attached) that currently have meters installed and has applied the metered rates to the usage of the home over the past year. The billing for water was calculated using the proposed rate for residential property, and the sewer billing was calculated using the proposed rate for residential property and the winter average water usage. By using the winter average for sewer billing, customers are not billed for sewer services for water used to irrigate landscaping, since that water does not go to the sewer plant. The consumption based billing is compared to the flat rate proposed to be effective February 1, 2009. 58% of the homes surveyed would see a decrease in water and sewer bills over a 12 month period compared to a flat rate. 42% would see an increase in bills compared to a flat rate.

Staff is recommending a meter installation program and consumption based billing for the following reasons:

- 1) Equity: With metering, customers pay according to the amount of water they use. In our current flat rate system, those that conserve are asked to subsidize those that use more water and those that waste water.
- 2) Conservation: Metered systems reduce the amount of water customer's use and the energy required to provided the water, by providing financial incentive. Changing to metering typically reduces consumption immediately by at least 10 percent, and eventually in some cases by as much as 25 percent. Water flowing into the sewer system is also reduced, creating additional savings in energy costs and infrastructure costs. Annual energy cost savings could be as much as \$30,000 for the city, and future system expansion costs would be reduced.
- 3) System maintenance: Metering allows the water utility to find leaks in the system, by comparing the amount of water pumped with the amount customer's use. System leaks are typically 7 percent in a tight system and as much as 20 percent in systems needing repair. Winters cannot determine these problems without metering.
- 4) Drought planning: If a drought occurs, we will ask citizens to reduce water consumption. Without metering, we have no way to monitor citizen's efforts to reduce their water use, and citizens have no way to know how well they are doing.

**ALTERNATIVES:**

Council can choose to not act on recommendations 2-4

**FISCAL IMPACT:**

Adoption of Resolution 2009-2 will provide increased revenues for the water and sewer operations and maintenance funds.

Implementation of the meter installation program will require use of water bond proceeds.

## RESOLUTION 2009-02

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING RESOLUTION 2005-48 ESTABLISHING FEES, RATES AND CHARGES FOR MAINTENANCE, REPLACEMENT AND REPAIR OF THE CITY'S WATER SYSTEM AND AMENDING RESOLUTION 2005-49 ESTABLISHING FEES, RATES AND CHARGES FOR MAINTENANCE, REPLACEMENT AND REPAIR OF THE CITY'S SEWER SYSTEM**

**WHEREAS**, The Municipal code of the City of Winters, Section 13-04-040 authorizes the City Council to adopt by resolution a schedule of charges and fees for the support of the City's Water System ; and

**WHEREAS**, The Municipal code of the City of Winters, Section 13.08.110H2 authorizes the City Council to adopt by resolution a schedule of charges and fees for the support of the City's Sewer System;; and

**WHEREAS**, on December 13, 2005 the City Council adopted Resolution 2005-48 amending the fees, rates and charges contained within Resolution 93-33. Said resolution also resolved that the rates would annually be increased in accordance with the cited methodology; and

**WHEREAS**, on December 13, 2005 the City Council adopted Resolution 2005-49 amending the fees, rates and charges contained within Resolution 95-15. Said resolution also resolved that the rates would annually be increased in accordance with the cited methodology; and

**WHEREAS**, the Water Operation and Maintenance Fund is not receiving adequate revenues for reasonable operations; and

**WHEREAS**, the Sewer Operation and Maintenance Fund is not receiving adequate revenues for reasonable operations; and

**WHEREAS**, the City Council of the City of Winters after duly studying and determining reasonable cost of operations, maintenance and repair and replacement of the water system and having duly deliberated thereon;

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Winters does hereby amend Resolution 2005-48 with the Water Service Rates attached hereto as Exhibit A, and amends Resolution 2005-49 with the Sewer Service Rates attached hereto as Exhibit B, and incorporated herein as fully set forth.

**PASSED AND ADOPTED** by the City Council, City of Winters, this 20th day of January 2009 by the following roll call vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

---

Mike Martin, MAYOR

**ATTEST:**

---

Nanci G. Mills, CITY CLERK

2008 Water Consumption  
 Based on 100 homes in Winters, units: 100 cubic feet  
 Total consumption 27,339 HCF

Street	Street No.	Average Summer 33.23	Average Winter 12.34	Average Total 22.76	Jan.	Feb.	Mar.	Apr.	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan.	Feb.	Mar.	Apr.	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Flat for a year based on new rate	Increase (Decrease)	
Totals					1378	1465	1058	1339	3576	3283	4897	2807	4035	1490	859	1152																
Abbey St.	207	6	3	5	5	7	4	5	6	7	10	1	5	2	1	2	48.25	50.17	47.29	48.25	49.21	50.17	53.05	44.41	48.37	45.25	44.41	45.37	574.20	877.92	(303.72)	
Abbey St.	209	37	10	24	6	7	6	8	19	30	54	41	72	26	7	9	49.99	50.95	49.99	51.91	62.47	73.03	96.07	83.59	113.07	69.47	50.55	52.87	804.35	877.92	(73.55)	
Abbey St.	211	12	7	10	0	0	0	1	19	9	10	9	22	8	12	24	36.34	36.34	36.34	37.30	54.58	44.98	45.94	44.98	57.41	44.07	47.86	59.38	545.52	877.92	(332.40)	
Abbey St.	214	22	3	12	1	3	2	4	18	18	43	25	21	8	1	2	28.78	28.70	27.74	29.66	43.10	43.10	67.10	49.82	46.19	33.29	26.78	27.74	450.00	877.92	(427.92)	
Main St.	423	36	20	28	8	13	11	11	31	29	41	14	92	34	24	31	78.21	83.01	81.09	81.09	100.29	98.37	109.89	83.97	159.04	102.96	93.57	100.29	1,171.80	877.92	293.88	
Main St.	433	22	15	18	14	17	9	16	22	7	28	18	40	14	4	32	70.82	73.70	68.02	72.74	78.50	64.10	84.26	74.66	95.31	71.29	51.22	88.10	900.72	877.92	22.80	
Main St.	437	9	4	7	5	4	5	6	7	7	15	7	13	5	2	9	33.25	32.29	33.25	34.21	35.17	35.17	42.85	35.17	41.09	33.09	30.37	32.29	418.20	877.92	(459.72)	
Main St.	451	17	7	12	7	8	6	8	24	12	19	14	23	8	6	4	43.06	44.02	42.10	44.02	59.38	47.86	54.58	49.78	58.12	44.32	42.10	44.98	574.32	877.92	(303.60)	
Main St.	455	49	14	31	21	21	14	18	34	57	93	37	53	19	6	4	74.91	74.91	68.19	72.03	87.39	109.47	144.03	90.27	105.33	73.29	60.51	58.59	1,018.92	877.92	141.00	
Main St.	459	29	12	21	10	33	7	9	37	32	47	22	26	10	6	9	59.09	81.17	56.21	58.13	85.01	80.21	94.61	70.61	74.78	58.76	55.25	58.13	831.96	877.92	(45.96)	
Main St.	463	13	6	9	7	7	7	8	22	12	16	4	18	6	1	5	40.43	40.43	40.43	41.39	54.83	45.23	49.07	37.55	50.57	39.89	34.67	38.51	513.00	877.92	(364.92)	
Main St.	469	74	21	48	9	43	8	7	39	114	81	71	132	49	14	5	81.80	114.44	80.84	79.88	110.60	182.60	150.92	141.32	200.30	119.78	86.60	77.96	1,427.04	877.92	549.12	
Main St.	507	25	12	19	29	31	14	26	122	0	0	0	0	0	0	0	77.33	79.25	62.93	74.45	166.61	49.49	49.49	49.49	49.49	49.49	49.49	49.49	807.00	877.92	(70.92)	
Edwards St.	455	25	10	18	14	9	8	15	30	11	28	17	46	17	7	8	57.67	52.87	51.91	58.63	73.03	54.79	72.07	60.55	88.48	60.46	50.95	51.91	733.32	877.92	(144.60)	
Edwards St.	459	23	11	17	10	9	22	12	25	25	37	14	28	10	4	11	56.46	55.50	67.98	58.38	70.86	70.86	82.38	60.30	73.55	56.65	50.70	57.42	761.04	877.92	(116.88)	
Edwards St.	467	35	4	20	0	0	0	0	28	99	36	46	17	3	5		28.45	28.45	28.45	28.45	28.45	55.33	123.49	63.01	72.70	44.68	31.33	33.25	566.04	877.92	(311.88)	
Edwards St.	475	31	16	24	19	31	7	8	39	19	54	22	45	17	10	14	78.25	89.77	66.73	67.69	97.69	78.25	111.85	81.13	103.56	75.98	69.61	73.45	993.72	877.92	115.80	
Edwards St.	474	27	9	18	0	0	0	0	30	51	24	59	21	14	21		41.80	41.80	41.80	41.80	41.80	70.40	90.56	64.64	97.80	62.20	55.04	61.76	710.40	877.92	(167.52)	
Roosevelt	1101	25	12	18	15	12	10	15	33	19	33	18	30	11	10	11	63.89	61.01	59.09	63.89	81.17	67.73	81.17	66.77	78.29	60.05	59.09	60.05	802.20	877.92	(75.72)	
Roosevelt	1107	38	13	26	17	17	14	20	38	32	55	31	54	20	2	9	68.44	68.44	65.56	71.32	88.60	82.84	104.92	81.88	104.10	71.18	54.04	60.76	922.08	877.92	44.16	
Roosevelt	1013	34	7	21	9	7	7	12	44	29	85	22	31	11	3	7	44.88	43.06	43.06	47.86	78.58	64.88	98.74	57.46	65.84	47.16	39.22	43.06	673.20	877.92	(204.72)	
Roosevelt	1015	45	16	31	16	16	12	25	49	45	91	30	60	22	12	19	75.37	75.37	71.53	84.01	107.05	103.21	118.57	88.81	117.61	81.13	71.53	78.25	1,072.44	877.92	194.52	
Roosevelt	1017	24	9	17	7	18	7	16	29	19	30	16	37	13	2	7	48.32	58.88	48.32	56.96	69.44	59.84	70.40	56.96	76.72	54.48	43.52	48.32	692.16	877.92	(185.76)	
Roosevelt	1019	42	12	42	42	64	52	39	48	33	54	26	50	19	20	30	195.59	189.83	178.31	165.83	174.47	160.07	180.23	153.35	176.85	146.16	147.59	165.19	2,025.48	877.92	1,147.56	
Roosevelt	1023	31	12	21	16	13	12	18	34	36	45	25	28	10	8	11	64.85	61.97	61.01	66.77	82.13	84.05	92.69	73.49	76.18	59.28	57.17	60.05	839.64	877.92	(38.28)	
Roosevelt	1016	68	13	40	11	11	11	35	85	69	112	37	61	22	12	8	82.68	82.68	82.68	85.72	143.32	118.36	158.64	87.64	110.42	73.50	63.64	59.80	1,090.08	877.92	212.16	
Roosevelt	1018	45	10	28	7	12	5	11	46	59	78	30	48	18	5	14	50.95	55.75	49.03	54.79	88.39	100.87	119.11	73.03	90.59	61.23	49.03	57.67	850.44	877.92	(27.48)	
Roosevelt	1014	39	11	25	11	10	9	8	47	36	49	42	50	18	4	11	57.42	56.46	55.50	54.54	81.98	81.42	93.90	87.18	94.63	64.37	50.70	57.42	845.52	877.92	(32.40)	
Roosevelt	1012	46	13	30	12	13	6	11	36	47	85	39	59	21	14	13	63.64	64.60	57.88	62.68	86.68	87.24	134.68	89.56	103.32	72.72	65.56	64.60	968.16	877.92	90.24	
Snapdragon St	616	50	12	31	11	11	7	18	56	46	70	32	79	29	7	9	60.05	60.05	58.21	66.77	103.25	93.65	116.69	80.21	125.35	77.31	58.21	58.13	953.88	877.92	75.96	
Snapdragon St	612	47	19	33	19	16	14	14	42	52	80	20	74	27	21	17	86.14	83.26	81.34	81.34	108.22	117.82	144.70	87.10	138.85	93.91	88.06	84.22	1,194.96	877.92	317.04	
Snapdragon St	610	35	15	25	12	25	13	15	44	28	44	28	50	18	4	15	68.90	81.38	89.86	71.78	89.62	84.26	99.62	84.26	105.15	74.89	51.22	71.78	972.72	877.92	94.80	
Snapdragon St	608	36	19	28	26	23	17	18	37	35	80	30	17	17	11	22	92.86	89.98	84.22	85.18	103.42	101.50	144.70	96.70	84.22	84.22	78.46	89.02	1,134.48	877.92	256.56	
Snapdragon St	606	31	26	29	31	26	19	21	34	19	38	19	56	21	22	36	116.07	111.27	104.55	106.47	118.95	104.55	122.79	104.55	140.40	106.14	107.43	120.87	1,384.04	877.92	486.12	
Snapdragon St	604	22	7	15	7	9	7	14	25	20	31	16	26	10	3	9	43.06	44.98	43.06	43.78	60.34	55.54	66.10	51.70	61.63	45.61	39.22	44.98	606.00	877.92	(271.92)	
Snapdragon St	602	37	21	29	35	35	31	34	64	36	42	17	29	11	5	8	106.76	106.76	102.52	105.80	134.60	107.72	113.48	89.48	101.26	83.46	77.96	80.84	1,211.04	877.92	333.12	
Snapdragon St	600	49	25	37	69	24	12	18	87	40	61	25	63	23	9	14	149.92	106.72	95.20	100.96	157.20	122.08	142.24	107.68	144.09	105.83	92.32	97.12	1,431.36	877.92	553.44	
Snapdragon St	601	50	29	34	10	27	14	20	79	47	58	31	62	23	15	24	77.50	93.82	81.34	87.10	143.74	113.02										

**2008 Water Consumption**  
 Based on 100 homes in Winters, units: 100 cubic feet  
 Total consumption 27,339 HCF

Street	Street No.	Average Summer	Average Winter	Average Total	Jan.	Feb.	Mar.	Apr.	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>Totals</b>		<b>33.23</b>	<b>12.34</b>	<b>22.78</b>	<b>1378</b>	<b>1465</b>	<b>1058</b>	<b>1339</b>	<b>3576</b>	<b>3283</b>	<b>4897</b>	<b>2807</b>	<b>4035</b>	<b>1490</b>	<b>859</b>	<b>1152</b>
Hillview	1009	28	12	20	10	16	14	18	35	22	36	22	36	13	6	11
Hillview	1013	38	10	24	12	16	12	13	27	36	71	41	42	15	1	2
Hillview	319	30	5	18	3	3	2	9	27	26	48	28	42	16	6	3
Hillview	315	28	11	19	8	17	7	11	43	19	38	20	34	13	8	12
Hillview	313	29	10	20	12	21	8	9	40	24	44	29	26	10	4	7
Hillview	312	21	9	15	9	11	7	9	24	17	35	19	24	9	9	8
Hillview	311	94	33	63	17	17	18	15	32	106	163	94	154	57	62	25
Anderson	214	26	6	16	5	6	5	6	26	30	50	21	20	8	3	8
Anderson	206	21	10	16	14	10	0	3	9	28	39	18	31	11	10	15
Carrión Circle	801	24	9	17	9	10	11	15	19	24	42	18	24	9	9	8
Carrión Circle	802	26	5	15	2	4	2	8	42	22	34	22	26	9	6	4
Carrión Circle	804	15	3	9	3	4	2	3	11	13	27	19	16	6	11	-6
Carrión Circle	805	27	6	16	5	5	5	6	20	24	49	30	31	11	3	7
Carrión Circle	807	29	16	22	20	27	22	17	34	32	43	21	26	10	5	11
Carrión Circle	821	24	7	15	-4	11	7	9	25	23	38	26	23	8	11	8
Broadview	102	38	18	28	25	23	18	24	45	28	54	31	47	17	8	19
Broadview	104	43	13	28	15	13	10	8	41	42	67	38	60	22	8	10
Broadview	106	34	17	25	28	20	20	20	50	27	51	27	29	11	6	15
Broadview	110	23	10	17	11	10	10	9	35	19	28	20	29	10	10	8
Broadview	111	50	19	35	25	15	10	15	40	44	70	62	71	26	22	16
Broadview	107	26	12	19	11	10	11	30	20	20	37	17	32	12	11	16
Broadview	105	36	16	26	20	7	20	19	34	33	42	35	55	20	13	14
Broadview	103	51	9	30	9	8	7	12	54	46	97	59	41	15	5	10
Broadview	101	66	23	45	36	25	20	45	81	53	83	59	76	28	12	19
Creekside	209	21	6	14	6	11	4	7	25	20	40	17	18	6	6	5
Creekside	205	42	29	36	35	33	29	19	17	30	68	48	68	25	25	30
Creekside	401	25	11	18	10	8	15	18	21	34	37	12	26	10	9	16
Creekside	404	17	5	11	8	8	3	11	38	8	20	11	14	5	3	5
Creekside	408	30	21	26	30	35	40	5	44	37	45	24	23	9	6	9
Creekside	412	25	10	18	11	9	8	7	15	16	45	29	38	14	5	13
Manzanita	412	22	14	18	22	16	27	41	56	8	9	7	12	5	6	9
Manzanita	408	10	5	8	4	5	2	4	11	10	15	7	15	5	4	8
Manzanita	400	36	10	23	9	10	8	7	39	36	55	35	45	16	11	8
Russell St.	104	24	5	15	4	4	2	5	12	28	48	27	24	9	5	8
Russell St.	107	12	2	7	3	4	2	12	26	12	13	6	4	1	2	1
Russell St.	123	33	14	24	33	21	13	16	33	40	54	26	31	11	1	3
Russell St.	303	42	19	30	24	29	44	23	106	47	47	17	12	5	5	6
Russell St.	301	51	12	32	12	7	5	5	31	72	53	48	59	21	10	18
Russell St.	211	69	14	41	21	32	16	26	121	141	33	71	22	8	1	3

Jan.	Feb.	Mar.	Apr.	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Flat for a year based on new rate	Increase (Decrease)
58.09	64.85	62.93	66.77	83.09	70.61	84.05	70.61	83.91	62.11	55.25	60.05	823.32	877.92	(54.60)
55.75	59.59	55.75	56.71	70.15	78.79	112.39	83.59	84.27	58.91	45.19	46.15	807.24	877.92	(70.68)
33.96	33.96	33.00	39.72	57.00	56.04	77.16	57.96	71.82	46.02	36.84	33.96	577.44	877.92	(300.48)
54.54	63.18	53.58	57.42	88.14	65.10	83.34	66.05	79.87	58.97	54.54	58.38	783.12	877.92	(94.80)
55.75	64.39	51.91	52.87	82.63	67.27	86.47	72.07	69.52	53.50	48.07	50.95	755.40	877.92	(122.52)
50.24	52.16	48.32	50.24	64.64	57.92	75.20	59.84	64.78	50.10	50.24	49.28	672.96	877.92	(204.96)
121.04	121.04	122.00	119.12	135.44	206.48	261.20	194.96	252.93	159.07	184.24	126.72	1,866.24	877.92	1,108.32
38.51	39.47	38.51	39.47	58.67	62.51	81.71	53.87	53.38	40.92	36.59	41.39	585.00	877.92	(292.92)
57.67	53.83	44.23	47.11	52.87	71.11	81.67	61.51	73.73	55.05	53.83	58.63	711.24	877.92	(166.68)
50.24	51.20	52.16	56.00	59.34	64.64	81.92	58.88	64.78	50.10	50.24	49.28	688.28	877.92	(188.64)
33.00	34.92	33.00	38.76	71.40	52.20	63.72	52.20	55.67	40.09	36.84	34.92	546.72	877.92	(331.20)
28.70	29.66	27.74	28.70	36.38	38.30	51.74	44.05	41.27	31.49	38.38	20.06	414.48	877.92	(463.44)
38.51	38.51	38.51	39.47	52.91	56.75	80.75	62.51	63.21	44.53	35.59	40.43	592.68	877.92	(285.24)
79.21	85.93	81.13	76.33	92.65	90.73	101.29	80.17	85.30	69.28	64.81	70.57	977.40	877.92	(89.48)
32.50	46.90	43.06	44.98	60.34	58.42	72.82	61.30	58.12	44.32	46.90	44.02	613.68	877.92	(264.24)
89.27	87.35	82.55	88.31	108.47	92.15	117.11	95.03	110.23	81.75	72.96	83.31	1,108.68	877.92	230.76
66.52	64.60	61.72	59.80	91.48	92.44	116.44	88.60	109.72	73.24	59.80	61.72	946.08	877.92	68.16
89.52	81.84	81.84	81.84	110.64	88.56	111.60	88.56	90.74	72.94	68.40	77.04	1,043.52	877.92	165.60
54.79	53.83	53.83	52.87	77.83	62.47	71.11	63.43	71.53	54.27	53.83	51.91	721.80	877.92	(156.12)
91.90	82.30	77.50	82.30	106.30	110.14	135.10	127.42	136.04	92.88	89.02	83.26	1,214.16	877.92	336.24
60.05	59.09	60.05	78.29	68.69	68.69	85.01	65.21	80.40	60.82	60.05	64.85	811.80	877.92	(66.12)
79.21	66.73	79.21	78.25	92.65	91.69	100.33	93.61	112.69	79.33	72.49	73.45	1,019.64	877.92	141.72
50.24	49.28	48.32	53.12	93.44	85.75	134.72	88.24	89.94	56.02	46.40	51.20	847.68	877.92	(30.24)
112.02	102.42	97.62	121.62	156.18	129.30	158.10	135.06	151.47	105.21	89.94	96.96	1,455.60	877.92	577.68
39.47	44.27	37.55	40.48	57.71	52.91	72.11	50.03	50.57	39.89	39.47	38.51	562.92	877.92	(315.00)
127.80	125.86	122.04	112.44	110.52	123.00	159.48	140.28	159.53	118.15	118.20	123.00	1,540.32	877.92	662.40
56.46	54.54	61.26	64.14	67.02	79.50	82.36	58.38	72.15	56.13	55.50	62.22	769.68	877.92	(108.24)
38.76	38.76	33.96	41.64	67.56	38.76	50.28	41.64	44.43	35.97	33.96	35.88	501.60	877.92	(376.32)
101.96	106.76	111.56	77.96	115.40	108.68	116.36	96.20	85.64	81.40	78.92	81.80	1,172.64	877.92	294.72
54.79	52.87	51.91	50.95	58.63	59.59	88.39	72.07	80.76	57.62	49.99	55.71	734.28	877.92	(143.64)
75.87	72.03	60.67	64.11	108.51	62.43	63.39	61.47	66.69	59.13	60.51	63.39	868.20	877.92	(8.72)
34.92	35.88	33.00	34.92	41.64	40.68	45.48	37.80	45.13	36.23	34.92	38.76	459.36	877.92	(418.56)
52.87	53.83	51.91	50.95	81.67	78.79	97.03	77.83	87.08	59.94	54.79	51.91	798.60	877.92	(79.32)
34.92	34.92	33.00	35.88	42.60	57.96	77.16	57.00	54.26	39.58	36.84	38.76	542.88	877.92	(335.04)
26.07	27.03	25.11	34.71	48.15	34.71	35.67	28.95	26.70	24.48	25.11	24.15	350.84	877.92	(5

Exhibit A  
City of Winters  
Proposed Water Rates  
Effective February 1, 2009

Water Flat Rates	current	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Single family	33.76	33.97	35.33	36.74	37.84	38.60
Multi Family (per account)		4.46	4.64	4.82	4.97	5.07
( per unit)	30.80	17.41	18.11	18.83	19.40	19.79
Public Schools	582.68	513.72	534.26	555.64	572.30	583.75
Commercial I (until metered)	30.80	60.64	63.06	65.58	67.55	68.90
Commercial II/Industrial (until metered)	36.96	124.90	129.90	135.09	139.15	141.93

Water - Metered Rates	Fixed Monthly rate per month per account					
	current	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
3/4" Meter	30.80	17.63	18.33	19.07	19.64	20.03
1" Meter	30.80	26.45	27.51	28.61	29.47	30.06
1.5" Meter	30.80	48.32	50.25	52.26	53.83	54.9
2" Meter	30.80	94.71	98.5	102.44	105.51	107.63
3" Meter	30.80	158.16	164.48	171.06	176.19	179.72
4" Meter	30.80	267.87	278.58	289.72	298.42	304.38
6" Meter	30.80	553.27	575.4	598.42	616.37	628.7
Consumptive Rates All usage per hcf		0.96	0.99	1.03	1.06	1.09
>12 hcf < 120 hcf	0.6160					
>120 hcf < 250 hcf	0.4067					
>250 hcf	0.2085					

Exhibit B  
City of Winters  
Proposed Sewer Rates  
Effective February 1, 2009

<b>Flat Rates</b> (no volume charges)	<b>Current</b>	<b>Projected Fixed Monthly COS Rates (a)</b>				
	<b>Rates</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
Single Family - COS Flat Rates	\$34.77	\$39.19	\$43.11	\$47.42	\$52.64	\$54.21
Multi-Family (per Unit)	\$32.85	\$22.36	\$24.59	\$27.05	\$30.03	\$30.93
Public Schools (w/o Meters)	\$32.85	\$461.98	\$508.17	\$558.99	\$620.48	\$639.10
Yolo Co. Housing	\$3,512.40	\$3,558.03	\$3,913.83	\$4,305.22	\$4,778.79	\$4,922.15
Commercial I	\$28.42	\$23.73	\$26.10	\$28.71	\$31.87	\$32.82
Commercial II	\$32.85	\$96.60	\$106.26	\$116.88	\$129.74	\$133.63
<b>New Metered Rates</b> (with volume charges)						
Public Schools (w/ Meters)	\$32.85	\$211.31	\$232.44	\$255.69	\$283.81	\$292.33
Commercial I	\$28.42	\$10.85	\$11.94	\$13.13	\$14.58	\$15.01
Commercial II	\$32.85	\$44.18	\$48.60	\$53.46	\$59.34	\$61.12
		<b>Projected COS Volume Rates (a)</b>				
<b>Non-Residential</b> (Applies to All Metered Monthly Water Use) (b).						
Public Schools (w/ Meters)	\$2.86	\$0.99	\$1.09	\$1.20	\$1.33	\$1.37
Commercial I	\$2.86	\$1.28	\$1.40	\$1.54	\$1.71	\$1.76
Commercial II	\$2.86	\$1.39	\$1.53	\$1.69	\$1.87	\$1.93



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Council Members  
**DATE:** January 20, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager *[Signature]*  
**FROM:** Shelly Gunby, Director of Financial Management *[Signature]*  
**SUBJECT:** Resolution 2009-3, the 2008-2009 ERAF Shift.

---

**RECOMMENDATION:**

Staff recommends the City Council adopt Resolution 2009-3 allocating the required funds for the required ERAF shift to schools and community colleges and submit a copy of said resolution to the county auditor to satisfy the reporting requirements contained in AB1389.

**BACKGROUND:**

Included in the California State Budget for fiscal year 2008-2009 is the requirement that redevelopment agencies "shift" property tax revenues to K-12 schools and community colleges.

Each agency share of the shift was determined by the California Department of Finance, and the Winters Community Development Agency was notified on November 12, 2008 that our share of the shift is \$160,731.

The agency must notify the county auditor prior to March 1, 2009 how we intend to remit the funds; Resolution 2009-3 will satisfy that requirement. The payment to the county auditor is due on May 10, 2009. The agency has funds available to submit the payment on the required date. Failure to make the required ERAF payment in full will subject the agency to sanctions including:

1. Agency will be prohibited from adding new project areas, or expanding existing project areas.
2. Agency will be prohibited from issuing new bonds or other obligations.
3. Agency will be prohibited from encumbering any funds or expending any money derived from any source except:
  - a. Bonds issued before the imposition of sanctions
  - b. Loans or money advanced to the agency
  - c. Contractual obligations that if breached could subject the agency to damages or other liabilities or remedies.

- d. Obligation incurred for the payment of public improvements and the land for the public improvements pursuant to Section 33445 of the Health and Safety Code.
- e. Indebtedness incurred for assisting affordable housing pursuant to Section 33334.2 of the Health and Safety Code, and
- f. An amount to be expended on month operation and administration of the agency, not to exceed 75% pf the average month amount spent for these purposes in the fiscal year preceding the fiscal year in which the agency failed to make the ERAF payment.

**FISCAL IMPACT:**

Payment of the ERAF will provide reduced funding for other projects within the redevelopment project area.

**RESOLUTION 2009-3**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS ALLOCATING THE ERAF (EDUCATION REVNUUE AUGMENTION FUND) AMOUNT REQUIRED BY CHAPTER 751, STATUTES OF 2008**

**WHEREAS**, Chapter 751, Statures of 2008 requires redevelopment agencies to shift \$350 million in property tax revenues to K-12 schools and community colleges during the 2008-2009 fiscal year: and

**WHEREAS**, the State Director of Finance determined the ERAF amount for the City of Winters in the amount of \$160,731: and

**WHEREAS**, the City of Winters is required to report to the County Auditor how the agency intends to remit the required amount;

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Winters that \$160,731 shall be remitted by the Winters Community Development Agency on May 10, 2009 from the non- housing tax increment collected in the 2008-2009 fiscal year. Such payment shall be submitted in check form and delivered to the County Auditor.

**PASSED AND ADOPTED** by the City Council, City of Winters, the 20th day of January 2009 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

\_\_\_\_\_  
Mike Martin, Mayor

**ATTEST:**

\_\_\_\_\_  
Nanci G. Mills, CITY CLERK



**COMMUNITY DEVELOPMENT AGENCY  
STAFF REPORT**

**TO:** Honorable Chairman and Board of Directors  
**DATE:** April 15, 2008  
**FROM:** John W. Donlevy, Jr., Executive Director   
**SUBJECT:** Lease Agreement: 11 Main Street

---

**RECOMMENDATION:**

That the Community Development Agency Board of Directors:

1. Approve a lease agreement between the Winters Community Development Agency and the Winters Opera House Partners for the lease of 11 Main Street, Winters;
2. Authorize the Executive Director to execute the agreement.

**BACKGROUND:**

As the Board of Directors is aware, the Agency has been active in many aspects of the Downtown including infrastructure improvements, façade improvements, land purchases and the Agency's lease assistance program. In total, the Agency has affected more than half of the businesses in downtown.

In October, 2008, Regalare, a boutique store closed on Main Street closed and the space at 11 Main Street became available for lease. Agency Staff waited to determine the marketability of the location for new retail businesses which has not occurred.

At its January 6, 2009 Meeting, an executive session was held in which staff was given negotiation authority to develop a lease with the Winters Opera House Partners. Those negotiations have concluded and the lease is presented for consideration.

**DISCUSSION:**

The potential use of the location by the Agency falls into three (3) potential main uses:

- A sublease with a strong/destination level operator to establish a business and presence on Main Street.

- An established presence by the Community Development Agency on Main Street to market and advance the economic development goals of the City.
- A visitors center to market the "Winters Brand" and area to include recreation, agri-tourism, Lake Berryessa and general business enterprises.

Securing a lease on the property has become a priority before advancing the development of a specific program for the location.

The proposed lease is as follows:

- A two year lease for the 750 sf space at a cost of \$1.25 per square foot. Additionally, the Agency would be responsible for a portion of utilities.
- Agency will be responsible for tenant improvement to be determined.
- Agency will carry the ability to sub-lease the property should it be decided to actively market the site for a destination level business operator.

The lease is attached for review.

The total fiscal impact to the Agency for the lease is approximately \$5,000 for the balance of Fiscal Year 2008-09.

Staff will bring a package of options and recommendations for the use of the space to the February 17, 2009 meeting. At that time, a more comprehensive budget and costs will be outlined to establish the budget.

**ATTACHMENT:**

Lease Agreement

**FISCAL IMPACT:**

Minimum of \$5,000 in FY 2008-08. Total impact to be determined following the February 17, 2009 Meeting.

## LEASE

THIS LEASE, executed in duplicate at Winters, California on this DECEMBER 19, 2008, by and between Winters Opera House Partners, herein referred to as "LESSOR", and the Winters Community Development Agency, herein collectively referred to as "LESSEE".

WITNESSETH:

WHEREAS, LESSOR is desirous of leasing unto LESSEE and LESSEE is desirous of leasing from LESSOR approximately 750 square feet of inside commercial property, more or less, hereinafter "THE PREMISES", 11 Main Street, Winters, California, hereinafter "the property;" excluded is the interior hallway and entry way to the Opera House stairway. This common area will not be used for storage and will remain clean and clear.

There is no parking on the premises and business owners and employees are encouraged to park in the city parking lot and leave street parking for customers.

NOW THEREFORE, it is hereby mutually understood and agreed by and between the parties hereto as follows:

1. Leasing and Description of Premises: LESSOR hereby leases to LESSEE and LESSEE hereby hires from LESSOR THE PREMISES. THE PREMISES shall consist of walls, ceiling, and flooring. LESSEE shall be responsible for the installation of plumbing, plumbing fixtures, electricity, water lines, floor covers, utilities, dividing wall in old kitchen, and any utility services to be hooked up to outside city or private services. All installations and improvements of LESSEE shall be subject to the written approval of LESSOR, at LESSOR's sole discretion.
2. Term: The term of this lease shall be for 2 (TWO) YEARS, commencing on FEBRUARY 1, 2009, ending on JANUARY 31, 2011.
3. Rent: Upon the commencement of the term of this lease, Lessee shall pay rent to Lessor for the leased premises at the rate of \$937.50.00 per month, plus approximately \$35 in City of Winters water, sewer and municipal tax (20 percent of the city bill for the Opera House building), plus a \$700 deposit for a total of \$1,637.50. Such rent shall continue, payable monthly in advance, for the next ten (10) months of the term hereof. On the first anniversary date, February 1, 2010, and for the remaining duration of this lease, the monthly rental for the ensuing twelve (12) months shall be adjusted upward or downward (but never less than the base rent provided hereinabove; \$937.50) in the same percentage proportion that the Bureau of Labor Statistics, United States Department of Labor, Consumer Price Index, All Items for All Urban Consumers, shall be increased or decreased over the price index which is published nearest in point of time to the commencement of the term hereof. In the event said index is discontinued, revised or replaced during the term of this lease or any extension thereof, such other governmental index or computation with which it is revised or replaced, shall be deemed the basis of the re-computation.
4. Use: The premises shall be used for a retail business, tourism/chamber office, city offices or other purposes reasonably related to Main Street business, and for no other purposes. No use shall be made or

permitted to be made of said premises, nor acts done which will increase the existing rate of insurance upon the building in which the said premises may be located or cause a cancellation of any insurance policy covering said building, or any part thereof, nor shall LESSOR sell, or permit to be kept, used, or sold, in or about said premises, any articles which may be prohibited by a standard form of fire insurance policy. LESSEE shall make no repairs or alterations to the premises without the consent of the LESSOR in writing first. Said consent shall be given at LESSOR's sole discretion. All repairs, alterations or attachments of property to the premises shall, upon expiration or sooner termination of this lease, become the sole property of the LESSOR.

5. Security Deposit: LESSEE shall keep a deposit with LESSOR in the sum of SEVEN HUNDRED DOLLARS (\$700). Said sum shall be held by LESSOR as security for the faithful performance of the LESSEE of all the terms, conditions and covenants of this lease by said LESSEE to be kept and performed during the term hereof. If at any time during the term of this lease any of the rent herein reserved shall be overdue and unpaid, or any other sum payable by LESSEE to LESSOR hereunder shall be overdue and unpaid, then LESSOR may, at the option of LESSOR (but LESSOR shall not be required to) appropriate and apply any portion of said sum to the payment of any overdue rent or other sum. Should LESSEE comply with all of the said terms, covenants and conditions and promptly pay all of the rental herein provided for as it falls due, and all other sums payable by LESSEE to LESSOR hereunder, the said sum shall be returned in full to LESSEE at the end of the term of this lease, together with interest thereon at 1% per annum.

6. Signs: any sign and/or signs shall be permitted only with the written approval of LESSOR. If approval of sign design or placement is required by any public agency, the responsibility of obtaining such approval shall be that of LESSEE who shall, in any event, bear the expense of installation of such sign.

7. Removal of Trade Fixtures; Conditioned upon LESSEE being in full and complete performance of all the provisions of this lease, LESSEE may remove all moveable furniture, trade fixtures, and store equipment installed in the demised premises by LESSEE, prior to the termination of this lease, and provided further that the same may be removed without damage to the building, and if damage is caused by such removal, LESSEE agrees to repair such damage at LESSEE's own cost and expense forthwith, and LESSEE also agrees to repair any damage at LESSEE's expense that may be caused by removal of any sign or signs under this lease.

8. Liability Insurance: LESSEE agrees to take out and keep in full force during the life hereof, at LESSEE's expense, public liability insurance to protect against any liability to the public incident to the use of or resulting from any accident occurring in or about said premises, the liability under each such insurance to be no less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for any one person injured, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for any one accident, and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for property damage. These policies shall

insure the contingent liability of LESSOR and are to be placed with LESSOR, and LESSEE is to obtain a written obligation on the part of the insurance carriers to notify LESSOR in writing prior to any cancellation thereof, and LESSEE agrees, if LESSEE does not keep such insurance in full force and effect, the LESSOR may take out the necessary insurance and pay the premium, and the repayments thereof shall be deemed to be part of the rental and payable as such on the next day upon which rent becomes due.

9. Personal Property Taxes: LESSEE hereby agrees to pay before delinquent any and all personal property taxes arising by reason of LESSEE's use or occupancy of the subject premises or the existence of LESSEE's personal property on said premises.

10. Successor and Assigns: The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all the parties hereto shall be jointly and severally liable hereunder.

11. Holding Over: Any holding over after the expiration of the said term, with the consent of LESSOR, shall be construed to be a tenancy from month-to-month, at a rental each month equal to the last regular month's rent.

12. Waiver: The waiver by LESSOR of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition therein contained. The subsequent acceptance of rent hereunder by LESSOR shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, other than the failure of LESSEE to pay the particular rental so accepted, regardless of LESSOR's knowledge of such preceding breach at the time of acceptance of such rent.

13. Attorney's fees: In the event of any legal action concerning this lease, the losing party shall pay to the prevailing party reasonable attorney's fees and court costs to be fixed by the court wherein such judgment shall be entered.

14. Late Charge: In addition to all other rights and remedies regarding nonpayment of rent, LESSOR shall have the right to assess a late charge at the rate of one percent (1%) per day after the 1<sup>st</sup> of each month for which the rent remains unpaid. Such late charge is to cover additional administrative handling necessitated by late payment of rent and is not to be deemed interest or to include interest.

15. Subordination: this lease shall be subject to and subordinate at all times to the lien of any mortgage or mortgages or trust deed or deeds which may be placed upon the demised premises or the property of which the demised premises are a part, and the LESSEE covenants that it will execute and deliver to the LESSOR or to the nominee of the LESSOR proper subordination agreements to this effect at any time upon the request of the LESSOR and without payment being made therefore.

16. Property Taxes: LESSOR shall pay all real property taxes assessed against THE PREMISES.

17. Gas and Electric Utilities: LESSEE shall, in addition to all other sums agreed to be paid by LESSEE under this lease, pay for all gas and electric charges billed for use of the premises.

18. Payment of Utilities: Water, Garbage, and Sewer: LESSEE shall, in addition to all other sums agreed to be paid by LESSEE under this lease, pay his pro-rata share of all water, garbage and sewer charges which shall, during the term of this lease and any extension thereof, be assessed against the premises. If a total utility billing is assessed against more than one tenant, LESSEE shall pay only LESSEE's pro-rata share of said utility cost. This payment shall include any increases in costs which might be assessed by public or private agencies supplying said service. If, because of a change in the law or otherwise such charges be made directly of LESSOR then LESSEE agrees to pay such sum to LESSOR.

19. Repair and Maintenance: LESSEE shall, at LESSEE's sole cost and as part of the consideration of rental, undertake to maintain said premises and appurtenances and every part thereof in a good and sanitary order (excepting exterior walls, floor structure, windows and roof, which LESSOR agrees to repair), including but not limited to doors, plumbing facilities, and electrical facilities, of THE PREMISES.

20. Option to Renew Lease: In the event LESSEE has fully complied with all of the terms, covenants and conditions of this lease during the TWO-YEAR term. Renewal shall be on the same terms and conditions as provided for herein, except as to the rent. Said rent shall be re-negotiated. Notice of LESSEE's intention to renew this lease shall be given by LESSEE to LESSOR at least ninety (90) days prior to the expiration of this lease.

21. Notices: Notices between the parties shall be given in writing, and mailed, postage prepaid, addressed to LESSOR c/o Winters Opera House Partners, 312 Railroad Avenue, Winters, CA 95694. Either party may change its address for purpose of notice by giving said change of address to the other party by mail as above stated.

22. Insolvency-Receiver-Bankruptcy: Either  
(a) the appointment of a receiver to take possession of all or substantially all of the assets of LESSEE, or  
(b) a general assignment by LESSEE for the benefit of creditors, or  
(c) any action taken or suffered by LESSEE under any insolvency or bankruptcy act shall constitute a breach of this lease by LESSEE, and LESSOR may declare this lease void and be entitled to remedies provided by law and by this lease.

23- Assignment or Sub-letting: LESSEE shall have the right to market and solicit sub-lessees with the approval of the LESSOR. LESSOR shall have approval authority on a new sub-lessee, but such approval shall not be unreasonably withheld. ~~not assign this lease, or any interest therein, and shall not sub let the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agent and servants of LESSEE exempted) to occupy or use the said premises, or any portion thereof. Any such assignment or sub letting shall be void, and shall, at the option of LESSOR, terminate this lease. This lease shall not,~~

~~nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law.~~

24. Surrender of Lease not a Merger: The voluntary or other surrender of this lease by LESSEE, or mutual cancellation thereof, shall not work a merger.

25. Entry by LESSOR: LESSEE shall permit LESSOR and its agents to enter into and upon said premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopies, fences, and props as may be required, or for the purpose of posting notices of nonresponsibility for alterations, additions, or repairs, or for the purpose of placing upon the property in which the said premises are located any usual or ordinary "for Sale" signs, without any rebate of rent and without any liability to LESSEE for any loss of occupation or quiet enjoyment of the premises thereby occasioned; and shall permit LESSOR and its agents, at any time within ninety (90) days prior to the expiration of this lease, to place upon said premises any usual or ordinary "to let" or "to lease" signs and exhibit the premises to prospective tenants at reasonable hours.

26. Compliance with Governmental Regulations: LESSEE shall, at LESSEE's sole cost and expense, comply with all of the requirements of all Municipal, State and Federal Authorities now in force, or which may hereafter be in force, pertaining to the said premises, and shall faithfully observe in the use of the premises all Municipal ordinances and State and Federal statutes now in force or which may hereafter be in force. If there are permit requirements of the City of Winters LESSOR shall bear all costs of obtaining said permits, including processing fees, permit fees, parking in-lieu fees, and any other costs and expenses, excluding any building permit fees, incurred in obtaining said permits. LESSEE shall not be liable to LESSOR for any failure to obtain permits from the City of Winters.

27. Free from Liens: LESSEE shall keep the demised premises and the property in which the premises are situated, free from any liens arising out of any work performed, materials or obligations incurred by LESSEE.

28. Remedies of Owner on Default: In the event of any breach of this lease by LESSEE, then LESSOR besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of LESSEE. Should LESSOR elect to re-enter as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this lease or it may from time to time, without terminating this lease, re-let said premises or any part hereof for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as LESSOR in its sole discretion may deem advisable with the right to make alterations and repairs to said premises; upon each such re-

letting (a) LESSEE shall be immediately liable to pay to LESSOR, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such re-letting and of such alterations and repairs, incurred by LESSOR, and the amount, if any, by which the rent reserved in this lease for the period of such re-letting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the demised premises for such period on such re-letting; or (b) at the option of LESSOR rents received by LESSOR from such re-letting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from LESSEE to LESSOR; second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder and the residue, if any, shall be held by LESSOR and applied in payment of future rent as the same may become due and payable hereunder. If LESSEE has been credited with any rent to be received by such re-letting under option (a), and such rent shall not be promptly paid to LESSOR by the new tenant, or if such rentals received from such re-letting under option (b) during any month be less than that to be paid during that month by LESSEE hereunder, LESSEE shall pay any such deficiency to LESSOR. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by LESSOR shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to LESSEE or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, should LESSOR at any time thereafter elect to terminate this lease for any breach, in addition to any other remedy it may have, it may recover from LESSEE all damages it may incur by reason of such breach, including the cost of recovering the premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from LESSEE to LESSOR. LESSOR shall additionally have the right, pursuant to Civil Code Section 1951.2 upon breach and termination to recover from LESSEE the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the LESSEE proves could have been reasonably avoided.

29. Time: Time is of the essence of this lease.

30. Integration: This lease represents the entire agreement between the parties hereto and there are no collateral oral agreements or understandings.

31. Arbitration: In the event of any dispute between LESSOR and LESSEE relevant to the construction or interpretation of this lease, they shall each select an arbitrator, the two arbitrators so selected shall select a third arbitrator and the three arbitrators so selected shall hear and determine the controversy and their decisions thereon shall be final and binding upon both LESSOR and LESSEE, who shall bear the cost of such arbitration equally between them.

32. Lease Provisions: If any paragraph, term, or clause hereof is unenforceable the remaining provisions of this lease shall nevertheless remain full effective.

IN WITNESS WHERE, LESSOR and LESSEE have executed these presents, the day and year first above written.

\_\_\_\_\_  
LESSOR

\_\_\_\_\_  
LESSEE

\_\_\_\_\_  
LESSOR



**COMMUNITY DEVELOPMENT AGENCY STAFF REPORT**  
**January 20, 2009**

**TO:** City of Winters Community Development Agency

**THROUGH:** John W. Donlevy, Jr., City Manager/Executive Director *JWD*

**BY:** Asa Utterback, Project Manager, Ponticello Enterprises

**SUBJECT:** **Approval of Consultant Services Agreement by and Between the Community Development Agency and Rick Engineering Company for the Downtown Streetscape Improvements, Phase 2**

---

**RECOMMENDATION:** Staff recommends that the Community Development Agency Board of Directors: 1) Approve the negotiated Consultant Services Agreement by and Between the Community Development Agency and Rick Engineering Company for the Downtown Streetscape Improvements, Phase II Project No. 06-07 and 2) authorize the Executive Director to execute the contract with Rick Engineering.

**BACKGROUND:** On March 20, 2007, the Community Development Agency Board of Directors approved the Request for Proposals (RFP) to solicit professional design services for the Downtown Streetscape Improvements, Phase I Project in a Qualifications Based Selection (QBS) process. The QBS process was completed and the top – ranked consulting firm was Rick Engineering Company of Sacramento. On August 7, 2007, the Agency Board approved a Consultant Services Agreement with Rick Engineering Company for engineering services associated with the Downtown Streetscape Improvements, Phase I project. The project designer Rick Engineering satisfactorily completed construction documents for the Phase I in July of 2008. The Phase 1 construction began in August 2008 and is nearly complete.

The scope of the improvements for the Phase II elements in general will be creating bulb-outs at all four corners of First and Main Streets; mid-block on Main Street between First Street and Railroad. It will also include improvements at the mid-block alley on the west side of Railroad Avenue between Main and Abbey Streets. The bulb-outs will be of a similar layout and design as the Phase I improvements at the corner of Abbey Street and Railroad Avenue, including furnishings, surface treatments, and landscaping. The improvements will also include underground storm drain facilities in Main Street and other sidewalk and lighting upgrades along Main Street between First Street and Railroad Avenue. Phase 2 does not include the alley improvements on the alley between Main and Abbey Streets from First to Railroad. Only the improvements within the road right of way on Main Street, First Street and Railroad Avenue are in the project that was

approved for federal funding. The attached Phasing Plan has not been updated to reflect the federal funding application scope.

The subject Agreement provides a not to exceed amount of \$48,800 for design services to prepare construction documents associated with the above proposed Phase II improvements.

**FISCAL IMPACT:** The agreement provides a not-to-exceed amount of \$48,800 which is within the programmed budget amount (\$55,000) for the design.

**ATTACHMENTS:**

- Consultant Services Agreement
- Downtown Streetscape Phasing Plan dated Feb 21, 2008

**MAYOR:**  
Michael Martin  
**MAYOR PRO TEM:**  
Woody Fridae  
**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. 003-09**

THIS AGREEMENT is made at Winters, California, as of January \_\_\_\_\_, 2009, by and between the Community Development Agency ("AGENCY") and Rick Engineering Company ("CONSULTANT"), who agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, CONSULTANTS shall provide to the AGENCY the Services described in Exhibit "A" (4 pages), which is the CONSULTANT'S Revised Proposal dated December 22, 2008. Consultant shall provide said services at the time, place, and in the manner specified by Exhibit "A".

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 Exhibit "B" ( 1 page), but in no event shall total compensation exceed forty eight thousand eight hundred dollars (\$48,800), without the AGENCY'S prior written approval. AGENCY 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" (3 pages) 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. **EXHIBITS.** All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

COMMUNITY DEVELOPMENT AGENCY

By: \_\_\_\_\_  
John W. Donlevy, Jr., Executive Director

CONSULTANT

By: \_\_\_\_\_  
Martin S. Flores, Director Urban Design & Planning

ATTEST:

By: \_\_\_\_\_  
Nanci G. Mills, AGENCY CLERK



September 26, 2008  
 Revised December 22, 2008

Mr. Asa Utterback  
 City of Winters  
 318 1<sup>st</sup> Street – City Hall  
 Winters, California 95694-1923

SUBJECT: DOWNTOWN STREETScape IMPROVEMENTS – PHASE 2  
 (RICK ENGINEERING COMPANY JOB# 15627)

Dear Mr. Utterback:

Pursuant to your request, the following is Rick Engineering Company's revised proposal to provide civil engineering, landscape architecture and surveying services for the subject project. The project is the second phase of the City of Winters Downtown Streetscape Improvements. Our understanding of the project is based upon our meetings at your office on June 12, 2008, and at the project site on August 21, 2008.

This project will be the Streetscape Phase II elements as indicated on the exhibit titled "City of Winters Downtown Streetscape Phasing", prepared by Ponticello Enterprises and dated February 21, 2008.

The scope of improvements in general will be creating bulb-outs at: all four corners of First and Main Streets; mid-block on Main Street between First Street and Railroad Avenue; and the mid-block alley on the west side of Railroad Avenue between Main and Abbey Streets. The bulb-outs will be of a similar layout and design as the Phase I improvements at the corner of Abby Street and Railroad Avenue, including furnishings, surface treatments, and landscaping. The improvements will also include underground storm drain facilities in Main Street and new tree grates along Main Street between First Street and Railroad Avenue as well as new trees and tree wells and grates along the western sidewalk of Railroad Avenue. More specific scope of services is described below.

#### **SCOPE OF WORK**

We propose to furnish the following services for the compensation listed below:

##### **A. Topographic Survey and Base Map**

1. Provide surveying services to: Dip storm drain manholes in First Street to verify tie in elevations; provide supplemental pavement elevations as necessary at alley connection to Railroad Avenue and at the intersection of First and Main Streets. A sub-consultant to Rick Engineering Company may perform this work.
2. Field walk to confirm and identify existing above ground utility and other improvements within the project limits. Reconcile locations with exiting utility maps provided by the City of Winters.

B. Design Concept Plan

1. Prepare a Design Concept Layout (DCL) to include curbs, striping, storm drain, street lights, paving treatment, furnishings, trees and tree grates.
2. Prepare a Preliminary Opinion of Probable Construction Costs based on DCL.
3. Meet with City of Winters to review DCL and Cost Estimate.
4. Provide revisions to DCL and Cost Estimate.
5. Obtain approval of Design Concept Layout for commencement of final design.

C. Plans Specifications and Estimates (PS&E)

1. Prepare an Improvement Plan Set to include the following:
  - a. Title Sheet
  - b. General Notes
  - c. Signage and Striping Plan
  - d. Business Access and Project Signage
  - e. Survey Control Plan
  - f. Demolition Plan
  - g. Horizontal Control Plan
  - h. Paving Plan
  - i. Water Plan
  - j. Storm Drain Plan
  - k. Street Light Plan
  - l. Details and Sections
  - m. Landscape Construction Layout
  - n. Landscape Construction Schedule
  - o. Landscape Construction Details and Notes
  - p. Planting Plan
  - q. Planting Detail and Notes
  - r. Irrigation Plan
  - s. Irrigation Notes and Schedule
  - t. Irrigation Details
2. Prepare Technical Specifications (Specifications) to accompany the Improvement Plan Set.
3. Prepare Engineer's Opinion of Probable Construction Costs (Estimate).
4. Prepare PS & E Submittals to include the following:
  - a. 90% submittal – This submittal will include: Improvement Plans addressing City comments received on the Design Development submittal, with the majority of the design information complete; specification; updated Estimate. Meet with City of Winters to review submittal comments.
  - b. 100% submittal – This submittal will include: completed Improvement plans which have addressed the City comments received on the 90% submittal; completed Specifications; completed Estimate.

D. Post Design Service

1. Attend pre-bid meeting, on-site pre-construction meeting, and on-site meetings during construction. This item assumes 5 meetings total. Any additional meetings will require additional fee authorization.
2. Provide services to review and respond to Requests for Information (RFI) during bid and construction phase. This item is a budget estimate. Additional services authorization will require for services requested beyond this estimated fee.

E. Miscellaneous and Direct Expenses

This item includes but is not limited to direct expenses for: printing, plotting, reproduction, delivery, travel, and documents.

**FEE**

We will perform the above-described work on a time and materials basis for the total fee listed below. The City of Winters will be billed on a monthly basis for each item as the work progresses. For billing purposes, the fee shall be divided as follows:

Topographic Survey and Base Map	\$ 2,000.00
Design Concept Plan	\$ 4,000.00
PS&E's	\$36,800.00
Post Design Service	\$ 4,000.00
Miscellaneous and Direct Expenses	<u>\$ 2,000.00</u>
TOTAL	\$48,800.00

**EXCEPTIONS**

The following are excluded from the Scope of Services.

1. Analysis and Design of existing storm drain systems.
2. Dry Utility Design, except for street light conduits.
3. Dry Utility Coordination.
4. Construction Inspection.
5. Construction Staking.
6. As-built Plans.
7. Any other item not specifically mentioned in the Scope of Work.

Mr. Asa Utterback  
December 22, 2008  
Page 4 of 4

EXHIBIT 'A'

If you have any questions regarding this proposal, please contact me directly at (916) 638-8200.  
Thank you for requesting Rick Engineering Company to provide these services.

Sincerely,

RICK ENGINEERING COMPANY



Kelly L. Birkes, R.C.E. 44644  
Associate Principal  
Sacramento Branch Manager

K:\15627\Contracts\Asa\_City of Winters\_2008\_09\_26\_rev12\_22\_15627.doc

Enclosures



**Hourly Rates – California Offices**  
 August 30, 2008 – February 27, 2009

Principal Consultant (Special Projects).....	\$ 190.00	Associate Landscape Architect.....	\$140.00
Principal.....	175.00	Principal Project Landscape Architect/Manager.....	125.00
Associate Principal.....	160.00	Associate Project landscape Architect/Manager.....	115.00
Associate/Manager.....	150.00	Assistant Project Landscape Architect/Manager.....	105.00
Principal Project Engineer/Manager.....	130.00	Principal Landscape Designer.....	97.00
Associate Project Engineer/Manager.....	125.00	Associate Landscape Designer.....	92.00
Assistant Project Engineer/Manager.....	115.00	Assistant Landscape Designer.....	87.00
Principal Engineering Designer.....	107.00	Principal Landscape Drafter.....	76.00
Associate Engineering Designer.....	102.00	Associate Landscape Drafter.....	71.00
Assistant Engineering Designer.....	97.00	Assistant Landscape Drafter.....	65.00
Principal Engineering Drafter.....	89.00	Associate Environmental Project Manager.....	\$125.00
Associate Engineering Drafter.....	82.00	Assistant Environmental Project Manager.....	115.00
Assistant Engineering Drafter.....	74.00	Principal Environmental Specialist.....	107.00
Principal Construction Engineer/Manager.....	\$130.00	Associate Environmental Specialist.....	102.00
Associate Construction Engineer/Manager.....	125.00	Assistant Environmental Specialist.....	97.00
Assistant Construction Engineer/Manager.....	115.00	Environmental Technician.....	74.00
Principal Construction Technician.....	107.00	Expert Witness.....	\$300.00
Associate Construction Technician.....	102.00	Court Appearance per half day or part.....	1,200.00
Assistant Construction Technician.....	97.00	Photogrammetry Supervisor.....	\$135.00
Principal Transportation/Traffic Engineer.....	\$130.00	Principal Photogrammetrist.....	105.00
Associate Transportation/Traffic Engineer.....	125.00	Associate Photogrammetrist.....	95.00
Assistant Transportation/Traffic Engineer.....	115.00	Assistant Photogrammetrist.....	93.00
Principal Transportation/Traffic Designer.....	107.00	GIS Manager.....	\$150.00
Associate Transportation/Traffic Designer.....	102.00	Principal GIS Analyst.....	\$105.00
Assistant Transportation/Traffic Designer.....	97.00	Associate GIS Analyst.....	100.00
Director of Planning.....	\$160.00	Assistant GIS Analyst.....	93.00
Principal Project Planner.....	150.00	Principal Computer Graphics Editor.....	88.00
Senior Project Planner.....	125.00	Associate Computer Graphics Editor.....	83.00
Assistant Project Planner.....	115.00	Assistant Computer Graphics Editor.....	73.00
Senior Planner.....	107.00	Field Supervisor.....	\$130.00
Associate Planner.....	102.00	One-person Survey Party.....	105.00
Assistant Planner.....	97.00	Two-person Survey Party.....	170.00
Senior Planning Technician.....	89.00	Three-person Survey Party.....	235.00
Associate Planning Technician.....	82.00	Prevailing wage rates for Survey Parties slightly higher.	
Assistant Planning Technician.....	74.00	Computing & Mapping Director.....	\$130.00
Planning Assistant.....	60.00	Principal Survey Analyst.....	120.00
Principal Water Resources Designer.....	\$107.00	Associate Survey Analyst.....	105.00
Associate Water Resources Designer.....	102.00	Assistant Survey Analyst.....	90.00
Assistant Water Resources Designer.....	97.00	GPS Pre-planning/Post-processing.....	120.00
		GPS Survey Party.....	85.00/person/hour
		Associate Project Administrator.....	\$60.00
		Assistant Project Administrator.....	43.00
		Administrative Assistant.....	60.00

When authorized, overtime shall be charged at the listed rates times 1.3.  
 Unless otherwise agreed upon, we shall charge for printing, reproduction, deliveries, transportation, and other expenses.  
 A ten (10) percent fee for administration, coordination and handling will be added to all subcontracted services.

## 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 and warrants 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 and warrants 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 \$2,000,000 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 upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the City Manager prior to the effective date of such cancellation, or change in coverage.

CONSULTANT shall file with the City Manager concurrent with the execution of this Agreement, the City's standard endorsement form (attached hereto) providing for each of

the above requirements.

(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 for its convenience upon written notification to CONSULTANT. 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.

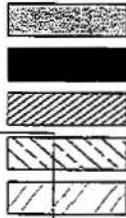
The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

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.

**LEGEND**



- STREETSCAPE PHASE 1**
- STREETSCAPE PHASE 2 (FULL IMPROVEMENT)**
- STREETSCAPE PHASE 2 (PARTIAL IMPROVEMENT)**
- PHASE 3 (NON-PARTICIPATING)**
- MONTICELLO REDEVELOPMENT**

FIRST ST.

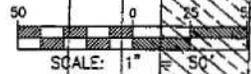
ABBHEY ST.

RAILROAD AVÉ.

MAIN ST.

E. AE

E. M



CITY OF WINTERS

DOWNTOWN STREETSCAPE PHASING

PONTICELLO ENTERPRISES  
CONSULTING ENGINEERS

DATE: FEB 21, 2008  
BY: A. Utterback

SHEET:  
1 of 1