



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, February 2, 2010  
6:30 p.m.  
**AGENDA**

*Members of the City Council*

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

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

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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 Winters City Council Held on January 19, 2010 (pp 1-9)

### PRESENTATIONS

### DISCUSSION ITEMS

1. Second Reading and Adoption of Ordinance 2010-01, an Ordinance of the City Council of the City of Winters adopting Title 19 of the Winters Municipal Code pertaining to Code Enforcement, Amending Section 1.12.010(B), Section 1.16.010, Section 8.16.030, Section 15.40.070, and Section 17.108.130 of the Municipal Code, and Repealing Section 8.16.040 of the Municipal Code to Conform to New Code Enforcement Provisions in Title 19 (pp 10-31)
2. Public Hearing and Adoption of Resolution 2010-08, A Resolution of the City Council of the City of Winters Accepting the Final Product Funded by CDBG Planning and Technical Assistance Grant # 07-PTAE-3321 (pp 32-35)
3. Public Hearing and Consideration of Resolution 2010-07, A Resolution of the City Council of the City of Winters Authorizing the City Manager to Execute a Public Improvement Agreement and an Interim Building Permit Issuance Agreement between the City of Winters and the Central Valley Coalition for Affordable Housing, a California Non-Profit Public Benefit Corporation, for the Orchard Village Project (pp 36-70)
4. Municipal Services Tax – Update (pp 71-72)
5. Increase in Municipal Services Tax – Ballot Measure (pp 73)

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### COMMUNITY DEVELOPMENT AGENCY

1. Public Hearing and Consideration of Resolution 2010-04, a Resolution of the Winters Community Development Agency

Authorizing the Executive Director to Execute an Amended and Restated Owner Participation Agreement with the Central Valley Coalition for Affordable Housing, a California Non-Profit Public Benefit Corporation for the development of the Orchard Village Affordable Housing Project. **(Continued to the February 16, 2010 City Council meeting)**

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CITY MANAGER REPORT

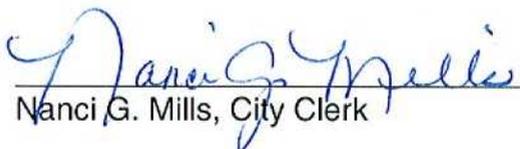
INFORMATION ONLY

EXECUTIVE SESSION

Conference with City Attorney regarding Louie vs. City of Winters Litigation (Government Code Section 54956.9(a))

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the February 2, 2010, 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 28, 2010, and made available to the public during normal business hours.

  
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Nanci G. Mills, City Clerk

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Wednesday at 10:00 a.m.

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Regular Meeting and Executive Session  
of the Winters City Council  
Held on January 19, 2010

Mayor Michael Martin called the meeting to order at 6:30 p.m.

Present: Council Members Cecilia Aguiar-Curry, Harold Anderson, Woody Fridae, Tom Stone and Mayor Martin

Absent: None

Staff: City Manager John Donlevy, City Attorney John Wallace, Chief of Police Bruce Muramoto, Director of Financial Management Shelly Gunby, Community Development Director Nellie Dyer, Housing Programs Manager Dan Maguire, Environmental Services Manager Carol Scianna, Management Analyst Dawn Van Dyke, After School Program Coordinator Nancy Gonnella, City Clerk Nanci Mills, and Administrative Assistant Tracy Jensen.

Winters resident Marie Rojo-Heilman led the Pledge of Allegiance.

**Approval of Agenda:** City Manager Donlevy indicated that the agenda has been amended to include Discussion Item #8, Lake Berryessa Concessionaire Contract Update. Motion by Council Member Stone and second by Council Member Fridae to approve the amended agenda. Motion carried unanimously.

**COUNCIL/STAFF COMMENTS:** Council Member Anderson recently attended a Winters Putah Creek Committee meeting. Council Member Stone said he is getting ready for the first Youth Day Preparation Meeting and said the last Saturday in April is right around the corner. He also said tickets are still available for the Citizen of the Year dinner, which will be held on Saturday, January 23. Tickets will not be available at the door. Council Member Aguiar-Curry said there will be a JAWS Economic Development and Sustainable Communities meeting regarding rural development to be held in Davis on Thursday, January 28. On Monday, January 25, Woodland is sponsoring the third Yolo Leadership Summit, which will include Yolo Safe Communities, where speakers will include the Woodland City Manager, Yolo County Chief Probation Officer, and the Associate Superintendent of Yolo County School. Numerous State initiatives will be discussed. The Sacramento Valley Division Membership meeting, which was held in Live Oak last week, was very well attended. Laura Hollender of Meyers-Nave gave a good presentation on behalf of the City of Winters regarding medicinal marijuana and ethics. On January 21, the League of California Cities will hold their Mayors Meeting. Council Members may receive their leadership pins at this meeting. There will also be a Policy Committee meeting which will be attended by City Manager Donlevy, Council Members Anderson and Aguiar-Curry. Also, there is an initiative circulating, entitled "California to

Protect Local Taxpayers and Vital Services", which would save local monies and prevent the State from taking them. They are available tonight if you care to sign.

**PUBLIC COMMENTS:** None

**CONSENT CALENDAR**

- A. Minutes of the Regular Meeting of the Winters City Council held on January 5, 2010
- B. Approve Purchase of GPS (Global Positioning System) Unit and Software to be Used in the Field to Collect GIS Data for Public Works. The Juno SB System Quote is \$3,916.49, to be Funded through Water and Sewer O & M
- C. Acceptance of Final Product for the Yolo County 10 Year Plan on Homelessness and Adoption of Resolution 2010-06, Approving the Ten Year Plan on Homelessness, One at a Time: Ending and Preventing Homelessness for Yolo County Residents and Committing to Support Implementation of the Plan
- D. Project Acceptance: I505/Gateway Utilities Phase 1, Project No. 021-09-01
- E. Resolution 2010-03, A Resolution of the City Council of the City of Winters Allocating the ERAF amount required by Chapter 21, Statutes of 2009

City Manager Donlevy gave an overview. Council Member Aguiar-Curry asked whether training and upgrades were included in the cost of Item B, the GPS Unit and Software. City Manager Donlevy replied that although these items are not included in the cost presented, the City employs staff members who are very knowledgeable with these types of systems. Motion by Council Member Stone and seconded by Council Member Aguiar-Curry to approve the Consent Calendar. Motion carried unanimously, with Council Member Anderson abstaining from Item A only.

**PRESENTATIONS:** None

**DISCUSSION ITEMS**

- 1. **Public Hearing and Approval of Resolution 2010-02, A Resolution of the City Council of the City of Winters authorizing the City of Winters to join the CaliforniaFIRST Program; Authorizing the California Statewide Communities Development Authority to Accept Applications from Property Owners, Conduct Contractual Assessment Proceedings and Levy Contractual Assessments within the Territory of the City; and Authorizing Related Actions**

Management Analyst Dawn Van Dyke gave an overview. Council Member Fridae asked what kind of programs would be included under the CaliforniaFIRST Program. Dawn responded that this program allows property owners to finance renewable energy, energy efficiency and water efficiency improvements on their property. Mayor Martin asked if a loan would follow the

property. Dawn confirmed that if a \$10,000 loan was obtained to replace windows, a lien would be placed against the property and the resident would make payments until the house is sold. The new owner would then take over the payments.

Mayor Martin opened the public hearing at 6:50 p.m. and closed the public hearing at 6:50 p.m. with no public comment.

Council Member Fridae commended Dawn on pursuing this program and making it available for citizens to make their homes more efficient. Dawn will be marketing this program by distributing fliers and submitting articles to the newspaper, giving all residents the opportunity to participate.

Motion by Council Member Stone, second by Council Member Anderson to approve Resolution 2010-02, authorizing the City of Winters to join the CaliforniaFIRST Program, authorizing the California Statewide Communities Development Authority to accept applications from Property Owners, conduct Contractual Assessment proceedings and levy Contractual Assessments within the territory of the City, and authorizing related actions. Motion carried with the following vote:

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

2. **Public Hearing, Introduction and Waive the First Reading of an Ordinance of the City of Winters adopting Title 19 of the Winters Municipal Code pertaining to Code Enforcement, Amending Section 1.12.010(B), Section 1.16.010, Section 8.16.030, Section 15.40.070, and Section 17.108.130 of the Municipal Code, and Repealing Section 8.16.040 of the Municipal Code to Conform to New Code Enforcement Provisions in Title 19**

Laura Hollender of Meyers Nave gave an overview of the code enforcement ordinance being presented and reviewed the changes that have been incorporated since it was originally introduced. Council Member Anderson asked for clarification of "affected property." City Manager Donlevy confirmed this ordinance would give the property owner the right to deny entry to the Code Enforcement Officer. If he deems it necessary to gain entry, a court order may be obtained to include the right to entry. Council Member Anderson said this would seem to create a lot of work for someone, saying it was too broad and costly.

City Manager Donlevy said it is necessary for the City to have a Code Enforcement Officer although the County Health Department has one. He said the first question asked by the Code Enforcement Officer is if the resident would mind if he came onto their property. It always needs to be posed in the form of a question, not a demand. City Manager Donlevy said the existing ordinance provides civil procedure and court action. Council Member Aguiar-Curry said this ordinance will give the City more flexibility and the tools to do it right.

Laura Hollender said she would modify the ordinance by adding a sentence "owner may deny right of entry." Mayor Martin opened the public hearing at 7:13 p.m. and closed the public hearing at 7:13 p.m. with no public input. Motion by Council Member Fridae and seconded by Council Member Stone to introduce the ordinance by title only with said modifications and waive the first reading. Council Member Aguiar-Curry asked if there would be additional cost associated with this ordinance and Laura Hollender indicated no. Motion carried by the following vote:

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

3. **Public Hearing and Consideration of Resolution 2010-07 Authorizing the City Manager to Execute a Public Improvement Agreement and an Interim Building Permit Issuance Agreement between the City of Winters and the Central Valley Coalition for Affordable Housing, a California Non-Profit Public Benefit Corporation, for the Orchard Village Project**

This item is being continued to the February 2, 2010 City Council meeting.

4. **Fiscal Sustainability- City Council Direction on Sustainability Review**

City Manager Donlevy gave an overview of the staff report and reviewed the seven key components of the Strategic Plan and presented the following three options: Budget and Service Reduction, Economic Development, and Increase Municipal Services Tax and City-Wide Assessment District, with Option 2, Economic Development, divided into 4 sub-options.

With the current deficit in the General Fund and the request for an increase in the Police and Fire departments, Mayor Martin asked about the municipal tax. Council Member Aguiar-Curry said there was not enough time to educate the public and promote the tax increase suggested in Option 3. City Manager Donlevy said there has been zero growth in town, or no economic development. Council Member Fridae said instead of looking for more work or cutting back on expenses, we should try to do both and continue to pursue all options. He suggested asking the residents whether they would prefer a tax increase or loss of police/fire services.

Council Member Aguiar-Curry said for the short term, it is unrealistic to get a tax increase on the June ballot, and to consider the cost of a special election. Council Member Anderson said an increase of the Municipal Services Tax and City-Wide Assessment would be a lot of work and would require a lot of community outreach. He said in these economic times it would be tough to pass and he already knows what the answer would be by the residents – no!

Mayor Martin cited two issues: general services to the public and increase the police/fire staff, and asked if we had the information to include this on the ballot in such a short time? City

Manager Donlevy said this is not an either/or choice, but where a multi-faceted approach must be taken.

Mayor Martin said he doesn't like the term "fast-tracking" and asked that the term not be used. Each prospective project requires a site review and community input, and the City needs to put the wheels in motion. Mayor Martin also wants to look at budget reductions.

Council Member Aguiar-Curry wants to continue the public outreach regarding the Hwy 128 and Gateway Studies, so when developers come to town they will know what we want. She also wants to maintain the downtown business core.

City Manager Donlevy asked if an increase in Municipal Services Tax would be focused on public safety. City Attorney Wallace said a general tax increase would be pitched primarily at public safety. He stated a general tax requires a majority vote, while a specific tax requires 2/3 vote. Council Member Stone said he feels strongly that a tax increase would not pass and Council Member Anderson concurred. Mayor Martin suggested giving the community the say, as waiting two years to place on the ballot would be irresponsible. Council voted unanimously to continue the meeting to 1/27/2010 at 6:00 p.m. to address this item.

Debra DeAngelo, 220 White Oak Lane, asked Council to treat the City's budget like a household budget and identified various City-owned pieces of property that could be sold, which may solve our short-term problems. Council Member Stone said he appreciated the analogy, but property is like stock – don't sell when the price is down. Recognize the potential of the property, as the long term benefits outweigh the short term benefits. Any redevelopment money earned will go back into the redevelopment fund and not the general fund.

City Manager Donlevy indicated he would like to bring back to a future Council meeting a combination of Options 1 and 2 to discuss service cuts, fee increases and economic development. Option 3 will be continued to January 27<sup>th</sup> at 6:00 p.m. **(which was then continued to the February 2, 2010 City Council meeting.)** Council Member Anderson said utilities were extended out to the freeway a year ago and it's time to attract some economic development.

## 5. Fiscal Sustainability- Budget Reduction Priorities

City Manager Donlevy gave an overview of the proposed service and program reductions and reviewed the tables contained in the staff report. Mayor Martin asked if the school district would be able to continue to help fund the swimming pool. Council Member asked about the extent of swimming pool revenues, which include those earned from the swim team, swim passes, adult lap swim, masters swim program, swim lessons and private parties.

Marie Rojo-Heilman, 116 Abbey Street, presented a petition containing 462 signatures initiated by the senior citizens who use the Community Center on a daily basis, requesting the Center not be closed. Marie suggested staffing the Center with volunteers to save money, and hold some fundraising events and increase rental rates to generate income. She also asked about

park fees and the practicality of the Community Service Officer's car. She also suggested pay cuts, furloughs, and 4-day work week as a way to save money. She added that she would like to see a Trader Joe's out at the freeway.

Justin Hyer, 1202 Valley Oak Drive, spoke on behalf of the youth and community members who value the swimming pool. He noted 250 members of the Winters Swim Team who use the pool during the summer months 6 days a week, 4 hour per day. The reality is that summer for many kids exists at the pool every day from 2-5. The swim instructors who gave lessons at the pool last summer received a lot of praise from the parents. Justin said closure of the swimming pool would affect people young and old, not just for exercise but for social purposes. He asked Council to consider how cuts to the swimming pool would affect the youth as well as the older generation of Winters residents.

Kate Laddish, 400 Morgan #6, spoke in favor of keeping the swimming pool open. She said the youth lifeguards, Justin Hyer included, did a tremendous job working at the pool last year, giving our youth confidence and providing them with invaluable leadership skills.

Council Member Aguiar-Curry asked about the current fees being charged for the Community Center. The City of Live Oak has a Community Center Committee, who determines fees, checks volunteers, and charges all groups who use the center a \$300 "subscription" per year plus \$20/hour. Those who don't pay the "subscription" annual fee are charged \$50/hour. The City of Winters could go to an "all-pay" system, or conduct fundraising in lieu of fees. Council Member Anderson liked the subscription idea, although the money won't go far. The Community Center can't continue like this, it needs revenues. City Manager Donlevy said a fee structure can be created and brought back before Council, stressing that there was no fee charged for 1,900 Community Center hours during 2009.

Mayor Martin re-opened the discussion regarding swimming pool usage, where use was at its heaviest from May through August. Should the swim team pay more? Should the fee to swim be increased? Director of Financial Management Gunby confirmed the swim team has a separate bank account. Council Member Stone suggested cutting the schedule and keep the pool open during peak months only. Council Member Aguiar-Curry suggested the possibility of scholarships. Debra DeAngelo suggested scheduling more programs at the pool. Council Member Anderson asked if there were incurred costs if the pool was closed. Council Member Fridae said the masters swim program has raised a lot of money to keep the pool open during the cold months. He would like to see community-wide fundraising for solar heating and asked if grants might be available. He also suggested, out of principle, the City Council stipends be cut in order to set an example. Council Member Anderson said this wouldn't solve anything.

Council Member Aguiar-Curry requested bringing back fees, commission, and indicated the City Park is a huge liability. Council Member Anderson said there are maintenance staff costs associated with the park. Mayor Martin said people are interested, and sporting organizations may be willing to contribute. Council Member Fridae said it would not be viable to close the pool or the Community Center or shut down the recreation department. We should look at ways to generate revenue and look at breaking even. City Manager asked if we should shoot for half of the expenditures for each program.

**6. Community Garden Update – Discussion of Garden Rules with Bill Maynard, Community Garden Program Coordinator, City of Sacramento**

Housing Programs Manager Dan Maguire gave a brief overview, confirming that Sunday appears to be the most-favored day for the Farmers Market, but the time of the market may be altered. He has also provided a copy of grammatically correct Community Garden rules. Dan introduced Bill Maynard, Community Garden Program Coordinator with the City of West Sacramento and Vice President of the American Community Garden Association and Ana Kormos, Winters Farmers Market Manager. Ana said they are currently in the preliminary application process, distributed flyers and submitted notices for the newspaper about an informal community meeting being held on Thursday, January 21 at the Community Center, where rules and regulations will be available. She is inviting everyone in the community who want a garden plot to come out and attend this very general meeting. All applications will be divided into two pots – low income and non-low income. There will be 36 plots available, with four plots designated for ADA. Council Member Fridae complimented Mike Briggs for the fence that has been erected around the Community Garden and said the garden rules were very well thought out. Ana Kormos said redwood will be installed to separate the garden plots once the rain lets up, with hopes of planting in mid-March after the first frost. Mayor Martin asked about the assigning of plots. Bill Maynard responded that in the City of West Sacramento created a lottery with a waiting list, with some degree of turnover expected each year. Council Member Anderson asked whether plots would be renewed every year for those with a perpetual interest. Dan Maguire said the ability to renew will be assessed, with no guarantee. Mayor Martin thanked Bill Maynard for his assistance so we could avoid re-inventing the wheel. He knows the community garden will be a success. Bill Maynard also thanked Ana Kormos for her hard work.

**7. Street Closure Requested by the Winters Education Foundation for the Winters Criterium Bike Race**

Housing Programs Manager Dan Maguire gave an overview and reviewed the routes and events associated with the race. Myke Berna of VeloCity and Bobby Rodriguez of the Winters Educational Foundation were present to answer any questions from Council. Mayor Martin asked if the residents in the residential areas have been put on notice regarding the street closure? Myke indicated flyers had been sent out, and Bobby said they will do everything required for traffic flow and will also fulfill any requests made by seniors during the street closure. Council Member Anderson asked that all other residents be notified as well.

Motion by Council Member Fridae, second by Council Member Aguiar-Curry, to approve the street closure request. Motion carried, with Council Member Stone abstaining.

**8. Lake Berryessa Concessionaire Contract Update**

City Manager Donlevy said Winters did not participate in negotiations as we were told it would be a conflict of interest, as Winters is the Gateway to Lake Berryessa. He said there are

Section 54956 of the Government Code – Staffing Levels/Liability and Section 54956.9 of the Government Code – Conference with Legal Counsel regarding Labor Negotiations.

There was no reportable action taken.

**ADJOURNMENT**

Mayor Martin adjourned the regular meeting of the City Council into Executive Session at 10:53 p.m.

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Michael Martin, MAYOR

**ATTEST:**

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Nanci G. Mills, City Clerk



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: February 2, 2010  
THROUGH: John W. Donlevy, Jr., City Manager   
FROM: Laura Hollender, Esq., Meyers Nave  
SUBJECT: Ordinance No. 2010-01 adding Title 19, entitled, "Code Enforcement" to the Winters Municipal Code.

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**RECOMMENDATION:** Staff recommends that the City Council adopt, Ordinance No. 2010-01, entitled, "An Ordinance of the City of Winters Adopting Title 19 of the Winters Municipal Code pertaining to Code Enforcement, Amending Section 1.12.010(B), Section 1.16.010, Section 8.16.030, Section 15.40.070, and Section 17.108.130 of the Municipal Code, and Repealing Section 8.16.040 of the Municipal Code to Conform to the New Code Enforcement Provisions in Title 19."

**BACKGROUND:**

If adopted by the City Council, Ordinance No. 2010-01 would add Title 19 entitled, "Code Enforcement" to the Winters Municipal Code. Ordinance No. 2010-01 would provide City staff with a number of tools for preventing, discouraging, abating and otherwise addressing municipal code violations that occur within the City of Winters. The tools provided for Ordinance No. 2010-01 range from civil and criminal proceedings to administrative remedies, and nuisance abatement. Ordinance No. 2010-01 also amends and repeals several other sections of the Winters Municipal Code in order to conform the current municipal code to the new provisions in Title 19.

Ordinance No. 2010-01 was introduced for first reading at the City Council meeting held on January 19, 2010. During this meeting, several council members expressed concern about breadth of the property inspections provisions contained in Section 19.04.110 of the proposed ordinance. In response to these concerns, the Council requested that the section be revised to explicitly state that individuals or occupants of property within the City may deny entry to a code enforcement officer that would like to inspect a property. This revision has been made and is reflected in redline form in the attached ordinance.

Ordinance No. 2010-01 was originally introduced to the City Council as an informational item at the December 1, 2009 City Council meeting. During that meeting, staff received feedback on ordinance, which included a request that the ordinance be revised to include a requirement that City staff pursue the least intrusive remedies available prior to addressing code violations through civil or criminal actions. Section 19.04.010 of Ordinance No. 2010 was amended to include this requirement.

Ordinance No. 2010-01 was also amended subsequent to the December 1, 2009 meeting to include a provision that the City is not required to pursue the code enforcement remedies contained in Title 19 for every code violation that occurs within the City. Instead, the City envisions that the remedies provided in Title 19 will be used to address municipal code violations as City resources permit.

### ***Purpose of Code Enforcement***

The primary purpose of code enforcement is to obtain compliance with the provisions of the City's municipal code in order to protect and promote the public health, safety and general welfare. If an individual responsible for creating a code violation is unwilling to comply with the City's code, the City's code enforcement ordinance would provide City staff with a number of tools for obtaining compliance and prohibiting continued code violations. The preferred method of code enforcement for a particular situation will depend on the scope of code violation and the desired outcome.

### ***Code Enforcement Tools***

The proposed code enforcement ordinance would provide City staff with four different code enforcement tools for addressing municipal code violations: (1) criminal enforcement; (2) civil actions; (3) summary abatement and nuisance abatement; and (4) administrative citations. Each of these tools is discussed in detail below.

#### **1. Criminal Enforcement**

The proposed ordinance provides that any violation of the Winters Municipal Code may be prosecuted as either a misdemeanor or an infraction in accordance with the procedures set forth in Chapter 1.16 of the Winters Municipal Code. Chapter 1.16 provides that any person failing to comply with any of the mandatory requirements of the Winters Municipal Code shall be guilty of a misdemeanor, unless by ordinance or statute the violation is made an infraction. Chapter 1.16 also provides that any person convicted of a misdemeanor shall be punished by a fine not to exceed One Thousand Dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months. Finally, Chapter 1.16 provides that such person shall be guilty of a separate offense for each and every day a code violation occurs.

Criminal prosecution of municipal code violations is generally reserved for violations of a serious and on-going nature. For example, criminal prosecution may be appropriate in the following situations: (1) preventing a slumlord from operating within the City, or (2) stopping illegal drug offenses.

## 2. Civil Actions

The proposed ordinance provides that the City Council may direct the City Attorney to institute a civil action to restrain, enjoin, or abate a violation of the Winters Municipal Code. Under this scenario, the City Attorney would seek an injunction or other court order to prevent an individual from engaging an activity that is violating the Winters Municipal Code.

Instituting a civil action is also generally reserved for code violations of a serious and on-going and may be an appropriate tool in the following situations: (1) shutting down a business that operating an illegally within the City; (2) stopping gang related activities from occurring within the City.

The City may recover attorney fees and costs incurred with bringing a civil action from the individual or individuals responsible for the code violation.

## 3. Nuisance Abatement

The proposed ordinance provides that any violation of the Winters Municipal Code may be declared a public nuisance subject to abatement by the City.

The proposed code enforcement ordinance provides for two kinds of nuisance abatement: (1) summary abatement for emergency situations, and (2) nuisance abatement for non-emergency situations.

Summary abatement is reserved for those situations in which a code violation creates an imminent or immediate threat of harm to persons or property, or to the public health, safety and welfare. In these situations, City staff may act immediately to abate the violation and the City may recover the costs of this action from the property owner. If possible, the code enforcement officer will first notify the owner of the premises that an emergency situation exists which requires immediate abatement. After the emergency situation has been abated, the proposed ordinance provides that a hearing will be held at which time the owner of the premises may contest the abatement, and/or the cost of the abatement.

Nuisance abatement may be used in all other situations in which a code violation is occurring. The procedures for abating a nuisance through nuisance abatement are set forth in Chapter 19.08 of the Municipal Code. The procedures consist of first issuing a Notice of Violation to the individual responsible for the code violation. The Notice of Violation serves as a written warning of responsibility and requires that the individual responsible for the code violation to cease and abate the violation. If the individual does not cease and abate the violation within time period provided in the Notice of Violation, a hearing on the matter will be held and an abatement order may be issued. The abatement order will require the individual to abate the nuisance and allow the City to obtain an abatement warrant authorizing the City to abate the violation, if compliance by the individual is not achieved.

Summary abatement and nuisance abatement costs may be recovered by City in the form of a lien or special assessment.

#### 4. Administrative Citations

Finally, the proposed code enforcement ordinance provides that a violation of the Winters Municipal Code may be addressed through an administration citation process according to the procedures set forth in Chapter 19.16 of the proposed ordinance. The administrative citation process consists of issuing a First Offense Warning to the individual responsible for creating code violation. If the code violation is not remedied within the time for compliance stated in the First Offense Warning, the City may issue an administrative citation requiring the individual to pay a fine for violating the code.

Costs associated with issuing an administrative citation may be recovered by City in the form of a lien or special assessment.

**FISCAL IMPACT:** The costs associated with code enforcement actions are recoverable from the individual responsible for the municipal code violation.

**ATTACHMENTS:** Ordinance No. 2010-01 entitled, "An Ordinance of the City of Winters Adopting Title 19 of the Winters Municipal Code pertaining to Code Enforcement, Amending Section 1.12.010(B), Section 1.16.010, Section 8.16.030, Section 15.40.070, and Section 17.108.130 of the Municipal Code, and Repealing Section 8.16.040 of the Municipal Code to Conform to the New Code Enforcement Provisions in Title 19."

**ORDINANCE NO. 2010-01**

**AN ORDINANCE OF THE CITY OF WINTERS ADOPTING  
TITLE 19 OF THE WINTERS MUNICIPAL CODE PERTAINING TO  
CODE ENFORCEMENT, AMENDING SECTION 1.12.010(B), SECTION  
1.16.010, SECTION 8.16.030, SECTION 15.40.070, AND SECTION 17.108.130 OF  
THE MUNICIPAL CODE, AND REPEALING SECTION 8.16.040 OF THE  
MUNICIPAL CODE TO CONFORM TO NEW CODE ENFORCEMENT  
PROVISIONS IN TITLE 19**

The City Council of the City of Winters does ordain as follows:

**SECTION 1. Adoption of Title 19**

Title 19, entitled, "Code Enforcement" is hereby added to the Winters Municipal Code to read as follows:

**Chapter 19.04            CODE ENFORCEMENT GENERALLY**

- 19.04.010    Purpose and authority.**
- 19.04.020    Definitions.**
- 19.04.030    Code violations.**
- 19.04.040    Duty to enforce.**
- 19.04.050    Criminal enforcement.**
- 19.04.060    Civil actions.**
- 19.04.070    Public nuisance.**
- 19.04.080    Administrative citations.**
- 19.04.090    Reservation of rights.**
- 19.04.100    Service procedures.**
- 19.04.110    Authority to inspect property.**
- 19.04.120    Authority to obtain records.**

**19.04.010    Purpose and authority.**

The City Council establishes the procedures set forth in this Title for declaring and addressing violations of the Winters Municipal Code, pursuant to California Government Code Sections 36900 *et seq.*, 38660, 38771 through 38775, inclusive, 53069.4, 54988, and all other statutes and laws referenced herein. The purpose of this Title is to provide criminal, civil and administrative remedies, which shall be in addition to all other legal remedies that may be pursued by the city, to prevent, discourage, abate, or otherwise address any violation of this Code. It is the policy of the City to first seek to address code violations through the least intrusive remedies available, including administrative remedies, prior to instituting such remedies as civil or criminal actions.

**19.04.020    Definitions.**

For the purposes of this Title, the words and terms set forth in this Section shall have the following definitions:

- A. "Affected Property" means any real property or portions thereof within city boundaries, including any buildings or other improvements located on such property, where Code violations allegedly exist or have previously existed.
- B. "Code" means the Winters Municipal Code, as it may be amended from time to time.
- C. "Code Enforcement Officer" means any person authorized or directed by the city manager to enforce any provision of this Code.
- D. "Compliance" means all actions required to remove, alleviate, eliminate, halt, or mitigate a violation of this Code in the manner and in the time frame prescribed by a Code enforcement officer, Hearing Officer, or the Director.
- E. "Day" and "Days" mean calendar days.
- F. "Director" means the Community Development Director.
- G. "Enforcement Action" means any notice of violation, hearing, citation, investigation, complaint or petition, or any administrative or judicial order under authority of this Title or any other legal authority.
- H. "Hearing Officer" means any person appointed by the Director to conduct a hearing pursuant to this Title.
- I. "Responsible Party" means any person, or parent or legal guardian of any person under eighteen years of age, whose acts or omissions have caused or contributed to a violation of this Code, and shall include any owners(s) or occupant(s) of the Affected Property.

**19.04.030 Code violations.**

It is unlawful for any person to violate any provision or fail to comply with any requirement of this Code. Any Responsible Party (including, without limitation, any agent, employee, or contractor of the Responsible Party) violating or contributing to the violation of any Code requirement or such term or condition may be subject to an Enforcement Action as provided in this Title and in any other applicable law. The owner of any property, building, or structure within the city has the responsibility for keeping such property, building, or structure free of violations related to its use or condition. The owner of such property, building, or structure is separately liable for violations committed by occupants relative to the use or condition of the property.

**19.04.040 Duty to Enforce**

Nothing in this Title shall be construed as requiring the City to pursue the code enforcement remedies contained herein for every Code violation that occurs within the City. The City envisions that this Title will be enforced, in the City's prosecutorial discretion, as resources permit. Nothing in this section or the absence of any similar provisions from any other City law shall be construed to impose a duty on the City to enforce such other provision of law. This Title is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**19.04.050 Criminal enforcement.**

In addition to the remedies set forth in this Title, any violation of this Code may be subject to criminal prosecution according to the procedures set forth in Chapter 1.16 of this Code. Upon entry of a second or subsequent criminal judgment against the same owner or other Responsible Party within a two-year period for a condition of real property constituting a public nuisance (except for conditions abated pursuant to Health and Safety Code Section 17980), the court issuing the judgment may order said owner or other Responsible Party to pay treble the cost of the abatement, pursuant to Government Code Section 38773.7.

**19.04.060 Civil actions.**

In addition to the remedies set forth in this Title, the city attorney, at the discretion of the city council, may institute an action in any court of competent jurisdiction to restrain, enjoin, or abate any violation of this Code. The City in any such civil action shall be entitled to recovery of attorney's fees and costs incurred in such action. Upon entry of a second or subsequent civil judgment against the same owner or other Responsible Party within a two-year period for a condition of real property constituting a public nuisance (except for conditions abated pursuant to Health and Safety Code Section 17980), the court issuing the judgment may order said owner or other Responsible Party to pay treble the cost of the abatement, pursuant to Government Code Section 38773.7.

**19.04.070 Public nuisance.**

Any violation of this Code is hereby declared to be a public nuisance. In addition to the remedies set forth in this Title, any public nuisance may be abated by the city according to the procedure set forth in Chapter 19.08, except as otherwise provided in Chapter 8.08 (Abandoned Vehicles), Chapter 8.12 (Weed and Rubbish Abatement), Chapter 12.08 (Trees), and Chapter 15.56 (Abatement of Dangerous Buildings).

**19.04.080 Administrative citations.**

In addition to the remedies set forth in this Title, any violation of this Code may be subject to the administrative citation process according to the procedures set forth in Chapter 19.16.

**19.04.090      Reservation of rights.**

In addition to the remedies provided in this Title, the city expressly reserves the right to utilize enforcement remedies available under any applicable state or federal statute or pursuant to any other lawful power the city may possess. The election of remedies provided by this Title or other applicable law shall be at the sole discretion of city officials.

**19.04.100      Service procedures.**

A. Whenever notice or other document is required to be given under this Title, it shall be personally served or served by mail pursuant to the provisions of Section 1.04.110 of this Code. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of mail, service shall be deemed complete as provided in Section 1.04.110 of this Code.

B. Where service of a notice of violation, first offense warning, or administrative citation is by mail, a copy of the notice of violation, first offense warning, or administrative citation shall also be conspicuously posted at the Affected Property.

C. Proof of service of any notice or other document required to be given under this Title shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time and manner of service, and the place of posting, if applicable. The declaration shall be affixed to a copy of the notice or other document and retained by the Code enforcement officer.

D. The failure of a Responsible Party to receive any notice or other document served in accordance with this Section shall not affect the validity of any proceedings taken under this Title.

**19.04.110      Authority to inspect property.**

A. A Code Enforcement Officer may enter and inspect any Affected Property pursuant to the provisions of Chapter 1.12 of this Code to perform any duty imposed upon him or her by this Title whenever the Code Enforcement Officer has cause to believe a violation is occurring. Notwithstanding the foregoing, any individual or occupant of any property within the City has the right to deny entry to a Code Enforcement Officer requesting entry for inspection purposes.

~~provided that:~~

- \_\_\_\_\_ 1. If entry is denied, pursuant to Section 1.12.010, the Code Enforcement Officer may seek a court ordered inspection warrant pursuant to the Code

of Civil Procedure Sections 1822.50 *et seq.* Upon issuance of an inspection warrant, the Code Enforcement Officer shall cause such warrant to be executed in accordance with the procedures set forth in Code of Civil Procedure Section 1822.56.

2. If entry and inspection pursuant to a court ordered inspection warrant is denied, the Code Enforcement Officer shall have recourse to every remedy provided by law to secure entry.

B. Inspections performed pursuant to Chapter 1.12 and/or an inspection warrant may include, but not be limited to, the taking of photographs, samples, measurements, surveys, or obtaining other physical evidence, and/or conferring with any person(s) present at the Affected Property, as permitted by law and consistent with legally recognized privacy rights.

#### **19.04.120 Authority to obtain records.**

The city shall have the right and authority to request and review records from the Responsible Party or any third party that is, or may be, related to the subject matter of the enforcement action, and to make copies of the same at the expense of the city, in any manner authorized by law.

### **Chapter 19.08 NUISANCE ABATEMENT**

- 19.08.010 Nuisance abatement (non-emergency).**
- 19.08.020 Summary abatement (emergency).**
- 19.08.030 Notice of violation; stop work order.**
- 19.08.040 Time allowed for abatement by the Responsible Party.**
- 19.08.050 Abatement hearing.**
- 19.08.060 Abatement order and abatement warrant.**
- 19.08.070 Appeal of an abatement order.**
- 19.08.080 Recovery of abatement costs.**
- 19.08.090 Report and confirmation of abatement costs.**

#### **19.08.010 Nuisance abatement (non-emergency).**

Whenever a Code Enforcement Officer determines that a Code violation exists, the Code Enforcement Officer may pursue the abatement of such violation according to the procedures provided in this Chapter.

#### **19.08.020 Summary abatement (emergency).**

Notwithstanding any other provision of this Code, whenever, in the reasonable discretion of the Code Enforcement Officer, the existence or continuance of any violation poses an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, a Code Enforcement Officer may act immediately and without prior notice or hearing to abate or cause the abatement of such violation on behalf of the city pursuant to

this Section. Notwithstanding the foregoing, a reasonable effort shall be made to notify the owner of the premises in advance of abatement.

The city's director of financial management shall keep an itemized account of the costs incurred by the city in abating the violation and shall submit a report of the abatement costs to the Director in accordance with Section 19.08.100 of this Title. The report of abatement costs shall also be served on the Responsible Party and shall include notice of the time and place when a hearing will be conducted in which the Responsible Party may contest the validity of the summary abatement and the costs incurred by the city in abating the violation pursuant to the procedures in Section 19.08.100 of this Title. Such costs may be recovered to the same extent and in the same manner that abatement costs are recovered pursuant to Section 19.16.060 of this Title.

**19.08.030 Notice of violation; stop work order.**

A. A notice of violation serves as a written warning of responsibility and requires action by the Responsible Party to cease and abate the violation. A notice of violation is not required if the Code Enforcement Officer determines that summary abatement is necessary pursuant to Section 19.08.020.

B. The notice of violation shall include the following information:

1. The date, approximate time and location of the violation, including the address or other description of the location where the violation occurred or is occurring;
2. The name(s) of the Responsible Party(ies), if known;
3. The Code section(s) violated and a description of the violation(s);
4. An order prohibiting the continuation or repeated occurrence of the violation;
5. A description of the action necessary to abate the violation;
6. A period of time during which the action necessary to abate the violation shall be commenced and completed, which shall be determined pursuant to Section 19.08.040;
7. A statement that the period of time during which the action necessary to abate the violation shall be commenced and completed may be extended pursuant to the procedure set forth in Section 19.08.040;
8. A statement informing the Responsible Party that he or she may dispute the violation by contacting the city clerk to set up a meeting with the Director to discuss the matter within ten (10) Days of receiving the notice of violation;
9. An order requiring the Responsible Party to appear at an abatement hearing upon the expiration of the period of time to abate the violation or any extension of that time period granted by the Director pursuant to Section 19.08.040 in the event that the Responsible Party fails to abate the violation;
10. The time, date and place for the abatement hearing;

11. A description of the abatement process, including the types of evidence that may be submitted at the abatement hearing; and
12. The name and signature of the Code Enforcement Officer, city contact information (address, telephone number) for additional information and, if possible, the signature of the Responsible Party.

C. If the violation is related to a permit, license, or other city approval of a project, the notice of violation may be accompanied by a stop work order which orders the Responsible Party to immediately stop any and all work on the project that is subject to the permit, license or approval until the violation is corrected.

#### **19.08.040 Time allowed for abatement by the Responsible Party.**

A. Any notice of violation issued pursuant to Section 19.08.030 or abatement order issued pursuant to Section 19.16.040 shall provide a reasonable time during which the action necessary to abate the violation shall be commenced and completed based upon the circumstances of the particular violation, taking into consideration the following factors:

1. The means required to abate the violation;
2. The period of time that the violation has existed; and
3. The potential threat to public health and safety created by the violation.

B. If a violation pertains to building, plumbing, electrical, mechanical, or other similar structural or zoning issues and does not pose an imminent threat of harm to persons or property, or to the public health, welfare, or safety, the Responsible Party shall be provided an appropriate amount of time to abate the violation as determined by the Code Enforcement Officer, but in no event shall that amount of time be less than seven (7) Days.

C. Any Responsible Party receiving a notice of violation may file a written request for extension with the city clerk for consideration by the Director for an extension of time to abate the violation identified in the notice of violation, provided that the written request is received before the end of the period set forth in the notice of violation to abate the violation. The Director may grant an extension of time to abate the violation if the person requesting the extension of time has supplied sufficient evidence showing that the abatement cannot reasonably be made within the period set forth in the notice of violation.

#### **19.08.050 Violation Disputes**

If a person designated as the Responsible Party in the notice of violation wishes to dispute the alleged Code violation, he or she may contact the city clerk to set up a meeting with the Director to discuss and seek resolution of the matter within ten (10) Days of receiving the notice of violation. If the concerns of the person designated as the Responsible Party in the notice of violation are not satisfactorily addressed in this

meeting, he or she will be entitled to present those concerns at an abatement hearing as described in this Title.

**19.08.060 Abatement hearing.**

All abatement hearings shall be conducted pursuant to the procedures set forth in Chapter 19.16 and shall be subject to all of the provisions of this Title.

**19.08.070 Abatement order and abatement warrant.**

A. An abatement order issued pursuant to Section 19.16.040 may include any combination of the following remedies:

1. Issue a “cease and desist order” requiring the Responsible Party to immediately stop the violation.
2. Require the Responsible Party to abate the violation according to a proposed schedule to abate the violation within a reasonable time as determined according to Section 19.08.040.
3. Require the Responsible Party to restore a site or location that has been damaged or disturbed as a result of the violation to a pre-violation condition.
4. Require the Responsible Party to mitigate any damage or disturbance to protected or environmentally sensitive areas as a result of any violation, including, without limitation, off-site replacement of damaged or destroyed natural resources where on-site restoration or mitigation is not feasible, as determined by the city.
5. Impose conditions that restrict or regulate the development of, use of, or activity on real property where a nexus exists between the violation and the development, use, or activity. Conditions may be imposed until the violation is fully abated. Restrictions and regulations on current or future development, use, or activity may include site restoration and/or the suspension or revocation of any entitlements issued by the city.
6. Authorize the city to abate or cause the abatement of the violation where the Responsible Party has refused or otherwise neglected to abate the violation or is unable to take steps to abate the violation. The abatement order shall specify that if the city undertakes the abatement of the violation, the city shall be entitled to recover all costs of abatement incurred in performing such work and other costs necessary to enforce the order. Any abatement costs incurred as a result of the city actions to abate a violation pursuant to an abatement order may be recovered by the city as a personal obligation and/or through a lien or a special assessment on the Affected Property pursuant to Section 19.16.060.
7. Any other order or remedy that serves the interests of justice.

B. If an abatement order is issued pursuant to Section 19.16.040 authorizing the city to abate a violation, an authorized representative of the city may petition a court of competent jurisdiction for an abatement warrant authorizing a Code Enforcement Officer

or any employee, authorized agent, representative, or contractor of the city to enter onto any Affected Property to abate the violation. An abatement warrant, as contemplated in this section, shall be requested in the same manner, and be in substantially the same form, as an inspection warrant pursuant to the Code of Civil Procedure Sections 1822.50 *et seq.* The city shall seek the written consent of the Responsible Party to allow the city to perform the necessary work prior to seeking an abatement warrant from a court. Upon issuance of an abatement warrant, as described in this Section, the Code Enforcement Officer shall cause such warrant to be executed in accordance with the procedures set forth in Code of Civil Procedure Section 1822.56.

**19.08.080 Appeal of an abatement order.**

An abatement order issued pursuant to Section 19.16.040 may be appealed to the city manager pursuant to Section 19.16.050.

**19.08.090 Recovery of abatement costs.**

The city may elect to recover its costs to abate a violation, including, without limitation, the costs of any abatement hearing (including staff time necessary to prepare for and attend an abatement hearing), any costs incurred by the city in performing or contracting for work required to achieve Compliance with an abatement order, any re-inspections required to determine or confirm that Compliance has been achieved, production of all staff reports, environmental tests or measurements that are deemed necessary or appropriate by the Code Enforcement Officer, third party inspection(s) or consultant services as deemed necessary by the city and any attorneys' fees incurred in pursuing enforcement. Any abatement costs incurred may be recovered even if the nuisance is abated by the Responsible Party. If the city elects at the initiation of an administrative enforcement action or proceeding to seek recovery of attorneys' fees, pursuant to Government Code Section 38773.5, the prevailing party shall be entitled to recover attorneys' fees in an amount not to exceed the amount of attorneys' fees incurred by the city in such action.

**19.08.100 Report and confirmation of abatement costs.**

- A. The city's director of financial management shall keep an accounting of all abatement costs as described in Section 19.08.080.
- B. The city's director of financial management shall submit an itemized report of the abatement costs to the Director for confirmation.
- C. The city clerk shall serve a copy of such report upon the Responsible Party pursuant to Section 19.04.100. The report of abatement costs shall be accompanied by a notice of the time and place when a hearing will be conducted by the Director to consider confirmation of such report. The report and notice shall be served upon the Responsible Party at least ten (10) Days prior to the scheduled date of the hearing.
- D. At the time and place fixed in the notice of the confirmation hearing, the Director shall consider the report of abatement costs submitted by the city's

director of financial management and hear any protests or objections thereto by the Responsible Party or any other interested persons. The hearing may be continued from time to time without further written notice.

- E. Upon the conclusion of the hearing, the Director shall make such revisions, corrections, or modifications to the report as may be necessary or appropriate, based upon the evidence presented at the hearing, and shall thereafter confirm the report as submitted or modified by issuing an order for collection of the abatement costs pursuant to Section 19.16.060. The decision of the Director shall be final and conclusive, unless timely appealed to the city council in accordance with the procedures provided in Chapter 2.44 of this Code.

## **Chapter 19.12 ADMINISTRATIVE CITATIONS**

- 19.12.010 First offense warning.**
- 19.12.020 Administrative citation.**
- 19.12.030 Administrative fines.**
- 19.12.040 Payment of fines; late payment charges.**
- 19.12.050 Hearing contesting an administrative citation.**

### **19.12.010 First offense warning.**

A. Whenever a Code Enforcement Officer determines that a violation of this Code exists, the Code Enforcement Officer may serve a first offense warning to the Responsible Party. The first offense warning shall be served as a prerequisite to the issuance of a first administrative citation and serves as a written warning of responsibility.

B. The first offense warning shall include the following information:

1. The date, approximate time and location of the violation, including the address or other description of the location where the violation occurred or is occurring;
2. The name(s) of the Responsible Party(ies), if known;
3. The Code section(s) violated and a description of the violation(s);
4. An order prohibiting the continuation or repeated occurrence of the violation;
5. A description of the action necessary to abate the violation;
6. A period of time during which the action necessary to abate the violation shall be commenced and completed, which shall be determined pursuant to Section 19.08.040;
7. A statement that the period of time during which the action necessary to abate the violation shall be commenced and completed may be extended pursuant to the procedure set forth in Section 19.08.040;
8. A statement that an administrative citation shall be issued to the Responsible Party upon the expiration of the period of time during which the action necessary to abate the violation or any extension of that time

- period granted by the Director pursuant to Section 19.08.040 in the event that the Responsible Party fails to abate the violation;
9. The amount of the administrative citation in the event that an administrative citation is issued for the violation;
  10. The name and signature of the Code Enforcement Officer, city contact information (address, telephone number) for additional information and, if possible, the signature of the Responsible Party; and
  11. A statement informing the Responsible Party that he or she may dispute the violation by contacting the city clerk to set up a meeting with the Director to discuss the matter within ten (10) Days of receiving the notice of violation.

#### **19.12.020 Violation Disputes**

If a person designated as the Responsible Party in the first offense warning wishes to dispute the alleged Code violation, he or she may contact the city clerk to set up a meeting with the Director to discuss and seek resolution of the matter within ten (10) Days of receiving the first offense warning.

#### **19.12.030 Administrative citation.**

A. In the event that the Responsible Party fails to abate the violation upon the expiration of the period of time identified in the first offense warning during which the action necessary to abate the violation shall be commenced and completed or any extension of that time period granted by the Director pursuant to Section 19.08.040, the Code Enforcement Officer shall have the authority to issue an administrative citation to the Responsible Party for the violation.

B. Each administrative violation shall include the following:

1. The date, approximate time and location of the violation, including the address or other description of the location where the violation occurred or is occurring and a brief description of the conditions observe that constitute a violation;
2. The name(s) of the Responsible Party(ies), if known;
3. The Code section(s) violated and a description of the violation(s);
4. The amount of the fine for the Code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine must be paid;
6. An order prohibiting the continuation or repeated occurrence of the violation of this Code;
7. A description of the administrative citation process, including the time within which the administrative citation may be appealed and the procedure for requesting an appeal hearing;
8. A description of the waiver of deposit process set forth in Section 19.16.020, including the time within which a written request for a deposit waiver may be made; and

9. The name and signature of the enforcement officer, city contact information (address, telephone number) for additional information and, if possible, the signature of the Responsible Party.

**19.12.040 Administrative fines.**

- A. The amounts of fines that may be imposed for a violation shall be set forth in a schedule of fines established by resolution of the city council. The amount of such fines shall not exceed:
  1. The amount of any fine that may be imposed for a violation that would otherwise be an infraction shall not exceed the amounts set forth in Government Code Section 36900, as amended from time to time.
  2. The amount of any fine that may be imposed for a violation that would otherwise be a misdemeanor shall not exceed one thousand dollars (\$1,000).
- B. A separate violation shall be deemed committed on each Day a violation of this Code occurs or continues for purposes of setting the amount of a fine to be imposed. Any fine imposed will accrue on a daily basis from the date the fine becomes effective until the violation is corrected. Any condition of real property that constitutes a violation where the same, or substantially similar, violation has been the subject of two or more enforcement actions within any three-month period is deemed a continuing violation.

**19.12.050 Payment of fines; late payment charges.**

- A. Fines shall be paid directly to the city within thirty (30) Days from the date of the administrative citation.
- B. Payment of a fine under this Section shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administrative citation.
- C. Fines that remain unpaid thirty (30) Days after the due date shall be subject to a late payment penalty of ten percent (10%) plus interest at the rate of one percent (1%) per month on the outstanding balance, which shall be added to the fine amount from the date that payment is due.

**19.12.060 Hearing contesting an administrative citation.**

- A. Any person issued an administrative citation may contest the administrative citation by filing a written request for a hearing with the city clerk within thirty (30) Days of the date of the administrative citation. The fine issued by the administrative citation shall be deposited with the written request for a hearing or a written request for a waiver of the deposit shall be filed with the written request for a hearing. A hearing to contest the administrative citation shall be conducted pursuant to the procedures set forth in Chapter

19.16 and shall be subject to all of the provisions of this Title. A hearing to contest the administrative citation shall not be held unless and until the fine has been deposited or a waiver of the deposit has been granted pursuant to Section 19.16.020. If the fine or written request for a waiver of the deposit are not filed with the written request for a hearing, the hearing request shall not be considered timely submitted.

B. When a written request for hearing is filed with the city clerk to contest an administrative citation, the city clerk shall set the time and place for the hearing and shall serve a notice of hearing on the requesting party. A hearing to contest the administrative citation shall be conducted pursuant to the procedures set forth in Chapter 19.16.

## **Chapter 19.16 HEARING PROCEDURE**

<b>19.16.010</b>	<b>Preservation of the status quo pending hearing.</b>
<b>19.16.020</b>	<b>Waiver of deposits and fees.</b>
<b>19.16.030</b>	<b>Administrative hearing.</b>
<b>19.16.040</b>	<b>Decision of the Hearing Officer.</b>
<b>19.16.050</b>	<b>Appeal of Hearing Officer decision.</b>
<b>19.16.060</b>	<b>Collection of fines and costs.</b>
<b>19.16.070</b>	<b>Requirement to exhaust administrative remedies.</b>
<b>19.16.080</b>	<b>Judicial review.</b>

### **19.16.010 Preservation of the status quo pending hearing.**

If a timely request for any hearing is filed, any Compliance obligations that may be imposed shall be stayed until a final decision is rendered, unless an emergency situation exists requiring summary abatement pursuant to Section 19.08.020.

### **19.16.020 Waiver of deposits and fees.**

A. Any person who is financially unable to make the deposit required by Section 19.12.050 or the fee required by Section 19.16.050 may seek a waiver from such payment.

B. In order to seek a waiver from a deposit or fee, a written request for a waiver shall be filed with the city clerk. The written request for a waiver shall be filed with any written request for a hearing for which the deposit or fee is required as required by Sections 19.12.060 and 19.16.050. The request for a waiver shall be submitted with any supporting documents demonstrating to the satisfaction of the city clerk that the person is financially unable to deposit the full amount of the fine in advance of the hearing or pay the full amount of the fee.

C. If the city clerk denies the request for a waiver, the city clerk shall provide the requesting party a written determination of facts and findings supporting the determination to not issue the waiver. If the request for a waiver is denied, the person shall submit the required deposit or fee to the city clerk within ten (10) Days of service of

the city clerk's determination, or may appeal the determination of the city clerk to the city council in accordance with the procedures provided in Chapter 2.44 of this Code.

**19.16.030 Administrative hearing.**

A. The hearing shall be set for a date not less than ten (10) Days from the date of service of the notice of violation, and not more than sixty (60) Days from the date a written request for a hearing to contest the administrative citation is filed with the city clerk, unless the Code Enforcement Officer determines that the matter is urgent or that good cause exists for an extension of time based on the circumstances of the particular situation, in which case the hearing date may be shortened or extended.

B. If the Code Enforcement Officer submits a written report concerning the notice of violation or administrative citation to the Hearing Officer for consideration at the hearing, then a copy of the report shall be served on the person issued the notice of violation or administrative citation at least five (5) Days before the hearing.

C. At the place and time set forth in the notice of hearing or the notice of violation, the Hearing Officer shall conduct a hearing on the alleged violation(s). Any Responsible Party or other interested person(s) may appear and offer written or oral testimony or other evidence as to whether a violation has occurred and/or whether the violation continues to exist, whether the person served the notice of violation or the administrative citation is the Responsible Party for any such violation, whether an administrative fine or the fine amount is warranted, and/or any other matter pertaining thereto. Evidence presented by the Code Enforcement Officer or other official of the city tending to show that a violation occurred and that the person served the notice of violation or administrative citation is the Responsible Party shall establish a prima facie case that a violation, as charged, actually existed and that the person served the notice of violation or administrative citation is the Responsible Party for the violation. The burden of proof shall then be on the Responsible Party to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of the evidence.

D. The Hearing Officer shall consider all written and oral testimony and other evidence regarding the violation presented by the Responsible Party, the owner, the occupant, any officer, employee, or agent of the city, and any other interested party. Evidence offered during a hearing must be credible and relevant in the estimation of the Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply.

E. The Hearing Officer shall conduct the hearing, order the presentation of evidence and make any rulings or determinations necessary to address procedural issues presented during the court of the hearing.

**19.16.040 Decision of the Hearing Officer.**

A. After considering all of the written and oral testimony and other evidence presented at the hearing, the Hearing Officer shall, within ten (10) Days following the conclusion of the hearing, issue a written decision. The written decision of the Hearing Officer and any abatement order shall be served upon the Responsible Party and any interested party requesting a copy pursuant to Section 19.04.100.

B. If the Hearing Officer's written decision addresses an administrative citation, the Hearing Officer may uphold the administrative citation, uphold the administrative citation and modify the amount of the fine, or cancel the administrative citation. The written decision shall state the reasons for the decision. If the Hearing Officer modifies the amount of the fine or cancels the administrative citation, the city shall promptly refund any amount of the fine deposited.

C. If the Hearing Officer's written decision addresses a notice of violation and/or stop work order, the Hearing Officer may uphold, modify, or cancel the notice of violation and/or stop work order. The written decision shall state the reasons for the decision. If the Hearing Officer upholds or modifies the notice of violation and/or stop work order, the Hearing Officer shall issue a written abatement order in accordance with Section 19.08.070. The city may seek to enforce any abatement order by confirmation from a court of competent jurisdiction. Any abatement order that is judicially confirmed may be enforced through all applicable judicial enforcement measures, including, without limitation, contempt proceedings upon a subsequent violation of such order.

#### **19.16.050 Appeal of Hearing Officer decision.**

A. The Responsible Party may appeal any decision of the Hearing Officer to the city manager by filing a written request for appeal stating the grounds for the appeal with the city clerk within seven (7) Days after the date on which the decision or determination is rendered by the Hearing Officer. The written request for an appeal hearing shall include payment of the appeal processing fee set forth by resolution of the city council or a request for waiver of the fee pursuant to Section 19.16.020. An appeal hearing shall not be held unless and until the appeal processing fee has been paid or a waiver of the fee has been granted pursuant to Section 19.16.020.

B. The city clerk shall serve, pursuant to Section 19.04.100, notice of the time and place when the hearing will be conducted by the city manager to consider the Hearing Officer's decision upon the Responsible Party at least ten (10) Days prior to the scheduled date of the hearing. The hearing may be continued to a later date, at the discretion of the city manager.

C. The city manager may uphold, modify, or cancel the decision of the Hearing Officer. Any determination by the city manager shall be in writing and served to the appellant pursuant to Section 19.04.100 within ten (10) Days of the conclusion of the hearing. The decision of the city manager may be appealed to the city council in accordance with the procedures provided in Chapter 2.44 of this Code.

**19.16.060 Collection of fines and costs.**

The city may pursue any and all legal and equitable remedies for unpaid administrative fines, late payment charges, abatement costs and/or other costs, including, but not limited to, a lien as prescribed by Government Code Section 38773.1 or a special assessment as prescribed by Government Code Section 38773.5.

**19.16.070 Requirement to exhaust administrative remedies.**

A. The failure of any person to do the following shall constitute a failure to exhaust administrative remedies and shall preclude the person from obtaining judicial review of the validity of the administrative citation or abatement order:

1. Failure to timely file a written request for a hearing to contest an administrative citation pursuant to Section 19.12.060.
2. Failure to timely file a written request for appeal of a decision by a hearing officer pursuant to Section 19.16.050.

**19.16.080 Judicial review.**

Any Responsible Party who is aggrieved by a decision of the city council and who has exhausted the administrative remedies provided by this Code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Sections 1094.5 1094.6 and Government Code Section 53069.4.

**SECTION 2. Amendment of Code.**

Section 1.12.020(B) of Chapter 1.12 of the Winters Municipal Code entitled, "Right of Entry," is hereby amended to read as follows:

B. If the building or premises to be inspected is occupied, the authorized officer or employee shall first present proper credentials and seek written consent to enter. If such building or premises is unoccupied, the officer or employee shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and seek written consent to enter. If consent to such entry is not given, the authorized officer or employee shall have recourse to every remedy provided by law to secure entry.

**SECTION 3. Amendment of Code.**

Section 1.16.010 of Chapter 1.16 of the Winters Municipal Code entitled, "General Penalty," is hereby amended to read as follows:

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code or the provisions of any Code adopted by reference by this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code shall be guilty of a misdemeanor unless by ordinance or statute the violation is made an infraction. Any person convicted of a misdemeanor under the provisions of this Code shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code, or the provisions of any Code adopted by referenced by this Code, is committed, continued or permitted to exist.

#### **SECTION 4. Amendment of Code.**

Section 8.16.030 of Chapter 8.16 of the Winters Municipal Code entitled, "Nuisance," is hereby amended to read as follows:

Any place where stagnant water is allowed to accumulate within the city is declared to be a public nuisance, and shall be abated in accordance with Title 19 of this Code.

#### **SECTION 5. Repeal of Section 8.16.040 of Code.**

Section 8.16.040 of Chapter 8.16 of the Winters Municipal Code entitled, "Abatement by City," is hereby repealed in its entirety.

#### **SECTION 6. Amendment of Code.**

Section 15.40.070 of Chapter 15.40 of the Winters Municipal Code entitled, "Nuisance declaration—Abatement," is hereby amended to read as follows:

Every violation of this chapter is a public nuisance. To abate the public nuisance, the City may take an action provided for in Title 19 of this Code. In addition, the community development Director may, upon a finding that the condition of any moved structure is a present and imminent menace to public safety, take such measures as are necessary to protect life and limb, without notice to any person and without further process. The cost of performing such measures shall be a charge upon the holder of the permit and a lien upon the building and property.

#### **SECTION 7. Amendment of Code.**

Section 17.108.130 of Chapter 17.108 of the Winters Municipal Code entitled, "Violation—Nuisance—Abatement" is hereby amended to read as follows:

A person who violates the provisions of this chapter is guilty of maintaining a public nuisance. An authorized employee of the building department may mail written notice to the owner that the violation exists. The owner then shall have thirty (30) days to remedy

the violation. The notice shall state that if the violation is not corrected within the time specified, the nuisance will be abated in accordance with Title 19 of this Code.

**SECTION 8. 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 9. Effective Date.**

This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on \_\_\_\_\_, 2010, and was passed and adopted at a regular meeting of the City Council held on \_\_\_\_\_, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

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

1359952v1.



CITY COUNCIL  
STAFF REPORT

**TO:** Honorable Mayor and Council members

**DATE:** Feb. 2, 2010

**THROUGH:** John W. Donlevy, Jr., City Manager

**FROM:** Dawn Van Dyke, Management Analyst

**SUBJECT:** Public Hearing and adoption of Resolution 2010-08 A Resolution of the City Council of the City of Winters Accepting the Final Product, Downtown Winters Feasibility Market Study, funded by a grant from the Department of Housing and Community Development, Community Development Block Grant Program for Planning and Technical Assistance Contract #07-PTAE-3321

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**RECOMMENDATION:** Hold the Public Hearing and adopt Resolution 2010-08 accepting the final product funded by CDBG planning and technical assistance Grant #07-PTAE-3321.

**BACKGROUND:** In 2007, the City of Winters received a grant from the Department of Housing and Community Development, Community Development Block Grant (CDBG) program through its Planning and Technical Assistance Program. The purpose of the grant was to fund feasibility and marketing studies regarding the potential adaptive re-use of three buildings in Winters' Historic Downtown: The DeVilbiss Hotel, Bank of Winters (Putah Creek Café) and Masonic buildings. In addition, if the projects were deemed feasible, the grant would fund the development of an Over the Counter (OTC) grant application for economic development through CDBG.

After going through an RFP process, Chabin Concepts was selected to perform the scope of work as described in the grant.

Early in the process, the DeVilbiss Hotel was removed from consideration due to the extensive work and costs that would be incurred to rehabilitate the second floor of the building. Marketing studies, feasibility studies, alternative uses and other aspects of reuse were explored for the Bank of Winters and Masonic buildings. Options for reuse included the creation of a boutique hotel or office space on the second floor of the Bank of Winters building, and the creation of

assembly/meeting space or office space on the second floor of the Masonic Building.

During the grant period, the country, state and local economy began to feel the effects of the current downturn. Although the work was completed, the feasibility of rehabilitating the buildings and reusing them for any of the proposed uses had greatly changed due to economic conditions. For this reason, and despite the many positive elements that were discussed during this process, the building owners were not able to move forward with an OTC application.

The final product is available for public review at City Hall.

**FISCAL IMPACT:** None at this time.

**ATTACHMENTS:** (Under separate cover) Downtown Winters Feasibility Market Study.

**Resolution 2010-08**

**A Resolution of the City Council of the City of Winters Accepting the Final Product, Downtown Winters Feasibility Market Study, funded by a grant from the Department of Housing and Community Development, Community Development Block Grant Program for Planning and Technical Assistance Contract #07-PTAE-3321**

**WHEREAS**, the City of Winters applied for and received funding through the Department of Housing and Community Development, Community Development Block Grant Program (HCD, CDBG) for Planning and Technical Assistance in 2007; and

**WHEREAS**, Downtown Winters, the block of Main Street between Railroad Avenue and First Street has been designated as a Historic District by the State Historic Preservation Office; and

**WHEREAS**, the City of Winters wishes to support the rehabilitation and adaptive reuse of buildings in the Historic District as a vital element of the downtown; and

**WHEREAS**, the City of Winters believes that a thriving and successful downtown business district is important to the economic health of the community; and

**WHEREAS**, through the grant funds received from HCD, the City commissioned Feasibility and Market Studies for rehabilitation and adaptive reuse for three historic buildings in the Downtown; and

**WHEREAS**, the final study focused on the Bank of Winters, DeVilbiss Hotel and Masonic buildings and proposed rehabilitation and new use for the Bank of Winters and Masonic buildings; and

**WHEREAS**, the feasibility and market study were presented to the property owners for review and discussion and provided valuable information about the feasibility of rehabilitation, proposed new uses and market potential; and

**WHEREAS**, the final product is available for public review at City Hall and may be used as background information for future projects;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Winters hereby accepts the final product funded through the HCD, CDBG, Planning and Technical Assistance Grant, 07-PTAE-3321.

Passed and adopted this \_\_\_\_ day of \_\_\_\_\_ 2010.

**AYES:** \_\_\_\_\_

**NOES:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_

\_\_\_\_\_  
Michael Martin, Mayor  
City of Winters

\_\_\_\_\_  
John W. Donlevy, Jr., City Manager  
City of Winters

ATTEST:

\_\_\_\_\_  
Nanci Mills, City Clerk  
City of Winters



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: February 2, 2010  
THROUGH: John W. Donlevy, Jr., City Manager   
FROM: Nick Ponticello, City Engineer  
SUBJECT: Public Improvement Agreement for Orchard Village Apartment Project

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**RECOMMENDATION:** That City Council 1) approve the Public Improvement Agreement, and; 2) authorize the Mayor to execute the Public Improvement Agreement for the Orchard Village Apartment Project.

**BACKGROUND:** The attached Public Improvement Agreement has been prepared for the Orchard Village Apartments. Approval will allow the public improvements associated with the Orchard Village Apartment Project to be constructed.

The Orchard Village Apartment Project Mitigated Negative Declaration and Mitigation Monitoring Program and Design Review application were approved by Planning Commission on January 27, 2009. As a condition of the development, the Applicant is required to enter into a Public Improvement Agreement in order to construct the required public improvements.

The project includes a 40-foot right-of-way dedication along Railroad Avenue to accommodate future expansion of the roadway to a four-lane arterial if needed. The section maintains the existing curb, gutter, and sidewalk alignment along the westerly side of Railroad Avenue which is almost fully developed. It also includes roadway improvements, a pedestrian crossing, frontage landscaping and lighting, and a 10-foot Class I bike path along the frontage of the development.

On the west side of Railroad, the applicant will construct a crosswalk and associated ADA ramp improvements across Railroad Avenue from the southwestern corner of the project property to the southwestern corner of Carrion Circle and Railroad Avenue. On the east side of Railroad, the applicant will construct a temporary off-street pedestrian asphalt concrete (AC) path from the project site's south boundary south to Grant Ave.

Dutton Street will be constructed from the south property boundary to the north property boundary to meet Secondary Collector Standards with a 66-foot right-of-way, which is consistent with the Winters General Plan Circulation Element (1992). A 10-foot Class I pedestrian/bike path will be constructed within a 24-foot wide access way dedicated to the City of Winters from Railroad Street to Dutton Street along the south side of the development.

The primary access to the project site is via a driveway on Railroad Avenue. A second driveway access is on Dutton Street. The secondary access driveway will be utilized for an emergency access only until planned improvements to the Dutton/Walnut/ Grant intersection have been completed.

The project provides a 1.61-acre site for active parkland. A portion of this area is for a detention pond to accept run-off from the residential portion in times of extreme flooding. The remaining portion (1.4 ac) includes a public neighborhood park including picnic tables, benches, trails, and landscaping.

Sanitary sewer service is provided by the construction of a 10-inch sewer main in the right-of-way of Dutton Street. The new 10-inch sewer main will connect to the north end of the existing 8-inch sewer main located in Dutton Street.

Water service is provided by the construction of a 10-inch water main in the right-of-way of Dutton Street and in the new pedestrian pathway on the south side of the project between Railroad Ave. and Dutton Street. The new 10-inch water mains will connect to the existing 8-inch water main located in Dutton Street.

Storm drainage will be conveyed through a 36-inch main in Dutton Street. The project will detain project run-off and meet storm water quality standards in two detention pond areas and a below grade storm water quality unit. The first small detention pond is located on the interior of the residential portion and will service runoff for storm intensities beyond ten-year floods. Storm intensities less than the 10 year storm will flow past the onsite pond to the below ground storm water quality unit and then to the 36" storm drain within the Dutton Street extension. The second detention pond area is located to the west of Dutton Street. These detention facilities include multiple uses including pedestrian paths, benches and trash cans with the intent of providing a tiered open space for community use. At the same time, it is designed to provide the appropriate storm water volume requirements for various storm intensities. The first tier of the detention pond is the deepest and will be fenced and have water in it more often and it will be detaining the 10-year, 24 hour storm event and the 50-year, 24 hour storm event. It will be landscaped with plants that flourish in wet environments. The second tier detention pond is also designed for water detention for higher intensity storms. It is slightly sloped and includes park benches and picnic tables. A new 24-inch and 30-inch storm drain pipe will be constructed in Dutton Street to convey detention pond flows south in Dutton Street.

A portion of the residential portion of the property (5.000 ac) falls within the General Plan Flood Overlay Area. This area is generally located in the northwesterly quadrant of site bounded by Railroad Avenue on the west, beginning at the southwesterly corner of the project, and then extending northeasterly to the north property line of the site. As such, the project is required to pay into the Flood Overlay Area Storm Drainage Fee Program.

**ATTACHMENTS:** Public Improvement and Maintenance Agreement for Orchard Village

Recording Requested by  
and when Recorded, return to:

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

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

## **PUBLIC IMPROVEMENT AND MAINTENANCE AGREEMENT**

This Public Improvement and Maintenance Agreement (“AGREEMENT”) is made and entered into this \_\_\_th day of \_\_\_\_\_, 2\_\_\_ (“EFFECTIVE DATE”) by and between the CITY OF WINTERS, a municipal corporation, hereinafter called (“CITY”) and the CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING, a California non-profit public benefit corporation or its assignees likely to be separate entities (Winters Pacific Associates, Pacific West Builders, Inc. dba Idaho Pacific West Builders, Inc. in California and or Pacific West Communities, Inc. dba Idaho Pacific West Communities, Inc. in California) (“DEVELOPER”). CITY and DEVELOPER are hereinafter sometimes collectively referred to as the “PARTIES” and singularly as “PARTY.”

### **RECITALS**

**WHEREAS,** DEVELOPER is the owner of certain property located within the CITY, as more particularly described in Exhibit A., and is currently developing the property with a multifamily housing development known as the Orchard Village Apartments (“PROJECT”);  
and

**WHEREAS**, the PROJECT has been conditionally approved by the CITY Planning Commission subject to, among other requirements, the development of and dedication to the City of certain public improvements; and

**WHEREAS**, the public improvements for the PROJECT include, but are not limited to the following: streets, highways, sidewalks, curbs, gutters, storm drainage facilities, public utility facilities, and a public park on property owned by the DEVELOPER adjacent to the PROJECT. The foregoing public improvements are more particularly described in paragraph 3 of this AGREEMENT, and are hereinafter referred to as “the required public improvements;” and

**WHEREAS**, the improvement plans for the required public improvements have been prepared in accordance with plans and documents submitted to and approved by the Planning Commission, the conditions of approval required by the Planning Commission, and in satisfaction of applicable state and local environmental compliance requirements; and

**WHEREAS**, the CITY and the DEVELOPER desire to enter into this AGREEMENT to provide for the construction and dedication to the City of the required public improvements, as more particularly set forth below.

### **AGREEMENT**

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Payment of Fees:** Subsequent to execution of this AGREEMENT by CITY, or at such times as are legally required, DEVELOPER shall pay to CITY all those planning, plan check approval, and administrative fees required by CITY ordinances, as more specifically set forth in paragraph 35 of this AGREEMENT. Those fees to be paid shall include actual staff time and

expenses incurred in the processing and checking improvement plans. All other fees (e.g. development impact fees) shall be paid in accordance with existing ordinances or resolutions and this AGREEMENT.

2. **Inspection Fees:** The DEVELOPER shall pay to the CITY fees for inspecting the construction of the required public improvements in an amount equal to a deposit of \$56,100. Said fees in the amount of \$56,100 shall be paid at time of approval of the improvement plans.

The fees referred to in this paragraph are not necessarily the only City inspection fees, charges, or other costs that may be imposed on the PROJECT, and this AGREEMENT shall in no way exonerate or relieve the DEVELOPER from paying such other applicable fees, charges, and/or other costs. Fees associated with over-time inspections and other special inspections related to the required public improvements may be drawn down from the initial \$56,100 deposit, or any subsequent deposit as required by the CITY.

3. **Construction of Improvements:**

a. Except as otherwise provided below, DEVELOPER agrees to furnish, construct and install at DEVELOPER's sole cost and expense all the required public improvements as shown and approved on the improvement plans prepared by Laugenour and Meikle and dated October 13, 2009 ("IMPROVEMENT PLANS"), a copy of which is on file in the office of the City Engineer, and is incorporated herein by reference, along with any changes or modifications as may be required by the City Engineer. The IMPROVEMENT PLANS may be modified by the DEVELOPER as construction progresses, provided that any modification is approved in writing by the City Engineer. The total estimated cost of the required public improvements is \$776,993.

b. DEVELOPER agrees to install street lights pursuant to P.G. & E. and City requirements.

c. DEVELOPER agrees that gas, electric, telephone and cable television utilities shall be provided via underground transmission facilities at no cost to CITY. DEVELOPER's cost of such facilities (excluding those costs to be paid by utility companies) shall be included in the amount of improvement securities required in Section 9 of this AGREEMENT.

**4. Conformance with Improvements Plans:**

a. All construction of the required public improvements shall conform with the IMPROVEMENT PLANS and shall comply with all applicable standards as required by the CITY's improvement standards, and shall be to the reasonable satisfaction of the City Engineer.

b. DEVELOPER shall provide the City Engineer with a geotechnical study showing condition of the soil/earth for infrastructure, and building pads.

**5. Fulfillment of Conditions:** DEVELOPER shall fulfill all conditions of approval imposed by CITY's Planning Commission on January 27, 2009 and incorporated herein by this reference, in accordance with CITY ordinances, and state law. Reimbursement to CITY of CITY staff time, costs, and expenses, including legal expenses, incurred in the processing, review, approval, inspecting and completion of the improvement and agreements therefore, is a specific condition of approval.

**6. Schedule For Construction:** Except as provided in Paragraph 22 for construction of the public park and Paragraph 23 for construction of the water well improvements, construction of all other required public improvements shall be commenced by the DEVELOPER within one hundred eighty (180) days of the Effective Date and shall be completed within three hundred-sixty

five (365) calendar days thereafter. At least fifteen (15) calendar days prior to the commencement of construction, the DEVELOPER shall notify the City Engineer, in writing of the date DEVELOPER shall commence construction, and shall provide the City Engineer with a construction schedule, in a form specified by the City Engineer, before beginning any work..

**7. Inspection and Access to Work**

a. Except as otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the City Engineer. The City Engineer may observe the progress and quality of the work and determine, in general, if construction of the required public improvements is proceeding in accordance with the intent of the IMPROVEMENT PLANS. The City Engineer is not required to make comprehensive or continuous inspections to check the quality of the work, and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the City Engineer shall not relieve the DEVELOPER of its obligation to conduct comprehensive inspections of the work and to furnish proper materials, labor, equipment and tools, construct acceptable work, and to provide adequate safety precautions, in conformance with this AGREEMENT.

b. Whenever the DEVELOPER varies the period during which work is carried out on each day, DEVELOPER shall give due notice to the City Engineer so that proper inspection may be provided. Any work done in the absence of proper inspection by the City Engineer shall be subject to rejection. Safe access to all parts of the work shall at all times be maintained for the necessary use of the City Engineer, other agents of the CITY, and agents of the Federal, State, or

local governments, as applicable, during reasonable hours for inspection of the work to ascertain compliance with applicable laws and regulations.

c. One or more inspectors may be assigned by the City Engineer to observe the work and compliance with this Agreement. It is understood that such inspectors shall have the power to issue instructions, reject work, and make decisions regarding compliance with this AGREEMENT, subject to review by the City Engineer within the limitations of the authority of the City Engineer. Such inspection shall not relieve the DEVELOPER of its obligation to conduct comprehensive inspections of the work, to furnish proper materials, labor, equipment and tools, construct acceptable work, and to provide adequate safety precautions in conformance with this AGREEMENT.

d. The City Engineer and its representatives shall at all times have access to the work wherever it is in preparation or progress, and the DEVELOPER shall provide safe and convenient facilities for such access and for inspection. If this AGREEMENT, the CITY's improvement standards, the City Engineer's instructions, or the laws, ordinances, of any applicable public authority require any material, equipment or work to be specifically tested or approved, the DEVELOPER shall give the City Engineer timely notice of its readiness for such inspection, and if the inspection is by an authority other than the CITY, notice shall be given of the time fixed for such inspection. Inspections by the City Engineer will be made promptly and, where practicable, at the source of supply.

e. Work performed without inspection may be required to be removed and replaced under proper inspection. In such instances, the entire cost of removal and replacing such

work, including the cost of City furnished materials used in the work, shall be borne by the DEVELOPER, regardless of whether or not the work exposed is found to be defective.

f. The DEVELOPER shall furnish promptly without additional charge all facilities, labor and materials reasonably needed by the City Engineer for performing all inspection and tests. DEVELOPER shall be charged with any additional cost of inspection when material and workmanship are not ready at the time of its inspection.

g. Where any part of the work is being done under an encroachment permit or building permit, or is subject to Federal, State, County or City codes, laws, ordinances, rules or regulations, representatives of the applicable government agency shall have full access to the work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the work for inspection is required by the governing agency, the DEVELOPER shall furnish such notice to the appropriate agency.

**8. Timeliness and Extension:**

a. Time is of the essence of this AGREEMENT. The dates for commencement and completion of the required public improvements may be extended as provided in this paragraph. The City Engineer may extend the dates due to delays in the work actually caused by inclement weather, riots, strikes, lockouts, fires, earthquake, floods and conditions resulting therefrom, or for other reasons beyond the control of the DEVELOPER. Extension of the dates for any other cause shall be made only by the City Council. Extension shall be granted only upon a showing of good

cause by the DEVELOPER. The City Council shall be the sole and final judge as to whether sufficient good cause has been shown to warrant granting the DEVELOPER an extension.

b. Request for extension of the commencement and/or completion date shall be in writing and delivered to the CITY in the manner hereinafter specified for service of notices in paragraph 28 of this AGREEMENT. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on the CITY.

c. In the event the CITY extends the time of commencement and/or completion of the work to be done under this AGREEMENT, such extension shall in no way release any guarantee or security given by the DEVELOPER pursuant to this AGREEMENT, or relieve or release those providing an improvement security pursuant to this AGREEMENT. Those individuals or entities providing improvement security for the PROJECT as specified in Paragraph 9 below, shall be deemed to have expressly agreed to any such extension of time. Any such extension may be granted without notice to those entities or individuals providing improvement security to the DEVELOPER.

d. The granting of any extension of time may be conditioned by the CITY by requiring new or amended improvement security in amounts increased to reflect increases in the costs of constructing the required improvements or by other conditions imposed by the CITY to protect its interests and ensure the timely completion of the required public improvements.

9. **Improvements Security:** Concurrently with the execution of this Agreement, the DEVELOPER shall furnish the CITY:

a. Improvement security in the sum of Seven Hundred Seventy-Six Thousand

Nine Hundred and Ninety-Three Dollars (\$776,993) which is equal to one hundred (100) percent of the total estimated cost of constructing the required public improvements, which estimated cost has been reviewed and approved by the City Engineer, and the cost of any other obligation to be performed by DEVELOPER under this AGREEMENT; and

b. Separate improvement security in the sum of Seven Hundred Seventy-Six Thousand Nine Hundred and Ninety-Three Dollars (\$776,993) which is equal to one hundred (100) percent of the estimated cost of constructing the required public improvements, securing payment to the contractor, subcontractor, and to persons furnishing labor, materials, or equipment to them for the construction of the required public improvements.

c. As part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY in successfully enforcing the obligation secured.

d. The type and form of the improvements security shall be in conformance with the City Resolution No. 2006-02, entitled, A RESOLUTION ESTABLISHING THE POLICY OF THE CITY OF WINTERS REGARDING IMPROVEMENT SECURITY, and shall be subject to the approval of the City Manager and City Attorney. No change, alteration, or addition to the terms of this AGREEMENT or the IMPROVEMENT PLANS accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this AGREEMENT. Security may be an instrument of credit or similar security as provided for in Resolution No. 2006-02 from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out this

AGREEMENT are on deposit and guaranteed for payment. Said security document shall be subject to approval of the CITY.

10. **Release of Security:** The security furnished by the DEVELOPER may be released in whole or in part in the following manner:

a. Security given for faithful performance of any act or agreement may be released upon the performance of the act and final completion and acceptance by the City Council of the required work. Partial release of said security upon partial performance of the act or the acceptance of the work as it progresses may be made upon written authorization of the City Engineer following his inspection and approval of the required public improvements or work related thereto, and the approval of the City Council once each month. In any event, however, sufficient security in an amount equal to ten percent (10%) of the estimated cost of the required public improvements to be constructed, shall be retained for the guarantee and warranty of the constructed improvements and related work against any defective work or labor done, or defective materials furnished, and for the purpose of guaranteeing payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment, and the same shall be retained for one (1) year after completion and acceptance by the CITY of all required public improvements and work related thereto. CITY is further not obligated to release any amount of security deemed reasonably necessary by CITY to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

b. Security securing the payment to contractor, his subcontractors and to persons furnishing labor, materials or equipment may, six (6) months after performance of the act and the

completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which the action has been filed and notice thereof given in writing to the City Council, and if no such actions have been filed the security may be released in full.

**11. Risk of Loss Prior To Acceptance:** Neither the CITY, nor any of its officers/elected officials or employees, shall be liable or responsible to DEVELOPER or anyone else, for any accident, loss, or damage, happening or occurring to the improvements specified in this AGREEMENT prior to the completion and acceptance of the required public improvements by CITY. The entire risk of loss relative to said improvements shall be with the DEVELOPER during the period of construction thereof and prior to completion and acceptance thereof by CITY.

**12. As Built Drawings:** DEVELOPER shall keep accurate records on a set of project mylar prints of all additions and deletions to the work, and of all changes in location, elevation, and character of the work, not otherwise shown or noted on the IMPROVEMENT PLANS. Prior to field acceptance of the work, all additions and deletions shall be transferred to mylars and two half size sets of prints. DEVELOPER shall deliver this "as built" information to the City Engineer for the Engineer's approval and retention.

**13. Utility Arrangements:** DEVELOPER shall file with the City Engineer, prior to commencement of any work to be performed pursuant to this agreement, a written statement or a will service letter signed by DEVELOPER and each public utility serving the project, providing that DEVELOPER has made all arrangements required and necessary to provide the public utility service to the project. Said agreement will provide for the undergrounding of all utility lines on the property as approved by the City Engineer. For purposes of this paragraph, the term "public utility" shall include, but is not limited to, a company providing natural gas, water, sewer, electricity, telephone,

and/or cable television service. Said provision shall be without expense to the CITY.

**14. Insurance:** DEVELOPER shall not commence construction or work under this Agreement until all insurance required under this paragraph is obtained and until such insurance has been approved by the City Attorney as to form and sufficiency, nor shall the DEVELOPER allow any contractor or subcontractor to commence work until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved.

**a.** WORKERS' COMPENSATION INSURANCE shall be provided, during the life of this AGREEMENT, for all employees employed for construction or work required under this AGREEMENT regardless of whether said employees are employed by Owner or Owner's contractors, subcontractors, or agents. DEVELOPER shall indemnify and hold harmless CITY for any damage resulting from failure of either DEVELOPER or any contractor or subcontractor to take out or maintain such insurance.

**b.** DEVELOPER shall obtain the following insurance coverages naming DEVELOPER's contractors, subcontractors, and their agents as insured, and the coverage and certificate(s) thereof shall have been approved by the City Attorney:

**1) COMPREHENSIVE GENERAL LIABILITY INSURANCE** for liability assumed by DEVELOPER pursuant to this AGREEMENT with CITY. The minimum limits of liability for the insurance of this PROJECT for the CITY shall be One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollars (\$2,000,000) aggregate for bodily injury liability and property damage liability.

**2) AUTOMOBILE LIABILITY INSURANCE** coverage in minimum limits of not less than One Million Dollars (\$1,000,000) shall be required by DEVELOPER

and/or DEVELOPER's contractors and sub-contractors hired to perform work on the PROJECT for owned, hired, leased, and non-owned autos.

An additional insured endorsement to the DEVELOPER's liability insurance policies shall name the CITY, its elective and appointive boards, commissions, officers, agents, and employees, as additional insured, and provide that such insurance is primary insurance with respect to the interest of the CITY and that of any other insurance maintained by the CITY.

**15. Certificates of Insurance:** Promptly upon execution of this AGREEMENT, and prior to commencement of any work, the DEVELOPER shall provide the CITY with certificates of insurance evidencing that the above-required insurance has been obtained and is in full force and effect. The terms of the above-required insurance policy/policies shall require each carrier to give CITY at least thirty (30) calendar days prior written notice of cancellation or reduction in coverage of each of the above-required insurance policies during the effective period of this AGREEMENT. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve DEVELOPER for liability in excess of such coverage, nor shall it preclude CITY from taking such other actions as are available to it under any other provisions of this AGREEMENT or otherwise in law.

**16. Indemnification and Hold Harmless:** DEVELOPER will indemnify, hold harmless and assume the defense of, in any actions of law or in equity, the CITY, its officers/elected officials, employees, agents, and elective and appointive boards from any and all claims, losses, damage, including property damage, personal injury, including death, and liability of every kind, nature, and description, directly or indirectly arising out of or in any way connected with performance under this

AGREEMENT and/or construction of the required public improvements by the DEVELOPER, his contractor or any subcontractor, or of any person directly or indirectly employed by, or acting as agent for the DEVELOPER, his contractor or any subcontractor. This indemnification and hold harmless provision shall extend to claims, losses, damage, injury, and liability for injuries occurring after completion of the construction. Acceptance of insurance certificates required under this Agreement does not relieve DEVELOPER from liability under this indemnification and hold harmless provision.

17. **Developer Is Not An Agent of the City:** Neither DEVELOPER, nor any of DEVELOPER's contractors, subcontractors, or agents are or shall be considered agents of CITY when performing DEVELOPER's obligations under this AGREEMENT.

18. **Repair of Reconstruction of Defective Work:** For a period of one (1) year after acceptance by the City Council of the completed construction and work done under this AGREEMENT, DEVELOPER shall remain fully and completely responsible for the repair, replacement, and reconstruction of any defective or otherwise unsatisfactory work or labor done, or defective materials furnished, in the performance of this AGREEMENT by DEVELOPER. Should DEVELOPER fail or refuse to act promptly after receiving written notification by CITY of the necessity to act pursuant to the aforementioned requirement, or should the exigencies of the case require repairs or replacements to be made before DEVELOPER can be notified, CITY may, in its sole discretion, make the necessary repairs or replacements and perform the reconstruction work and DEVELOPER shall pay to CITY the actual cost therefore plus fifteen percent (15%) thereof, which additional fifteen percent (15%) shall be paid to CITY as and for an administrative fee. The PARTIES further understand and agree that the improvement security furnished pursuant to

paragraph 10 of this AGREEMENT shall guarantee and secure the faithful performance of the provisions of this paragraph during the one-year warranty period.

**19. Acceptance and Dedication to City of Requirement Public Improvements:**

Except as provided in Paragraph 22 of this AGREEMENT with regard to the public park, title to and ownership of the required public improvements constructed pursuant to this AGREEMENT by DEVELOPER shall vest absolutely to the CITY upon completion and acceptance in writing of such improvements by CITY. The CITY may elect not to accept the required public improvements, unless they are constructed in conformity with the approved IMPROVEMENT PLANS, approved modifications, if any, City's improvement standards, and to the satisfaction of the City Engineer.

**20. Notice of Breach and Default:** If DEVELOPER refuses or fails to obtain prosecution of the work, or any severable part thereof with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the DEVELOPER should be adjudged a bankrupt, or DEVELOPER should make a general assignment for the benefit of DEVELOPER's creditors, or if a receiver should be appointed in the event of DEVELOPER's insolvency, or if DEVELOPER, or any of the DEVELOPER's contractors, subcontractors, agents, or employee, should violate any of the provisions of this AGREEMENT, CITY may serve written notice of breach of this AGREEMENT upon DEVELOPER and any holder of security provided by DEVELOPER pursuant to paragraph 10 of this AGREEMENT.

**21. Breach of Agreement: Performance by Improvement Security Provider or City:**

a. In the event of any such notice of breach and default, those entities or individuals providing improvement security to the DEVELOPER under Paragraph 9 shall have the duty to take over and complete the required public improvements herein specified. However, if within fifteen (15) days after the servicing upon it of such notice of breach, the security improvement providers do not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within twenty (20) days after notice to such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of DEVELOPER and those providing improvement security to the DEVELOPER shall be liable to CITY for any excess cost or damages occasioned CITY thereby.

b. In the event DEVELOPER has provided security for DEVELOPER's performance under this AGREEMENT in either the form of a deposit or an instrument of credit, CITY, at its option, shall have full and conditional recourse to such security in accomplishing the performance incumbent upon DEVELOPER.

c. In the event the CITY takes action under Subsection 21(a) or 21(b) above, CITY without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary therefor. The rights of CITY provided in this Section are in addition to and cumulative to any and all other rights. Paragraphs 21 and 22 hereof shall not be construed as being in lieu of any other such rights provided by law.

22. **Park Development:** The PROJECT has been conditionally approved by the City

subject to, among other requirements, the development of and dedication to the CITY of an improved public park on property adjacent to the PROJECT and more particularly described in Exhibit B (“Park Improvements”). Additionally, the CITY and the DEVELOPER are actively applying for Proposition 84 park grant funds to develop a larger park area than was conditionally approved by the CITY on a larger portion of the same site adjacent to the Project. Any larger park will meet or exceed the Park Improvements described in Exhibit B and shall be approved by the Planning Commission (the “Larger Park”). Subsections a-d below are subject to the caveat that if the Proposition 84 park funds are awarded to the PROJECT, then the Park Improvements set forth in Exhibit “B” shall be replaced by the improvements approved for the Larger Park and, upon construction and dedication to City of the Larger Park the park development requirement will be deemed met. Upon dedication of the Larger Park to the City, all Park Fees shall be reimbursed to Developer even though costs associated with the Park Improvements are paid by the Proposition 84 funds.

**a. Construction.** DEVELOPER agrees to construct the Park Improvements described in Exhibit B, in accordance with plans approved by City Engineer and in accordance with , CITY's improvement standards, as applicable, and this AGREEMENT. The Park Improvements shall be constructed and/or installed at the sole cost and expense of DEVELOPER. Construction of the Park Improvements shall at all times strictly conform to all applicable provisions of the CITY's comprehensive plan, zoning ordinances and other applicable laws, rules and regulations of any governmental entity having jurisdiction or control over any part or stage of the project.

**b. Payment.** Upon satisfactory completion of the Park Improvements described

in Exhibit B, and the acceptance thereof by CITY, DEVELOPER shall be entitled to receive reimbursement for up to the actual cost of the Park Improvements in the following manner:

The CITY will require, and DEVELOPER agrees to pay, all Park Impact Fees owed for the PROJECT at the time of issuance of the first building permit for the PROJECT. Upon acceptance of the Park Improvements by the CITY and payment of all impact fees, the DEVELOPER shall then be entitled to reimbursement of Park Impact Fees paid by DEVELOPER for construction of the Park Improvements. The total amount of reimbursement for the construction of Park Improvements identified in Exhibit B paid to DEVELOPER shall not exceed the actual cost of the Park Improvements or the amount of Park Impact Fees paid by DEVELOPER, whichever is less. DEVELOPER shall have no further rights to reimbursement for the Park Improvements, after such payment is made by CITY.

**c. Timing of Construction.** DEVELOPER shall commence construction of the Park Improvements no later than July 1, 2011 and shall complete construction within twelve (12) months from commencement of construction. In accordance with the conditions of approval for the PROJECT, DEVELOPER understands and agrees that it shall not receive certificates of occupancy allowing occupancy of any apartment units until construction of the Park Improvements has commenced, as determined in the sole discretion of the CITY. The CITY further agrees that completion of the Park Improvements shall not be required prior to the occupancy of the PROJECT.

**d. Reimbursement.** Reimbursement for Park Improvements shall be made exclusively from the Park Impact Fund identified for the Park Improvements described in Exhibit B. 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.

**e. Adjustment.** Notwithstanding any other provisions of this AGREEMENT, DEVELOPER agrees to make any changes in the construction of the Park Improvements as requested by City Engineer. CITY agrees to pay DEVELOPER for any additional costs for City-approved changes that add Park Improvements beyond those improvements shown on the City approved Park Improvement plans in Exhibit B, however, DEVELOPER shall provide a written statement of the cost of the change, prior to constructing any change. In addition, notwithstanding any other terms contained in this AGREEMENT, City Engineer is only authorized to request changes from DEVELOPER provided the total cost for said changes does not exceed the budgeted amount for the Park Improvements, as approved by the City Council. If a Larger Park is constructed, Proposition 84 park fund shall pay for changes to the approved plans for the Larger Park or any added improvements to the Larger Park.

**f. Conveyance and Dedication of Park Improvements.** When DEVELOPER completes construction of the Park Improvements and the Park Improvements have been deemed satisfactory and accepted by CITY, the Park Improvements shall automatically become the property of CITY. DEVELOPER shall take any and all actions necessary to convey and vest full, complete and clear title in the Park Improvements to CITY.

**g. Cost Documentation.** Prior to the start of construction for the Park Improvements, DEVELOPER shall provide to the CITY copies of all design and construction

contracts. Upon DEVELOPER's completion of the Park Improvements, DEVELOPER shall submit documentation to CITY evidencing the cost of the Park Improvements or portion thereof constructed. Such documentation shall include, but is not limited to, copies of DEVELOPER's construction contract(s), invoices, cancelled checks, complete lien releases with respect to the Park Improvements and any other documentation reasonably requested by CITY. 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 after completion of the Park Improvements, or a serviceable portion thereof. 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 the Park Improvements in order for CITY to verify the DEVELOPER's costs.

**h. Liens.** DEVELOPER shall provide a guarantee and assurance to CITY that there are no liens on the Park Improvements 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 Park Improvements. Notwithstanding any other provision or term of this AGREEMENT, CITY shall have no obligation to make any reimbursement payments until DEVELOPER has cleared any and all liens and encumbrances from the Park Improvements, and provided the required guarantee and assurance in writing, to the satisfaction of CITY.

**i. Conveyance of Documents.** Upon conveyance of the Park Improvements, as set forth in sub-paragraph f above, DEVELOPER shall convey and deliver to CITY copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, construction contracts, warranties and other documents relating to the design, construction and operation of the

Park Improvements, which are in DEVELOPER's custody or control, or in the custody or control of any of DEVELOPER's contractor's, subcontractors or agents.

**23. Water Well.**

a. DEVELOPER hereby agrees that, in lieu of installing water well improvements, to pay a development fee to CITY, at the time of issuance of the first building permit for the PROJECT, in the sum of Seven Hundred Thousand Dollars (\$700,000.00). These monies (the "Funds") shall be used to fund all costs and expenses of any kind incurred in the development and construction of the Water Well Phase 2 pumping and site improvements as required in the conditions of approvals for the Project (hereinafter "Water Well Improvements").

b. If, after completion of the PROJECT, as determined by the City Engineer in the CITY's sole discretion, any portion of the Funds has not been expended or committed for expenditure, the CITY shall, within sixty (60) days of such determination, return to DEVELOPER such unexpended or uncommitted amount.

c. The Funds shall be deposited and maintained in a separate ledger account. The Funds shall be used, in the sole discretion of the City, to develop and construct the Water Well Improvements, or to reimburse the City Redevelopment fund account that advanced funds for construction of the Water Well Improvements.

d. The advance of Funds shall be contingent on the issuance of building permits for the PROJECT.

e. The Water Well Improvements are estimated to be complete by May 1, 2010.

f. Completion of the Water Well Improvements is a condition of the PROJECT receiving final Certificate of Occupancies. However, a conditional certificate of occupancy may be

issued until final completion of the Water Well Improvements at the request of the DEVELOPER to the City Manager if the Water Well Improvements final completion is delayed and the Project has adequate water flow, water pressure and fire flow or the DEVELOPER has otherwise provided adequately for fire protection including, without limitation, through installation of a temporary on-site water storage system; all as determined by the Fire Chief and City Engineer.

g. The Funds will be reimbursed to the DEVELOPER as additional development occurs and impact and/or development fees are collected. The DEVELOPER or its assigns shall receive such reimbursement subsequent to reimbursement owed by the CITY to Winters Investors LLC for well fees paid prior to the execution of this AGREEMENT. The DEVELOPER or its assigns shall receive reimbursement in full prior to any other developer receiving any reimbursements from this fund with respect to fees paid or costs incurred later in time than those of DEVELOPER.

#### 24. Prevailing Wages.

a. DEVELOPER shall comply, and shall ensure that its contractors and subcontractors comply, with all federal and state prevailing wage laws and labor code requirements applicable to public works and payment of prevailing wages (including the Davis-Bacon Act of 1931, California Labor Code Sections 1720 *et seq.*, California Labor Code Sections 1726 and 1781, and implementing regulations of the Department of Industrial Relations, all as amended), and such prevailing wage policies, if any, as set forth in the City of Winters Municipal Code (collectively, "**Prevailing Wage Laws**") in connection with construction and development of the PROJECT. Except to the extent DEVELOPER obtains a ruling to the contrary from the Department of Industrial Relations or meets the requirements for exemptions for affordable

housing, DEVELOPER shall, as required, comply with Prevailing Wage Laws, shall require the general contractor for the PROJECT to comply with Prevailing Wage Laws, and, upon written request by CITY, submit certified copies of payroll records to CITY and to maintain and make records available to CITY and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. DEVELOPER shall, as required, also include in its general contractor agreement and in all of its leases and other contracts, a provision, in form acceptable to CITY, obligating the general contractor, or others as applicable, to require their respective contractors and/or subcontractors to comply with Prevailing Wage Laws, and to submit, upon request by CITY, certified copies of payroll records to CITY, and to maintain and make such payroll records available to CITY and its designees for inspection and copying during regular business hours at the Property or at another location within the City of Winters.

b. DEVELOPER hereby fully releases and discharges the CITY, its respective officials, officers, employees, volunteers, agents and representatives and each of them from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, arising out of or in any way connected with or otherwise based upon the obligations of DEVELOPER to comply with Prevailing Wage Laws with respect to all or any portion of the PROJECT, (including if any collective bargaining entity, commences any action or administrative proceeding alleging any violation of Prevailing Wage Laws and any claims made by contractors, subcontractors or other third party claimants (whether or not pursuant to Labor Code Sections 1726 and 1781, as

amended and added by Senate Bill 966), by the California Department of Industrial Relations, or by the California Division of Labor Statistics and Research).

**25. Assessment District:** DEVELOPER expressly consents to the annexation to the City-Wide Maintenance Assessment District.

**a.** Purpose of said district is to provide and pay for the maintenance, servicing, and incidental expenses of the property's street lights, landscaping (where applicable), creek bank protection (where applicable), and open space areas along Putah Creek (where applicable), etc, as provided in the Streets & Highways Code, Section 22500 et seq., arising from the impacts brought by DEVELOPER and improvements constructed by the DEVELOPER.

**b.** DEVELOPER agrees that current assessment levels are appropriate, as are the assessment formulas.

**26. Effect of Waiver:** CITY's waiver of a breach of any one (1) term, covenant, or other provision of this AGREEMENT, is not a waiver of a breach of any other term, nor is a subsequent breach of the term or provision thereby waived.

**27. Attorney's Fees:** In the event that DEVELOPER fails to perform any obligation hereunder and should CITY prevail in any legal action to compel performance of this AGREEMENT, DEVELOPER agrees to pay reasonable attorney's fees, all costs of suit and all other expenses of litigation incurred by CITY in connection therewith.

**28. Assignments:** This AGREEMENT and all rights, duties, benefit and burdens (collectively, the "ATTRIBUTES") hereunder shall be freely assignable by the DEVELOPER in whole or in part. Specifically, but without limitation, it is understood and agreed that

DEVELOPER shall assign: (1) the ATTRIBUTES relating to developing, building, owning and operating the PROJECT as well as pay applicable fees to Winters Pacific Associates, a California limited partnership; (2) the ATTRIBUTES relating to developing and building the PARK IMPROVEMENTS and the right to directly receive reimbursement of Park Impact Fund fees paid by and otherwise due to DEVELOPER or its assigns to Pacific West Communities, dba California Idaho Pacific West Communities, Inc.; and (3) the ATTRIBUTES relating to reimbursement of fees paid in respect of the well improvements to Pacific West Communities, Inc., dba California Idaho Pacific West Communities, Inc.

**29. Binding on Heirs, Successors, and Assigns:** The covenants and conditions contained in this AGREEMENT shall be binding on DEVELOPER'S heirs, successors, and assigns until such time as said covenants and conditions completely have been fulfilled.

**30. Notices and Payments:** Notices shall be in writing. Payments shall be made by cash, check, or money order. Notices or payments may be made by personal delivery to or mailed to:

**CITY:**  
**City of Winters**  
**318 First Street**  
**Winters, CA 95694**  
**Attn: City Manager**  
**Telephone: (530) 795-4910**  
**Facsimile: (530) 795-4935**

**With a copy to:**  
**Meyers, Nave, Riback, Silver & Wilson**  
**555 Capitol Mall, Suite 1200**  
**Sacramento, CA 95814**  
**Attn: Steven P. Rudolph**  
**Telephone: (916) 556-1531**  
**Facsimile: (916) 556-1516**

**DEVELOPER:**

**Central Valley Coalition for Affordable Housing**  
3351 M Street, Suite 100  
Merced, CA 95348  
Attn: Christine Alley  
Telephone: (209) 388-0782  
Facsimile: (209) 385-3770

**With a copy to:**  
Winters Pacific Associates, LP  
430 E. State Street, Suite 100  
Eagle, ID 83616  
Attn: Caleb Roope  
Telephone: (208) 461-0022 ext. 3033  
Facsimile: (208) 461-3268

Mailed notices or payments shall be deemed delivered three days after deposit in the U.S. Mail, properly addressed and with certified postage prepaid. A change of person or place to send or receive notices or payments shall be made in accordance with provision set forth hereinabove. Any PARTY or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

31. **Definition of CITY:** "CITY" shall include the City Manager, the City Engineer, and other authorized representatives designated by the Winters City Council.

32. **Covenants and Conditions:** Each covenant and each condition shall be deemed both a covenant and a condition.

33. **Effective Period of This Agreement:** This AGREEMENT shall remain in full force and effect for a period of one (1) year after acceptance by the City Council of the completed construction and the work done under this AGREEMENT or from DEVELOPER's completion of the most recent repair or reconstruction work under paragraph 18 of this AGREEMENT,

whichever is later.

**34. Recordation:** The PARTIES agree that this AGREEMENT shall be recorded at the Office of the Yolo County Recorder.

**35. Time For Payment of Fees:**

**a.** If DEVELOPER owes CITY money as reimbursement of costs related to processing application to date, said reimbursement shall be paid prior to the EFFECTIVE DATE of this AGREEMENT.

**b.** Fish and Game CEQA Mitigation: The DEVELOPER shall comply with provisions of Fish and Game Code Section 711.4 by, prior to any construction or grading of the PROJECT site, submitting written evidence of having paid applicable Fish and Game mitigation fees.

**c.** Building Permits Fees: Appropriate building permit fees shall be paid prior to issuance of building permits.

**d.** City Development Impact Fees: City of Winters Development Impact Fees in effect at the time of issuance of building permits shall be paid prior to issuance of certificates of occupancy unless otherwise stated in this requirement. Currently those fees are Parks, Water, Streets, Police, Fire, Sewer, Local Drainage, Flood Area Storm Drainage Development Impact Fee, General Capital, and Monitoring (General Plan).

**e.** The Flood Area Storm Drainage Development Impact Fee referred to in paragraph 35(d) above is One Hundred Seventy-Two Thousand Eight Hundred Dollars (\$172,800) (4.32 acres X \$40,000/acre) for this Property and shall be paid in full prior to issuance of the certificates of occupancy for the development.

- f. Development Impact fees are subject to an annual increase each July based upon the Engineering News Record Construction Cost Index.
- g. Winters Joint Unified School District Fees: School Impact fees must be paid to the School District prior to issuance of certificates of occupancy.
- h. Yolo County Facilities Fees: County fees must be paid prior to issuance of certificates of occupancy.
- i. Business License: Prior to conducting business in the City of Winters, all contractors, subcontractors, or any other agents shall pay for and obtain a Business License.
- j. DEVELOPER acknowledges that the City's General Plan requires that affordable housing be dispersed throughout the community to avoid the housing deterioration that comes from the concentration of said housing. DEVELOPER agrees to fully comply with City's General Plan goals and policies as to such housing.

36. **Disclaimer Of Liability:** In the event any claim, action or proceeding is commenced naming the CITY or its agents, officers/elected officials, and employees as defendant, respondent or cross defendant arising or alleged to arise from the CITY's approval of this PROJECT, the DEVELOPER shall defend, indemnify, and hold harmless the CITY or its agents, officers/elected officials and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul any approval of the CITY of Winters, the Winters Planning Commission, any advisory agency to the CITY and local district, or the Winters City Council. Project DEVELOPER shall defend such action at DEVELOPER's sole cost and expense which includes court costs and attorney fees. The CITY shall promptly notify the DEVELOPER of any such claim, action, or proceeding and shall

cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the CITY from participating in the defense of any claim, action, or proceeding, if the CITY bears its own attorney fees and cost, and defends the action in good faith. DEVELOPER shall not be required to pay or perform any settlement unless the settlement is approved by the DEVELOPER in good faith, and the settlement not direct or indirect cost on the CITY, or its agents, officers/elected officials, and employees, the Winters Planning Commission, any advisory agency to the CITY, local district and the Winters City Council. Notwithstanding anything in this AGREEMENT to the contrary, the foregoing shall not apply to any bona fide purchaser(s) from DEVELOPER following their acquisition of any parcel in the development project if the required improvements (for such purchasers' parcels) have been completed and accepted by the CITY.

37. **Certificates of Occupancy:** Except as otherwise provided in this AGREEMENT, permanent certificates of occupancy for residential units shall not be issued until after completion, and acceptance by the City, of the required public improvements pursuant to the approved public IMPROVEMENT PLANS, or the City Engineer and Fire Chief have provided their written approval. The issuance of certificates of occupancy prior to the completion and acceptance of the required public improvements will be subject to conditions and shall be limited in scope.

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

**CITY OF WINTERS:**

**DEVELOPER:**

BY: \_\_\_\_\_  
Michael Martin, MAYOR

BY: \_\_\_\_\_

BY: \_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John C. Wallace, ATTORNEY

1365034v1

# EXHIBIT "A"

## *Legal Description of Property*

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF WINTERS, COUNTY OF YOLO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Lot 3, J.H. Hill's Subdivision of a portion of Fractional Section 22, Township 8 North, Range 1 West, M.D.B&M., Filed October 3, 1888, In Book 44 of Deeds, Page 1, Yolo County Records.

Parcel Two:

The West 60.00 feet of the South 471.57 feet of the North 1,414.71 feet of the fractional Northwest Quarter or Section 22, Township 8 North, Range 1 West M.D.B&M.

Excepting therefrom all minerals and mineral rights, interests, and royalties including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals in and under the property; however, Grantor or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the property in connection therewith as excepted and reserved by Southern Pacific Transportation Company, a Delaware corporation, in the Quitclaim Deed recorded May 30, 1997, as Instrument No. 97-0012564, Yolo County Records,

APN: 003-360-05-1, 003-360-18-1

## **Exhibit “B”**

### ***Park Improvements***

As conditions of approval state:

Applicant shall submit a neighborhood park development plan for review and approval by the City, base on input received by the City. The elements of the plan shall consist of turf, irrigation systems, recreational pathways, picnic benches. The plan shall include covered picnic/barbeque structure and an alternative playground structure. The City will determine which alternative structure to be constructed.

**RESOLUTION NO. 2010-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS APPROVING A PUBLIC IMPROVEMENT AGREEMENT AND MAINTENANCE AGREEMENT BETWEEN CITY OF WINTERS (CITY) AND CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING, A CALIFORNIA NON PROFIT PUBLIC BENEFIT CORPORATION (DEVELOPER), TO CONSTRUCT PUBLIC IMPROVEMENTS IN THE ORCHARD VILLAGE PROJECT AND AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENTS**

WHEREAS, the Developer is the owner of certain property located within the City, as more particularly described in Exhibit A of the Public Improvement and Maintenance Agreement, and is currently developing the property with a multifamily housing development known as Orchard Village Apartments ("Project"); and

WHEREAS, the Project has been conditionally approved by the City's Planning Commission on January 27, 2009;

WHEREAS, Condition #36 requires that the developer enter into a guarantee improvement agreement with the City to address the public improvements and pay all associated fees; and

WHEREAS, approval of the Public Improvement Agreement ("Agreement") by the City Council and execution of the Agreement by the City Manager will satisfy Condition #36.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Winters does hereby approve and authorize the Mayor or his designee to execute the Public Improvement and Maintenance Agreement between the City of Winters and the Central Valley Coalition for Affordable Housing.

IT IS HEREBY CERTIFIED that foregoing Resolution No. 2010-07 was duly introduced and legally adopted by the City Council at its regular meeting held on this 2nd day of February 2010, by the following roll call vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

Approved:

Attested:

\_\_\_\_\_  
Michael Martin, Mayor

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

Approve As to Form:

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



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: February 2, 2010  
THROUGH: John W. Donlevy, Jr., City Manager  
FROM: John C. Wallace, City Attorney  
SUBJECT: Increase in Municipal Services Tax - Ballot Measure

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RECOMMENDATION: None

BACKGROUND: Proposition 218, enacted by the voters of California in 1996, changed city authority to raise certain taxes and assessments, to require approval of property owners or voters. Proposition 218 distinguishes taxes for special purposes (special taxes) from taxes for general fund uses (general taxes). Although certain fees and increases are subject to special procedures, Special taxes require 2/3rds approval by the voters, while general taxes require a majority vote. An example here in Winters would be the Maintenance Assessment District, currently under-funded. To balance that fund by an increased assessment, a 2/3rds vote would be required. Our recently adopted Utility Tax Modernization Act is an example of a general tax, which required majority approval and was adopted. Procedurally, the Council by Resolutions would repeat the process used in the utility tax ballot measure. Wording for the ballot measure would substantially be as follows:

Shall the City Council of the City of Winters be authorized to increase the Municipal Services Tax by \$\_\_\_\_\_ per month, the proceeds of which shall be used for essential general services including, but not limited to, police and fire protection services, street improvements, parks and recreation, and other General Fund services? Yes \_\_\_\_\_ No \_\_\_\_\_

FISCAL IMPACT: An increase in general fund revenues, in an amount based on the amount of increase.



CITY COUNCIL  
STAFF REPORT

**TO:** Honorable Mayor and Councilmembers  
**DATE:** February 2, 2010  
**FROM:** John W. Donlevy, Jr., City Manager  
**SUBJECT:** Municipal Services Tax- Update

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**RECOMMENDATION:**

That the City Council discuss and provide direction regarding the City's Municipal Services Tax.

**BACKGROUND:**

Under Chapter 3.16 of the City's Municipal Code, the City of Winters currently charges all units within the City a Municipal Services Tax of \$120 annually (\$10 per month). While it is a "general" tax, the revenues received are primarily used to fund public safety services and supplement the City's General Fund.

**DISCUSSION:**

At the January 19, 2010 City Council Meeting, Staff was directed to bring back a discussion item to determine the estimated costs for upgrading public safety services and the projected revenues for potential increases in the Municipal Services Tax.

The total annual costs for a police officer is approximately \$125,000. This includes pay and benefits, costs for operations and equipment. The goal for increased staffing in the Department is for an additional four officers over a two year period.

The Fire Department has also requested the implementation of a "paid-call" system to encourage current volunteers to sleep at the fire station during the evenings to allow for a more effective 24 hour response capability. This system was tested during the fall of 2009 and was extremely successful. The cost for implementation of the "paid-call" system within the Winters Fire Department is approximately \$80,000.

**Municipal Tax Projections:**

The City of Winters currently charges the Municipal Tax to 2,383 residences and businesses within the City. The projections for estimated revenues from possible increases are as follows:

- Current Budget @ \$10= \$285,960
- \$2.5 increase= \$71,490
- \$5 increase= \$142,980
- \$7.5 increase= \$214,470
- \$10 increase= \$285,960

Any increases in the Municipal Services Tax will require a vote of the citizens of Winters and must pass with more than 50%. The resolution must be submitted to Yolo County no later than March 12, 2010.

**FISCAL IMPACT:**

To be determined.