

Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, October 4, 2011
6:30 p.m.
AGENDA

Members of the City Council

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

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

6:00 p.m. - Executive Session

AGENDA

Pursuant to Government Code Section 54956.8 - 314 Railroad Avenue,
Winters, CA Real Property Negotiator City Manager John W. Donlevy, Jr.

6:30 p.m. – Regular Meeting

AGENDA

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 Tuesday, September 20, 2011 (pp. 1-3)

PRESENTATIONS

DISCUSSION ITEMS

1. Fire Management Services Proposal- Cities of Winters and Dixon (pp. 4-10)
2. Downtown Hotel RFP Calendar and Process (p. 11)
3. North Bank Trail Project- Mitigation Easement Escrow Funding Authorization (pp. 12-18)
4. 314 Railroad Ave. – Status Update (pp. 19-20)

COMMUNITY DEVELOPMENT AGENCY

1.

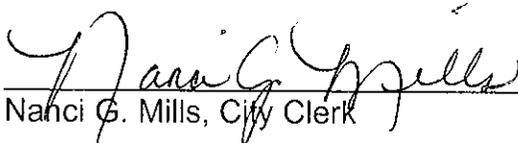
CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the October 4, 2011 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 September 29, 2011, and made available to the public during normal business hours.


Nanci G. Mills, City Clerk

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

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Wednesday at 10:00 a.m.

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



Minutes of the Regular Meeting of the
Winters City Council Held on September 20, 2011

6:00 p.m. - Executive Session

AGENDA

Pursuant to Government Code Section 54956.8 - 318 Railroad Avenue,
Winters, CA Real Property Negotiator City Manager John W. Donlevy, Jr.

Pursuant to Government Code Section 54957.6 – Personnel Negotiations
Relating to Police and Fire

6:30 p.m. – Regular Meeting

AGENDA

Mayor Fridae called to order the regular meeting of the Winters City Council at
6:30 p.m.

Present: Council Members Cecilia Aguiar-Curry, Harold Anderson, Michael
Martin, Tom Stone, and Mayor Woody Fridae
Absent: None
Staff: City Manager John Donlevy, City Attorney John Wallace, City Clerk
Nanci Mills, Community Development Director Nelia Dyer,
Management Analyst Dawn Van Dyke, Police Officer Matt Martin
and Administrative Assistant Tracy Jensen.

Police Officer Matt Martin led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy indicated no agenda changes.
Motion by Council Member Aguiar-Curry, second by Council Member Martin to
approve the agenda. Motion carried unanimously.

Closed Session: City Manager Donlevy reported that Council addressed only the personnel negotiations item, where no reportable action was taken. Staff was given direction and will then meet and confirm.

COUNCIL/STAFF COMMENTS: Mayor Fridae welcomed Council Member Stone back from medical leave. Council Member Stone reported the carnitas festival and fun run are being held this weekend.

Council Member Martin attended a Yolo-Solano Air Quality District meeting where they are pushing back some rules for local businesses.

Council Member Aguiar-Curry attended the Yolo County Board of Supervisors Redistricting meeting on 9/14 and although we put up a valiant effort, Winters was unsuccessful in its bid to remain in the 5th district. Supervisors Rexroad, McGowan and Saylor favored the map where most of the Woodland population will be in the 5th district and Winters will be in the 2nd district. This map completely changes the constituency of the 5th district. Ms. Aguiar-Curry said the supervisors didn't view the Winters map and were 'dismayed' by the lack of Winters residents in attendance. The Supervisors will give their final vote at the redistricting meeting on 9/27. Council Member Martin voiced his disappointment that the Supervisors didn't listen to the farmers, saying Winters is just a pawn and that they are more concerned with the larger cities in the district. Ms. Aguiar-Curry added that Supervisor Chamberlain represented Winters well and the other Supervisors don't appreciate Mr. Chamberlain's support of the agricultural community. The shift, which is being viewed as a political move, will make it difficult for Mr. Chamberlain to get through the process. Supervisor Saylor will then represent District 5. On 9/19, Ms. Aguiar-Curry attended a Water Resources Assn. Board of Directors meeting where they are addressing mercury issues in Cache Creek, Proposition 84, and a \$1.4 million dollar grant directed at an abandoned well amnesty program, where citizens can apply for up to \$25,000 per well to properly abandon it. Yolo County and the Farm Bureau has more information for those who are interested. Ms. Aguiar-Curry will be attending the League of California Cities annual conference beginning tomorrow, where she will be facilitating a meeting about what Cities can expect, and is also a member of the resolutions committee voting on behalf of the City of Winters. Ms. Aguiar-Curry thanked Council Member Stone for acknowledging the carnitas festival, where there will be seven cooks this year. She thanked Mary Jo Rodolfa and Dawn Van Dyke for all their hard work to get the fiesta up and running and support they've given the Hispanic Advisory Committee and thanked Mariani Nut for their sponsorship. She also thanked the 30 volunteers who will donate their time to plant 19 trees at Valley Oak Park, 6 trees at City Park and 14 trees at Blue Oak Park on behalf of the Sacramento Tree Foundation. Ms. Aguiar-Curry acknowledged the Winters Calendar (www.winterscalendar.com) and thanked Mary Jo Rodolfa for keeping everyone informed of upcoming events in Winters, including dinners, walks, meetings, cruise nights, etc. The Chamber of

Commerce has been direction to give Ag Tours and have placed Ana Kormos in charge of putting something together for the Winters Ag Exploration to be held on October 22. Ms. Aguiar-Curry would like to take the opportunity to assist the Stockings in placing holiday wreaths on the veteran's headstones at the Winters Cemetery, where we might be able to piggy back at a cost of \$7/wreath and asked if the Hispanic Advisory Committee might be able to help coordinate this event. Council Member Martin added the Boy Scouts and Girl Scouts helped last year.

Council Member Anderson attended a Yolo County Transportation District meeting on 9/12, a SACOG Board meeting on 9/15, and a Winters Putah Creek Committee meeting at the Community Center on 9/19, where he took a tour of the current creek project.

Mayor Fridae said Dave Springer has information regarding an opportunity for homeowners to obtain 0% interest financing for retrofitting and photovoltaics. Please refer to the article in the Winters Express.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council held on September 6, 2011
- B. Minutes of the Executive Session Meeting of the Winters City Council Held on September 9, 2011
- C. Approve the Amplified Sound Permit Application for the Festival de la Comunidad on September 24, 2011
- D. Memorandum of Understanding and Acceptance of Property Dedication from Winters Joint Unified School District to the City of Winters for Construction of Pedestrian Improvements (sidewalk, curb and gutter) on the South Side of Grant Avenue (SR 128) Adjacent to Waggoner Elementary School
- E. Approve Materials Sampling and Testing with Matriscope Engineering Laboratories for the Construction of the I-505/Gateway Utilities Phase 2, Project No. 021-09.02

City Manager Donlevy gave an overview, stating the MOU and Acceptance of Property Dedication from WJUSD is subject to one item of negotiation, legal fees. The district is stipulating this in the MOU. Motion by Council Member Aguiar-Curry, second by Council Member Anderson to approve the consent calendar. Motion carried unanimously.

DISCUSSION ITEMS

1. 314 Railroad Avenue – Lease Assignment – Linton to Briggs

Council Member Anderson recused himself due to a possible conflict of interest and Council Member Stone recused himself due to his absence during the informational period.

City Manager Donlevy gave an overview and said the City is acting as the defacto landlord and negotiating the terms of sale. There are two wrinkles: 1) the Linton's have a catering commitment in October and will need to use the kitchen, and 2) the City agreed to follow the redevelopment plan and use redevelopment funds, but due to the litigation before the California Supreme Court, there is an automatic stay in place regarding the redevelopment funds. This item will be revisited at the October 4th City Council meeting.

Mayor Fridae said the best case scenario would be a delay for the Linton's and wait for the litigation to be finalized. Council Member Aguiar-Curry said it is out of our hands, but it looks like the California Supreme Court is moving fast with the litigation. City Attorney Wallace said the staff report recommendation, conditional approval, still exists. City Manager Donlevy said the conditional approval of terms were set forth in a letter to the Linton's dated 9/6/11 and any relocation funds will be given after the premises are vacated. City Attorney Wallace said he should have a status and report of the relocation and will report back to Council at the October 4th meeting, although October 18th is a more realistic return date. City Manager Donlevy said the staff recommendation of conditional approval is subject to the terms outlined in the letter of 9/6 and final approval will come upon completion of Items A – E in the letter of 9/6, at which time the relocation benefits will be paid. City Manager Donlevy also added the conditional approval will put Ms. Briggs and the Linton's in complete control of the process and the calendar will ultimately be set by them.

Motion by Council Member Martin, second by Council Member Aguiar-Curry to approve staff recommendation of a conditional approval of the Lease Assignment at 314 Railroad between the Linton's and the Brigg's. Motion carried unanimously.

2. Resolution 2011-44, A Resolution of the City Council of the City of Winters Changing the Name of a City Street in the City Limits from County Road 90 to Chapman Lane

City Manager Donlevy gave an overview and said the names on the Potential Street Names list were prioritized by the committee and are not arranged alphabetically. Council Member Martin prefers a random choice, giving all the names on the list a fair and equal opportunity. Mayor Fridae and Council

Member Aguiar-Curry also prefer random drawing. Council Member Stone asked about the first name on the existing list and City Manager Donlevy confirmed the names were placed in order of priority by member of the Street Naming Committee, Jack Graf, JoAnne Larkey and Newt Wallace.

Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve Resolution 2011-44, changing the name of a City street in the Winters City Limits from County Road 90 to a randomly chosen name from the Potential Street Names list. Motion carried with the following vote:

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

Due to the large number of veterans on the list, Council Member Anderson suggested the City of Winters work with Solano County regarding a Veterans Memorial Bridge or installing a plaque on the bridge naming all of the veterans. Mayor Fridae asked to bring back Council Member Anderson's suggestion as a discussion item to a future meeting.

Council Member Aguiar-Curry randomly drew a historic name, Matsumoto, changing County Road 90 to Matsumoto Lane.

COMMUNITY DEVELOPMENT AGENCY

1.

CITY MANAGER REPORT: City Manager Donlevy reiterated Council Member Anderson's comments about the creek work taking place, saying it's a very aggressive project. This is the largest creek restoration undertaking on Putah Creek, with substantial vegetation removal, grading and land moving. The changes will be very dramatic. Following the project, there will be substantial re-planting with an amazing park and considerable public access. The Winters High School Athletic Boosters are sponsoring a golf tournament at Wild Wings and a dinner at the Community Center on Sunday, 9/25. Please contact Debbie Geerts for tickets and/or information. City Manager Donlevy will be attending the League of California Cities annual conference in San Francisco with Council Member Aguiar-Curry and City Clerk Nanci Mills.

INFORMATION ONLY: Mayor Fridae acknowledged Community Development Director Nelia Dyer for her work on the Grant Avenue Design Guidelines and appreciates the time and effort spent on the project.

ADJOURNMENT: Mayor Fridae adjourned the meeting at 7:20 p.m.

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: October 4, 2011
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Fire Services Proposal- Cities of Winters and Dixon

RECOMMENDATION:

That the City Council:

1. Receive a presentation on a Fire Management Services Proposal between the Cities of Winters and Dixon; and
2. Provide feedback and direction regarding the services outlined; and
3. Authorize the City Manager and City Attorney to work with the City of Dixon to develop a contract document for said services.

BACKGROUND:

On January 1, 2011, the City of Winters established the City Fire Department, which incorporates services for the City and the Winters Fire District. This includes a full service fire department and basic life support system.

Since 2001, Chief Scott Dozier has served in the capacity of Fire Chief and done so in an exemplary manner. He has led the department in providing a high level of service for our residents and transitioning the operations to a modern fire and life safety operation.

Chief Dozier will retire from his position in November, 2011 after almost 35 years of service.

The Department is currently staffed with the chief, 3 paid firefighters and a part time secretarial position.

The qualities of the paid staff are exceptional. They bring competencies, skills and knowledge which make Winters a very safe place to live. We count on their abilities to save our lives and protect our properties every day. They are first rate!

With the opening of the new Public Safety Center, Winters Fire will transition from a 5 day a week/ Volunteer serviced department to a 24/7 shift fire system. The services and operations will dramatically change, especially from a fire management standpoint.

The crossroads of determining the replacement of Chief Dozier has included an examination of many options which could include:

- Recruitment of a new chief from outside departments.
- Internal Promotion
- Shared Services with outside agencies.

From a City Management standpoint, the core organizational emphasis has focused on the internal development of candidates for positions. A key value has included grooming candidates to increase the levels of competency for a certain position, then putting the person in that position.

The greatest difficulty with the current situation is the fact that while our internal personnel are exceptional, none currently has experience in operating a 24/7 operation. This is a critical path issue which must be filled in order for the Department to move forward in a successful manner.

DISCUSSION:

Staff has pursued and is recommending the development of an agreement with the Dixon Fire Department for Fire Management Services as a shared services model. Attached as Exhibit A is an overview of the scope of services which would be included in such an agreement.

The justification for the recommendation is that it instantly brings considerable management and operational experience to the Department during the transitional phase of our Fire Department. It also brings a cost savings of approximately \$180,000 over the three year period.

The key attributes of the proposal are as follows:

1. **Fire Chief/Fire Marshall Services:** The provision of personnel on a part-time office and full-time incident/call basis to serve in the roles of fire chief and duty chief in the event of major incidents.
2. **Operational Plan:** Development of an Operational Plan for the transition of the Department to a 24/7 operation to include operations, training, compliance, capital and

facilities maintenance and personnel supervision.

3. **Staffing:** Three day a week office staffing and 24/7 incident call response.
4. **Training and Mentorship:** The development of internal staff to gain experience and knowledge in the new service programs for eventual assumption of these roles in the future.
5. **Term and Cost:** Three (3) year contract at \$90,000 per year with a not to exceed inflation increase of 3% annually.

A key goal for the program is to bring the experience of the Dixon Fire management personnel to assist the Winters staff in implementing the 24/7 operation during what is viewed as a critical transition phase for our fire operations.

The reputation of the Dixon personnel is extremely high. As a "small" city department, Dixon Fire is viewed as a leader in training and program implementation. Their personnel are highly qualified and capable of assuming this contract.

Under this proposal, Staff is recommending that a contract agreement be completed and enacted effective November 1, 2011. This would mean adoption at the October 18, 2011 City Council Meeting.

FISCAL IMPACT:

The proposal provides for an annual cost of \$90,000 in the first year and a not to exceed inflation adjustment of 3% in each of the next two years of the agreement. Total cost not to be exceeded is \$278,181. The estimated annual cost for a City Fire Chief with salary and benefits is approximately \$155,000 for a three year cost of \$465,000. The three (3) year savings to the City General Fund would be \$186,189 (approximately \$65,000 annually).

Winters/Dixon Fire Administration Contract Overview

OBJECTIVE

The Winters Fire Department has a need for continuity of Fire Administrative Services as it deals with the retirement of a long term Fire Chief, and the department transitions from a traditional come-from-home volunteer model to that of a 24 hour staffed engine, utilizing existing career staff, existing volunteers and newly hired reserve firefighters.

Winters desires assistance in seeing the department through this transitional phase, presently estimated to be three years.

SCOPE OF SERVICES

Dixon will provide the City of Winters with access to the Fire Chief and two Division Chiefs as needed, depending on specific areas of expertise and assignment. Such services will include the following:

1. Fire Administration (Fire Chief)
 - A. The Fire Chief will coordinate the development of an Operational Plan for the Department to include operations, training, compliance, capital and facilities maintenance. The Department will strive toward a five (5) year plan to facilitate the transition into the new Public Safety Facility and a transition of operations, standard operating procedures and training.
 - B. The control of administrative oversight, emergency operations and routine fire service functions for the Winters Fire Department will be managed by the Dixon Fire Chief.
 - C. The Fire Chief as an employee of Dixon reports directly to the City Manager of Dixon. The City Manager of Winters will provide direction to the Fire Chief as it relates to the services provided in Winters.
 - D. The Fire Chief will assist in the preparation and administration of the Winters Fire Department Annual Budget. [Note: The Department will have an Administrative Coordinator who will work with the chief to administer the day to day budget]

- e. The Fire Chief or designee will be actively involved in the administration of personnel of the Winters Fire Department including selection, hiring, promotion, discipline and termination. [Note: The Department will have an Administrative Coordinator who will work with the chief and the training Captain to administer personnel matters, including recruitment, performance evaluations and discipline]
 - f. The Fire Chief or designee will assist the Winters Fire Department with expertise as it exists in Dixon in selecting and applying to various grant opportunities, including the FEMA Assistance to Firefighters Grant for equipment and volunteer firefighter retention and recruitment.
 - g. The Fire Chief or designee will be available to:
 - a. Represent the Winters Fire Department before the City Council and Fire Board of Directors.
 - b. Represent the Fire Department at Winters Management staff meetings.
 - c. Represent the interests of Winters Fire before the Board of Supervisors, LAFCO, County Fire Chief Meetings and other entities as reasonable and necessary.
2. Training, Coaching, Mentoring (Chief Officers)
- a. Dixon will provide coaching, counseling, career development and mentoring to staff of the Winters Fire Department in order to prepare officers for future promotional opportunities that may exist in the Winters Fire Department.
 - b. Dixon will assist the Winters Staff with development of a training program that meets the needs of Career staff, existing volunteers and reserve firefighters.
3. Fire Prevention (Fire Division Chief / Fire Marshal)
- a. Dixon will assist in the development of Winters Staff and provide technical expertise as needed in the following areas:
 - i. Plan Review
 - ii. Permitting
 - iii. New Construction Inspections
 - iv. Fire Code Adoption
 - v. Develop and Provide Public Education Services
 - vi. Pre-Fire Planning
 - vii. Development of annual Business Inspection Program
 - viii. Fire Cause and Origin Investigation
- [Note: The Building and Safety Division will relocate into the public safety facility and assist the Fire Department in the areas of code enforcement, Fire Prevention and Fire Inspection.]
4. Operations (Fire Division Chief)

- a. The Fire Management team will work with Winters Fire Department Staff to develop a comprehensive annual maintenance program for its fire apparatus fleet. A report detailing the status of the fleet and projected replacement needs will be developed by Fire Administration in conjunction with Winters Fire Department Staff.
 - b. Dixon will provide Winters with ideas, concepts and programs to enhance 24 hour staffing through a combination of career and volunteer firefighters.
 - c. Develop and Implement Operational Policies and Procedures.
5. Duty Chief Services (Chief Officers)
- a. The Dixon Fire Department utilizes a 24 hour Duty Chief model. The Duty Chief is used to provide incident command and support to complex incidents in the jurisdiction and to neighboring jurisdictions on a mutual aid basis. During the traditional work week, multiple Chief Officers are typically available subject to training schedules, vacation and meetings. Callouts for the duty Chief are not frequent given that most incidents are handled by a single engine company. Given the direction for the Winters model toward 24 hour engine based staffing, Dixon proposes to make the Duty Chief available to Winters for incident management.
 - b. In addition to emergency response, the Duty Chief serves as the point of contact for personnel issues, staffing decisions, injuries and or other after-hours issues that require senior management consultation and or response.
 - c. Duty Chiefs are permitted a 20 minute response time pursuant to a MOU. As an added benefit, a Dixon Chief Officer is currently a resident of the City of Winters.

WINTERS RESPONSIBILITIES

This project demands significant involvement by your personnel. Ultimate success is highly dependent on their effort. To help achieve a smooth and successful implementation, it will be your responsibility to:

1. Provide the necessary personnel budget, operations and maintenance budget for the fire department your city desires.
2. Provide administrative support as needed for the office administrative functions such as; payroll processing, purchasing, records management, information technology, communications, budget tracking and reporting and other office related needs.

BENEFITS

The City of Dixon has invested in a Fire Management team able to provide the full spectrum of services required by a modern, 24 hour mostly career fire department. Winters is able to tap into the capabilities of this team at a rate much lower than it could if it independently hired multiple individuals.

The City of Dixon is able to further develop the professional qualifications of its staff by working in an adjacent community. The revenue provided by this agreement allows the City of Dixon to further reduce the high costs of essential public safety services without significantly impacting the services provided to Dixon.

COSTS AND PROFESSIONAL FEES

The City of Dixon proposes to provide Winters approximately 24 hours (three, 8 hour working days) of Chief Officer Time per week, plus Duty Chief Services. The fees proposed under this contract are \$90,000 annually.

TERM OF AGREEMENT

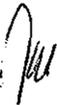
A three year term is proposed under this agreement.

ADDITIONAL STEPS

Once mutual interest has been established, a contract for services would be required. It is anticipated that insurance, liability, workers compensation will require additional conversation and negotiation. Once fully negotiated, it would of course require approval from both City Councils.



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: October 4, 2011
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Downtown Hotel RFP and Process

RECOMMENDATION:

That the City Council continue this item to October 18, 2011.

BACKGROUND:

Staff was unable to complete the final packet for the City Council Meeting. This will come to the City Council for consideration at the October 18, 2011 Meeting.



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: October 4, 2011, 2011
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: North Bank Improvement Project- Mitigation Funding Escrow Funding Agreement

RECOMMENDATION:

That the City Council authorize:

1. Development of a MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF WINTERS AND THE US FISH and WILDLIFE SERVICE REGARDING THE PUTAH CREEK BRIDGE REPLACEMENT NORTH BANK IMPROVEMENT PROJECT (REFERENCE B.O. FWS 81420-2011-F-0020-1)
2. Authorization to establish an escrow account in the amount of \$136,460 from project funds; and
3. Request that Staff bring the final agreement back to the City Council for final approval and authorization.

BACKGROUND:

After a four (4) year planning period, Staff and the engineering team have positioned the North Bank Trail Project for bid and construction. Phase I of the project is currently out to bid and will be presented to the City Council for authorization at the October 18, 2011 meeting.

A key aspect of the project is to provide onsite mitigation for the impacts of moving three (3) elderberry shrubs for the trail project and the removal of shrubs for the Winters Car Bridge Project.

The project has an approved Biological Opinion for USFWS and is awaiting clearance of

mitigation issues in order to proceed.

DISCUSSION:

Staff has been in negotiations with the United States Fish and Wildlife Service over the approval of a conservation easement for the City owned properties along Putah Creek since December, 2010. The easement would establish an endowment fund and provide for the establishment of a permanent mitigation area.

The process of establishing the easement with USFWS has been delayed based on their workload, but in recent months, the Service has allowed the project to move forward with construction, subject to the City entering into a Memorandum of Understanding (Attachment A). The basics of the MOU are as follows:

1. Establish an escrow account with the equivalent amount of the cost of purchasing the mitigation credits with an accredited mitigation bank. In this case, it would be \$136,460 which comes from the project funds. A quote for such a purchase is included as Attachment B.
2. Finalize the mitigation easement with USFWS based on their standard process.
3. Once established, the mitigation funds would be reimbursed to the City for deposit in the mitigation account.

Staff is requesting authorization to proceed with this process which will include establishing the escrow account and finalization of the MOU. Once completed, Staff will bring these back for final authorization.

FISCAL IMPACT:

\$136,460 which will come from the North Bank Improvement Project Funds.

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF WINTERS AND THE US FISH and WILDLIFE SERVICE
REGARDING THE PUTAH CREEK BRIDGE REPLACEMENT NORTH BANK IMPROVEMENT PROJECT
(REFERENCE B.O. FWS 81420-2011-F-0020-1)

On Wednesday September 7th representatives from the US Fish and Wildlife Service in Sacramento, California held a telephone conference call with City officials from Winters, California, to discuss environmental mitigation for the Valley Longhorn Elderberry Beetle (VELB) as it relates to Phase One of the Putah Creek Bridge Replacement North Bank Improvement Project (reference B.O. FWS 81420-2011-F-0020-1) and the Putah Creek Car Bridge Replacement Project.

The "official" project description is as follows:

To augment the Winters Road Bridge Replacement project sponsored by Solano County with HBP funding, the City of Winters is sponsoring the Putah Creek Bridge Replacement North Bank Improvements project, which will create a Conservation Easement for mitigation plantings required of the Road Bridge Replacement project, an accessible all-weather path for maintenance access to the Conservation Easement and pedestrian and bicycle connectivity from the new Bridge to outlying areas, and signage and interpretative panels to educate people about Putah Creek and the restoration plantings and species present along the Conservation Easement. The proposed Conservation Easement area and project are in the existing Putah Creek Nature Park.

The project is part of a Putah Creek Park Master Plan for environmental restoration and for mitigation of impacts from the future Putah Creek Car Bridge construction project. Phase one is the only phase that is funded and the only phase scheduled to go to construction in calendar year 2011.

The referenced Biological Opinion for Phase one of the project requires mitigation for 159 plantings and 3 transplants for a total of 31.8 Basins (essentially 32 credits). The cost to obtain these credits on the open market and pay for all the costs associated with transplantation would be \$136,460.

The City has expressed a desire to construct Phase One as soon as possible. The construction documents are completed, the project is funded and has been approved for construction by the California Department of Transportation; the funding administrator. The project proponent (City of Winters) has submitted an application to USFWS to construct an on-site mitigation area of sufficient size to house all mitigation required for both phases of the North Bank Improvement Project and the adjacent Putah Creek Car Bridge Replacement Project, which (FWS 81420-2008-F-1666-1) is scheduled for construction in approximately 2013.

In an effort to expedite project construction, the above parties have agreed that a mitigation set-aside will be placed in an approved escrow account such that mitigation is ultimately funded as the on-site mitigation easement agreement is developed. The agreed upon amount of this set-aside is to be one-half of the estimated market value of the required mitigation or \$136,460.

The City of Winters will arrange the escrow account and will fully fund this account. Once the account is fully funded, the USFWS will allow the project construction to move forward. It is understood that the City will solicit bids but not award a construction contract until USFWS approves the award.

This agreement in no way releases the project proponent from its obligation to meet all other requirements of the above-referenced Biological Opinion and does not allow for construction of Phase Two until such time as the on-site mitigation area is approved or mitigation requirements have been met by other agreed upon means.

CITY OF WINTERS

US FISH AND WILDLIFE SERVICE

By: John Donlevy, City Manager

Date: _____

By: Kellie Berry, Sacramento Valley Division Chief

Date: _____

Delta Habitat, LLC

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PROPOSAL :

TO SELL 32 VELB CONSERVATION CREDITS AND TO TRANSPLANT 3+ ELDERBERRY SHRUB CLUSTERS DURING THE 2011 NOVEMBER – 2012 FEBRUARY VELB TRANSPLANT WINDOW FROM THE PUTAH CREEK NORTH BANK IMPROVEMENT PROJECT, CITY OF WINTERS, YOLO COUNTY TO THE FRENCH CAMP VELB CONSERVATION BANK IN SAN JOAQUIN COUNTY – DELTA HABITAT LLC CONTRACT No. DH-04-VCS-2011

DELTA HABITAT PROJECT NUMBER : DH – 04 – VCS 2011 15 September 2011

PROJECT: THE 2011 / 2012 PUTAH CREEK NORTH BANK IMPROVEMENT PROJECT, CITY OF WINTERS, YOLO COUNTY CALIFORNIA

CONTACT:

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PROPOSAL

(1) SELL 32 VELB CONSERVATION CREDITS IN 2011/12 AT \$3,800/CREDIT -	\$121,600
(2) TRANSPLANT 3+ Large ELDERBERRY SHRUB CLUSTERS -	\$14,860
Total Contract Payment Amount for proscribed Services:	\$136,460

Note: (1) - FCCB currently has 48 VELB credits for sale at this time. However, FCCB anticipates USFWS will release additional FCCB VELB credits for sale prior to January of 2012.

(2) - As the **PUTAH CREEK NORTH BANK IMPROVEMENT PROJECT** does not have a final USFWS approval, VELB Credit sale purchase costs and transplant costs could change after the close of the 2011/2012 Transplant season for implementation of this Project. The above quote is firm till 15 February 2012, the close of the 2011/2012 VELB Transplant window.

Project Name / Location

The City of Winters (City) is proposing 1,350 feet of improvements to an existing unimproved pedestrian trail along the north bank of Putah Creek and a pedestrian bridge from the north to south bank of Putah Creek. The project is within the Winters Putah Creek Nature Park, a 40-acre park just West of the Interstate 505 bridge in Winters, California. The Elderberry shrubs need to be relocated prior to the construction program which is planned to take place in the Spring of 2012.

JOB DESCRIPTION for DELTA HABITAT LLC

Conservation Credits Sale:

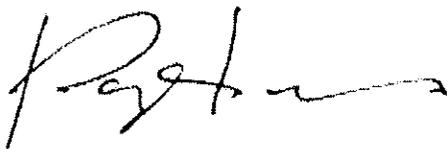
Delta Habitat will sell thirty-two (32) conservation credits for VELB impacts to the City of Winters during the 2011 / 2012 Elderberry Transplant season.

Transplanting:

Darryl Foreman, representing Delta Habitat LLC and the Strata Habitat Foundation, our French camp Conservation Bank manager, has evaluated the shrubs that need transplanting from plans, photographs and a BO letter report provided by the City and their Biology consultants, BSK Associates.

The three (3) identified elderberry shrubs will be carefully excavated from the Putah Creek site inside the 2011 / 2012 transplant window prior to 15 February 2012 per the USFWS Biological Opinion instructions by the City . The shrubs would be pruned a maximum of 50% or as needed and the moist root balls will be covered for protection. The protected plants along with all cuttings will be transported to the French Camp VELB Conservation Bank in Stockton by Delta Habitat LLC staff (5 staff, 3 trucks 3 trailers, 1 mini excavator, 1 Bob Cat, 1 tractor, 1 - 70 KW generator, 1 water trailer). The EB shrubs will be replanted the day excavated or the following morning. Viable cuttings will also be planted. The shrubs will be transplanted per the USFWS directive. The USFWS will be notified of the transplanting as part of the reporting function of the VELB Bank.

DELTA HABITAT, LLC, owner of the FRENCH CAMP CONSERVATION BANK



By: Darryl Foreman, Manager French Camp VELB Conservation Bank
President Delta Habitat LLC
415-309-0646

Approved By:

Title: _____

Date: _____ 2011

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: October 4, 2011
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, City Attorney
SUBJECT: 314 Railroad Avenue - Lease Assignment

RECOMMENDATION: Status Report/Discussion

BACKGROUND: The Winters Community Development Agency (CDA) acquired the real property at 314 Railroad Avenue, Winters in April of 2010. The property was, and is, the site of Cody's Restaurant. A lease was negotiated as part of the purchase with Rory and Theresa Linton, and that lease is attached for your review. The lease provides for rent of \$375 per month payable through September of 2012. The lease granted the tenant a "right of first refusal" if, at the end of the lease term, the CDA wished to rent to others. If the CDA did not lease to the Lintons at the end of the lease term, the Lintons were to receive \$30,000 as and for relocation costs. The CDA subsequently transferred its interest in the real property to the City of Winters (CITY) to offset loans owed to CITY from payments required by the State of California that the CDA did not have. The City of Winters now owns the real property, subject to this existing lease. The CITY in acquiring the real property also agreed to comply with the Downtown Redevelopment Plan, which enabled the CDA to continue financially developing the area. The CITY has received correspondence from the Lintons requesting approval of an assignment of the existing lease to Shaunie Briggs, and a signed copy of a Letter of Intent. Those you have previously received and reviewed. Written consent and approval of the landlord (CITY) is required under Paragraph 12 of the lease for any subletting or lease assignment. The City Council has previously approved such an assignment conditionally. Those conditions were set forth in a City Attorney letter which you have also reviewed. This is on the agenda for review and, providing that all of the conditions set forth in the City Attorney's letter are met, for

approval. The prospective purchaser, Shaunie Briggs, has indicated she will acknowledge that her tenancy is due to expire in September of 2012, and will formally waive any right to relocation benefits.

LEGAL ANALYSIS: The legal issue for discussion is the effect of the stay issued by the California Supreme Court in the California Redevelopment Association litigation with the State of California over redevelopment. Specifically, the legal is whether the CITY can expend relocation benefits of \$30,000 prior to the expiration of the lease term. The CITY can, if it makes findings that the assignment will continue the Downtown Redevelopment Plan. The problem is that the CDA cannot pay the \$30,000 prior to the date it is legally obligated to do so. That date under the terms of the lease is September of 2012. In other words, if the CITY pays the \$30,000 early, to help this assignment go through, there is a real risk the CITY will not be reimbursed by the CDA. The reason - the results of the litigation are not known, and there may in fact be no CDA to reimburse the expenditure. Because the City has not given notice of its intent whether to renew the lease (the CITY has until March of 2012 to do so), the Tenant can probably justifiably vacate the premises as part of business planning. If in fact the lease was surrendered and not assigned, for valid reasons, that could create the legal obligation triggering the CDA payment. I'll need further direction from the City Council, both in closed session as to my negotiation and in open session should a further direction or decision be needed.

FISCAL IMPACT: None other than staff costs. Existing debt/costs of \$30,000 are due and payable for relocation benefits upon the end of the lease term.