



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, February 1, 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*

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, January 18, 2011 (pp 1-7)
- B. Wave Broadband Master Services Agreement, Order for Internet and Telephone Services and Addendum to Master Services Agreement between Wave Broadband and the City of Winters (pp 8-34)

PRESENTATIONS

DISCUSSION ITEMS

1. Strategic Action Plan Update (pp 35-54)
2. Economic Development Committee Work Program and Calendar (pp 55-58)
3. Grant Avenue/I-505 Traffic Analysis (pp 59-64)

COMMUNITY DEVELOPMENT AGENCY

- 1.
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CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

Pursuant to Government Code Section 54957.6 Personnel - City Manager

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the February 1, 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 January 26, 2011, and made available to the public during normal business hours.

Nancy Jensen, admin Asst. for Nanci Mills
Nanci G. Mills, City Clerk

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

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

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

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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 Winters City Council Meeting
Held on January 18, 2011

Mayor Fridae called the meeting order 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, Director of Financial Management Shelly Gunby, Housing Programs Manager Dan Maguire, Management Analysts Carol Scianna and Dawn Van Dyke, Fire Chief Scott Dozier, Fire Captains Brad Lopez and Art Mendoza, Firefighter Jason Van Doren, Associate Elliot Landes, and Administrative Assistant Tracy Jensen.

La'akea Drumright led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy said there were no changes to the agenda. Motion to approve the agenda was made by Council Member Aguiar-Curry and seconded by Council Member Martin. Motion carried unanimously.

COUNCIL/STAFF COMMENTS: Council Member Aguiar-Curry attended a USDA meeting in Woodland on January 12th, where they provided survey results entitled Jobs, Economic Development, and Sustainable Communities. Contact USDA if you would like a copy. The League of California Cities' Environmental Policy Committee meeting at UCD will be re-scheduled to the week of January 31. The Hispanic Advisory Committee is working on sponsoring a dance as a fundraiser as well as preparing for the 2011 Community Festival. Ms. Aguiar-Curry attended a Water Resource Association meeting, where a presentation was given by the Northern California Water Association Director. The 2011 Citizen of the Year celebration sponsored by the Chamber is scheduled for this Saturday, January 22.

Council Member Anderson attended a Lower Putah Creek Coordinating Committee meeting last week, which was held at the Davis Police Department.

Mayor Fridae recently met with Assemblywoman Mariko Yamada to voice his concerns about the State's plans to end redevelopment agencies and said Assemblywoman Yamada will go to bat for us.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, January 4, 2011
- B. Update on Questions Raised at the December 21, 2010 Joint City Council/Planning Commission Meeting - Presentation of the Status Report on the Analysis of Land Use Designations and Zoning of the Properties along East Grant Avenue (SR 128) between Morgan Street and Interstate 505

City Manager Donlevy gave an overview. Regarding Item B, Council Member Harold Anderson had asked questions at the January 4th meeting, prompting this status report. City Manager Donlevy said he will schedule a meeting between the City's legal council, Meyers Nave, Council Member Anderson and himself to provide answers to Mr. Anderson's questions prior to the February 15th City Council meeting. Mayor Fridae asked if clarification was needed before moving forward with appointing members to the Economic Development Advisory Committee. Council Member Anderson said selection of the committee members can be done tonight. Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve the Consent Calendar. Motion carried unanimously.

PRESENTATIONS

City Clerk Nanci Mills administered the Oath of Allegiance to Fire Chief Scott Dozier, Fire Captains Brad Lopez and Art Mendoza, and Firefighter Jason Van Doren. Members of their families then came forward to pin their fire department badges to their uniforms.

Mayor Fridae read aloud a Proclamation honoring Eagle Scout La'akea Drumright, an award he received on December 5, 2010, which is an honor attained by only two percent of all scouts. La'akea has earned 28 merit badges and spent 86 hours remodeling the shelving system for the Helping Hands Food and Clothing closet operated by St. Anthony's church. Mayor Fridae thanked La'akea for his contributions to our community and offered congratulations on behalf of the Council.

DISCUSSION ITEMS

1. Resolution 2011-02, A Resolution of the City Council of the City of Winters Accepting Dedication of Land as Described in the Recorded Map of Putah Creek Hamlet No. 1, Phase 1 (Yolo County APNS 038-070-033 and 038-180-046 (Parcels Abutting Putah Creek))

City Attorney Wallace gave an overview. Although the land was dedicated to the City, there is no deed of ownership on file. As part of this project, the grant authorities want a lot guarantee, or a title assurance, which will be resolved by the adoption of this resolution. After adoption, a certified copy of the resolution will be taken to be recorded and delivered to the title company for guarantee.

Motion by Council Member Anderson, second by Council Member Aguiar-Curry to approve Resolution 2011-02, accepting dedication of land described in the recorded map of Putah Creek Hamlet No. 1, Phase 1 (parcels abutting Putah Creek.) Motion carried with the following vote:

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

2. Status of Utility User Tax Receipts

Director of Financial Management Shelly Gunby gave an overview and reported that PG&E is the only utility service provider who is not collecting or remitting the 9.5% UUT rate. Council Member Martin asked if PG&E will eventually remit the correct amount retroactively back to 7/1/10? City Manager Donlevy and Ms. Gunby agreed that they will negotiate with PG&E. Council Member Aguiar-Curry asked Ms. Gunby to bring this item back once it has been resolved.

3. Status Report – 201 First Street, John Rogers Building

Council Member Anderson and Mayor Fridae stepped down due to a possible conflict of interest.

City Manager Donlevy gave an overview. The John Rogers building (old library) was surplus property of the County and it was in the best interest of the City to purchase the property. No immediate use of the building is planned, as operating costs are not available. If the City were to consider selling the building, which it is not, it would first be offered to other governmental agencies. City Attorney Wallace said the building has a construction defect on the roof and can possibly be turned into a redevelopment project. The building has been found to be structurally sound. There are no interior walls, which could lead to many possible uses. The current challenges are ADA issues regarding

the bathrooms and limited parking. Council Member Anderson and Mayor Fridae returned to the dais at this time.

4. Appointment of Economic Development Advisory Committee Members

City Manager Donlevy would like to organize a meeting of the committee members once they are revealed, not to conduct any business but to coordinate their schedules for future meetings. City Manager Donlevy would like to bring back a final syllabus to Council at the February 1st meeting. Council then announced the following appointees:

Planning Commission appointee: Wade Cowan
Chamber of Commerce appointee: Debra DeAngelo
Council Member Anderson appointee: William Biasi;
Council Member Aguiar-Curry appointee: Dan Martinez;
Mayor Fridae appointee: Bill Hailey;
Council Member Martin appointee: Joseph Castro;
Council Member Stone appointee: Sandy Vickrey;
At-Large Committee Member appointee: Lisa Baker.

Council Member Aguiar-Curry made a motion to accept the appointment of Planning Commissioner Wade Cowan as a committee member, which was seconded by Council Member Stone and voted unanimously by the Council.

Regarding the at-large committee member, Mayor Fridae said the list of applicants included some very qualified individuals and excellent people to choose from. Council Member Anderson nominated Lisa Baker, seconded by Council Member Stone, and approved unanimously by the Council.

COMMUNITY DEVELOPMENT AGENCY

Agency Chairman Aguiar-Curry opened the Community Development Agency at 7:25 p.m., and immediately adjourned to closed session to discuss the following Executive Session item:

Grant Avenue Commercial Project - Land Negotiation Parameters – Pursuant to Government Code Section 54956.8 – Negotiating Party John Donlevy, City Manager

Pursuant to Government Code Section 54956.8, the Winters Community Development Agency met in closed session with our property negotiator regarding the Grant Ave. Commercial Project. The Agency Board has provided direction regarding real property negotiations but has no reportable actions regarding this issue.

The Community Development Agency returned to open session at 7:45 p.m.

1. **Redevelopment Agency Status Update**

At a news conference held on January 10th, Governor Brown outlined his budget proposal, which included the elimination of redevelopment agencies throughout the State of California in an attempt to bring in line the state's financial problems, although voters passed Proposition 22 with a 60% margin (prohibits the State from taking funds used for Transportation or Local Government projects and services.) They feel that this can be done by the legislature and through a statutory process without a constitutional amendment.

City Manager Donlevy said a time line for this change is March 26th. Successor agencies will be created to manage outstanding debt and agency assets, presumably including land. Current projects will be honored but planned projects will not.

Redevelopment is a major industry in California, generating two billion dollars in taxes annually. The SACOG Blueprint, which promotes compact, mixed use development and more transit choices, and the adoption of SB375, the anti-sprawl bill, will be compromised. The City's Downtown Master Plan, which is a blueprint of SACOG's blueprint, will become null and void.

The CDA owes the City over \$3 million dollars and staff wants to protect those interests, as well as protecting the disposition of property, or the acquisition and assembly of land, which is among the agency's mandates.

The City sold \$20 million dollars in bonds and we owe it to the bondholders. The City of Winters has a stellar credit rating, which may be jeopardized. Investor's equity positions will be jeopardized and will cost taxpayers down the road. City staff is moving quickly by having agency properties appraised, developing purchase and sale agreements, and developing a conveyance agreement to transfer public facilities to the City. From an agreement standpoint, we're covered. The primary goal is that the City doesn't lose out. A draft agreement will come back to Council.

City Manager Donlevy and Council agreed to adjourn to Monday, January 24 to discuss the status report and how the transferring of \$1.3 million dollars out of the City of Winters in local tax dollars will have a significant impact on how we do business.

2. **Resolution No. 2011-03, A Resolution of the City Council of the City of Winters Extending the Exclusive Negotiating Rights Agreement By and Between the City of Winters Community Development Agency and Yackzan Group, Inc. for the Development of the Grant Avenue Commercial Property**

City Manager Donlevy gave an overview. A motion was made by Agency Member Fridae to approve Resolution 2011-03, extending the Exclusive Negotiating Rights Agreement by and between the City of Winters Community Development Agency and Yackzan Group, Inc. for the development of the Grant Avenue Commercial Property. Agency Member Stone added it was a key piece of property, and among the interests to keep in mind was a significant interest of existing businesses to move out to the new property, which should be given the opportunity to move. It would be advantageous to have all three healthcare providers in one location, ie: two medical facilities and the pharmacy. The vacancies at these downtown locations could be used for different purposes. The motion was seconded by Agency Member Anderson and carried with the following vote:

AYES: Agency Members Anderson, Fridae, Martin, Stone, and Agency Chair Aguiar-Curry
NOES: None
ABSENT: None
ABSTAIN: None

3. Approval of Month-to-Month Sub-Lease Between the City of Winters Community Development Agency and the Winters Chamber of Commerce for the Winters Visitors Center

Agency Members Anderson and Fridae stepped down due to a possible conflict of interest.

City Manager Donlevy gave an overview. Agency Member Martin asked if the Chamber could carry on without funding. Agency Chair Aguiar-Curry said the Chamber of Commerce is a viable group who are committed and proactive in the Community.

Al Aldrete, Chamber Director, said he would like to see an extension of the lease but understands the decision is out of their hands. He thanked the City and CDA for their support and added that the mission of the Chamber and the vision of the Visitor Center is their commitment to serving the business community. Agency Member Martin asked if there had been an increase of people at the Visitor Center. Al Aldrete replied they have seen approximately 1,000 visitors in the last six months and tends to be seasonal, with December seeing an exceptional amount in sales.

Motion by Agency Member Martin to approve the month-to-month sublease with the Chamber of Commerce and Visitor's Center at 11 Main Street. Seconded by Agency Member Stone. Motion carried unanimously.

Agency Chair Aguiar-Curry closed the meeting of the Community Development Agency at 8:18 p.m. Agency Members Anderson and Fridae returned to the dais.

The City Council adjourned into executive session at 8:20 p.m.

CITY MANAGER REPORT: None

INFORMATION ONLY: None

EXECUTIVE SESSION:

**Grant Avenue Commercial Project - Land Negotiation Parameters –
Pursuant to Government Code Section 54956.8 – Negotiating Party John
Donlevy, City Manager**

Please see above for action taken.

**Conference with Labor Negotiator, John Donlevy, City Manager –
Pursuant to Government Code Section 54957.6
City Manager
City Attorney
Department Heads
Management
Mid-Management
Winters Police Officers
Winters Fire
Confidential
Winters Employee Association**

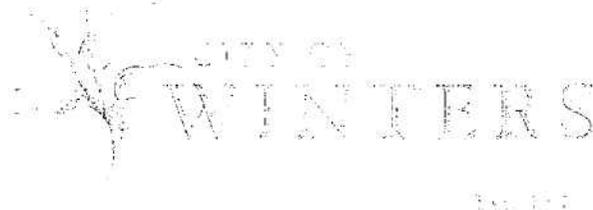
No reportable action was taken.

ADJOURNMENT

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



TO: Honorable Mayor and Council Members
DATE: February 1, 2011
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Nanci G. Mills, Director of Administrative Services/City Clerk *Nanci*
SUBJECT: Wave Broadband Master Agreement/Order for Services and Addendum to Master Services Agreement

RECOMMENDATION:

Approve the Master Services Agreement and Addendum, approve the Order for Internet and Telephone Services and authorize the City Manager to execute.

BACKGROUND:

City Staff has been working diligently on a new phone system, which Council has approved, as well as data and fiber connection with the new public safety facility. Wave Broadband has provided us with lowest costs for the new equipment, installation and monthly charges. Wave has continued to work with us from the beginning to make sure that we are receiving the best service for telephone and data connections.

This service will connect City Hall and the new Public Safety Facility with telephone and computer, which the City has never had to provide between two separate buildings.

FISCAL IMPACT:

Approximately \$32,400 per year plus long distance charges. This is approximately \$600 per month more than the current monthly charge through AT&T.

Hi Nanci - I've reviewed both the Wave Broadband Master Services Agreement and Order - my comments, and a proposed Addendum are attached. Thanks. J.

John C. Wallace
City Attorney, City of Winters
318 First Street
Winters, CA 95694
Phone: 530.795.4171
Fax: 530.795.4172
jwallacesq@sbcglobal.net

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MEMO

TO: Nanci G. Mills, City Clerk
 THROUGH: John W. Donlevy, Jr., City Manager
 DATE: January 21, 2011
 FROM: John C. Wallace, City Attorney
 SUBJECT: Wave Broadband Master Agreement/Order for Services

Background: City has decided to contract with Wave Broadband for new services and let the current AT&T contract expire. For review is a Master Agreement with Wave Broadband and and Order for Services.

Analysis: Assumption – that notice has been given to AT&T of the non-renewal of any City contractual obligation to AT&T after the date of contract expiration, and that the date of expiration is sufficient time to allow the new installation.

Before me are two agreements.

The Master Agreement – A general agreement as to services, the relevant portions as to the City of Winters are as follows:

318 First Street Winters, CA 95694 Phone. 530.795.4910 Fax. 530.795.4935	COUNCIL MEMBERS Harold Anderson Michael Martin Tom Stone	MAYOR Woody Fridae MAYOR PRO TEM Cecilia Aguiar-Curry	CITY CLERK Nanci Mills TREASURER Michael Sebastian	CITY MANAGER John W. Donlevy,
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1. A 3-day period after installation to notify Wave Broadband of problems.
2. The services will continue monthly at expiration of the 48-month period (the order provides for a new one year term automatically occurring, absent notice). Service rates will not be the same, but at a new and presumably higher rate.
3. Interest on late payments at 1.5% per month, unless limited by law.
4. Fees billed one month in advance.
5. City should provide an "exemption certificate" as to taxes and surcharges.
6. Any damages to City from faulty equipment or loss of service are limited to a reduction in service fees based on days lost.
7. City can terminate if the installation is 30 days' late (order gives Wave Broadband 60-90 days after agreement executed).
8. The Agreement needs our information as to contact person under "notices."
9. The agreement provides that the City keep confidential the Master Agreement and maybe the Order, though I don't see anything warranting that in the Master Agreement. Both parties need to acknowledge the California Public Records Act, since the City does not have the ultimate say as to who can see the Master Agreement and Order. I've put language in an addendum, which should be acceptable.
10. The Agreement provides that, if the City has a dispute with Wave Broadband, we'll be in Washington State to resolve it, and that Washington law governs this Agreement. That's not acceptable, and I've put language in an addendum to make California law and Yolo County the place to resolve disputes.

The Wave Broadband Order for Internet and Telephone Services:

1. Under the terms of the Order (1), Wave Broadband reserves the right to lower service levels. The language is boilerplate and should not affect anything, so long as industry standards are not somehow lowered.
2. The costs of removal of all of the City's AT&T equipment are solely that of City.
3. The Order provides for an automatic renewal for one-year term at the end of the 48 months, and is therefore not consistent with the Master Agreement. So long as a review is calendared 90 days' prior to the expiration of the Order that should not be an issue.
4. Long distance rates are subject to change, as are tax collection obligations of Wave Broadband.
5. The City is obligated to return or allow return of Wave Broadband's equipment at the end of the contract term "in good condition". The usual language for "reasonable wear and tear excepted" is not there, and I don't know if this equipment will last 48 months. There is a disclaimer of warranty and "AS IS" clause in the Order.

Conclusion/Recommendation:

With the Addendum, the Master Agreement can be executed. A gap in service caused by the end of AT&T service and the beginning of Wave Broadband I am assuming has been addressed.

ADDENDUM TO MASTER SERVICES AGREEMENT BETWEEN
WAVE BROADBAND (“Wave”) AND THE CITY OF WINTERS
 (“City”)

1. The following language is added to Paragraph 7.8 of the Master Services Agreement:

Both parties acknowledge that the City of Winters is subject to the California Public Records Act (“CPRA”), which allows for public review and copying of City records. Under the CPRA, Section 6253.3, City may not allow another party to control disclosure of information. City agrees to place the Master Services Agreement and the Order in a separate record designating confidential information, not readily available to the public for inspection. Disclosed to the public shall be the total amount paid monthly for services under the Master Services Agreement and Order for Internet and Telephone Services. In the event City receives a CPRA request involving these records, City shall give Wave at least 20 days’ notice of such request, and work with Wave regarding the level of disclosure, claiming exemption under the applicable sections of the CPRA, including California Government Code Sections 6255(a) and 6254.19. After release of the edited, redacted, or claim of exemption, should challenge and litigation result, Wave shall have the right to defend its claim of exemption from the CPRA, at Wave’s sole cost and expense.

2. Paragraph 7.10 is deleted in its entirety, and replaced with the following language:

7.10 Governing Law/Forum Selection. This Agreement, all transfers and assignments pursuant to this Agreement, and all rights of the Parties, shall be governed as to validity, construction, enforcement and in all other respects by the laws of the State of California (without regard to choice of law rules). Venue for purposes of federal or state jurisdiction shall in Yolo County, California.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective officers thereunto duly authorized, to be effected with the effective date of the Master Services Agreement referenced herein.

CUSTOMER:

WAVE BROADBAND:

THE CITY OF WINTERS,
CALIFORNIA

By: _____
John W. Donlevy, City Manager

By: _____
Name: _____

Dated: _____

Title: _____

Attest:

Dated: _____

By: _____
Nanci G. Mills, City Clerk

Dated: _____

Nanci Mills

From: Mike Puckett [MPuckett@wavebroadband.com]
Sent: Monday, January 24, 2011 1:13 PM
To: nanci.mills@cityofwinters.org
Subject: FW: Wave Broadband
Attachments: image001.jpg; City Wave Broadband Agreement - Addendum 1-21-2011.doc; City of Winters order 1-18-11.pdf; City of Winters MSA 1-18-11.pdf

Hey Nanci!

Ok, we are good with the addendum, so if you can get the SO, MSA and the addendum signed and sent over to me, we can execute it and get the work moving along (the sooner the better, so I can get Kirk lined up for the initial PRI).

I've attached all three agreements.

Thanks and have a great week!

Mike

From: Nanci Mills [mailto:nanci.mills@cityofwinters.org]
Sent: Friday, January 21, 2011 11:08 AM
To: Mike Puckett
Subject: FW: Wave Broadband

Good Morning Mike,
Here is the response from the City Attorney.
Let me know after you have read comments
Thanks,
Nanci



Nanci G. Mills
Director of Administrative Services / City Clerk
City of Winters
318 First Street
Winters, CA 95694
530-795-2100 ext. 104
530-795-4955 Fax
nanci.mills@cityofwinters.org

From: John Wallace [mailto:jwallacesq@sbcglobal.net]
Sent: Friday, January 21, 2011 10:54 AM
To: Nanci Mills
Cc: Mary Jo
Subject: Wave Broadband

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "**Master Agreement**") is dated January 19, 2011 and is between WAVE BROADBAND ("**Wave**") and THE CITY OF WINTERS ("**Customer**"). This agreement sets forth the general terms and conditions applicable to Customer's purchase of one or more communications or related services (individually or collectively, "**Services**") from Wave pursuant to an Order (as defined below).

ARTICLE 1. ORDERS FOR AND DELIVERY OF SERVICE

1.1 Submission and Acceptance of Order(s). *Not a Purchase Agreement.* This Master Agreement is not an agreement to purchase or provide Services. Any such agreement or commitment may be entered into by Wave and Customer only pursuant to an Order (each, an "**Order**" and collectively, "**Orders**"). Each Order will set forth the specific terms of the Services to be provided by Wave and will incorporate the terms of this Master Agreement by reference. In the event of any inconsistency between an Order and this Master Agreement, this Master Agreement will control. Customer may submit an Order requesting Services and containing the duration for which Wave will provide the Services ("**Service Term**"). Services will continue on a month to month basis at the expiration of the Service Term at Wave's then current rates. Wave shall notify Customer of acceptance of the Order, such acceptance being at Wave's sole discretion, by delivering in writing the date by which Wave shall endeavor to install Services (the "**Install Date**") or by delivering the Services. Renewal Orders will be deemed accepted by Wave's continuation of Services. Customer shall pay Wave's then current charges for moves, adds or changes agreed to by Wave with respect to any Order or Services. The Master Agreement and any Order are collectively referred to as the "**Agreement.**"

1.2 Credit Approval and Deposits.

(A) Wave reserves the right to request financial information from Customer to determine the creditworthiness of Customer. Customer's execution of this Agreement signifies Customer's acceptance of Wave's initial and continuing credit approval procedures and policies. Customer shall provide Wave with credit information as Wave requests. Wave may require Customer to make a security deposit as a condition of Wave's acceptance of any Order or continuation of Services or as otherwise provided herein. Deposits will be due on Wave's written request. When Services are discontinued, Wave will credit the deposit to Customer's account and refund the balance, if any, to Customer.

(B) Wave reserves the right to withhold initiation or full implementation of any or all Services under an Order pending Wave's initial satisfactory credit review and approval thereof, which may be conditioned on terms specified by Wave. Wave further reserves the right to modify its requirement, if any, with respect to any security or other assurance Customer provides for payments due hereunder in light of Customer's actual usage when compared to projected usage levels on which any security or assurance requirement was based.

(C) If at any time there is a material adverse change in Customer's creditworthiness, as determined by Wave in its sole discretion, then in addition to any other remedies available to Wave, Wave may elect, in its sole discretion, to exercise one or more of the following remedies: (i) delay or withhold the commencement of Services; (ii) suspend Services; (iii) decline to accept Orders or other requests from Customer to provide Services; and/or (iv) condition its provision of Services or acceptance of Orders.

1.3 Customer Premises; Title to Equipment.

(A) If access to non-Wave facilities is required for the installation, maintenance or removal of Wave equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment.

(B) Unless stated otherwise in the applicable Order, Customer is solely responsible for the acquisition, installation, maintenance and repair of any and all equipment necessary to receive Services.

(C) If, under the applicable Order, Wave provides equipment, network facilities and other property in order to provide Services, title to all such equipment, network facilities and other property of Wave (including software) provided by Wave is and will always remain with Wave. Such equipment, network facilities and other Wave property will not become fixtures of any Customer premises and must be returned to Wave at any time Services are discontinued in the condition in which they were received, subject to ordinary wear and tear. Customer shall not sell, lease, assign or create or permit to be created any liens, encumbrances or security interests on Wave's equipment, network facilities or other property.

1.4 Scheduled Maintenance and Local Access. Scheduled maintenance will not normally result in Services interruption. If scheduled maintenance requires Services interruption, Wave shall: (i) provide Customer reasonable advance notice, (ii) work with Customer to minimize such interruptions, and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If Customer obtains third party local access services, Customer shall: (i) provide Wave with circuit facility and firm order commitment information and design layout records to enable cross-connects to Wave Services (provided by Wave subject to applicable charges), (ii) cooperate with Wave (including providing necessary authorizations) respecting circuit grooming, and (iii) where related Services are disconnected, provide Wave a written disconnection firm order commitment from the relevant third party provider.

ARTICLE 2. BILLING AND PAYMENT

2.1 Commencement of Billing. Wave shall deliver written notice (a "Connection Notice") stating when Services were installed either as part of Customer's first invoice for particular Services or in a separate notification. If Customer notifies Wave earlier than three days after delivery of the Connection Notice that Services are not functioning properly, Wave shall correct any deficiencies and, on Customer's request, credit Customer's account in the amount of 1/30 of the applicable MRC for each day the Services did not function properly.

2.2 Payment of Invoices and Disputes. The fees payable to Wave by Customer and the due dates of such fees are set forth in the applicable Orders (the "Fees"). All Fees are due within 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Acceptance of any such interest charges paid by Customer will not constitute a waiver by Wave of any Customer Default (as defined below) with respect to any such overdue amount. Customer is responsible for all charges respecting the Services, even if incurred as the result of unauthorized use. Wave's failure to submit an invoice will not relieve Customer of its obligation to pay all amounts owed when due, unless otherwise agreed upon in writing by both parties.

(a) If Customer in good faith disputes any charges invoiced by Wave, Customer shall promptly pay all undisputed charges and may notify Wave in writing of any such disputed amounts within 60 days after the invoice date, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely and appropriately disputed within 60 days after the invoice date will be deemed final and not subject to further dispute. If Customer was billed in error, a credit for the amount billed incorrectly will be made to the next invoice. If the amount was billed correctly, Customer shall pay the amount within 15 days of confirmation.

(b) If Wave receives Customer's payments more than 30 days after the invoice dates for two consecutive months, Customer shall, within five days after Wave's request, deposit with Wave an amount equal to two month's monthly recurring charges. On expiration or termination of this Agreement and Customer's compliance with its financial obligations hereunder, Wave shall return to Customer all amounts on deposit, if any.

(c) Fees due hereunder are billed one month in advance. The first billing cycle may include a partial month's recurring fee and a full month's recurring fee if Wave provides Services for a partial month. Fees are payable for the duration of the Service Term.

(d) Wave may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.

(e) Customer will be responsible for all expenses, including reasonable attorney's fees and collection costs, Wave incurs in collecting any unpaid amounts due under this Agreement.

2.3 Taxes and Fees. Except for Wave's federal and state income tax and Wave's personal property tax, Customer is responsible for the determination, calculation, collection and payment of all taxes and other fees (including FCC fees such as universal service fees, TRS, etc.) that may be imposed on Wave or Customer, all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Services, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on Wave or a Wave affiliate, along with similar charges stated in an Order (collectively "**Taxes and Fees**"). Some Taxes and Fees are recovered through imposition of a percentage surcharge on the charges for Services. Fees are exclusive of Taxes and Fees. Customer may present Wave with an exemption certificate eliminating Wave's liability to pay certain Taxes and Fees; Wave will give effect thereto prospectively.

2.4 Regulatory and Legal Changes. If changes in applicable law, regulation, rule or order materially affect delivery of Services, the parties shall negotiate in good faith appropriate changes to any applicable Order. If the parties cannot reach agreement within 30 days after Wave's notice requesting renegotiation: (a) Wave may, on a prospective basis after such 30 days period, pass any increased delivery costs on to Customer, and (b) if Wave does so, Customer may terminate the affected Services on written notice to Wave delivered within 30 days of the increased costs.

2.5 Order Cancellation and Termination Charges.

(A) Customer may cancel an Order (or portion thereof) prior to the Install Date by giving 30 days written notice to Wave in accordance with section 7.5 of this Master Agreement, identifying the affected Order and Services. If Customer does so, Customer shall pay Wave, within 30 days after invoice, a cancellation charge equal to the sum of: (i) for "off-net" Services, any and all third party termination charges for the cancelled Services; (ii) for "on-net" Services, one month's monthly recurring charges for the cancelled Services; (iii) any set-up costs and other the non-recurring charges for the cancelled Services; and (iv) any other expenses Wave incurs to prepare to comply with the Order.

(B) Following the Install Date, Customer may discontinue any Services and terminate any Order if Customer provides written notification thereof to Wave at least 30 days in advance of the effective date of discontinuance, provided that Customer shall pay Wave the Disconnection Charge under section 2.5(D) of this Master Agreement.

(C) Subject to order cancellation permitted by subsection 2.5(A) above, either party may terminate an Order and specified Services on the occurrence of any of the following events: (i) the other party's Default, as defined in article 3 below, of this Agreement; (ii) Wave, in its sole discretion, determines that Wave's installation or provision of Services or Customer's use of Services granted hereunder is resulting or will result in significant damage to the property of Wave or risk of harm to Wave or its employees or representatives; or (iii) a party's filing of a voluntary petition for bankruptcy, filing of an involuntary petition of bankruptcy against a party that is not discharged within 60 days of its filing, a party's assignment of assets for the benefit of creditors, the appointment of a receiver over a majority of a party's assets, or a party's general inability to pay its creditors as bills become due.

(D) If Wave terminates an Order in accordance with this Agreement (i) as the result of Customer Default as defined in article 3 below, or (ii) because Wave, in its sole discretion, determines that Wave's installation or provision of Services or Customer's use of Services granted hereunder is resulting or will result in significant damage to the property of Wave or risk of harm to Wave or its employees or representatives pursuant to section 2.5(C) above, or if Customer terminates an Order following the Install Date pursuant to section 2.5(B) above or for any reason other than (i) Wave's Default prior to the expiration of the Service Term, or (ii) in accordance with the Force Majeure provisions of section 7.1 of this Master Agreement, Customer shall pay Wave a disconnection charge (as liquidated damages and not as a penalty) including all unpaid amounts for Services actually provided, all non-recurring, disconnection or termination charges reasonably incurred by Wave on Customer's behalf, and the sum of all remaining monthly recurring charges and other charges Customer was to pay Wave for the remainder of the Service Term (the "**Disconnection Charge**"). This Disconnection Charge will be due and

payable within five days after the effective date of termination of the Order. In the event of termination of an Order for breach, the non-breaching party will have the right to pursue any or all remedies available to it at law or in equity. Customer acknowledges that the charges in this subsection 2.5(D) are a genuine estimate of Wave's actual damages and are not a penalty. On termination of the Order, Customer, at its sole cost and expense, shall immediately deliver or cause to be delivered to Wave any Wave property located on any premises of Customer and/or remove all of its equipment from Wave's property.

(E) No termination pursuant to this section 2.5 will relieve Customer of any of its obligations under any this Agreement that are intended to continue, including, without limitation, the obligation to pay all Fees due to Wave prior to such termination. Further, each of the sections in article 5 and sections 7.8, 7.10 and 7.16 of this Master Agreement will survive any early termination or the expiration of this Agreement.

(F) If Customer terminates an Order due to Wave Default as defined in article 3 below, Wave shall reimburse Customer for any pre-paid, unused monthly service fees attributable to such terminated Order.

2.6 Offsets. In no event shall Customer offset any amount to due to Wave from Customer for any reason, against amounts owed to Customer from Wave. If Customer is indebted to Wave for any reason, Wave may offset any such amount owed to Wave by Customer for any reason, against any money otherwise due to Customer from Wave and any and all amounts for which Wave may become liable to third parties by reason of Customer's acts in performing or failing to perform Customer's obligations under this Agreement or any other agreement. Further, Wave may withhold such sums for any monies that become due to Customer under this Agreement and/or any other agreement or from funds or equipment to be paid or disbursed to Customer pursuant to business dealings between the parties not reflected in any contract, as Wave, in its sole discretion, deems necessary to protect Wave from any loss, damage or expense relating to or arising out of Customer's action, inaction or performance of Customer's duties under this Agreement or any other agreement. The provisions of this section 2.6 will survive the expiration or termination of this Agreement indefinitely.

ARTICLE 3. DEFAULT

3.1 Customer Default. Customer will be in default under this Agreement ("Customer Default") if Customer does one or more of the following (each individually to be considered a separate event of Customer Default) and Customer fails to correct each such noncompliance within 10 days of receipt of written notice in cases involving non-payment or within 30 days of receipt of written notice identifying with reasonable particularity the nature of the breach in cases involving any other noncompliance:

- (i) Customer is past due with respect to any payment required hereunder;
- (ii) Customer substantially breaches any other material terms of this Agreement ; or
- (iii) Customer files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days.

3.2 Wave Default. Wave will be in default under this Agreement ("Wave Default") if Wave does one or more of the following (each individually to be considered a separate event of Wave Default) and Wave fails to correct each such noncompliance or within 30 days of receipt of written notice from Customer identifying with reasonable particularity the nature, scope and extent of the noncompliance:

- (i) Wave substantially breaches any material term of this Agreement; or
- (ii) Wave files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such

other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days.

ARTICLE 4. RIGHT TO SUSPEND OR TERMINATE

4.1 Termination and Suspension by Wave.

(A) In the event of Customer Default, Wave may, at its option, and in addition to any other remedies it may have at law or in equity:

- (i) Immediately suspend Services until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Wave any amounts due under this Agreement (e.g., monthly services fees), as if such suspension of Services had not taken place;
- (ii) Terminate the Services or applicable Order; or
- (iii) After the occurrence of two such events of Customer Default in any 12 month period, terminate this Agreement or any applicable Order.

(B) Customer hereby forever waives, releases and discharges Wave and its affiliates from any and all claims, demands, actions, damages and causes of action related in any way to, or arising out of, any suspension or termination in accordance with this section 4.1.

4.2 Termination by Customer. In the event of Wave Default, if Wave's diligent efforts to correct such default are not commenced and pursued within 30 days of Wave's receipt of a written notice from Customer describing in reasonable detail the nature, scope and extent of the Wave Default, Customer's exclusive remedies will be (i) reimbursement set forth at section 2.5(F) hereunder, and (ii) termination of any applicable Order.

4.3 Automatic Termination. In addition to other termination rights under this Agreement, unless Wave, at its sole discretion, notifies Customer in writing of its choice not to exercise the automatic termination rights granted by this section 4.3, this Agreement will terminate automatically if any of the follow occurs:

- (i) For more than twenty consecutive days Customer fails to maintain operations as a going business;
- (ii) Customer, or any officer, director, substantial shareholder or principal of Customer, is charged in a court of competent jurisdiction with any offense substantially related to the business conducted by Customer in connection with this Agreement;
- (iii) Customer fails to comply with any applicable federal, state or local law or regulation, or engages in any practice, substantially related to the business conducted by Customer in connection with this Agreement, that is determined to be an illegal or unfair trade practice in violation of any applicable federal, state or local law or regulation;
- (iv) Customer falsifies any record or report hereunder;
- (v) Customer fails to maintain in full force and effect throughout the Service Term each right of entry, license, permit or similar document or authority required by contract, law or governmental authority having jurisdiction, that is necessary to carry out the provisions of this Agreement or to maintain Customer's corporate or other business status;
- (vi) Customer commits any fraud, misrepresentation or illegal action in connection with this Agreement or any other agreements;

- (vii) Wave, at any time during the Service Term, does not have all rights necessary to provide the Services or Wave is advised by counsel that termination of this Agreement is advisable given current and then-pending laws, regulations or ordinances, whether federal, state or local;
- (viii) Wave is legally or contractually prohibited from offering the Services; or
- (ix) Delivery of the Services becomes technically infeasible due to equipment changes and reconfiguration or other technical issues.

ARTICLE 5. LIABILITIES AND SERVICE LEVELS

5.1 Limited Warranty. At all times during the Service Term, Wave warrants that it shall use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. *The foregoing limited warranty is exclusive and in lieu of all express and implied warranties whatsoever.* Customer must make any warranty claim within 30 days after the applicable Services have been performed. Wave's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth in this section, is a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty.

5.2 Disclaimer of all other Warranties. *Wave makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties or merchantability, fitness for a particular purpose or title or non-infringement of third party rights, except those expressly set forth in this Agreement. No advice or information given by Wave, its affiliates or its contractors or their respective employees will create a warranty. If, under the applicable Order, Wave provides equipment, network facilities and other property in order to provide Services to Customer, Customer (i) shall pay for and accept all such Wave provided equipment "as is"; (ii) forever waives any right or claim it or any of its affiliates may now have or may hereafter acquire against Wave regarding such equipment or the installation, maintenance, replacement or the use thereof; and (iii) shall look only to the warranty provided by the manufacturer of such equipment for any issues, damages, problems or concerns that may arise in connection therewith. Notwithstanding the foregoing, if Customer discovers any material defect in any such equipment within five days following delivery of the equipment to Customer, and Customer does not cause such defect, Customer may return such equipment to Wave. If Wave determines in its sole and absolute discretion that such returned equipment contains a material defect not caused by Customer, Wave shall make commercially reasonable efforts to replace the defective equipment at no additional cost to Customer except for any applicable shipping and handling costs associated with the return and replacement.*

5.3 Limitation of Wave Liability.

(A) Notwithstanding anything to the contrary herein, Wave's total cumulative liability to Customer under this Agreement is limited to the aggregate amount of the Fees actually paid by Customer to Wave for the rights obtained under this Agreement during the six months immediately preceding the date of the termination of this Agreement, exclusive of any amounts expended by Wave hereunder. Customer hereby irrevocably and forever releases Wave from all obligations, liability, claims or demands in excess of the foregoing limitation.

(B) Upon expiration or termination of this Agreement, Wave will have no liability or obligation to Customer whatsoever and no amounts spent by Customer in fulfillment of this Agreement will be recoverable from Wave by Customer.

5.4 No Special Damages. *Without limiting any express provisions provided elsewhere in this Agreement, neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or, even if the party has been advised, knew or should have known of the possibility of such damages.*

5.5 Liability and Indemnification.

(A) In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement, Customer shall, at its own expense, indemnify, defend and hold harmless Wave and its members, directors, employees, representatives, officers and agents (the "Wave Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Wave Indemnified Parties, including but not limited to, reasonable attorneys' fees and court costs incurred by Wave Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Wave Indemnified Parties will have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Wave Indemnified Parties in such case.

(B) Customer accepts full responsibility for all actions taken by its employees, contractors or agents for work performed on any property of Wave and for the any equipment used in connection with the Services, and Customer shall indemnify Wave Indemnified Parties from any actions of such employees, contractors and agents and arising from such equipment in accordance with subsection 5.5(A).

5.6 Service Levels. The "Service Level" commitments applicable to Services, maintenance log and trouble ticketing procedures and credit procedures and regulations for Wave's noncompliance with a Service Level are contained in the Orders and/or set forth at www.wavebroadband.com.

5.7 Right of Termination for Installation Delay. In lieu of installation Service Level credits, if Wave's installation of Services is delayed by more than 30 business days beyond the Install Date, Customer may terminate the affected Services without liability on written notice to Wave, provided such written notice is delivered prior to the actual installation of Services. This Section will not apply where Wave is constructing facilities to a new location not previously served by Wave.

ARTICLE 6. CUSTOMER REPRESENTATIONS AND OBLIGATIONS

6.1 Customer Representations. Customer represents that:

(A) it has the full power and legal authority to execute, deliver and carry out the terms of this Agreement and that the individual signing this Master Agreement and any Order has the authority to do so;

(B) it has all permits, licenses and authorizations that may be required under contract and/or applicable federal, state and local law, rules, regulations and ordinances to install, operate and maintain any equipment used in connection with this Agreement, including without limitation, if applicable, the contractual right of entry to any properties on which any such equipment is or will be located;

(C) any person who accesses any Services through Customer's equipment or network facilities in Customer's premises will be an authorized user, will use the Services and/or equipment in an appropriate and legal manner will be subject to the terms of this Agreement. Customer is responsible for ensuring that all such users understand this Agreement and comply with its terms;

(D) as of the date of the applicable Order Customer is in compliance with, and throughout the Service Term it shall comply with, any and all applicable local, state and federal laws, rules, regulations, licensing requirements, and valid orders of administrative agencies, governmental entities and courts of competent jurisdiction in connection with the operation of its business and the performance of its obligations under this Agreement. Customer shall maintain all permits, licenses, permissions, authorizations, and rights that may be required under any applicable legal requirements or otherwise for the performance of its obligations under this Agreement;

(E) it is in compliance with all laws, rules and regulations and court and governmental orders related to maintenance of its corporate or other business status and/or to the operation of its business;

(F) it has not and shall not during the Service Term enter into an agreement or arrangement that could limit the full performance of its obligations under this Agreement; and

(G) it is under no obligation and shall not become subject to any obligation that may interfere with its performance of this Agreement;

6.2 Customer Obligations. Customer is responsible for payment of all Fees due in accordance with this Agreement and shall comply with all other terms of this Agreement.

ARTICLE 7. GENERAL TERMS

7.1 Force Majeure. Neither party will have any claim or right against the other for any failure of or delay in performance by the other party (other than Customer's payment obligations under article 2 of this Master Agreement) if the failure or delay is caused by or the result of causes beyond the reasonable control of the other party, including, but not limited to, acts of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, or; other similar occurrence beyond the control and without the fault or negligence of the affected party. Notwithstanding the foregoing, if the excusable delay exceeds 60 days, either party may terminate this Agreement or applicable Order immediately on written notice without incurring any termination liability hereunder.

7.2 Assignment and Resale.

(A) Customer shall not assign or otherwise transfer this Agreement or delegate Customer's obligations, in whole or in part, whether by operation of law or otherwise, to any other party, except that on obtaining the prior written consent of Wave, which will not be withheld unreasonably, Customer may assign this Agreement, in whole or in part, to any parent, subsidiary or affiliate of Customer controlling, under the control of or under common control with Customer (a "**Customer Affiliate**"), or any entity that purchases all or substantially all of the assets of Customer.

(B) Any assignment will be contingent on the assignee or transferee agreeing in writing to assume and to perform all of Customer's obligations under this Agreement. The parties' rights and obligations under this Agreement will bind and inure to the benefit of the parties and each of their respective permitted successors and assigns. At Wave's request, any prospective assignee for which Wave's consent is required for assignment shall submit to Wave evidence of its financial fitness, competitive standing and any other criteria Wave deems appropriate. The prospective assignee shall reimburse Wave the costs of reviewing such evidence to determine whether to permit the assignment or sublease. If Customer validly assigns or otherwise transfers this Agreement in accordance with subsection 7.2(A) above, Customer will remain liable for the obligations under this Agreement if the assignee fails to fulfill those obligations.

(C) If Customer sells substantially all of its assets to a party that is not a Customer Affiliate, Customer may choose to terminate this Agreement and be released from its obligations under this Agreement as of the effective date of such sale, provided that (i) Customer provides 30 days' prior written notice to Wave of such sale; (ii) Customer has fully paid, in accordance with the terms of this Agreement, all amounts to which Wave is entitled under this Agreement as of the effective date of such sale; and (iii) Customer is not in breach or Customer Default of this Agreement. If Customer terminates this Agreement in accordance with this subsection 7.2(C), Wave will not have any further duty or obligation under this Agreement or otherwise with respect to Customer.

(D) Unless otherwise provided in an Order, Customer may provide Services to third parties or use the Services in connection with goods or services provided by Customer to third parties ("**Customer Provided Services**") provided that Customer shall indemnify, defend and hold Wave and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer shall file all required documentation and at all times have the requisite authority with appropriate regulatory agencies respecting the same.

7.3 Authorized Representatives. Each party represents to the other that the execution and delivery of this Agreement and the performance of such parties' obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms

7.4 Affiliates. Services may be provided to Customer by an affiliate of Wave, but Wave will remain responsible to Customer for the delivery and performance of Services. If Customer transfers this Agreement, in whole or in part, to a Customer Affiliate pursuant to section 7.2 above, or the Customer Affiliate otherwise purchases Services, Customer will be jointly and severally liable for all claims and liabilities related to Services ordered by any Customer Affiliate.

7.5 Notices. Any notice to be given to either party under this Agreement will be in writing and deemed received (a) when received, if hand delivered, (b) three days after being sent by certified mail, postage prepaid and return receipt requested, (c) when received, if sent by facsimile during the hours of 9:00 a.m. to 5:00 p.m. (recipient's time) with printed confirmation of receipt, or (d) the next day, when sent by reliable, commercial overnight courier providing receipt of service to a party at such party's address set forth below. Notice received after 5:00 p.m. (recipient's time) will be effective the next regular business day:

IF TO WAVE:

WAVE BROADBAND
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Paul Koss
Facsimile:
Email: pkoss@wavebroadband.com

IF TO CUSTOMER:

City of Winters
318 1st St.
Winters, CA 95694
Attn:
Facsimile:
Email:

WITH A COPY TO:

WaveDivision Holdings, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Jim Penney
Facsimile: 426-896-1911
Email: jpenney@wavebroadband.com

Attn:
Facsimile:
Email:

For billing inquiries/disputes, requests for Service Level credits and/or requests for disconnection of Services (other than for default):

WAVE BROADBAND
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn:
Facsimile:
Email:

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on any applicable Order. Either party may change its notice address by giving notice to the other party in accordance with this section.

7.6 Acceptable Use Policy. Customer's use of Services shall comply with Wave's Acceptable Use Policy, as communicated in writing to Customer from time to time and which is also available through Wave's web site (www.Wavebroadband.com).

7.7 Intellectual Property and Publicity. Nothing in this Agreement or its performance grants either party, by implication, estoppel or otherwise, any right, title, interest or license in or to the other party's names, logos, logotypes,

trade dress, designs, or other trademarks, patents, patent applications, trade secrets, copyrights, mask work rights or other intellectual property rights of the other party or its affiliates.

7.8 Confidential Information. "Confidential Information" means the specific terms of this Agreement and any information, data or other materials provided by one party to the other under or in connection with this Agreement that is (a) clearly and conspicuously marked as "confidential" or with a similar designation; (b) identified by the disclosing party as confidential and/or proprietary before, during or promptly after presentation or communication; or (c) disclosed in a manner which the disclosing party reasonably communicated, or the receiving party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Except with the prior written consent of the disclosing party, the receiving party shall not (i) use or disclose any Confidential Information other than to employees and contractors who have a need to know the Confidential Information, with any disclosure only to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties, or (ii) make copies or allow others to make copies of such Confidential Information except as is reasonably necessary for internal business purposes. Nothing in this Agreement prohibits or limits either party's use or disclosure of information (a) previously known to it without obligation of confidence; (b) independently developed by or for it without use of or access to the other party's Confidential Information; (c) acquired by it from a third party which is not under an obligation of confidence with respect to such information; (d) which is or becomes publicly available through no breach of this Agreement; or (e) is required to be disclosed by operation of law, court order or other governmental demand. Further, the receiving party is free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the disclosing party, provided that the receiving party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information in intangible form, which is retained in unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The receiving party will not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. The parties acknowledge and agree that breach of this section 7.8 may cause irreparable injury for which monetary damages are not an adequate remedy. Accordingly, each party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this section 7.8, without posting a bond if otherwise required by law. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing. Any non-disclosure agreement between the parties applicable to this Agreement supersedes this section 7.8.

7.9 Compliance with Laws. Customer shall not use or permit third parties to use Services in any manner that violates applicable law or causes Wave to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties under this Agreement.

7.10 Governing Law; Forum Selection. The laws of the State of Washington govern all matters arising out of this Agreement. The state and federal courts located in King County, Washington will have exclusive jurisdiction and be the exclusive venue of any lawsuit between the parties arising out of this business relationship, including disputes when they arise following termination of this Agreement. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. Customer acknowledges and agrees that this section 7.10 serves as a material inducement for Wave to enter into this Agreement. *Each party waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under this Agreement.*

7.11 Further Actions. The parties shall, at their own costs and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intended purposes of this Agreement.

7.12 Amendment. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the Services and supersedes all prior agreements relating to the Services. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party.

7.13 Waiver. No failure by either party to enforce any rights hereunder will constitute a waiver of such rights. Wave's acceptance of any payment under this Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Wave for additional amounts due from Customer. No express or implied waiver by Wave of any event of default will in any way be a waiver of any further subsequent event of default.

7.14 Relationship. This Agreement is a commercial contract between Wave and Customer and the relationship between the parties is that of independent contractors. Nothing in this Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the parties or any of their affiliates, agents or employees for any purpose.

7.15 Counterparts. This Master Agreement and any Order may be executed in several counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Any executed documents sent via facsimile or portable document format (pdf) images will be considered originals.

7.16 Legal Expenses. If any proceeding is brought by a party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief as set forth in this Agreement, that party's reasonable attorneys' and experts' fees and expenses.

7.17 Severability. The invalidity under applicable law of any provision of this Agreement will not affect the validity of any other provision of this Agreement, and if any provision herein is determined to be invalid or otherwise illegal, this Agreement will remain effective and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

7.18 No Inference Against Author. No provision of this Agreement will be interpreted against any party because the party or its legal representative drafted the provision.

7.19 No Third Party Beneficiaries. This Agreement is not intended and does not confer any rights or remedies on any entity or person other than Wave and Customer.

7.20 Successor Interests. This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of the parties.

7.21 Headings. The article and section headings in this Agreement are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Agreement.

The parties are signing this agreement on the date stated in the introductory clause.

CUSTOMER

WAVE BROADBAND

By _____

By _____

Name _____

Name _____

Title _____

Title _____

ORDER FOR INTERNET AND TELEPHONE SERVICES

This Order for Internet and Telephone Services (the "Order") is made pursuant to that certain Master Services Agreement dated January 19, 2011 (the "Master Agreement") between WAVE BROADBAND ("Wave") and THE CITY OF WINTERS ("Customer"). This Order is dated as of the date which appears on the signature page of this Order. All capitalized terms not defined herein have the meanings that are ascribed in the Master Agreement.

In accordance with the Master Agreement, the terms and conditions of which are incorporated herein by this reference, Wave and Customer agree as follows:

CUSTOMER INFORMATION:

Account Name: The City of Winters
 Invoicing Address: 318 1st St., Winters, California 95694
 Invoicing Special Instructions: _____
 Customer Federal Tax ID#: _____

SITE-SPECIFIC INFORMATION:

New Renew Change:
 Install Date: within 60-90 days of Order date
 Initial Service Term: 48 months
 Service Site(s) (Address): 318 1st St., Winters, California 95694
 Service Site Name (for purposes of identification): City of Winters
 Service Site Special Instructions: _____

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name	Nanci Mills	Nanci Mills	Lowell Switzer
Phone	530-793-4910 x 101	530-793-4910 x 101	530-400-7805
Fax	530-795-4935	530-795-4935	
Cell			
Pager			
Email Address	nanci.mills@cityofwinters.org	nanci.mills@cityofwinters.org	lswitzer@switzerenterprises.com

50 Mbps Fiber Ethernet IP Circuit to 318 First St., Winters, California 95694	\$1,000.00
50 Mbps Fiber Ethernet Point-To-Point Circuit from 318 First St., Winters, California 95694 to 700 West Grant Avenue, Winters, California 95694	\$750.00
1 Primary Rate Interface with unlimited local calling and 100 Direct Inward Dialing Telephone Lines at 318 First St., Winters, California 95694	\$475.00
1 Primary Rate Interface with unlimited local calling AND 100 Direct Inward Dialing	\$475.00

Telephone Lines at 700 West Grant Avenue, Winters, California 95694	
Customer hereby designates Wave as its primary interexchange carrier for interLATA (including international) services.	
	\$2,700.00

Installation of above-mentioned Services	\$2,950.00
	\$2,950.00

1 Service. Wave shall provide the IP and telephone Services indicated above to Customer at the Service Site(s) identified above (the "Services"). The service level, performance standards and maintenance, credit and trouble ticketing procedures applicable to the Services provided under this Order are governed by the IP and Telephone Services Service Level Agreement ("SLA"), the current version of which is attached in Exhibit A. Customer represents and warrants that Customer has read the SLA and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that Wave may update or modify the SLA from time to time either by sending Customer the updated SLA or informing Customer of the Wave website on which the then-current SLA is posted.

2 Other Providers. Unless otherwise expressly agreed to in writing, Wave will have no obligation or responsibility to arrange for termination or removal of telecommunications services provided by long distance providers. Customer will remain responsible for terminating and removing any such unwanted services and circuits provided by other long distance providers. Customer understands that it may designate only one primary interexchange carrier for any one telephone number for state-to-state (interLATA), intrastate and international usage.

3 Service Term. The initial term of this Order begins on the Install Date identified above and continues for the Initial Term indicated above. On expiration of the Initial Term, this Order will automatically renew for successive one-year renewal terms unless either party terminates the Order by giving written notice to the other party not less than 30 days prior to the end of the Initial Term or the then current renewal term. The period of time this Order is in effect is referred to as the "Service Term."

4 Rates and Charges. Customer is responsible for paying such long distance charges to Wave along with all one-time charges and recurring monthly service fees listed above, all in accordance with article 2 of the Master Agreement. Any long distance rates listed above are the rates as of the date of this Order and do not reflect the actual rates anytime during the Service Term. All long distance charges are exclusive of applicable taxes, and Wave may add or adjust rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs ("Governmental Charges"), plus amounts to recover reasonable administrative costs associated with such Governmental Charges; provided, however, that the administrative costs for which Customer is liable will not exceed 10%. Such administrative costs include, but are not limited to, (i) charges for terminating or originating calls to wireless carriers; and (ii) domestic and international mobile origination and termination charges imposed on Wave by Wave's foreign carrier correspondents. Customer will not be eligible to receive any other additional discounts, promotions and/or credits (Tariffed or otherwise).

5 CPNI. Wave will have access to certain Customer proprietary network information ("CPNI"). Under federal law, Customer has a right to, and Wave has a duty to protect, the confidentiality of CPNI. CPNI may be useful to tailor services to Customer and to enhance Wave's ability to meet Customer's needs. Customer expressly authorizes Wave, its affiliates, or its sales representatives to use CPNI to determine if Customer could benefit from other services offered by Wave and its affiliates, and market them to Customer. Customer may withdraw its authorization at any time by informing Wave in writing. Any such withdrawal will not affect the quality of Services provided hereunder.

6 Equipment and Network. "Equipment" means components including, but not limited to, any gateway or

edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables that makes up the network of Wave-provided Equipment, facilities and materials (the "Network") necessary to provide the Services.

7 Site Visits and Repairs. If Customer's misuse, abuse or modification of the Services, Equipment or Network facilities supplied by Wave necessitates a visit to the Service Site for inspection, correction or repair, Wave may charge Customer a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Services.

8 Installation Review; Subsequent Interference. Wave may perform an installation review of each Service Site prior to installation of the Services at that Service Site. Wave may require Customer to provide Wave with accurate site and/or physical network diagrams or maps of a Service Site prior to the installation review. Wave may directly or through its agents inspect the Service Site before beginning installation, and shall satisfy itself that safe installation and proper operation of its Equipment and the Services are possible at the Service Site. If Wave, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to Wave's personnel or Network and/or cause technical difficulties to Wave or its customers, Wave may terminate this Order effective on prior written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

9 Interference. If, during the Service Term, (i) proper operation of Wave's Equipment and/or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any Force Majeure Event, or (ii) such interference/obstruction or the cause thereof will have negative consequences to Wave's personnel or Network and/or cause technical difficulties to Wave or its customers, as Wave may determine in its sole discretion, Wave may terminate any affected Order(s) without liability on written notice to Customer.

10 Site Preparation. Customer is responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services, including, but not limited to, the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment and/or Services. To ensure proper installation of the Equipment and the Services, Customer may be required to provide electrical or other utility service, and/or accurate physical network diagrams and/or maps prior to installation.

11 Installation. Wave shall schedule one or more installation visits with Customer. Customer's authorized

representative must be present during installation. During installation, Wave shall test to confirm that the Services can be accessed from the Service Site. If, during the course of installation, Wave determines additional work is necessary to enable Wave to deliver the Services to the Service Site, Wave shall notify Customer of any new or additional one-time charges that may be necessary. If Customer does not agree to pay such one-time charges by executing a revised Order reflecting such new charges (and superseding the underlying applicable Order) within five business days of receiving the revised Order, Customer and/or Wave may terminate the applicable Order. Customer will be responsible for access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for Wave to install the Services. Customer shall connect any Equipment provided by Wave to Customer's computer or network to enable access to the Services. With respect to any excavation, Wave will be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.

12 Ongoing Visits. Wave may access the Service Site from time to time to inspect, construct, install, operate and maintain Wave's Network facilities, Equipment or materials and/or any related facilities. Except in emergency situations, Wave shall obtain approval from Customer (not to be unreasonably withheld or delayed) before entering the Service Site. At Wave's request, Customer, or a representative designated by Customer, shall accompany Wave's employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, and/or removing the Equipment.

13 Equipment Maintenance.

(a) Except as otherwise provided in this Order or the Master Agreement, neither party is responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party, provided, however, that subject to the indemnification provisions of this Order and the Master Agreement, each party will be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

(b) Customer shall (i) safeguard Wave-provided Equipment against others; (ii) not add other equipment or move, modify, disturb, alter, remove, or otherwise tamper with any portion of the Equipment; (iii) not hire or permit anyone other than personnel authorized by Wave acting in their official capacities to perform any work on the Equipment; and (iv) not move or relocate Equipment to another location or use it at an address other than the Service Site(s) without the prior written consent of Wave.

(c) Any unauthorized connection or other tampering with the Services, Equipment, any system or its components will be cause for immediate disconnection of Services,

termination of this Order and/or legal action, and Wave will be entitled to recover damages, including, but not limited to, the value of any Services and/or Equipment obtained in violation of this Order in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees. If any antenna or signal amplification system for use in connection with communication equipment hereafter installed on the Service Site interferes with the Services Wave provides under this Order, Wave will not be obligated to distribute a quality signal to the Service Site better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

(d) Immediately on termination of Services, at the discretion of Wave, Customer shall return, or allow Wave to retrieve, the Equipment supplied by Wave to Customer, in good condition. Failure of Customer to return, or allow Wave to retrieve, Equipment within ten days after Services are terminated will result in a charge to Customer's account equal to the full retail cost of replacement of the unreturned Equipment. In addition, Customer shall pay for the repair or replacement of any damaged Equipment (whether or not caused by Customer's negligent act, except for such repairs or replacements as may be necessary due to ordinary wear and tear or material/workmanship defects), together with any costs incurred by Wave in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

14 IP and Telephone Service. In addition to the other provisions of this Order and the Master Agreement, continued use of the Services is subject to the following terms and conditions:

(a) Equipment and Software Requirements. Customer shall maintain certain minimum Equipment and software, as Wave may determine, to receive the Services.

(b) Access and Use. Customer shall ensure that any person who has access to the Services through Customer's computer(s), Service Site, facilities or account shall comply with the terms of this Order. Customer is responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Services.

(c) Customer Security Responsibilities. Customer is responsible for the implementation of reasonable security procedures and standards. Wave may temporarily discontinue or disconnect the Services on learning of a breach of security and shall attempt to contact Customer in advance of such discontinuation or disconnection, if possible. The temporary discontinuation or disconnection of the IP Services will not constitute a breach of this Order.

(d) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Wave are and will remain the property of Wave. Customer shall not alter, modify, sell,

lease, assign, encumber or otherwise tamper with the Electronic Addresses.

(e) No Liability for Changes of Address. Due to growth, acquisitions and changes in technology, Wave reserves the right to change addressing schemes, including Electronic Addresses.

(f) No Liability for Risks of Internet Use. The Internet is a shared network and Wave does not warrant that the Services will be error free. The Services, Wave's Network and the Internet are not secure, and others may access or monitor Customer's traffic. Wave does not warrant that data or files Customer sends or receives over the Network will not be subject to unauthorized access by others, that other users will not gain access to the Customer's data, or that the data or files will be free from computer viruses or other harmful components. Wave has no responsibility and assumes no liability for such acts or occurrences.

(g) No Liability for Purchases. Through use of the Services, Customer may access certain information, products and services of others for which there is a charge. Customer is solely liable and responsible for all fees or charges for these online services, products or information. Wave has no responsibility to resolve disputes with other vendors.

(h) Blocking and Filtering. While the computer industry may provide blocking and filtering software that empowers Customer to monitor and restrict access to Customer's computer and its data, Wave is not the publisher of this software. Wave strongly recommends that the Customer employ a "firewall" or other security software. Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Wave is not responsible in any manner for the effectiveness of these blocking and filtering technologies. Wave does not warrant that other users will be unable to gain access to Customer's computer(s) and/or data even if the Customer utilizes blocking and filtering technologies.

(i) Acceptable Use Policy and Business Services Subscriber Agreement. Customer shall comply with the terms of Wave's Internet Services Acceptable Use Policy ("AUP") and Business Services Subscriber Agreement (the "**Subscriber Agreement**"), both found at www.wavebroadband.com (or the applicable successor URL) and those agreements are incorporated by reference into this Order. Customer represents and warrants that Customer has read the AUP and Subscriber Agreement and agrees to be bound by their terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that Wave may update or modify the AUP or Subscriber Agreement from time to time, with or without notice to Customer. Wave may discontinue or disconnect Services immediately for any violation of the Wave AUP or Subscriber Agreement with or without notice to Customer.

(j) Special Provisions Regarding Telephone Service.

The telephone Services provided hereunder are provided by Wave's Internet Protocol Voice network. Customer acknowledges and accepts that telephone Service is not represented as fail-safe and is not designed for use in situations where error-free or uninterrupted service is essential. Wave will not be responsible for any losses or damages arising as a result of the unavailability of the Service, including the inability to reach 911 or other emergency services, or the inability to contact Customer's security system or remote medical monitoring service provider.

(k) Domain Names.

Customer is solely responsible for registering for or renewing a desired domain name, Wave disclaims such responsibility, and Customer acknowledges that Wave does not guarantee that Customer will be able to register or renew a desired domain name, even if an inquiry indicates that domain name is available at the time of such inquiry.

15 Customer Use. Customer shall not use or permit third parties to use the Services, including but not limited to the Equipment and software provided by Wave, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Wave Network, backbone, nodes or other Services. Customer shall not use the Services for purposes competitive with Wave. Violation of any part of this section 12 is grounds for immediate termination of this Order or all Orders in addition to any other rights or remedies Wave may have hereunder.

16 Performance. Wave shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Services are available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Services. Specifically, Customer understands and agrees that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Wave's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, will not constitute failures by Wave to perform its obligations under this Order, and Customer will not hold Wave at fault for loss of Customer revenue or lost employee productivity due to such Services outages.

17 Limitation of Liability. In addition to the provisions of article 5 of the Master Agreement:

(a) Customer acknowledges that any content that Customer may access or transmit through any Services is provided by independent content providers, over which Wave does not exercise and disclaims any control. Wave neither previews content nor exercises editorial control, does

not endorse any opinions or information accessed through any Services, and assumes no responsibility for content. Wave specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Services. Such content or programs may include, without limitation, programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Wave assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

(b) Customer agrees that Customer uses the Services and Equipment supplied by Wave at its sole risk. Wave does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind.

(c) Wave assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Services or from the installation, maintenance or removal of any Services, Network, or related Equipment or software. Wave does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.

(d) Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. Wave does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Wave assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third-party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer will remain liable for payments as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Wave has no responsibility to resolve any difficulties caused by such third-party equipment or software. If, at Customer's request, Wave attempts to resolve difficulties caused by such third-party equipment or software, such efforts will be performed at Wave's discretion and at Wave's then-current commercial rates and terms.

(e) If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of the Services and this Order by Wave without Wave incurring liability. Wave is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold Wave harmless from and indemnify Wave against any claims, losses, or damages arising from such use. Wave is not responsible and assumes no liability for losses, claims, damages, expenses,

liability, or costs resulting from others accessing the Customer's computers, its internal network and/or the Network through Customer's equipment, and Customer shall hold Wave harmless from and indemnify Wave against any such claims, losses, or damages to the full extent arising from such access.

18 Privacy. Wave treats private communications on or through its Network or using any Services as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Wave also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy can be found on Wave's website at www.wavebroadband.com. Customer represents and warrants that Customer has read the Privacy Policy and agrees to be bound by its terms. Customer expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by Wave, with or without notice to Customer.

19 General Customer Representations and Obligations. In addition to any representations and obligations in the Master Agreement, Customer is responsible for all access to and use of the Services by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer will be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Services, until Customer informs Wave of any breach of security. Wave expressly prohibits using the Services for the posting or transferring of sexually explicit images, material inappropriate for minors, or other offensive materials. By signing below, Customer expressly acknowledges that Customer shall not post or transfer or permit others to post or transfer such materials using the Services.

This Order will become effective when all parties have signed it. The date this Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Order.

Customer:

THE CITY OF WINTERS

By: _____

Name Printed: _____

Title: _____

Date: _____

Wave:

WAVE BROADBAND

By: _____

Name Printed: _____

Title: _____

Date: _____

EXHIBIT A

Service Level Agreement

I. Overview

This Exhibit A Service Level Agreement (SLA) applies to Service orders (Service) for customers that use the Point-To-Point Fiber Transport Services provided by Wave Broadband (“Wave”). This SLA describes the standards, rights and remedies regarding the performance of the Network in the provision of Service to Customer as defined in the Order. This SLA only applies to fiber based customers with point to point or Internet based services.

II. Network Scope (Point to Point)

The scope of the Network includes any and all Wave controlled equipment between and inclusive of those Wave devices closest to the Customer Provided Equipment (CPE) that provide a demarcation point between the Customer network and the Network, e.g., a Cisco switch. A demarcation point is defined as the Ethernet switched infrastructure and/or optical infrastructure residing in a Wave Point of Presence (PoP) on the Network and under the direct control of Wave or its circuit partner(s). The Network, as it applies to this document and all rights and remedies herein, does not include any third party equipment, other than equipment furnished by Wave or its circuit partner(s), any physical cross connections between Customer and Wave or any Customer application riding on the Network unless specifically noted within the contract for Services entered into between Customer and Wave.

III. Network Service Standards and Performance (Point to Point)

Network Availability: Wave guarantees within the rights and limits of this SLA that the Network will be available to the Customer 99.99 percent of the time as measured on a monthly basis. 99.99 percent uptime is defined as a period or periods of Network outage of duration not to exceed 4.32 minutes in any given month. A Network outage is calculated from the time Service becomes unavailable to the time Service is restored as verified by Wave or its circuit partner(s)'s monitoring systems and based on the availability of Service during the Service monthly billing period in which the Customer opens a trouble ticket with the Network operations center regarding the Network outage.

Latency: Wave guarantees within the rights and limits of this SLA that the average round-trip latency on the Network will not exceed 50 milliseconds for a period of three samples by Wave's Network monitoring facilities, or for a continuous 20 minute period, whichever is less. Average round-trip latency, with respect to a given month, is defined as the average time required for a round-trip frame transfer between PoPs on the Network during that month as measured by Wave. Average round-trip latency does not extend past the demarcation between the CPE and the Wave demarcation point.

Packet Loss: Point to Point packet loss on the Network will be no more than 1%, or current industry standard, whichever is less.

Mean Time to Repair: Wave's Mean Time to Repair (MTTR) goal for any Service is two hours. However, Customer acknowledges that MTTR may exceed this amount in cases of major damage to the Network such as fiber cuts. MTTR commences after the Customer, Wave, or one of its Network circuit partners opens a trouble ticket with the Network NOC at <888-317-0488>. MTTR is defined as the time required to restore the Network to a normally operating state. MTTR is calculated on a monthly average of the time taken to repair all trouble tickets on a specific circuit with the same severity level during a Network outage. The cumulative length of Network outages per circuit is divided by the number of trouble tickets in the billing month to gather the monthly MTTR per circuit.

IV. Internet Access Service

If the contracted service includes internet, the following performance criteria and responsibilities are incorporated in the SLA:

- Minimum ordered bandwidth is guaranteed or service charge is pro-rated;
- Guaranteed passing of all ports/protocol;

- Filter and reroute on-demand to mitigate DOS and DDOS attacks;
- Each full hour of downtime entitles Customer to one-half-day Service credit, with a maximum credit of two-half-days per day of interrupted service with no carry-forward; downtime is defined as an inoperative Wave- or circuit partner(s)-controlled circuit impeding access to a third-party circuit provider transporting over the Internet

V. Credits

All customer credits are based on a monthly billing cycle. Credits for Network non-compliance will be credited to the Customer's account within two billing cycles. No credit will exceed the monthly value for the billing month of the affected circuit/service address exclusive of any applicable taxes charged to Customer or collected by Wave. In the event that Wave is unable to satisfy the Network Service standards and performance guarantees as defined in the SLA, the following credits apply:

- Network unavailability per incident 20-percent of MRC;
- Latency greater than 50-milliseconds, per incident 10-percent of MRC;
- MTTR 2 hours per month 25-percent of MRC.
- Packet Loss greater than 1-percent, per incident 10-percent of MRC;

Note: where there are multiple simultaneous performance "failures," the performance penalty metric yielding the highest dollar credit will be the only one to be applied to the Customer's account and it shall never exceed the net monthly balance of charges for that particular circuit for the month in which the failure has occurred.

VI. Credit Request

Business Sales Account Executive is the only authorized medium to report perceived SLA noncompliance events. In order to receive credits, Customer must inform the Wave in writing, which will in turn open a ticket with the NOC within the time limits as listed in this section of this SLA. If the Customer does not open a trouble ticket or does not open a trouble ticket within the prescribed time, Customer will not be able to receive a credit. A list of prescribed times according to the Network standards in Section III of this document are below:

Network Standard Measurement

Network availability trouble ticket must be opened within two hours of the occurrence in order to request credits or other remedies as they relate to this document. Latency trouble ticket must be opened within two hours of the occurrence in order to request credits or other remedies as they relate to this SLA. MTTR trouble ticket must be opened before the end of the billing cycle, defined as the date of the 26th of any given month. In addition to the trouble ticket requirements as listed in the section of the SLA, request for credit must be made in writing to Wave within five days of opening the trouble ticket. The request for credit must include the trouble ticket number, applicable circuit IDs or account number, and relevant information regarding the scope of the occurrence as it relates to the rights and remedies as specified within this SLA. Requests for credit must be made to a customer service representative at the Wave call center or the local Wave Business office. Wave will provide a formal response to the Customer's request for SLA credits within 10 working days of receipt of such request.

VII. Exceptions

All Network Service standards and performance guarantees do not include periods of Service interruption of or on the Network caused in whole or in part by:

- ✓ Reasons of force majeure as defined in the applicable Order;
- ✓ Customer's or Customer's agent's acts or omissions including without limitation, any negligence, willful misconduct or use of the Network or Wave services in breach of the applicable Order by Customer or others authorized by Customer;
- ✓ Wave OR Customer scheduled maintenance;
- ✓ Failure of circuits beyond the demarcation point or points on the Network, unless such failure is caused solely by Wave;

- ✓ Service outage attributable to the installation of a new circuit where a new circuit is defined as a circuit over which Service may be active but a signed Order acceptance document has not been received and duly noted by an assigned agent of Wave;
- ✓ Circumstances beyond Wave's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike, or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party Services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the SLA.

VIII. Trouble Ticket ... Escalation

A Customer-initiated trouble ticket is to be routed through the Network Operations Center at <888-317-0488>. Should Customer believe that fault lies on the Network, it shall call the NOC (staffed 24x7x365), identifying the circuit in question by its unique circuit ID or account billing code number. The NOC will open a trouble ticket and seek resolution as expeditiously as possible. Closing of the ticket will be affected with a telephone call back to Customer. In the event that a trouble ticket remains open or unresolved for an unexpectedly long period of time, Customer, at its sole discretion, can contact the Network NOC and ask for an escalation. Customer may also call its local Wave Business Account Executive to seek resolution.

Maintenance and Outages

Customer to be notified one week in advance of scheduled outages that will take part or all of its circuits off-line. All efforts will be expended to perform such work off-hours. In the event of unscheduled outages, Wave will notify the Customer as expeditiously as possible and, if necessary, be on-site within two hours, regardless of location, to effect necessary repairs to return circuit to normal operating status.

Trouble Calls and Maintenance

Demand Maintenance/Service and Repair - Wave response to Network problems shall occur at all hours (24 x 365). If Wave is to provide maintenance/service or repair on Network facilities located within Customer premises; Wave must have reasonable access to such facilities on a 24/365 basis. This shall include response to all situations creating problems on the network, regardless of whether they originate within the network or within equipment or software at the customer site. Appropriate Wave technical support shall respond and actively begin working on Network problems within 30 minutes of either 1) Wave NOC identifying such problem, or 2) Wave receiving a call from Customer reporting a Network problem. Wave shall place a phone call to Customer's designated service contact to inform Customer that the situation is being addressed. Wave shall work continuously until the problem is resolved. If it is determined by Wave that the Network problem is caused by Customer equipment or software, then Customer shall correct the problem promptly, such that the integrity of the Network provided by Wave is not adversely affected. If Customer does not correct the problem, then Wave may, at its sole discretion, disconnect the affected Customer site from the Network until such time that the Customer equipment or software is repaired or readjusted. If Customer desires assistance from Wave in correcting the equipment or software problem, then Wave shall provide such assistance, but Wave shall also have the right to invoice Customer, at Wave's prevailing hourly rate for the time spent correcting Customer equipment or software problems.



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: February 1, 2011
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Strategic Action Plan

RECOMMENDATION:

That the City Council receive and update and brief review of the City's 2011 Goals and the Strategic Action Plan.

BACKGROUND:

Since 2007, the City has maintained a "Strategic Action Plan" as a means of identifying the key projects and goals for the City. Having such a document allows the City to remain focused on our efforts and provides a means for informing the public of the priorities of the City.

DISCUSSION:

Attached for the information and comment of the City Council are the updated 2011 Goals and the overall Strategic Action Plan for the City of Winters. These have been developed and incorporate the following:

- The City's Fiscal Years 2010-11 and 2011-12 Budgets.
- A compilation and summation of City Council policy directives on key issues.
- Staff input based on known needs and projects.

Staff will provide a brief presentation and is requesting the input and comments from the City Council.

FISCAL IMPACT: None by this action.



2011 Goals

1. **Economic Development**- The development and implementation of strategies and programs to expand the City's economic base to increase tax revenues, create sustainable jobs, revitalize the existing downtown core and establish a visitor serving infrastructure.
2. **Fiscal Sustainability**- Implementation of policies and practices to maintain sound fiscal policy and practices to secure the long term financial sustainability of the City.
3. **Public Safety**- Advance the public safety capabilities for police, fire and emergency response services through facilities and the development/implementation of comprehensive staffing and service plans.
4. **Water Programs**- Implementation of the metering program, billing systems and conservation programs to maximize the equity and efficiency of the City's water utility.
5. **Wastewater**- Advance the permitting of the wastewater utility, analyze the long term capital and infrastructure needs and begin efficiency projects to manage wastewater operations.
6. **Capital Project** implementation to advance economic development, street, water, wastewater, recreation and environmental projects and interests.



Strategic Action Plan

For the past three years, the City Council and staff have established Strategic Action Plans to focus the efforts of the City of Winters. An impressive amount of work has been done to achieve many of the goals in that plan.

Staff has begun the process of reviewing the 2007 plan, revisiting priorities and goals in order to develop an updated Strategic Action Plan including input from staff and the City Council.

A combination of the severe decline in recurring revenues and the need for long term sustainability to address service shortfalls has driven staff to recommend a single priority for the City to focus on for the coming years-

Economic Development.

Economic Development provides jobs for residents, an economy to support community needs in schools and social organizations, tax revenues to enable local government to provide the necessary services to a broad spectrum of the population and a critical network to enable commerce to succeed.

The overall health of a community is often defined by the level of commerce which occurs. It reflects on the City in many ways including the wealth of persons and businesses, the quality of life for residents to be able to work and live within a close proximity and the impacts residents have on the environment.

The overall objectives of the Economic Development Priority are as follows:

- Generate an infusion of new businesses and capital investment.
- Implementation of the City's General Plan
- Creation of a wide range of jobs for all facets of the community.
- Business to business commerce.
- Revenue generation for the City.
- Sustainability programs that benefit the residents, businesses, community organizations, schools and the environment.

The following strategic programs are recommended for departments to accomplish this priority:

1. **Economic Development-** Focus on job creation and revenue generation at the I505 and Gateway corridor along Grant Ave to include freeway serving businesses, lodging, research/business park development and industry; the Grant Avenue Commercial Project; Downtown development to include implementation of master plan projects, development of Putah Creek and the pursuit of business expansion, including a hotel.
2. **Community Development-** establish a streamlined development process, revise and refine the planning regulations for the Gateway Master Plan Area and the Grant Avenue corridor, continue to revise, refine and define the vision of the General Plan, facilitate development of a Climate Action Plan.
3. **Public Facilities and Infrastructure Projects-** continue to improve and expand water, sewer and roadway infrastructure in support of development, adopt and follow updated circulation plans, develop funding plans for new facilities to serve the community.
4. **Environment-** establish baseline for GHG emissions, develop Climate Action Plan, develop a mapping system, incorporate “green” policies throughout City operations
5. **Housing-** continue to ensure the long-term affordability of housing in the City of Winters, incorporate outreach, training and funding sources to provide programs to enable first-time homebuyers, seniors and low-income residents to rehabilitate and purchase homes.
6. **Public Safety-** continue to increase staffing levels and service capabilities as funding allows, create funding plans for new equipment, establish and improve retention, recruiting and training.
7. **Community Service-** continue to work cooperatively with the school district, maintain After School Program, establish and maintain fiscally sustainable recreation programs, maintain and improve facilities, incorporate volunteerism and community efforts.

The following is a draft outline of the proposed plan.

❖ Economic Development

The City of Winters will make economic development a priority with a sole focus on creating jobs to meet a variety of needs in the community including high paying jobs that sustain homeownership and jobs to provide employment for youth. Rather than define the type of businesses that will come to Winters, the City will focus on encouraging job creation and providing incentives to those who wish to bring businesses to Winters. Flexibility and receptivity to all proposals will allow for a broad variety of business types, including:

- Research/technology
- Manufacturing
- Biotechnology
- University-related business
- Agriculture and ag tech
- Office/professional
- Meeting/conference facilities
- Freeway and visitor serving
- Service sector
- Retail

This approach will result in the generation of revenue to allow for long-term fiscal sustainability.

Priorities

INTERSTATE 505/GRANT AVE CORRIDOR

This will include seeking development of key properties suited to freeway and visitor serving businesses.

Potential projects include:

- **Jordan/McClish Property**- Potential projects will include food and fuel businesses, lodging and recreational businesses. McClish property could be ideally suited for manufacturing, research park, ag tech or conference center.
- **Grant Avenue Commercial**- Continue to support Yackzan group's efforts to develop the property, with possible tenants including banks, food outlets, retail and medical offices.
- **Robada, Skreden**-Potential projects will include hotels, research, university related business, ag tech, and office professional.

Interests include:

- **East of Interstate 505 interchange**- Continue to work cooperatively with Yolo County to determine the highest and best use for the property. Possibilities could include ag processing. Annexation could be an option.

DOWNTOWN

Downtown continues to be a focal point and maintaining its vitality as a destination place is vital. An emphasis will be on the continued implementation of the Downtown Master Plan and advancing key projects currently under consideration.

Projects include:

- Monticello
- Vehicle bridge replacement
- Downtown Streetscape Project Phase II
- Downtown hotel
- Putah Creek Projects
- Alley improvement
- Art Park

Interests include:

- Mariani property/Railroad Avenue
- Buckhorn, Masonic and Putah Creek Café buildings

ZONES

Include property/business owners in the discussion of appropriate business types for various zones in the City; remain mindful of the need to be flexible and complement, not compete with, the downtown.

INTERSTATE 505/GRANT-suitable uses in this zone include fast food, lodging, gas, recreation and lake serving businesses.

GRANT WEST-suitable uses in this zone include manufacturing, ag tech, conference center, lodging, biotechnology, research, office/professional.

DOWNTOWN-suitable uses in this zone include wine shops, specialty food shops, restaurants, bakery, candy store, Yolo-centric agricultural products other destination type businesses.

The strategic plan should focus efforts to:

- Incorporate “green” concepts and standards throughout process
- Implement economic development incentive program
- Utilize business assistance programs
 - SBDC
 - CDBG ED business loan program
 - Redevelopment (as funding is recaptured through tax increment)
- Collaborate with UC Davis and other organizations to benefit from technology transfer

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- Job creation.
- Expanded commerce
- Business to business
- Establishment of a corporate connection with leading industries and UC Davis.
- Remove barriers to development from the General Plan and Zoning Code
- Define the vision of the current General Plan
 - Review environmental documents
 - Determine development levels that have been approved
 - Assess land use designations and zoning categories
- Implement project processing guidelines including
 - Critical path elements to define how projects proceed
 - Design guidelines including building and energy standards

❖ Community Development

Community Development is responsible for all planning and implementation regarding development in the City of Winters. Planning will be streamlined through realization of the following goals, objectives and projects:

- **Remove barriers to development from the General Plan and Zoning Code**
- **Streamline the development process in the City of Winters**

Priorities:

REMOVE BARRIERS TO DEVELOPMENT FROM THE GENERAL PLAN AND ZONING CODE

Staff has identified barriers in the General Plan and zoning code that have prevented development from taking place in the Gateway Master Plan area and along Grant Avenue since the adoption of the General Plan in 1992. Ideas under consideration include:

- Remove Planned Commercial (PC) and Planned Commercial/Business Park (PCB) land use designations and associated definitions from General Plan
- Amend the General Plan Land Use Map
- Amend the Zoning Map and Zoning Chapter in WMC to “simplify” the planning process for potential businesses

STREAMLINE THE DEVELOPMENT PROCESS

A key element to the overall effectiveness of our economic development program will be the streamlining of the processing of proposed projects through our Community Development Department. Ideas under consideration are:

- Single Source of Contact for Economic Development.
- A Development Review Team to assist in processing concepts and project applications.
- Project Review Committee meetings to discuss projects in pipeline – Similar to the Capital Projects meeting that takes place biweekly, the Project Review Committee would convene at the same rate.
- Expedited processing of job creating projects.

STUDIES/MAPPING

- Develop comprehensive tracking system library for the following:
 - Circulation plans
 - Traffic studies
 - Environmental impact reports/related data
 - Mitigation monitoring plan
 - Restoration projects

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- **Remove barriers to development from the General Plan and Zoning Code**
- **Streamline the development process in the City of Winters**

❖ Public Facilities

Public Facilities in the City of Winters are crucial in terms of economic development, public safety, recreation and community development. The City of Winters will pursue development of Public Facilities through realization of the following goals, objectives and projects:

- **Complete water and sewer improvements**
- **Complete and adopt Complete Streets Plan for Grant Avenue Corridor**
- **Complete circulation improvements on Grant Avenue**
- **Complete renovation/construction of City Hall, Community Center, Community Theater and Teen/Senior Center**
- **Complete downtown hotel/alley improvement project**

Priorities:

PUBLIC SAFETY CENTER

The completion and relocation of fire and police services into the new public safety center will serve as a hallmark moment in the quest to upgrade services within the community. This should include expanded 24/7 service capabilities, upgraded professional standards and improvements in the ability to serve business and industry.

WATER/SEWER IMPROVEMENTS

Projects that have been completed thus far :

Water-

- Rehabilitation of wells 4 and 5
- SCADA Implementation at all well sites
- Well 7 going on line end of August 2010
- Water Main replacements on Russell and Edwards Streets

Sewer-

- SCADA implementation at headworks and all lift stations
- Pump Replacements at all lift stations and East St. headworks
- Control Panel Replacement/ Improvements at Walnut Ln and Carter Ranch
- Manual Transfer switches installed at lift stations
- Repair /replacement of bar screen, grinder
- Improvements at WWTF chlorine feed and irrigation pump systems

The City will continue to upgrade and maintain water and sewer projects/operations. Key projects which will be implemented will include:

- Implementation of a consumption based water system by January, 2012.
- Implementation of water efficiency and leak detection program

- Wastewater Treatment Facility
 - Replace aerators done
 - Pump (bid documents in fall) done
 - Expansion postponed due to lack of need, will revisit in future
 - Efficiency Improvements at East St. Headworks planned for early 2011
- Line Replacements ongoing program to be developed
 - Mains
 - Distribution
 - Collection System
- Initiate rehabilitation projects and upgrades to wells 2 and 6

CIRCULATION PROJECTS

Begin circulation projects in the Grant Avenue corridor

- Adopt Complete Streets Plan for Grant Avenue Corridor
- Update Bikeway System Master Plan

INFRASTRUCTURE PROJECTS

- Construct improvements on Grant Avenue corridor including roundabouts at one or more of the following intersections: Walnut Lane, Dutton and Morgan streets.
- Improvements to Grant Avenue and Railroad intersection
- Improvements to south entry to City (adjacent to new vehicle bridge)
- Continue pedestrian improvements including sidewalk construction Citywide
- Continue to extend streets/improve circulation and connectivity as development occurs/funding is available

DOWNTOWN PROJECTS

Continuing to improve and develop the downtown as the “urban core” for the City of Winters will be critical to the overall sustainability of the community as a destination location. Key infrastructure to be addressed and/or upgraded will include:

- Phase II Downtown Streetscape Improvement Project
- Putah Creek Vehicle Bridge Replacement (2012)
- Putah Creek North bank improvements
- Downtown hotel project and Abbey/Main Street alley improvements
- Art Park

PUBLIC FACILITIES

A key priority will be the construction and/or renovation of major facilities for the City of Winters. These will include:

- **Winters City Hall** upgrade/renovation to provide quality working environment and services to the community.
- **Winters Community Center** which will provide a gathering place for community events and organizations.
- **Winters Community Theater** to provide a venue for the Winters Theatre Group and other performances.
- **Teen and/or Senior Center** which will provide a permanent spot for senior citizens to gather for potlucks and the senior lunch program. In addition, provide a permanent location for teen activities such as dances, movie nights, club meetings, and indoor recreation activities.
- **Complete Sports Park** (Phase I)

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

Continue to upgrade/improve the City's infrastructure base to support economic expansion

❖ Environment

The City of Winters is committed to the concept of improving our environment through both sustainable and green practices. Overall, Winters is known for its leadership in such areas as organic and sustainable farming practices, the restoration of Putah Creek, the commitment to the land on which we live, and maintaining a health quality of life.

The City of Winters will pursue the goal of improving and sustaining the environment through the realization of the following goals, objectives and projects:

Priorities:

DEVELOP CLIMATE ACTION PLAN

Establish a comprehensive plan for reducing impacts to the environment by taking the following actions:

- Complete data collection/entry into the Climate Registry system
 - Establish baseline
- Develop the plan
 - Climate Action Plan should be unique to Winters and include information in addition to municipal operations
 - data on where residents work and how far they drive to get to work
 - vehicle trips analysis-by sector: (work, recreation, shop)
 - green jobs analysis---what is green? How do you get green? Incentives?
 - Plan should include realistic actions to be taken in order to achieve California's goals for reducing greenhouse gas emissions
 - Incorporate actions specific to AB 32
 - Incorporate actions specific to SB 375

OTHER APPROVED PLANS/ACTIONS

- Continue to support and promote participation in programs such as PACE (Property Assessed Clean Energy) to enable homeowners to install energy efficient improvements in their homes/properties

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- Reduce GHG emissions
- Reduce vehicle miles traveled

❖ Housing Programs

Implement best practices and standards and procedures to ensure the long-term affordability of rental and for-purchase real property inventory; support the City's goals of creating new affordable housing and conserving existing affordable housing; ensure that real property assets are maintained in a manner benefiting the residents, neighborhood and community.

- **Facilitate as needed reviews of affordable housing practices and procedures by the City Council**
- **Manage existing and future assets to maximize asset value, leveraging the City of Winters' financial contributions with funding from both private and public sector funding sources**
- **Conduct community outreach programs to solicit participation in affordable housing program design to ensure the needs of the targeted income groups are met to the highest degree possible**

Priorities:

Key Program priorities include:

- Homebuyers Assistance Programs.
- Expand Housing Rehabilitation Program for existing homes to include non-senior households, with revisions to grant portion of the program.
- Implementation of the Foreclosure/ Vacant Homes Abatement Program.
- Execute action plan to attain the goals established in the 2008 Housing Element.
- Work with developers to advance market rate housing.
- Develop and implement a home acquisition, rehabilitation, and resale program for "at risk" properties (foreclosures, short sales, bank owned properties, etc.).

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- Increase the availability of quality housing for all income levels.

❖ Police Department

The Winters Police Department is dedicated to protecting the lives and property of our citizens. Our goal is to ensure the safety of every person and to serve the public with professionalism and courtesy. To accomplish this, we are committed to excellence and will not accept anything less. We shall diligently pursue every investigation until every possible lead has been exhausted. We take pride in serving our community and preserving the community's social and moral values. "Protection our duty; Service our goal."

- **Provide adequate staffing levels so there are at least two officers on duty at any given time, seven days a week, 24 hours a day**
- **Develop a recruitment and retention plan to ensure that qualified applicants apply for police officer positions and that the department retains trained and valuable staff**

Priorities:

The Winters Police Department is in need of the improvement in personnel/staffing. The strategy for improving this will include the following:

ESTABLISH A FINANCING PLAN TO ACHIEVE ADEQUATE STAFFING LEVELS

- Restructure of supervisory levels by integrating Corporals into supervisory roles as a temporary solution to vacant sergeant positions.
- Increase patrol staffing levels to a minimum of two officers on duty 24/7 and with adequate supervision when funding permits.

DEVELOP A RECRUITMENT/RETENTION PLAN

- Have a recruitment plan of continuous application and testing for future positions.
- Hire lateral police officers to share training and experience with younger officers.

PUBLIC SAFETY FACILITY

- Preparing for the move into the new facility for police personnel by continuing the purging process of unneeded archives.

HIRING/RETENTION

- Have a recruitment plan of continuous application and testing for future positions.
- Hire lateral police officers to share training and experience with younger officers.
- Have competitive salary and benefit with surrounding law enforcement agencies. Be at least 5% above the second lowest paid law enforcement agency in the County when funding permits. If we don't, we will continue to be plagued with recruitment and retention problems.

TRAINING

- Coordinate with Yolo County Law Enforcement Agencies' Training Managers group to develop localized training programs that are POST Certified and cost effective.
- Send officers to training courses that provide innovative and strategic ways of improving service to the community.
- Review the re-implementation of YONET and School Resource Officer positions.

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- Reduce Criminal activity
- Expand police capability and capacity
- Enhance investigative capabilities

❖ FIRE DEPARTMENT

The Winters Fire Department mission is to provide, within budgetary resource restraints, the highest quality of services to protect life, the environment and property for our community, businesses, customers and partners from fire, medical emergencies and natural disasters through 1) Strategic Planning 2) Cohesive leadership 3) Comprehensive Prevention, Education and Training programs. We will accomplish this with a commitment to quality, dedication and professionalism.

- **Develop Mission, Vision & Core Values for Department**
- **Obtain new multi-tasking fire apparatus with equipment**
- **Development & Implementation of “Sleeper Program with 24/7 staffing:**
 - Minimum Staffing Requirements
 - Policies & Procedures
 - Recruitment & Retention
 - Training & Development
 - Scheduling
 - Labor
 - Compensation
- **City/District merger**
- **Conduct a Needs Assessment for development and Implementation of a Master Plan in the following areas;**
 - Fire Prevention, Pre-Planning & Code Enforcement
 - Training, Future Leadership & Development
 - Key Critical & Historical Infrastructure
 - Staffing & Administration
 - Operations/Service Levels
 - Develop/Revise Equipment Replacement Plan
- **Budgeting Plan & Alternative Funding Sources**
- **Recruitment & Retention**

Priorities:

The Winters Fire Department will begin a process toward the improvement of the overall personnel/staffing of the operations and the transition to a new public safety facility to be shared with the Winters Police Department. Key initiatives will include:

DEVELOP A STAFF RETENTION PLAN

- Increase pay and benefits comparable to Police Department, nearby fire departments
- Provide work schedule based on a “Kelly” shift or similar
- Educational incentives
- Acting pay compensation

- Bilingual compensation

INCREASE STAFFING TO 24/7 SCHEDULE

- Develop funding plan
- Develop existing staff to provide leadership for future department

CAPITAL IMPROVEMENTS: ENGINE, PUBLIC SAFETY FACILITY

- Develop funding plan for new multi-tasking apparatus
- Replace SCBA air bottles by 2013 or replace all SCBA with new up dated units
- Revise/Develop an Equipment Replacement Plan and incorporate a funding plan

CITY/DISTRICT MERGER

- Continue process to merge district staff
- Continue process to merge facility, equipment

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- Fund and activate a sleeper program based on 24-7 coverage of one engine company made up on one paid staff and two volunteers in the 2010-2011 budget
- Fund and acquire one new multi tasking type 1 engine to replace one 1975 type 3 engine and one 1972 type 2 engine by 2013
- Replace 90% of the department structural PPE by 2012
- Continue to encourage and support higher education and training to the officers of the department
- Engage in as many grants as reasonable to help achieve the above noted objectives
- Support the continuing City / District merger process
- Provide the same lever of service to the district as is received within the city based on geographical constraints

❖ Community Services

Community Services and Recreation are a key element of outreach between the City and its residents. An active and healthy community is a vibrant community. Community Services and Recreation provides a variety of recreation, parks and youth programs as well as an after school program and community center.

- **Develop a cooperative relationship between the City and School District**
- **Provide a diversity of financially sustainable recreation and leisure opportunities**
- **Provide and promote well used and relevant recreation facilities and settings**
- **Provide effective management, support and resources**

Priorities:

INTEGRATE MANAGEMENT OF SCHOOL AND PUBLIC FACILITIES

- Investigate/advocate for the use of school facilities by sports clubs
- Facilitate cooperative atmosphere between school district and City staff
 - Provide incentives

FINANCIALLY SUSTAINABLE RECREATION AND LEISURE OPPORTUNITIES

- Continue recreation programs
 - Softball
 - Tennis program, lessons
 - Softball, basketball and soccer program/competition
- Increase volunteerism
- Establish recreation alternatives for elderly
- Update recreation, leisure policies

MAINTAIN, UPDATE FACILITIES

- Improve, maintain existing facilities
- Allocate resources toward annual improvement and upgrade program
- Include safety provisions
- Facilitate increased use of passive recreation spaces (playgrounds, BBQ areas)
- Financially support new Sports Park

PROVIDE EFFECTIVE MANAGEMENT, SUPPORT AND RESOURCES

- Ensure that services provided meet community needs
- Provide affordable recreation programs/alternatives

- Ensure that recreation staff is highly motivated and committed
- Allocate time/resources for staff development

AFTER SCHOOL PROGRAM

“Committed to empowering children through education and beyond”

- Continue to work together to ensure continuity of after school program
- Continue to locate funding sources for possible expansion of program
- Develop guidelines for management, expansion of program

STRATEGIC OBJECTIVES TO BE ACCOMPLISHED

- Community Outreach
- Programs for all ages
- Enhance Quality of Life



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: February 1, 2011
FROM: John W. Donlevy, Jr., City Manager *JWD*
SUBJECT: Economic Development Advisory Committee- Work Program and Appointee List

RECOMMENDATION:

That the City Council:

1. Appoint the members of the Economic Development Advisory Committee (Exhibit A)
2. Approve the Work Program; and
3. Review the Proposed Committee Calendar (to be presented at the meeting).

BACKGROUND:

At the January 16, 2011, the City Council nominated members to serve on the Economic Development Advisory Committee. At the meeting, Staff was directed to bring back the Committee list for formal appointment, the final proposed work program and the proposed calendar for the tasks assigned to the Committee.

DISCUSSION:

The primary tasks of the EDAC will be to focus on the revision of the Design Guidelines for the Grant Avenue Corridor and to work with Staff on the development of Economic Development Strategies for the City as a whole.

The proposed work program presents a balanced agenda to work through a thorough review of both the design and economic development elements. There will be three (3) public workshops and each meeting will allow public input into the process.

The Committee Calendar establishes an aggressive timetable for the completion of tasks. This will be developed on January 31, 2011 and presented to the City Council at the February 1, 2011 meeting.

Staff is requesting review and input from the City Council.

FISCAL IMPACT: None by the recommended actions.

**Economic Development Advisory Committee
Contact Information**

Last Name	First Name	Address	City	State	Zip Code	Phone	Email
Baker	Lisa	508 Dorset Court	Winters	CA	95694	530-669-2219	Lisa.baker508@gmail.com
Biasi	William	400 Edwards Street	Winters	CA	95694	530-795-3612	wvbiasi@ucdavis.edu
Castro	Joseph	104 Third Street	Winters	CA	95694		jgc6@pge.com
Cowan	Wade	106 Third Street	Winters	CA	95694	530-795-9090	wkmkcowan@sbcglobal.net
DeAngelo	Debra	220 White Oak Lane	Winters	CA	95694	530-795-3492	debra@wintersexpress.com
Hailey	Bill	P. O. Box 658	Winters	CA	95694	530-795-2300	shirfra@gmgranch.net
Martinez	Dan	P. O. Box 605	Winters	CA	95694		dan@martinezorchards.com
Vickrey	Sandra	37 Main Street	Winters	CA	95694		svickrey711@yahoo.com

**Economic Development Advisory Committee
Syllabus of Topics
Meeting Schedule**

Meeting #	Date	Economic Development	Planning/Design
1		<ol style="list-style-type: none"> 1. Organization Meeting 2. City of Winters Economic Development Strategy- Information Item 	<ol style="list-style-type: none"> 1. Planning Issues- PC/BP and Zoning 2. Design Guidelines for I505 and Grant Ave. Corridor 3. Complete Streets Corridor Concept
2A		City of Winters Economic Primer	Design Primer- How the design of development and building is accomplished in planning
2B		Facilitated General Community Workshop #1 on Economic Development and Design Concepts	
3		Designing a Sustainable and Innovative Winters Economy- Community Workshop	No planning issues covered
4		Municipal Economic Development Primer- What cities do to attract business and industry. Presentation and discussion with economic development professionals on how others improve their economy.	Section I –Connectivity (Street, Bike and Pedestrian Circulation On-Site/Offsite) <ul style="list-style-type: none"> - Vehicular Circulation/Parking - Passenger Drop-Off Areas - Service/Delivery, Emergency and Utility Access - Bicycle Circulation/Parking - Pedestrian Circulation
5		The Regional Economy- Yolo, Solano and Sacramento. Discussion with representatives of the regional economic development organizations on the main drivers of the area economy.	Section II – Site Planning Guidelines <ul style="list-style-type: none"> - Community Spaces and Special Features - Outdoor Storage and Service Areas - Building Siting and Orientation - Drainage and Water Quality (Low Impact Design) - Compatibility/Coordination with Surrounding Properties

6		Green Economic Development- SARTA and Valley Vision Presentations. What the "green" jobs economy really means and the overall potential for bringing these types of jobs and industries to Winters.	Section III – Architectural Design <ul style="list-style-type: none"> - Form/Scale - Elevations, Entries, and Roof Forms - Materials - Colors - Energy Conservation - Winters Identifiers
7		Collaboration opportunities with UC Davis. What opportunities exist for us and what can we expect to gain from working with the university.	Section IV – Landscape Design <ul style="list-style-type: none"> - Parking Lot Landscape - Building Site Landscape - Fencing and Screen Walls
8		Winters Economic Strategy Recommendations. Development of recommendations on improving the Winters economy.	Section V – Signage
9		Same	Section VI – Lighting <ul style="list-style-type: none"> - Parking Area Lighting - Accent and Security Lighting
<i>Facilitated Workshop #2- Reporting of Drafted Recommendations by EDC</i>			
10		Recommendations Refinement Meeting	
11		Final Recommendations	Design Guidelines Booklet Completed



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: February 1, 2011
THROUGH: John W. Donlevy, Jr., City Manager *[Signature]*
FROM: Nicholas J. Ponticello, City Engineer
SUBJECT: Burger King/Arco Development- Grant Avenue/CR90 Traffic Improvement Cost Allocation Analysis

RECOMMENDATION: That City Council 1) approve a Traffic Engineering Service Work Order (Work Order) with Fehr & Peers Associates, Inc. in the amount of \$6,210 to prepare a traffic improvement cost allocation analysis for improvements in the vicinity of the Grant Avenue/County Road 90 intersection in the City of Winters and 2) authorize the City Manager to execute the Work Order with Fehr & Peers Associates, Inc.

BACKGROUND: The City currently has an On-Call Contract with Fehr & Peers Associates Inc. for maintaining the City's traffic model and preparing traffic/transportation related study services. Fehr & Peers Associates has been performing Traffic Engineering Services for the City for the Burger King/Arco Development.

Fehr & Peers Associates, Inc. has presented the City with a proposal letter dated January 24, 2011, with attached Exhibit A (Scope of Work) and Exhibit B (Study Budget) to perform the traffic engineering services. The proposed Scope of Work includes the development of a preliminary cost opinion for a new traffic signal at the Grant Avenue/County Road 90 intersection and an evaluation of mitigation cost allocations to adjacent properties for the new traffic signal and related improvements at the Grant Avenue/County Road 90 intersection.

City Staff has reviewed the proposed scope of work and budget and recommends that Fehr & Peers Associates, Inc. conduct the work.

FISCAL IMPACT: None from the General Fund. Source of Funds – Road Impact Fee and Developer funded.

ATTACHMENTS: Fehr & Peers scope of services for Traffic Engineering Services
Scope of Services Work Order

**City of Winters
On-Call Traffic Engineering Services**

WORK ORDER

Date: February 1, 2011

Consultant: Fehr & Peers

Work Order No. FP 10-003

Project: Winters Burger King/Arco Development- Winters Grant
Avenue/CR90 Traffic Improvement Cost Allocation Analysis Services

To: Bob Grandy, Fehr & Peers

From: City Manager, City of Winters

You are hereby authorized to proceed with the following work, for the above-listed project, in accordance with the executed On-Call Consultant Services Agreement, dated March 14, 2005, and this Work Order.

Description:

Scope of Services proposal titled "Winters Grant Avenue/CR90 Traffic Improvement Cost Allocation Analysis", which includes Letter Proposal dated January 24, 2011, Scope of Work (Exhibit A) and Study Budget (Exhibit B).

Scope and Cost:

Fehr & Peers shall perform the tasks indicated. The total fee of \$6,210 shall not be exceeded without prior written authorization from the City.

Authorized By:

City of Winters Representative
John W. Donlevy, City Manager

Accepted By: _____
Consultant

Robert Grandy

FEHR & PEERS

January 24, 2011

Mr. Nick Ponticello
City Engineer
City of Winters
318 First Street
Winters, CA 95694

Re: Winters – Grant Avenue/CR 90 Traffic Improvement Cost Allocation Analysis

Dear Nick:

Fehr & Peers appreciates the opportunity to submit this work scope and budget to prepare a traffic improvement cost allocation analysis for improvements in the vicinity of the Grant Avenue/County Road 90 intersection in the City of Winters. Based on our recent discussions, this work effort includes the development of a preliminary cost opinion for a new traffic signal at the Grant Avenue/County Road 90 intersection and an evaluation of mitigation cost allocations to adjacent properties for that new traffic signal and related improvements at the Grant Avenue/County Road 90 intersection.

The tasks that we propose to undertake to complete the above work program are described in Exhibit A. Fehr & Peers will perform Tasks 1-2 in the scope of work (Exhibit A), on a time-and-materials basis, for a maximum fee of \$6,210.

Please call me at (916) 773-1900, ext. 2370 or on my cell at (916) 802-0525 if you have any questions.

Sincerely,

FEHR & PEERS ASSOCIATES, INC.



Bob Grandy, P.E.
Principal

Attachments

Mr. Nick Ponticello
 January 24, 2011
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Exhibit A Draft Scope of Work

The following scope of work is based on an evaluation of a mitigation cost allocation for the following near-term developments.

- Burger King/Arco project and remaining Light Industrial land on the property
- Jordan Property – Parcels 1-3
- Development of Parcels immediately adjacent to Chevron station
- If applicable, a portion of the McClish property

TASK 1 COST ESTIMATE FOR TRAFFIC SIGNAL

Fehr & Peers will work with the City Engineer to identify the ultimate geometry for the Grant Avenue/County Road 90 intersection. We will prepare a conceptual plan for the ultimate intersection layout that incorporates an eventual widening of Grant Avenue to four lanes. We will submit the intersection concept plan to City staff for review and approval. Based on the approved intersection geometry, we will develop a preliminary cost opinion for a traffic signal.

TASK 2 TRAFFIC IMPROVEMENT COST ALLOCATION ANALYSIS

Prior to initiating any work for Task 2, we will meet with City staff to identify anticipated development for the following properties, and any other adjacent parcels whose planned development would benefit from a traffic signal at the Grant Avenue/County Road 90 intersection. Fehr & Peers will determine the cost allocation for the traffic signal and related traffic improvements for adjacent property owners based on a "per pm peak hour trip" methodology.

- Burger King/Arco project and remaining Light Industrial land on the property
- Jordan Property – Parcels 1-3
- Development of Parcels immediately adjacent to Chevron station
- If applicable, a portion of the McClish property

We will identify the total pm peak hour trip generation of planned development on each of the above parcels. For the Burger King/Arco and Jordan Property (parcels 1-3), we will use the trip generation from the previously prepared traffic studies. For the remaining light industrial land on the Burger King/Arco property and any relevant portions of the McClish property, we will determine the pm peak hour trip generation based on development levels identified by City staff. For the parcel(s) adjacent to the Chevron station, we will determine the pm peak hour trip generation for two different land use options.

- Development levels per General Plan zoning (as defined by City staff)
- Alternate Development level – assuming 1 fast food restaurant and a 50 unit hotel

We will work with the City Engineer to identify a list of related traffic improvements and identify whether they are the responsibility of a single parcel or some combination of parcels. Based on that information, we will prepare a matrix that shows the percentage allocation – for the relevant development parcels – for each planned near-term traffic improvement.

Mr. Nick Ponticello
January 24, 2011
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We will prepare a technical memorandum summarizing the approach and the resulting cost allocation. We will attend one meeting with City staff to discuss the memo and submit a revised final memo based on comments received.

Mr. Nick Ponticello
 January 24, 2011
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**Exhibit B
 STUDY BUDGET**

Task	Staff & Billing Rates				Total Hours	Total Cost
	Principal	Senior Engineer	Engineer	Support		
	\$225	\$155	\$110	\$100		
<i>Winters Cost Allocation Evaluation</i>						
Task 1: Traffic Signal Cost Estimate	4	16	0	2	22	\$3,580
Task 2: Cost Allocation Evaluation	4	0	8	2	14	\$1,980
<i>Total Labor Cost</i>						\$5,560
<i>Direct Costs (traffic counts, travel, phone, copies, etc.)</i>						\$650
<i>Traffic Access Study Total Cost</i>						\$6,210