



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, July 5, 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*

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

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

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

### CONSENT CALENDAR

All matters listed under the consent calendar are considered routine and non-controversial, require no discussion and are expected to have unanimous Council support and may be enacted by the City Council in one motion in the form listed below. There will be no separate discussion of these items. However, before the City Council votes on the motion to adopt, members of the City Council, staff, or the public may request that specific items be removed from the Consent Calendar for separate discussion and action. Items(s) removed will be discussed later in the meeting as time permits.

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, June 21, 2011 (pp 1-5)
- B. Resolution 2011-36, A Resolution of the City Council of the City of Winters Approving Funding Sources for the Public Safety Facility (pp 6-8)
- C. Purchase and Sale Agreement Between the City of Winters and Central Valley Coalition for Affordable Housing (CVCAH) for 3.12 Acres of Land APN # 003 360 025, for the Development of the Orchard Village Park; Dedication of 1.60 Acres of Land by CVCAH to the City of Winters to Fulfill Quimby Act Requirement is Included in the Agreement (pp 9-33)

### PRESENTATIONS

25-Year Service Awards to Nanci G. Mills and Terry A. Vender

### DISCUSSION ITEMS

- 1. Appointment of Planning Commission Members (3) (pp 34)
- 2. Redistricting Update and Proposed Resolution (pp 35-37)
- 3. Beekeeping in the City (No Backup)
- 4. Resolution 2011-35 A Resolution of the City Council of the City of Winters Authorizing the Application for Housing-Related Parks Grant (38-39)
- 5. 2011-2012 Budget Update (pp 40)
- 6. 318 Railroad Avenue (APN # 003 204 005) Update on Responses to Invitation to Submit a Lease Proposal (pp 41-49)

COMMUNITY DEVELOPMENT AGENCY

1.

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CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the July 5, 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 June 29, 2011, and made available to the public during normal business hours.

  
Nanci G. Mills, City Clerk

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

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

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Winters Library – 708 Railroad Avenue

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

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

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Wednesday at 10:00 a.m.

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



Minutes of the Regular Meeting of the  
Winters City Council Held on June 21, 2011

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

Present: Council Members Cecilia Aguiar-Curry, Harold Anderson, Tom Stone and Mayor Fridae  
Absent: Council Member Michael Martin  
Staff: City Manager John Donlevy, City Clerk Nanci Mills, Director of Financial Management Shelly Gunby, Assistant City Attorney Kara Ueda, Environmental Services Manager Carol Scianna, and Administrative Assistant Tracy Jensen.

Jaime Garcia led the Pledge of Allegiance.

Approval of Agenda: Motion by Council Member Aguiar-Curry, second by Council Member Stone to approve the agenda. Motion carried unanimously, with one absent.

COUNCIL/STAFF COMMENTS: Council Member Stone said Yolo County Supervisor Don Saylor will be having a re-districting forum in Davis tomorrow night at 6:30 p.m., not of the Supervisor's district, but how it will affect Yolo County and where Yolo County will be placed statewide. At this point, Yolo County could possibly be split into three districts. Last night there was a Joint Powers meeting regarding habitat conservation and preservation, where they are coming together and should have something done with fish and wildlife. The JPA will be meeting with the City Attorney and should be able to come together by the end of the year.

Council Member Anderson attended a Playground Committee meeting on 6/8 along with Council Member Aguiar-Curry; attended a Yolo County Transportation District meeting in Woodland on 6/13; attended a SACOG Board meeting and EDAC meeting hosted by Terry Bottomley at the Community Center on 6/16; and attended a League of California Cities Transportation Policy meeting on 6/17.

Council Member Aguiar-Curry chaired an environmental quality policy committee meeting in Sacramento on 6/17, and among the issues coming up include electric plug-in automobiles and how cities are planning for their use, and sea level rise, adding if anyone had any issues, they are to be kept local; attended the Water Resources Agency (WRA) Board of Directors meeting and directed everyone to their website to view their achievements. The WRA has not raised their membership rates since 2008, and the last increase was only 1%. Ms. Aguiar-Curry attended the Winters Chamber of Commerce meeting and wanted to give kudos to the Chamber for their hard work and fabulous things they're doing for the community. The Chamber is trying to put together an Ag Tourism Tour, which has been tentatively scheduled for 7/23 @ Four Winds. They are also holding informative meetings for local businesses. The Quilt Festival held on 6/11 was fantastic and thanks to all those who helped with the event. The Yolo Leaders meeting will be held in Esparto on 6/29 from 4-6:30pm, where the agenda will include school district and school transportation issues and all of the Yolo County Supervisors are committed to attend. Also on 6/29 is another redistricting meeting scheduled in Woodland at 7pm. Our community has put together three maps in order to save the ag land and those maps will be presented at this meeting. The League of California Cities (LCC) Sacramento Valley Division will be taking a "secret" tour of the State Capitol at 10am on 6/24, followed by a meeting in Rancho Cordova at 3pm and dinner at 5pm. Chris Mackenzie from LCC, along with 2-3 assembly members, will be attending. Thank you to City Manager Donlevy for all his hard work with redevelopment, and with the veto of the budget, we don't know where we stand. Thanks to all who made phone calls to Senator Wolk and Assembly Member Yamada to try to save redevelopment. Ms. Aguiar-Curry also attended the Grant Avenue Corridor (EDAC) meeting last week.

Mayor Fridae congratulated the swim staff for doing such a great job, as it was reported that there were 135 recreations swimmers today.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, May 17, 2011
- B. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, June 7, 2011
- C. Approval of Warrior Pride Fun Run Request for Street Closure
- D. Resolution 2011-34, A Resolution of the City Council of the City of Winters Classifying the Various Components of Fund Balance as Defined in Governmental Accounting Standards Board Statement No. 54

- E. Street Closure Request – Winters District Chamber of Commerce is Requesting Approval of a Temporary Street Closure on August 26<sup>th</sup> for the Earthquake Street Festival. Closures would be Main Street from Railroad Avenue to First Street and East Main Street from Railroad Avenue to Elliot Street
- F. Approval of Annual Rate Increase in Accordance with the City's Refuse Franchise Agreement with USA Waste of California, Inc. dba Waste Management of Winters

City Manager Donlevy gave an overview and requested a correction to the minutes of the May 17<sup>th</sup> meeting, where the Mayor's Cup was defended at Rolling Hills Golf Club. Council Member Anderson requested a correction to the minutes of the June 7<sup>th</sup> meeting, where he had excused himself from the Executive Session due to a potential conflict. Motion by Council Member Stone, second by Council Member Aguiar-Curry to approve the Consent Calendar with said changes. Motion carried unanimously, with one absent.

#### DISCUSSION ITEMS

- 1. Public Hearing and Adoption of Resolution 2011-31, a Resolution of the City Council of the City of Winters Amending and/or Approving the Annual Levy Report, and Ordering the Levy and Collection of Assessments within the City of Winters City-Wide Maintenance Assessment District, Fiscal Year 2011/2012

City Manager Donlevy gave an overview. Council Member Aguiar-Curry asked if the City was covering the costs. City Manager Donlevy said this will come back to the Council later this year to discuss possible changes.

Mayor Fridae opened the public hearing at 6:46 p.m. and closed the public hearing at 6:46 p.m. with no public comment.

Motion by Council Member Aguiar-Curry, second by Council Member Stone to approve Resolution 2011-31, amending and/or approving the Annual Levy Report, and ordering the levy and collection of assessments within the City of Winters City-Wide Maintenance Assessment District, Fiscal Year 2011/2012. Motion carried with the following vote:

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

2. Amendment to Reciprocal Parking Easement Agreement for Parking Lot at Railroad Avenue and Main Street (Northeast Corner), Winters

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

City Manager Donlevy gave an overview. This is the first amendment of the agreement originally entered into with the Main Street Partners in October, 2007, which will encroach into the easement for decking for Main Street Village. The Main Street Partners include John and Elizabeth Siracusa, Paul and Jeanette Fair, and John and Melanie Pickerel. The expansion of the deck to the west of Ficelle will include 400 square feet and will affect three parking spaces. Three parties will be affected by this encroachment: the City, the Main Street Partners and John Pickerel. The City has received concurrence from all parties involved and has also approved the parking plan near the expansion area, which will include twenty-four additional parking spaces. A trash enclosure is also being planned, as well as the expansion of Rosie's garden. City Manager Donlevy said the deck expansion is greatly anticipated.

Council Member Aguiar-Curry said there is a thoroughfare that is not clearly identified and is often blocked by parked cars. City Manager Donlevy said the City will be applying striping throughout the parking lot area.

Motion by Council Member Aguiar-Curry, second by Council Member Stone to approve the amendment to the Reciprocal Parking Easement Agreement. Motion carried unanimously, with two absent.

Council Member Anderson returned to the dais.

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### COMMUNITY DEVELOPMENT AGENCY

- 1.

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CITY MANAGER REPORT: Last week, the Assembly, as part of the budget package, included two trailer bills: 1) kill redevelopment in California, and 2) establishes extortion payments to the State from redevelopment agencies who want to continue. This \$2.8 billion dollar extortion scheme includes \$400 million dollars a year statewide. The City of Winters would have to pay \$524,000 this year and \$124,000 for each year thereafter. This annual amount could possibly be increased. The problem is the State has already taken our money; \$960,000 has already been paid to the State. We don't have the money to pay it. The City of Winters would have to end our Redevelopment Agency to avoid higher annual payments and create an option for a successor agency. Unfortunately, Assembly

Member Yamada and Senator Wolk have not been supportive to cities' redevelopment agencies, which is disappointing. So much activity in Winters is due to Redevelopment and if stopped, it will have a tremendous impact. City Manager Donlevy, who sits on the Executive Board of State City Managers, attended the League of California Cities Revenue and Taxation Committee meeting, where they discussed pension reform and voted no on the package, which resulted in a 17 to 14 vote. The package will now go to the League of California Cities Executive Board on 7/15, where meaningful pension reform is expected to come down.

The Bobbie Greenwood Community Swim Center is having its most successful year in the pool in a long time. The pool is averaging over 100 kids every day, and the count today was 135 for recreation swim. City Manager Donlevy praised the City's outstanding lifeguard staff.

City Manager Donlevy said the demo is under way on Phase 2 of the Downtown Streetscape project.

Mayor Fridae pointed out the flyer from Solano Community College for a CIS 50 Microcomputer Applications class to be held at Winters High School on Wednesday's from 6:00 p.m. to 9:50 p.m. from August 17<sup>th</sup> to December 20<sup>th</sup>, 2011, where one can learn entry-level computer skills. For information, please call 707-864-7872.

INFORMATION ONLY: None

EXECUTIVE SESSION: None

ADJOURNMENT: Mayor Fridae adjourned the meeting of the Winters City Council at 7:05 p.m.

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Woody Fridae, MAYOR

ATTEST:

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Nanci G. Mills, City Clerk



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: July 5, 2011  
THROUGH: John W. Donlevy, Jr., City Manager *JWD*  
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*  
SUBJECT: Funding Sources for the Public Safety Facility.

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**RECOMMENDATION:**

Staff recommends the City Council adopt Resolution 2011-36, A Resolution of the City Council of the City of Winters Approving Funding Sources for the Public Safety Facility.

**BACKGROUND:**

The Public Safety Facility funding was originally from four (4) sources:

- Police Impact Fees
- Fire Impact Fees
- General Facility Impact Fees
- 2007 Bond Project Fund

With the advent of the State of California's efforts to eliminate redevelopment agencies and their intent to confiscate all the assets of the Redevelopment Agency, it seems prudent at this time to fund the Public Safety Facility from one source, the 2007 Bond Project Fund. By funding the facility from the 2007 Bond Project Fund, it would leave Impact Fee Funds available for the purchase of major equipment items for both the Police and Fire Departments (such as Fire Trucks and Police Cars as the departments expand, for example), and provide funding for the renovation of the soon to be former Police Department area into additional office space for City Hall personnel (from the General Facility Impact Fees). Additionally, by expending as much of the 2007 Bond Project Fund on the Police/Fire Facility, the City of Winters would see the benefit of those funds put to work in our community instead of funding State programs.

**FISCAL IMPACT:**

Retention of Police Impact Fees, Fire Impact Fees and General Facility Impact Fees for future

projects while ensuring that the 2007 Bond Project Fund is spent locally instead of being transferred to the State of California to fund their projects.

**RESOLUTION 2011-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS  
APPROVING FUNDING SOURCE FOR THE PUBLIC SAFETY FACILITY**

**WHEREAS**, on May 6, 2008 a Public Hearing was held regarding payment by the Winters Community Development Agency for all or a portion of the cost of the construction and installation of a Public Safety Facility of benefit to the City of Winters Community Development Agency; and

**WHEREAS**, the funding sources for the Public Safety Facility have suffered due to the recession, and;

**WHEREAS**, the 2007 Tax Allocation Bonds provided \$8,848,404.93 for non-housing activities, and;

**WHEREAS**, the total cost of the Public Safety Facility is budgeted to be \$8,400,000.00,

**NOW, THEREFORE BE IT RESOLVED** that the Winters Community Development Agency will pay for the entire cost of the Public Safety Facility from the 2007 Tax Allocation Bonds.

**PASSED AND ADOPTED** by the City Council, City of Winters, the 5th day of July, 2011.

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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Woody Fridae, Mayor

**ATTEST:**

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Nanci G. Mills, CITY CLERK



CITY COUNCIL  
STAFF REPORT

**TO:** Honorable Mayor and Council Members

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

**DATE:** July 5, 2011

**FROM:** Daniel Maguire, Housing Programs Manager *DM*  
Dawn Van Dyke, Management Analyst *DVD*

**SUBJECT:** Purchase & Sale Agreement between the City of Winters and Central Valley Coalition for Affordable Housing (CVCAH) for 3.12 acres of land, APN # 003-360-025, for the development of the Orchard Village Park. Dedication of 1.6 acres of land by CVCAH to the City of Winters to fulfill Quimby Act requirement is included in the agreement.

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**RECOMMENDATION:** That the City Council approve the Purchase & Sale Agreement between the City of Winters and Central Valley Coalition for Affordable Housing (CCVAH) for 3.12 acres of land, APN # 003-360-025, for the development of the Orchard Village Park. Dedication of 1.6 acres of land by CVCAH to the City of Winters to fulfill Quimby Act requirement is included in the agreement.

**BACKGROUND:** On Jan. 5, 2010, the City Council approved Resolution 2010-01 approving the application for Proposition 84 park grant funds. In the fall of 2010, the City of Winters received a grant award of \$865,191 from the State Parks Department Office of Grants and Loans (OGALS) through the Proposition 84 program. The grant funds were awarded for the development of a park to be located on the east side of Dutton Street, directly east of the Orchard Village Affordable Housing project. The Proposition 84 funds will be used to develop 3.12 acres of the site. Because the grant was approved as an acquisition and development project, grant funds may be used to purchase the property from CVCAH. The remaining 1.6 acre site will be developed concurrently, utilizing CDBG funds, and will be dedicated to the City of Winters to fulfill CVCAH's Quimby Act requirements for parkland. The result will be a 4.72 acre park project, including pedestrian pathways, open field space, playground equipment, picnic benches and other amenities.

In the Proposition 84 grant, \$255,000 is budgeted for purchase of the 3.12 acre site from the property owner. The City is required to provide proof that an escrow account has been opened before the final contract can be executed. Upon approval and completion of the Purchase & Sale Agreement, an escrow account will be opened and the City will receive its contract from OGALS; at that point, development and construction of the park may commence.

**FISCAL IMPACT:** \$255,000 in grant funds will be used for the purchase of the property.

**ATTACHMENT:** Purchase & Sale Agreement, including Exhibits A & B.

**PURCHASE AND SALE AGREEMENT (LAND PURCHASE)**

by and between

**CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING (CVCAH),**  
as Seller

and

**THE CITY OF WINTERS (CITY), A MUNICIPAL CORPORATION AND GENERAL  
LAW CITY,**  
as Buyer

Dated

July 5, 2011  
(For Reference Purposes Only)

# PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is dated, for reference purposes only, as of July 5, 2011, and is entered into by and between **THE CITY OF WINTERS (CITY), A MUNICIPAL CORPORATION AND GENERAL LAW CITY (“Buyer”)** and the **CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING (CVCAH) (“Seller”)** for the purchase and sale of certain unimproved real property located in the City of Winters (“**City**”) and hereafter defined as the “**Property**.” Buyer and Seller may be referred to herein as the “**Parties**” or either of them may be referred to as a “**Party**.”

## ARTICLE 1 DEFINITIONS

When used in this Agreement, the following capitalized terms shall have the meanings set forth below:

1.1 Approval Notice. “**Approval Notice**” means the notice which is described and defined in Section 5.2.2(c).

1.2 Closing and Closing Date. “**Closing**” means the consummation of the purchase and sale contemplated by this Agreement, the close of escrow and the delivery of possession of the Property to Buyer. “**Closing Date**” means the date stated in Section 8.1 for Closing.

1.3 Effective Date. “**Effective Date**” means the latest date set forth below the signatures of the Seller and Buyer on the signature page of this Agreement.

1.4 Environmental Laws. “**Environmental Laws**” shall have the meaning set forth in Section 6.1.7.

1.5 Escrow and Escrow Holder. “**Escrow**” means the escrow established to complete the transaction contemplated by this Agreement as set forth in Section 4.1. “**Escrow Holder**” means Placer Title Company, 134 C Street, Davis, CA 95616; Attention: Lisa Brigg.

1.6 Hazardous Substance. “**Hazardous Substance**” shall have the meaning set forth in Section 6.1.7.

1.7 Property. “**Property**” means the that a 3.12 acre portion of that certain parcel of land commonly known as APN No. 003-360-025 located west of Walnut Lane and east of the extension of Dutton Street, City of Winters, County of Yolo, State of California, more particularly described on **Exhibit A**, attached to this Agreement; together with all rights, privileges and easements appurtenant thereto. **CVCAH** as a condition of approval of its project has already agreed to dedicate 1.6 acres of park land to **CITY**. That dedication is described in **Exhibit B**, attached hereto. This purchase is in addition to that Quimby Act dedication.

1.8 Purchase Price. “**Purchase Price**” means the price to be paid for the Property as set forth in Section 2.1.

1.9 Review Period. “**Review Period**” means a period of thirty (30) days following the Effective Date.

1.10 Title Policy. “**Title Policy**” means an American Land Title Association owner’s policy of title insurance (Form 1992) (or such other policy issued by or through Escrow Holder providing substantially similar coverage or as is required by Buyer in its discretion, together with such endorsements as are required by Buyer) providing coverage in the amount of the Purchase Price.

1.11 Title Report. “**Title Report**” means a standard CLTA preliminary title report with respect to the Property, dated no earlier than the Effective Date, delivered from Escrow Holder as set forth in Section 5.2.1(a).

## **ARTICLE 2 PURCHASE AND SALE**

2.1 Purchase and Sale. Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on all of the terms, covenants and conditions set forth in this Agreement.

## **ARTICLE 3 PURCHASE PRICE**

3.1 Purchase Price. The Purchase Price for the Property is the sum of TWO HUNDRED AND FIFTY-FIVE THOUSAND DOLLARS (\$255,000) payable in cash or by wire transfer of immediately available funds on or before the calendar day prior to the Closing Date.

## **ARTICLE 4 ESCROW**

4.1 Opening of Escrow. Within five (5) calendar days after the Effective Date of this Agreement, Buyer and Seller shall deposit an executed copy of this Agreement with Escrow Holder in order to open an escrow (“**Escrow**”) to complete the transaction contemplated by this Agreement.

4.2 Escrow Instructions. This Agreement constitutes joint escrow instructions to Escrow Holder, instructing it to consummate the purchase and sale of the Property by Buyer and Seller pursuant to the terms and conditions contained in this Agreement. Buyer and Seller shall execute such additional escrow instructions as may be reasonably requested by Escrow Holder, but in the event of any inconsistency between the terms of such escrow instructions and the terms of this Agreement, the terms of this Agreement shall prevail.

4.3 Close of Escrow. The consummation of the purchase and sale contemplated by this Agreement, the close of escrow, the recording of the Deed, defined below, transferring title to the Property from Seller to Buyer and the delivery of possession of the Property to Buyer (the

“Closing”) shall occur on the dates set forth in Section 8.1 (the “Closing Date”) subject to the satisfaction or waiver of all conditions precedent to the Closing, as set forth in this Agreement.

## ARTICLE 5 CONDITIONS PRECEDENT

5.1 General Provisions. If all the conditions precedent set forth in this Article 5 have not been satisfied or waived within the times provided below, then the Party for whose benefit the unsatisfied condition exists may unilaterally cancel this Agreement and the Escrow at any time thereafter, prior to such satisfaction or waiver, by written notice to Escrow Holder and the other Party. If the Party for whose benefit the unsatisfied condition exists cancels this Agreement and the Escrow as provided above, the Escrow Holder shall return to each Party all funds and other items, if any, deposited by that Party in the Escrow.

5.2 Buyer’s Conditions Precedent to Closing. Buyer’s obligation to proceed with the purchase of the Property and perform in accordance with the terms of this Agreement is subject to the following conditions precedent, which are for Buyer’s benefit only.

5.2.1 Condition of Title. Buyer shall review and approve the condition of title of the Property, in accordance with the following provisions.

(a) Title Review. Within ten (10) calendar days after the Effective Date, Seller shall cause Escrow Holder to furnish to Buyer a current standard CLTA preliminary title report describing the title to the Property (“**Title Report**”), together with copies of all documents evidencing the items listed as exceptions to title in the Title Report.

(b) ALTA Supplement. Within ten (10) days after the Effective Date, Buyer may cause, but is not required to cause, a survey to be performed of the Property and separately cause the Escrow Holder to deliver to Buyer a supplement to the Title Report setting forth those items which a survey and inspection would reveal and which would be listed as exceptions in an ALTA policy of title insurance covering the Property (“**ALTA Supplement**”). The items listed as exceptions to title in the Title Report and listed by Escrow Holder as items which would be listed as exceptions in an ALTA policy of title insurance are hereinafter collectively referred to as “Exceptions.”

(c) Approval Notice. Buyer shall have the Review Period within which to give written notice to Seller and Escrow Holder of Buyer’s approval or disapproval of any of the Exceptions, any aspect of a survey of the Property, or any other matter affecting title to the Property. Buyer’s failure to give written approval of any of the Exceptions within the Review Period shall be deemed disapproval of the Title Report and the ALTA Supplement.

(d) Opportunity to Cure. If Buyer notifies Seller of its disapproval of any Exception, Seller shall have the right, but not the obligation, within seven (7) calendar days after receiving written notice of Buyer’s disapproval, to remove any disapproved Exception or to commit in writing to remove such Exception at or before the Closing in a manner reasonably acceptable to Buyer. Seller’s failure to remove such Exception after committing to do so shall be a default hereunder. If Seller cannot or does not elect in writing to remove any of the disapproved Exceptions

within the applicable period, Buyer shall have seven (7) calendar days after the expiration of Seller's period to remove such Exception to give the Seller written notice that Buyer elects to proceed with the purchase of the Property subject to the disapproved Exception. If Buyer does not give such notice within that seven (7) calendar day period or if Buyer is deemed to have disapproved the Title Report or ALTA Supplement, this Agreement shall be deemed terminated, and neither Party shall have any further obligation to the other hereunder except as provided in Sections 7.1 and 11.3.

5.2.2 Buyer's Inspection. Buyer shall have investigated and approved of the Property, in accordance with the following provisions:

(a) Review Period. Buyer shall have the Review Period to conduct, at Buyer's expense, an investigation and review of the Property, including, but not limited to, such tests or investigations which Buyer believes necessary to determine the condition of the Property (including soils and groundwater), title, zoning, land use, environmental matters affecting the Property, and any other matters related to the Property.

(b) Access to Information. Within five (5) calendar days after the Effective Date, Seller shall deliver to Buyer accurate and complete copies, or originals, of those documents described below which are in the possession or control of Seller: all environmental reports, soils reports, or other information regarding the environmental condition of the Property (including soils and groundwater), and any and all other contracts or documents of significance to the Property that may continue after Closing.

(c) Approval Notice. At any time on or before the expiration of the Review Period, Buyer may, in the exercise of Buyer's sole discretion, notify Seller and Escrow Holder in writing of its approval of its investigation and review of the Property conducted pursuant to this Section ("**Approval Notice**"). Buyer's failure to give such Approval Notice shall be deemed disapproval of the Property. Both parties acknowledge that the source of CITY funding for this purchase is a Park Grant, and the loss of funding from that Grant, at any time before the Closing Date, shall excuse the Buyer from performance.

5.2.3 Title Policy. On or before the Closing Date, the Escrow Holder shall, upon payment of Escrow Holder's regularly scheduled premium, have agreed to issue an ALTA Owner's Title Insurance Policy ("**Title Policy**") for the Property upon the Closing, in the amount of the Purchase Price showing title to the Property vested of record in the name of Buyer in fee simple subject only to those Exceptions not disapproved by Buyer pursuant to Section 5.2.1, any changes to the condition of title that Buyer has approved or created, and the standard printed exceptions of the Title Policy, which Title Policy shall be in form and substance, and shall contain such endorsements, as are reasonably required by Buyer.

5.2.4 Seller's Representations. All representations and warranties of Seller contained in this Agreement shall be true and accurate in all material respects as of the Closing, and Seller shall have fulfilled all of its other obligations under this Agreement.

5.2.5 Seller's Obligations. On or before the Closing Date, Seller shall have performed every covenant to be performed by Seller pursuant to this Agreement including, but not

limited to, the execution, as appropriate, and delivery at the Closing to Buyer of each item and document required to be delivered pursuant to this Agreement.

5.2.6 Deemed Disapproval/Opportunity to Cure. If Buyer fails to give written approval of any item requiring Buyer's approval under Sections 5.2.2 within five (5) calendar days after the approval period has expired, Buyer shall be deemed to have disapproved such item(s) and this Agreement shall be deemed terminated and neither Party shall have any further obligation to the other hereunder except as provided in Sections 7.1 and 11.3. If Buyer notifies Seller of its disapproval of any condition set forth in Sections 5.2.2, Seller shall have the right, but not the obligation, within five (5) calendar days after receiving written notice of Buyer's disapproval, to agree to satisfy Buyer's objection at or before the Closing in a manner reasonably acceptable to Buyer. Seller's failure to satisfy such objection after committing to do so shall be a default hereunder. If Seller cannot or does not agree in writing to satisfy Buyer's objection within the applicable period, Buyer shall have five (5) calendar days after the expiration of Seller's period to satisfy Buyer's objection to give the Seller written notice that Buyer elects to proceed with the purchase of the Property subject to the disapproved condition. If Buyer does not give such notice within that five (5) calendar day period or if Buyer is deemed to have disapproved any matter, this Agreement shall be deemed terminated and neither Party shall have any further obligation to the other hereunder.

5.3 Seller's Conditions Precedent to Closing. Seller's obligation to convey the Property to Buyer and perform in accordance with the terms of this Agreement is subject to the following conditions precedent, which are for Seller's benefit only.

5.3.1 Buyer's Representations. All representations and warranties of Buyer contained in this Agreement shall be true and accurate in all material respects as of the Closing.

5.3.2 Buyer's Obligations. On or before the Closing Date, Buyer shall have performed every covenant to be performed by Buyer pursuant to this Agreement including, but not limited to, the execution, as appropriate, and delivery at the Closing to Seller of each item and document required to be delivered pursuant to this Agreement.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

6.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that the statements set forth in this section (i) are true and correct as of the date of this Agreement, (ii) shall be true and correct at the Closing, and (iii) shall survive the Closing.

6.1.1 Capacity. Seller has the capacity and full power and has obtained all required authorizations to enter into and carry out this Agreement and the transactions contemplated hereby.

6.1.2 Authorization; Due Execution. The execution, delivery and performance of this Agreement by Seller has been fully authorized by all requisite action on the part of Seller. Except as otherwise expressly set forth elsewhere in this Agreement, no other authorizations or approvals, whether of any person, entity or governmental body of any kind whatsoever, including

any environmental assessments, are or will be necessary in order for Seller to enter into and perform its obligations under this Agreement. This Agreement, when executed and delivered by Seller, shall have been duly and properly executed by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms. All documents executed by Seller which are delivered to Buyer at or prior to the time of Closing will be, at the time of Closing, duly authorized, executed and delivered by Seller and, at the time of Closing, will be the legal, valid and binding obligation of Seller, enforceable in accordance with their terms.

6.1.3 No Default. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will constitute (i) a default or an event which with notice or the passage of time or both would constitute a default under, or violation or breach of, any instrument or agreement to which Seller is a party or by which Seller or the Property, may be bound, or (ii) an event which would permit any party to any agreement or instrument affecting the Property or affecting Seller's ability to perform its obligations hereunder to terminate it.

6.1.4 Title. To the best of Seller's actual knowledge, no person or entity has any right, title or interest in or to the Property or any portion thereof other than as set forth in the Title Report or the ALTA Supplement.

6.1.5 Governmental Compliance. To the best of Seller's knowledge, Seller is in compliance with all zoning laws, building codes, environmental laws and any other laws, ordinances, rules, requirements, resolutions, policy statements and regulations of any governmental authority having jurisdiction over the Property ("Governmental Regulations") except where Seller's failure to comply will not have a material adverse effect on Buyer, the Property, or Buyer's intended use thereof following the Closing, and where Seller has notified Buyer of such failure.

6.1.6 Environmental Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of Hazardous Substances has come to be located on or beneath the real property to provide written notice of the same to the buyer of real property. Seller agrees to make all necessary disclosures required by law.

6.1.7 Hazardous Substances. To the best of Seller's actual knowledge, no Hazardous Substance has been released on or beneath the Property in violation of any applicable Environmental Laws. Further, Seller does not know of the use by any present or prior owner or occupant of the Property or surrounding real property for the dumping, discharge or disposal of Hazardous Substance thereon. The term "**Hazardous Substance**" as used in this Agreement includes, without limitation, those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCA § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCA §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCA §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCA §§ 2601 et seq.]; the Hazardous Substance Transportation Act (HMTA) [49 USCA §§ 1801 et seq.] or under any other Environmental Law. The term "**Environmental Laws**" as used in this Agreement means all federal, state, local, or municipal laws, rules, orders,

regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Property, as now in effect.

6.1.6 Non-Foreign Certification. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulation promulgated thereunder, and Seller is a resident taxpayer in the State of California for purposes of Revenue and Taxation Code Section 18662.

6.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that the statements set forth in this section (i) are true and correct as of the date of this Agreement, (ii) shall be true and correct at the Closing, and (iii) shall survive the Closing.

6.2.1 Capacity. Buyer has obtained all required authorizations and has the capacity and full power to enter into and carry out this Agreement and the transactions contemplated hereby.

6.2.2 Authorization; Due Execution. The execution, delivery and performance of this Agreement by Buyer has been fully authorized by all requisite action on the part of Buyer. Except as otherwise expressly set forth elsewhere in this Agreement, no other or further authorizations or approvals, whether of any person, entity or governmental body of any kind whatsoever are or will be necessary in order for Buyer to enter into and perform its obligations under this Agreement. This Agreement, when executed and delivered by Buyer, shall have been duly and properly executed by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms. All documents executed by Buyer which are delivered to Seller at or prior to the time of Closing will be, at the time of Closing, duly authorized, executed and delivered by Buyer and, at the time of Closing, will be the legal, valid and binding obligation of Buyer, enforceable in accordance with their terms.

6.2.3 No Default. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will constitute (i) a default or an event which with notice or the passage of time or both would constitute a default under, or violation or breach of, any instrument or agreement to which Buyer is a party or by which Buyer may be bound, or (ii) an event which would permit any party to any agreement or instrument affecting Buyer's ability to perform its obligations hereunder to terminate it.

6.2.4 Buyer's Reliance. Buyer has not received or relied on any representation or warranty from Seller (or anyone acting or claiming to act on Seller's behalf) other than as expressly provided in this Agreement. Buyer acknowledges that, except for the express representations and warranties of Seller contained in this Agreement, Buyer is relying solely on Buyer's own independent investigation of the Property in determining whether to proceed with the purchase. Buyer agrees that Seller shall not incur any cost or liability with respect to the content or accuracy of any report, opinion, or conclusion of any third party (including, but not limited to, consultants and engineers) who has examined the Property, whether retained by Seller or not.

6.3 Brokerage Commission. Seller and Buyer each warrant to the other Party that, no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and the warranting Party with respect to the other Party or the Property. Seller and Buyer shall indemnify, defend and hold the other Party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder other than as provided above in connection with the Property and this Agreement resulting from the indemnifying Party's actions.

6.4 Property Sold AS-IS. Except as otherwise expressly provided in this Agreement, Buyer is acquiring the Property "AS IS," with all faults, without any covenant, representation or warranty of any kind or nature whatsoever, express or implied, and Buyer is relying solely on Buyer's own independent investigation of the Property in determining whether to proceed with the purchase.

## ARTICLE 7 PRE-CLOSING COVENANTS

7.1 Entry. As of the Effective Date, and until the Closing or earlier termination of this Agreement, Buyer, Buyer's agents and employees shall have the right to enter onto the Property for purposes of inspection and conducting soils, engineering and such other tests as Buyer may reasonably deem necessary or appropriate. Buyer shall indemnify, defend and hold Seller harmless from any cost, claim, lien, liability, damage, or expense arising from such entry by Buyer, Buyer's agents and employees or from the performance of any such inspection of the Property by Buyer, Buyer's agents and employees. If the transaction contemplated by this Agreement does not close for any reason, Buyer shall immediately after termination of this Agreement, at Buyer's sole cost, restore to the condition it was in as of the Effective Date of this Agreement any portion of the Property which is changed in any way by Buyer's investigation and review. Buyer's obligations under this Section shall survive the termination of this Agreement.

7.2 Seller's Covenants during Escrow. Following the Effective Date and until the Closing and delivery of possession of the Property to Buyer, Seller shall perform the following covenants.

7.2.1 No Change in Title. Seller shall not create or permit any liens, encumbrances, or easements to be placed on the Property.

7.2.2 No Change in Condition. Seller shall maintain the Property, or cause the Property to be maintained, in the same condition as it was in on the Effective Date.

7.2.3 No Default. Seller shall, at its sole cost and expense, perform all its obligations arising under any agreements, arrangements, and relationships affecting the Property.

7.2.4 No New Agreements. Without Buyer's prior written consent, Seller shall not enter into any agreement which would be binding on Buyer or the Property after the Closing.

7.2.5 Condition Compliance. Seller shall, at its sole cost and expense, take or cause to be taken all action to do or cause to be done, and to assist and cooperate in doing, all things

necessary, proper or advisable to deliver the Property to Buyer within the time, and in the condition, required by Section **Error! Reference source not found.**

7.2.6 Condemnation. Seller shall notify Buyer immediately if Seller becomes aware of a factual basis for any condemnation, environmental proceeding, special assessment proceeding, zoning action, land use or other litigation or proceeding against Seller or the Property that could detrimentally affect the Property or the use, ownership, development, sale or value of the Property.

## ARTICLE 8 CLOSING

8.1 Time. The Closing for the Property shall take place at eight o'clock A.M. (8:00 A.M.) on **August 15, 2010**, or on such date as the Parties may otherwise agree (the "**Closing Date**"). The execution and exchange of documents shall take place on the Closing Date, subject to the recording of documents and disbursement of funds by Escrow Holder. When Escrow Holder is in a position to issue the Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow as provided below.

8.2 Deposits into Escrow. On or before the calendar day prior to the Closing Date, the Parties shall deposit the funds and documents hereinafter described into Escrow. All documents shall be duly executed by authorized signatories and, when customary or necessary for recordation, properly acknowledged.

8.2.1 Seller. Seller shall deposit the following:

(a) A grant deed in the Escrow Holder's standard form transferring of all Seller's right, title, and interest in and to the Property to Buyer ("**Deed**");

(b) A certification (the "**Non-Foreign Certification**") duly executed by Seller under penalty of perjury setting forth Seller's business address and federal tax identification number, and certifying that Seller is not a "foreign person" for purposes of Section 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended, and any regulation promulgated thereunder and that Seller is a resident taxpayer in the State of California for purposes of Revenue and Taxation Code Section 18662;

(c) Such proof of Seller's authority and authorization to enter into this Agreement and to consummate the transaction contemplated by as may be reasonably requested by the Escrow Holder.

8.2.2 Buyer. Buyer shall deposit the following:

(a) The Purchase Price for the Property;

(b) Such proof of Buyer's authority and authorization to enter into this Agreement and to consummate the transaction contemplated by as may be reasonably requested by the Escrow Holder; and

(c) Additional funds in the amount necessary to pay Buyer's share of closing costs and prorations, as hereinafter set forth.

8.2.3 Other Instruments. Buyer and Seller shall each deposit such other instruments as are reasonably required by the Escrow Holder, or otherwise required, to close the Escrow and consummate the purchase of the Property in accordance with the terms hereof.

### 8.3 Close of Escrow.

8.3.1 Time. When Escrow Holder is in a position to issue the Title Policy for the Property and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow for the Property as provided below.

8.3.2 Procedure. Escrow Holder shall close Escrow for the Property as follows:

(a) Record the Deed with instructions for the County Recorder to deliver the Deed to Buyer and attach documentary transfer tax information after recording;

(b) Pay the Purchase Price to Seller reduced by Seller's share of closing costs and prorations, as hereinafter set forth;

(c) Deliver the Non-Foreign Certification to Buyer;

(d) Deliver the Title Policy to Buyer;

(e) File any informational reports required by Internal Revenue Code section 6045(e), as amended; and

(f) Forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

### 8.3.3 Costs and Prorations.

(a) Closing Costs. Seller shall pay the title insurance premium for CLTA coverage in the amount of the Purchase Price, documentary transfer taxes, and one-half (½) of escrow fees. Buyer shall pay recording costs, one-half (½) of escrow fees, the additional title insurance premium for ALTA coverage if required of Buyer, including the cost of an ALTA survey, if required, and any endorsements to the title policy. Any other closing costs shall be apportioned in the manner customary in Yolo County.

(b) Prorations. All real property taxes attributable to the Property shall be prorated and apportioned as of 12:01 A.M. on the Closing Date, so that Seller shall bear all expenses with respect to such real property taxes through and including the period preceding the Closing Date

and Buyer shall bear all expenses with respect to such real property taxes on and after the Closing Date.

(c) Costs Upon Termination. If this Agreement is terminated pursuant to its terms, the Parties shall share equally in the escrow termination fees or any other expenses of Escrow Holder which are incurred or charged in connection with the transaction contemplated herein.

8.4 Possession. Right to possession of the Property shall transfer to Buyer at the Closing.

## ARTICLE 9 INDEMNIFICATION

9.1 Indemnification by the Seller. Seller shall indemnify, protect and defend Buyer against, and hold Buyer harmless from, any and all claims, demands, actions, damages, liability and expense, including without limitation all attorney fees and costs of defense which arise, result from, or in any way relate to: (i) any breach or violation of this Agreement or of any representation, warranty or covenant made in this Agreement by Seller; or (ii) the failure of Seller to pay or otherwise discharge when due any contractual or other obligation of Seller with respect to the Property which arises prior to the Closing Date and is not expressly assumed by Buyer pursuant to this Agreement (except to the extent such occurrence is expressed in this Agreement as an obligation of Buyer).

9.2 Indemnification by the Buyer. Buyer shall indemnify, protect and defend Seller against, and hold Seller harmless from, any and all claims, demands, actions, damages, liability and expense, including without limitation all attorney fees and costs of defense which arise, result from, or in any way relate to: (i) any breach or violation of this Agreement or of any representation, warranty or covenant made in this Agreement by Buyer; or (ii) the failure after the Closing of Buyer to pay or otherwise discharge when due any contractual or other obligation of Seller which is assumed by Buyer pursuant to this Agreement (except to the extent such occurrence arises, results from or relates to the breach of any warranty or representation of Seller hereunder or is a matter for which Seller has expressly agreed to indemnify Buyer hereunder).

9.3 Notice of Claim. Immediately upon obtaining notice of a matter for which indemnity may be claimed, the Party to whom an indemnity obligation is due hereunder (the "**Indemnitee**") shall promptly notify the other Party (the "**Indemnitor**") in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Sections 9.1 or 9.2 hereof (such written notice being hereinafter referred to as a "**Notice of Claim**"). A Notice of Claim shall specify, in reasonable detail, the nature of any such claim giving rise to a right of indemnification.

9.4 Defense of Third Party Claims. With respect to any claim or demand set forth in a Notice of Claim relating to a third party claim, the Indemnitor shall defend, in good faith and at its expense, any such claim or demand; provided, that the Indemnitee at its sole expense shall have the right to participate in the defense through its own counsel. So long as the Indemnitor is defending in good faith any such third party claim, the Indemnitee shall not settle or compromise such third

party claim. The Indemnitee shall make available to the Indemnitor or its representatives all records and other materials reasonably required by them for its use in contesting any third party claim and shall cooperate fully with the Indemnitor in the defense of all such claims.

## **ARTICLE 10 ASSIGNMENT**

10.1 Assignment. Except as otherwise provided in this Agreement, neither Party shall have the right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the other Party's prior written consent, which shall not be unreasonably withheld or delayed.

## **ARTICLE 11 MISCELLANEOUS**

11.1 Further Assurances. Each of the Parties agrees to use its best efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with the other Parties hereto in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including, without limitation, executing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to complete any conveyance, transfer, sale, or assignment contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

11.2 Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be given by mailing the same by certified or registered mail, return receipt requested, postage prepaid or by United States express mail, by a commercially recognized courier service, or by facsimile transmission provided that a true copy of the facsimile transmission is sent on the same day by United States express mail or a commercially recognized courier service for delivery no later than the next calendar day. Any such notice or other communication shall be deemed to have been given on the earlier of (i) personal delivery, (ii) the date of delivery or refusal to accept delivery as shown on the return receipt, if given by certified or registered mail, or (iii) when received by the Party to whom such notice or other communication is addressed if addressed as follows, or to such other address or addresses as a Party may hereafter designate by notice to the other:

If to Buyer:

CITY OF WINTERS

City Manager John W. Donlevy, Jr.  
City of Winters  
318 First Street  
Winters, CA 95694  
Ph: (530) 795-4910  
Fax: (530) 795-4935

With copies to

John C. Wallace, City Attorney  
318 First Street  
Winters, CA 95694  
Ph: (530) 795-4171  
Fax: (530) 795-4172  
E-mail: jwallacesq@sbcglobal.net

If to Seller:

Attn:

CENTRAL VALLEY COALITION FOR  
AFFORDABLE HOUSING (CVCAH)

Address: \_\_\_\_\_  
\_\_\_\_\_

Ph:

Fax:

E-Mail:

11.3 Continuation and Survival of Representations, Warranties and Indemnities. All representations and warranties by the respective Parties contained herein or made in writing pursuant to this Agreement and all agreements with respect to covenants and conditions of this Agreement which, by their nature, are not to be satisfied prior to the Closing Date, are intended to and shall remain true and correct as of the time of Closing, shall be deemed to be material, and shall survive the execution and delivery of this Agreement, delivery of the deed and the transfer of title. All indemnities by the respective Parties set forth in this Agreement are intended to and shall survive the execution and delivery of this Agreement the delivery of the Deed, and the transfer of title.

11.4 Successors and Assigns. Without waiver of the provisions of Article 10, each and all of the rights, benefits, duties, liabilities, and obligations of the Parties shall inure to the benefit of, and be binding upon, their respective successors and assigns.

11.5 Interpretation. Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation." Words used in the singular number shall include the plural, and vice versa, and any gender shall be deemed to include each other gender. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the Parties and this Agreement.

11.6 Attorneys' Fees. In the event either Buyer or Seller brings any suit or other proceeding with respect to the subject matter or enforcement of this Agreement or with respect to a breach of representation, warranty or covenant under this Agreement, the prevailing party (as determined by the court, Buyer or other authority before which such suit or proceeding is adjudicated) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings,

costs incurred in establishing the right to indemnification, or in any action or participation in, or in connection with any case or proceeding under the Bankruptcy Code of the United States, or any successor statutes).

11.7 Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement. All references herein to a particular time of day shall be deemed to refer to Pacific Time. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday. All time periods expiring on a specified date or period in this Agreement shall be deemed to expire at 5:00 P.M. on such specified date or period.

11.8 Force Majeure. In the event that either Party hereto is delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of a cause beyond the reasonable control of the obligated Party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Such cause shall include "acts of God;" strikes; lockouts; weather in which work cannot proceed (even if normal); protests; riots; terrorism or insurrection; war; unavailability of materials from normal sources; delays by governmental authorities, including courts; the inaction of any utility company (e.g. PG&E) not caused or contributed to by the Party claiming the delay; but it shall not include delays due to inability or failure to obtain financing or inadequate financial resources.

11.9 Construction. The titles and headings of the articles and sections in this Agreement are intended solely for reference and do not modify, explain, construe, define or limit any provision of this Agreement. All references to sections, recitals, and the preamble shall, unless otherwise stated, refer to the sections, recitals, and preamble of this Agreement.

11.10 Arm's Length Negotiations. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived.

11.11 Integration. This Agreement, all attached exhibits, and all related documents referred to in this Agreement constitute the entire agreement between the Parties. There are no oral or written agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. All attached exhibits are incorporated into this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the Party to be charged.

11.12 Third-Party Rights. This Agreement has been made and is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third

persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

11.13 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the invalid or unenforceable term or provision shall be ineffective to the extent of such invalidity or unenforceability and shall have no effect on the remaining terms and provisions of this Agreement.

11.14 Waivers. No waiver or breach of any provision shall be deemed, or constitute, a waiver of any other provision, whether or not similar, nor shall any be valid unless it is in writing and executed by the waiving Party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

11.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Seller and Buyer.

11.16 Authority of Parties. Each person executing this Agreement on behalf of a Party warrants that he has the full power and authority to execute this Agreement on behalf of that Party and that no further approval of any kind is necessary to bind the Parties hereto.

11.17 Governing Law. 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 shall be in the Superior Court of the State of California, County of Yolo.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective officers thereunto duly authorized as of the dates set forth below, the latest of which shall be deemed to be the Effective Date of this Agreement.

**SELLER:**

**CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING (CVCAH)**

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

By \_\_\_\_\_  
Title \_\_\_\_\_

Corporate Resolution Attached.

**BUYER:**

**CITY OF WINTERS**, a municipal corporation and general law city,

By \_\_\_\_\_  
W. Keith Fridae, Mayor

Attest: \_\_\_\_\_  
NANCI G. MILLS, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Wallace, City Attorney  
CITY OF WINTERS

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

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

**Approximately 3.12 acres, more or less, that certain portion of 003-360-25 remaining after  
prior agreed upon dedications to the CITY OF WINTERS .**

**ASSESSOR'S PARCEL NUMBER 003-360-25**

**EXHIBIT A  
RESERVATION FOR PARK ACQUISITION  
for the  
CITY OF WINTERS**

THAT portion of real property situate in the City of Winters, County of Yolo, State of California, and being a portion of the Northwest Quarter of Section 22, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being a portion of that parcel of land described in DOC-2010-0017763-00, said parcel being Parcel 2 as it appears in Doc-2009-0015525-00, and being a portion of Lot 3 of "J. Hill's Subdivision," filed in Book 44 of Deeds, at Page 1, being more particularly described as follows:

BEGINNING at a the Northeast corner of said Lot 3, said point being distant the following two (2) courses from a concrete monument marking the Northwest corner of said Section 22: (1) North 89°31'53" East 984.10 feet along the North line of said Section 22 to a 1" iron with driving head, said point also being on the West line of Walnut Lane, as it appears in Book 2002 of Maps, at Page 149; and (2) along said West line, South 00°29'13" East 943.14 feet to the Northeast corner of said Lot 3; thence, from said POINT OF BEGINNING, along the East line of said Lot 3 and the West line of Walnut Lane, South 00°29'13" East 471.56 feet to the Southeast corner of said Lot 3; thence, along the South line of said Lot 3, South 89°31'53" West 393.24 feet; thence, leaving said South line, North 32°08'15" East 162.29 feet; thence North 00°28'07" West 88.74 feet; thence North 35°48'53" East 32.42 feet; thence North 05°27'15" East 64.23 feet; thence North 41°26'56" East 108.44 feet; thence North 00°28'07" West 75.40 feet to a point on the North line of said Lot 3; thence, along said North line, North 89°31'53" East 207.38 feet to the POINT OF BEGINNING.

Portion of Assessor's Parcel Number 003-360-025.

Containing 3.12 acres of land, more or less.

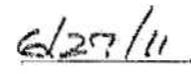
The basis of bearings for this description is the North line of Section 22, Range 1 West, Township 8 North, shown as N 89°31'53" E in Book 6 of Parcel Maps, at Page 16.

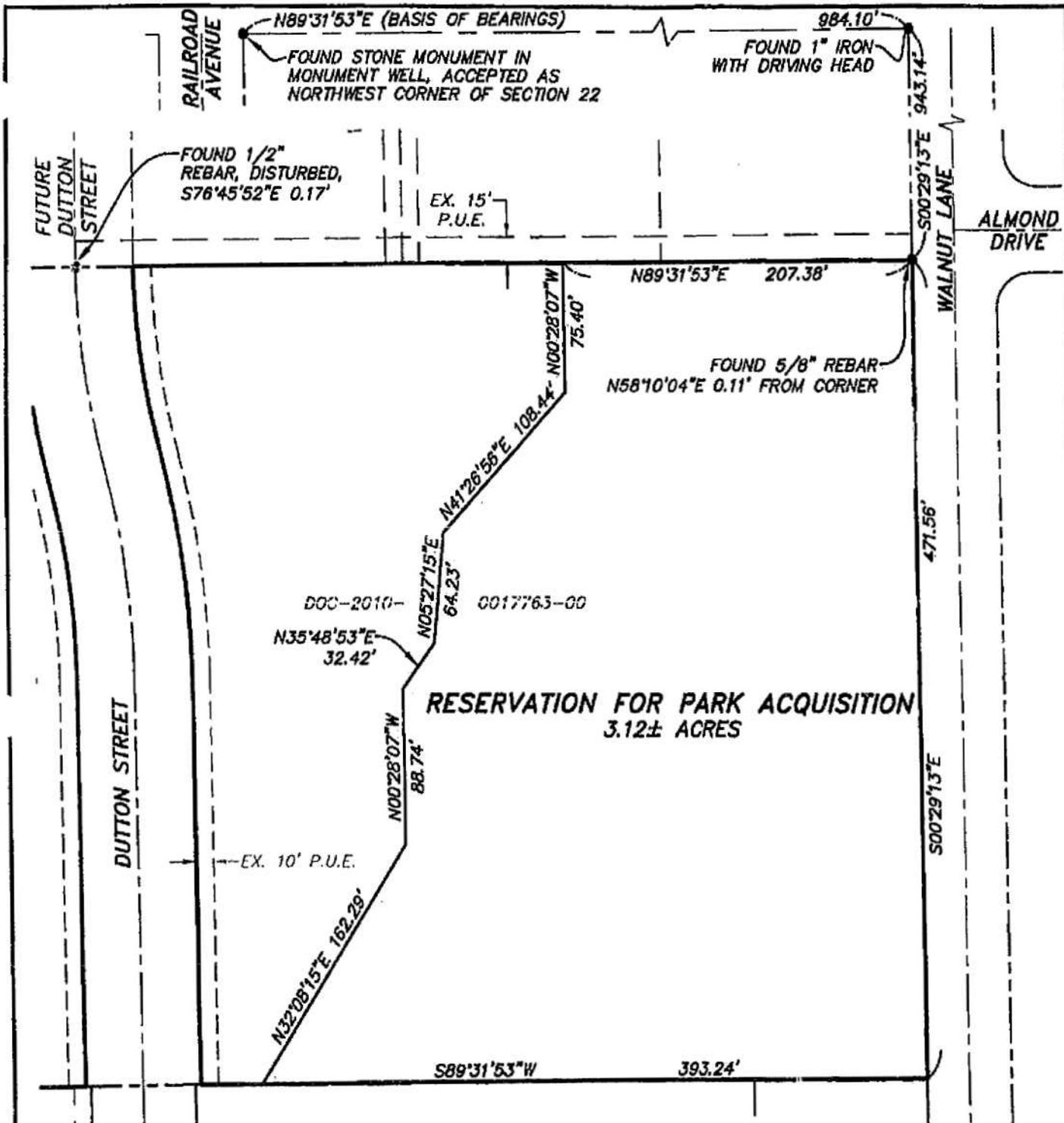
End of description.

This description was prepared by me or under my direction in accordance with Section 8761 of the Professional Land Surveyors' Act.



  
Bryan P. Bonino, L.S.

  
Date



**RESERVATION FOR PARK ACQUISITION**

TO THE

**CITY OF WINTERS**

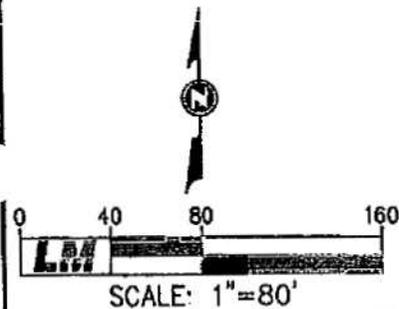
LOCATED IN A PORTION OF SECTION 22,  
TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT  
DIABLO MERIDIAN, CITY OF WINTERS, YOLO  
COUNTY, CALIFORNIA

**LM LAUGENOUR AND MEIKLE**

CIVIL ENGINEERING • LAND SURVEYING • PLANNING  
808 COURT STREET, WOODLAND, CALIFORNIA 95695 • PHONE: (530) 662-1755  
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 • FAX: (530) 662-4802

SHEET 1 OF 1

MAY 4, 2011



**Closure Calculations  
Reservation for Park Acquisition**

Parcel name: RESERVATION FOR PARK ACQUISITION

North: 5482.5633      East : 5993.5124  
Line Course: S 00-29-13 E Length: 471.56  
North: 5011.0203      East : 5997.5201  
Line Course: S 89-31-53 W Length: 393.24  
North: 5007.8041      East : 5604.2932  
Line Course: N 32-08-15 E Length: 162.29  
North: 5145.2271      East : 5690.6239  
Line Course: N 00-28-07 W Length: 88.74  
North: 5233.9641      East : 5689.8981  
Line Course: N 35-48-53 E Length: 32.42  
North: 5260.2539      East : 5708.8692  
Line Course: N 05-27-15 E Length: 64.23  
North: 5324.1931      East : 5714.9742  
Line Course: N 41-26-56 E Length: 108.44  
North: 5405.4740      East : 5786.7562  
Line Course: N 00-28-07 W Length: 75.40  
North: 5480.8714      East : 5786.1396  
Line Course: N 89-31-53 E Length: 207.38  
North: 5482.5675      East : 5993.5126

Perimeter: 1603.70    Area: 136,039 sq.ft. 3.12 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0042      Course: N 02-32-11 E  
Error North: 0.00423      East : 0.00019  
Precision 1: 381,833.33

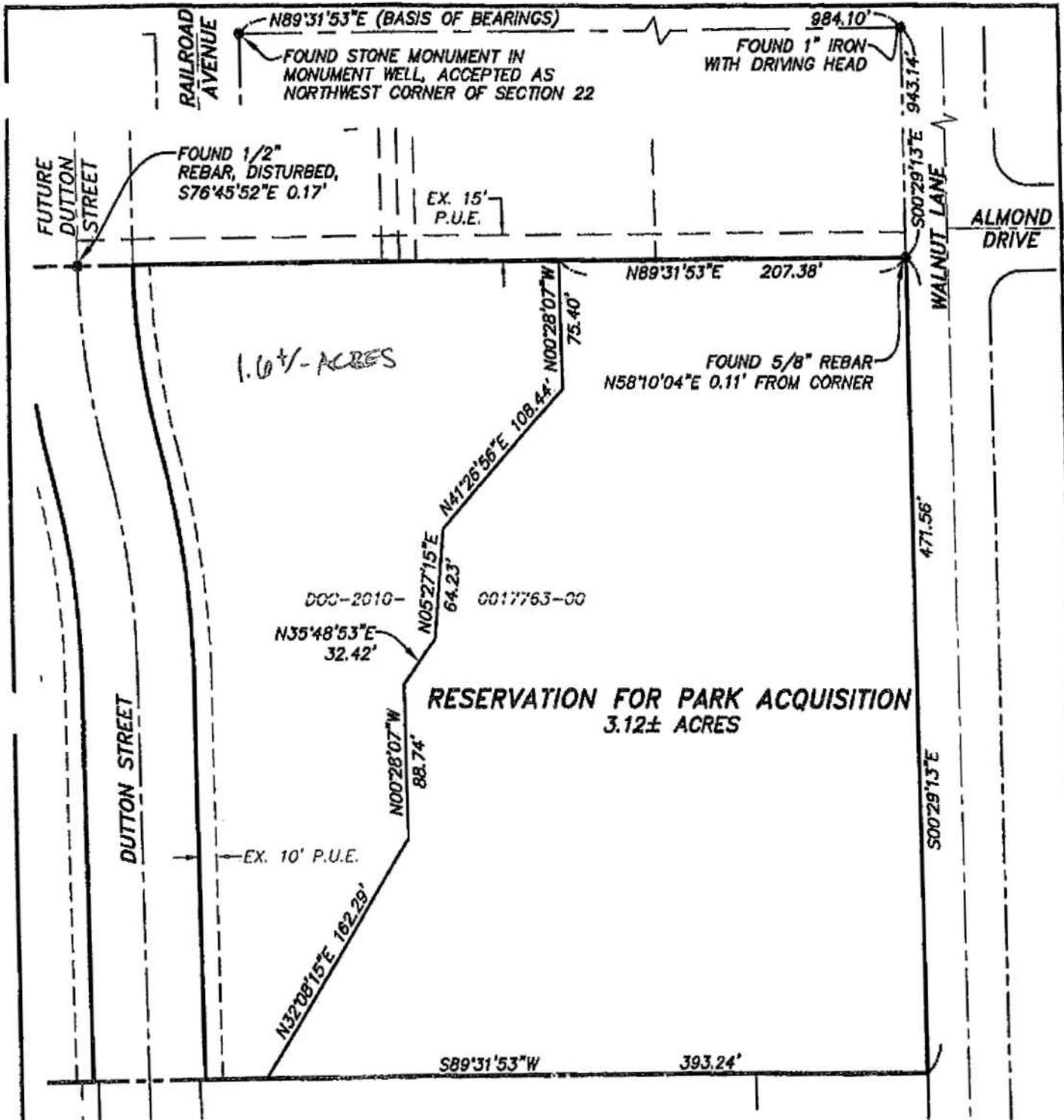
**EXHIBIT B**  
**RESERVATION FOR PARK DEDICATION**  
**for the**  
**CITY OF WINTERS**

THAT portion of real property situate in the City of Winters, County of Yolo, State of California, and being a portion of the Northwest quarter of Section 22, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being a portion of Lot 3 of "J. Hill's Subdivision," filed in Book 44 of Deeds, at Page 1, being more particularly described as follows:

Beginning at the Northeast corner of said Lot 3, said point also being the Southeast corner of Parcel B, as it appears in Book 6 of Parcel Maps, at Page 16, and said point being distant the following two (2) courses from a concrete monument marking the Northwest corner of said Section 22: (1) North 89° 31' 53" East 984.12 feet along the North line of said Section 22 of a point on the West line of Walnut Lane, as it appears in Book 2002 of Maps, at Page 149; and (2) along said West line, South 00° 29' 11" East 943.11 feet; thence, from said POINT OF BEGINNING, along said West line, South 00° 29' 11" East 469.14 feet to the Southeast corner of said Lot 3; thence, along the South line of said Lot 3, South 89° 22' 44" West 462.24 feet to the Northeast corner of Parcel 3, as said parcel is shown on Parcel Map No. 3275, filed in Book 9 of Parcel Maps, at Page 52, said point also being North 89° 22' 44" East 30.00 feet from a found 5/8" rebar marking the Northwest corner of Dutton Street right of way, said point also being the centerline of Proposed Dutton Street, as shown on Parcel Map No 3012, filed in Book 5 of Parcel Maps, at Page 63; thence North 00° 37' 22" West 232.80 feet; thence, along a tangent curve to the left having a radius bearing South 89° 22' 38" West 500.00 feet, a central angle of 13° 40' 16", through an arc length of 119.30 feet to a point of reverse curvature; thence, along a curve to the right having a radius bearing North 75° 42' 22" East 500.00 feet, a central angle of 13° 49' 12", through an arc length of 120.60 feet to the point on the North line of said Lot 3, said point also being the Southwest corner of Parcel 3, as said parcel is shown on Parcel Map No. 4592, filed in Book 2002 of Maps, at Page 149, said Southwest corner also being the Southeast corner of Parcel E, as said parcel is shown on Parcel Map No. 3675, filed in Book 9 of Parcel maps, at Page 14, said point also being the future centerline of Dutton Street; thence, along said North line, North 89° 31' 53" East 491.69 feet to the POINT OF BEGINNING and as described in the Certificate of Compliance recorded May 19, 2009, as Instrument No. 2009-0015525.

Excluding the portion of the real property described in Exhibit "A" (Reservation for Park Acquisition).

Portion of Assessor's Parcel Number 003-360-025  
Containing 1.60 acres of land, more or less.



1.6± ACRES

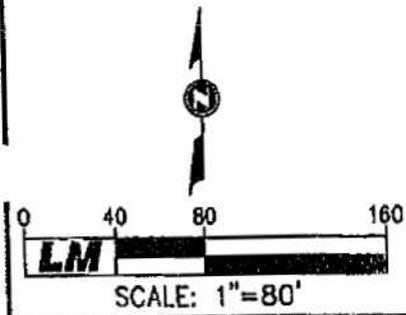
**RESERVATION FOR PARK ACQUISITION**  
3.12± ACRES

**RESERVATION FOR PARK ACQUISITION**  
TO THE  
**CITY OF WINTERS**  
LOCATED IN A PORTION OF SECTION 22,  
TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT  
DIABLO MERIDIAN, CITY OF WINTERS, YOLO  
COUNTY, CALIFORNIA

**LM LAUGENOUR AND MEIKLE**  
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P.O. BOX 828, WOODLAND, CALIFORNIA 95778 · FAX: (530) 682-4602

SHEET 1 OF 1

MAY 4, 2011



X:\Land Projects\3122-1-3\dwg\3122-1-3-3-Exhibit\_Remainder



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE :** July 5, 2011  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Nanci G. Mills, Director of Administrative Services/City Clerk  
**SUBJECT:** Planning Commission Term Expirations (3)

---

**RECOMMENDATION:**

Staff respectfully recommends that the City Council receive the Planning Commission Interview and Selection Committee's recommendation and select three (3) candidates to fill these vacancies.

**BACKGROUND:**

Effective July 1, 2011, Planning Commissioners Glenn DeVries, Bruce Guelden and Corinne Martinez will have completed their four year terms.

The City Clerk's office placed notices in the Winters Express that were published on May 19<sup>th</sup> and June 23<sup>rd</sup> to advise the public of these openings.

Following the advertising for the Planning Commission vacancies, the Interview and Selection Committee consisting of Mayor Fridae and Council Member Stone reviewed the Applications of Interest submitted and are coming before Council tonight with their recommendation.

**FISCAL IMPACT:**

None



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** July 5, 2011  
**FROM:** John W. Donlevy, Jr., City Manager   
**SUBJECT:** Yolo County Redistricting

---

**RECOMMENDATION:**

That the City Council:

1. Receive a report on the status of Yolo County Supervisorial Redistricting; and
2. Consider the adoption of A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS IN SUPPORT OF THE CITY REMAINING WITHIN THE YOLO COUNTY 5<sup>TH</sup> SUPERVISORIAL DISTRICT

**BACKGROUND:**

Since May, 2011, the City Council has been actively discussing the topic of redistricting within Yolo County. Much of the debate has centered on which district the greater Winters area will be placed as part of the process.

An update and consideration of the attached resolution will be made at the meeting.

**FISCAL IMPACT:**

None by this action.

**Resolution No. 2011-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS IN  
SUPPORT OF THE CITY REMAINING WITHIN THE YOLO COUNTY 5<sup>TH</sup>  
SUPERVISORIAL DISTRICT**

**WHEREAS**, Yolo County and counties throughout the State are required to initiate a redistricting process following the national census every ten years; and

**WHEREAS**, The City of Winters has been a member of the 5<sup>th</sup> Supervisorial District which represents mostly western Yolo County, Capay Valley communities and the rural and agricultural base of the County; and

**WHEREAS**, agriculture is the major economic component in Yolo County's economy and, historically, there has always been a seat on the board that represents the agricultural community, of which Winters is a part; and

**WHEREAS**, Winters and western Yolo County communities share common demographic, environmental, economic and geographic issues which have been effectively facilitated within the 5<sup>th</sup> Supervisorial District; and

**WHEREAS**, The importance of linking common interests and communities is a common thread which Winters and western Yolo County communities wish to maintain; and

**WHEREAS**, the residents of western Yolo County share with each other a common vision, economy, social fabric, governance and collaborative spirit. Our relatively small communities have far more in common with each other than with the larger and more urbanized communities within the County; and

**WHEREAS**, The City of Winters and the greater Winters community have expressed our interest in remaining a part of the 5<sup>th</sup> supervisorial district to maintain a continuity of representation based on common interests and issues; and

**WHEREAS**, a map that preserves a rural/agricultural seat on the board creates the least disruption of districts, leaving as few residents as possible experiencing a change of district representative; and

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WINTERS AS  
FOLLOWS:**

1. That the Yolo County Board of Supervisors adopt a map which keeps the City of Winters within the boundaries of the 5<sup>th</sup> Supervisorial District.

PASSED AND ADOPTED THIS 5<sup>th</sup> DAY OF JULY, 2011, BY THE  
FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Woody Fridae, MAYOR

ATTEST:

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



CITY COUNCIL  
STAFF REPORT

**TO:** Honorable Mayor and Council Members

**DATE:** July 5, 2011

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

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

**SUBJECT:** Resolution 2011-35- A Resolution of the City Council of the City of Winters Authorizing the Application for Housing Related Parks Grant

---

**RECOMMENDATION:** That the City Council approve Resolution 2011-35 a Resolution of the City Council of the City of Winters, Authorizing the Application for Housing Related Parks Grant.

**BACKGROUND:** In May, 2011, the State of California, Department of Housing and Community Development issued a Notice of Funding Availability for the Housing Related Parks Program grants. This non-competitive grant program (funded through the sale of General Obligation Bonds) enables eligible applicants who meet all of the threshold criteria to apply for funding based on the number of affordable residential units (very-low and low-income) for which construction is started during the program year (2010). Based on the number of bedrooms in the newly constructed Orchard Village Apartment Complex, the City of Winters would potentially qualify for \$120,000-\$229,000 in grant funds. The final award amount will be calculated on whether the project qualifies for bonus funds that are awarded based on a number of criteria, including Regional Housing Needs Allocation, the number of Extremely Low Income households in the project, infill status and community needs.

Funds may be used for construction, rehabilitation, or acquisition of capital assets for the benefit of the community, property with a useful life of 15 years or more and other costs related to the construction or acquisition of the project.

While this is a non-competitive program, it is possible depending on the number and type of applications, that it could be oversubscribed. Should this happen, awards will be prorated among eligible applicants.

**FISCAL IMPACT:** None by this action, if funded the application could bring in \$120,000-\$229,000 for park improvements.

**Resolution No. 2011-35**  
**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS**  
**AUTHORIZING THE APPLICATION FOR HOUSING RELATED PARKS GRANT**

**WHEREAS:**

- A. The State of California, Department of Housing and Community Development (Department) has issued a Notice of Funding Availability dated May 28, 2010 (NOFA), under its Housing Related Parks (HRP) Program.
- B. The City of Winters (Applicant) desires to apply for a HRP Program grant and submit the 2010 Program Year Application Package released by the Department for the HRP Program.
- C. The Department is authorized to approve funding allocations for the HRP Program, subject to the terms and conditions of the NOFA, Program Guidelines, Application Package, and Standard Agreement.

**THEREFORE, IT IS RESOLVED THAT:**

- 1. Applicant is hereby authorized and directed to apply for and submit to the Department the HRP Program Application Package released December 2010 for the 2010 Program Year. If the application is approved, the Applicant is hereby authorized and directed to enter into, execute, and deliver a State of California Standard Agreement (Standard Agreement), and any and all other documents required or deemed necessary or appropriate to secure the HRP Program Grant from the Department, and all amendments thereto (collectively, the "HRP Grant Documents").
- 2. Applicant shall be subject to the terms and conditions as specified in the Standard Agreement. Funds are to be used for allowable capital asset project expenditures to be identified in **Exhibit A** of the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement. Applicant hereby agrees to use the funds for eligible capital asset(s) in the manner presented in the application as approved by the Department and in accordance with the NOFA and Program Guidelines and Application Package.
- 3. That the City Manager and/or his designee is/are authorized to execute in the name of Applicant the HRP Program Application Package and the HRP Grant Documents as required by the Department for participation in the HRP Program.

PASSED AND ADOPTED this 5th Day of July, 2011, by the following vote:

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_ ABSENT: \_\_\_\_\_

The undersigned City Clerk of the Applicant here before named does hereby attest and certify that the forgoing is a true and full copy of a resolution of the City Council of the City of Winters adopted at a duly convened meeting on the date above-mentioned, which has not been altered, amended or repealed.

Signature \_\_\_\_\_

Date \_\_\_\_\_



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: July 5, 2011  
THROUGH: John W. Donlevy, Jr., City Manager *JD*  
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*  
SUBJECT: Status of 2011-2012 Budget

---

**RECOMMENDATION:**

Staff recommends the City Council accept this report on the 2011-2012 State Budget and it's impact on the budget of the City of Winters and the Winters Community Development Agency.

**BACKGROUND:**

The State of California has yet to pass a budget that has been signed by Governor Brown for 2011-2012. At the time this report is prepared, there is a budget "deal" in place that requires a vote of the legislature. No details have been released as of this time. Staff will be prepared to present to the Council the impacts of the state budget on the City of Winters as of the close of business on July 5, 2011.

**FISCAL IMPACT:**

Unknown at this time.



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Council members  
**DATE:** July 5, 2011  
**THROUGH:** John W. Donlevy, Jr., City Manager *JWD*  
**FROM:** Dan Maguire, Housing Programs Manager *DM*  
**SUBJECT:** Update on Responses to Invitation to Submit Lease Proposals for 318 Railroad Avenue (APN # 003 204 005)

---

**RECOMMENDATIONS:**

Receive the report form staff updating City Council on the responses received to the City's Invitation to Submit Lease Proposals for the City-owned property located at 318 Railroad Avenue.

**BACKGROUND:**

The City issued a Request for Proposals ("RFP") for interested businesses to lease and operate a commercial business in the City-owned building located at 318 Railroad Avenue. The Public Notice of the RFP was published in the 6/9/2011 and 6/16/2011 editions of the Winters Express. The City received two (2) proposals in response to the "Invitation to Submit a Lease Proposal". Staff is in the process of reviewing those proposals using the criteria outlined in the Invitation to Submit a Lease Proposal.

**FISCAL IMPACTS:**

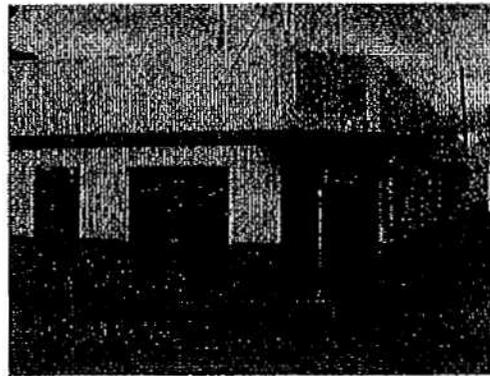
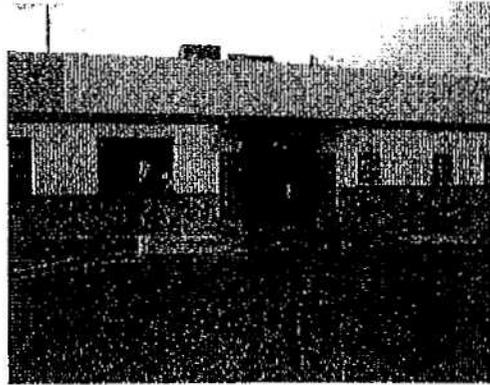
None by this action

# City of Winters

Invitation to Submit a Lease Proposal

**318 RAILROAD AVENUE,  
WINTERS, CA 95694**

Formerly JJ's Bar and Grill



Dan Maguire

City of Winters Housing Programs Manager

318 First Street, Winters, CA 95694

530-795-4910 ext.118

## **I. INVITATION TO SUBMIT A LEASE PROPOSAL**

The City of Winters and the Community Development Agency (Redevelopment Agency) of the City of Winters (together, the "City") own various parcels and buildings within the Winters City limits. Many of these properties are leased for commercial purposes, in support of the City's economic development goals. When a vacancy occurs, the City invites potential tenants to submit proposals to lease the property. This Invitation to Submit a Lease Proposal provides information on a property now available. It also includes additional information about the City of Winters in general, preferred lease terms and the City's criteria for evaluating lease proposals.

## **II. ABOUT WINTERS**

Winters is located in Western Yolo County on the west side of the Sacramento Valley, about 10 miles north of Vacaville, and 30 miles west of Sacramento. The foothills of the California Coastal range are just west of the town; this range forms a western boundary to the Sacramento Valley agricultural area. The area has suitable soils for most agricultural commodity cropping patterns, including fruit and nut permanent plantings. Winters, which originally developed in the late 1800's, was a rail-stop used by Central Valley growers to ship agricultural products to the San Francisco Bay markets. Agricultural activities are still predominating in the market area.

In the 1950's the state began the damming of Putah Creek, which is a coastal range tributary, to form Lake Berryessa, a source for irrigation and drinking water, and recreation. The reservoir was filled by 1963, creating one of the largest fresh water lakes in California, containing about 1.6 million acre feet of water. It has 165 miles of shoreline and almost 10,000 acres of land for public use surrounding the lake. According to the Lake Berryessa Visitors Center, the lake receives about 1.2 million visitors per year, mostly in the summer, and mostly traveling west along Highway 128 through Winters. Winters is known as the "Gateway to Lake Berryessa", and the tourist trade accounts for some measure of the area's economy.

Winters continues to experience major developments, particularly in the core downtown area. In addition to a two phased downtown streetscape program, construction is scheduled to begin in the near future on a new car bridge over Putah Creek. Major trail improvements and creek restoration projects are planned that will enhance the creek area immediately adjacent to the downtown.

## **III. THE PROPERTY**

The Property is located at 318 Railroad Avenue, in the Core Downtown area. The commercial property is in a mixed land use area (zoned C-2, commercial uses) and was most recently a tavern. The lot size is approximately 2600 square feet, with 26 linear feet of frontage on Railroad Avenue, and 103 linear feet of street frontage on Abbey Street. The square footage of the building is approximately 2,000 square feet.

Roof work and an electrical panel upgrade were completed in 2011. The City will be contracting to have one of the two restrooms remodeled into an ADA accessible restroom.

#### **IV. THE IDEAL TENANT**

318 Railroad Avenue is located in the core downtown area of Winters, with close proximity to many established businesses (Buckhorn Restaurant, Putah Creek Café, and the Palms) as well as many newer start-up businesses, such as Turkovich Wine, Winters Cheese Company, Preserve Public House, and Arc Guitar. The City is seeking out a tenant that wants to be in a dynamic location and is committed to operating a business that adds to the "Winters is open for business" environment. Uses similar to historical uses (tavern) and the ability to start the business up quickly are desirable.

#### **V. PREFERRED LEASE TERMS**

While all lease terms are negotiable, the City has found that providing basic lease parameters to potential tenants is helpful. The following preferred lease terms are provided as a guideline.

##### Initial Maximum Length of Lease

The maximum preferred initial lease term is eighteen (18) months. Extension and renewal terms are subject to negotiations and may be included in the lease.

##### Minimum Base Rent

The property is offered on a fixed rent basis. The minimum Base Rent is \$0.95 per square foot per month (attic space, although useable space has not been included in the rentable space). Based on square footage of 2,000 square feet, the Base Rent is \$1,900 per month.

##### Rent Adjustment

The Base Rent will remain fixed for the initial lease term.

##### Additional Rent – Type of Lease

The property is offered on a Base Rent plus utilities, insurance, and operating and common area expenses arising from the use of the property.

##### Security Deposit

A cash sum of \$2,000 will be required to be deposited with the City, concurrently with the tenant's execution of a lease, as security for the performance of tenant's obligations under the lease.

##### Tenant Utility and Service Costs

The tenant will be responsible for all utilities and services required or desired by the tenant in connection with its use or occupancy of the property.

##### As-is Condition, Tenant Improvements

The property is offered in its current, existing, "as is" condition, with the exception of a planned bathroom remodel to be performed at the expense of the City, to create an ADA compliant restroom. The City will consider proposals for tenant improvement allowances, or rent credits in

lieu of a tenant improvement allowance. The City is expecting the tenant to make capital improvements into the property initially as well as making regular capital improvements necessary to maintain the building.

#### Tenant Improvements, Prevailing Wages

Tenant improvements, if performed at the expense of the City, as an allowance or in lieu of rent, or owed the City by the end of the lease term, are subject to prevailing wage requirements set forth in California Labor Code Section 1720 *et seq.* and implementing regulations.

#### Insurance Requirements

The tenant will be required to obtain and keep in force the following minimum insurance coverage:

Public liability insurance to protect against any liability to the public incident to the use of or resulting from any accident occurring in or about said premises, the liability under such insurance to be not less than five hundred thousand dollars (\$500,000) for any one person injured, one million dollars (\$1,000,000) for any one accident and two hundred fifty thousand dollars (\$250,000) for property damage.

#### Continuous Operation

The City will require an operating covenant acknowledging that continuous operation is necessary for the development of the business, image and traffic and that the tenant's failure to open or remain open will be detrimental to both the image and the economics of the premises and will constitute a default under the lease.

#### Business License

Upon execution of a lease, the tenant will be required to obtain a City of Winters business license, and to maintain such license during the full term of the lease.

#### Exclusive Negotiation Rights

The goal of the Agency and City is for the location of a hotel within the block, with retail establishments fronting Railroad Avenue. As part of the lease arrangement, the City, as part of its negotiation with potential hotel developers, will include an exclusive negotiation period for the tenant, not to exceed ninety (90) days, for the location of the business within the future project. At the option of the City, this period may be extended.

### **VI. MODEL LEASE**

The City has prepared a model lease for potential tenants. The City will propose use of the model lease, amended as appropriate for this particular property and the selected tenant. The model lease may be obtained by contacting the City of Winters Community Development Department.

### **VII. FORM FOR LEASE PROPOSALS**

Potential tenants or brokers may submit any form of lease proposal that reflects the tenant's interest in the property. At a minimum, the lease proposal should include the following information:

Proposed tenant name, address and contact information

Proposed tenant trade name

Proposed tenant's experience in operating businesses similar to that proposed for this property.

This could include a business plan or other information demonstrating the tenant's ability to operate a successful business in this location, or evidence of similar successful business operations.

Proposed base rent

Proposed initial length of the lease, and any options to extend.

Proposed allowance for tenant improvements or rent credits in lieu of tenant improvement allowance.

A statement that the tenant has reviewed this Invitation to Submit a Lease Proposal and the Preferred Lease Terms, and agrees to all terms of this Invitation, including the Conditions of Invitation set forth in Section X., below. If the tenant cannot meet any of the Preferred Lease Terms, the statement should identify those terms, and any proposed alternatives.

A current financial statement.

Contact information for existing and/or former landlords.

### **VIII. DATE FOR SUBMITTING LEASE PROPOSALS**

Proposals are due by 5:00 p.m. June 24, 2011 (proposals received after the deadline will not be considered).

### **IX. CRITERIA FOR REVIEW OF LEASE PROPOSALS**

The City will consider all lease proposals and will evaluate proposals based on the following criteria:

Compatibility of the proposed tenant and use with the property characteristics, neighboring uses, and the City's economic development goals.

Proposed base rent and agreement to pay as referenced in the Preferred Lease Terms.

Proposed initial length of lease.

Proposed tenant improvement allowance or rent credits in lieu of a tenant improvement allowance.

Ability of the tenant to execute a lease substantially in the form of the model lease offered by the City.

Consideration of the tenant's financial condition, as it relates to the tenant's ability to finance a business of the nature proposed for the property, and its ability to meet rent payment and additional rent requirements.

Submit four (4) references, including 3 business and 1 from your financial institution, with their addresses and phone numbers.

Provide a detailed description of all the services your proposal provides, including:

Hours of Operation

Number of employees, full and part-time  
If a joint venture or multiple tenant proposal, please provide specific detail  
Proposed tenant's experience in operating businesses similar to those proposed for this property.  
Other criteria, as applicable to the particular property and/or the tenant under consideration.

## **X. CONDITIONS OF INVITATION**

This section outlines the conditions of this Invitation to Submit a Lease Proposal. All applicants responding to this Invitation must agree to these Conditions of Invitation.

This Invitation to Submit a Lease Proposal is not a contract or a commitment of any kind by the City and does not commit the City to enter into a lease, or to pay any cost incurred by any respondent in the submission of a proposal. The City, at its sole discretion, reserves the right to accept or reject in whole or in part, any or all submittals received in response to this Invitation, to negotiate with any qualified source, or to cancel or modify in whole or in part the tenant selection process. Failure to provide any of the requested data within the specified submission period may cause the City, at its sole discretion, to reject the submittal or require the data to be submitted forthwith.

All facts and opinions stated within this Invitation to Submit a Lease Proposal and in all supporting documents and data, are based on the best available information from a variety of sources at this time. No representation or warranty is made with respect thereto. Each prospective tenant will be responsible for verifying the accuracy of all information presented herein and for conducting its own investigations of the property and all feasibility analyses necessary or desirable to undertake the leasing of the premises.

By submitting a response to the Invitation to Submit a Lease Proposal, each respondent expressly waives any and all rights that it may have to object to, protest or judicially challenge the following:

- 1) The City's Invitation to Submit a Lease Proposal, including, but not limited to these Conditions of Invitation; and
- 2) The City's evaluation and selection process, including but not limited to the qualifications of the respondent tenants, evaluation of proposals, evaluation of responses to the Invitation, and all other aspects of the City's tenant selection process.

The City and the City's Community Development Agency acquired the subject property specifically to facilitate the development of a downtown hotel. The goal of the City is to enter only into short term leases for the subject property in order to facilitate the hotel project. By submitting a response to the Invitation to Submit a Lease proposal, each respondent expressly acknowledges that it is aware of the status of the property and the agency's future plans and that the business will not be eligible for relocation assistance or payments when the agency terminates the tenancy. Tenant will provide written verification of their understanding of the above under the California Relocation Assistance Act of 1970 (Gov. Code § 7260 *et seq.*) that post-acquisition tenants are not eligible for relocation assistance.

All information submitted to City in response to this Invitation will become property of the City.

## **XI. CONTACT INFORMATION AND PROPOSED LEASE SUBMITTALS**

Additional information regarding this property may be obtained by contacting the City of Winters Community Development Department. The deadline for submitting proposals is 5:00 p.m. on June 24, 2011. Two copies of Proposals for Lease of this property should be submitted to the Community Development Department, at the following address:

City of Winters

Community Development Department

318 First Street

Winters, CA 95694

Attention: Dan Maguire

Telephone: (530) 795-4910 Ext. 118

Information requests should be sent by e-mail to: [daniel.maguire@cityofwinters.org](mailto:daniel.maguire@cityofwinters.org)

**PROOF OF PUBLICATION**  
**(2015.5 C.C.P.)**

STATE OF CALIFORNIA  
COUNTY OF YOLO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of THE WINTERS EXPRESS, a newspaper of general circulation, printed and published in the City of Winters, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of December 24, 1951, Case Number 12461; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit: June 9, 2011.  
I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Winters, California, this 9th day of June, 2011.

Charles Wallace

  
Signature

This space is for the County Clerk's Filing Stamp

**REQUESTS FOR PROPOSALS**

**REQUEST FOR PROPOSALS**

City of Winters Request for Proposals - Business to lease and operate a commercial business in the City-Owned Building located at 318 Railroad Avenue (APN# 003 204 005)

The City of Winters is soliciting Proposals from Qualified Business Firms who are interested in leasing the City owned property located at 318 Railroad Avenue. The City of Winters has issued a Request for Proposals for the lease of the property. The Request for Proposal will be available for public inspection at City Hall, 318 First Street, Winters, CA and is also available on the City of Winters website at [www.cityofwinters.org](http://www.cityofwinters.org). The commercial lease application form is also available on the City website and at City Hall.  
Nanci Mills, City Clerk  
City of Winters

Published June 9, 2011