



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, September 20, 2011  
6:00 p.m.  
**AGENDA**

*Members of the City Council*

*Woody Fridae, Mayor  
Cecilia Aguilar-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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**6:00 p.m. - Executive Session**

**AGENDA**

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

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

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**6:30 p.m. – Regular Meeting**

**AGENDA**

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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 September 6, 2011 (pp 1-7)
- B. Minutes of the Executive Session Meeting of the Winters City Council Held on September 9, 2011 (pp 8)
- C. Approve the Amplified Sound Permit Application for the Festival de la Comunidad on September 24, 2011 (pp 9-11)
- D. Memorandum of Understanding and Acceptance of Property Dedication from Winters Joint Unified School District to the City of Winters for Construction of Pedestrian Improvements (sidewalk, curb and gutter) on the South Side of Grant Avenue (SR 128) Adjacent to Waggoner Elementary School (pp 12-34)
- E. Approve Materials Sampling and Testing with Matriscope Engineering Laboratories for the Construction of the I-505/Gateway Utilities Phase 2, Project No. 021-09.02 (pp 35-38)

DISCUSSION ITEMS

1. 314 Railroad Avenue – Lease Assignment – Linton to Briggs (pp 39-55)
2. Resolution 2011-44, A Resolution of the City Council of the City of Winters Changing the Name of a City Street in the City Limits from County Road 90 to Chapman Lane (pp 56-63)

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COMMUNITY DEVELOPMENT AGENCY

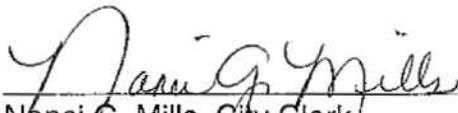
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CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the September 20, 2011 regular meeting of the Winters City Council was personally delivered to each Councilmember's mail boxes in City Hall and posted on the outside public bulletin board at City Hall, 318 First Street on September 15, 2011, and made available to the public during normal business hours.

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

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

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

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

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Any attachments to the agenda that are not available online may be viewed at the City Clerk's Office or locations where the hard copy packet is available.

Email Subscription: You may contact the City Clerk's Office to be placed on the list. An agenda summary is printed in the Winters Express newspaper.

City Council agenda packets are available for review or copying at the following locations:

Winters Library – 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 Winters City Council Meeting  
Held on September 6, 2011

**6:00 p.m. - Executive Session**

Council convened at 6:00 p.m. to discuss the single agenda item below.

Present: Council Members Cecilia Aguiar-Curry and Michael  
Martin and Mayor Fridae  
Absent: Council Members Harold Anderson and Tom Stone  
Staff: City Manager John Donlevy and City Attorney John Wallace

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

City Manager Donlevy reported the action taken during closed session included staff authorization to re-open the proposal process regarding 318 Railroad Avenue.

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**6:30 p.m. – Regular Meeting**

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

Present: Council Members Cecilia Aguiar-Curry, Harold Anderson, Michael  
Martin and Mayor Fridae  
Absent: Council Member Tom Stone  
Staff: City Manager John Donlevy, City Attorney John Wallace,  
Community Development Director Nelia Dyer, Grant Writer Dawn  
Van Dyke, Environmental Services Manager Carol Scianna, and  
Administrative Assistant Tracy Jensen.

Wade Cowan led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy requested Consent Item H be moved to Discussion Item #5. Council agreed unanimously to approve the agenda as modified.

**COUNCIL/STAFF COMMENTS:** Council Member Martin recently attended the Winters High School's Back-to-School night and was excited to see Solano College's first Computer Class being held in Winters.

Council Member Anderson attended the annual State of the Region forum sponsored by the Metro Chamber on 8/26.

Council Member Aguiar-Curry attended the Local Government Commission meeting on 9/1, where City Manager Donlevy gave a fabulous presentation. On 9/13, the Air Quality Management District will hold a Clean Car Workshop at the California Automotive Museum in Sacramento. Today Ms. Aguiar-Curry attended the Valley Vision Food Collaboration, recently attended a Water Resources Association (WRA) Executive Committee meeting as well as a WRA Technical meeting and said the WRA Board meeting is coming up in November. Last week Ms. Aguiar-Curry met with the Consulate General of Mexico along with two school board members to discuss how the Hispanic community can contact the consulate for assistance. Ms. Aguiar-Curry also reminded everyone of the upcoming Criterium Bike Race on 9/18. The Sacramento Tree Foundation will be in Winters to plant 45 trees in City Park, Blue Oak Park and Valley Oak Park on 10/1 and volunteers are needed. Thanks to the local wineries for sponsoring the recent Tempfest, and thanks to Rich Marovich for putting an article about the Tempfest on the front page of the Sacramento Bee above the fold line. Volunteers are still needed for the Carnitas Cook-Off on 9/24.

Mayor Fridae thanked the Chamber of Commerce for sponsoring the 20<sup>th</sup> Annual Earthquake Festival, which was a great event.

**PUBLIC COMMENTS:** Alison Hapworth-Eldridge, 803 Suffolk Place, said the new bulb outs at Main & First Streets prevent handicap access to the bank, and the lack of blue parking spaces in the downtown area affect citizens and local businesses.

### **CONSENT CALENDAR**

- A. Minutes of the Regular Meeting of the Winters City Council Held on August 16, 2011
- B. Minutes of the Special Meeting of the Winters Community Development Agency Held on August 26, 2011

- C. Accept Recommendations from Staff to Purchase and Install Automatic Gate Opener for Well 7, on Grant Ave. from Arrow Fence Co. in the amount of \$11,240
- E. Community Design Grant Application Authorization
- F. Street Closure Request - Winters Healthcare Foundation Fall Harvest Festival – October 28, 2011
- G. Approval for City Manager to Execute Contract with EnviroCare International to Provide Control Center for the I-505/Gateway Utilities Phase 2 Project, Total Requested is \$75,775.
- H. A Resolution 2011-44 of the City Council of the City of Winters Changing the Name of a City Street in the City Limits from County Road 90 to Chapman Lane (**Moved to Discussion Item #5**)
- I. Lease at 318 Railroad Ave. – Approval of Settlement
- J. Parkland Purchase from Central Valley Coalition for Affordable Housing (CVCAH) - Authority to Close Escrow
- K. Medical Leave Approval – Tom McMasters Stone

City Manager Donlevy gave an overview. Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve Items A-G and J-K. Motion carried unanimously, with Council Member Stone absent.

Council Member Anderson recused himself due to a possible conflict of interest pertaining to Item I. Motion by Council Member Martin, second by Council Member Aguiar-Curry to approve Item I. Motion carried unanimously, with Council Members Anderson and Stone absent.

Council Member Anderson returned to the dais at this time.

## **PRESENTATIONS**

### **Presentation of Appreciation of Service Plaques for Planning Commission Members Corinne Martinez and Glenn DeVries**

Mayor Fridae presented a Plaque of Appreciation of Service to departing Planning Commissioner Corinne Martinez for her service, dedication, time and expertise on behalf of the City of Winters. Ms. Martinez thanked Mayor Fridae and the Council for the opportunity to serve.

## **DISCUSSION ITEMS**

1. **Second Reading and Possible Adoption of Ordinance 2011-06, An Ordinance of the City Council of the City of Winters, Amending Chapter 17.36 of the Winters Municipal Code Pertaining to Design Review**

Community Development Director Nelia Dyer gave an overview. Motion by Council Member Aguiar-Curry, second by Council Member Anderson to waive the second reading, read by title only, and adopt Ordinance 2011-06 amending Chapter 17.36 of the Winters Municipal Code pertaining to Design Review. Motion carried with the following vote:

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

## **2. Fire Board- Appointment of Members**

City Manager Donlevy gave an overview. Council Member Anderson confirmed that Council Members Stone and Martin are currently Fire Committee members. Council Member Martin recommended the appointment of Council Member Aguiar-Curry, who agreed to the appointment. City Manager Donlevy confirmed the Fire Board meets on a quarterly basis. Council members collectively agreed Council Member Stone would be a good choice, but Council Member Martin said he would serve if Council Member Stone declines the appointment.

Motion by Council Member Anderson, second by Council Member Martin to appoint Council Members Aguiar-Curry and Stone as Fire Board members and in the event Council Member Stone declines the appointment, Council Member Martin will serve as a Fire Board member. Motion carried unanimously with one absent.

## **3. Waive the Second Reading, Read by Title Only, and Adopt Ordinance 2011-05, An Ordinance of the City Council of the City of Winters, Amending Title 17 of the Winters Municipal Code to Prohibit the Establishment and Operation of Businesses and Uses Prohibited by State and/or Federal Law**

City Attorney Wallace gave a brief overview.

Motion by Council Member Martin, second by Council Member Anderson to waive the second reading, read by title only, and adopt Ordinance 2011-05 amending Title 17 of the Winters Municipal Code to prohibit the establishment and operation of businesses and uses prohibited by State and/or Federal law. Motion carried with the following vote:

**AYES:** Council Members Aguiar-Curry, Anderson, Martin, Mayor Fridae  
**NOES:** None

**ABSENT:** Council Member Stone  
**ABSTAIN:** None

**4. Award Bid for Construction of I-505/Gateway Utilities Phase 2, Project No. 021-09.02**

City Manager Donlevy gave an overview and requested Council to award the construction contract for the I-505/Gateway Utilities Phase 2, Project No. 021-09.02 to low bidder G.D. Nielson Construction, Inc. A bid protest was received from Sanco Pipelines, Inc., the second lowest bidder at \$285,000, who claimed G.D. Nielson Construction made an error in their bid, exceeding the 5% allowance of the total bid price for mobilization and demobilization, making their bid non-responsive. The actual percentage entered by G.D. Nielson Construction was 5.75%, which is considered a minor irregularity.

City Attorney Wallace said State law allows the City Council to waive minor irregularities and G.D. Nielson Construction has indicated they will comply with the bid specifications. Assistant City Attorney Harriet Steiner said the bid acceptance letter for G.D. Nielson Construction should state the 5% allowance and City Attorney Wallace said notice has been given to Sanco Pipelines.

Motion by Council Member Anderson, second by Council Member Aguiar-Curry, to approve staff recommendation and award a construction contract for the I-505/Gateway Utilities Phase 2, Project No. 021-09.02, to G.D. Nielson Construction, Inc. for \$279,029, authorize a construction funding limit of \$320,000 for the contract plus contingency, and authorize the City Manager to execute the contract on the City's behalf. Motion carried unanimously, with one absent.

**5. Resolution 2011-44, a Resolution of the City Council of the City of Winters Changing the Name of a City Street in the City Limits from County Road 90 to Chapman Lane (Moved from Consent Item I)**

City Manager Donlevy gave an overview. The proposed selection, Chapman, was taken from a memo dated 12/6/05 containing a list of potential street names submitted on behalf of the Street Naming Committee, where Chapman was listed first. Also included in the memo were several historic names and Winters residents killed during foreign wars, including WWII, Korea and Vietnam. After much discussion, a motion was made by Council Member Anderson and seconded by Council Member Martin to choose from the veterans list and the historic list on a rotating basis, beginning with a veteran, thus eliminating any personal preference based on personal knowledge and resulting in a random choice.

City Manager Donlevy made available the names of all the veterans listed in the memo, where Mayor Fridae drew a name randomly.

Motion by Council Member Anderson, second by Council Member Aguiar-Curry to approve Resolution 2011-44 as amended, changing the name of a City street in the Winters City limits from County Road 90 to Ozbun Lane in memory of James D. Ozbun, Vietnam veteran. Motion carried with the following vote:

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

\* *A check with the National Archives found that James D. Ozbun was from Fairfield, not Winters, and there are no records to indicate he graduated from Winters High School. The street-naming issue will be brought back to the City Council at the September 20<sup>th</sup> meeting for a re-draw of the name and re-adoption of the amended resolution.*

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### COMMUNITY DEVELOPMENT AGENCY

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**CITY MANAGER REPORT:** The Police and Fire departments have begun moving into the new Public Safety Facility but won't occupy the building until next week. They have mobilized moving computers, phones, files and completing final inspections. They must also move their communications with outside agencies, ie: Yolo Emergency Communications and the State of California. The transfer will be complete when the Police department begins toning out of the new facility using the State's CLEATS system. Mayor Fridae asked about a ribbon-cutting ceremony. City Manager Donlevy said it will be scheduled sometime in October.

### INFORMATION ONLY

1. **Winters Healthcare Foundation & Anytime Fitness 5K Fun Run  
- September 24, 2011**

**ADJOURNMENT:** At 7:30 p.m., Mayor Fridae adjourned the meeting to Friday, September 9, 2011, for closed session regarding 314 Railroad Avenue, Winters, CA

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Woody Fridae, MAYOR

**ATTEST:**

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Nanci G. Mills, City Clerk



Minutes of the Winters City Council  
Executive Session Meeting  
Held on Friday, September 9, 2011

Council convened at 7:00 a.m. to discuss the single item below.

Present: Council Members Cecilia Aguiar-Curry, Michael Martin, Mayor  
Woody Fridae

Absent: Council Members Harold Anderson and Tom Stone

Staff: City Manager John Donlevy and City Attorney John Wallace

**DISCUSSION ITEM**

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

Council authorized the City's real property negotiator to proceed regarding  
property located at 314 Railroad Avenue.

COUNCIL/STAFF COMMENTS: None

CITY MANAGER REPORT: None

INFORMATION ONLY: None

ADJOURNMENT: Mayor Fridae adjourned the executive session meeting at  
7:56 a.m.

\_\_\_\_\_  
Woody Fridae, Mayor

ATTEST:

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



**STAFF REPORT**

**TO:** Honorable Mayor and Council Members  
**DATE:** September 20, 2011  
**THROUGH:** John W. Donlevy, Jr., City Manager. *[Signature]*  
**FROM:** Dawn Van Dyke, Management Analyst and Mary Jo Rodolfa  
Executive Assistant  
**SUBJECT:** Amplified Sound Permit Application

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**RECOMMENDATION:**

Approve the amplified sound permit application for the Festival de la Comunidad.

**BACKGROUND:**

The City of Winters Hispanic Advisory Committee is requesting this amplified sound permit for the annual Festival de la Comunidad and Carnitas Cook-Off to be held on September 24, 2011.

Per the Noise Ordinance, it requires Council approval on the attached form.

**FISCAL IMPACT:**

None

Date of Application: 9/7/11 To City Council: \_\_\_\_\_

Name of Person(s)/ Organization: City of Winters Hispanic Advisory Com. Contact: Dawn Van Dyke or Mary Jo Rodolfo

Business Address: 318 First Street Telephone: 530-795-4910 x 108  
Winters, CA 95694 530-795-4910 x 111

Telephone: 530-795-4910

Type of Event: Community Festival & Carnitas Cook-Off

Purpose of Event: (ie; fundraiser, parade, festival, etc.): Festival

Date/Time of Event: Sept. 24, 2011 From: 5 p.m. To: 10 p.m.

Location/Address of Event: Rotary Park & Winters Community Center

Rated Output of Amplifier in Watts: 600 Number of Speakers: 4

I have provided a list of and contacted all property owners adjacent to and within 300 feet of the event. Their approval of this event is indicated by their signature on the attached petition. Complaints about the sound will result in a warning and a request to reduce the volume. Additional complaints will result in the cessation of amplified sound. All amplified sound must be extinguished no later 10:00 p.m. pursuant to Winters Municipal Code Title VI; Chapter 7-Noise Control. Signing below certifies that all information contained within this application is correct. In the event that any of this information is found to be fraudulent, it may result in an automatic denial of this application.

Signature: \_\_\_\_\_

For City Use Only

Proof of Insurance:  N/A (Not City Property)  Yes  No

Rental Fee Paid:  N/A (Not City Property)  Yes  No

Police Department:  Approved  Denied Date: 9/13/11

Authorized Signature: \_\_\_\_\_

City Council:  Approved  Denied Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_





CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Council Members

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

DATE: Sept. 20, 2011

FROM: Dawn Van Dyke, Management Analyst 

SUBJECT: Memorandum of Understanding and acceptance of property dedication from Winters Joint Unified School District to the City of Winters for construction of pedestrian improvements (sidewalk, curb and gutter) on the south side of Grant Avenue (SR 128) adjacent to Waggoner Elementary School.

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**RECOMMENDATION:** That the City Council approve the Memorandum of Understanding and acceptance of property dedication from Winters Joint Unified School District to the City of Winters for construction of pedestrian improvements (sidewalk, curb and gutter) on the south side of Grant Avenue (SR 128) adjacent to Waggoner Elementary School.

**BACKGROUND:** In 2009, the City of Winters applied for and received a grant from the Sacramento Area Council of Governments (SACOG) through its Community Design program for construction of a sidewalk on the south side of Grant Avenue adjacent to Waggoner Elementary School. The finished project will result in improved pedestrian access from the intersection of West Main Street east to Railroad Avenue, and a safe path of travel for students and pedestrians on that side of Grant Avenue (SR128).

City staff approached the Winters Joint Unified School District (WJUSD) to request a 10 foot easement in order to construct the sidewalk improvements on the school property instead of requesting right of way on Grant Avenue (SR128), which would have to be approved by Caltrans. The WJUSD Board of Trustees, after consulting with their legal advisors, decided to convey the property to the City instead of granting an easement. The WJUSD Board of Trustees prepared a resolution approving and authorizing the dedication of property to the City to improve sidewalk and pedestrian access.

City engineers have nearly completed the bid documents for the project, which should take approximately three weeks to construct. In order to avoid conflicts between pedestrians and the district school buses that drop off and pick up students on that side of the school site, improvements will be made to the school's driveway area as part of the construction project. Upon approval of the property dedication, MOU and recordation of the documents with the Yolo County Clerk, the project will be put out for public bid.

Safety precautions will be implemented during the construction process to avoid any risk to students coming to and from the school site.

This project has been determined to be Categorical Exempt under CEQA, Section 15304, (Class 4, Minor Alterations to Land).

**FISCAL IMPACT:** The construction improvements will be paid for utilizing grant funds from SACOG. The match, in the amount of \$11,740, will come from TDA funds.

- ATTACHMENTS:** School Board agenda item
- School Board Resolution 878-11
  - Description of Property
  - Memorandum of Understanding
  - Offer of Dedication
  - Grant Deed
  - Notice of Categorical Exemption

BOARD AGENDA ITEM

DATE: August 18, 2011

ITEM NO. D3

TOPIC: Sidewalk Dedication Grant Avenue (Waggoner School) to the City of Winters.

**DESCRIPTION:** The City of Winters is proposing to put in a public sidewalk on Grant Avenue at the back fence line of Waggoner Elementary School. The City has asked Winters Joint Unified School District to donate a 10' section of land at that area to accommodate the new sidewalk to help the city avoid excessive costs due to Caltrans requirements. The donation would save the city an estimated \$20,000.00 in Caltrans Fees as well as speed up the process. The Attached letter outlines the process which the district must follow to accomplish the dedication.

Ed Code permits the governing board of a school district to convey to the state or any city, for public street or highway purposes, with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district. Before doing so, the governing board must adopt a resolution by a two-thirds vote declaring its intention to dedicate or convey the property. The resolution must fix a time for a public hearing on the issue and copies of the resolution must be posted in three public places in the district and noticed in a newspaper of general circulation published in the district.

At the same time and place of the public hearing or within 60 days after the hearing, the governing board may adopt the resolution by two-thirds vote of all its members authorizing and directing the president or secretary of the governing board to execute a deed of dedication or conveyance of the property and to deliver it. The dedication is effective upon delivery and acceptance of the deed.

**FISCAL IMPACT:** The donation would amount to roughly 1/16 of an acre of land. The city has agreed to some minor improvements as part of the sidewalk installation. Additionally the city has agreed to pay all costs associated with the donation including any legal fees that the district may incur to complete the transaction. The attached Memorandum of Understanding between the District and the City of Winters sets forth the terms of the agreement between the parties regarding the sidewalk.

**RECOMMENDATION:** The district has evaluated the city's proposal and believes that the sidewalk and minor improvements will provide a safe pathway for students and enhance the schools appearance. It is recommended that the Winters Joint Unified School Districts' Board of Trustees adopt attached resolution # 878-11 approving and authorizing the dedication of property to improve the sidewalk and pedestrian access.

  
\_\_\_\_\_  
Gary Castillo  
Supervisor Maintenance & Operations

  
\_\_\_\_\_  
Rebecca D. Gillespie, Ed.D.  
Superintendent

June 15, 2011

**CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGE**

**VIA EMAIL AND U.S. MAIL**

Gary Castillo  
Supervisor Maintenance & Operations  
Winters Joint Unified School District  
909 Grant Avenue  
Winters, CA 95694

Re: Dedication of Sidewalk to City of Winters

Dear Mr. Castillo:

In conversations with Addison Covert of our firm, you previously requested that we prepare the documents necessary to facilitate a transfer of the real property located near Waggoner Elementary School ("Property") from the Winters Joint Unified School District ("District") to the City of Winters ("City"), which Property the City plans to construct upon a pedestrian sidewalk, chain link fence and irrigation (collectively referred to as "sidewalk"). In addition to this letter explaining the necessary steps, we have prepared and enclosed for your review an Offer of Dedication, a Grant Deed, and a Resolution.

1. Consideration for the Conveyance.

The District had originally planned on providing the City with an easement along the path of the sidewalk, but subsequently decided to convey the Property to the City instead. Due to this conveyance of fee title, the District may be entitled to receive compensation from the City. Although the City is at a deference to the District for the conveyance of the Property, the City likely does not expect to pay the District since the original plan was to permit an easement, which would not entail consideration. However, California Education Code section 17556 permits a school district to convey property for public street purposes without consideration. Moreover, adequate consideration may be provided by the City in its improvements to the Property and any land retained by the District. Although the statute does not require consideration, adequate consideration would likely be provided to the District through the City's improvements.

2. Procedures Set Forth in the California Education Code for Conveying the Property to the City.

California Education Code section 17556 permits the governing board of a school district to dedicate or convey to the state or any city, for public street or highway purposes, with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district. Because the City is constructing a pedestrian sidewalk on the Property, this use likely satisfies the definition of "street or highway purposes" under section 17556.

Before ordering the dedication or conveyance, the governing board must, in regular open meeting, by two-thirds vote of all its members, adopt a resolution declaring its intention to dedicate or convey the property. (Cal. Ed. Code § 17557.) The resolution must describe the property proposed to be dedicated or conveyed, must specify the purposes for which it will be dedicated or conveyed, and must specify the terms upon which the property will be dedicated or conveyed. In this regard, please obtain a legal description of the property to be dedicated and attach the legal description as Exhibit A to the resolution.

Additionally, the resolution must fix a time not less than ten days later for the public hearing on the issue of the dedication or conveyance. The date and time for this hearing must be inserted into the enclosed resolution before it is circulated to the board. Notice of adoption of the resolution and of the time and place of the public hearing must be given by posting copies of the resolution signed by the board members, in three public places in the district not less than ten days before the date of the meeting, and by publishing the notice once not less than five days before the date of the meeting in a newspaper of general circulation published in the district or in the county if no newspaper is available within the district. (Cal. Ed. Code § 17558.)

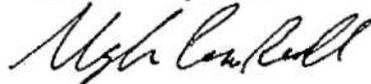
At the time and place fixed in the resolution for the public hearing, or at any other public meeting held within 60 days thereafter, the governing board may adopt the resolution by two-thirds vote of all its members authorizing and directing the president of the governing board, the secretary or the board members to execute a deed of dedication or conveyance of the property and to deliver it. (Cal. Ed. Code § 17559.) The dedication or conveyance is fully effective upon delivery and acceptance of the deed. (*Ibid.*).

Gary Castillo  
June 15, 2011  
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Once you have had an opportunity to review these documents, please do not hesitate to contact our office with any questions.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



Meghan Covert Russell

Enclosures

cc: Rebecca Gillespie  
Gloria Hahn  
Addison Covert

973902.1

RESOLUTION NO. 878-11

A RESOLUTION OF THE BOARD OF TRUSTEES  
OF WINTERS JOINT UNIFIED SCHOOL DISTRICT  
APPROVING AND AUTHORIZING THE DEDICATION OF PROPERTY TO  
IMPROVE SIDEWALK AND PEDESTRIAN ACCESS

WHEREAS, Winters Joint Unified School District ("District") is a public school district organized and existing under the laws of the State of California;

WHEREAS, the District owns the real property described in the legal description attached hereto as Exhibit A and incorporated herein by referenced ("Property");

WHEREAS, the District desires to convey the Property to the City of Winters ("City") for use as a sidewalk and to increase pedestrian access;

WHEREAS, the City desires to obtain the Property from the District for use as a sidewalk;

WHEREAS, California Education Code sections 17556, 17557, 17558, 17559, and 17560 provide for the dedication or conveyance for public street or highway purposes, either with or without consideration and without the vote of electors of the District first being taken, any real property belonging to the District, either in fee or any lesser estate or interest therein;

WHEREAS, the District's Board of Trustees intends to provide the City with an Offer of Dedication of the Property and upon the City's acceptance of the Offer of Dedication, the District intends to convey the Property to the City by a Grant Deed describing the Property and setting forth the terms and conditions for its dedication to the City; and

WHEREAS, it is the desire of the District's Board to take all additional actions and approve all additional steps necessary to complete the dedication of the Property consistent with the terms and conditions of the Offer of Dedication, Grant Deed, and this Resolution.

**NOW, THEREFORE, it is hereby resolved by the Board of Trustees of the District, as follows:**

Section 1. Recitals. The above recitals are true and correct.

Section 2. Attachments. The legal description for the Property is that legal description described in Exhibit A attached hereto.

Section 3. Public Hearing Date, Time, and Location. The Board will hold a Public Hearing on Thursday, September 1, 2011 at 6:30 pm or shortly thereafter, in the District Office located at 909 West Grant Avenue, Winters, California to hear any opposition from District voters/electors regarding this dedication of the Property. Notice will be provided to the public through a newspaper of general circulation.

APPROVED, PASSED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2011, by the Board of Trustees by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President, of the Board of Trustees

ATTEST:

\_\_\_\_\_  
Secretary, of the Board of Trustees

Exhibit A

(Legal Description of Property)

972090.1

Exhibit A

### LAND DESCRIPTION

THAT portion of real property situate in the City of Winters, County of Yolo, State of California, and being a portion of the Rancho Rio De Los Putos, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being a portion of that Parcel of land as described in Book 462 of Official Records at Page 212, said County Records, being more particularly described as follows:

BEGINNING at a point on the Northerly line of said Parcel of land as described in said Book 462 of Official Records at Page 212, said County Records, said point being distant South 65°00'00" West 32.42 feet from the Northeasterly corner of said Parcel of land; thence, from said POINT OF BEGINNING and along said Northerly line, South 65°00'00" West 685.00 feet to the Northwesterly corner of said Parcel of land; thence, along the Westerly line of said Parcel of land, South 25°00'00" East 10.00 feet; thence, leaving said Westerly line and along a line parallel with and distant 10.00 feet Southerly of as measured right angles from said Northerly line of said Parcel of land, North 65°00'00" East 675.00 feet; thence, leaving said parallel line, North 20°00'00" East 14.14 feet to the POINT OF BEGINNING.

Containing 6,800 square feet of land, more or less.

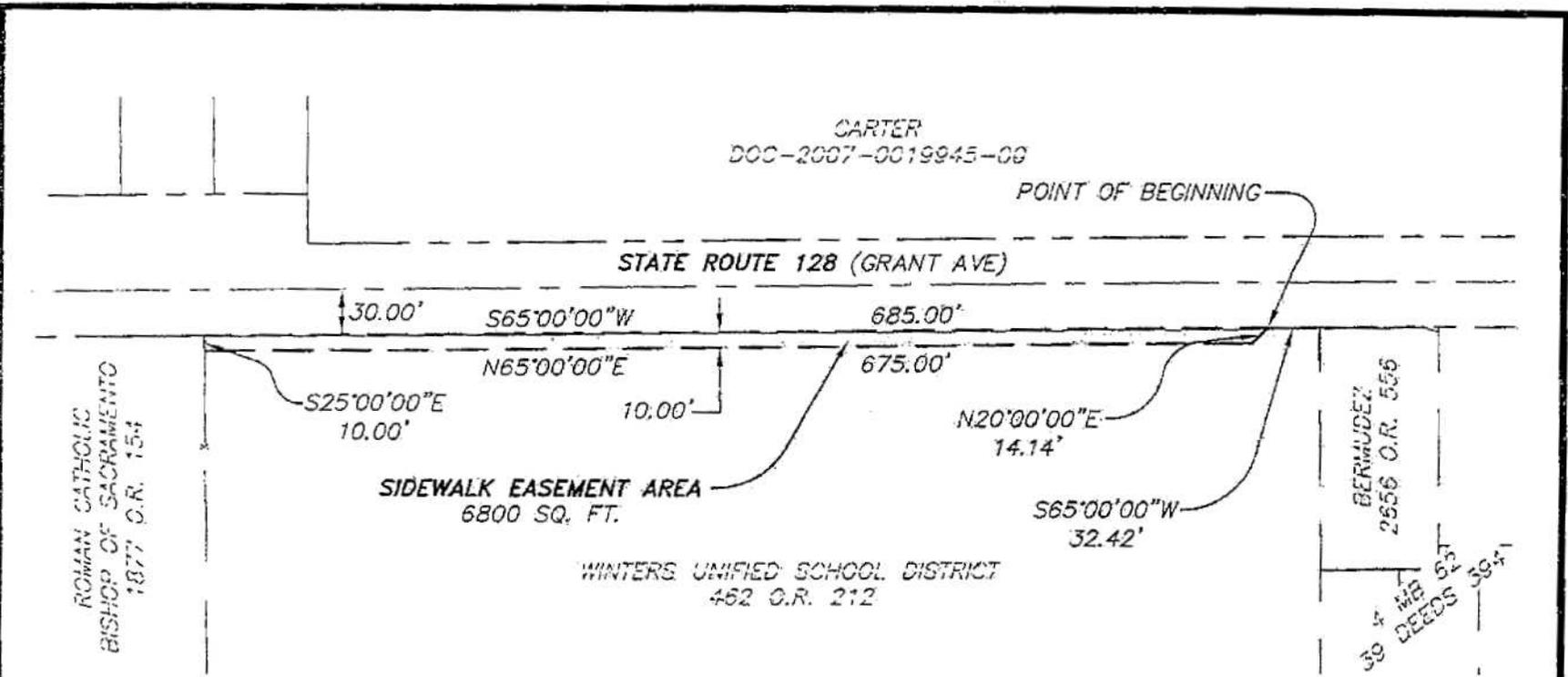
End of description.

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

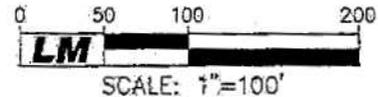


  
Christopher W. Lerch

2-18-2011  
Date



*Christopher W. Lerch*  
 CHRISTOPHER W. LERCH DATE 2-18-2011



THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY DIRECTION IN ACCORDANCE WITH SECTION 8761 OF THE PROFESSIONAL LAND SURVEYORS' ACT.

**LM LAUGENOUR AND MEIKLE**  
 CIVIL ENGINEERING · LAND SURVEYING · PLANNING  
 608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755  
 P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4802

EXHIBIT TO ACCOMPANY DESCRIPTION  
**CITY OF WINTERS**  
 LOCATED IN A PORTION OF THE RANCHO RIO DE LOS PUTOS, TOWNSHIP 8 NORTH, RANGE 1 WEST, MDM, AND ALSO BEING A PORTION THAT PARCEL OF LAND AS DESCRIBED IN BOOK 462 OF OFFICIAL RECORDS AT PAGE 212, SAID COUNTY RECORDS, CITY OF WINTERS, YOLO COUNTY, STATE OF CALIFORNIA  
 SHEET 1 OF 1 FEBRUARY 18, 2011

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, hereinafter referred to as the "Agreement," is made and entered into by and between the Winters Joint Unified School District ("District") and the City of Winters ("City") for the following purposes and with references to the following facts:

### RECITALS

A. WHEREAS, the District's Board of Trustees approved Resolution No. \_\_\_\_\_, on \_\_\_\_\_, 2011, to authorize the conveyance of certain real property located at \_\_\_\_\_ ("Property") to the City for use as a public sidewalk by way of an Offer of Dedication and Grant Deed; and

B. WHEREAS, the City now desires to improve pedestrian and vehicular access by constructing certain improvements to the Property and surrounding areas.

### AGREEMENT

1. Sidewalk and Paving. The City will construct and maintain a separated sidewalk, including a heavy sidewalk in the area of the bus crossing and entrances on the Property. The City will pave the remainder of the grass area between the two (2) rolling gates, adjacent to the new sidewalk, on the Property.

2. Relocation of Fencing and Gates. The City will erect a new six-(6) foot high, chain-link fence, which will extend approximately ten (10) feet onto the District's site adjacent to the Property. The City will relocate the existing rolling gates onto the new fence line.

3. Irrigation Modification. The City will install new irrigation and modify existing irrigation as necessary to accommodate the new sidewalk and the relocation of the fence and gates adjacent to the Property.

4. Maintenance by the District. The City will maintain the area north of the fence to the Caltrans right-of-way. The District will not be responsible for maintenance of the area north of the fence, but the District will maintain the fence, gates and area south of the fence that lies on the District's property.

5. Legal Fees. The City will provide reimbursement for any legal fees incurred by the District related to this Property transaction.

6. Liability. The City shall hold harmless, indemnify and release the District and its successors and assigns from any claim, action, liability, loss, damage or suit arising from the operation or maintenance of the Property.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date set forth below.

DATED: \_\_\_\_\_, 2011

WINTERS JOINT UNIFIED SCHOOL DISTRICT

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

CITY OF WINTERS

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

NO FEE DOCUMENT  
Government Code § 6103

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Winters Joint Unified School District  
909 Grant Avenue  
Winters, CA 95694  
Attention: Facilities Department

The Above Space for Recorder's Use Only

**OFFER OF DEDICATION**

Dedication. Winters Joint Unified School District ("Grantor"), the owner of the real property located in the City of Winters, County of Yolo and State of California as described in Exhibit A ("Property"), attached to and incorporated into this Offer of Dedication, hereby makes an irrevocable offer of dedication to the City of Winters ("Grantee"). Grantor hereby grants to Grantee fee title in the Property. This Offer of Dedication is authorized pursuant to Education Code section 17556.

Acceptance. The parties agree to prepare and execute a final Grant Deed granting fee title to the Grantee. The terms of this Offer to Dedicate shall be incorporated into such Grant Deed. Legal acceptance of this Offer to Dedicate the Property shall be deemed to occur as of the date the Grant Deed, attached in substantially final form as Exhibit B and incorporated into this Offer of Dedication by reference, is recorded with the Yolo County Clerk Recorder.

Dated: \_\_\_\_\_, 2011

GRANTOR:

WINTERS JOINT UNIFIED SCHOOL  
DISTRICT

By: \_\_\_\_\_  
Rebecca D. Gillespie, Superintendent

ACKNOWLEDGEMENT

STATE OF CALIFORNIA    )  
  ) ss.  
COUNTY OF YOLO        )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

(seal)

**Exhibit B**

(Form of Grant Deed)

**OFFICIAL BUSINESS:**  
Document entitled to free recording  
Per Government Code section 27383.

Recording requested by and  
When recorded mail to:

Winters Unified School District  
909 Grant Avenue  
Winters, CA 95694  
Attention: Facilities Department

---

**GRANT DEED**

---

**TITLE ORDER NO.**

**ESCROW NO.**

**APN:**

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Winters Joint Unified School District**, a school district duly organized and existing under the Constitution and the laws of the State of California,

grants to the

**City of Winters**, a city duly organized and existing under the Constitution and the laws of the State of California,

all right, title, and interest in the Real Property located in the City of Winters, County of Yolo, State of California, as described in the attached Exhibit A.

Dated: \_\_\_\_\_

**GRANTOR:**

**WINTERS JOINT UNIFIED SCHOOL  
DISTRICT**, a school district

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

Name: \_\_\_\_\_

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



**RECORDING REQUESTED BY:**

CITY OF WINTERS

**SPACE ABOVE THIS LINE FOR  
RECORDER'S USE**

**WHEN RECORDED MAIL TO:**

City Clerk  
City of Winters  
318 First Street  
Winters, CA 95694

**DOCUMENT TRANSFER TAX \$ 0**  
"No Fee Required" (Government Code Section 6103 & 27383)  
recorded for the benefit of: The City of Winters

\_\_\_\_\_  
City of Winters, by: (signature required above this line)

**G R A N T D E E D**

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,**

Winters Joint Unified School District

**GRANT(S) TO CITY OF WINTERS, A MUNICIPAL CORPORATION, all of that real property situate in the County of Yolo, State of California, described as follows:**

A permanent Public Right of Way in and to that portion of the real property situated, lying and being in the City of Winters, County of Yolo, State of California, such easement being more particularly described in Exhibits A composed of two (2) pages, attached hereto and made a part hereof, and;

The purpose of the easements are for, construction, installation, removal, repair, replacement, reconstruction, maintenance and operation, and use for public right of way/ public sidewalk and associated appurtenances, over, along, upon, under, and across said property.

**Grantor Further Grants to Grantee the right to:**

1. Grant said easement or a portion thereof to other public utilities or public agencies;
2. Review and control of the landscaping planting, trimming, maintenance and/or removal of any trees or other plants within said Easement;
3. Review and control all signage and other appurtenances on said easement;
4. Review and control all vehicle access across said property;

Said Public Right of Way excludes maintenance and operation of other facilities including fences, gates, and landscape that lay within the easement boundaries except where those facilities are utilized specifically for public sidewalk uses. ~~Grantor retains permanent vehicle access across said Public Right of Way.~~ However, the City of Winters shall at all times be financially and legally responsible for the public sidewalk.

**Signature(s) must be acknowledged by a Notary Public.**

IN WITNESS WHEREOF, this Public Service Easement Deed is executed by the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 2011

Signature: \_\_\_\_\_

WINTERS JOINT UNIFIED SCHOOL DISTRICT  
(Print Grantor's Legal Name, Company or Corporation as applicable)

By: \_\_\_\_\_  
(Print name and title of signatory if company or corporation)

“This conveyance is accepted by the undersigned on behalf of the City of Winters pursuant to City Council Resolution No. \_\_\_\_\_, adopted by City Council on the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2011.”

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
Nanci Mills, City Clerk

### LAND DESCRIPTION

THAT portion of real property situated in the City of Winters, County of Yolo, State of California, and being a portion of the Rancho Rio De Los Puntos, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being a portion of that Parcel of land as described in Book 462 of Official Records at Page 212, said County Records, being more particularly described as follows:

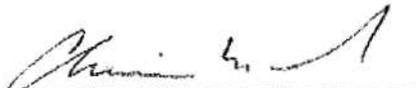
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Containing 6,800 square feet of land, more or less.

End of description.

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



  
\_\_\_\_\_  
Christopher W. Lerch

2-18-2011  
Date

CARTER  
DOC-2007-0019945-00

POINT OF BEGINNING

STATE ROUTE 128 (GRANT AVE)

ROMAN CATHOLIC  
BISHOP OF SACRAMENTO  
1877 C.R. 154

30.00'

S65°00'00"W

685.00'

S25°00'00"E  
10.00'

N65°00'00"E

10.00'

675.00'

N20°00'00"E  
14.14'

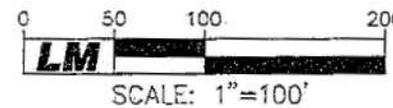
SIDEWALK EASEMENT AREA  
6800 SQ. FT.

S65°00'00"W  
32.42'

WINTERS UNIFIED SCHOOL DISTRICT  
462 O.R. 212

BERMUDEZ  
2656 C.R. 556

39 DEEDS  
4 MB 52  
594'



*Christopher W. Lerch*  
CHRISTOPHER W. LERCH

Z-18-2011  
DATE

THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY  
DIRECTION IN ACCORDANCE WITH SECTION 8761 OF  
THE PROFESSIONAL LAND SURVEYORS' ACT.

EXHIBIT TO ACCOMPANY DESCRIPTION  
**CITY OF WINTERS**

LOCATED IN A PORTION OF THE RANCHO RIO DE LOS PUTOS,  
TOWNSHIP 8 NORTH, RANGE 1 WEST, MDM, AND ALSO BEING A  
PORTION THAT PARCEL OF LAND AS DESCRIBED  
IN BOOK 462 OF OFFICIAL RECORDS AT PAGE 212,  
SAID COUNTY RECORDS, CITY OF WINTERS,  
YOLO COUNTY, STATE OF CALIFORNIA  
SHEET 1 OF 1  
FEBRUARY 18, 2011

**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) 662-4602





## STAFF REPORT

**TO:** Honorable Mayor and Council Members  
**DATE:** September 20, 2011  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Nick Ponticello, City Engineer  
**SUBJECT:** Approve Materials Sampling and Testing with Matriscope Engineering Laboratories for the Construction of the I-505/Gateway Utilities Phase 2, Project No. 021-09.02

---

**RECOMMENDATION:** Staff recommends the City Council approve a work order with Matriscope Engineering Laboratories (Matriscope) to perform materials sampling and testing for the I-505/Gateway Utilities Phase 2, Project No. 021.09.02 in the amount of \$16,414.75.

**BACKGROUND:** On September 6, 2011 City Council awarded a construction contract for the I-505/Gateway Utilities Phase 2 project. During Phase 1 of the project, Matriscope provided the Geotechnical Report and testing services through their On-Call contract with the City. The On-Call contract has expired and the City is currently receiving proposals to select a new On-Call material sampling and testing firm. However, construction of this Phase 2 project will begin before an On-Call vendor is selected.

Since Matriscope provided sampling and testing services during Phase 1 and the City has not selected an On-Call vendor, Staff is requesting that Council authorize Matriscope to perform these services for an amount not to exceed \$16,414.75 based on the attached proposal..

**ALTERNATIVES:** Council can elect to delay the start of construction until an On-Call vendor is selected. However, with the rainy season approaching, weather conditions could hamper construction and further delay completion of this project..

**FISCAL IMPACT:** The cost of the project is being paid through 2007 Sewer Bond. A Zone of Benefit will be established to reimburse the City through the development of the properties..

Attachment: Matriscope Proposal



September 12, 2011

Proposal No.: P091311CC

**City of Winters c/o Ponticello Enterprises**  
**Jim Fletter**  
**Project Manager**  
1216 Fortna Ave  
Woodland, CA 95776

**Phone No.:** (530) 668-5883 x 208  
**Fax No.:** (530) 668-5893

**Subject: Proposal for Acceptance Sampling and Testing Services**  
**Wastewater Lift Station (I-505/Gateway Utilities) Phase II Project**  
**Winters, CA**

**Dear Mr. Fletter,**

MatriScope Engineering Laboratories, Inc. (MatriScope) is pleased to present to the City of Winters c/o Ponticello Enterprises (City) our proposal to provide acceptance sampling and material testing services for the Wastewater Lift Station (I-505/Gateway Utilities) Phase II project in Winters, California. The MatriScope professional staff and team of experienced technicians offer your project the highest possible caliber of personnel required to bring the entire scope of the project to a successful completion.

MatriScope provides geotechnical and environmental engineering, construction inspection and material testing services complete with a Caltrans, AASHTO, AMRL, CCRL, DSA (LEA#138), and USACE, accredited laboratory. We provide proactive service to our clients through efficient management and cost control, and by providing excellent personnel to each assignment. We believe that our extensive experience and ability to respond timely to your firm's requests for services will result in superior customer service throughout the duration of this contract.

The attached pricing proposal details our proposed services and fees for this project. We will assume normal conditions will prevail and work will progress free of any disruptions or unforeseen obstacles. Please consider that we are dependent upon your construction schedule, which is a factor in determining our ultimate cost. We propose to conduct the testing services on a time and materials basis.

MatriScope must conform to the project specifications, as well as to the contractors' and subcontractors' work schedules, which can vary according to job conditions. If additional services are required beyond the scope of this proposal, those services would be billed in accordance with the unit prices quoted and/or our 2011 Schedule of Fees and Services. We propose to conduct the material testing and inspection services on a time-and-materials basis.

MatriScope has a minimum billing increment for our field technicians. Field technicians' charges are billed at a two-hour minimum and four-hour increment. Overtime (work over 8 hours and Saturdays) or

premium time (Sundays and Holidays) are billed at 1.5 x and 2.0 x, respectively, of our stated hourly rates. All inspectors and/or materials testing will be provided upon 24 hours prior notice of the time and date of the requested service. Same day request for service will be billed at 1.5 x hourly rate.

MatriScope Engineering Laboratories, Inc. will provide a certificate of insurance providing our standard coverage, which consists of:

Commercial General Liability (CGL)	\$1,000,000 each occurrence
Bodily Injury & Property Damage	\$2,000,000 aggregate
Workers Compensation	\$1,000,000
Automobile Liability	\$1,000,000

We will provide an itemized listing of all tests and inspections performed. All billing services performed in the field will be charged on an hourly basis. An administration fee of ten percent will be added to all invoices. Equipment charges are additional. All payments are net-30 days from the date of invoice and are considered past due thereafter. A finance charge of one and a half percent per month service charge (eighteen percent per annum) may be assessed on past due accounts.

It is our common goal to complete this project on time and on budget, and we look forward to participating on the Wastewater Lift Station project and contributing to its success. If you should have any questions regarding our services or require any additional information, please do not hesitate to contact me at (916) 375-6700.

Submitted for Your Approval,

**MatriScope Engineering Laboratories, Inc.**



**Carla Collins Mixon**  
**Business Development Manager**

**19 EARTHWORK**

	No. Visits	No. Units	Rate/Ea.	Total
<b>Field Services</b>				
a. Soil Technician (6 days)	6 hrs/day w/travel	36	\$ 78.00	\$ 2,808.00
b. Transport Mileage (6 trips)	70 miles/trip	420	\$ 0.65	\$ 273.00
c. Nuclear Gauge Equipment		36	\$ 15.00	\$ 540.00
<b>Laboratory Services</b>				
c. Modified Proctor (ASTM D1557)		1	\$ 225.00	\$ 225.00
e. R-Value Confirmation Tests (CTM 301)		1	\$ 300.00	\$ 300.00
<b>EARTHWORK TOTAL:</b>				<b>\$ 4,146.00</b>

**26 AGGREGATE BASEROCK (3/4" Class 2)**

	No. Visits	No. Units	Rate/Ea.	Total
<b>Field Services</b>				
a. Soil Technician (5-6 days)	6 hrs/day w/travel	32	\$ 78.00	\$ 2,496.00
b. Transport Mileage (5 trips)	70 miles/trip	350	\$ 0.65	\$ 227.50
c. Nuclear Gauge Equipment		32	\$ 15.00	\$ 480.00
<b>Laboratory Services</b>				
c. Modified Proctor (ASTM D1557)		2	\$ 225.00	\$ 450.00
<b>AGGREGATE BASEROCK TOTAL:</b>				<b>\$ 3,653.50</b>

**ACCESS ROAD / COMPACTION**

	No. Visits	No. Units	Rate/Ea.	Total
<b>Field Services</b>				
a. Soil's Technician (3 days)	8 hrs/day w/travel	24	\$ 78.00	\$ 1,872.00
b. Transport Mileage (3 trips)	70 miles/trip	210	\$ 0.65	\$ 136.50
c. Nuclear Gauge Equipment		24	\$ 15.00	\$ 360.00
<b>Laboratory Services</b>				
d. Sieve Analysis (CTM 202)		1	\$ 125.00	\$ 125.00
e. Modified Proctor		1	\$ 225.00	\$ 225.00
<b>HOT MIX ASPHALT TOTAL:</b>				<b>\$ 2,718.50</b>

**73 CONCRETE CURBS, SIDEWALKS, GUTTERS, PADS & LIFT STRUCTURES**

	No. Visits	No. Units	Rate/Ea.	Total
<b>Field Services</b>				
a. Concrete Inspector (4 days)	6 hrs/day w/travel	24	\$ 78.00	\$ 1,872.00
b. Sample Pick-up (4 days)	2 hrs/day w/travel	8	\$ 78.00	\$ 624.00
c. Transport Mileage (6 trips)	70 miles/trip	420	\$ 0.65	\$ 273.00
<b>Laboratory Services</b>				
c. Concrete Compression Testing (4 set of 4 cyts.)		16	\$ 30.00	\$ 480.00
<b>CONCRETE CURBS AND SIDEWALKS TOTAL:</b>				<b>\$ 3,249.00</b>

**PROJECT MANAGEMENT**

a. Project Manager - Preconstruction Meeting	3 hrs/day w/travel	3	\$ 150.00	\$ 450.00
c. Mileage (1 trip)	70 miles/trip	70	\$ 0.65	\$ 45.50
d. Senior Staff Professional - Testing Oversight & Final Reports	1 hr/day	4	\$ 165.00	\$ 660.00
<b>PROJECT MANAGEMENT TOTAL:</b>				<b>\$ 1,155.50</b>

**SUBTOTAL: \$ 14,922.50**

10% Administrative Fee: \$ 1,492.25

**PROJECT TOTAL: \$ 16,414.75**



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: September 20, 2011  
THROUGH: John W. Donlevy, Jr., City Manager  
FROM: John C. Wallace, City Attorney  
SUBJECT: 314 Railroad Avenue - Lease Assignment

---

**RECOMMENDATION:** Conditional Approval

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

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

September 7, 2011

Shaunie Briggs  
20 Rail Road Ave.  
Winters, CA 95694

Re: Cody's Restaurant Asset Purchase

Dear Shaunie:

This letter ("Letter of Intent") constitutes a proposal from Rory Linton and Theresa Linton, Husband and Wife, ("Seller") to sell to Shaunie Briggs ("Purchaser") substantially all of the assets of Cody's Restaurant. This letter sets forth an outline of proposed terms and conditions of the purchase and evidences our desire to proceed in good faith to negotiate a final agreement for purchase.

The following terms and conditions apply to the proposed purchase:

- 1. Assets Purchased.** The assets purchased will be the restaurant equipment that the Seller owns and uses in the operation of their business. The purchase will not include current assets such as cash, cash equivalents, prepaid items, and accounts receivable, or any intangible assets.
- 2. Assignment of Lease.** Due to ambiguous representations by the City of Winters concerning the transfer of the lease, the Seller and Purchaser understand the exact method by which possession of the property will be transferred to Purchaser is at this time undetermined, but, regardless of the method used to transfer possession, Purchaser and Seller both recognize Seller's desires to obtain the thirty thousand dollar (\$30,000.00) relocation fee described in paragraph twenty four (24) of the current lease for 314 Rail Road Avenue and that the method of transfer to be selected will be a method that results in the Seller's acquisition of said fee. That being said and understood, the following is proposed: at the time of the purchase, the Seller will transfer possession of the premises to Purchaser by either assigning or sub-leasing their leasehold interest in the real property on which their business is presently operated and will transfer title to any tenant improvements. If the property is to be assigned or sub-leased, Purchaser and Seller will both use best efforts to obtain any consent required from the lessor and any other persons with an interest in the property or lease. In lieu of Assigning or Sub-Leasing, Purchaser and Seller may agree that Seller will terminate the current lease on terms agreeable with Seller and the City and that Purchaser will thereafter enter into a new lease with the City on terms agreeable to Purchaser and the City.
- 3. Purchase Price.** The purchase price will be [REDACTED]. A down payment of [REDACTED] will be made at the closing of the purchase, and the remaining balance will be paid in accordance with a promissory note that amortizes such

balance over twelve monthly installments including [REDACTED]  
[REDACTED] Payment of the promissory note will be secured by a security interest in the assets purchased and will be personally guaranteed by Shaunie Briggs.

**4. Assumption of Liabilities.** Purchaser will not assume any liabilities of the Seller, whether known or unknown, or contingent or fixed.

**5. No Financing Contingency.** We understand the Purchaser's financial resources to be sufficient to make the purchase without third party financing. Purchaser's obligation to complete the purchase will not be subject to our ability to obtain financing.

**6. Closing.** This purchase will be closed as soon as possible, but not later than November 1, 2011, at the office of Arthur Samuel Humphrey, Attorney at Law, which is located at 78 Cernon Street, Suite A, Vacaville, CA 95688.

**7. Confidentiality.** Premature disclosure of this purchase could have an adverse effect on the Seller's business and Purchaser's businesses. Accordingly, neither Purchaser nor the Seller will issue or approve a news release or make any other public announcement concerning this purchase without the prior approval of the other as to the contents and timing of its release.

**8. Definitive Agreement.** After the City of Winter's disposition with regard to the lease is determined, if the Purchaser wants to continue to negotiate in good faith seeking to complete a purchase on the terms outlined in this letter, Seller will instruct their lawyer to commence preparation of a definitive purchase agreement and the other necessary documents.

**9. No Binding Commitment.** Except as otherwise specifically stated in this letter, the letter does not create a binding agreement to purchase or sell. Any binding obligations will only arise under the definitive purchase agreement which has yet to be prepared. Until a definitive purchase agreement is prepared and signed, either Purchaser or the Seller has the right to terminate negotiations relating to this purchase at any time, for any reason whatsoever, without liability to the other party.

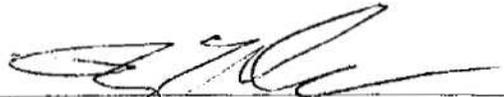
**13 Exclusive Dealing.** At the present time, Seller is not negotiating with any other person for the Sale of a Cody's Restaurant or its assets, and Purchaser is not negotiating with any other person regarding any purchase that is contemplated to be made in lieu of the purchase outlined in this letter. We agree that until the negotiations contemplated by this letter are formally terminated neither of us will enter into any such negotiation without first notifying the other in writing.

**14 Expenses.** Purchaser and the Seller will each bear their own expenses in connection with the purchase.

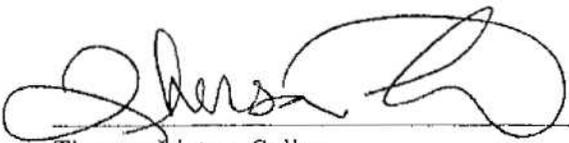
**15 Prior Negotiations.** This letter constitutes the entire agreement between Purchaser and Seller and supersedes all prior communications, agreements and understandings, written or oral, with respect to the purchase.

If the Purchaser wants to proceed in good faith to negotiate a final agreement for the purchase of the assets of Cody's Restaurant on the terms outlined in the letter, please date and sign the enclosed copy of the letter and return it to us. We look forward to working with you on this proposed purchase and hope that it will be advantageous to all of us.

Dated: 9/8/11

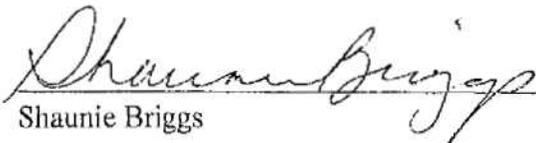
  
Rory Linton, Seller

Dated: 9/8/11

  
Theresa Linton, Seller

The Purchaser wants to proceed in good faith to negotiate a final agreement for the purchase of the assets of Cody's Restaurant on the terms outlined in this letter and agrees that the negotiations will be conducted in accordance with this letter.

Dated: 9/8/11

  
Shaunie Briggs



September 6, 2011

Rory and Teresa Linton  
Cody's Restaurant  
314 Railroad Ave.  
Winters, Ca 95694

**Re: Restaurant Sale and Transfer of Lease**

Dear Mr. and Mrs. Linton:

The City has received your letter dated September 2, 2011 regarding the sale of your business and transfer of lease to Shaunie Briggs.

In order to expedite the approval of this lease transfer, the City will require the following:

- A. A notarized copy of the sale agreement for the business and an acknowledgement of the acceptance of the terms of the lease and the legal transfer to Ms. Briggs. This should be provided by you in the form of a jointly executed Tenant Estoppel Certificate and Assignment.
- B. Acknowledgement that the payment of the relocation settlement will only occur at the termination of the transferred lease and the final vacation of the premises by all parties.
- C. A letter from Ms. Briggs acknowledging the full terms of the lease. She should also agree to sign an amended lease agreeing to the balance of the terms and duration. This will include a full acknowledgement that the lease term expires on September 30, 2012.
- D. A description of the proposed Briggs business and a defined use for the premises.
- E. Cody's must make current all sales taxes owed to the City of Winters and the State Board of Equalization.

The City will also require that Ms. Briggs provide the City with the necessary insurance documents which name the City of Winters as an additional insured including workers compensation and general liability insurance.

Please respond in writing, no later than Thursday, September 22, 2011.

Congratulations on the sale of your business and best of luck in the future.

Sincerely,

John C. Wallace  
City Attorney  
City of Winters

318 First Street  
Winters, CA 95694  
Phone. 530.795.4910  
Fax. 530.795.4935

COUNCIL MEMBERS
Harold Anderson
Michael Martin
Tom Stone

MAYOR
Woody Fridae
MAYOR PRO TEM
Cecilia Aguiar-Curry

CITY CLERK
Nanci Mills
TREASURER
Michael Sebastian
CITY MANAGER
John W. Donlevy, Jr.

Rory & Theresa Linton  
Cody's Restaurant  
314 Railroad Ave.  
Winters, CA 95694  
530 795 2283

September 2, 2011

Dear Councilpersons and City Staff:

I am excited to announce that an agreement has been made with Shaunie Briggs to purchase Cody's Restaurant. We are excited for her to take over and need to complete the process. We engaged in conversation with the City Staff regarding the lease and sale of the business in January 2011. It wasn't till April 28<sup>th</sup> that we received a letter (attached) from Dan Maguire regarding lease and sale of the business. This letter was per council decision in a closed meeting prior to April 28, 2011. Shaunie Briggs has been trying to get a longer term lease since then and we have supported her. After a few more months of no action from the City, Shaunie Briggs, my Wife, Theresa, and myself agree to follow what is written in the letter in regards to the lease. We would like to thank you and we will continue on with the sale of our business. We will expect the City to carry out their obligation stated in the letter within 48 hours from the date of this letter.

Thank You For Your Support



Rory Linton

Theresa Linton





April 28, 2011

To: Rory Linton, Theresa Linton, dba Cody's  
314 Railroad Avenue  
Winters, CA 95694

Re: Assignment of Lease, Relocation Assistance

Dear Rory and Theresa:

You asked about sale of your business to a buyer, and a buyer's lease terms after purchase.

Existing Lease: The Winters Community Development Agenda ("CDA") acquired the real property at 314 Railroad Avenue, Winters, in April of 2010. A lease was negotiated with you as part of that acquisition. The CDA this year deeded the property to the City of Winters ("CITY"), with the provision that the City of Winters would use the property to continue the CDA's Redevelopment Plan for downtown. The relevant portions of the lease are as follows:

Lease term: The lease ends by its terms on September 30, 2012.

Rent: Rent is \$375 per month, payable through September 30, 2012.

Options/Renewals: There is no specific right to renew this lease. You have a Right of First Refusal should the CITY decide to continue leasing the property. Lease rent would be negotiable, and would not exceed \$2,500 per month. There is no obligation by either CITY as Landlord or you as Tenant to re-lease the property.

Assignment: Under the lease, you cannot assign the lease legally without the written permission of CITY.

Notices: Under the lease, you are entitled to 6 months' notice from CITY should CITY intend not to renew the lease. Therefore, you are entitled to receive notice by March 31, 2012. No notice has been given.

Relocation: Under California law, development which "displaces" an existing business creates an obligation on the part of the public agency acquiring property to provide Relocation Assistance. In this case the possibility of Relocation as part of the Redevelopment Plan was discussed, negotiated, and made part of the lease terms. The two relevant sections are:

318 First Street  
Winters, CA 95694  
Phone 530.795.4910  
Fax. 530.795.4935

COUNCIL MEMBERS  
Harold Anderson  
Michael Martin  
Tom Stone

MAYOR  
Woody Fridae  
MAYOR PRO TEM  
Cecilia Aguiar-Curry

CITY CLERK  
Nanci Mills  
TREASURER  
Michael Sebastian

CITY MANAGER  
John W. Donlevy, Jr.



Rent at less than fair market levels. Rent was set at \$375 per month over the lease term. The reduced rent, over the lease term, resulted in a \$99,000 benefit to you. That was considered part of the relocation benefits.

A lump sum payment of \$30,000 is payable to you, should the lease not be renewed, on termination of your lease September 30, 2012.

The lump sum payment and reduced rent represent the agreed upon Relocation Assistance. No further assistance is required on the part of CITY.

Assignment/Development: Development of 314 Railroad Avenue is part of a larger City focus on development of the entire half-block parcel. No application has been submitted to the City for development, but the City is aggressively seeking such development in compliance with the City's fiscal sustainability findings and policy. Because of that, the City is unable to give you any assurance that a term lease will be renegotiated at the end of the lease term. The City's redevelopment policies provide for the incorporation of existing businesses, but with private new development the City cannot provide figures on what rent would be after site development. Because of this sought-after development, the City cannot consent to an Assignment of the Lease without a formal agreement with a Buyer that the lease is being assigned only with a waiver of Relocation Assistance to the buyer.

Early termination of the Lease: As the City indicated, the City will cooperate with an early termination of your lease, negotiating the remaining lease rent, and paying you the Relocation Fee set forth in the lease.

Please have any prospective buyer(s) contact me directly regarding month to month lease terms, terminable on 90 days' notice. Rent would be at market rate, and based on the business adjacent to your would be at least \$1,900 per month.

Please contact me if you have questions.

Dan Maguire,  
City of Winters  
318 First Street  
Winters, CA 95694  
(530) 795-4910, Ext. 118

318 First Street  
Winters, CA 95694  
Phone. 530.795.4910  
Fax. 530.795.4935

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CITY CLERK  
Nanci Mills  
TREASURER  
Michael Sebastian

CITY MANAGER  
John W. Donlevy, Jr.

## LEASE

THIS LEASE, is executed in duplicate at Winters, California as of March 31, 2010, by and between the City of Winters Community Development Agency, a public body, corporate and politic ("Agency" or "Landlord"), and THERESA E. LINTON and RORY EUGENE LINTON, husband and wife, individuals ("Cody's" or "Tenant").

### RECITALS

A. The Agency is acquiring the real property commonly known as 314 Railroad Avenue, Winters, California ("The Property Premises").

B. The Agency is charged with implementing the City of Winters Community Development Project Area Plan (the "Redevelopment Plan") and has legal authority under Health and Safety Code section 33430 to lease any property within the redevelopment project area for purposes of redevelopment.

C. Cody's and Linton Screen Printing are family owned operations located in Winters, California and currently is doing business on the property.

D. Agency recognizes that Cody's business is an asset to the community and that continuing business at the Premises will help stimulate business activity in the downtown area of Winters. Consequently, Agency desires to assist Cody in continuing business on The Premises.

E. Agency can extend such assistance by entering into a Lease for the Premises, at below-market rent, in lieu of future relocation assistance, except as provided herein, which may be required of the Agency for existing tenants on property acquisition, and in exchange for a reduced purchase price of the land and building

F. Cody's agrees to diligently and actively continue its existing business on the Premises, to waive any future right to further relocation benefits arising from the Agency's acquisition of the property, except as provided herein, and to fulfill the terms and conditions of this Lease. Cody's acknowledge that in addition to occupying the premises as Tenants they are the Sellers of the Premises to the Agency.

G. This Lease is conditioned on the use of the Premises in conformity with the Redevelopment Plan, and Downtown Master Plan, as referenced in the Summary Report approved with the acquisition of The Premises by the Agency.

### AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals. The recitals above are incorporated by reference as though fully stated herein.

2. Purchase/Leaseback/Condition of Premises. Agency is purchasing the 314 Railroad Avenue, Winters property from a partnership, a partnership which includes Tenant. Tenant has occupied The Premises from the original construction of the building. Because of that, Tenant accepts the building in its current condition, "AS IS", There is a roof leak but the extent of required repairs is unknown. The Premises have been inspected by The Agency, and both parties accept the property "AS IS" in its current condition. Agency has agreed to lease the property to Tenant, to take effect April 1, 2010, or upon completion of Agency's property acquisition, whichever is later.

3. Lease in Lieu of Relocation. The parties agree that this below-market lease is executed in part in lieu of relocation benefits. More specifically the parties agree that at \$1.00 per square foot of commercial space the rent would be approximately \$3,675.00 per month. Total savings over the term of the lease is approximately \$99,000. The parties agree that this, together with other compensation specified in this Lease, is adequate compensation in lieu of direct relocation benefits. Upon termination of the lease term, Tenant shall have no right to claim any additional relocation benefits except as provided herein.

4. H&S Section 33380, 33340 Acknowledgment. California Redevelopment Law includes the right of owner participation upon acquisition of real property for redevelopment. Tenant/Owners so acknowledge, and specifically consent to this sale and leaseback instead.

5. Term. The term of this Lease shall be for thirty (30) months, commencing on April 1, 2010 or upon the property acquisition date, if later, (the "Commencement Date") and expiring, unless sooner terminated as provided in this Lease, on September 30, 2012 (the "Lease Term").

6. Rent. Commencing on the Commencement Date, Tenant shall pay as rent, without deduction or set-off, THREE HUNDRED AND SEVENTY-FIVE Dollars (~~\$375.00~~) per month (the "Lease Rent"), payable on the first of each month in advance. If the Lease Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month.

7. Security Deposit. A security deposit of \$1,000 is required with this lease. This amount shall be deducted from the Lessee's proceeds as part of escrow.

8. Other Charges/Obligations. Tenant acknowledges that they will be responsible for water, electric, gas, garbage and sewer utility charges applicable to the property in relation to the Lessess business. As additional consideration for the below-market rent of the Premises, Tenant is obligated to pay maintenance, repair and replacement costs on the interior of the Premises. Tenant hereby assumes such obligations and charges. If Tenant does not pay such amounts, Landlord may (but is not obligated) to do so on Tenant's behalf and charge such sums to Tenant as additional rent. Any sums owed by Tenant to Landlord under this Lease shall be considered "additional rent" and shall be due and payable in the same manner as Lease Rent.

9. Tenant's Maintenance and Repair/Alterations. Tenant shall, at its own expense, undertake to keep, maintain and repair all interior portions of the Premises, excluding the roof, but including without limitation all Tenant's personal property and trade fixtures, during the

term of this Lease, in good working and sanitary order, condition and repair, reasonable wear and tear and damage by casualty not caused by the negligence of Tenant or its agents, contractors or employees excepted. Tenant shall be liable for any damage to the Premises resulting from the acts or omissions of Tenant or its authorized representatives. Tenant shall make no changes or alterations to the premises without the consent of Landlord first had and obtained. Tenant shall attach no signs on the outside of the premises, or on the sidewalk abutting The Premises without the written consent of Landlord. Tenant may place temporary (10 days or less) signs, provided the signs are in compliance with City of Winters ordinances then in effect. With exception of repairs necessitated due to reasonable wear and tear, or damage by casualty, or damage caused by the negligence of Tenant or its agents, contractors or employees, tenant will be fully responsible for repairs that cost up to \$500. For repairs in this category that exceed \$500, Tenant and Landlord will split the cost equally.

10. Remedies of Owner on Default: In the event of any breach of this lease by Lessee, then Landlord besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee. Should Landlord elect to re-enter as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this lease or it may from time to time, without terminating this lease, re-let said premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to said premises; upon each such re-letting (a) Lessee shall be immediately liable to pay to Landlord, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such re-letting and of such alterations and repairs, incurred by Landlord, and the amount, if any, by which the rent reserved in this lease for the period of such re-letting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the demised premises for such period on such re-letting; or (b) at the option of Landlord rents received by Landlord from such re-letting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Lessee to Landlord; second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If Lessee has been credited with any rent to be received by such re-letting under option (a), and such rent shall not be promptly paid to Landlord by the new tenant, or if such rentals received from such re-letting under option (b) during any month be less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by Landlord shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, should Landlord at any time thereafter elect to terminate this lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which

amounts shall be immediately due and payable from Lessee to Landlord. Landlord shall additionally have the right, pursuant to Civil Code Section 1951.2 upon breach and termination to recover from Lessee the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided.

11. Statement Regarding Possessory Interest Tax. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes are referred to herein as "Possessory Interest Taxes." Tenant shall pay any Possessory Interest Taxes directly to the taxing authority. (These are personal property taxes levied by the County of Yolo based on the business personal property of Tenant.

12. Assignment. Tenant may not assign or sub-sublet ("Transfer") the Premises or Tenant's interest in the Lease, or any portion thereof, without prior written consent and approval of the Landlord.

13. Quiet Enjoyment. As long as Tenant is not in default of this Lease, during the term of this Lease Tenant shall have quiet enjoyment of the Premises.

14. Use and Continuous Operating Covenant.

(a) The Premises shall be used and occupied only for uses and occupancy currently approved.

(b) Tenant shall conduct Cody's Restaurant business, at all times in a manner of such character and quality as is reasonably designed to produce an economically reasonable return and meet the goals of Landlord as set forth in the Recitals.

(c) Tenant shall follow all City codes as relate to business occupancy and regulation.

15. Indemnity and Insurance.

(a) Indemnity. Tenant agrees to protect, defend, indemnify, and hold harmless Agency and the City of Winters and their respective partners, affiliates, subsidiaries, directors, officials, officers, successors and assigns, agents, employees, volunteers, and representatives harmless from and against any and all liabilities, claims, expenses, losses and damages, orders, fines, penalties and expenses of any kind whatsoever (including but not limited to reasonable attorneys fees and costs) that may at any time be asserted against Landlord or the City of Winters arising out of or in connection with this Lease (except to the extent caused by Landlord's or City's sole or active negligence or willful misconduct), or resulting from or in connection with the obligation to comply with all laws with respect to the Premises, including, without limitation, all applicable federal and state labor laws and standards.

(1) Insurance. Tenant agrees to take out and keep in full force during the life hereof, at Tenant's expense, commercial general liability insurance to protect against any liability to the public, incident to the use of or resulting from any accident occurring in or about the Premises, the liability under each such insurance to be no less than Five Hundred Thousand Dollars (\$500,000) for any one person injured, One Million Dollars (\$1,000,000) for any one accident, and Three Hundred Thousand Dollars (\$300,000) for property damage. Landlord shall be named as an additional insured on all of Tenant's policies of insurance. Tenant will obtain a written obligation on the part of the insurance carriers to notify Landlord in writing prior to any cancellation thereof, and Tenant agrees, if Tenant does not keep such insurance in full force and effect, the Landlord may take out the necessary insurance and pay the premium, and the repayments thereof shall be deemed to be part of the Rent and payable as such on the next day upon which Rent becomes due. Tenant may elect to self-insure or jointly self-insure all or any part of such required insurance coverage (including but not limited to, e.g., coverage offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective).

(a) Landlord shall maintain at Landlord's sole cost and expense, commercial liability and property insurance on the Property for bodily injury, personal injury and property damage based upon, involving or arising out of Landlord's and third parties' use, occupancy, or maintenance of the Premises or/and the Property, the liability under each such insurance to be no less than Two Million Dollars (\$2,000,000) for any one person injured, Four Million Dollars (\$4,000,000) for any one accident, and Five Hundred Thousand Dollars (\$500,000) for property damage. Tenant shall be named as an additional insured on all of Landlord's policies of insurance. In addition, Landlord shall obtain and keep in force during the Term of this Lease a policy or policies of insurance in the name of Landlord, with loss payable to Landlord and to any lenders having a lien on the Property or any part of it, covering loss or damage to the Premises, Building, and Property including any tenant improvements in an amount not to exceed the full replacement cost thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood, special extended perils ("all risk", as such term is used in the insurance industry), plate glass insurance if Landlord so elects, and such other insurance as Landlord deems advisable, but excluding earthquake unless required by a lender having a lien on the Property.

As available, each party will deliver to the other party certificates of coverage or copies of the policies of insurance that the party is required to carry pursuant to this section within ten (10) days after execution of this Lease. Landlord waives any right to recover against Tenant for claims for damages to the extent covered (or required by this Lease to be covered) by insurance. This provision is intended to waive fully, and for the benefit of Tenant, any rights and/or claims which might give rise to a right of subrogation in favor of Tenant's insurance carrier. The coverage obtained by Landlord pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

16. Release. Tenant fully releases and discharges Landlord and the City of Winters from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the Landlord or City of

Winters arising out of or in connection with this Lease, except to the extent caused by Landlord's or City's sole or active negligence or willful misconduct, or Landlord's or City's violation of current or future laws, government code or government statutes. Tenant acknowledges and agrees that the release and waiver set forth in this section is material consideration for Landlord's Lease of the Premises to Tenant on the terms set forth herein and that, but for this release and waiver, Landlord would not have Leased the Premises to Tenant. It is hereby intended that the above release relates to both known and unknown claims that the Tenant may have, or claim to have, against the Landlord or the City with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Tenant expressly waives any rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR

17. Attorneys' Fees. If Landlord or Tenant (each a "party") brings an action to enforce the terms of this Lease, to declare rights hereunder or for any other relief against another party or parties, the prevailing party in any such action, on trial and appeal, shall be entitled to its reasonable attorneys' fees and costs of suit to be paid by the losing party as fixed by the Court.

18. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to the addresses indicated below, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

To Landlord:           City of Winters Community  
                                  Development Agency  
                                  Attn: Executive Director  
                                  318 First Street  
                                  Winters, CA 95694  
                                  Telephone: (530) 795-4910  
                                  Facsimile: (530) 795-4935

To Tenant:           Cody's Restaurant  
                                  Attn: Theresa Cody  
                                  314 Railroad Avenue  
                                  Winters, CA 95694  
                                  Telephone: (530) 795-2283  
                                  Facsimile: (    ) \_\_\_\_\_

19. Non-Discrimination. The Tenant herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, subtenants, or vendees in the Premises herein leased.

20. No Brokers. Neither party has had any contact or dealings regarding the Premises, or any communication in connection with this Lease, through any real estate broker or other person who is entitled to a commission or finder's fee in connection with this transaction. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any contact, dealings or communication with either party, then the party upon whose contact, dealings or communication the claim is based shall indemnify and hold the other party harmless from all costs and expenses (including but not limited to attorneys' fees) incurred by such other party in connection with such claim.

21. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

22. Miscellaneous. This Lease constitutes the entire understanding of Landlord and Tenant with respect to the matters covered by it and supersedes all prior Leases and understandings, written or oral, between Landlord and Tenant with respect to such matters. This Lease may not be modified or amended, nor may any term or provision be waived or discharged, except in writing signed by the party or parties against whom such amendment, modification, waiver, or discharge is sought to be enforced. The waiver by any party of any breach by another party of any provision of this Lease will not constitute or operate as a waiver of any other breach of such provision or of any other provision by such party, nor will any failure to enforce any provision operate as a waiver of such provision or any other provision. This Lease will be construed in accordance with, and be governed by, the laws of the State of California. This Lease will benefit and be binding upon the parties to it and their respective heirs, representatives, successors and assigns. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

23. Entry by Landlord: Lessee shall permit Landlord and its agents to enter into and upon said premises with 24 hours prior notice. Notice can be in writing or verbal. Entry by Landlord will be for the purpose of inspecting the same or for the purpose of maintaining the building in which said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such

scaffolding, canopies, fences, and props as may be required, or for the purpose of posting notices of nonresponsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned; and shall permit Landlord and its agents, at any time within ninety (90) days prior to the expiration of this lease, to place upon said premises any usual or ordinary "to let" or "to lease" signs and exhibit the premises to prospective tenants at reasonable hours.

24. Right of First Refusal: Cody's shall have the right of first refusal to renew this lease. The renewal lease rate shall be negotiated by Landlord and Cody's, but in no case shall it exceed \$2,500 per month. Landlord shall provide a minimum of 180 days notice documenting their intent to renew the lease or let the building become vacant.

If the Agency decides to not renew the lease, and if the Agency does not renew the lease at the lease renewal date, the Agency shall pay Cody's a \$30,000 relocation fee, payable upon Cody's vacating the Premises and inspection and acceptance by the Agency thereafter for damage.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LANDLORD:

TENANT:

Winters Community Development Agency

\_\_\_\_\_  
Theresa E. Linton

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

\_\_\_\_\_  
Rory Eugene Linton

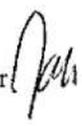
Approved as to Form:

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John C. Wallace, Agency Counsel



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Council Members  
DATE: September 20, 2011  
THROUGH: John W. Donlevy, Jr., City Manager   
FROM: Nelia C. Dyer, Community Development Director   
SUBJECT: Resolution 2011-44 - A Resolution of the City Council of the City of Winters Changing the Name of a City Street in the Winters City Limits from County Road 90 to Chapman Lane

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**RECOMMENDATION:** Staff recommends that the City Council take the following actions: 1) receive the staff report; and 2) approve Resolution 2011-44, A Resolution of the City Council of the City of Winters changing the name of a city street in the Winters city limits from County Road 90 to Chapman Lane.

**BACKGROUND/DISCUSSION:** On May 16, 2006, the Winters City Council adopted City of Winters Resolution No. 2006-18, A Resolution of the Winters City Council Adopting Policies and Procedures for Naming and Dedicating City Facilities (see Attachment A). Resolution No. 2006-18 states that a Street Naming Committee was appointed by the City Council and makes recommendations to the City Council on the names of streets. The Street Naming Committee at the time was comprised of Joanne Larkey, Newt Wallace, and Jack Graf, and this committee has never disbanded. The committee established a list of names in order of priority for new streets in Winters in December 2005, with "Chapman" being the first name on the list (see Attachment B).

A new connection from Road 33/Industrial Road to Grant Avenue west of the proposed East Baker Street terminus is included as a key modification in the Winters General Plan, adopted in 1992. Therefore, County Road 90 is proposed to be closed to through traffic from Grant Avenue/State Route 128 to the new connection. The street or cul de sac will be used by patrons of the Chevron and approved Burger King/Arco Fuel Station. To remove conflict, duplication, or uncertainty among street names, staff recommends that the name of the street be changed from County Road 90 to Chapman Lane within the city limits. The term "lane" as opposed to "court" is suggested at this time since the timing of the future roadway modifications is unknown.

At a later date, staff and the Street Naming Committee will bring a list of names in order of selection to the City Council for approval so as to eliminate the need to return to the City Council to approve a street name every time there is a need for one.

**RECOMMENDATION:** Staff recommends that the City Council make the affirmative motion as follows:

**I MOVE THAT THE CITY COUNCIL OF THE CITY OF WINTERS APPROVE RESOLUTION 2011-44, A RESOLUTION CHANGING THE NAME OF A CITY STREET IN THE WINTERS CITY LIMITS FROM COUNTY ROAD 90 TO CHAPMAN LANE.**

**FISCAL IMPACT:** If approved, the Public Works Department will place an order for and erect a new street sign. In addition, staff time will be required to transmit the resolution to the County Board of Supervisors.

**ATTACHMENTS:**

- A. City of Winters Resolution No. 2006-18, A Resolution of the Winters City Council Adopting Policies and Procedures for Naming and Dedicating City Facilities
- B. Memo from Community Development Director Dan Sokolow to Street Naming Committee Members, dated December 6, 2005
- C. Resolution 2011-44, A Resolution of the City Council of the City of Winters Changing the Name of a City Street in the Winters City Limits from County Road 90 to Chapman Lane

## CITY OF WINTERS

### RESOLUTION NO. 2006-18

#### A RESOLUTION OF THE WINTERS CITY COUNCIL ADOPTING POLICIES AND PROCEDURES FOR NAMING AND DEDICATING CITY FACILITIES

BE IT RESOLVED by the City Council of the City of Winters as follows:

SECTION 1: The City Council shall name municipal building/facilities in recognition of the following:

- A. Naming City buildings, streets, parks, and other facilities serves a public interest by recognizing important landmarks, locations, or persons. This assists the public not only in identifying and visiting these places, but also promotes civic pride.
- B. In order to facilitate that manner in which public facilities may be named, the City Council believes that it should set forth the guidelines for identifying facilities that should be named and the manner in which names may be selected.

SECTION 2: The public facilities affected by this Resolution are as follows:

- A. Buildings: City-owned facilities used for City administration or other City business. Such facilities include, without limitation, the Community Center, City Council Chambers, meeting rooms, Police and Fire Facility and any newly constructed buildings.
- B. Support Facilities: City-owned facilities that support field operations. Support facilities include, without limitation, the corporation yard and water and wastewater pump stations.
- C. Parks: City-owned facilities utilized as recreation or open space sites and trail areas. Park sites include developed and undeveloped park areas and designated open space areas.
- D. Recreation Facilities and Amenities: City-owned facilities used primarily for sports, recreation and leisure activities, including, without limitation, athletic fields, tennis/basketball/handball courts, community centers, gazebos and meeting rooms.
- E. Streets: A Street Naming Committee was appointed by the City Council and makes recommendations to the City Council on the names of new streets.

SECTION 3: City facilities will be named pursuant to the following guidelines:

- A. Names given to facilities will provide easy and recognizable references for City residents, corporate citizens and other visitors. Such names should generally reflect the facility's geographic location (such as a major street, location, neighborhood) or the City's name if the facility serves the entire population.

- B. In certain, unusual, circumstances, where names reflecting the geographical location or the City are unworkable, names may reflect topography, notable flora, or historical precedent.
- C. Under extraordinary circumstances, consideration may be given to naming facilities after significant personages who made prominent contributions to the City's community.
  - Individuals, living or deceased, who have made outstanding contributions to the City of Winters or Winters community
  - Individuals, living or deceased, who have made contributions of local, state, national or worldwide significance

SECTION 4: Facilities will be dedicated as follows:

- A. Groups or individuals may submit recommendations for a name in writing (Exhibit A). Recommendations may also come from other City boards and or commissions. All recommendations will be given the same consideration without regard to the nomination source.
- B. Following the City Council's action, the City Manager, or designee, will install a plaque on the facility which includes the following:
  1. Facility name;
  2. Dedication date;
  3. Additional information determined by City Council action at the time of naming the facility.
- C. If a plaque currently exists on a building or facility being named or dedicated, that plaque will be retained and appropriately displayed.

SECTION 5: This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED AND ADOPTED this 16<sup>th</sup> day of May, 2006, at a regular meeting of the City Council by the following roll call vote:

**AYES:** Council Members Anderson, Fridae, Godden, Stone and Mayor Martinez  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

\_\_\_\_\_  
 Dan Martinez, Mayor

ATTEST:

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

EXHIBIT A

CITY OF WINTERS

Naming and Dedicating City Facilities to recognize an Individual or Organization

NOMINATION FORM

Nomination for consideration in the naming of a City-owned facility. Please type or print clearly and submit to the office of:

City Clerk  
318 First Street, Winters, CA 95694  
Telephone: 530-795-4910  
Fax: 795-4935

Date \_\_\_\_\_

I. Individual/organization submitting name: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

II. Nominee: (circle one)                      Individual      Organization      Club

1. Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

2. Mailing Address: \_\_\_\_\_ Zip

Code: \_\_\_\_\_  
Number of Years in Winters area \_\_\_\_\_

Recommended Name of  
Facility \_\_\_\_\_

Location of  
Facility \_\_\_\_\_

**Explanation of why this individual / organization should be considered. (This information will be used by the Commission to determine the basis for their decision.) (Use additional paper if needed).**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reviewed by City Council on:      Date \_\_\_\_\_



**MEMORANDUM**  
December 6, 2005

**TO:** Street Naming Committee Members  
**FROM:** Dan Sokolow – Community Development Director  
**SUBJECT:** Potential Street Names

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**HISTORIC NAMES**

Chapman  
Ritchie  
Humphrey  
Morris  
Martin  
Ely  
Briggs  
Ireland  
Wyatt  
Young  
Vasey  
Hamakawa  
Rubio  
Rojo  
Carbajal  
Matsumoto  
Dote  
Miyamoto  
Ramos  
Bruhn  
Tufts  
Button

**WINTERS RESIDENTS KILLED DURING FOREIGN WARS**

**World War II**

Frederick C. Barker, Jr.  
James D. Barnes  
Billie Bishop  
Kenneth L. Coleman  
Ralph O. Emerton

H.S. Graber  
Charles E. Hart  
Huber Holland  
Sherman Herold, Jr.  
Laverne Leggett  
Caleb G. Lewis  
Manuel L. Martin  
Keith Revelle  
Senif C. Sheard  
Albert Siranian  
John T. Taylor  
Weldon White

**Korea**

Gilbert Delgado  
Thomas Potter

**Vietnam (not declared)**

Peter R. Carroll  
John B. Causey  
Roger D. Curtis  
James D. Ozbun  
Tierry Maxim  
Kenneth D. Middleton  
Ralph G. Williams

Street Names Committee/Potential Street Names 6Dec05

**RESOLUTION No. 2011-44**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS CHANGING THE NAME OF A CITY STREET IN THE CITY LIMITS FROM COUNTY ROAD 90 TO CHAPMAN LANE**

**WHEREAS**, the City Council of the City of Winters has considered the request of staff to change the name of County Road 90 within the Winters City Limits to Chapman Lane;

**WHEREAS**, City of Winters Resolution No. 2006-18, A Resolution of the Winters City Council Adopting Policies and Procedures for Naming and Dedicating City Facilities, states that a Street Naming Committee was appointed by the City Council and makes recommendations to the City Council on the names of new streets;

**WHEREAS**, the Street Naming Committee comprised of Joanne Larkey, Newt Wallace, and Jack Graf established a list of names in order of priority for new streets in Winters in December of 2005, with "Chapman" being the first name on the list;

**WHEREAS**, the City Council finds that the granting of this request will remove conflict, duplication, or uncertainty among street names.

**NOW, THEREFORE BE IT RESOLVED** as follows:

1. The City Council of the City of Winters approves the request and changes the street name within Winters City Limits of County Road 90 to Chapman Lane.
2. The City Clerk is directed to transmit a certified copy of the resolution to the Board of Supervisors.

**PASSED AND ADOPTED** by the City Council, City of Winters, the 20th day of September, 2011.

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

\_\_\_\_\_  
Woody Fridae, Mayor

**ATTEST:**

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