



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, December 20, 2011

5:30 p.m. - Executive Session

AGENDA

Personnel – Management Analyst – Advice from Legal Counsel – Pursuant to Government Code Section 54956.9 (b) – EEOC Charge No. 550-2011-01815

6:30 p.m. – Regular Meeting

AGENDA

Members of the City Council

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

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

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

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, December 6, 2011 (pp 1-7)
- B. On-Call Contracts with Construction Testing Services (CTS) and KC Engineering for Materials Sampling and Testing and Geotechnical Engineering Services Associated with All Private Development and Public Works Construction Projects (pp 8-35)
- C. Resolution 2011-56 A Resolution of the City Council of the City of Winters Accepting the Dedication of a Public Service Easement from the Roman Catholic Bishop of Sacramento, St. Anthony's Church (pp 36-47)
- D. Memorandums of Understanding (MOU) and Salary Range Resolutions Staff Report (pp 48)
 - a. Review and Adopt Resolution 2011-47, Memorandum of Understanding for the City of Winters Police Officers Association, Effective January 1, 2012 (pp 49-74)
 - b. Review and Adopt Resolution 2011-48, Memorandum of Understanding for the City of Winters Sergeant's Association, Effective January 1, 2012 (pp 75-100)
 - c. Review and Adopt Resolution 2011-49, Memorandum of Understanding for the City of Winters Miscellaneous Employees Association, Effective January 1, 2012 (pp 101-127)

- d. Review and Adopt Resolution 2011-50, Memorandum of Understanding for the City of Winters Confidential Employees Association, Effective January 1, 2012 (pp 128-153)
- e. Review and Adopt Resolution 2011-51, Memorandum of Understanding for the City of Winters Mid-Management Employees, Effective January 1, 2012 (pp 154-178)
- f. Review and Adopt Resolution 2011-52, Memorandum of Understanding for the City of Winters Manager's Series Employees, Effective January 1, 2012 (pp 179-187)
- g. Review and Adopt Resolution 2011-53, Memorandum of Understanding for the City of Winters Management (Department Head) Employees, Effective January 1, 2012 (pp 188-197)
- h. Review and Adopt Resolution 2011-54, Salary Ranges for the City of Winters, Effective January 1, 2012 (pp 198-204)
- E. Resolution 2011-57, A Resolution of the City Council of the City of Winters, Approving the Requirements of the Reserve Police Officer Program to Include the Position of "Designated" Level I Reserve Officer within the Winters Police Department (pp 205-209)

PRESENTATIONS

Proclamation Honoring Eagle Scout Nickolas Andrew Stewart

DISCUSSION ITEMS

- 1. Public Hearing and First Amendment to the Development Agreement for Development of the Property Commonly Known as the Creekside Property between the City of Winters and Donald Miller; Making Certain Changes to the Improvements Required of the Developer; Change the Name of the Developer to the Roman Catholic Diocese of Sacramento; and to Extend the Term of the Development Agreement for an Additional Eight (8) Years (pp 210-281)
- 2. Request for Authorization to Send Correspondence on Behalf of the City to Congressmen Mike Thompson and John Garamendi Requesting a Congressional Investigation into the Bid Process and Plans Involving Markley Cove Resort at Lake Berryessa (pp 282-287)
- 3. Update and Discussion of City Property Lease – 318 Railroad Avenue, Winters, and Response to City RFP – 318 Railroad Avenue, Winters (pp 288-295)

COMMUNITY DEVELOPMENT AGENCY

- 1.

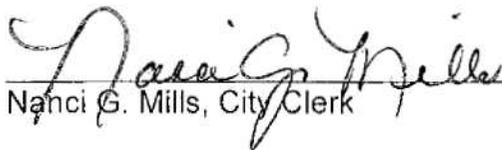
CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the December 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 December 14, 2011, and made available to the public during normal business hours.



Nanci G. Mills, City Clerk

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

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

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

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.

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Winters Library – 708 Railroad Avenue

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

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

City Council meetings are televised live on City of Winters Government Channel 20 (available to those who subscribe to cable television) and replayed following the meeting.

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 Tuesday, December 6, 2011

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

Present: Council Member Cecilia Aguiar-Curry, Harold Anderson, Michael Martin, Mayor Woody Fridae
Absent: Council Member Tom Stone
Staff: City Manager John Donlevy, City Attorney John Wallace, City Clerk Nanci Mills, Director of Financial Management Shelly Gunby, After School Program Coordinator Nancy Gonnella, Chief of Police Sergio Gutierrez, Police Officers Albert Ramirez, Josh Hearn, Jeremy Warren, Creig Urquhart, Todd Barnett and Matt Martin, Housing Programs Manager Dan Maguire, Police Department Records Manager Karla Ferguson, Executive Assistant Mary Jo Rodolfa, and Administrative Assistant Tracy Jensen.

Council Member Michael Martin led the Pledge of Allegiance.

Approval of Agenda: City Manager said there were no changes to the agenda. Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve the agenda. Motion carried unanimously, with one absent.

COUNCIL/STAFF COMMENTS: Council Member Aguiar-Curry attended the Sacramento Valley Division of the League of California Cities meeting in Gridley, which included approximately 21 cities. Gridley, who came to Winters and toured the downtown with City Manager Donlevy, is currently re-doing their downtown so they can be "just like Winters." Ms. Aguiar-Curry also attended the Yolo and Solano County Economic Development meeting in Davis on 11/16 and emceed the retirement party for Fire Chief Scott Dozier on 11/18. Ms. Aguiar-Curry thanked Ms. Okelo-Odongo for scheduling the upcoming PG&E meeting in Winters. On Monday, 12/19, there will be a public meeting from 6-8pm at West Plainfield Fire Station regarding a proposed treatment center at DQU. The meeting is being sponsored by the DQU Indian Health Services and public comments are welcome. Today Ms. Aguiar-Curry attended the Cal League presentation regarding energy usage and emergency services and said an initiative is being planned by the Cal Energy Commission. On Sunday,

December 10 @ 1pm, there will be a wreath laying ceremony at the Winters Cemetery with approximately 280 wreaths and said volunteers are needed. Ms. Aguiar-Curry thanked Susie Stocking and her family for putting this project together.

Council Member Anderson, along with Council Member Aguiar-Curry attended the Yolo Sugar Mill meeting sponsored by SACOG on 11/17 and also attended Fire Chief Scott Dozier's retirement celebration on 11/18, attended SACOG's Land Use meeting on 12/1 and also attended the Local Government Commission meeting on 12/1 regarding long range planning and planning for the aging population with Young Urban Professionals.

On 12/3, Council Member Martin attended the open house hosted by President Leguere at Solano Community College in support of the local college. Solano Community College is offering an Introduction to Criminal Justice class on Monday nights at Winters High School from 1/18/12 – 5/23/12, with Sgt. Michael Covina instructing the class.

Mayor Fridae commended Council Member Martin's legacy of making connections with Solano College, which is reflected in the college courses being offered in Winters. Mayor Fridae thanked the Winters Chamber of Commerce and Winters Rotary Club for organizing the tree-lighting ceremony in spite of the wind. The Winters Friends of the Library did a great job at their Holiday Festival and it was nice to see Winters Middle School volunteers helping at the festival.

PUBLIC COMMENTS:

In collaboration with the City of Winters, Alisa Okelo-Odondo from Pacific Gas & Electric will host an open house on Monday, December 12 from 6:30pm-7:30pm at the Public Safety Facility, 700 Main Street, Winters. Community members will be provided with information about the community's natural gas system and be given the opportunity to learn more about their gas service, speak with natural gas experts and learn about PG&E's natural gas safety program. In addition to attending the Winters open house, information about PG&E's natural gas transmission system, pipeline locations and safety programs may be found online at www.pge.com/gassystem.

Sandra Montero, Yolo County resident from the Capay area and member of "Citizens Preserving Yolo County", spoke against the effects of the proposed wind turbine project and asked Council to please say no to wind turbines.

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, November 15, 2011
- B. Resolution 2011-46, a Resolution of the City Council of the City of Winters Receiving from the Community Development Agency the Annual Redevelopment Report to Legislative Body, State Controller's Office and State Housing and Community Development Department for Fiscal Year Ending June 30, 2011 and Authorizing its Transmittal to the State Department of Housing and Community Development and the State Controller's Office
- C. Application for Parade Permit Submitted by Saint Anthony's Parish
- D. Adoption of the Public Safety Facility Site License Agreement for Telecommunications Purposes
- E. Acceptance of Public Service Easement Deed for the Installation, Maintenance and Operation of a Public Sidewalk on Property Owned by the Roman Catholic Bishop of Sacramento, St. Anthony's Church

City Manager Donlevy gave an overview. Council Member Aguiar-Curry requested clarification to page 9 of the minutes of the City Council meeting held on 11/15/11. Motion by Council Member Aguiar-Curry, second by Council Member Martin to approve the Consent Calendar with the requested correction. Motion carried unanimously, with one absent.

PRESENTATIONS

City Clerk Nanci Mills performed the swearing-in of Police Officer Jose Ramirez to the position of Sergeant of the Winters Police Department. Sergeant Ramirez has been with the Winters Police Department for 17 years and began as a reserve in 1993. He has been the recipient of the M.A.D.D. award several times, a Life Saving Award, Officer of the Year for four years, finds solutions to fix problems, and has embraced the management team. Officer Ramirez thanked the Council, City Manager, Chief Gutierrez, and said the support of family and friends and his service with the U.S. Navy has made him the person he is today.

DISCUSSION ITEMS

- 1. Second Reading and Possible Adoption of Four (4) Ordinances of the City of Winters Amending and Adding Chapters to the Winters Municipal Code Pertaining to Single Room Occupancy Units, Emergency Shelters, Manufactured and Factory-Built Homes, and Second Residential Units

Housing Programs Manager Dan Maguire gave an overview, stating the adoption of these ordinances would bring the City of Winters zoning into compliance with

State laws by meeting the affordable housing requirement set forth in the Housing Element of the Winters General Plan.

Motion by Council Member Aguiar-Curry, second by Council Member Martin to waive the second reading and adopt Ordinances 2011-07, 2011-08, 2011-09 and 2011-10. Motion carried with the following vote:

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

2. Yolo County Community Corrections Operational Agreement and Funding Agreement

Chief Gutierrez gave an overview and said both agreements stem from the Public Safety Realignment in accordance with AB109, where lower level offenders, adult parolees and juvenile offenders are moved from State to local jurisdictions to prevent overcrowding. Council Member Aguiar-Curry asked how much notice would be received before being released into the community. Chief Gutierrez said 30 days. Council Member Martin asked how the Funding Agreement fixed amount of \$7,500 for the fiscal year was determined. Chief Gutierrez said a committee determined this amount to cover overtime costs for officers who are assigned to a special task involving the Community Corrections Program for the remainder of the fiscal year. The amount for the entire year over the next fiscal year will be \$10,000. Mayor Fridae asked if the City of Winters had a choice to participate. Chief Gutierrez said no, but this agreement puts the City of Winters in the driver's seat regarding monitoring and awareness of who is in the community. The new funding will go toward four new probation officers and seven new sheriffs to provide supervision. For more information, please visit the following website for more information: www.cdcr.ca.gov. Council Member Martin asked how low level offenders are categorized. Chief Gutierrez said these offenders are non-violent, non-serious, non-sexual offenders.

Motion by Council Member Aguiar-Curry, second by Council Member Martin to adopt the Community Corrections Operational Agreement and Funding Agreement between the City of Winters and the Yolo County Probation Department. Motion carried unanimously with Council Member Stone absent.

3. Request for Appointment of a City Council Member to the Board of Commissioners for the Yolo County Housing Authority

Housing Programs Manager Maguire gave an overview. Lisa Baker, Executive Director for the Yolo County Housing Authority said this process was discussed

at a 2008 Strategic Planning session, and will result in direct participation from the cities within the service area. Council Member Martin asked what duties would be required from each representative. Ms. Baker said the representatives would be directly involved in the policy-making body for the organization, approve the annual budget, determine fees for services and to work immediately with the director.

Mayor Fridae nominated Council Member Aguiar-Curry to the Board of Commissioners for the Yolo County Housing Authority. Council Member Anderson requested nominations be closed. The City Council recommended unanimously, with one absent, that Council Member Aguiar-Curry be appointed to serve on the Housing Commission of the Housing Authority of the County of Yolo to represent the City in accordance with Chapter 2 of Article 37 of the Yolo County Code.

4. City of Winters Emergency Operations Center and Yolo Operational Area – Multi Hazard Mitigation Plan

City Manager Donlevy gave an overview. The City of Winters Emergency Operations Plan and supporting documents are compliant with the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS) policies, procedures and guidelines. The City, County, State, and FEMA all fall under the uniform frame work of SIMS. Mayor Fridae asked about coordination with the schools regarding evacuation and shelter plans and said school personnel need to be trained. He requested City Manager Donlevy contact WJUSD to share a plan for training. Council Member Aguiar-Curry said she was surprised that PG&E is not part of the process. Council Member Anderson asked if there was a plan for a possible dam break and wants the schools to receive notification immediately. It was estimated there would be a 15-minute response time in the event of a dam break. City Manager Donlevy said an EOC workshop will be scheduled to include Council Members and school representatives.

5. I-505 Grant Avenue Planning Project - Traffic Analysis

City Manager Donlevy gave an overview and said the project entails 5 key elements to be referenced in a cumulative traffic analysis. Council Member Aguiar-Curry asked where the funding for this contract would come from. City Manager Donlevy said the funding would come from street impact fees. Council Member Anderson said the City needs this infrastructure and said the City should move ahead with the traffic analysis.

Motion by Council Member Anderson, second by Council Member Martin to approve staff recommendation by approving Resolution No. 2011-55, giving

authorization for the City Manager to enter into a contract with Fehr & Peers in the amount of \$20,110, and to authorize a notice to proceed for a Traffic Analysis for I-505/Grant Avenue Planning Area Environmental Review.

Mayor Fridae said it would be a challenge to allow and/or facilitate strategic growth, ie: Burger King and a hotel, by capturing income from those needing services at the freeway and not interfering with the Downtown and doing it in an efficient way. Mayor Fridae does not want to look like Dixon and said the cumulative effect of the project will ultimately attract business to the freeway and said he wanted to "put on the brakes."

Motion by Council Member Aguiar-Curry, second by Council Member Martin, to move forward with approval of staff recommendation. Motion carried with the following vote:

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

COMMUNITY DEVELOPMENT AGENCY

1.

CITY MANAGER REPORT: City Manager Donlevy said he will sit down next week with representatives from Solano County, including Supervisor John Vasquez, and City Engineer Alan Mitchell to discuss bridge building and invited Council members to join them. City Manager Donlevy said he will bring the information back to Council at the 1/17/2012 meeting. Council Members Anderson & Martin confirmed they would attend the meeting. Council Member Anderson asked how many months and years this project would be dragged out. City Manager Donlevy said "the train is leaving the station" and nothing will slow this project down. City Manager Donlevy reminded everyone about the PG&E informational meeting taking place on Monday, December 12th.

INFORMATION ONLY

1. September 2011 Treasurer Report
2. September 2011 Investment Report
3. October 2011 Treasurer Report
4. October 2011 Investment Report

EXECUTIVE SESSION: None

ADJOURNMENT: Mayor Fridae adjourned the meeting at 9:03 p.m. in memory of Bob Harris, who served on the City Council for eight years.

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



STAFF REPORT

TO: Honorable Mayor and Council members
THROUGH: John Donlevy, City Manager
FROM: Alan Mitchell, Assistant City Engineer
DATE: December 20, 2011
SUBJECT: On-call Materials Sampling and Testing, and Geotechnical Engineering Services contracts with Construction Testing Services (CTS) and KC Engineering.

RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute on-call contracts with CTS and KC Engineering for materials sampling and testing, and Geotechnical Engineering services, for future private development and public works construction projects.

BACKGROUND: Materials sampling and testing services are typically required for construction of both private and public improvements. Services include, but are not limited to, lab testing of aggregate, asphalt and concrete materials, analysis of soil conditions, testing of trench and roadway compaction, and quality control of contractor operations.

Staff recently sent out a request for qualifications and received six responses (Signet, Matriscope, CTS, KC Engineering, Holdrege and Kull, and Wallace Kuhl & Associates). The qualifications were reviewed and scored against the following criteria: Pertinent Experience, Professional Qualifications, Fees, and Location of Firm. Of the six firms, CTS and KC Engineering ranked the highest based on their submittal.

Staff recommends the City execute on-call contracts with both CTS and KC Engineering, for a period of two-years from execution, with the ability for extension of the contracts for one more two-year period. By having two firms available as a resource, staff will have the flexibility to work with the firm best qualified for a specific type of project and/or from whom the best price was obtained. Project-specific proposals will be requested from each firm, for each project. These proposals will be evaluated and work orders executed with the firm deemed best qualified and most cost-effective.

ALTERNATIVES: No alternatives recommended.

FISCAL IMPACT: The costs associated with the Contracts will be funded with project-specific funds. For private development, the developer's fees cover the cost of materials testing. For public works projects, either local funds or federal/state funds will cover the cost.

Attachments: On-Call Contracts



**CONSULTANT SERVICES AGREEMENT
AGREEMENT NO. 015-11**

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and Construction Testing Services, "(CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the City with on-call Materials Sampling and Testing, and Geotechnical Support Services for various City projects. Exhibit "A" includes typical Tasks, which may be required. CONSULTANT shall provide said Services for a period of two-years from the date of execution of this Agreement, with an option to re-new the Agreement, upon mutual consent of both parties, for additional years up to a total of two years.

CONSULTANT shall provide a Scope of Work and Fee Proposal on a project-by-project basis, for review by the CITY. The negotiated Scope and Fee will be the basis for a Work Order for each specific project. CONSULTANT shall provide said services at the time, place, and in the manner specified by the City Engineer.

2. PAYMENT. The CONSULTANT shall be paid at the rates indicated in Exhibit "B" – Fee Schedule. The Fee Schedule will remain in affect for the two years Contract period. City shall pay consultant for the actual time and materials expended, in accordance with the Fee Schedule and the negotiated Scope and Fee for each specific project. Services shall be rendered pursuant to the Agreement and the negotiated project-specific Work Order.

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

CONSULTANT

By: _____
John W. Donlevy, Jr., City Manager

By: _____

ATTEST: By: _____ (Nanci G. Mills, CITY CLERK)

Exhibit "A"

TYPICAL TASKS

1. Earthwork Observation
2. Bulk Sampling and Coring of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
3. Field Density Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
4. Laboratory Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
5. Reporting of materials sampling and testing
6. Field Quality Control
7. Geotechnical Engineering Consultation



**2011 FEE SCHEDULE - P6661 9/14/11
PERSONNEL FEES AND BASIS OF CHARGES
INSPECTIONS, ENGINEERING & SPECIAL SERVICES**

	Standard Rate/Hour	Discounted Rate/Hour
* FIELD INSPECTION AND LABORATORY SERVICE		
Steel	\$100.00	\$68.00
Nondestructive - UT, MT, PT	\$400.00	\$68.00
Steel Visual/UT Combination	\$100.00	\$68.00
Concrete ACI	\$100.00	\$68.00
Concrete ICC	\$400.00	\$68.00
Pre-stressed Concrete	\$100.00	\$68.00
Masonry	\$400.00	\$68.00
Soil Technician w/Nuclear Gauge and/or Sand Cone (portal-to-portal)	\$100.00	\$68.00
Roofing & Waterproofing	\$100.00	
Specialty Inspector/for where formal certification is required	\$100.00	
Field Inspector with Special Enhancement	\$100.00	
Laboratory Technician	\$100.00	
Technician Typist	\$100.00	
**PROFESSIONAL ENGINEERING SERVICES		
Principal Engineer (Civil-Structural)	\$250.00	
Geotechnical Engineer	\$200.00	
Consulting Engineer (Civil-Structural)	\$160.00	
Associate Engineer, Licensed	\$150.00	
Staff Engineer/Project Manager	\$130.00	
Field Supervision	\$120.00	
ASNT Level III	\$120.00	
Drafting	\$110.00	
Quality Control Manager	QOR	
SPECIAL SERVICES		
Portable and mobile laboratories, NDT and Soils	QOR	
* Insert Pull-Out Testing (including normal equipment)	\$120.00	
* Coring, 1 Person (including equipment)	\$160.00	
* Coring, 2 Persons (including equipment)	\$210.00	
Project Research	QOR	
Ultrasonic Testing for Non-Metallic Materials	QOR	
Pavement Rehabilitation Analysis using Deflections	QOR	
Roof Moisture Survey	QOR	
Soil Drilling Equipment	QOR	
Geotechnical Site Investigations/Foundation Reports	QOR	
Pachometer, Schmidt Hammer, Windsor Probe	\$150.00	
Floor Flatness Testing FFI - Equipment Fee \$100/Day	\$150.00	
Slab Moisture Testing - \$30/kit	\$150.00	
Ferroscon/GPR - Equipment Fee \$100/day	\$150.00	
Administration, Secretarial, Special Projects, Notary, Certified Payroll	\$75.00	
Concrete/Grout/Mortar Mix Design Review (less than 48 hours notice - \$500)	\$250.00	\$125.00
Welding Procedure Review (less than 48 hours notice - \$500)	\$250.00	\$125.00
Welder Qualification Test	\$150.00	
Geotechnical Pad Letter (less than 48 hours notice - \$500)	\$250.00	
Final Letter, each (less than 48 hours notice - \$500)	\$250.00	\$125.00
EXPERT WITNESS TESTIMONY		
Court appearance, per day	\$1,160.00	
Court appearance, per half day	\$660.00	

* Field inspection services will be billed in accordance with minimums shown on Basis of Charges.
**Professional engineering services and laboratory technician services will be billed at actual time.



BASIS OF CHARGES

GENERAL

Fees for tests and inspection include cost of technician, normal equipment and regular reports. Engineering services other than supervisory will be charged at applicable rates. Soils testing with nuclear gauge and/or sand cone equipment may require applicable travel and mileage charges for equipment transport and storage per code. Fees for special projects, services overseas, or elsewhere in the United States, will be quoted on request. With prior notification to Client; charges are subject to change at any time. Construction Testing Services reserves the right to adjust the rates quoted in this contract based upon any Union or prevailing wage increases and/or changes in any industry requirements.

MINIMUM HOURLY CHARGES - INSPECTION

Technician personnel and the following minimum charges are contractual commitment:

One-half day or less	4 Hours
Over one-half day	8 Hours
Show-up time (less than 2 hours notice = 4 hour charge)	2 Hours

WORKING HOURS AND PREMIUM TIME

Regular workday is the first 8 hours between 6:00 am and 6:00 pm Monday through Friday. Premium time is as follows:

Overtime, Weekdays and Saturdays (first 8 hours)	1.5 x quoted hourly rate
Overtime Saturdays (over 8 hours) and Sundays (first 8 hours)	2 x quoted hourly rate
Overtime Sundays (over 8 hours) and Holidays	3 x quoted hourly rate
Shift differential, swing and graveyard - (Work performed between 2:00 pm and 4:00 am)	12.5%/hour additional to base or quoted rate.

MISCELLANEOUS CHARGES - Only Where Applicable

Facsimile charges. Plus 1.00/page (n/c for cover page)	\$5.00 minimum
Parking Fees	At Cost
Air Travel	Cost Plus 5%
Outside Services	Cost Plus 20%
Subsistence (per union contract)	\$85.00/day
Mileage	Standard Federal Rate
Project Management & Administration	5% of Monthly Invoice
Samples Made by Others: Concrete Cylinders	\$100 + Test
Samples Made by Others: All Other Tests	\$40 + Test
Returned Check Fee	\$100

TESTS

Testing fees shown include normal time for performing test. Samples requiring special preparation will be charged at the laboratory technician rate. Fees for tests not listed will be quoted upon request. There will be a minimum charge of \$100.00 for any engineering report. Please note some tests may be tested by subconsultants.

INSURANCE

For the waiver of subrogation if required by client, a 2% CTS administrative fee will be added to all gross billings/revenue in addition to the 3% fee from State Fund.

PAYMENT

Invoices will be submitted monthly or bimonthly for services performed during the preceding month and are payable on receipt. Interest of 1.5% per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days, payment thereafter to be applied first to accrued interest and then to the principle unpaid amount. Attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by client. Visa, MasterCard and American Express payments are accepted however fees will apply. Visa and MasterCard payments require an additional 3% on top of the amount of the invoice being paid. American Express payments require an additional 4% on top of the amount of the invoice being paid.

All fees subject to Basis of Charges



CONCRETE AND MASONRY TESTS

		Standard Rate/Each	Discounted Rate/Each
PORTLAND CEMENT CONCRETE			
Compression test. 6" x 12" cylinder (including mold)	ASTM C-39	\$50.00	\$15.00
Cylinder molds. 6" x 12"	ASTM C-470	\$40.00	
Cylinders stored and cured. not tested (including mold)		\$40.00	
Compression test. Gunite (including sample prep)		\$55.00	
Compression test. Cores	ASTM C-42	\$60.00	
Lightweight insulating concrete. 3" x 6" cylinders	ASTM C-495		
Compression test, including mold		\$60.00	
Unit Weight test, including mold		\$60.00	
Flexural test, 6" x 6" x 18"	ASTM C-78	\$200.00	
Splitting tensile test, 6" x 12" cylinder	ASTM C-495	\$150.00	
Unit Weight, concrete cylinder		\$50.00	
Modulus of elasticity (static)	ASTM C-469	\$210.00	
Laboratory trial batch (mixing and molding only)	ASTM C-192	\$460.00	
Drying shrinkage (3 specimens - 28 days, including prep)	ASTM C-157 Mod	\$370.00	
Unit Weight - fireproofing, each	ASTM E-605	\$100.00	
Sample pickup		\$15.00/each	\$5.00/each
High Strength Concrete - Mix Designs/trial batches/and other considerations		QOR	
Compression tests (over 8000 p.s.i. or 400 k) each		\$100.00	
Grab sample, sealing and storing for 2 months in a humidity and temperature controlled room.		\$35.00	
MASONRY			
Compression test			
mortar 2" x 4" cylinder, U.B.C. (including mold)		\$50.00	
mortar molds. 2" x 4". Single use		\$40.00	
grout. U.B.C.		\$60.00	\$30.00
mortar or grout. stored and cured not tested (including mold)		\$50.00	
non-shrink grout		\$60.00	\$30.00
2" x 2" x 2" cubes		\$60.00	\$30.00
cores (including sample prep)		\$100.00	
composite grouted prism. each		\$100.00	
Shear test - bed joint - Preece method (including sample prep)		\$170.00	
Compression test. gross area only each	ASTM C-140	\$85.00	
Compression test. net area and gross area each	ASTM C-140	\$105.00	
Absorption. Moisture content and unit weight	ASTM C-140	\$105.00	
Linear shrinkage	CMA Rapid Method	\$110.00	
Linear Shrinkage	British Method	\$130.00	
Tensile test	CMA Method	QOR	
Non-standard block (all tests)		QOR	
* BRICK			
Modulus of rupture	ASTM C-67	\$100.00	
Compression	ASTM C-67	\$100.00	
Saturation coefficient (including absorption)	ASTM C-67	\$100.00	
Suction rate	ASTM C-67	\$100.00	
Efflorescence	ASTM C-67	\$100.00	

*Unusual sample preparation for brick specimen will be charged at the established hourly rate.

All fees subject to Basis of Charges



SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS

SOILS		Standard Rate/Each	Discounted Rate/Each
Plasticity index	ASTM D-4318	\$220.00	
Expansion Index	ASTM D-4829/UBC18.2	\$220.00	\$175.00
Laboratory moisture - density tests	ASTM D-1557/D-698	\$300.00	\$200.00
	Calif. 216 (Wet Method)	\$260.00	\$200.00
* "R" (Resistance) value (minimum 3 pts) Untreated	Calif. 301	\$350.00	\$295.00
California bearing ratio, with curve	ASTM C-1883	\$225.00	
Cement treated base laboratory design (3 specimens)	Calif. 312	\$300.00	
Cement treated base field control (3 specimens) (Aggregate quality test not included.)	Calif. 312	\$250.00	
Cement treated base Mix Design (additional cement content)		\$105.00	
Moisture Content Determination & Dry Density	ASTM D-2216/D-2937	\$50.00	
Moisture Density Check Point		\$170.00	
Unconfined Compressive Strength	ASTM D-2166	\$160.00	
Triaxial Compression Test		\$500.00	
Direct Shear Test		\$300.00	
Consolidation		\$500.00	
pH of Soil		\$260.00	
Hydraulic Conductivity	ASTM D-5084	\$300.00	
Sieve Analysis -			
Coarse Retained on No. 4 Sieve	ASTM C-136/Calif.202	\$120.00	\$90.00
Fine Passing No. 4 Sieve	ASTM C-136/Calif.202	\$160.00	\$110.00
Combined with 200 Wash		\$190.00	\$120.00
200 Wash Only	ASTM C-117	\$120.00	\$90.00
Hydrometer analysis - includes fine sieve	ASTM D-422	\$320.00	
Specific gravity. Bulk SS.D. -			
Coarse (includes absorption)	ASTM C-127	\$130.00	
Fine (includes absorption)	ASTM C-128	\$130.00	
Corrosivity Tests on Soils	ASTM/Caltrans	\$275.00	
AGGREGATES			
Cleanness value	Calif. 227	\$200.00	\$150.00
Sand equivalent (average of 3)	Calif. 217	\$100.00	\$75.00
Durability factor-coarse	Calif. 229	\$255.00	\$195.00
Durability factor-fine	Calif. 229	\$240.00	\$195.00
Durability factor-combined	Calif. 229	\$270.00	\$195.00
Crushed particles. Coarse and fine	ASTM D-693/Calif. 205	\$200.00	
** Sodium sulfate soundness, per size fraction (5 cycles)	ASTM C-88/Calif. 214	\$140.00	
Low Angles Rattler C535	ASTM C-131/Calif. 211	\$285.00	\$250.00
Unit weight of aggregate	ASTM C-29/Calif. 212	\$105.00	
Organic impurities		\$95.00	
Wetting/drying		\$350.00	
Flat and elongated particles	D4791, CE119, CE120	\$200.00	

* Unusual sample preparation (dried clays, saturated clays, etc.) and all other tests for treated or untreated soils, aggregate subbase and aggregate base will be charged at established rates for laboratory technician.

** Does not include sample preparation or sieve analysis

All fees subject to Basis of Charges



SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS *Continued...*

ASPHALTIC CONCRETE

		Standard Rate/Each	Discounted Rate/Each
Stability tests, premixed per samples -			
Hveem (2 specimens)	Calif. 366	\$365.00	
Marshall (3 specimens)	ASTM D-1559	\$575.00	
Marshall (1 specimen)		\$75.00	
Swell (in conjunction with Hveem stabilometer)	Calif. 305	\$190.00	
Moisture content, xylene reflux	ASTM D-2172	\$205.00	
Extraction, % asphalt - Method B	ASTM D-2172	\$220.00	
Extraction with Gradation		\$350.00	\$300.00
Asphalt Specific Gravity and Unit Weight	ASTM D1188	\$100.00	
Asphalt stripping	ASTM D-1664/Calif. 302	\$100.00	
Centrifuge kerosene equivalent, percent oil retained	Calif. 303	\$175.00	
Lab Test Maximum Density - LTMD	Calif. 375	\$360.00	\$300.00
Marshall Maximum Density	Calif. 304	\$285.00	\$250.00
Rice Maximum Theoretical Specific Gravity	ASTM D-2041/Calif. 309	\$195.00	\$150.00
Unit weight compacted sample	Calif. 308	\$130.00	
Unit weight compacted core	Calif. 308	\$130.00	
Thickness of asphalt concrete cores		\$100.00	
Complete asphalt design for given asphalt and aggregate by one of the following methods: (includes aggregate gradings)		QOR	
1. Hveem TM CA 367			
2. Marshall. Asphalt Inst. MS-2			

MATERIALS MECHANICAL TESTS

#3 to #8 Rebar Tensile Tests	ASTM A-615	\$125.00	
#9 to #11 Rebar Tensile Tests	ASTM A-615	\$150.00	
#14 Rebar Tensile Tests	ASTM A-615	QOR	
#9 and Smaller Rebar Bend Tests	ASTM A-615	\$100.00	
Mechanical Couplers		QOR	
High Strength Bolt Test			
Bolts: Proof Load & Ultimate Load		\$150.00	
Hardness		\$40.00	
Nuts: Proof Load		\$150.00	
Hardness		\$40.00	
Washers: Hardness		\$100.00	
Fastener Set (1 bolt, 1 nut & 1 washer)		\$175.00	
Tensile & Elongation Test		\$270.00	

CONTACT INFORMATION

Headquarters: 2174 Rheem Drive, Suite A • Pleasanton, CA 94588 • P 925.462.5151 • F 925.462.5183
Peninsula: One Embarcadero Center, Suite 535 • San Francisco, CA 94111 • P 415.334.4747 • F 415.438.2357
Oakland: 246 30th Street • Oakland, CA 94601 • P 510.444.4747 • F 510.835.1825
San Jose: 2033 Gateway Place, #500 • San Jose, CA 95110 • P 408.573.6992 • F 408.437.1201
Stockton: 343 East Main Street, #711 • Stockton, CA 95202 • P 209.507.7555 • F 209.507.7554
Sacramento: 4770 Duckhorn Drive • Sacramento, CA 95834 • P 916.419.4747 • F 916.419.4774
Chico: 2260 Park Avenue, Suite B • Chico, CA 95928 • P 530.345.2355 • F 530.666.4749
Las Vegas: 3842 E. Post Road • Las Vegas, NV 89120 • P 702.257.4747 • F 702.257.4718

All fees subject to Basis of Charges

EXHIBIT "C"

GENERAL PROVISIONS

(1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC.. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement.

(4) INSURANCE.

- (a) WORKER'S COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation.
- (b) GENERAL LIABILITY AND AUTOMOBILE INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement broad form property damage, personal injury, automobile, employer, and comprehensive form liability insurance in the amount of \$2,000,000 per occurrence; provided (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured under the policy; and (2) that the policy shall stipulate that this insurance will operate as primary insurance; and that (3) no other insurance effected by the CITY or other names insured will be called upon to cover a loss covered there under; and (4) insurance shall be provided by an, at least, A-7 rated company. The form of said endorsements(s) shall be supplied by the City.
- (c) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, CONSULTANT shall maintain an Errors and Omissions Insurance policy in the amount of not less than \$1,000,000.
- (d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with the City Clerk upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the City Clerk prior to the effective date of such cancellation, or change in coverage.

CONSULTANT shall file with the City Clerk concurrent with the execution of this Agreement, the City's standard endorsement form (attached hereto) providing for each of the above requirements.

(5) CONSULTANT NOT AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

(7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, at its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of the CITY.

(10) PRODUCTS OF CONSULTING. All products of the CONSULTANT resulting from this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, hold harmless the CITY, its officers, agents and employees from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property to the extent arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the City, its officers, agents or employees.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

(13) LOCAL EMPLOYMENT POLICY. The City of Winters desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Yolo County.

The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advise, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.



**CONSULTANT SERVICES AGREEMENT
AGREEMENT NO. 014-11**

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and KC Engineering, "(CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the City with on-call Materials Sampling and Testing, and Geotechnical Support Services for various City projects. Exhibit "A" includes typical Tasks, which may be required. CONSULTANT shall provide said Services for a period of two-years from the date of execution of this Agreement, with an option to re-new the Agreement, upon mutual consent of both parties, for additional years up to a total of two years.

CONSULTANT shall provide a Scope of Work and Fee Proposal on a project-by-project basis, for review by the CITY. The negotiated Scope and Fee will be the basis for a Work Order for each specific project. CONSULTANT shall provide said services at the time, place, and in the manner specified by the City Engineer.

2. PAYMENT. The CONSULTANT shall be paid at the rates indicated in Exhibit "B" – Fee Schedule. The Fee Schedule will remain in affect for the two years Contract period. City shall pay consultant for the actual time and materials expended, in accordance with the Fee Schedule and the negotiated Scope and Fee for each specific project. Services shall be rendered pursuant to the Agreement and the negotiated project-specific Work Order.

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

CONSULTANT

By: _____
John W. Donlevy, Jr., City Manager

By: _____

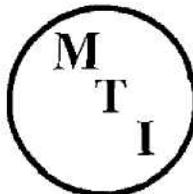
ATTEST: By: _____

(Nanci G. Mills, CITY CLERK)

Exhibit "A"

TYPICAL TASKS

1. Earthwork Observation
2. Bulk Sampling and Coring of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
3. Field Density Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
4. Laboratory Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
5. Reporting of materials sampling and testing
6. Field Quality Control
7. Geotechnical Engineering Consultation



Materials Testing, Inc.

8798 Airport Road
Redding, California 96002
(530) 222-1116, fax 222-1611

865 Cotting Lane, Suite A
Vacaville, California 95688
(707) 447-4025, fax 447-4143

KC ENGINEERING CO.
A SUBSIDIARY OF MATERIALS TESTING, INC.

--FEE SCHEDULE-- City of Winters, 2011-2013

Introduction of Fees

- Listed herein are hourly rates for engineering and inspection services most frequently performed by **MATERIALS TESTING, INC.** A fee schedule of field and laboratory services and tests are included herein. Prices for other services not listed below will be given upon request, as well as special quotations for projects involving volume work.
- It is pointed out that our *prevailing-wage* hourly rates **include** charges for use of vehicle, portal to portal, use of nuclear gauge and concrete testing equipment and all individual testing performed in the field. A two (2) hour minimum charge applies to Technician & Special Inspector rates on weekdays. A four (4) hour minimum charge applies for weekend and holidays.
- Invoices will be submitted at completion of services, or monthly, whichever is earlier, and are due and payable upon presentation.
- Laboratory and field testing prices include reporting of routine results. This does not include analysis, conclusions, recommendations or detailed engineering reports.
- HOURLY RATES (see Item #2 above):**

GEOTECHNICAL ENGINEERING

Principal Engineer.....	160.00/hr.
Senior Engineer.....	130.00/hr.
Project Engineer.....	120.00/hr.
Staff Engineer.....	110.00/hr.

GEOLOGICAL & ENVIRONMENTAL

Certified Engineering Geologist	145.00/hr.
Registered Environmental Assessor.....	125.00/hr.

TECHNICIAN & SPECIAL INSPECTOR

Field & Laboratory Manager.....	100.00/hr.
ACI Concrete Technician.....	90.00/hr.
Soils/Asphalt Engineering Technician.....	95.00/hr.
ICC Certified Special Inspector.....	95.00/hr.
AWS/Certified Welding Inspector.....	100.00/hr.
Second Shift.....	Add \$5/hr.
Overtime (Saturdays & Hours over Eight).....	1.5 x Hourly Rate
Overtime (Sundays & Holidays & after 8 hrs on Sat.)	2 x Hourly Rate

6. LABORATORY AND TECHNICAL FEES

CONCRETE

Concrete Mix Design or Review of Submitted Mix Design (Aggregate Test not Included).....	325.00/ea.
Concrete Mix Design Adjustment (Aggregate Test not Included)	110.00/ea.
Metric Conversion.....	175.00/ea.
Concrete Mix Design (Minor Change).....	75.00/ea.
Concrete Mix Design or Review of Submitted Mix Design Requiring Registered Engineer's Stamp (Aggregate Test not Included).....	330.00/ea.
Concrete Mix Design Adjustment Requiring Registered Engineer's Stamp (Aggregate Test not Included).....	350.00/ea.
Concrete Trial Batch (Includes Preparation and Testing of Six (6) Cylinders, Gradation, and Specific Gravity of Aggregates)	750.00/ea.
Concrete Trial Batch (Caltrans Ten (10) Cylinders)	750.00/ea.
Compression Tests (6 x 12 Cylinder)..... (ASTM C 39)	35.00/ea.
Compression Tests (2 x 4 Cylinder)..... (ASTM C 39)	35.00/ea.
Compression Tests (4 x 6 Cylinders)..... (Soil & Cement)	35.00/ea.
Compression Tests on Core Specimens..... (Concrete-ASTM C 42, Rock-ASTM D 7012)	45.00/ea.
End Preparation by Diamond Sawing.....	25.00/trim
Compression Tests (2x2x2 Cubes)..... (ASTM C 109)	35.00/ea.
Strength Test - Flexure Beam (6 x 6 x 21)..... (ASTM C 78) (CTM 523)	80.00/ea.
Unit Weight Hardened Concrete..... (ASTM C 642)	40.00/ea.
Density of Structural Lightweight Concrete..... (ASTM C 567)	100.00/ea.

CONCRETE MASONRY

Compression Tests, Concrete Masonry Units..... Set of 3 (ASTM C 140)	250.00/set
Component Prism Compression Tests..... (ASTM C 1314)	125.00/ea.
Compression Test (Mortar Cylinders)..... (ASTM C 39)	35.00/ea.
Compression Tests (Grout Prisms)..... (ASTM C 1019)	35.00/ea.
Absorption, Moisture Content and Unit Weight of Concrete Masonry (Set of 3)(ASTM C 140).....	225.00/set
Linear Shrinkage, Concrete Masonry (1 set of 3) (ASTM C 426).....	Cost Plus 20%
Compressive Tests, Solid Bricks.....	35.00/ea.
Weight Loss Requirement.....	20.00/ea.
Absorption (Cold) (ASTM C 67).....	20.00/ea.
Absorption (Boiling) (ASTM C 67).....	20.00/ea.

SOILS

Coarse Sieve Analysis..... (ASTM C 136) (CTM 202)	60.00/ea.
Fine Sieve Analysis..... (ASTM C 136) (CTM 202)	85.00/ea.
Total Sieve Analysis, with -#4 Portion, Wash Only... (ASTM C 136) (CTM 202)	130.00/ea.
Total Sieve Analysis with Total Wash..... (ASTM C 136) (CTM 202)	160.00/ea.
Hydrometer(Includes Wash and Sieve..... of Minus No. 4 and Specific Gravity) (ASTM D 422)	230.00/ea.
Percent Finer than No. 200..... (ASTM D 1140) (CTM 202)	65.00/ea.
Constant Head Permeability..... Material Remolded (Compaction Curve Additional) (ASTM D 2434)	300.00/ea.

MTI Fee Schedule 2011

Flexible Wall Permeability..... (ASTM D 5080)	Quote
Atterberg Limits Sample Preparation..... (ASTM D 4318) (CTM 204)	38.00/ea.
Plastic Limit (ASTM D 4318) (CTM 204).....	70.00/ea.
Liquid Limit...(ASTM D 4318) (CTM 204).....	75.00/ea.
Plasticity Index (ASTM D 4318) (CTM 204).....	145.00/ea.
Moisture/Dry Unit Weight of Tube Sample..... (ASTM D 2937)	40.00/ea.
Moisture Content..... (ASTM D 2216, C 566) (CTM 226)	25.00/ea.
Specific Gravity..... (ASTM D 854) (CTM 209)	60.00/ea.
Dry Unit Weight, Waxed (Undisturbed Sample).....	55.00/ea.
"R" Value (Includes Grading..... and Re-Proportioning, if necessary) (ASTM D 2844) (CTM 301)	250.00/ea.
USDA Classification, Includes % Plus # 10.....	125.00/ea.

Compaction Curves

(Laboratory Maximum Density/Optimum Moisture)
with assumed G_s for rock correction, with measured
G_s add \$60.00

ASTM D 1557	Method A.....	185.00/ea.
	Method B.....	185.00/ea.
	Method C.....	195.00/ea.
Overtime Curve.....		225.00/ea.
ASTM D 698	Method A	155.00/ea.
	Method B.....	155.00/ea.
	Method C	180.00/ea.
AASHTO T-180	Method A	180.00/ea.
	Method B.....	180.00/ea.
	Method C	190.00/ea.
	Method D.....	190.00/ea.

MTI Fee Schedule 2011

AASHTO T-99	Method A	155.00/ea.
	Method B.....	155.00/ea.
	Method C	170.00/ea.
	Method D.....	175.00/ea.
UBC 70-1	Method A.....	160.00/ea.
	Method B.....	160.00/ea.
	Method C.....	185.00/ea.
Cal Test No. 216.....		190.00/ea.
U.S.B.R. Method.....		175.00/ea.
Compaction Check Point (For any of the above standards).....		80.00/ea.
Minimum Index Density (ASTM D 4254).....		75.00/ea.
Maximum Index Density (ASTM D 4253).....		85.00/ea.
<u>SOILS (miscellaneous)</u>		
Minimum Resistivity (CTM 643).....		85.00/ea.
PH Values (La Motte Meter Method).....		45.00/ea.
Sulfate Testing		90.00/ea.
Unconfined Compression Test		90.00/ea.
(Includes Moisture/Density Tube Sample)		
(ASTM D 2166) (CTM 221)		
Lime Treated Unconfined Compression.....		210.00/pt.
(ASTM D 5102) (CTM 373)		
Soil Cement Unconfined Compression.....		200.00/pt.
(ASTM D1633)		
Remolded Unconfined Compression.....		150.00/ea.
Direct Shear (ASTM D 3080).....		285.00/ea.
Percent Swell Test (ASTM D 4546).....		150.00/pt.
Organic Content (ASTM D2974).....		80.00/ea.
Consolidation Test (ASTM D 2435) (CTM 219).....		300.00/ea.

MTI Fee Schedule 2011

Expansion Index (ASTM D 4829).....	250.00/ea.
Special Consolidation Tests.....	Quote
<u>AGGREGATE QUALITY</u>	
Coarse Sieve Analysis..... (ASTM C 136 or CTM 202)	60.00/ea.
Fine Sieve Analysis..... (ASTM C 136 or CTM 202)	85.00/ea.
Total Sieve Analysis. With -#4 Portion Wash Only (ASTM C 136 or CTM 202).....	130.00/ea.
Total Sieve Analysis with Total Wash..... (ASTM C 136 or CTM 202)	160.00/ea.
Coarse Durability Index (ASTM D 3744)(CTM 229).	100.00/ea.
Fine Durability Index (ASTM D 3744) (CTM 229)	100.00/ea.
Cleanness Value (1" x #4) (CTM 227).....	115.00/ea.
Cleanness Value (2-1/2" x 3/4") (CTM 227).....	150.00/ea.
Coarse Specific Gravity & Absorption..... (ASTM C 127) (CTM 206)	65.00/ea.
Fine Specific Gravity & Absorption..... (ASTM C 128) (CTM 207)	95.00/ea.
Sodium Sulfate Soundness, 5 Cycles..... (ASTM C 88) (CTM 214)	350.00/ea.
Sand Equivalent Value (Ave of 3)..... (ASTM D 2419) (CTM 217)	80.00/ea.
Organic Impurities (ASTM C 40 or CTM 213).....	60.00/ea.
Unit Weight, Aggregate (Dry Rodded)..... (ASTM C 29) (CTM 212)	60.00/ea.
Percent Finer than #200 Sieve Plus #4 Material..... (ASTM C 117) (CTM 202)	65.00/ea.
Percent Finer than #200 Sieve Minus #4 Material..... (ASTM C 117) (CTM 202)	60.00/ea.
Percent Finer than #200 (ASTM C 117) (CTM 202)...	70.00/ea.

MTI Fee Schedule 2011

Crushed Particles (ASTM D 693) (CTM 205).....	165.00/ea.
Fractured Faces (ASTM D 5821)	165.00/ea.
L. A. Abrasion Test (ASTM C 131) (CTM 211)..... (100 & 500 Revs)	125.00/ea.
L. A. Abrasion Test (ASTM C 535) (CTM 211)..... (200 & 1000 Revs)	160.00/ea.
Clay Lumps & Friables (ASTM C 142).....	65.00/ea.
Flats & Elongates (ASTM D 4791)	165.00/ea.
Light Weight Particles (ASTM C 123).....	80.00/ea.
Wood Particles Test (OSHD TM-25).....	65.00/ea.
Natural Moisture Content (As Received)..... (CTM 226) (ASTM C 566)	25.00/ea.
Freeze/Thaw (ASTM D 5312).....	Quote
Wetting/Drying (ASTM D 5313).....	Quote
Aggregate Angularity (ASTM D 2488).....	130.00/ea.

CORING

(Concrete, Masonry, or Asphalt Concrete)

Coring Equipment..... 1 Technician (Asphalt)	155.00/hr.
Coring Equipment	180.00/hr.
1 Technician (Masonry)	
Coring Equipment..... 1 Technician (Concrete)	180.00/hr.
Additional Technician	85.00/hr.

ASPHALT/BITUMINOUS MATERIAL

Review of Submitted Asphalt Mix Design.....	325.00/ea.
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Hveem Tests:

Hveem Mix Design with TSR (CTM 371)..... (Based on 5 Oil Contents with 15 Points)	4,500.00/ea.
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MTI Fee Schedule 2011

Mix Verification.....	735.00/ea.
Unit Weight Lab Compacted Briquette (Field Mix) (ASTM D 1561) (CTM 308).....	175.00 (Set of 3)
Hveem Stabilometer Value with Unit Weight (Field Mix) (ASTM D 1561) (CTM 366).....	225.00 (Set of 3)
Unit Weight Lab Compacted Briquette (Lab Mix) (Mixing Oil, Rock, etc.) (ASTM D 1561)(CTM 308).	250.00 (Set of 3)
Stabilometer Value with Unit Weight (Lab Mix) (ASTM D 1560) (CTM 366) (CTM 308).....	325.00 (Set of 3)
Marshall Tests:	
Marshall Mix Design..... (Based on 5 Oil Contents with 15 Points)	2,800.00 (Set of 3)
Unit Weight Lab Compacted Briquette (Field Mix) (ASTM D 2726)	130.00 (Set of 3)
Stability & Flow with Unit Weight (Field Mix) (ASTM D 1559).....	225.00 (Set of 3)
Unit Weight Lab Compacted Briquette (Lab Mix)..... (ASTM D 2726)	225.00 (Set of 3)
Stability & Flow with Unit Weight (Lab Mix)..... (ASTM D 1559)	325.00 (Set of 3)
<u>Miscellaneous Tests:</u>	
Swell Tests (Field or Lab Mix)..... (Does Not Include Briquette Fabrication) (CTM 304)	50.00/ea.
Immersion Compression (ASTM D 1075).....	715.00/ea.
Hveem Stability Cored Sample (CTM 366).....	85.00/ea.
Tensile Strength Ratio (ASTM D 4867).....	1,500.00/ea.
Specific Gravity (Maximum Theoretical) (Rice)..... (ASTM D 2041) (CTM 309)	100.00/ea.
Specific Gravity Unit Weight of Briquettes/Cores. (ASTM D 2726) (CTM 308).....	45.00/ea.
Unit Weight of Briquettes (Wax Coated) (CTM 308)	55.00/ea.

MTI Fee Schedule 2011

Extraction of Bitumen..... (ASTM D 2172, Method A) (CTM 310)	165.00/ea.
Grading of Extracted Sample..... (ASTM C 136) (CTM 202)	100.00/ea.
Moisture Content of Asphalt Mixture (CTM 370)....	30.00/ea.
Centrifuge Kerosene Equivalent, CKE (CTM 303)...	400.00/ea.
Coarse (Includes Specific Gravity and Absorption)	180.00/ea.
Fine (Includes Sieve Analysis and Specific Gravity)...	230.00/ea.
Percent Retained Oil (CTM 303).....	105.00/ea.
Moisture Content of Cored Sample (CTM 370).....	25.00/ea.
Tensile Strength Ratio (Lottman) (AASHTO T-283)	820.00/ea.
QC/QA Plan.....	1,000.00/ea.
Asphalt Content (Troxler Nuclear Gauge) (CTM 379)	90.00/ea.
Calibration of Troxler Nuclear Gauge (CTM 379)....	250.00/ea.

EXHIBIT "C"

GENERAL PROVISIONS

(1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC.. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

(4) INSURANCE.

- (a) WORKER'S COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation.
- (b) GENERAL LIABILITY AND AUTOMOBILE INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement broad form property damage, personal injury, automobile, employer, and comprehensive form liability insurance in the amount of \$2,000,000 per occurrence; provided (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured under the policy; and (2) that the policy shall stipulate that this insurance will operate as primary insurance; and that (3) no other insurance effected by the CITY or other names insured will be called upon to cover a loss covered there under; and (4) insurance shall be provided by an, at least, A-7 rated company. The form of said endorsements(s) shall be supplied by the City.
- (c) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, CONSULTANT shall maintain an Errors and Omissions Insurance policy in the amount of not less than \$1,000,000.
- (d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with the City Clerk upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the City Clerk prior to the effective date of such cancellation, or change in coverage.

CONSULTANT shall file with the City Clerk concurrent with the execution of this Agreement, the City's standard endorsement form (attached hereto) providing for each of the above requirements.

(5) CONSULTANT NOT AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

(7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, at its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of the CITY.

(10) PRODUCTS OF CONSULTING. All products of the CONSULTANT resulting from this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, hold harmless the CITY, its officers, agents and employees from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property to the extent arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the City, its officers, agents or employees.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This

indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

(13) LOCAL EMPLOYMENT POLICY. The City of Winters desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Yolo County.

The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advise, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

EXHIBIT "C"

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Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This

indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

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The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

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CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members
THROUGH: John W. Donlevy, Jr., City Manager
DATE: December 20, 2011
FROM: Dawn Van Dyke, Management Analyst 
SUBJECT: Resolution 2011-56 A Resolution of the City Council of the City of Winters
Accepting the Dedication of a Public Service Easement from the Roman Catholic
Bishop of Sacramento, St. Anthony's Church

RECOMMENDATION: That the City Council accept Resolution 2011-56 A Resolution of the City Council of the City of Winters Accepting the Dedication of a Public Service Easement from the Roman Catholic Bishop of Sacramento, St. Anthony's Church.

BACKGROUND: At the Dec. 6, 2011 City Council meeting, the City Council approved acceptance of a Public Service Easement for installation, maintenance and operation of a public sidewalk on property owned by the Roman Catholic Church, adjacent to St. Anthony Parish Hall. Staff inadvertently left off the required Resolution of Acceptance, which is necessary in order for the easement to be filed with the Yolo County Clerk. Said Resolution is attached. The Dec. 6, 2011 staff report is also attached for reference.

FISCAL IMPACT: Construction of that portion of the sidewalk will cost approximately \$600.

RESOLUTION NO. 2011-56

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WINTERS ACCEPTING THE DEDICATION OF A PUBLIC
SERVICE EASEMENT FROM THE ROMAN CATHOLIC BISHOP
OF SACRAMENTO,
ST. ANTHONY'S CHURCH**

WHEREAS, The City of Winters has received grant funds from the Sacramento Area Council of Government for construction of a sidewalk on the south side of Grant Avenue, adjacent to Waggoner Elementary School property east of St. Anthony Parish Hall; and

WHEREAS, a small portion of the sidewalk will be constructed on property adjacent to St. Anthony Parish Hall at City expense; and

WHEREAS, the City of Winters has requested a public service easement for installation, maintenance and operation of a public sidewalk over and upon the 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

WHEREAS, the Roman Catholic Bishop of Sacramento, St. Anthony's Church has granted said easement through a Public Service Easement Deed; and

WHEREAS, said property is located at APN 003-120-003, and consists of 96 square feet of land, more or less; and

WHEREAS, the City has accepted the public service easement; and

WHEREAS, the City of Winters needs to record a resolution evidencing this acceptance of the above described public service easement.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Winters, State of California, as follows:

On Dec. 20, 2011, at a regularly scheduled and noticed meeting of the Winters City Council, the foregoing Resolution is hereby adopted in its entirety on the following vote:

AYES:
NOES:
ABSENT:

ATTEST:

W. Keith Fridae, Mayor, City of Winters

ATTEST:

Nanci G. Mills, City Clerk
City of Winters



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members

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

DATE: December 6, 2011

FROM: Dawn Van Dyke, Management Analyst *DVD*

SUBJECT: Acceptance of Public Service Easement Deed for installation, maintenance and operation of a public sidewalk on property owned by the Roman Catholic Bishop of Sacramento, St. Anthony's Church.

RECOMMENDATION: That the City Council accept a public service easement deed for installation, maintenance and operation of a public sidewalk on property owned by the Roman Catholic Bishop of Sacramento, St. Anthony's Church.

BACKGROUND: The City of Winters received a grant from the Sacramento Area Council of Governments (SACOG) through the 2009 Community Design Program for construction of a sidewalk on the south side of Grant Avenue adjacent to Waggoner Elementary School. The Winters Joint Unified School District (WJUSD) recently deeded property to the City for construction of the sidewalk project in order to avoid construction in the Caltrans right of way. The project engineer is recommending that the City accept a public service easement on a portion of property just west of Waggoner School, belonging to St. Anthony Catholic Church. This easement will allow for a smoother transition at the end of the sidewalk, with a gradual slope, rather than an abrupt end. SACOG funds may not be used for projects on private property, so construction of the remaining sidewalk from the Waggoner School property to the intersection of Grant Avenue and Main Street, will not be completed at this time.

FISCAL IMPACT: This transition portion will add approximately \$600 to the project cost, to be paid for by the City as SACOG funding may not be used for projects on private property.

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

APN: 003 -- 120 -- 003

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)

P U B L I C S E R V I C E E A S E M E N T D E E D

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

Roman Catholic Bishop of Sacramento, St. Anthony's Church

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 Service Easement for installation, maintenance and operation of a public sidewalk over and upon the portion of real property situate, lying and being in the City of Winters, County of Yolo, State of California, such easement being more particularly described as:

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 1877 of Official Records at Page 154, said County Records, being more particularly described as follows:

BEGINNING at a point on the Northeasterly corner of said Parcel of land as described in said Book 1877 of Official Records at Page 154, said County Records; thence, from said POINT OF BEGINNING and along the Easterly line of said Parcel, South 25°00'00" East 8.00 feet; thence, leaving said Easterly line and along a line parallel with and distant 8.00 feet Southerly of as measured right angles from the said Northerly line of said Parcel of land, South 65°00'00" West 12.00 feet; thence, leaving said parallel line, North 25°00'00" West 8.00 feet; thence, along the said Northerly line, North 65°00'00" East 12.00 feet to the POINT OF BEGINNING.

Containing 96 square feet of land, more or less.

Said Public Service Easement excludes maintenance and operation of other facilities including fences, gates, and driveways that lay within the easement boundaries except where those facilities are utilized specifically for public sidewalk uses.

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

IN WITNESS WHEREOF, this Public Service Easement Deed is executed by the undersigned this

9 day of September, 2011

Signature: Rev. Michael J. Hobda

ROMAN CATHOLIC BISHOP OF SACRAMENTO, ST. ANTHONY'S CHURCH
(Print Grantor's Legal Name, Company or Corporation as applicable)

By: Rev. Michael J. Hobda
(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

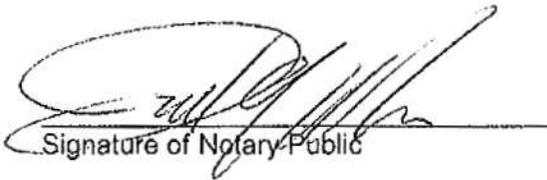
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

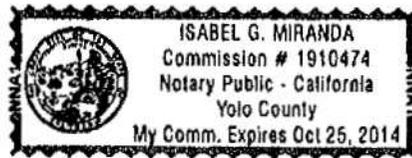
State of California
County of YOLO } ss.

On (date) SEPTEMBER 9, 2011 before me, ISABEL G MIRANDA, Notary Public, personally appeared MICHAEL JOSEPH HEBDA, 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 signatures(s) 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.


Signature of Notary Public



OPTIONAL INFORMATION

Date of Document: SEPTEMBER 9, 2011

Type, or Title of Document: PUBLIC SERVICE EASMENT DEED

Number of Pages in Document: 2

Type of Satisfactory Evidence:

- Personally Known with Paper Identification
- Paper Identification
- Credible Witness(es)

Capacity of Signer:

- Individual Partner(s) General or Limited
- CEO / CFO / COO President / Vice-President / Secretary / Treasurer
- Power of Attorney Trustee/Guardian/Conservator
- Other: _____

Other Information: _____

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

APN: 003 - 120 - 003

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)

P U B L I C S E R V I C E E A S E M E N T D E E D

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

Roman Catholic Bishop of Sacramento, St. Anthony's Church

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 Service Easement for installation, maintenance and operation of a public sidewalk over and upon the portion of real property situate, lying and being in the City of Winters, County of Yolo, State of California, such easement being more particularly described by:

Exhibit A composed of two (2) pages, attached hereto and made a part hereof by reference,

Said Public Service Easement excludes maintenance and operation of other facilities including fences, gates, and driveways that lay within the easement boundaries except where those facilities are utilized specifically for public sidewalk uses.

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

IN WITNESS WHEREOF, this Public Service Easement Deed is executed by the undersigned this

19 day of August, 2011

Signature: Rev. Michael J. Hebdan

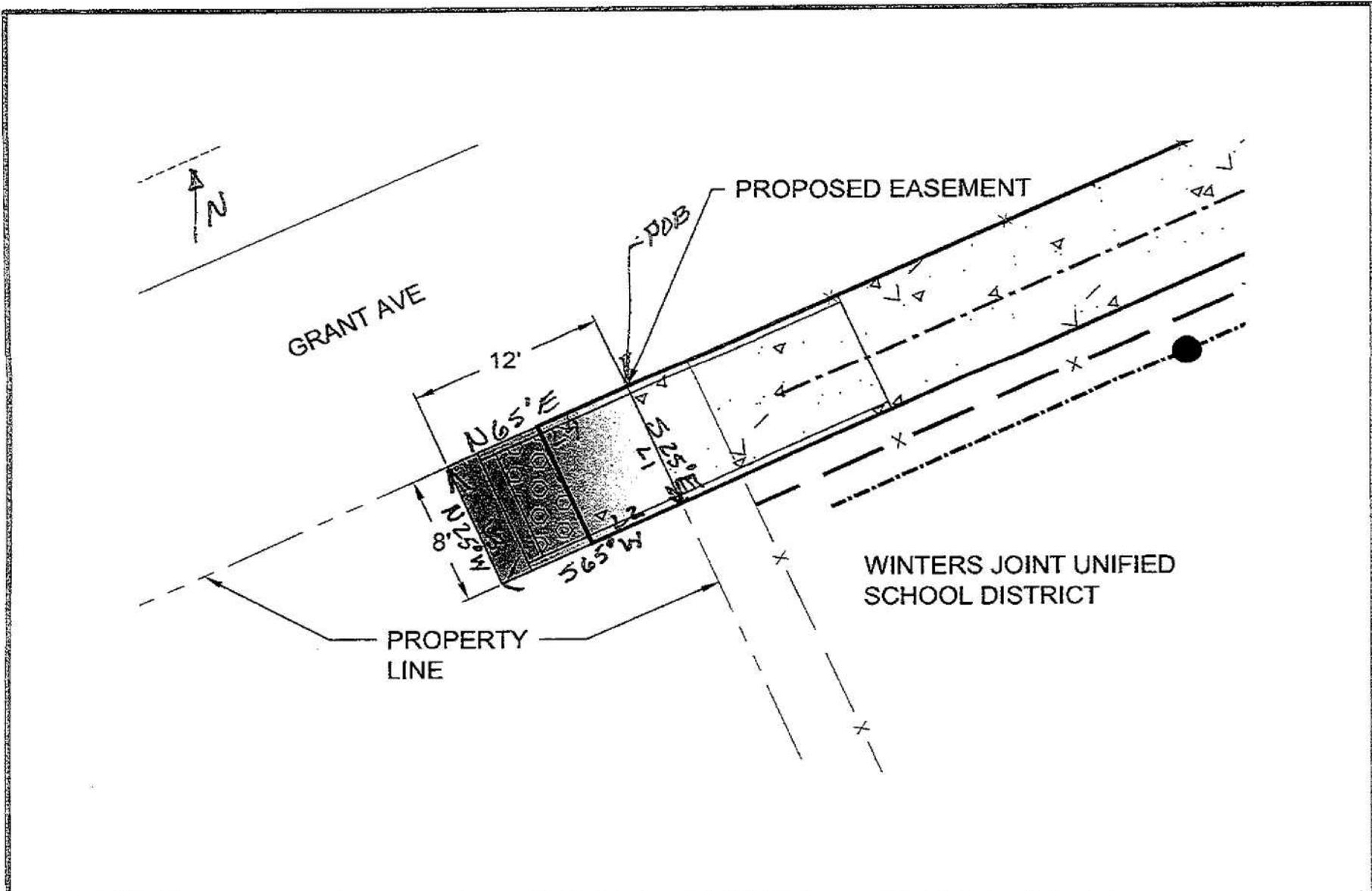
ROMAN CATHOLIC BISHOP OF SACRAMENTO, ST. ANTHONY'S CHURCH
(Print Grantor's Legal Name, Company or Corporation as applicable)

By: Rev. Michael J. Hebdan, Pastor
(Print name and title of signatory if company or corporation)

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Dated: _____

Signed: _____
Nanci Mills, City Clerk



PONTICELLO ENTERPRISES
 CONSULTING ENGINEERS, INC.
 1216 Forest Avenue
 Woodland, CA 95776
 Phone: (530) 666-5983
 Fax: (530) 666-5893

GRANT AVENUE SIDEWALK CONNECTIVITY
 City of Winters

DATE: JULY 15, 2011
 DRAWN BY: JTS
 DESIGNED BY: JEF
 PAGE 1 OF 1

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

APN: 003 - 120 - 003

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)

P U B L I C S E R V I C E E A S E M E N T D E E D

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

Roman Catholic Bishop of Sacramento, St. Anthony's Church

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 Service Easement for installation, maintenance and operation of a public sidewalk over and upon the portion of real property situate, lying and being in the City of Winters, County of Yolo, State of California, such easement being more particularly described as:

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 1877 of Official Records at Page 154, said County Records, being more particularly described as follows:

BEGINNING at a point on the Northeasterly corner of said Parcel of land as described in said Book 1877 of Official Records at Page 154, said County Records; thence, from said POINT OF BEGINNING and along the Easterly line of said Parcel, South 25°00'00" East 8.00 feet; thence, leaving said Easterly line and along a line parallel with and distant 8.00 feet Southerly of as measured right angles from the said Northerly line of said Parcel of land, South 65°00'00" West 12.00 feet; thence, leaving said parallel line, North 25°00'00" West 8.00 feet; thence, along the said Northerly line, North 65°00'00" East 12.00 feet to the POINT OF BEGINNING.

Containing 96 square feet of land, more or less.

Said Public Service Easement excludes maintenance and operation of other facilities including fences, gates, and driveways that lay within the easement boundaries except where those facilities are utilized specifically for public sidewalk uses.

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

IN WITNESS WHEREOF, this Public Service Easement Deed is executed by the undersigned this

9 day of September 2011

Signature: Rev. Michael J. Hebda

ROMAN CATHOLIC BISHOP OF SACRAMENTO, ST. ANTHONY'S CHURCH
(Print Grantor's Legal Name, Company or Corporation as applicable)

By: Rev. Michael J. Hebda
(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

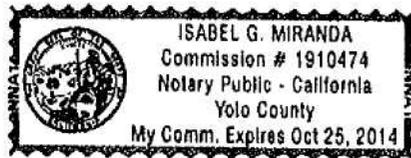
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of YOLO } ss.

On (date) SEPTEMBER 9, 2011 before me, ISABEL G MIRANDA, Notary Public, personally appeared MICHAEL JOSEPH HEBDA, 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 signatures(s) 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.



[Handwritten Signature]
Signature of Notary Public

OPTIONAL INFORMATION

Date of Document: SEPTEMBER 9, 2011

Type, or Title of Document: PUBLIC SERVICE EASMENT DEED

Number of Pages in Document: 2

Type of Satisfactory Evidence:

- Personally Known with Paper Identification
- Paper Identification
- Credible Witness(es)

Capacity of Signer:

- Individual Partner(s) General or Limited
- CEO / CFO / COO President / Vice-President / Secretary / Treasurer
- Power of Attorney Trustee/Guardian/Conservator
- Other: _____

Other Information: _____



Page 1 of 1

TO: Honorable Mayor and Council Members
DATE: December 20, 2011
THROUGH: John W. Donlevy, Jr., City Manager *[Signature]*
FROM: Nanci G. Mills, Director of Administrative Services/City Clerk *Nanci*
SUBJECT: Memorandums of Understanding (MOU) and Salary Range Resolutions

RECOMMENDATION:

Staff recommends that the City Council adopt Resolutions 2011-47, 2011-48, 2011-49, 2011-50, 2011-51, 2011-52, 2011-53, 2011-54 Approving Certain Terms and Conditions of Employment for the City Associations, salary ranges, and the new job description for the Administrative Coordinator.

BACKGROUND:

The MOU's consist of a cross section of employees in all City Departments. Highlights of the agreements include new salary ranges for only the maintenance worker classifications (all others remain the same), with the exception of the new classification and job description of the Administrative Coordinator. Increase in the cafeteria plan to the 2012 Kaiser rate (\$41-\$108 depending on employee status). The Deferred Compensation and the vacation sections, indicating that the employer contribution and cash out of time is frozen at this time, and the addition of the CALGOVEBA program Council approved as a health savings plan for employee contributions.

Resolution 2011-54 is the salary ranges and job description for the newly created Administrative Coordinator that will work for both the Fire and Police Chiefs at the public safety facility.

FISCAL IMPACT:

The cost associated with the adoption of these Resolutions are included in the City's Budget.



RESOLUTION NO. 2011-47

**MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
POLICE OFFICERS ASSOCIATION**

**Effective
January 1, 2012**

MEMORANDUM OF UNDERSTANDING

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****PREAMBLE****

This Memorandum of Understanding (MOU) is entered into this 1st day of January, 2012, between the City of Winters (hereinafter referred to as City) and the Winters Police Officers Association (hereinafter referred to as Association).

ARTICLE 1 - RECOGNITION

The City recognizes the Association as the representative for the employees in the Police Officer job classification (hereinafter referred to as employee).

ARTICLE 2 - MEMORANDUM OF UNDERSTANDING RATIFICATION

Upon approval of the Association, this MOU will be submitted to the City Council and is of no force or effect until ratified and approved by a Resolution adopted by the City Council.

ARTICLE 3 - MANAGEMENT RIGHTS

All management rights and functions except those which are clearly and expressly limited in this MOU shall remain vested exclusively in the City, however, if any modification occurs that effects wages, hours or working conditions, the City shall notify the Association and meet and confer regarding the impact of such modifications. It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

- A. Manage the City and determine services to be provided.
- B. Schedule work hours and or work periods, determine the number and duration of work periods, and establish, modify, or change work schedules, and determine the necessity of overtime and the amount of overtime required.
- C. Direct the work force and hire, promote, demote, transfer, suspend, or discharge any employee and determine the administration of discipline.
- D. Determine the location of any new facilities, buildings, departments, divisions, or subdivisions thereof, and the relocation, sale, leasing, or closing of facilities, departments, divisions, or subdivisions thereof.
- E. Determine the layout of buildings and equipment and determine control and use of City property, materials, and equipment.

- F. Determine processes, techniques, methods, and means of performing work and institute changes in procedures.
- G. Determine the size, character and use of inventories.
- H. Determine the financial policy, including accounting procedures.
- I. Determine the administrative organization of the City, the size and character of the work force, and allocate or assign work to employees and determine duties to be included in any job classification.
- J. Determine how new employees are selected.
- K. Establish and judge quality and quantity standards.
- L. Establish, modify, eliminate or enforce rules and regulations and determine the methods and means by which operations are to be conducted including placing or contracting work with outside firms and hiring part time employees.
- M. Require employees, where necessary, to take in-service training courses during working hours.
- N. Take any necessary action to carry out City responsibilities in cases of an emergency.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this MOU and then only to the extent such specific and express terms are in conformance with law.

ARTICLE 4 - ASSOCIATION RIGHTS

- A. The Association retains the right to engage in the meet and confer process and employer/employee relations including, but not limited to wages, hours, and other terms and conditions of employment.
- B. The Association may schedule use of meeting space within City facilities outside working hours, provided there are no legal prohibitions, and such space is available. The Association may use City equipment normally used in the conduct of business meetings, such as desks, chairs, blackboards, etc. Use of City equipment and space shall not disrupt department operations.
- C. The Association will have reasonable advance notice of any City ordinance, rule, resolution, or regulation directly relating to matters within the scope of

representation proposed to be adopted by the City Council. Reasonable advance notice is defined as public noticing as published by the City Clerk pursuant to state law, with a copy of the notice sent to the Association President. In addition, employees will be provided copies of special orders, general orders, training bulletins, department rules and regulations, and a copy of this MOU.

- D. The City will provide an Association office in any new facility obtained for the Police Department.
- E. The City will allow the three principal Association officers (President, Vice-President and Secretary/Treasurer) time to conduct Association business during the officer's duty shift if the officer is not otherwise engaged in an investigation and is available to answer dispatched calls.
- F. With prior approval of the Police Chief and/or City Manager, authorized agents of the Association shall have access to City premises during work hours (8:00 A.M. to 5:00 P.M.), Monday through Friday, for purposes of adjusting disputes, investigating working conditions, and such other matters, as may be requested by the Association and approved by the City. Access may be restricted so as not to interfere with the conduct of City services and safety or security standards.
- G. City bulletin boards may be used for transmitting notices of Association meetings, elections, results of elections, and other matters pertaining to Association business. Notices must be signed by the Association President and a copy provided to the City Manager.

ARTICLE 5 - ASSOCIATION SECURITY AND DUES

The City shall deduct dues and other premiums from the first and second paychecks of each employee and remit to the Association for the duration of this MOU an amount that an employee authorizes in writing the City to deduct. The Association agrees to hold harmless and indemnify the City against any claims, causes of action, or lawsuits arising from such deductions or transmittal of such deductions to the Association.

- A. Every employee covered by this MOU shall, within sixty (60) calendar days of employment: (1) become a member of the Association and maintain membership in good standing in accordance with its Constitution and By-Laws; or (2) shall pay an agency fee in an amount equal to the amount of the monthly dues pursuant to Section F.
- B. Any employee appointed to any classification out of the bargaining unit covered by this MOU may withdraw from Association membership and the employee's obligation to pay dues or fees shall be terminated.

- C. The City shall deduct from employee wages the regular membership dues of Association employees, or agency fees of other employees as provided in Section A, which an employee voluntarily authorizes the City to deduct in writing in accordance with the provision of Section 1157.3 of the California Government Code.
- D. Membership dues or agency fee deductions shall be made in equal amounts each payroll period, and a check for the total deductions shall be submitted to the Winters Police Officers Association, at the end of each month.
- E. The City shall notify the Association of changes in bargaining unit membership in a form of check-off authorization as approved by both the City and the Association.
- F. An employee with lawfully established valid objections of membership or financial support of an Association shall make in lieu payments to the Association or to other charitable organizations in accordance with the provisions of Section 3502.5 of the California Government Code.

ARTICLE 6 - NO STRIKE/NO LOCKOUT

The City and Association agree that it is mutually beneficial to resolve differences through negotiation. During the term of the MOU the City agrees that it will not cause a lockout of employees and the Association agrees that it will not sanction or cause a strike, slowdown, sickout, stoppage of work or other job action. Compliance with the request of other labor organizations is included within this prohibition.

ARTICLE 7 - LAYOFF PROCEDURES

In the event of work force reduction, an employee with the least seniority shall be laid off first. "Least seniority" is determined by date-of-hire with the exception of employees on initial probation..

- A. The Association shall be given at least sixty (60) days notice prior to the effective date of the layoff. The City and Association agree to meet and confer to discuss alternatives to layoff and layoff procedures.
- B. Employees shall be given at least forty-five (45) days notice prior to layoff. Employees on probation can be laid off without regard to seniority order or noticing.
- C. No new employee shall be hired in the Police Officer classification until employees on layoff have been given the opportunity to return to work. Such employees shall be rehired or reinstated to the previous position in reverse order of layoff. Probationary employees may be rehired without regard to seniority order, only after regular employees have been rehired. Reinstatement must be exercised within twenty (20) work days after the City deposits written notice of recall from layoff in the United States mail addressed to the employee's last known address by Certified

Mail - Return Receipt Requested.

- D. Employees who leave the Association to accept another position in the City service shall, upon completion of the probationary period in the new position, lose all seniority rights to their former positions.

ARTICLE 8 - WAGES, MERIT STEPS, BENEFITS, AND WAGE PLAN ADMINISTRATION

- A. Base Wages and Merit Steps: The following schedule provides a wage range with five (5) merit steps also know as base wage steps.

Police Officer Wages effective July 1, 2008:

A	B	C	D	E
4,179	4,388	4,607	4,837	5,079

Within the range, all step advancements will be considered on an employee's anniversary date and if an increase is granted, it shall be effective as of the anniversary date. Step increases shall be based on work performance and completion of required length of service in the previous step. New employees will normally be hired at the "A" step. Employees shall spend at least one (1) year in a particular step before being considered for further Step increases; however, the Police Chief may advance a probationary employee to "B" step at six (6) months, with a corresponding change in anniversary date. The time required for step advancement shall be extended by any time spent on leave of absence pursuant to Article 19.

- B. The City will review this wage scale by the end of April, surveying base wages of the Police Officer classification in the jurisdictions of: Auburn, Davis, Dixon, Galt, Marysville, Oroville, Placerville, Rocklin, Vacaville, West Sacramento, and the Yolo County Sheriff's Department. The purpose of this survey will be a reference check on the base wages paid in Winters.
- C. Benefits - The City provides the following benefits pursuant to the terms and conditions noted. Fair Labor Standards Act provisions shall be used to determine which benefits are required to be used in calculating overtime pay.
 - 1. Shift Differential - Employees required to work shifts shall receive the following for shifts actually worked.

		PER SHIFT
Day Cover or Swing Shift	=	\$6.50
Utility or Night Cover Shift	=	\$7.00
Graveyard Shift	=	\$8.00

2. Uniform Allowance- Employees are required to wear uniforms as established by the City. For purchase and maintenance of uniforms the City will pay \$250.00 (two hundred and fifty dollars) per quarter, paid quarterly in a separate check to the employee/reserve.
3. Bilingual Pay - An employee who is certified to use both English and Spanish, written and/or spoken, on the job, and the use of such skill is required by the City shall receive \$150.00 (one hundred fifty dollars) per month. Employees must be tested and certified pursuant to department standards. Yolo County provides the certification at no cost.
4. Insurance - Effective January 1, 2012, employees shall receive \$800.00 (eight hundred dollars) per month, or \$1403.00 per month for a family plan to purchase various health, vision, dental, life, etc., insurance which the City may subscribe. The City will cover any increase so there will be no out of pocket expense to the employee if premium increases during this fiscal year. Money left over after an employee has purchased the insurance coverage desired will be paid to the employee. New employees are required to purchase health, vision and dental insurance which the City may subscribe. Employee's are not required to have health and dental coverage through the City but must show proof of coverage satisfactory to the City. Employees may be required to purchase other insurance pursuant to terms and conditions established by insurance carriers and as agreed to by the Associations.
5. Public Employees Retirement System (PERS) - Employees shall join the PERS system as a condition of employment. The City subscribes to the 3% at 55 retirement plan. The City shall pay the employer rate and the employee rate of 9%.
6. Social Security (FICA) - Employees are required to join the Federal Social Security System as a condition of employment. The employee shall pay the employee's contribution to Social Security on the employee's applicable wages. The City shall pay the City's contribution on applicable employee wages.
7. Education Incentive - An employee who provides evidence of having received a degree from a recognized college/university or a post certificate which the City deems appropriate to the needs of the job being performed shall receive incentive pay as indicated.

CERTIFICATE/EDUCATION

WAGE INCREASE

AA/AS Degree/Intermediate Post
BA/BS Degree/Advanced Post

4% above base wage
10% above base wage

Employer shall pay up to \$1,000 per semester, per employee, toward continue college/adult learning education and professional development program

8. Longevity Recognition - An employee who has completed five (5) consecutive years employment is eligible to receive an amount equal to one-half (1/2) month's base wage during the sixth (6th) year and every year of service thereafter until the employee leaves City service. Payment shall be made on the anniversary of the employee's full time hire date.
9. Jury Duty - Employees may be excused from the regular responsibilities of their position when called for jury duty. Employees called for jury duty shall notify the Chief of Police of the call. If, in the opinion of the City, the absence of the employee would result in undue disruption of work, the City may direct the employee to request an exemption from jury duty. An employee shall not suffer loss of pay or benefits while actually serving on jury duty. All court approved jury pay received by the employee shall be remitted to the City.
10. Field Training Officers - Employees assigned as Field Training Officers shall receive \$200.00 (two hundred dollars) per month while actively engaged in the training of officers.
11. Corporal – Will receive an additional \$200 a month in salary over the police officer salary range.
12. Court Time - A minimum of three (3) hours overtime shall be paid for each court appearance outside an officer's scheduled working hours. However, if a scheduled court appearance is canceled and notification is not received by the officer on the prior business day to the scheduled court appearance, two hours of overtime shall be paid to the officer.
13. Deferred Compensation – An employee who has increased their personal deferred compensation contribution in to a deferred compensation plan offered by the city after this MOU goes in to effect, the City will contribute up to \$500.00 annually. (The City contribution is frozen at this time.)
14. Association Time - Individual Association members may donate, from their accrued vacation leave, holiday leave, or compensatory time off, to the Association for Association business. The President of the Association may designate members of the Association to utilize this time. Only one member at a time may be absent unless mutually agreed between the Chief of Police and the Association that additional members may be absent. Two (2) weeks advance notice of use of time shall be given. The time may be used only in hourly increments. The accrual of time given by an employee to the Association, shall be noted on each employee's time card, and shall be the responsibility of the Administrative Services Department. The Association's balance of accrued time

will appear on the Association's dues check.

15. Counseling Services - The City will provide psychological counseling services for employees and their families as developed and administered by the Yolo County Risk Management Authority.

D. SALARY PLAN ADMINISTRATION

1. Employees shall be paid according to a bi-weekly payroll plan which has twenty-six (26) pay periods in a calendar year.
2. Employees shall normally be paid by twelve noon (12:00 noon) on or before every other Friday.
3. When the normal pay day falls during an employee's annual vacation leave, the employee may receive a vacation advance on the last working day prior to beginning vacation leave provided a written request is submitted to the Administrative Services Department at least five (5) working days in advance and the amount requested is less than the employee's regular paycheck, based on straight time hours.
4. Work performance evaluations shall be completed by the employee's supervisor at least ten (10) working days prior to the employee's anniversary date. At this time consideration may be given for a merit step advance. If the evaluation is not completed in the time required, the performance of the employee shall be deemed to be acceptable. The evaluation shall include the following elements:
 - a. A written record to be reviewed and acknowledged in writing by the employee. No change will be made after this review and without the acknowledgment of both the supervisor and employee.
 - b. A discussion between the supervisor and employee on the content of the performance evaluation.
 - c. A provision whereby an employee may submit a written response to any statement made on the evaluation which must be filed with the evaluation and forwarded to the supervisor. Such responses, and any written acknowledgement by a reviewing official, shall become attached to the evaluation. If the evaluation is satisfactory or better the employee can be granted a merit increase provided that an increase does not exceed the established range. If the evaluation is "Unsatisfactory" or "Improvement Needed", a step increase will not be granted, provided however that inadequate work performance has been previously documented, and the employee has been made aware of and given the opportunity to remedy deficiencies. A withheld step increase may be granted following any

subsequent review period of satisfactory work performance by the employee. The review period shall be no less than ninety (90) days. A step increase granted after this review shall not be retroactive back to the anniversary date.

ARTICLE 9 - PROBATION, NEW CLASSIFICATION, RECLASSIFICATION, ACTING APPOINTMENT, AND PROMOTION

- A. Probation - The probationary period is a time to obtain the best fit for an employee in a new job or classification and for terminating the employer/employee relationship if work performance or adjustment to the City does not meet the expectations of the employee or the City.
 - 1. All original appointments shall be tentative and subject to a probationary period of twelve (12) months for an employee who has successfully completed a POST academy. New hires, without a POST academy, shall have an eighteen (18) month probationary period.
 - 2. The probationary period may be extended up to six (6) months in two (2) three (3) month increments as a result of an employee's unfavorable job performance as determined by the Police Chief. The probationary period may be extended for any leave of absence granted pursuant to Article 19.
 - 3. During the probationary period, an employee will be evaluated every four (4) months. If an employee is under an extended probation the evaluations shall be given each month during the extension.
- B. New Classifications - The City may establish new job classifications. Employees desiring to compete for such positions will be evaluated in the same manner as any candidate aspiring to receive appointment.
- C. Reclassification - Reclassification is a change to an existing job class as a result of changes in the function, duties, and/or responsibilities as determined by the City. The City and Association agree to meet and confer if classifications in this MOU are being reclassified.
- D. Acting Appointments - The City may temporarily appoint an employee to an acting capacity in a higher job classification. The employee shall receive \$200.00 (two hundred dollars) per month for each full month of service. This amount will be prorated for less than a full month's service.
 - 1. Acting appointments will not continue beyond six (6) months except by mutual agreement of the City, employee, and the Association.
 - 2. An employee having served in an acting capacity and subsequently promoted to the position shall establish a new anniversary date as of the first date of formal

promotion.

- E. Promotion - The City may advance an employee to a job classification having a higher base wage range.
 - 1. A promoted employee shall receive an increase to the next higher wage step above that currently held provided that the increase does not exceed the wage range established for the promoted classification.
 - 2. A promoted employee shall be subject to a one (1) year probationary period. An employee rejected during this time shall be reinstated to the job classification previously held at the same wage step the employee had prior to the promotion. A rejection pursuant to this section shall not be considered a demotion as defined in Article 20.
 - 3. Nothing in this section shall be construed as limiting the City's right to advertise a promotional position to any candidate desiring to apply. Any qualified employee may apply and will be evaluated in the same manner as any candidate aspiring to receive appointment to the position.

ARTICLE 10 - PERSONNEL RECORDS

Personnel records, except payroll records, are confidential. Access to personnel records shall be limited to the City Manager, Assistant City Manager, Administrative Services Director, Sergeant, and the Police Chief. An employee and/or their representative, designated by the employee in writing, will be allowed to review the employee's personnel records during regular business hours (8:00 A.M. - 5:00 P.M., Monday through Friday). An employee shall receive, upon written request, a copy of any document placed in the employee's personnel file. Records of sworn police officers which are kept by the Administrative Services Department shall have access restricted as provided by law.

ARTICLE 11 - HOURS OF WORK

The normal work week is five (5) consecutive work days of eight (8) work hours each equaling forty (40) work hours over a standard seven (7) day cycle ("standard" means seven (7) consecutive days based on each employee's work week assignment).

- A. The hours of a work shift are:

Day Shift	0600 to 1400
Cover 2 (Day Cover)	1000 to 1800/1200 to 2000
Swing Shift	1400 to 2200
Utility	1600 to 2400/1800 to 0200
Cover 1 (Night Cover)	2000 to 0400
Graveyard	2200 to 0600

An employee will not have less than a ten (10) hour rest period between the end of a shift and the beginning of the employee's next shift. If this rest period is not given, the employee's next shift will be considered call-back.

- B. Employees shall receive one (1) rest period of not more than thirty (30) minutes, or two (2) rest periods of fifteen (15) minutes each during a work shift plus a thirty (30) minute lunch break. Employees shall work straight eight (8) hours and will be considered to be on duty during rest periods and lunch break. An employee working a shift over 8 hours will have an extra 15 minute break for every two hours worked.
- C. Breaks and rest periods are not cumulative and shall not be used to arrive late or leave work early.
- D. Employees will report to work fully prepared at the start of their work shift.
- E. Shifts will be rotated every four (4) months; in January, May, and September. An employee can choose a work shift by seniority as determined by date-of-hire. An employee may not choose the same shift more than two (2) rotations in a row. Selection of shifts will take place one (1) month prior to the beginning of the next shift rotation.

The Chief of Police may remove from the shift rotation selection process any employee for disciplinary or administrative purposes (administrative purpose, by way of example and not limitation, might be when a low seniority employee was forced by lack of choice to work the same shift for more than three (3) rotations in a row), and place the employee in any particular shift which the Chief determines. If an employee and a shift are removed from the selection process, the Chief of Police will inform the Association five (5) weeks before the beginning of the next rotation cycle. The shift rotation process will not be used to reward or favor an employee.

ARTICLE 12 – OVERTIME

- A. Although all classifications listed in Article 1 are part of the Association bargaining unit, for purposes of the Fair Labor Standards Act (FLSA) the City may designate certain positions exempt per Department of Labor standards. The City will inform said employees in writing and place a copy of said notice in the employee's personnel file.
- B. The work cycle for all employees within the bargaining group shall be seven (7) days in length. All employees, except those deemed exempt, required to work hours in excess of forty (40) hours in a seven (7) day cycle, and/or in excess of eight (8) hours in one (1) day, shall receive overtime pay at the rate of time and one-half. "Hours worked" shall not include any leave of absence pursuant to Article 19.

- C. All overtime must have authorization of a supervisor prior to starting overtime work, except when an emergency situation arises which necessitates overtime work beyond a regular shift. An employee's failure to obtain prior approval may result in denial of the overtime request. Employees shall not spend excessive amounts of time at their work station before or after their normal work period. Such incidental time will not be compensated in any manner whatsoever unless prior authorization of a supervisor is obtained.
- D. The City will provide an employee with one (1) week prior notification of scheduled mandatory overtime. If this notification is not given, an employee may refuse to work the overtime.
- E. Non-mandatory attendance at training schools/facilities which improves the performance of regular job duties and/or prepares for job advancement are not compensable as hours in excess of an employee's normal work shift. Any time spent in excess of the normal work shift will not be counted as working time and is not compensable in any manner whatsoever. Time spent in studying and other personal pursuits are not compensable hours of work under any conditions. This includes travel time to and from a training facility, for non-mandatory training, outside of an employee's work shift.
- F. Employees will be provided with a locker for their own personal convenience and may or may not utilize the locker for storage and clothes changing purposes at their own discretion. Time spent in changing clothes before or after a shift is not considered hours worked and are not compensated in any manner whatsoever.
- G. An employee who is called back to work before or after working a regular shift or work week will be compensated for a minimum of two (2) hours or for actual hours worked, whichever is greater, at the overtime rate. Call back begins the moment the employee receives notification of the call back.
Employees who are required to attend any meetings or training outside their scheduled working hours, will be compensated at a rate of one and one half (1½) times their hourly rate for a minimum of three (3) hours.
- H. Compensatory Time Off (CTO) may be requested by an employee in lieu of overtime pay, and if approved by the City, shall be provided at time and one-half for all hours worked over eight (8) hours in one (1) day and/or forty (40) hours per week. CTO may be provided when requested on a straight time basis for a holiday "not worked". Employees may accrue up to one hundred forty (140) hours of compensatory time, may only cash out one hundred twenty (120). Unused compensatory time on the books shall be paid at termination of employment.
- I. Employees shall receive time and a half pay for working on Youth Day and Caesar Chavez Day. There will be no straight time for employees who are off.

ARTICLE 13 - SICK LEAVE

- A. Employees shall receive sick leave at the rate of eight (8) hours per month for each calendar month of service. Sick leave time shall accrue on a monthly basis. Sick leave shall not accrue during the first six (6) months of initial probation. At the end of that time, the hours which would have accrued will be credited to the employee's sick leave balance.
- B. Sick leave may be accumulated to a maximum of nine hundred and sixty (960) hours.
- C. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
- D. Employees granted a leave of absence pursuant to Article 19, or absent from duty when not authorized by the City shall not accrue sick leave. Sick leave shall not be accrued by an employee absent from duty after separation from City service.
- E. After three (3) consecutive sick days, a physician's certificate or otherwise may be required to determine the adequacy of reasons for the sick leave absence.
- F. Bereavement Leave - Up to five (5) consecutive sick leave days may be granted per incident for death or illness involving members of an employee's family defined as: spouse, mother, father, sister, brother, children, grandparents, grandchildren, mother or father-in-law, and aunt or uncle. Evidence of family relationship may be required before such sick leave is granted. Use of Bereavement Leave shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave.
- G. If an employee dies in the line of duty, that is carrying out their duties and responsibilities during a work shift, then the employee's designated beneficiary shall receive fifty (50) percent of the employee's accumulated sick leave in straight time pay. The formula for such a payment is:

$$\frac{\text{Accumulated Leave}}{2} \times \text{Base Hourly Wage} = \text{Sum Total of Payout}$$
- H. Employees having ten (10) years or more of service with the City, upon retirement shall receive straight time pay for one third (1/3) of their accumulated sick leave hours.
- I. Upon request of an employee and upon approval of the Chief of Police, sick leave credits may be transferred from one or more employees to another employee, under the following conditions:

1. When the receiving employee faces financial hardship due to injury or the prolonged illness of the employee, employee's spouse or child,
 2. The receiving employee has exhausted all leave credits,
 3. The donations must be a minimum of eight (8) hours and in additional eight (8) hour increments.
- J. Sick Leave Incentive - An employee who has used forty-eight (48) hours or less of sick leave in a one (1) year period from December 1 until November 30 shall receive one percent (1%) of their base yearly salary in a separate check payable to the employee during the first week of December of that year.

ARTICLE 14 - HOLIDAYS

- A. Employees shall receive the following holidays on a straight time basis:
- | | |
|---------------------------------------|-------------------------------|
| 1. New Year's Day | 8. Independence Day |
| 2. Martin Luther King's Day | 9. Labor Day |
| 3. President's Day | 10. Veteran's Day |
| 4. Caesar Chavez Day (Only if Worked) | 11. Thanksgiving Day |
| 5. Half Day Good Friday | 12. Day After Thanksgiving |
| 6. Youth Day (Only if Worked) | 13. December 24th |
| 7. Memorial Day | 14. December 25 th |
- B. Every employee shall receive two (2) floating holidays per year. Employees shall receive credit for one floating holiday on July 1, and the other floating holiday on January 1 of each year. If an employee fails to take their floating holidays off, between July 1 and June 30 of the following year, the employee will forfeit their floating holiday credit.
- C. If a holiday falls on an employee's scheduled work day, and the employee is required to work, in addition to the holiday pay at straight time, the employee shall be compensated with overtime at the rate of one and one-half the base hourly wage.

An employee who works a shift that begins on New Years Eve and extends to New Years Day will be compensated at the overtime rate of one and one-half the base hourly wage for the entire shift.

ARTICLE 15 – VACATIONS

A. Employees shall earn paid vacation leave on a monthly basis at each pay period during the month.

<u>YEARS OF SERVICE</u>	<u>HOURS PER PAY PERIOD</u>	<u>ANNUAL HRS</u>	<u>DAYS</u>
0 - 3	3.38	88	11
4 - 6	4.31	112	14
7 - 9	5.23	136	17
10 - 12	6.15	160	20
13 - 16	6.77	176	22
17 - 22	7.69	200	25
23 +	8.31	216	27

- B. Vacations shall be scheduled by the employees with the approval of the Chief of Police, and with regards to the needs of the City. Preference in scheduling shall be based on seniority.
- C. Vacation leave shall not be granted during the first six (6) months of an employee's original probationary period. At the end of that time, the hours which would have accrued will be credited to the employee's vacation balance.
- D. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation balance. Vacation leave shall not be granted to an employee after separation from City service.
- E. Employees granted a leave of absence pursuant to Article 19 or absent from duty when not authorized by the City shall not earn vacation leave.
- F. In the event that a holiday recognized in this MOU occurs during an employee's scheduled vacation leave, that holiday shall not be considered as vacation leave.
- G. Employees may cash in their accrued vacation hours on approval of the City.
- H. An employee separated from City service shall be compensated for vacation hours on the books.
- I. All employees shall take at least one (1) week (five (5) consecutive working days) away from the job each year, which can be a combination of vacation, CTO, holiday, and floating holiday.

ARTICLE 16 - TRAINING SCHOOLS/FEEES

- A. If, as a condition for continued employment, the City requires attendance at a school or training establishment and fees are charged, such fees shall be paid by the City.
- B. Travel time to and from a mandatory training school will be compensated by the City.
- C. It shall be the intent of the City to send each full time Peace Officer to a minimum of 40 hours of Continuous Professional Training each year.

(Continuous Professional Training will be as defined as training courses given POST credits/certificates and or college credits and includes the 24 hour mandated POST requirements).

A Representative of the WPOA will meet with the Training Supervisor during the month of October. This meeting will address the needs and/or requests of each full time Peace Officer with the needs of the department for the upcoming year of training.

- D. As scheduled by the Police Chief, firearms range training time will be considered overtime for employees not working their regular shift during such training.

ARTICLE 17 - TIME OFF TO EMPLOYEE REPRESENTATIVES

The City shall allow two (2) Association employees time off from normal duties without loss of compensation or benefits when formally meeting and conferring with representatives of the City on matters within the scope of representation. In no case shall any overtime be paid for such meeting and conferring.

ARTICLE 18 - WORKERS' COMPENSATION INSURANCE

The State Workers' Compensation Laws, and this MOU shall govern all aspects of work related injuries, illnesses, and accidents. Employees shall continue to receive full salary benefits in lieu of temporary disability during any absence from work which qualifies for Workers' Compensation benefits. Sick leave and vacation shall continue to accrue in accordance with the provision of State Labor Code 4850.

- A. Industrial Injuries and Accidents
 - 1. Employees shall report any work related injury, illness, or exposure which requires medical treatment to the appropriate department supervisor as soon as physically possible.

2. Employees shall report any work related injury, illness, or exposure of which the employee is aware which does not require medical treatment to the appropriate department supervisor as soon as possible, but in any event by the end of the employee's shift on which the injury, exposure or illness occurred.
 3. If an injured employee remains eligible for Workers' Compensation temporary disability benefits beyond one (1) year, full salary will continue by integrating sick leave and/or vacation accruals with Workers' Compensation benefits (use of vacation accruals must be approved by the department and the employee). If salary integration is no longer available because accruals are exhausted, Workers' Compensation benefits will be paid directly to the employee as prescribed by Workers' Compensation laws.
 4. An injured employee who is eligible for Workers' Compensation rehabilitation temporary disability benefits and who has exhausted "4850 pay" eligibility will continue to receive full salary by integrating sick leave and/or vacation accruals with Workers' Compensation rehabilitation temporary disability benefits. When these accruals are exhausted, the rehabilitation temporary disability benefits will be paid directly to the employee as prescribed by Workers' Compensation laws.
 5. The City contribution to the employee's group insurance plan(s) continues during the "4850 pay" period and during integration of sick leave or vacation with Workers' Compensation benefits.
 6. In accordance with State Labor Code Section 132(a), employees shall not be discriminated against.
- B. Accident Reporting - Employees shall report any accident involving an employee which results in any injury or property damage to other parties to the appropriate department supervisor as soon as practical.
- C. Medical Treatment - Any employee suffering from any work related injury, illness, or exposure which requires medical treatment shall immediately seek such treatment from the following City designated physician or medical facilities; Winters Medical Group during office hours, and/or Sutter Davis Hospital.
- D. Leave of Absence for Industrial Disability Qualification - An employee suffering a work related injury, illness, or exposure which disables that employee from the performance of regular job duties will request a leave of absence for industrial disability. Such a request will be submitted in the form of a Workers' Compensation claim. Any dispute regarding such claim shall be resolved through Claims Management and/or YCPARMIA.

ARTICLE 19 - LEAVE OF ABSENCE

A leave of absence is time away from work at the request of the employee. As used in this Article, leave of absence does not include vacation, compensatory time off, sick leave, industrial disability, holiday, or administrative leave.

- A. An employee who has successfully completed the original probationary period may request, and the City may grant, a leave of absence. Requests for leave in excess of thirty (30) days must be approved by the City Council (The City and Association agree that inability to return to work after an employee's sick leave has been exhausted shall be considered an urgent and substantial reason for the granting of a leave of absence.).
- B. Employee use of leave of absence for purpose other than that requested shall be considered as an employee's automatic resignation from City service.
- C. The City shall have sole discretion in approving or disapproving any employee request for a leave of absence or in granting any pay or benefits.
- D. Employees on authorized leaves of absence shall not lose any rights accrued at the time the leave is granted and such authorized leave of absence shall not be deemed a break in City service.
- E. As approved by the Police Chief an employee may return to work prior to the expiration of a leave of absence.
- F. Persons employed by the City to fill positions made vacant by an employee on leave of absence shall hold such positions subject to being laid off upon the return of the employee on leave. Employees promoted to fill positions made vacant by employees on leave shall hold such positions subject to being returned to their former position upon return of the employee.
- G. Military leave shall be granted in accordance with the provision of appropriate law. The City shall be allowed the opportunity, within the limits of law and military regulations, to determine when such leave shall be taken.

ARTICLE 20 - DISCIPLINE

Full authority for administering discipline for just cause, up to and including discharge, is retained by the City. California Government Code Section 3303 et seq will be adhered to during any disciplinary investigation, procedure, or action. Prior to any interrogation in an internal investigation, an employee shall be entitled to any complaints, notes, records, or reports, except those deemed to be confidential.

- A. Improper Employee Conduct - Improper employee conduct may be cause for disciplinary action. Improper conduct includes, but is not limited to, the following:
1. Fraud in securing appointment
 2. Inefficiency
 3. Insubordination
 4. Dishonesty or theft
 5. Drunkenness on duty
 6. Addiction to the use of controlled substances
 7. Discourteous treatment of the public or other employees
 8. Willful disobedience
 9. Negligent or willful misuse of City property.
 10. Neglect of duty (not performing assigned tasks).
 11. Conviction of any criminal act involving moral turpitude or felony.
 12. Excessive or unexcused absence or tardiness.
 13. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a City employee.
 14. Unlawful retaliation against any other City officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the City or any other appropriate authority any act or information relative to actual or suspected violation of any laws of this State or of the United States occurring on the job or directly related thereto.
- B. The purpose of disciplinary action is to correct deficiencies in employee performance and to assure improvement to meet job standards.
1. Oral or Written Reprimand - When the Department Head or immediate supervisor determines more severe action is not immediately necessary, an oral or written reprimand can be prepared detailing the deficiency or problem. If the reprimand is put in writing, a copy is to be filed in the employee's personnel file after being signed by and a copy given to the employee. Refusal to sign shall be noted before filing. Failure to correct deficiencies and improve to meet standards may result in further discipline including suspension, reduction in pay, demotion, and discharge. A written reprimand will remain in an employee's file for a period not to exceed six (6) months.
 2. Suspension - The Department Head may suspend an employee for cause and without pay for up to thirty (30) calendar days after the appropriate disciplinary proceedings. The Department Head may authorize immediate suspensions in an emergency situation or when the seriousness of a matter warrants. The disciplinary proceedings shall determine whether any suspension shall be with or without pay or benefits.

3. Reduction-in-pay - The Department Head, may reduce an employee's pay for cause to a lower step as a disciplinary action.
 4. Demotion - The Department Head, may demote an employee for cause as a disciplinary action.
 5. Discharge - An employee may be discharged by the City for cause upon approval of the City Manager. Permanent employees shall be discharged only after appropriate disciplinary proceedings.
- C. Notice of Proposed Disciplinary Action - Except in cases of emergency or when immediate action is required, notice shall be given by the Department Head to the affected employee in accordance with procedures developed in accordance with State law. In cases of emergency or when immediate action is required, the affected employee shall be verbally informed of the reasons for the immediate action and shall be served with a notice of proposed disciplinary action as soon as possible thereafter.
 - D. Disciplinary Hearing - The disciplinary hearing is a formal meeting at which the employee has an opportunity to rebut the charges or to state any mitigating circumstances. The City Manager or designee shall hear and consider the employee's response.
 - E. Notice of Decision - Following receipt and consideration of the written response or facts stated at the disciplinary hearing, or following no response by the required date, the Department Head shall prepare a notice of the action to be taken and effective date. The notice shall be delivered to the employee and a copy filed with the City Manager.
 - F. Appeal of Decision - In the event that an affected employee is not satisfied with the decision after the hearing, the decision may be appealed in writing to the City Council within thirty (30) calendar days from the date of filing. The City Council shall hear the matter, and after due consideration, shall give a written decision to the employee within twenty (20) calendar days.
 - G. Employee Representation - Employees may have a representative present at all stages of the disciplinary process provided that the representative is not a party to the action involved.
 - H. Retribution for Appeal - No employee shall be penalized in any way for participating in the appeal process.
 - I. Multiple Penalties - No employee shall receive more than one (1) disciplinary action for any individual occurrence of a violation leading to the discipline.

ARTICLE 21 - GRIEVANCE PROCEDURES

A grievance is an alleged violation of a specific clause of this MOU. The Association may grieve an action or inaction pursuant to the procedures herein specified.

- A. Informal Grievance Procedure - The first attempt to settle a grievance will be through discussion with the immediate supervisor. If the matter is not settled, the employee shall then have the right to file a formal appeal in writing to the Police Chief within fifteen (15) calendar days after receiving a decision from the immediate supervisor.

If grievance involves supervisors, employee can discuss the matter with the Chief.

- B. Formal Grievance Procedure - An employee filing a formal appeal shall do so in accordance with the following:

- 1. First Level of Review - The appeal shall be presented in writing to the Police Chief who shall render a decision in writing within fifteen (15) work days after receiving the appeal. If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Manager. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the Police Chief, the appeal shall be deemed to have been abandoned and terminated.

- 2. City Manger Review - The City Manager or a designated representative shall discuss the grievance with the employee and other persons as may be needed. The City Manager may designate a fact finding committee for advice concerning the appeal. The City Manager shall render a decision in writing to the employee within fifteen (15) work days. If the employee does not agree with the decision, the employee shall have the right to file a formal appeal in writing to the City Council within fifteen (15) work days after receiving a decision or non-decision from the City Manager.

- C. Appeal to the City Council - On receipt of an appeal, the City Council may make such investigations as it deems necessary. The City Council will decide whether or not to hear the appeal or appoint a hearing officer or hearing body. The employee may request that the appeal be considered at a public or closed meeting. The City shall notify the employee requesting the hearing of the date, time, and place of the hearing. Unless incapacitated, the employee making an appeal shall appear personally at the hearing before the City Council or appointed hearing officer or body.

Upon concluding any investigation or hearing, the City Council shall cause its findings to be prepared in writing and shall certify same. Such findings shall be

countersigned and filed as a permanent record by the City Manager. Any member of the City Council may submit a minority or supplemental report which shall be part of the permanent record.

If, due to the absence from the City, or illness or disability of a majority of the City Council, an employee would be deprived of a right of a hearing, and in the event the employee were demoted, reduced in pay, or dismissed from City employment, the City Manager shall defer action until the Council is able to function, unless the case is deemed an emergency, in which event, the City Manager may suspend the employee with pay until the Council is able to function.

D. Conduct of Grievance Procedure.

1. The time limits specified in this Article may be extended to a definite date by mutual agreement of the employee and the appellate person or body.
2. The employee may be represented by a person or persons of their choosing in preparing and presenting the appeal at any level of review.
3. The employee shall be assured freedom from reprisal for using the grievance procedures.

ARTICLE 22 - SAFETY AND HEALTH

Pursuant to advice and/or requirements of the City's Insurance Carrier the City will make provisions for the safety and health of City employees during work hours. Procedures, protective devices, safety wearing apparel, equipment and facilities will be provided by the City and shall comply with the requirements under applicable regulations or laws. Employees shall utilize such safety and health procedures, devices, apparel, equipment and facilities when needed or required and failure to do so may be cause for disciplinary action.

The City shall provide each employee with the following:

1. Sam Brown Belt
2. Duty Weapon
3. Holster, Duty Weapon
4. Handcuffs (2 pair, "Peerless")
5. Handcuff Cases (2)
6. Magazines (3)
7. Magazine Case
8. Baton
9. Baton holder
10. Aerosol Tear Gas
11. Gas Canister Holder
12. Flashlight (SL-20 Aluminum)

13. Flashlight Holder
14. Keepers (4)
15. Badge, Departmental
16. Hat Piece, Departmental
17. Ballistic Vest (Soft Body Armor of not less than Threat Level 111A or Better – To be replaced no later than every five years or sooner if deemed to be unsafe, worn or defective.)
18. Raincoat
19. Rain Pants
20. Hat Cover, Rain
21. Kevlar Helmet
22. CPR Mask w/bag
23. Duty Ammunition
24. Protective Nitrile Gloves
25. Stinger flashlight
26. Stinger holder
27. Electronic control device
28. Electronic control device holder
29. Baseball Cap

All the foregoing equipment is City owned and will be used and maintained as the City deems necessary. Items which become unserviceable as a result of normal use or through no substantial fault of the employee shall be replaced by the City.

- A. With the Police Chief's approval, an employee may substitute privately owned equipment for City issued equipment, and utilize any additional private safety equipment.
- B. Upon leaving City service an employee shall return all the equipment in good working order excepting normal wear. The cost of damaged or missing equipment shall be deducted from an employee's termination check.
- C. The City will reimburse an employee for the repair or replacement cost of approved personal property that is damaged, destroyed or lost in the line of duty not to exceed \$150.00 (one hundred fifty dollars) per employee per year. Replacement shall not include cash or coins, credit cards, or decorative jewelry.

ARTICLE 23 - NON-DISCRIMINATION

Neither the City or the Association shall discriminate against any employee or applicant for employment because of race, color, creed, age, sex, national origin, or Association or Non-Association activities.

ARTICLE 24 - SAVINGS PROVISION

If any provision(s) of this MOU are held contrary to law, such provision(s) will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

ARTICLE 25 - TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall remain in full force and effect from January 1, 2012.

. Negotiations to begin ninety (90) days prior to expiration of MOU.

ARTICLE 26 - CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the negotiations which resulted in the MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understanding set forth in this MOU constitute the complete and total contract between the City and the Association with respect to wages, hours, and terms and conditions of employment. Accordingly, all wages, hours and terms and conditions of employment shall remain in full force and effect for the term of this MOU, provided, however, that the parties may upon mutual agreement, renegotiate any part or provision of this MOU during its term. Any prior or existing MOU between the parties, past practices or conflicting rules and regulations regarding matters within the scope of representation are hereby superseded and terminated in their entirety.

Approved by the City of Winters Police Officers Association on the 4TH day of DECEMBER, 2011.

BY: [Signature] #534
Association Representative

BY: [Signature] #935
Association Representative

Accepted for submittal to the City Council on the ___ day of _____, 2011.

BY: [Signature]
John W. Donlevy, Jr., City Manager

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ___ day of _____, 2011.

Woody Fridae, Mayor

ATTEST: _____
Nanci G. Mills, City Clerk



RESOLUTION NO. 2011-48

**MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
SERGEANT'S ASSOCIATION**

**Effective
January 1, 2012**

**MEMORANDUM OF UNDERSTANDING
WINTERS POLICE SERGEANT**

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****PREAMBLE****

This Memorandum of Understanding (MOU) is entered into this 1st day of January, 2012, between the City of Winters (hereinafter referred to as City) and the Winters Police Sergeant Association (hereinafter referred to as Association).

ARTICLE 1 - RECOGNITION

The City recognizes the Association as the representative for the employees in the Police Sergeant job classification (hereinafter referred to as employee).

ARTICLE 2 - MEMORANDUM OF UNDERSTANDING RATIFICATION

Upon approval of the Association, this MOU will be submitted to the City Council and is of no force or effect until ratified and approved by a Resolution adopted by the City Council.

ARTICLE 3 - MANAGEMENT RIGHTS

All management rights and functions except those which are clearly and expressly limited in this MOU shall remain vested exclusively in the City, however, if any modification occurs that effects wages, hours or working conditions, the City shall notify the Association and meet and confer regarding the impact of such modifications. It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

- A. Manage the City and determine services to be provided.
- B. Schedule work hours and or work periods, determine the number and duration of work periods, and establish, modify, or change work schedules, and determine the necessity of overtime and the amount of overtime required.
- C. Direct the work force and hire, promote, demote, transfer, suspend, or discharge any employee and determine the administration of discipline.
- D. Determine the location of any new facilities, buildings, departments, divisions, or subdivisions thereof, and the relocation, sale, leasing, or closing of facilities, departments, divisions, or subdivisions thereof.
- E. Determine the layout of buildings and equipment and determine control and use of City property, materials, and equipment.
- F. Determine processes, techniques, methods, and means of performing work and

institute changes in procedures.

- G. Determine the size, character and use of inventories.
- H. Determine the financial policy, including accounting procedures.
- I. Determine the administrative organization of the City, the size and character of the work force, and allocate or assign work to employees and determine duties to be included in any job classification.
- J. Determine how new employees are selected.
- K. Establish and judge quality and quantity standards.
- L. Establish, modify, eliminate or enforce rules and regulations and determine the methods and means by which operations are to be conducted including placing or contracting work with outside firms and hiring part time employees.
- M. Require employees, where necessary, to take in-service training courses during working hours.
- N. Take any necessary action to carry out City responsibilities in cases of an emergency.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this MOU and then only to the extent such specific and express terms are in conformance with law.

ARTICLE 4 - ASSOCIATION RIGHTS

- A. The Association retains the right to engage in the meet and confer process and employer/employee relations including, but not limited to wages, hours, and other terms and conditions of employment.
- B. The Association may schedule use of meeting space within City facilities outside working hours, provided there are no legal prohibitions, and such space is available. The Association may use City equipment normally used in the conduct of business meetings, such as desks, chairs, blackboards, etc. Use of City equipment and space shall not disrupt department operations.
- C. The Association will have reasonable advance notice of any City ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council. Reasonable

advance notice is defined as public noticing as published by the City Clerk pursuant to state law, with a copy of the notice sent to the Association President. In addition, employees will be provided copies of special orders, general orders, training bulletins, department rules and regulations, and a copy of this MOU.

- D. The City will allow the three principal Association officers' (President, Vice-President and Secretary/Treasurer) time to conduct Association business during the employee's duty shift if the officer is not otherwise engaged in an investigation and is available to answer dispatched calls.
- E. With prior approval of the Police Chief and/or City Manager, authorized agents of the Association shall have access to City premises during work hours (8:00 A.M. to 5:00 P.M.), Monday through Friday, for purposes of adjusting disputes, investigating working conditions, and such other matters, as may be requested by the Association and approved by the City. Access may be restricted so as not to interfere with the conduct of City services and safety or security standards.
- F. City bulletin boards may be used for transmitting notices of Association meetings, elections, results of elections, and other matters pertaining to Association business. Notices must be signed by the Association President and a copy provided to the City Manager.

ARTICLE 5 - ASSOCIATION SECURITY AND DUES

- A. Every employee covered by this MOU shall, within sixty (60) calendar days of employment: (1) become a member of the Association and maintain membership in good standing in accordance with its Constitution and By-Laws.
- B. Any employee appointed to any classification out of the bargaining unit covered by this MOU may withdraw from Association membership and the employee's obligation to pay dues or fees shall be terminated.
- C. If requested by the Employee, the City shall deduct from employee wages the regular membership dues of Association employees, which an employee voluntarily authorizes the City to deduct in writing in accordance with the provision of Section 1157.3 of the California Government Code.
- D. Membership dues or agency fee deductions shall be made in equal amounts each payroll period, and a check for the total deductions shall be submitted to the Winters Police Sergeant Association, at the end of each month.

ARTICLE 6 - NO STRIKE/NO LOCKOUT

The City and Association agree that it is mutually beneficial to resolve differences through negotiation. During the term of the MOU the City agrees that it will not

cause a lockout of employees and the Association agrees that it will not sanction or cause a strike, slowdown, sickout, stoppage of work or other job action. Compliance with the request of other labor organizations is included within this prohibition.

ARTICLE 7 - LAYOFF PROCEDURES

In the event of work force reduction, an employee with the least seniority shall be laid off first. "Least seniority" is determined by date-of-hire with the exception of employees on initial probation.

- A. The Association shall be given at least sixty (60) days notice prior to the effective date of the layoff. The City and Association agree to meet and confer to discuss alternatives to layoff and layoff procedures.
- B. Employees shall be given at least forty-five (45) days notice prior to layoff.
- C. No new employee shall be hired in the Police Sergeant classification until employees on layoff have been given the opportunity to return to work. Such employees shall be rehired or reinstated to the previous position in reverse order of layoff. Reinstatement must be exercised within twenty (20) workdays after the City deposits written notice of recall from layoff in the United States mail addressed to the employee's last known address by Certified Mail - Return Receipt Requested.
- D. Employees who leave the Association to accept another position in the City service shall, upon completion of the probationary period in the new position, lose all seniority rights to their former positions.

ARTICLE 8 - WAGES, MERIT STEPS, BENEFITS, AND WAGE PLAN ADMINISTRATION

- A. Base Wages and Merit Steps: The following schedule provides a wage range with five (5) merit steps also know as base wage steps.

Police Sergeant Wages effective July 1, 2009.

A	B	C	D	E
4,910	5,156	5,414	5,685	5,969

Within the range, all step advancements will be considered on an employee's anniversary date and if an increase is granted, it shall be effective as of the anniversary date. Step increases shall be based on work performance and completion of required length of service in the previous step. New employees will normally be hired at the "A" step. Employees shall spend at least one (1)

year in a particular step before being considered for further Step increases, however, the Police Chief may advance a probationary employee to "B" step at six (6) months, with a corresponding change in anniversary date. The time required for step advancement shall be extended by any time spent on leave of absence pursuant to Article 19.

- B. The City will review this wage scale by the end of April, surveying base wages of the Sergeant classification in the jurisdictions of: Auburn, Davis, Dixon, Galt, Marysville, Oroville, Placerville, Rocklin, Vacaville, West Sacramento, and the Yolo County Sheriff's Department. The purpose of this survey will be a reference check on the base wages paid in Winters.
- C. Benefits - The City provides the following benefits pursuant to the terms and conditions noted. Fair Labor Standards Act provisions shall be used to determine which benefits are required to be used in calculating overtime pay.

1. Shift Differential - Employees required to work shifts shall receive the following for shifts actually worked.

		PER SHIFT
Day Cover or Swing Shift	=	\$6.50
Utility or Night Cover Shift	=	\$7.00
Graveyard Shift	=	\$8.00

2. Uniform Allowance- Employees are required to wear uniforms as established by the City. For purchase and maintenance of uniforms the City will pay \$250.00 (two hundred fifty dollars) per quarter, paid quarterly in a separate check to the employee.

3. Bilingual Pay - An employee who is certified to use both English and Spanish, written and/or spoken, on the job, and the use of such skill is required by the City shall receive \$150.00 (one hundred fifty dollars) per month. Employees must be tested and certified pursuant to department standards. Yolo County provides the certification at no cost.

4. Insurance - Effective January 1, 2012, employees shall receive \$800.00, per month, or up to \$1403.00 per month for a family plan to purchase various health, vision, dental, etc., insurance which the City may subscribe. Money left over after an employee has purchased the insurance coverage desired will be paid to the employee. New employees are required to purchase health and dental insurance which the City may subscribe. Employee's are not required to have health coverage through the City but must show proof of coverage satisfactory to the City. Employees may be required to purchase other insurance pursuant to terms and conditions established by insurance carriers and as agreed to by the Associations. Employer shall pay life insurance premium, long-term disability premium and the vision premium for employee

only.

5. Public Employees Retirement System (PERS) –Employees shall join the PERS system as a condition of employment. The City subscribes to the 3% at 55-retirement plan. The City shall pay the employer rate and the City shall pay the employee rate.
6. Social Security (FICA) - Employees are required to join the Federal Social Security System as a condition of employment. The employee shall pay the employee's contribution to Social Security on the employee's applicable wages. The City shall pay the City's contribution on applicable employee wages.
7. Education Incentive - An employee who provides evidence of having received a degree from a recognized college/university or a post certificate which the City deems appropriate to the needs of the job being performed shall receive incentive pay as indicated.

Employer shall pay up to \$1,000 per semester, per employee, toward continuous college/adult learning education and professional development program.

CERTIFICATE/EDUCATION

WAGE INCREASE

AA/AS Degree/Intermediate Post
BA/BS Degree/Advanced Post

4% above base wage
10% above base wage

8. Longevity Recognition - An employee who has completed five (5) consecutive years employment is eligible to receive an amount equal to one-half (1/2) month's base wage during the sixth (6th) year and every year of service thereafter until the employee leaves City service. Payment shall be made on the anniversary of the employee's full-time hire date.
9. Jury Duty - Employees may be excused from the regular responsibilities of their position when called for jury duty. Employees called for jury duty shall notify the Chief of Police of the call. If, in the opinion of the City, the absence of the employee would result in undue disruption of work, the City may direct the employee to request an exemption from jury duty. An employee shall not suffer loss of pay or benefits while actually serving on jury duty. All court approved jury pay received by the employee shall be remitted to the City.
10. Field Training Officers - Employees assigned as Field Training Officers shall receive \$200.00 (two hundred dollars) per month while actively engaged in the training of officers.

11. Court Time - A minimum of three (3) hours overtime shall be paid for each court appearance outside an employee's scheduled working hours. However, if a scheduled court appearance is canceled and notification is not received by the employee on the prior business day to the scheduled court appearance, two hours of overtime shall be paid to the employee.
12. Association Time - Individual Association members may donate, from their accrued vacation leave, holiday leave, or compensatory time off, to the Association for Association business. The President of the Association may designate members of the Association to utilize this time. Only one member at a time may be absent unless mutually agreed between the Chief of Police and the Association that additional members may be absent. Two (2) weeks advance notice of use of time shall be given. The time may be used only in hourly increments. The accrual of time given by an employee to the Association, shall be noted on each employee's time card, and shall be the responsibility of the Administrative Services Department. The Association's balance of accrued time will appear on the Association's dues check.
13. Counseling Services - The City will provide psychological counseling services for employees and their families as developed and administered by the Yolo County Risk Management Authority.
14. Administrative Leave – All employees covered by this Resolution shall receive 6 days administrative leave per fiscal year beginning July 1st. This leave shall be in addition to accrued vacation and other leaves provided by the City. If employee would like to cash in his or her administrative leave time, they may cash in up to sixteen hours (16) which must be accrued and on the books at the time the request is made. This time must be used by the end of each year, if not the time will be lost. (Cash out option is frozen at this time.)
15. Deferred Compensation – An employee who has increased their personal deferred compensation contribution in to a deferred compensation plan offered by the city after this MOU goes in to effect, the City will contribute a match of up to \$500.00 annually.(City contribution is frozen at this time.)

D. SALARY PLAN ADMINISTRATION

1. Employees shall be paid according to a bi-weekly payroll plan which has twenty-six (26) pay periods in a calendar year.
2. Employees shall normally be paid by twelve noon (12:00 noon) on or before every other Friday.
3. When the normal pay day falls during an employee's annual vacation leave, the employee may receive a vacation advance on the last working day prior to

beginning vacation leave provided a written request is submitted to the Administrative Services Department at least five (5) working days in advance and the amount requested is less than the employee's regular paycheck, based on straight time hours.

4. Work performance evaluations shall be completed by the employee's supervisor at least ten (10) working days prior to the employee's anniversary date. At this time consideration may be given for a merit step advance. If the evaluation is not completed in the time required, the performance of the employee shall be deemed to be acceptable. The evaluation shall include the following elements:
 - a. A written record to be reviewed and acknowledged in writing by the employee. No change will be made after this review and without the acknowledgment of both the supervisor and employee.
 - b. A discussion between the supervisor and employee on the content of the performance evaluation.
 - c. A provision whereby an employee may submit a written response to any statement made on the evaluation which must be filed with the evaluation and forwarded to the supervisor. Such responses, and any written acknowledgement by a reviewing official, shall become attached to the evaluation. If the evaluation is satisfactory or better the employee can be granted a merit increase provided that an increase does not exceed the established range. If the evaluation is "Unsatisfactory" or "Improvement Needed", a step increase will not be granted, provided however that inadequate work performance has been previously documented, and the employee has been made aware of and given the opportunity to remedy deficiencies. A withheld step increase may be granted following any subsequent review period of satisfactory work performance by the employee. The review period shall be no less than ninety (90) days. A step increase granted after this review shall not be retroactive back to the anniversary date.

ARTICLE 9 - PROBATION, NEW CLASSIFICATION, RECLASSIFICATION, ACTING APPOINTMENT, AND PROMOTION

- A. Probation - The probationary period is a time to obtain the best fit for an employee in a new job or classification and for terminating the employer/employee relationship if work performance or adjustment to the City does not meet the expectations of the employee or the City.
 1. All original appointments shall be tentative and subject to a probationary period of twelve (12) months.

2. The probationary period may be extended up to six (6) months in two (2) three (3) month increments as a result of an employee's unfavorable job performance as determined by the Police Chief. The probationary period may be extended for any leave of absence granted pursuant to Article 19.
 3. During the probationary period, an employee will be evaluated every four (4) months. If an employee is under an extended probation the evaluations shall be given each month during the extension.
- B. New Classifications - The City may establish new job classifications. Employees desiring to compete for such positions will be evaluated in the same manner as any candidate aspiring to receive appointment.
- C. Reclassification - Reclassification is a change to an existing job class as a result of changes in the function, duties, and/or responsibilities as determined by the City. The City and Association agree to meet and confer if classifications in this MOU are being reclassified.
- D. Acting Appointments - The City may temporarily appoint an employee to an acting capacity in a higher job classification. The employee shall receive \$800.00 (eight hundred dollars) per month for each full month of service. This amount will be prorated for less than a full month's service.
1. Acting appointments will not continue beyond six (6) months except by mutual agreement of the City, and the employee.
 2. An employee having served in an acting capacity and subsequently promoted to the position shall establish a new anniversary date as of the first date of formal promotion.
- E. Promotion - The City may advance an employee to a job classification having a higher base wage range.
1. A promoted employee shall receive an increase to the next higher wage step above that currently held provided that the increase does not exceed the wage range established for the promoted classification.
 2. A promoted employee shall be subject to a one (1) year probationary period. An employee rejected during this time shall be reinstated to the job classification previously held at the same wage step the employee had prior to the promotion.
- A rejection pursuant to this section shall not be considered a demotion as defined in Article 20.

3. Nothing in this section shall be construed as limiting the City's right to advertise a promotional position to any candidate desiring to apply. Any qualified employee may apply and will be evaluated in the same manner as any candidate aspiring to receive appointment to the position.

ARTICLE 10 - PERSONNEL RECORDS

Personnel records, except payroll records, are confidential. Access to personnel records shall be limited to the City Manager, Assistant City Manager, Administrative Services Director, Sergeant, and the Police Chief. An employee and/or their representative, designated by the employee in writing, will be allowed to review the employee's personnel records during regular business hours (8:00 A.M. - 5:00 P.M., Monday through Friday). An employee shall receive, upon written request, a copy of any document placed in the employee's personnel file. Records of sworn police officers which are kept by the Administrative Services Department shall have access restricted as provided by law.

ARTICLE 11 - HOURS OF WORK

The normal work week is five (5) consecutive work days of eight (8) work hours each equaling forty (40) work hours over a standard seven (7) day cycle ("standard" means seven (7) consecutive days based on each employee's work week assignment).

- A. The hours of a work shift are:

Day Shift	0600 to 1400
Cover 2 (Day Cover)	1000 to 1800/1200 to 2000
Swing Shift	1400 to 2200
Utility	1600 to 2400/1800 to 0200
Cover 1 (Night Cover)	2000 to 0400
Graveyard	2200 to 0600

An employee will not have less than a ten (10) hour rest period between the end of a shift and the beginning of the employee's next shift. If this rest period is not given, the employee's next shift will be considered callback.

- B. Employees shall receive one (1) rest period of not more than thirty (30) minutes, or two (2) rest periods of fifteen (15) minutes each during a work shift plus a thirty (30) minute lunch break. Employees shall work straight eight (8) hours and will be considered to be on duty during rest periods and lunch break. An employee working a shift over 8 hours will have an extra 15-minute break for every two hours worked.
- C. Breaks and rest periods are not cumulative and shall not be used to arrive late or

leave work early.

- D. Employees will report to work fully prepared at the start of their work shift.

ARTICLE 12 - OVERTIME

- A. Although all classifications listed in Article 1 are part of the Association bargaining unit, for purposes of the Fair Labor Standards Act (FLSA) the City may designate certain positions exempt per Department of Labor standards. The City will inform said employees in writing and place a copy of said notice in the employee's personnel file.
- B. The work cycle for all employees within the bargaining group shall be seven (7) days in length. All employees, except those deemed exempt, required to work hours in excess of forty (40) hours in a seven (7) day cycle, and/or in excess of eight (8) hours in one (1) day, shall receive overtime pay at the rate of time and one-half. "Hours worked" shall not include any leave of absence pursuant to Article 19.
- C. All overtime must have authorization of a supervisor prior to starting overtime work, except when an emergency situation arises which necessitates overtime work beyond a regular shift. An employee's failure to obtain prior approval may result in denial of the overtime request. Employees shall not spend excessive amounts of time at their workstation before or after their normal work period. Such incidental time will not be compensated in any manner whatsoever unless prior authorization of a supervisor is obtained.
- D. The City will provide an employee with one (1) week prior notification of scheduled mandatory overtime. If this notification is not given, an employee may refuse to work the overtime.
- E. Non-mandatory attendance at training schools/facilities which improves the performance of regular job duties and/or prepares for job advancement are not compensable as hours in excess of an employee's normal work shift. Any time spent in excess of the normal work shift will not be counted as working time and is not compensable in any manner whatsoever. Time spent in studying and other personal pursuits are not compensable hours of work under any conditions. This includes travel time to and from a training facility, for non-mandatory training, outside of an employee's work shift.
- F. Employees will be provided with a locker for their own personal convenience and may or may not utilize the locker for storage and clothes changing purposes at their own discretion. Time spent in changing clothes before or after a shift are not considered hours worked and are not compensated in any manner whatsoever.

- G. An employee who is called back to work before or after working a regular shift or work week will be compensated for a minimum of two (2) hours or for actual hours worked, whichever is greater, at the overtime rate. Call back begins the moment the employee receives notification of the call back.
Employees who are required to attend any meetings or training outside their scheduled working hours, will be compensated at a rate of one and one half (1½) times their hourly rate for a minimum of three (3) hours.
- H. Compensatory Time Off (CTO) may be requested by an employee in lieu of overtime pay, and if approved by the City, shall be provided at time and one-half for all hours worked over eight (8) hours in one (1) day and/or forty (40) hours per week. CTO may be provided when requested on a straight time basis for a holiday "not worked". Employees may accrue up to one hundred-twenty (140) hours of compensatory time, may only cash out one hundred twenty (120). Unused compensatory time on the books shall be paid at termination of employment.
- I. Employees shall receive time and a half pay for working on Youth Day. There will be no straight time for employees who are off.

ARTICLE 13 - SICK LEAVE

- A. Employees shall receive sick leave at the rate of eight (8) hours per month for each calendar month of service. Sick leave time shall accrue on a monthly basis.
- B. Sick leave may be accumulated to a maximum of nine hundred and sixty (960) hours.
- C. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
- D. Employees granted a leave of absence pursuant to Article 19, or absent from duty when not authorized by the City shall not accrue sick leave. Sick leave shall not be accrued by an employee absent from duty after separation from City service.
- E. After three (3) consecutive sick days, a physician's certificate or otherwise may be required to determine the adequacy of reasons for the sick leave absence.
- F. Bereavement Leave - Up to five (5) consecutive sick leave days may be granted per incident for death or illness involving members of an employee's family defined as: spouse, mother, father, sister, brother, children, grandparents, grandchildren, mother or father-in-law, and aunt or uncle. Evidence of family relationship may be required before such sick leave is granted. Use of Bereavement Leave shall not be counted as part of the forty eight (48) hours

Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave.

- G. If an employee dies in the line of duty, that is carrying out their duties and responsibilities during a work shift, then the employee's designated beneficiary shall receive fifty (50) percent of the employee's accumulated sick leave in straight time pay. The formula for such a payment is:

$$\frac{\text{Accumulated Leave}}{2} \times \text{Base Hourly Wage} = \text{Sum Total of Payout}$$

- H. Employees having ten (10) years or more of service with the City, upon retirement shall receive straight time pay for one third (1/3) of their accumulated sick leave hours.
- I. Upon request of an employee and upon approval of the Chief of Police, sick leave credits may be transferred from one or more employees to another employee, under the following conditions:
1. When the receiving employee faces financial hardship due to injury or the prolonged illness of the employee, employee's spouse or child,
 2. The receiving employee has exhausted all leave credits,
 3. The donations must be a minimum of eight (8) hours and in additional eight (8) hour increments.
- J. Sick Leave Incentive - An employee who has used forty-eight (48) hours or less of sick leave in a one (1) year period from December 1 until November 30 shall receive one percent (1%) of their base yearly salary in a separate check payable to the employee during the first week of December of that year.

ARTICLE 14 - HOLIDAYS

- A. Employees shall receive the following holidays on a straight time basis:
- | | |
|--|-------------------------------|
| 1. New Year's Day | 8. Independence Day |
| 2. Martin Luther King's Day | 9. Labor Day |
| 3. President's Day | 10. Veteran's Day |
| 4. Caesar Chavez Day (only if worked) | 11. Thanksgiving Day |
| 5. Half Day Good Friday | 12. Day After Thanksgiving |
| 6. Youth Day (Effective 4/25/09, only if worked) | 13. December 24 th |
| 7. Memorial Day | 14. December 25 th |
- B. Every employee shall receive two (2) floating holidays per year. Employees shall

receive credit for one floating holiday on July 1, and the other floating holiday on January 1 of each year. If an employee fails to take their floating holidays off, between July 1 and June 30 of the following year, the employee will forfeit their floating holiday credit.

- C. If a holiday falls on an employee's scheduled work day, and the employee is required to work, in addition to the holiday pay at straight time, the employee shall be compensated with overtime at the rate of one and one-half the base hourly wage.

An employee who works a shift that begins on New Years Eve and extends to New Years Day will be compensated at the overtime rate of one and one-half the base hourly wage for the entire shift.

ARTICLE 15 - VACATIONS

- A. Employees shall earn paid vacation leave on a monthly basis at each pay period during the month.

<u>YEARS OF SERVICE</u>	<u>HOURS PER PAY PERIOD</u>	<u>ANNUAL HRS</u>	<u>DAYS</u>
0 - 3	3.38	88	11
4 - 6	4.31	112	14
7 - 9	5.23	136	17
10 - 12	6.15	160	20
13 - 16	6.77	176	22
17 - 22	7.69	200	25
23 +	8.31	216	27

- B. Vacations shall be scheduled by the employees with the approval of the Chief of Police, and with regards to the needs of the City. Preference in scheduling shall be based on seniority.
- C. Vacation leave shall not be granted during the first six (6) months of an employee's original probationary period. At the end of that time, the hours which would have accrued will be credited to the employee's vacation balance.
- D. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation balance. Vacation leave shall not be granted to an employee after separation from City service.
- E. Employees granted a leave of absence pursuant to Article 19 or absent from duty when not authorized by the City shall not earn vacation leave.
- F. In the event that a holiday recognized in this MOU occurs during an employee's scheduled vacation leave, that holiday shall not be considered as vacation leave.

- G. Employees may cash in their accrued vacation hours on approval of the City.
- H. An employee separated from City service shall be compensated for vacation hours on the books.
- I. All employees shall take at least one (1) week (five (5) consecutive working days) away from the job each year, which can be a combination of vacation, CTO, holiday, and floating holiday.

ARTICLE 16 - TRAINING SCHOOLS/FEEES

- A. If, as a condition for continued employment, the City requires attendance at a school or training establishment and fees are charged, such fees shall be paid by the City.
- B. Travel time to and from a mandatory training school will be compensated by the City.
- C. It shall be the intent of the City to send each full time Peace Officer to a minimum of 40 hours of Continuous Professional Training each year.

(Continuous Professional Training will be as defined as training courses given POST credits/certificates and or college credits and includes the 24 hour mandated POST requirements).

A Representative of the WPSA will meet with the Training Supervisor during the month of October. This meeting will address the needs and/or requests of each full time Peace Officer with the needs of the department for the upcoming year of training.

- D. As scheduled by the Police Chief, firearms range training time will be considered overtime for employees not working their regular shift during such training.

ARTICLE 17 - TIME OFF TO EMPLOYEE REPRESENTATIVES

The City shall allow two (2) Association employees time off from normal duties without loss of compensation or benefits when formally meeting and conferring with representatives of the City on matters within the scope of representation. In no case shall any overtime be paid for such meeting and conferring.

ARTICLE 18 - WORKERS' COMPENSATION INSURANCE

The State Workers' Compensation Laws, and this MOU shall govern all aspects of work related injuries, illnesses, and accidents. Employees shall continue to receive full salary benefits in lieu of temporary disability during any absence from work which qualifies for

Workers' Compensation benefits. Sick leave and vacation shall continue to accrue in accordance with the provision of State Labor Code 4850.

A. Industrial Injuries and Accidents

1. Employees shall report any work related injury, illness, or exposure which requires medical treatment to the appropriate department supervisor as soon as physically possible.
2. Employees shall report any work related injury, illness, or exposure of which the employee is aware which does not require medical treatment to the appropriate department supervisor as soon as possible, but in any event by the end of the employee's shift on which the injury, exposure or illness occurred.
3. If an injured employee remains eligible for Workers' Compensation temporary disability benefits beyond one (1) year, full salary will continue by integrating sick leave and/or vacation accruals with Workers' Compensation benefits (use of vacation accruals must be approved by the department and the employee). If salary integration is no longer available because accruals are exhausted, Workers' Compensation benefits will be paid directly to the employee as prescribed by Workers' Compensation laws.
4. An injured employee who is eligible for Workers' Compensation rehabilitation temporary disability benefits and who has exhausted "4850 pay" eligibility will continue to receive full salary by integrating sick leave and/or vacation accruals with Workers' Compensation rehabilitation temporary disability benefits. When these accruals are exhausted, the rehabilitation temporary disability benefits will be paid directly to the employee as prescribed by Workers' Compensation laws.
5. The City contribution to the employee's group insurance plan(s) continues during the "4850 pay" period and during integration of sick leave or vacation with Workers' Compensation benefits.
6. In accordance with State Labor Code Section 132(a), employees shall not be discriminated against.

B. Accident Reporting - Employees shall report any accident involving an employee which results in any injury or property damage to other parties to the appropriate department supervisor as soon as practical.

C. Medical Treatment - Any employee suffering from any work related injury, illness, or exposure which requires medical treatment shall immediately seek such treatment from the following City designated physician or medical facilities;

Winters Medical Group during office hours, and/or Sutter Davis Hospital.

- D. Leave of Absence for Industrial Disability Qualification - An employee suffering a work related injury, illness, or exposure which disables that employee from the performance of regular job duties will request a leave of absence for industrial disability. Such a request will be submitted in the form of a Workers' Compensation claim. Any dispute regarding such claim shall be resolved through Claims Management and/or YCPARMIA.

ARTICLE 19 - LEAVE OF ABSENCE

A leave of absence is time away from work at the request of the employee. As used in this Article, leave of absence does not include vacation, compensatory time off, sick leave, industrial disability, holiday, or administrative leave.

- A. An employee who has successfully completed the original probationary period may request, and the City may grant, a leave of absence. Requests for leave in excess of thirty (30) days must be approved by the City Council (The City and Association agree that inability to return to work after an employee's sick leave has been exhausted shall be considered an urgent and substantial reason for the granting of a leave of absence.).
- B. Employee use of leave of absence for purpose other than that requested shall be considered as an employee's automatic resignation from City service.
- C. The City shall have sole discretion in approving or disapproving any employee request for a leave of absence or in granting any pay or benefits.
- D. Employees on authorized leaves of absence shall not lose any rights accrued at the time the leave is granted and such authorized leave of absence shall not be deemed a break in City service.
- E. As approved by the Police Chief an employee may return to work prior to the expiration of a leave of absence.
- F. Persons employed by the City to fill positions made vacant by an employee on leave of absence shall hold such positions subject to being laid off upon the return of the employee on leave. Employees promoted to fill positions made vacant by employees on leave shall hold such positions subject to being returned to their former position upon return of the employee.
- G. Military leave shall be granted in accordance with the provision of appropriate law. The City shall be allowed the opportunity, within the limits of law and military regulations, to determine when such leave shall be taken.

ARTICLE 20 - DISCIPLINE

Full authority for administering discipline for just cause, up to and including discharge, is retained by the City. California Government Code Section 3303 et seq will be adhered to during any disciplinary investigation, procedure, or action. Prior to any interrogation in an internal investigation, an employee shall be entitled to any complaints, notes, records, or reports, except those deemed to be confidential.

- A. Improper Employee Conduct - Improper employee conduct may be cause for disciplinary action. Improper conduct includes, but is not limited to, the following:
 - 1. Fraud in securing appointment
 - 2. Inefficiency
 - 3. Insubordination
 - 4. Dishonesty or theft
 - 5. Drunkenness on duty
 - 6. Addiction to the use of controlled substances
 - 7. Discourteous treatment of the public or other employees
 - 8. Willful disobedience
 - 9. Negligent or willful misuse of City property.
 - 10. Neglect of duty (not performing assigned tasks).
 - 11. Conviction of any criminal act involving moral turpitude or felony.
 - 12. Excessive or unexcused absence or tardiness.
 - 13. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a City employee.
 - 14. Unlawful retaliation against any other City officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the City or any other appropriate authority any act or information relative to actual or suspected violation of any laws of this State or of the United States occurring on the job or directly related thereto.

- B. The purpose of disciplinary action is to correct deficiencies in employee performance and to assure improvement to meet job standards.
 - 1. Oral or Written Reprimand - When the Department Head or immediate supervisor determines more severe action is not immediately necessary, an oral or written reprimand can be prepared detailing the deficiency or problem. If the reprimand is put in writing, a copy is to be filed in the employee's personnel file after being signed by and a copy given to the employee. Refusal to sign shall be noted before filing. Failure to correct deficiencies and improve to meet standards may result in further discipline including suspension, reduction in pay, demotion, and discharge. A written reprimand will remain in an employee's file for a period not to exceed six (6) months.

2. Suspension - The Department Head may suspend an employee for cause and without pay for up to thirty (30) calendar days after the appropriate disciplinary proceedings. The Department Head may authorize immediate suspensions in an emergency situation or when the seriousness of a matter warrants. The disciplinary proceedings shall determine whether any suspension shall be with or without pay or benefits.
 3. Reduction-in-pay - The Department Head may reduce an employee's pay for cause to a lower step as a disciplinary action.
 4. Demotion - The Department Head, may demote an employee for cause as a disciplinary action.
 5. Discharge - An employee may be discharged by the City for cause upon approval of the City Manager. Permanent employees shall be discharged only after appropriate disciplinary proceedings.
- C. Notice of Proposed Disciplinary Action - Except in cases of emergency or when immediate action is required, notice shall be given by the Department Head to the affected employee in accordance with procedures developed in accordance with State law. In cases of emergency or when immediate action is required, the affected employee shall be verbally informed of the reasons for the immediate action and shall be served with a notice of proposed disciplinary action as soon as possible thereafter.
 - D. Disciplinary Hearing - The disciplinary hearing is a formal meeting at which the employee has an opportunity to rebut the charges or to state any mitigating circumstances. The City Manager or designee shall hear and consider the employee's response.
 - E. Notice of Decision - Following receipt and consideration of the written response or facts stated at the disciplinary hearing, or following no response by the required date, the Department Head shall prepare a notice of the action to be taken and effective date. The notice shall be delivered to the employee and a copy filed with the City Manager.
 - F. Appeal of Decision - In the event that an affected employee is not satisfied with the decision after the hearing, the decision may be appealed in writing to the City Council within thirty (30) calendar days from the date of filing. The City Council shall hear the matter, and after due consideration, shall give a written decision to the employee within twenty (20) calendar days.
 - G. Employee Representation - Employees may have a representative present at all stages of the disciplinary process provided that the representative is not a party

to the action involved.

- H. Retribution for Appeal - No employee shall be penalized in any way for participating in the appeal process.
- I. Multiple Penalties - No employee shall receive more than one (1) disciplinary action for any individual occurrence of a violation leading to the discipline.

ARTICLE 21 - GRIEVANCE PROCEDURES

A grievance is an alleged violation of a specific clause of this MOU. The Association may grieve an action or inaction pursuant to the procedures herein specified.

- A. Informal Grievance Procedure - The first attempt to settle a grievance will be through discussion with the immediate supervisor. If the matter is not settled, the employee shall then have the right to file a formal appeal in writing to the Police Chief within fifteen (15) calendar days after receiving a decision from the immediate supervisor.
- B. Formal Grievance Procedure - An employee filing a formal appeal shall do so in accordance with the following:
 - 1. First Level of Review - The appeal shall be presented in writing to the Police Chief who shall render a decision in writing within fifteen (15) workdays after receiving the appeal. If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Manager. Should the employee fail to take action within fifteen (15) workdays after receiving a decision, or non-decision from the Police Chief, the appeal shall be deemed to have been abandoned and terminated.
 - 2. City Manager Review - The City Manager or a designated representative shall discuss the grievance with the employee and other persons as may be needed. The City Manager may designate a fact-finding committee for advice concerning the appeal. The City Manager shall render a decision in writing to the employee within fifteen (15) workdays. If the employee does not agree with the decision, the employee shall have the right to file a formal appeal in writing to the City Council within fifteen (15) workdays after receiving a decision or non-decision from the City Manager.
- C. Appeal to the City Council - On receipt of an appeal, the City Council may make such investigations, as it deems necessary. The City Council will decide whether or not to hear the appeal or appoint a hearing officer or hearing body. The employee may request that the appeal be considered at a public or closed meeting. The City shall notify the employee requesting the hearing of the date, time, and place of the hearing. Unless incapacitated, the employee making an

appeal shall appear personally at the hearing before the City Council or appointed hearing officer or body.

Upon concluding any investigation or hearing, the City Council shall cause its findings to be prepared in writing and shall certify same. Such findings shall be countersigned and filed as a permanent record by the City Manager. Any member of the City Council may submit a minority or supplemental report which shall be part of the permanent record.

If, due to the absence from the City, or illness or disability of a majority of the City Council, an employee would be deprived of a right of a hearing, and in the event the employee were demoted, reduced in pay, or dismissed from City employment, the City Manager shall defer action until the Council is able to function, unless the case is deemed an emergency, in which event, the City Manager may suspend the employee with pay until the Council is able to function.

D. Conduct of Grievance Procedure.

1. The time limits specified in this Article may be extended to a definite date by mutual agreement of the employee and the appellate person or body.
2. The employee may be represented by a person or persons of their choosing in preparing and presenting the appeal at any level of review.
3. The employee shall be assured freedom from reprisal for using the grievance procedures.

ARTICLE 22 - SAFETY AND HEALTH

Pursuant to advice and/or requirements of the City's Insurance Carrier the City will make provisions for the safety and health of City employees during work hours. Procedures, protective devices, safety wearing apparel, equipment and facilities will be provided by the City and shall comply with the requirements under applicable regulations or laws. Employees shall utilize such safety and health procedures, devices, apparel, equipment and facilities when needed or required and failure to do so may be cause for disciplinary action.

The City shall provide each employee with the following:

1. Sam Brown Belt
2. Duty Weapon
3. Holster, Duty Weapon
4. Handcuffs
5. Handcuff Case
6. Magazine (3)

7. Magazine Holder
8. Baton
9. Baton Ring or Holder
10. Aerosol Tear Gas (Chemical Mace)
11. Mace Canister Holder
12. Flashlight (SL-20 Aluminum)
13. Flashlight Holder
14. Keepers (4)
15. Badge, Departmental
16. Hat Piece, Departmental
17. Ballistic Vest (Soft Body Armor of not less than Threat Level 11A or Better)
18. Raincoat
19. Rain Pants
20. Hat Cover, Rain
21. Helmet, General
22. CPR Micro-shield
23. Duty Ammunition
24. Protective Plastic Gloves
25. Stinger flashlight
26. Stinger holder
27. Electronic control device
28. Electronic control device holder
29. Baseball Cap

All the foregoing equipment is City owned and will be used and maintained, as the City deems necessary. Items which become unserviceable as a result of normal use or through no substantial fault of the employee shall be replaced by the City.

- A. With the Police Chief's approval, an employee may substitute privately owned equipment for City issued equipment, and utilize any additional private safety equipment.
- B. Upon leaving City service an employee shall return all the equipment in good working order excepting normal wear. The cost of damaged or missing equipment shall be deducted from an employee's termination check.
- C. The City will reimburse an employee for the repair or replacement cost of approved personal property that is damaged, destroyed or lost in the line of duty not to exceed \$150.00 (one hundred fifty dollars) per employee per year. Replacement shall not include cash or coins, credit cards, or decorative jewelry.

ARTICLE 23 - NON-DISCRIMINATION

Neither the City or the Association shall discriminate against any employee or applicant for employment because of race, color, creed, age, sex, national origin, or Association

or Non-Association activities.

ARTICLE 24 - SAVINGS PROVISION

If any provision(s) of this MOU are held contrary to law, such provision(s) will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.

ARTICLE 25 - TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall remain in full force and effect from July 1, 2009, through and including June 30, 2010. Negotiations to begin ninety (90) days prior to expiration of MOU.

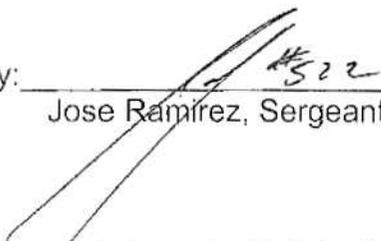
ARTICLE 26 – MOST FAVORED NATION CLAUSE

During the term of this Agreement the employer agrees that any increases and/or enhancements in compensation or benefits relating to any economic matters agreed to with the Winters Police Officers Association shall be provided to Winters Police Sergeants Association. Benefits or compensation provided for in this Agreement shall not be diminished, modified or eliminated during the term of the Agreement unless specifically provided for in this Agreement.

ARTICLE 27 - CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the negotiations, which resulted in the MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understanding set forth in this MOU constitute the complete and total contract between the City and the Association with respect to wages, hours, and terms and conditions of employment. Accordingly, all wages, hours and terms and conditions of employment shall remain in full force and effect for the term of this MOU, provided, however, that the parties may upon mutual agreement, renegotiate any part or provision of this MOU during its term. Any prior or existing MOU between the parties, past practices or conflicting rules and regulations regarding matters within the scope of representation are hereby superseded and terminated in their entirety.

Approved by the Winters Police Sergeants on the 5 day of DECEMBER, 2011.

By:  #522
Jose Ramirez, Sergeant

Accepted for submittal to the City Council on the ___ day of _____, 2011.

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

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ___ day of _____, 2011.

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK



RESOLUTION NO. 2011-49

**MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
MISCELLANEOUS EMPLOYEES ASSOCIATION**

**Effective
January 1, 2012**

**CITY OF WINTERS
MISCELLANEOUS EMPLOYEES ASSOCIATION**

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****PREAMBLE****

This Memorandum of Understanding (MOU) is entered into this 1st day of January 2012, between the City of Winters (hereinafter referred to as City) and the City of Winters Employee's Association (hereinafter referred to as Association) pursuant to Government Code Section 3500 to 3510.

ARTICLE 1 - RECOGNITION

The City recognizes the Association as the exclusive representative for the City employees in the following job classifications hereinafter referred to as "Employee(s)":

- Administrative Assistant/Finance
- Community Services Officer
- Maintenance Worker I
- Maintenance Worker II
- Maintenance Worker III (Senior Maintenance Worker)
- Maintenance Worker IV (Field Supervisor)
- Records Clerk II

The City reserves the right to alter or amend these classifications.

ARTICLE 2 - ASSOCIATION AND CITY COUNCIL APPROVAL

Upon approval by the Association, this MOU will be submitted to the City Council and is of no force or effect until ratified and is adopted by the City Council.

ARTICLE 3 - MANAGEMENT RIGHTS

All management rights and functions except those which are clearly and expressly limited in this MOU shall remain vested exclusively in the City; however, if any modification occurs that effects wages, hours or working conditions, the City shall notify the Association and meet and confer in good faith regarding the impact of such modifications. It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

- A. Manage the City and determine services to be provided.
- B. Determine the necessity and amount of overtime required, and seasonally establish, modify, or change work schedules.
- C. Direct the work force and hire, promote, demote, transfer, suspend, discipline, or discharge any employee and determine the administration of discipline.

- D. Determine the location of any new facilities, buildings, departments, divisions, or subdivisions thereof, and the relocations, sale, leasing, or closing of facilities, departments, divisions, or subdivisions thereof.
- E. Determine the layout of buildings and equipment and determine control and use of City property, materials, and equipment.
- F. Determine processes, techniques, methods, and means of performing work and institute changes in procedures.
- G. Determine the size, character and use of inventories and accounting procedures.
- H. Determine the financial policy, including accounting procedures.
- I. Determine the administrative organization of the City, the size and character of the work force, and allocate or assign work to employees and determine duties to be included in any job classification.
- J. Determine how new employees are selected.
- K. Establish and judge quality and quantity standards.
- L. Determine the methods and means by which operations are to be conducted including placing or contracting work with outside firms.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith, shall be limited only by the specific and express terms of this contract, and then only to the extent such specific and express terms are in conformance with law.

ARTICLE 4 - ASSOCIATION RIGHTS

Pursuant to Article 2, the Association retains the right to engage in the meet and confer process and employer/employee relations including, but not limited to, wages, hours, and other terms and conditions of employment.

ARTICLE 5 - ASSOCIATION DUES AND SECURITY

The City shall deduct dues and other premiums from the first and second paychecks of each employee and remit to the Association for the duration of this MOU the amount that an employee authorizes in writing the city to deduct. The Association agrees to hold harmless and indemnify the

City against any claims, causes of action, or lawsuits arising from such deductions or transmittal of such deductions to the Association.

- A. Every employee covered by this MOU shall, within sixty (60) calendar days of employment: (1) Become a member of the Association and maintain membership in good standing in accordance with its Constitution and Bylaws; or (2) shall pay an agency fee in an amount equal to the amount of the monthly dues pursuant to section G of this article.
- B. Any employee appointed to any classification out of the bargaining unit covered by this MOU may withdraw from Association membership and the employee's obligation to pay dues or fees shall be terminated.
- C. The City shall deduct from employee wages the regular membership dues of Association employees, or agency fees of other employees as provided in Section A, which an employee voluntarily authorizes the City to deduct in writing in accordance with the provisions of Section 1157.3 of the California Government Code.
- D. Membership dues or agency fee deductions shall be made in equal amounts each payroll period, and a check for the total deductions shall be submitted to the City of Winters Employees Association, at the end of each month.
- E. The City shall notify the Association of changes in bargaining unit membership in a form of check-off authorization, as approved by both the City and the Association.
- F. Upon written request from the Association, the City shall within thirty (30) calendar days, terminate the employment of an employee who fails to comply with the requirements of this article.
- G. An employee with lawfully established valid objections to membership or financial support of an Association shall be permitted to make in lieu payments to the Association or to other organizations as established by law, in accordance with the provisions of Section 3502.5 of the California Government Code.

ARTICLE 6 - NO STRIKE/NO LOCKOUT

The City and Association agree that it is mutually beneficial to resolve differences through negotiation. During the term of this MOU, the City agrees that it will not cause lockout of employees and the Association agrees that it will not sanction or cause a strike, slowdown, stoppage of work or other job action. Compliance with the request of other labor organizations is included within this prohibition.

ARTICLE 7 - LAYOFF PROCEDURES

If the City finds it necessary to reduce the work force due to lack of funds and/or work, the City may lay-off employees as follows:

- A. The City shall notify the Association ninety (90) days prior to any actual lay-off in order to meet and confer to explore alternatives to laying off employees.
- B. Employees shall be laid off in seniority order, with an employee with the least seniority in a classification affected by lay-off to be laid off first. Employees noticed for lay-off will receive (1) month base pay if they are actually laid off.
- C. Within seventy-two (72) hours of lay-off notice, an employee may exercise bump down rights by bumping into any lower rated classification covered in this MOU for which the employee is qualified. Employees bumped by higher seniority employees may themselves have the option of bumping down.
- D. The name of every employee laid off or bumped down, pursuant to this article, shall be placed on a reemployment list which shall be kept for a period of twelve (12) months. Such employees shall have precedent over any other individual applying for a position. Any reinstatement, shall be made in the reverse order of lay-off, or bump down.
- E. Employees actually laid off must exercise reinstatement with twenty (20) days after the City deposits written notice of recall from lay-off in the United States mail addressed to the employee's last know address by certified mail return receipt requested. An employee who fails to respond will be removed from the reemployment list noted in Section D of this article.

ARTICLE 8 - BASE WAGES AND STEPS, BENEFITS, AND WAGE PLAN ADMINISTRATION

- A. Base Wages and Steps: Addendum A provides a wage range with five (5) steps, also known as base wage steps, for each classification. The CPI-W will be the base for COLA Increases for all positions within this Association and will be reviewed at the end of April. Effective January 1, 20112 all Maintenance Worker classifications will be increased 5%. Compensation and Classification surveys will be conducted at a minimum of every three (3) years, with the next survey scheduled for 2013.
- B. Benefits: The City provides the following benefits pursuant to the terms and conditions noted. Monthly benefits shall be prorated for any partially worked month.
- C. Fair Labor Standards Act provisions shall be used to determine which

benefits are required to be used in calculating overtime pay.

1. Uniform allowance - The City shall provide Public Works Field Staff with uniform service and two pairs of OSHA approved safety shoes every year. The Community Services Coordinator will receive \$225.00 per quarter.
2. Bilingual Incentive - An employee who has completed original probation and uses both English and another language, written and/or spoken on the job, and the use of such skill is required by the job description to carry out job duties, shall receive \$200.00 per month, based upon successful completion of a qualified testing firm. Bilingual incentive is applicable to any classification and wage step noted in Addendum A only as long as bilingual skills are required by the job description and Department Head and approved by the City Manager prior to recruitment. The City will retain Cooperative Personnel Services to do the testing. This will apply to all employees eligible for the incentive
3. Insurance - Employees receive up to \$1510 per month to purchase various health, dental, and other insurance to which the City may subscribe. Money left over after an employee has purchased the insurance coverage desired will be paid to the employee in taxable wages. The City agrees to pick up the increase in dental and health premiums when they go into effect January 1, 2012. The City shall pay the cost of Long Term Disability Insurance and the cost of a \$30,000 Life Insurance Policy for each employee in this Association. The City of Winters will pay for the vision plan with MES Vision for all employees. Dependent cost must be paid for by employee.
4. Public Employee's Retirement System (PERS) - Employees shall join the PERS system as a condition of employment. The City subscribes to the 2%@55 modified formula retirement plan. The City shall pay the employer rate and the employee rate of 7%. The City agrees to obtain actuarial from PERS for discussion regards a higher retirement plan in one year.
5. Social Security (FICA) - Employees are required to join the Federal Social Security System as a condition of employment. The City shall pay the employer costs. The employee shall pay the employee contributions prescribed by Federal rules and regulations.
6. State Unemployment Insurance (SUI) - The City shall pay all

State Unemployment Insurance costs.

7. Education Incentive - An employee who has completed original probation and while working for the City provides evidence of having received a degree from an accredited college/university, or a license or certificate, issued by a State agency or technical certifying board which the Department Head and/or City Manager deems appropriate to the needs of the job being performed or future needs of the City, shall receive incentive pay, added to base monthly wage in the following amounts:

BA/BS Degree	10%
AA/AS Degree (or minimum of 90 semester units)	4%
License	2%
Certificate	2%

Whether a degree, certificate or license is needed to perform the job duties or is appropriate to the needs of the City is a decision which is solely within the purview of the City. Certificates which enhance or improve the performance of regular job duties are not considered required and are not eligible for the incentive. Education incentive shall not be paid for any degree, license or certificate, which is required to hold a particular classification. Each license or certificate will be reviewed annually. There is a total cap of 10%. Incentive pay shall not be paid for certificates or licenses which have expired.

8. Longevity Incentive - An employee who has completed five (5) consecutive years employment is eligible to receive a lump sum amount equal to one-half (1/2) month's base wage payable at the beginning of the sixth (6th) year and each year thereafter until the employee leaves City employment.
9. An employee who has increased their personal contributions into a Deferred Compensation plan the City will contribute a match of up to \$500 annually. (City contribution is frozen at this time.)
10. All employees covered under this Memorandum of Understanding agree to participate in the California Government VEBA (CALGOVEBA), a Individual health reimbursement account, pursuant to IRS Tax-exempt code 501 (c)(9). All employees agree to a \$25.00 per pay period contribution.

C. Wage Plan Administration

1. Employees shall be paid according to a bi-weekly payroll plan which has twenty-six (26) pay periods in a calendar year.
2. Employees shall normally be paid by twelve noon (12:00 p.m.) on or before every other Wednesday.
3. When the normal pay day falls during an employee's annual vacation leave, the employee may receive a vacation advance on the last working day prior to beginning vacation leave, provided a written request is submitted to the Finance Office at least five (5) working days in advance and the amount requested is less than the employee's regular paycheck based on straight time hours.
4. Work performance evaluations shall be completed by the employee's supervisor within ten (10) working days prior to the employee's anniversary date. At this time consideration may be given for a step advance. The evaluation shall include the following elements:
 - a. A written record to be reviewed and acknowledged in writing by the employee. No change will be made after this review without the acknowledgment of both the supervisor and employee.
 - b. A discussion between the supervisor and employee on the content of the performance evaluation.
 - c. A provision whereby an employee may submit a written response to any statement made on the evaluation which must be filed with the evaluation and forwarded to the supervisor. Such responses, and any written acknowledgment by a reviewing official, all become part of the evaluation.

If the evaluation is satisfactory or better, the employee may be granted a step increase. If the evaluation is less than satisfactory a step increase will not be granted, provided however that inadequate work performance has been previously documented. A withheld step increase may be granted following any subsequent review period of satisfactory work performance by the employee. The review period shall be less than ninety (90) days. A step increase granted after this review

shall not be retroactive back to the anniversary date.

ARTICLE 9 - PROBATION, NEW CLASSIFICATION, RECLASSIFICATION, ACTING APPOINTMENTS, PROMOTION, DEMOTION

All employees shall be provided with a copy of Government Code Section 3100-3109 and sign and Oath of Allegiance and Declaration of Permission to Work as part of their new employee orientation.

- A. Probation: The probation period is a time to obtain the best fit for an employee in a new job or classification and for terminating the employment relation if work performance or adjustment to the work relation if it does not meet the expectations of the City.
 - 1. All original or promotional appointments shall be tentative and subject to a probation period of six (6) months.
 - 2. The probation period may be extended up to six (6) months by the City as a result of an employee's unfavorable performance evaluation.
 - 3. During the probation period, an employee will be evaluated at the end of two (2), four (4), and six (6) months.
 - 4. During the probation period, a newly hired employee may be discharged without right of appeal if the City deems the employee/employer relationship and/or the employee's performance does not warrant formal appointment to the position.
 - 5. During the probation period a promoted employee may be returned to the job previously held if the City deems that formal appointment is not warranted. An employee may appeal such decision pursuant to all rules and regulations dealing with discipline.
- B. New Classifications: The City may establish new job classifications. Employees desiring to compete for such positions will be evaluated in the same manner as any candidate aspiring to receive appointment.
- C. Reclassification is a change to an existing job class as a result of changes in the function, duties, and/or responsibilities as determined by the City.
 - 1. The City may reclassify any job within the City service to accommodate changed job duties not anticipated in the original

classification.

2. Reclassification shall not be used to avoid restrictions surrounding promotions or demotions, or to assume new duties and responsibilities not originally assigned to the position.
 3. An employee whose job is reclassified shall receive the wage step in the reclassified position's range that is higher but closest to the wage step currently held, but in no case shall a wage be paid which is higher than the wage range.
- D. Action Appointments: The City may appoint an employee to an acting capacity in a higher job classification. The employee shall receive two hundred dollars (\$200.00) per month for each full month of service while in the acting capacity.
1. Service in an acting capacity shall not continue beyond six (6) months except upon mutual agreement of the City and employee.
 2. An employee having served in an acting capacity and subsequently appointed to the position shall establish a new anniversary date retroactive to the beginning of the acting appointment. If the employee does not meet the minimum requirements for the position, then the anniversary date will not be set until the minimum requirements are met.
- E. Promotion: The City may advance an employee to a job classification having a higher base wage range.
1. A promoted employee shall receive an increase to the next higher step at least five (5) percent above that currently held provided that it does not exceed the wage range established for the new classification.
 2. A promoted employee shall be subject to a six (6) month probationary period. An employee rejected during the probationary period shall be reinstated to the job classification previously held at the same wage step the employee had prior to the promotion. A rejection pursuant to this section shall not be considered a demotion as defined in Section F.
 3. Nothing in this section shall be construed as limiting the City's right to advertise a promotional position to any candidate desiring to apply. Any qualified employee may apply and will be evaluated in the same manner as any candidate

aspiring to receive appointment to the position.

4. Public Works Field Staff promotion criteria is attached to the back of this MOU.
- F. Demotion: The City may, with cause, demote an employee to a lower job classification.
1. A demoted employee shall receive a minimum decrease in wage equivalent to one (1) wage step in the employee's current job classification, provided however, that no employee shall receive a salary that exceeds the maximum salary established for the lower job classification.
 2. A new anniversary date shall be established as of the day on which the employee is formally demoted to the lower job classification.
 3. Employees being demoted shall not lose any years of service credit or seniority.

ARTICLE 10 - PERSONNEL RECORDS

Personnel records, except payroll records, are deemed confidential. Access to personnel records of an employee shall be limited to the City Manager, Administrative Services Director, and the Director of the Department to which an employee is assigned. An employee and/or their representatives, designated by the employee in writing, shall be allowed to review the employee's personnel records during regular business hours. An employee shall receive, upon written request, a copy of any document placed in the employee's personnel file.

ARTICLE 11 - HOURS OF WORK

The normal work shift is one (1) work day consisting of eight (8) hours. The work shift is one (1) work day consisting of eight (8) hours. The work period for all employees within the bargaining group shall be seven (7) days in length commencing at 12:00 midnight.

- A. The work shift is normally 8:00 a.m. to 5:00 p.m. for employees within City Hall. Employees (such as Public Works Employees) for whom the City deems a different schedule to be desirable or necessary shall work according to such other schedule, as deemed necessary by the Public Works Director.
- B. Employees shall receive one (1) rest period of not more than thirty (30) minutes, or two (2) rest periods of fifteen (15) minutes each during a work shift. Pursuant to Department of Labor guidelines the department shall determine the time and manner in which rest periods shall be taken. Rest

periods are paid time and shall be taken at the work site.

- C. Employees shall receive one (1) sixty (60) minute lunch break during a work shift. Lunch breaks shall be scheduled by the department with due consideration to the desires of an employee. Lunch breaks are not paid time and may be taken away from the work site.
- D. Lunch breaks and rest periods are not cumulative and shall not be used to arrive late or leave work early.

ARTICLE 12 - OVERTIME

Although all classifications listed in this Memorandum of Understanding are part of the Association bargaining unit, for purposes of the Fair Labor Standards Act (FLSA), the City may designate certain positions exempt per Department of Labor guidelines. The City will inform said employees in writing and place a copy of said notice in the employee's personnel file.

- A. Work Period: The work period for all employees within the bargaining group shall be seven (7) days in length commencing at 12:00 midnight Saturday.
- B. All employees, except those deemed exempt, required to work hours in excess of the standard work period of forty (40) hours in a seven (7) day cycle, or more than eight (8) hours in a day shall receive overtime pay at the rate of time and one-half the regular rate of pay.
- C. Except in emergency situations, all overtime must have written authorization of a supervisor prior to starting overtime work. Where prior written authorization is not feasible, explicit verbal authorization must be obtained and followed up by written authorization as soon as practical. Dispatched calls necessitating overtime work before or beyond a regular shift are considered authorized. An employee's failure to obtain prior written approval, will result in denial of the overtime request.
- D. Employees may be provided with a locker for personal convenience. Employees may or may not utilize the locker for storage and clothes changing purposes at their own discretion. Employees are expected to change clothes during normal shift hours and time spent in changing clothes before or after a shift, or during lunch, are not considered hours worked and are not compensable in any manner whatsoever.
- E. Compensatory time off may be requested by an employee in lieu of overtime pay, and if approved by the City, shall be provided at time and one-half for all hours worked over forty (40) hours in a week or over eight (8) hours in a day. Employees may accrue up to forty (40) hours of compensatory time. Unused time on the books as of the first pay period in December shall be paid to an employee. Unused compensatory time on the books shall be paid

at termination of employment.

- F. In the event an employee is not permitted to have an uninterrupted meal period, such employee shall be paid for actual interrupted time at the overtime rate if the employee works a full shift that day.

ARTICLE 13 - CALL-BACK ALLOWANCE

Public Works Employees who are on standby shall be paid an additional \$200 per week for the week that they are on standby in addition to their regular salary. Standby weeks will be scheduled with a rotating schedule within the department and directly with the Director of Public Works. Employees that are on standby are to remain within one hour of the City of Winters and are to be accessible by either their City Nextel or home phone.

An employee who is called back after working a regular shift or work week (between the hours of 6 p.m. and 6 a.m., Monday through Friday or at any time during Saturday or Sunday, shall be compensated for a minimum of three (3) hours, or for actual hours worked, whichever is greater, at the overtime rate.

Employees who are called back for issues generated based on their own negligence or failure to adequately complete part of a work assignment shall be exempted from eligibility for "Call Back" and will be paid for actual time (at the overtime rate) to complete and/or correct the situation.

ARTICLE 14 - SICK LEAVE

- A. Employees shall receive sick leave at the rate of eight (8) hours per month for each calendar month of service. Sick leave may be accumulated to a maximum of nine hundred sixty (960) hours. Hours may be reaccumulated if the sick leave balance falls below the maximum.
- B. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
- C. Employees granted a leave of absence or absent from duty for one (1) or more days when not authorized by the City shall not accrue sick leave for the pay period in which the absence occurred. Sick leave shall not be accrued by an employee absent from duty after separation from City service. Sick leave balances at separation shall be forfeited.
- D. If an employee is absent from work for more than three (3) consecutive days, evidence, in the form of a physician's certificate or otherwise, may be required to determine the adequacy of reasons for an employee's sick leave absence.
- E. An employee may take five (5) days off of Sick Leave for bereavement which

shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. Bereavement may be granted for death involving members of the immediate family (for this purpose, members of the immediate family shall be defined as: spouse, mother, father, sister, brother, children, grandparents, mother-in-law, or father-in-law).

- F. The City shall institute a Sick Leave Incentive Program for all Bargaining Unit employees. The Sick Leave Incentive shall be one percent (1%) of an employee's base annual salary. The Sick Leave Incentive shall be paid during the first week of December.

For employee's to be eligible for the Sick Leave Incentive, they must not have used more than forty-eight (48) hours of sick leave between December 1 and November 30. Sick Leave used for work related injuries or illnesses shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. The effective date for determination of work related injuries or illnesses shall be based upon a medical report.

ARTICLE 15 - HOLIDAYS

- A. Employees shall receive the following holidays:
 - 1. New Year's Day
 - 2. Martin Luther King's Birthday
 - 3. President's Day
 - 4. Half Day - Good Friday
 - 5. Cesar Chavez Day (Recognized Only – Monday through Friday)
(No additional day off if falls on Saturday or Sunday)
 - 6. Memorial Day
 - 7. Independence Day
 - 8. Labor Day
 - 9. Veteran's Day
 - 10. Thanksgiving Day
 - 11. Day After Thanksgiving Day
 - 12. December 24th
 - 13. December 25th
- B. Every employee shall receive two (2) floating holidays per year. If an employee fails to take their floating holidays off, one between January 1st - June 30th and the other between July 1st - December 31st, the employee will forfeit their floating holiday credit.
- C. If any holiday falls on a Sunday, the Monday following will be observed as the holiday. If it falls on a Saturday, the Friday preceding will be observed.

- D. In the event that a holiday falls on an employee's regularly scheduled work day and the employee is required to work, the employee shall be paid for actual hours worked and may elect to receive an additional eight (8) hours paid at straight time rate or eight (8) hours added to the employee's vacation accrual.

ARTICLE 16 - VACATIONS

- A. Employees shall earn paid vacation leave on a monthly basis at each pay period during the month. Vacation time shall be prorated in any partially worked month and the accrual rate shall be effective on the first day beginning the new benchmark year.

<u>YEARS</u>	<u>DAYS</u>
0 - 3	12 days
4 - 6	15 days
7 - 9	17 days
10 - 12	20 days
13 - 16	22 days
17 - 22	25 days
23 - PLUS	27 days

- B. Scheduling of employee vacation leave shall be at the employee's discretion with the Department Head's approval. Any scheduling conflicts shall be resolved with employee's seniority with City employment. If there is a tie then the tie will be resolved according to Departmental Seniority.
- C. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation leave. Vacation leave shall not be granted to an employee after separation from City service.
- D. All employees shall take at least one (1) week {5 straight working days} away from the job each year. However, all employees will be allowed to carry over one (1) previous year's vacation allowance. For example, an employee earning ten (10) days could carry over 10 days minus 5, which must be used. In the second year the employee would have 5 carryover days plus 10 days earned, minus 5 which must be used, and thus may carryover 10 days to the third year. In the third year the employee must lower their vacation accumulation to 10 days.
- E. Employees granted a leave of absence or absent from duty for one (1) or more days when not authorized by the City shall not earn vacation leave for the pay period in which the absence occurred.
- F. Employees may cash in up to sixty-four (64) hours of vacation leave per year

providing the employee takes at least one week off as specified in Article 16-D with the approval of the City Manager. (Cash out is frozen at this time.)

- G. In the event that a holiday recognized in this MOU occurs during an employee's scheduled vacation leave, that holiday shall not be considered as vacation leave.
- H. An employee separated from City service shall be compensated for vacation hours on the books.

ARTICLE 17 - TRAINING SCHOOL FEES

When, as a condition for continued employment, the City requires attendance at a school or training establishment and where fees are charged, such fees shall be paid by the City. An employee required to attend such school shall suffer no loss of wages or benefits. This article does not apply to employees who do not meet the minimum schooling, license, or certification requirements of their classification. For such employees the City reserves the right to work out a separate agreement to assist the employee in achieving minimum requirements in a reasonable time.

Non-mandatory attendance at training schools/facilities which improves the performance of regular job duties and/or prepares for job advancement are not compensable as hours in excess of an employee's normal work shift. Any time spent in excess of the normal work shift will not be counted as working time and is not compensable in any manner whatsoever. Time spent in studying and other personal pursuits are not compensable hours of work under any conditions. This includes travel time to and from training facility, non-mandatory training, outside of an employee's work shift.

ARTICLE 18 - TIME OFF TO EMPLOYEE REPRESENTATIVES

The City shall allow two (2) City employee representatives time off from normal duties without loss of wages or benefits when formally meeting and conferring with representatives of the City in matters within the scope of representation. In no case shall overtime be paid for such meeting and conferring. Association meetings during which association business is discussed may occur during normal work hours provided Department Heads are notified at least one (1) week prior to the meeting and that meetings are of a reasonable duration and frequency.

ARTICLE 19 - WORKER'S COMPENSATION INSURANCE

Worker's compensation Benefits shall be provided in accordance with State law, Yolo County Public Agency Risk Management Insurance Authority and any other applicable rules and regulations.

- A. Industrial Injuries and Accidents.

1. Employees shall report any work related injury or illness which requires medical treatment to the appropriate department supervisor as soon as physically possible. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
 2. Employees shall report any work related injury or illness which does not require medical treatment to the appropriate department supervisor as soon as possible, in any event by the end of the employee's shift during which the injury or illness occurred. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
- B. Accident Reporting. Employees shall report any accident which results in any injury or property damage to other parties to the appropriate department supervisor as soon as physically possible.
 - C. Medical Treatment. Any employee suffering from any work related injury or illness which requires emergency medical treatment shall immediately seek such treatment from a City designated physician or medical facility. Employees can seek treatment from their own physician or facility also.
 - D. Leave of Absence for Industrial Disability Qualification. An employee suffering a work related injury or illness which disables that employee from the performance of regular job duties, may request a leave of absence for industrial disability. Such a request may be submitted in the form of a worker's compensation claim. Any dispute regarding such claim shall be resolved in the appropriate jurisdiction as defined by statute or policy.
 - E. Compensation for any employee on a leave of absence pursuant to the worker's compensation sections of the California Labor code, may have accumulated sick leave, vacation, and compensatory hours prorated to supplement temporary disability compensation payments provided that the total amount does not exceed the employees base monthly salary.
 - F. Temporary light duty. The City may make jobs available for the employee who can perform light duty assignments approved by the employee's physician and the City.

ARTICLE 20 - LEAVE OF ABSENCE

Any employee who has successfully completed the original probationary period may request a leave of absence for a period not to exceed one (1) year.

- A. The City shall have sole discretion in approving or disapproving any

employee request for a leave of absence or in granting any pay or benefits. Any leave of absence exceeding thirty (30) days must be approved by the City Council.

- B. Military leave shall be granted in accordance with the provisions of State Law.

ARTICLE 21 - DISCIPLINE

Full authority for administering discipline for just cause, up to and including discharge, is retained by the City.

- A. Improper employee conduct may be cause for disciplinary action. Improper conduct includes, but is not limited to, the following:

1. Fraud in securing appointment.
2. Incompetency.
3. Inefficiency.
4. Insubordination.
5. Dishonesty.
6. Drunkenness on duty.
7. Addiction to the use of controlled substances.
8. Inexcusable absence without leave.
9. Immorality.
10. Discourteous treatment of the public or other employees.
11. Improper political activity while on duty.
12. Willful disobedience.
13. Misuse of City property.
14. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a City employee.
15. Unlawful retaliation against any other City officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the City or any other appropriate authority any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

- B. Disciplinary Action.

The purpose of the disciplinary action is to correct deficiencies in employee performance and to assure improvement to meet job standards. Whenever any of the above actions are to be taken, the Department Head shall notify the City Manager. The City Manager shall be responsible for determining

that the process is outlined in this Section.

1. Oral or Written Reprimand.

When the Department Head or immediate supervisor determines more severe action is not immediately necessary, an oral or written reprimand can be prepared detailing the deficiency or problem observed. If the reprimand is put in writing, a copy is to be filed in the employee's personnel file after being signed by and a copy given to the employee. Refusal to sign shall be noted before filing. Failure to correct deficiencies and improve to meet standards may result in further discipline including suspension, reduction in pay, demotion and discharge.

2. Suspension.

The Department Head may suspend an employee for cause and without pay, upon approval of the City Manager, for up to thirty (30) calendar days after the appropriate disciplinary proceedings. The City Manager may authorize immediate suspensions in an emergency situation or when the seriousness of a matter warrants. The disciplinary proceedings shall determine whether the immediate suspension shall be with or without pay. No employee shall be suspended without pay for more than thirty (30) calendar days in any calendar year.

3. Reduction-in-Pay

The Department Head, upon approval of the City Manager, may reduce an employee's pay for cause to a lower step or range as a disciplinary action.

4. Demotion.

The Department Head, upon approval of the City Manager, may demote an employee for cause as a disciplinary action.

5. Discharge -.An employee may be discharged by the Department Head for cause upon approval of the City Manager. Permanent employees shall be discharged only after appropriate disciplinary proceedings. The Appointing Authority may suspend the employee with pay immediately, as provided in 2 of this Section, pending the proper disciplinary process. Prompt disciplinary processing shall follow.

C. Notice of Proposed Disciplinary Action.

Except in cases of emergency or when immediate action is required, notice

shall be given by the Department Head to the affected employee in accordance with procedures established by the City Manager. Such procedures shall be developed in accordance with State law. In cases of emergency or when immediate action is required, the affected employee shall be verbally informed of the reasons for the immediate action and shall be served with a notice of proposed disciplinary action as soon as possible thereafter.

D. Disciplinary Hearing.

The disciplinary hearing is an informal meeting at which the employee has an opportunity to rebut the charges against him/her or to state any mitigating circumstances. The City Manager or his/her designee shall hear and consider the employee's response.

E. Notice of Decision.

Following receipt and consideration of the written response or facts stated at the disciplinary hearing, or following no response by the required date, the Department Head shall prepare a notice of the action to be taken and effective date. The notice shall be delivered to the employee and a copy filed with the City Manager preferably before the effective date, or as soon thereafter as possible.

F. Appeal of Decision.

In the event that an affected employee is not satisfied with the decision after the hearing, the decision may be appealed in writing to the City Council within thirty (30) calendar days from the date of filing, the City Council shall hear the matter. After due consideration, the City Council shall give its written recommendation for dispensation of the appeal to the Appointing Authority and to the employee within ten (10) calendar days.

G. Employees may, if they choose to, have an association or other representative present at all stages of the disciplinary process provided that the representative is not a party to the action involved.

H. Retribution for Appeal.

No employee shall be penalized in any way for availing himself/herself of, or participating in the appeal process.

ARTICLE 22 - GRIEVANCE PROCEDURES

A grievance is an alleged violation of a specific clause of this MOU. The Association may grieve an action or inaction pursuant to the procedures herein specified.

- A. Informal Grievance Procedure. The first attempt to settle a grievance will be through discussion with the immediate supervisor. Every effort should be made to find a solution by informal means at the lowest level of supervision. If the matter is not settled, the employee shall then have the right to file a formal appeal in writing to the department head.
- B. Formal Grievance Procedure. An employee filing a formal appeal shall do so in accordance with the following:
 - 1. Department Review. The appeal shall be presented in writing to the employee's department head who shall render a decision in writing within fifteen (15) work days after receiving the appeal. If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Manager. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the department head, the appeal shall be deemed to have been abandoned and terminated.
 - 2. City Manager Review. The City Manager or a designated representative shall discuss the grievance with the employee. The City Manager may designate a fact finding committee for advice concerning the appeal. The City Manager shall render a decision in writing to the employee within fifteen (15) working days of the appeal.

If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Council. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the City Manager, the appeal shall be deemed to have been abandoned and terminated. Appeal to the City Council. On receipt of an appeal, the City Council may make such investigations as it deems necessary. The City Council will decide whether or not to hear the appeal or appoint a hearing officer or body.

The employee may request that the appeal be considered at a public or closed meeting. The City shall notify the employee requesting the

hearing of the date, time, and place of the meeting. Unless incapacitated, the employee making the appeal shall appear personally at the hearing.

After conducting any investigation or hearing, the City Council shall cause its findings to be prepared in writing and shall certify the findings. Such findings shall be countersigned and filed as a permanent record by the City Manager. Any member of the City Council may submit a minority or supplemental

report which shall be part of the permanent record.

If due to the absence from the City, or illness or disability of a majority of the City Council, an employee would be deprived of a right of a hearing, and in the event the employee were demoted, reduced in pay, or dismissed from City employment, the City Manager shall defer action until the Council is able to function, unless the case is deemed an emergency, in which event, the City Manager may suspend the employee with pay until the Council is able to function.

D. Conduct of Grievance Procedure.

1. The time limits specified in this Article may be extended to a definite date by mutual agreement of the employee and the appellate person or body.
2. The employee may be represented by a person of their choosing in preparing and presenting the grievance at any level of review.
3. The employee shall be assured freedom from reprisal for using the grievance procedures.

ARTICLE 23 - JURY DUTY

An employee may be excused from the regular responsibilities of their positions when called for jury duty. Employees called for jury duty shall notify the City of the call and if, in the opinion of the City, the absence of the employee would result in undue disruption of work, the City may file a request with the court for an exemption from jury duty. An employee shall not suffer loss of pay or benefits while actually serving on jury duty under the supervision of the court.

ARTICLE 24 - INSPECTION PRIVILEGES/POSTING OF NOTICES

- A. With City approval, authorized agents of the Association shall have access to City premises during work hours (8:00 a.m. to 5:00 p.m.), Monday through Friday for purposes of adjusting disputes, investigating working conditions and such other matters as may be needed. Access shall be conducted so as not to interfere with the conduct of City services and safety or security standards.
- B. City bulletin boards may be used for transmitting notices of Association meetings, elections, results of elections, and other matters pertaining to Association business. Notices must be signed by an authorized Association representative and a copy provided to the City Manager.

ARTICLE 25 - SAFETY AND HEALTH

The City will provide protective devices, safety apparel, equipment and facilities pursuant to applicable regulations or laws. Employees shall utilize such protective devices, safety apparel, equipment and facilities when needed or required and failure to do so may be cause for disciplinary action.

ARTICLE 26 - WORK BY MANAGEMENT PERSONNEL

It is agreed that management personnel will not perform work which is normally performed by employees covered in this MOU. Management and/or supervisory personnel may perform any work required or directed in the event of an emergency or to assure that a department is meeting its service goals.

ARTICLE 27 - NON-DISCRIMINATION

Neither the City or the Association shall discriminate against any employee or applicant for employment because of race, color, creed, age, sex, national origin, disability, or Association or non-Association activities.

ARTICLE 28 - SAVINGS PROVISION

If any provision(s) of this Memorandum of Understanding are held contrary to law, such provision(s) shall be deemed invalid except to the extent permitted by law, but all other provisions will continue in full force and effect. On occurrence of such an event, the parties shall meet and confer in good faith as soon as practical to renegotiate only the invalidated provision(s).

ARTICLE 29 - TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall remain in full force and effect from January 1, 2012, and from year to year thereafter unless one party serves notice on the other.

ARTICLE 30 - CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

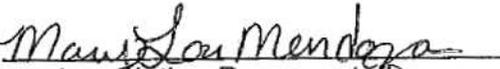
The parties acknowledge that during the negotiations which resulted in this MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understandings set forth in this MOU constitute the complete and total contract between the City and the Association with respect to wages, hours, and terms and conditions of employment and shall remain in full force and effect for the term of this MOU, provided, however, that the parties may, upon mutual agreement, renegotiate any part or provision of this MOU, during its term.

Any prior or existing Memorandum of Understanding between the parties, past practices or conflicting rules and regulation regarding matters within the scope of representation are

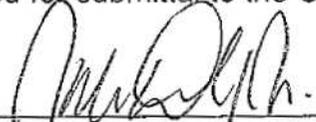
hereby superseded and terminated in their entirety.

Approved by the City of Winters Employee Association on the 12 day of December, 2011.

BY: 
Association Representative

BY: 
Association Representative

Accepted for submittal to the City Council on the ___ day of December, 2011.

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

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ___ day of _____, 2011.

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

ADDENDUM A

**WINTERS EMPLOYEES ASSOCIATION SALARY SCHEDULE
 JANUARY 1, 2012
 JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - FOR ALL OTHER CLASSIFICATIONS)
 (5% ON MAINT. WORKER CLASSIFICATIONS - NO CHANGE ON OTHERS)**

Position	A	B	C	D	E
Administrative Assistant/Finance	3,192	3,352	3,520	3,696	3,881
Community Services Officer	2,649	2,781	2,920	3,066	3,219
Maintenance Worker I	2,205	2,315	2,431	2,553	2,681
Maintenance Worker II	2,917	3,063	3,216	3,377	3,546
Maintenance Worker III (Senior)	3,545	3,722	3,908	4,103	4,308
Maintenance Worker IV (Field Sup)	4,311	4,527	4,753	4,991	5,241
Records Clerk II	2,493	2,618	2,749	2,886	3,030



2011-50

RESOLUTION NO. 2011-50
MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
CONFIDENTIAL EMPLOYEES ASSOCIATION

Effective
January 1, 2012

**CITY OF WINTERS
CONFIDENTIAL EMPLOYEES ASSOCIATION**

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****PREAMBLE****

This Memorandum of Understanding (MOU) is entered into this 1st day of January 2012, between the City of Winters (hereinafter referred to as City) and the City of Winters Confidential Employee's Association (hereinafter referred to as Association) pursuant to Government Code Section 3500 to 3510.

ARTICLE 1 - RECOGNITION

The City recognizes the Association as the exclusive representative for the City employees in the following job classifications hereinafter referred to as "Employee(s)":

- Administrative Assistant
- Executive Assistant to the City Manager

The City reserves the right to alter or amend these classifications.

ARTICLE 2 - ASSOCIATION AND CITY COUNCIL APPROVAL

Upon approval by the Association, this MOU will be submitted to the City Council and is of no force or effect until ratified and is adopted by the City Council.

ARTICLE 3 - MANAGEMENT RIGHTS

All management rights and functions except those which are clearly and expressly limited in this MOU shall remain vested exclusively in the City; however, if any modification occurs that effects wages, hours or working conditions, the City shall notify the Association and meet and confer in good faith regarding the impact of such modifications. It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

- A. Manage the City and determine services to be provided.
- B. Determine the necessity and amount of overtime required, and seasonally establish, modify, or change work schedules.
- C. Direct the work force and hire, promote, demote, transfer, suspend, discipline, or discharge any employee and determine the administration of discipline.
- D. Determine the location of any new facilities, buildings, departments, divisions, or subdivisions thereof, and the relocations, sale, leasing, or closing of facilities, departments, divisions, or subdivisions thereof.

- E. Determine the layout of buildings and equipment and determine control and use of City property, materials, and equipment.
- F. Determine processes, techniques, methods, and means of performing work and institute changes in procedures.
- G. Determine the size, character and use of inventories and accounting procedures.
- H. Determine the financial policy, including accounting procedures.
- I. Determine the administrative organization of the City, the size and character of the work force, and allocate or assign work to employees and determine duties to be included in any job classification.
- J. Determine how new employees are selected.
- K. Establish and judge quality and quantity standards.
- L. Determine the methods and means by which operations are to be conducted including placing or contracting work with outside firms.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith, shall be limited only by the specific and express terms of this contract, and then only to the extent such specific and express terms are in conformance with law.

ARTICLE 4 - ASSOCIATION RIGHTS

Pursuant to Article 2, the Association retains the right to engage in the meet and confer process and employer/employee relations including, but not limited to, wages, hours, and other terms and conditions of employment.

ARTICLE 5 - ASSOCIATION DUES AND SECURITY

The City shall deduct dues and other premiums from the first and second paychecks of each employee and remit to the Association for the duration of this MOU the amount that an employee authorizes in writing the city to deduct. The Association agrees to hold harmless and indemnify the City against any claims, causes of action, or lawsuits arising from such deductions or transmittal of such deductions to the Association.

- A. Every employee covered by this MOU shall, within sixty (60) calendar days of employment: (1) Become a member of the Association and maintain membership in good standing in accordance with its Constitution and Bylaws; or (2) shall pay an agency fee in an amount equal to the amount of the

monthly dues pursuant to section G of this article.

- B. Any employee appointed to any classification out of the bargaining unit covered by this MOU may withdraw from Association membership and the employee's obligation to pay dues or fees shall be terminated.
- C. The City shall deduct from employee wages the regular membership dues of Association employees, or agency fees of other employees as provided in Section A, which an employee voluntarily authorizes the City to deduct in writing in accordance with the provisions of Section 1157.3 of the California Government Code.
- D. Membership dues or agency fee deductions shall be made in equal amounts each payroll period, and a check for the total deductions shall be submitted to the City of Winters Employees Association, at the end of each month.
- E. The City shall notify the Association of changes in bargaining unit membership in a form of check-off authorization, as approved by both the City and the Association.
- F. Upon written request from the Association, the City shall within thirty (30) calendar days, terminate the employment of an employee who fails to comply with the requirements of this article.
- G. An employee with lawfully established valid objections to membership or financial support of an Association shall be permitted to make in lieu payments to the Association or to other organizations as established by law, in accordance with the provisions of Section 3502.5 of the California Government Code.

ARTICLE 6 - NO STRIKE/NO LOCKOUT

The City and Association agree that it is mutually beneficial to resolve differences through negotiation. During the term of this MOU, the City agrees that it will not cause lockout of employees and the Association agrees that it will not sanction or cause a strike, slowdown, stoppage of work or other job action. Compliance with the request of other labor organizations is included within this prohibition.

ARTICLE 7 - LAYOFF PROCEDURES

If the City finds it necessary to reduce the work force due to lack of funds and/or work, the City may lay-off employees as follows:

- A. The City shall notify the Association ninety (90) days prior to any actual lay-off in order to meet and confer to explore alternatives to laying off employees.

- B. Employees shall be laid off in seniority order, with an employee with the least seniority in a classification affected by lay-off to be laid off first. Employees noticed for lay-off will receive (1) month base pay if they are actually laid off.
- C. Within seventy-two (72) hours of lay-off notice, an employee may exercise bump down rights by bumping into any lower rated classification covered in this MOU for which the employee is qualified. Employees bumped by higher seniority employees may themselves have the option of bumping down.
- D. The name of every employee laid off or bumped down, pursuant to this article, shall be placed on a reemployment list which shall be kept for a period of twelve (12) months. Such employees shall have precedent over any other individual applying for a position. Any reinstatement, shall be made in the reverse order of lay-off, or bump down.
- E. Employees actually laid off must exercise reinstatement with twenty (20) days after the City deposits written notice of recall from lay-off in the United States mail addressed to the employee's last know address by certified mail return receipt requested. An employee who fails to respond will be removed from the reemployment list noted in Section D of this article.

ARTICLE 8 - BASE WAGES AND STEPS, BENEFITS, AND WAGE PLAN ADMINISTRATION

- A. Base Wages and Steps: Addendum A provides a wage range with five (5) steps, also known as base wage steps, for each classification. The CPI-W will be the base for COLA Increases for all positions within this Association and will be reviewed at the end of April. Compensation and Classification surveys will be conducted at a minimum of every three (3) years, with the next survey scheduled for 2013.
- B. Benefits: The City provides the following benefits pursuant to the terms and conditions noted. Monthly benefits shall be prorated for any partially worked month. Fair Labor Standards Act provisions shall be used to determine which benefits are required to be used in calculating overtime pay.
 - 1. Bilingual Incentive - An employee who has completed original probation and uses both English and another language, written and/or spoken on the job, and the use of such skill is required by the job description to carry out job duties, shall receive \$200.00 per month, based upon successful completion of a qualified testing firm. Bilingual incentive is applicable to any classification and wage step noted in Addendum A only as long as bilingual skills are required by the job description and Department Head and approved by the City Manager prior to

recruitment. The City will retain Cooperative Personnel Services to do the testing. This will apply to all employees eligible for the incentive

2. Insurance - Employees receive up to \$1510 per month to purchase various health, dental, and other insurance to which the City may subscribe. Money left over after an employee has purchased the insurance coverage desired will be paid to the employee in taxable wages. The City agrees to pick up the increase in dental and health premiums when they go into effect January 1, 2012. The City shall pay the cost of Long Term Disability Insurance and the cost of a \$30,000 Life Insurance Policy for each employee in this Association. The City of Winters will pay for the vision plan with MES Vision for all employees. Dependent cost must be paid for by employee.
3. Public Employee's Retirement System (PERS) - Employees shall join the PERS system as a condition of employment. The City subscribes to the 2%@55 modified formula retirement plan. The City shall pay the employer rate and the employee rate of 7%. The City agrees to obtain actuarial from PERS for discussion regards a higher retirement plan in 2013.
4. Social Security (FICA) - Employees are required to join the Federal Social Security System as a condition of employment. The City shall pay the employer costs. The employee shall pay the employee contributions prescribed by Federal rules and regulations.
5. State Unemployment Insurance (SUI) - The City shall pay all State Unemployment Insurance costs.
6. Education Incentive - An employee who has completed original probation and while working for the City provides evidence of having received a degree from an accredited college/university, or a license or certificate, issued by a State agency or technical certifying board which the Department Head and/or City Manager deems appropriate to the needs of the job being performed or future needs of the City, shall receive incentive pay, added to base monthly wage in the following amounts:

BA/BS Degree	10%
AA/AS Degree (or minimum of 90 semester units)	4%
License	2%
Certificate	2%

Whether a degree, certificate or, license is needed to perform the job duties or is appropriate to the needs of the City is a decision which is solely within the purview of the City. Certificates which enhance or improve the performance of regular job duties are not considered required and are not eligible for the incentive. Education incentive shall not be paid for any degree, license or certificate, which is required to hold a particular classification. Each license or certificate will be reviewed annually. There is a total cap of 10%. Incentive pay shall not be paid for certificates or licenses which have expired.

7. Longevity Incentive - An employee who has completed five (5) consecutive years employment is eligible to receive a lump sum amount equal to one-half (1/2) month's base wage payable at the beginning of the sixth (6th) year and each year thereafter until the employee leaves City employment.
8. An employee who has increased their personal contributions into a Deferred Compensation plan the City will contribute a match of up to \$500 annually. (City contribution is frozen at this time.)
9. All employees covered under this Memorandum of Understanding agree to participate in the California Government VEBA (CALGOVEBA), a Individual health reimbursement account, pursuant to IRS Tax-exempt code 501 (c)(9). All employees agree to a \$25.00 per pay period contribution. (Executive Assistant opted out of the program.)

C. Wage Plan Administration

1. Employees shall be paid according to a bi-weekly payroll plan which has twenty-six (26) pay periods in a calendar year.
2. Employees shall normally be paid by twelve noon (12:00 p.m.) on or before every other Wednesday.
3. When the normal pay day falls during an employee's annual vacation leave, the employee may receive a vacation advance on the last working day prior to beginning vacation leave, provided a written request is submitted to the Finance Office at least five (5) working days in advance and the amount requested is less than the employee's regular paycheck based on straight time hours.

4. Work performance evaluations shall be completed by the employee's supervisor within ten (10) working days prior to the employee's anniversary date. At this time consideration may be given for a step advance. The evaluation shall include the following elements:

- a. A written record to be reviewed and acknowledged in writing by the employee. No change will be made after this review without the acknowledgment of both the supervisor and employee.
- b. A discussion between the supervisor and employee on the content of the performance evaluation.
- c. A provision whereby an employee may submit a written response to any statement made on the evaluation which must be filed with the evaluation and forwarded to the supervisor. Such responses, and any written acknowledgment by a reviewing official, all become part of the evaluation.

If the evaluation is satisfactory or better, the employee may be granted a step increase. If the evaluation is less than satisfactory a step increase will not be granted, provided however that inadequate work performance has been previously documented. A withheld step increase may be granted following any subsequent review period of satisfactory work performance by the employee. The review period shall be less than ninety (90) days. A step increase granted after this review shall not be retroactive back to the anniversary date.

ARTICLE 9 - PROBATION, NEW CLASSIFICATION, RECLASSIFICATION, ACTING APPOINTMENTS, PROMOTION, DEMOTION

All employees shall be provided with a copy of Government Code Section 3100-3109 and sign an Oath of Allegiance and Declaration of Permission to Work as part of their new employee orientation.

- A. Probation: The probation period is a time to obtain the best fit for an employee in a new job or classification and for terminating the employment relation if work performance or adjustment to the work relation if it does not meet the expectations of the City.
 1. All original or promotional appointments shall be tentative and subject to a probation period of six (6) months.

2. The probation period may be extended up to six (6) months by the City as a result of an employee's unfavorable performance evaluation.
 3. During the probation period, an employee will be evaluated at the end of two (2), four (4), and six (6) months.
 4. During the probation period, a newly hired employee may be discharged without right of appeal if the City deems the employee/employer relationship and/or the employee's performance does not warrant formal appointment to the position.
 5. During the probation period a promoted employee may be returned to the job previously held if the City deems that formal appointment is not warranted. An employee may appeal such decision pursuant to all rules and regulations dealing with discipline.
- B. New Classifications: The City may establish new job classifications. Employees desiring to compete for such positions will be evaluated in the same manner as any candidate aspiring to receive appointment.
- C. Reclassification is a change to an existing job class as a result of changes in the function, duties, and/or responsibilities as determined by the City.
1. The City may reclassify any job within the City service to accommodate changed job duties not anticipated in the original classification.
 2. Reclassification shall not be used to avoid restrictions surrounding promotions or demotions, or to assume new duties and responsibilities not originally assigned to the position.
 3. An employee whose job is reclassified shall receive the wage step in the reclassified position's range that is higher but closest to the wage step currently held, but in no case shall a wage be paid which is higher than the wage range.
- D. Action Appointments: The City may appoint an employee to an acting capacity in a higher job classification. The employee shall receive two hundred dollars (\$200.00) per month for each full month of service while in the acting capacity.

1. Service in an acting capacity shall not continue beyond six (6) months except upon mutual agreement of the City and employee.
 2. An employee having served in an acting capacity and subsequently appointed to the position shall establish a new anniversary date retroactive to the beginning of the acting appointment. If the employee does not meet the minimum requirements for the position, then the anniversary date will not be set until the minimum requirements are met.
- E. Promotion: The City may advance an employee to a job classification having a higher base wage range.
1. A promoted employee shall receive an increase to the next higher step at least five (5) percent above that currently held provided that it does not exceed the wage range established for the new classification.
 1. A promoted employee shall be subject to a six (6) month probationary period. An employee rejected during the probationary period shall be reinstated to the job classification previously held at the same wage step the employee had prior to the promotion. A rejection pursuant to this section shall not be considered a demotion as defined in Section F.
 2. Nothing in this section shall be construed as limiting the City's right to advertise a promotional position to any candidate desiring to apply. Any qualified employee may apply and will be evaluated in the same manner as any candidate aspiring to receive appointment to the position.
- F. Demotion: The City may, with cause, demote an employee to a lower job classification.
1. A demoted employee shall receive a minimum decrease in wage equivalent to one (1) wage step in the employee's current job classification, provided however, that no employee shall receive a salary that exceeds the maximum salary established for the lower job classification.
 2. A new anniversary date shall be established as of the day on which the employee is formally demoted to the lower job classification.
 3. Employees being demoted shall not lose any years of service

credit or seniority.

ARTICLE 10 - PERSONNEL RECORDS

Personnel records, except payroll records, are deemed confidential. Access to personnel records of an employee shall be limited to the City Manager, Administrative Services Director, and the Director of the Department to which an employee is assigned. An employee and/or their representatives, designated by the employee in writing, shall be allowed to review the employee's personnel records during regular business hours. An employee shall receive, upon written request, a copy of any document placed in the employee's personnel file.

ARTICLE 11 - HOURS OF WORK

The normal work shift is one (1) work day consisting of eight (8) hours. The work shift is one (1) work day consisting of eight (8) hours. The work period for all employees within the bargaining group shall be seven (7) days in length commencing at 12:00 midnight.

- A. The work shift is normally 8:00 a.m. to 5:00 p.m. for employees within City Hall. Employees (such as Public Works Employees) for whom the City deems a different schedule to be desirable or necessary shall work according to such other schedule, as deemed necessary by the Public Works Director.
- B. Employees shall receive one (1) rest period of not more than thirty (30) minutes, or two (2) rest periods of fifteen (15) minutes each during a work shift. Pursuant to Department of Labor guidelines the department shall determine the time and manner in which rest periods shall be taken. Rest periods are paid time and shall be taken at the work site.
- C. Employees shall receive one (1) sixty (60) minute lunch break during a work shift. Lunch breaks shall be scheduled by the department with due consideration to the desires of an employee. Lunch breaks are not paid time and may be taken away from the work site.
- D. Lunch breaks and rest periods are not cumulative and shall not be used to arrive late or leave work early.

ARTICLE 12 - OVERTIME

Although all classifications listed in this Memorandum of Understanding are part of the Association bargaining unit, for purposes of the Fair Labor Standards Act (FLSA), the City may designate certain positions exempt per Department of Labor guidelines. The City will inform said employees in writing and place a copy of said notice in the employee's personnel file.

- A. Work Period: The work period for all employees within the bargaining group shall be seven (7) days in length commencing at 12:00 midnight Saturday.

- B. All employees, except those deemed exempt, required to work hours in excess of the standard work period of forty (40) hours in a seven (7) day cycle, or more than eight (8) hours in a day shall receive overtime pay at the rate of time and one-half the regular rate of pay.
- C. Except in emergency situations, all overtime must have written authorization of a supervisor prior to starting overtime work. Where prior written authorization is not feasible, explicit verbal authorization must be obtained and followed up by written authorization as soon as practical. Dispatched calls necessitating overtime work before or beyond a regular shift are considered authorized. An employee's failure to obtain prior written approval, will result in denial of the overtime request.
- D. Employees may be provided with a locker for personal convenience. Employees may or may not utilize the locker for storage and clothes changing purposes at their own discretion. Employees are expected to change clothes during normal shift hours and time spent in changing clothes before or after a shift, or during lunch, are not considered hours worked and are not compensable in any manner whatsoever.
- E. Compensatory time off may be requested by an employee in lieu of overtime pay, and if approved by the City, shall be provided at time and one-half for all hours worked over forty (40) hours in a week or over eight (8) hours in a day. Employees may accrue up to forty (40) hours of compensatory time. Unused time on the books as of the first pay period in December shall be paid to an employee. Unused compensatory time on the books shall be paid at termination of employment.
- F. In the event an employee is not permitted to have an uninterrupted meal period, such employee shall be paid for actual interrupted time at the overtime rate if the employee works a full shift that day.

ARTICLE 13 - CALL-BACK ALLOWANCE

An employee who is called back after working a regular shift or work week (between the hours of 6 p.m. and 6 a.m., Monday through Friday or at any time during Saturday or Sunday, shall be compensated for a minimum of three (3) hours, or for actual hours worked, whichever is greater, at the overtime rate.

Employees who are called back for issues generated based on their own negligence or failure to adequately complete part of a work assignment shall be exempted from eligibility for "Call Back" and will be paid for actual time (at the overtime rate) to complete and/or correct the situation.

ARTICLE 14 - SICK LEAVE

- A. Employees shall receive sick leave at the rate of eight (8) hours per month for each calendar month of service. Sick leave may be accumulated to a maximum of nine hundred sixty (960) hours. Hours may be reaccumulated if the sick leave balance falls below the maximum.
- B. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
- C. Employees granted a leave of absence or absent from duty for one (1) or more days when not authorized by the City shall not accrue sick leave for the pay period in which the absence occurred. Sick leave shall not be accrued by an employee absent from duty after separation from City service. Sick leave balances at separation shall be forfeited.
- D. If an employee is absent from work for more than three (3) consecutive days, evidence, in the form of a physician's certificate or otherwise, may be required to determine the adequacy of reasons for an employee's sick leave absence.
- E. An employee may take five (5) days off of Sick Leave for bereavement which shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. Bereavement may be granted for death involving members of the immediate family (for this purpose, members of the immediate family shall be defined as: spouse, mother, father, sister, brother, children, grandparents, mother-in-law, or father-in-law).
- F. The City shall institute a Sick Leave Incentive Program for all Bargaining Unit employees. The Sick Leave Incentive shall be one percent (1%) of an employee's base annual salary. The Sick Leave Incentive shall be paid during the first week of December.

For employee's to be eligible for the Sick Leave Incentive, they must not have used more than forty-eight (48) hours of sick leave between December 1 and November 30. Sick Leave used for work related injuries or illnesses shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. The effective date for determination of work related injuries or illnesses shall be based upon a medical report.

ARTICLE 15 - HOLIDAYS

- A. Employees shall receive the following holidays:

1. New Year's Day
 2. Martin Luther King's Birthday
 3. President's Day
 4. Half Day - Good Friday
 5. Cesar Chavez Day (Recognized Only – Monday through Friday)
(No additional day off if falls on Saturday or Sunday)
 6. Memorial Day
 7. Independence Day
 8. Labor Day
 9. Veteran's Day
 10. Thanksgiving Day
 11. Day After Thanksgiving Day
 12. December 24th
 13. December 25th
- B. Every employee shall receive two (2) floating holidays per year. If an employee fails to take their floating holidays off, one between January 1st - June 30th and the other between July 1st - December 31st, the employee will forfeit their floating holiday credit.
- C. If any holiday falls on a Sunday, the Monday following will be observed as the holiday. If it falls on a Saturday, the Friday preceding will be observed.
- D. In the event that a holiday falls on an employee's regularly scheduled work day and the employee is required to work, the employee shall be paid for actual hours worked and may elect to receive an additional eight (8) hours paid at straight time rate or eight (8) hours added to the employee's vacation accrual.

ARTICLE 16 - VACATIONS

- A. Employees shall earn paid vacation leave on a monthly basis at each pay period during the month. Vacation time shall be prorated in any partially worked month and the accrual rate shall be effective on the first day beginning the new benchmark year.

<u>YEARS</u>	<u>DAYS</u>
0 - 3	12 days
4 - 6	15 days
7 - 9	17 days
10 - 12	20 days
13 - 16	22 days
17 - 22	25 days
23 - PLUS	27 days

- B. Scheduling of employee vacation leave shall be at the employee's discretion with the Department Head's approval. Any scheduling conflicts shall be resolved with employee's seniority with City employment. If there is a tie then the tie will be resolved according to Departmental Seniority.
- C. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation leave. Vacation leave shall not be granted to an employee after separation from City service.
- D. All employees shall take at least one (1) week {5 straight working days} away from the job each year. However, all employees will be allowed to carry over one (1) previous year's vacation allowance. For example, an employee earning ten (10) days could carry over 10 days minus 5, which must be used. In the second year the employee would have 5 carryover days plus 10 days earned, minus 5 which must be used, and thus may carryover 10 days to the third year. In the third year the employee must lower their vacation accumulation to 10 days.
- E. Employees granted a leave of absence or absent from duty for one (1) or more days when not authorized by the City shall not earn vacation leave for the pay period in which the absence occurred.
- F. Employees may cash in up to sixty-four (64) hours of vacation leave per year providing the employee takes at least one week off as specified in Article 16-D with the approval of the City Manager. (Cash out is frozen at this time.)
- G. In the event that a holiday recognized in this MOU occurs during an employee's scheduled vacation leave, that holiday shall not be considered as vacation leave.
- H. An employee separated from City service shall be compensated for vacation hours on the books.

ARTICLE 17 - TRAINING SCHOOL FEES

When, as a condition for continued employment, the City requires attendance at a school or training establishment and where fees are charged, such fees shall be paid by the City. An employee required to attend such school shall suffer no loss of wages or benefits. This article does not apply to employees who do not meet the minimum schooling, license, or certification requirements of their classification. For such employees the City reserves the right to work out a separate agreement to assist the employee in achieving minimum requirements in a reasonable time.

Non-mandatory attendance at training schools/facilities which improves the performance of regular job duties and/or prepares for job advancement are not compensable as hours in excess of an employee's normal work shift. Any time

spent in excess of the normal work shift will not be counted as working time and is not compensable in any manner whatsoever. Time spent in studying and other personal pursuits are not compensable hours of work under any conditions. This includes travel time to and from training facility, non-mandatory training, outside of an employee's work shift.

ARTICLE 18 - TIME OFF TO EMPLOYEE REPRESENTATIVES

The City shall allow employee representatives time off from normal duties without loss of wages or benefits when formally meeting and conferring with representatives of the City in matters within the scope of representation. In no case shall overtime be paid for such meeting and conferring. Association meetings during which association business is discussed may occur during normal work hours provided Department Heads are notified at least one (1) week prior to the meeting and that meetings are of a reasonable duration and frequency.

ARTICLE 19 - WORKER'S COMPENSATION INSURANCE

Worker's compensation Benefits shall be provided in accordance with State law, Yolo County Public Agency Risk Management Insurance Authority and any other applicable rules and regulations.

- A. Industrial Injuries and Accidents.
 - 1. Employees shall report any work related injury or illness which requires medical treatment to the appropriate department supervisor as soon as physically possible. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
 - 2. Employees shall report any work related injury or illness which does not require medical treatment to the appropriate department supervisor as soon as possible, in any event by the end of the employee's shift during which the injury or illness occurred. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
- B. Accident Reporting. Employees shall report any accident which results in any injury or property damage to other parties to the appropriate department supervisor as soon as physically possible.
- C. Medical Treatment. Any employee suffering from any work related injury or illness which requires emergency medical treatment shall immediately seek such treatment from a City designated physician or medical facility. Employees can seek treatment from their own physician or facility also.

- D. Leave of Absence for Industrial Disability Qualification. An employee suffering a work related injury or illness which disables that employee from the performance of regular job duties, may request a leave of absence for industrial disability. Such a request may be submitted in the form of a worker's compensation claim. Any dispute regarding such claim shall be resolved in the appropriate jurisdiction as defined by statute or policy.
- E. Compensation for any employee on a leave of absence pursuant to the worker's compensation sections of the California Labor code, may have accumulated sick leave, vacation, and compensatory hours prorated to supplement temporary disability compensation payments provided that the total amount does not exceed the employees base monthly salary.
- F. Temporary light duty. The City may make jobs available for the employee who can perform light duty assignments approved by the employee's physician and the City.

ARTICLE 20 - LEAVE OF ABSENCE

Any employee who has successfully completed the original probationary period may request a leave of absence for a period not to exceed one (1) year.

- A. The City shall have sole discretion in approving or disapproving any employee request for a leave of absence or in granting any pay or benefits. Any leave of absence exceeding thirty (30) days must be approved by the City Council.
- B. Military leave shall be granted in accordance with the provisions of State Law.

ARTICLE 21 - DISCIPLINE

Full authority for administering discipline for just cause, up to and including discharge, is retained by the City.

- A. Improper employee conduct may be cause for disciplinary action. Improper conduct includes, but is not limited to, the following:
 - 1. Fraud in securing appointment.
 - 2. Incompetency.
 - 3. Inefficiency.
 - 4. Insubordination.
 - 5. Dishonesty.
 - 6. Drunkenness on duty.
 - 7. Addiction to the use of controlled substances.
 - 8. Inexcusable absence without leave.

9. Immorality.
10. Discourteous treatment of the public or other employees.
11. Improper political activity while on duty.
12. Willful disobedience.
13. Misuse of City property.
14. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a City employee.
15. Unlawful retaliation against any other City officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the City or any other appropriate authority any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

B. Disciplinary Action.

The purpose of the disciplinary action is to correct deficiencies in employee performance and to assure improvement to meet job standards. Whenever any disciplinary actions are to be taken, the Department Head shall notify the City Manager. The City Manager shall be responsible for determining that the process is outlined in this Section.

1. Oral or Written Reprimand.

When the Department Head or immediate supervisor determines more severe action is not immediately necessary, an oral or written reprimand can be prepared detailing the deficiency or problem observed. If the reprimand is put in writing, a copy is to be filed in the employee's personnel file after being signed by and a copy given to the employee. Refusal to sign shall be noted before filing. Failure to correct deficiencies and improve to meet standards may result in further discipline including suspension, reduction in pay, demotion and discharge.

2. Suspension.

The Department Head may suspend an employee for cause and without pay, upon approval of the City Manager, for up to thirty (30) calendar days after the appropriate disciplinary proceedings. The City Manager may authorize immediate suspensions in an emergency situation or when the seriousness of a matter warrants. The disciplinary proceedings shall determine whether the immediate suspension shall be with or without pay. No employee shall be suspended without pay for more than thirty (30) calendar days in any

calendar year.

3. Reduction-in-Pay

The Department Head, upon approval of the City Manager, may reduce an employee's pay for cause to a lower step or range as a disciplinary action.

4. Demotion.

The Department Head, upon approval of the City Manager, may demote an employee for cause as a disciplinary action.

5. Discharge -.

An employee may be discharged by the Department Head for cause upon approval of the City Manager. Permanent employees shall be discharged only after appropriate disciplinary proceedings. The Appointing Authority may suspend the employee with pay immediately, as provided in 2 of this Section, pending the proper disciplinary process. Prompt disciplinary processing shall follow.

C. Notice of Proposed Disciplinary Action.

Except in cases of emergency or when immediate action is required, notice shall be given by the Department Head to the affected employee in accordance with procedures established by the City Manager. Such procedures shall be developed in accordance with State law. In cases of emergency or when immediate action is required, the affected employee shall be verbally informed of the reasons for the immediate action and shall be served with a notice of proposed disciplinary action as soon as possible thereafter.

D. Disciplinary Hearing.

The disciplinary hearing is an informal meeting at which the employee has an opportunity to rebut the charges against him/her or to state any mitigating circumstances. The City Manager or his/her designee shall hear and consider the employee's response.

E. Notice of Decision.

Following receipt and consideration of the written response or facts stated at the disciplinary hearing, or following no response by the required date, the Department Head shall prepare a notice of the action to be taken and effective date. The notice shall be delivered to the employee and a copy filed with the City Manager preferably before the effective date, or as soon

thereafter as possible.

F. Appeal of Decision.

In the event that an affected employee is not satisfied with the decision after the hearing, the decision may be appealed in writing to the City Council within thirty (30) calendar days from the date of filing, the City Council shall hear the matter. After due consideration, the City Council shall give its written recommendation for dispensation of the appeal to the Appointing Authority and to the employee within ten (10) calendar days.

G. Employees may, if they choose to, have an association or other representative present at all stages of the disciplinary process provided that the representative is not a party to the action involved.

H. Retribution for Appeal.

No employee shall be penalized in any way for availing himself/herself of, or participating in the appeal process.

ARTICLE 22 - GRIEVANCE PROCEDURES

A grievance is an alleged violation of a specific clause of this MOU. The Association may grieve an action or inaction pursuant to the procedures herein specified.

A. Informal Grievance Procedure. The first attempt to settle a grievance will be through discussion with the immediate supervisor. Every effort should be made to find a solution by informal means at the lowest level of supervision. If the matter is not settled, the employee shall then have the right to file a formal appeal in writing to the department head.

B. Formal Grievance Procedure. An employee filing a formal appeal shall do so in accordance with the following:

1. Department Review. The appeal shall be presented in writing to the employee's department head who shall render a decision in writing within fifteen (15) work days after receiving the appeal. If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Manager. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the department head, the appeal shall be deemed to have been abandoned and terminated.

2. City Manager Review. The City Manager or a designated representative shall discuss the grievance with the employee. The

City Manager may designate a fact finding committee for advice concerning the appeal. The City Manager shall render a decision in writing to the employee within fifteen (15) working days of the appeal.

If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Council. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the City Manager, the appeal shall be deemed to have been abandoned and terminated.

3. Appeal to the City Council. On receipt of an appeal, the City Council may make such investigations as it deems necessary. The City Council will decide whether or not to hear the appeal or appoint a hearing officer or body. The employee may request that the appeal be considered at a public or closed meeting. The City shall notify the employee requesting the hearing of the date, time, and place of the meeting. Unless incapacitated, the employee making the appeal shall appear personally at the hearing.

After conducting any investigation or hearing, the City Council shall cause its findings to be prepared in writing and shall certify the findings. Such findings shall be countersigned and filed as a permanent record by the City Manager. Any member of the City Council may submit a minority or supplemental report which shall be part of the permanent record.

If due to the absence from the City, or illness or disability of a majority of the City Council, an employee would be deprived of a right of a hearing, and in the event the employee were demoted, reduced in pay, or dismissed from City employment, the City Manager shall defer action until the Council is able to function, unless the case is deemed an emergency, in which event, the City Manager may suspend the employee with pay until the Council is able to function.

D. Conduct of Grievance Procedure.

1. The time limits specified in this Article may be extended to a definite date by mutual agreement of the employee and the appellate person or body.
2. The employee may be represented by a person of their choosing in preparing and presenting the grievance at any level of review.
3. The employee shall be assured freedom from reprisal for using the grievance procedures.

ARTICLE 23 - JURY DUTY

An employee may be excused from the regular responsibilities of their positions when called for jury duty. Employees called for jury duty shall notify the City of the call and if, in the opinion of the City, the absence of the employee would result in undue disruption of work, the City may file a request with the court for an exemption from jury duty. An employee shall not suffer loss of pay or benefits while actually serving on jury duty under the supervision of the court.

ARTICLE 24 - INSPECTION PRIVILEGES/POSTING OF NOTICES

- A. With City approval, authorized agents of the Association shall have access to City premises during work hours (8:00 a.m. to 5:00 p.m.), Monday through Friday for purposes of adjusting disputes, investigating working conditions and such other matters as may be needed. Access shall be conducted so as not to interfere with the conduct of City services and safety or security standards.
- B. City bulletin boards may be used for transmitting notices of Association meetings, elections, results of elections, and other matters pertaining to Association business. Notices must be signed by an authorized Association representative and a copy provided to the City Manager.

ARTICLE 25 - SAFETY AND HEALTH

The City will provide protective devices, safety apparel, equipment and facilities pursuant to applicable regulations or laws. Employees shall utilize such protective devices, safety apparel, equipment and facilities when needed or required and failure to do so may be cause for disciplinary action.

ARTICLE 26 - WORK BY MANAGEMENT PERSONNEL

It is agreed that management personnel will not perform work which is normally performed by employees covered in this MOU. Management and/or supervisory personnel may perform any work required or directed in the event of an emergency or to assure that a department is meeting its service goals.

ARTICLE 27 - NON-DISCRIMINATION

Neither the City or the Association shall discriminate against any employee or applicant for employment because of race, color, creed, age, sex, national origin, disability, or Association or non-Association activities.

ARTICLE 28 - SAVINGS PROVISION

If any provision(s) of this Memorandum of Understanding are held contrary to law, such provision(s) shall be deemed invalid except to the extent permitted by law, but all other provisions will continue in full force and effect. On occurrence of such an event, the parties shall meet and confer in good faith as soon as practical to renegotiate only the invalidated provision(s).

ARTICLE 29 - TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall remain in full force and effect from January 1, 2012, and from year to year thereafter unless one party serves notice on the other.

ARTICLE 30 - CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the negotiations which resulted in this MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understandings set forth in this MOU constitute the complete and total contract between the City and the Association with respect to wages, hours, and terms and conditions of employment and shall remain in full force and effect for the term of this MOU, provided, however, that the parties may, upon mutual agreement, renegotiate any part or provision of this MOU, during its term.

Any prior or existing Memorandum of Understanding between the parties, past practices or conflicting rules and regulation regarding matters within the scope of representation are hereby superseded and terminated in their entirety.

Approved by the City of Winters Confidential Employee Association on the 15 day of December, 2011.

BY: *Tracy Jensen*
Association Representative

BY: *Mark B. DeLoe*
Association Representative

Accepted for submittal to the City Council on the 20th day of December, 2011.

BY: _____
John W. Donlevy, Jr., City Manager

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ____ day of _____, 2011.

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

CONFIDENTIAL SALARY SCHEDULE
JANUARY 1, 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - NO CHANGE)

Position	A	B	C	D	E
Administrative Assistant/Admin. Serv.	3,192	3,352	3,520	3,696	3,881
Executive Asst. to City Manager	3,114	3,269	3,432	3,604	3,784



RESOLUTION NO. 2011-51
MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
MID-MANAGEMENT EMPLOYEES ASSOCIATION

Effective
January 1, 2012

**CITY OF WINTERS
MID-MANAGEMENT EMPLOYEES ASSOCIATION**

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****PREAMBLE****

This Memorandum of Understanding (MOU) is entered into this 1st day of January, 2012 between the City of Winters (hereinafter referred to as City) and the City of Winters Mid-Management Employee's Association (hereinafter referred to as Association) pursuant to Government Code Section 3500 to 3510.

ARTICLE 1 - RECOGNITION

The City recognizes the Association as the exclusive representative for the City employees in the following job classifications hereinafter referred to as "Employee(s)":

- Administrative Coordinator
- Building Official
- Grant Writer/ Management Analyst

The City reserves the right to alter or amend these classifications.

ARTICLE 2 - ASSOCIATION AND CITY COUNCIL APPROVAL

Upon approval by the Association, this MOU will be submitted to the City Council and is of no force or effect until ratified and is adopted by the City Council.

ARTICLE 3 - MANAGEMENT RIGHTS

All management rights and functions except those which are clearly and expressly limited in this MOU shall remain vested exclusively in the City; however, if any modification occurs that effects wages, hours or working conditions, the City shall notify the Association and meet and confer in good faith regarding the impact of such modifications. It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

- A. Manage the City and determine services to be provided.
- B. Determine the necessity and amount of overtime required, and seasonally establish, modify, or change work schedules.
- C. Direct the work force and hire, promote, demote, transfer, suspend, discipline, or discharge any employee and determine the administration of discipline.
- D. Determine the location of any new facilities, buildings, departments, divisions, or subdivisions thereof, and the relocations, sale, leasing, or closing of facilities, departments, divisions, or subdivisions thereof.

- E. Determine the layout of buildings and equipment and determine control and use of City property, materials, and equipment.
- F. Determine processes, techniques, methods, and means of performing work and institute changes in procedures.
- G. Determine the size, character and use of inventories and accounting procedures.
- H. Determine the financial policy, including accounting procedures.
- I. Determine the administrative organization of the City, the size and character of the work force, and allocate or assign work to employees and determine duties to be included in any job classification.
- J. Determine how new employees are selected.
- K. Establish and judge quality and quantity standards.
- L. Determine the methods and means by which operations are to be conducted including placing or contracting work with outside firms.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the City, the adoption of rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith, shall be limited only by the specific and express terms of this contract, and then only to the extent such specific and express terms are in conformance with law.

ARTICLE 4 - ASSOCIATION RIGHTS

Pursuant to Article 2, the Association retains the right to engage in the meet and confer process and employer/employee relations including, but not limited to, wages, hours, and other terms and conditions of employment.

ARTICLE 5 - ASSOCIATION DUES AND SECURITY

The City shall deduct dues and other premiums from the first and second paychecks of each employee and remit to the Association for the duration of this MOU the amount that an employee authorizes in writing the city to deduct. The Association agrees to hold harmless and indemnify the City against any claims, causes of action, or lawsuits arising from such deductions or transmittal of such deductions to the Association.

- A. Every employee covered by this MOU shall, within sixty (60) calendar days of employment: (1) Become a member of the Association and maintain membership in good standing in accordance with its Constitution and Bylaws;

or (2) shall pay an agency fee in an amount equal to the amount of the monthly dues pursuant to section G of this article.

- B. Any employee appointed to any classification out of the bargaining unit covered by this MOU may withdraw from Association membership and the employee's obligation to pay dues or fees shall be terminated.
- C. The City shall deduct from employee wages the regular membership dues of Association employees, or agency fees of other employees as provided in Section A, which an employee voluntarily authorizes the City to deduct in writing in accordance with the provisions of Section 1157.3 of the California Government Code.
- D. Membership dues or agency fee deductions shall be made in equal amounts each payroll period, and a check for the total deductions shall be submitted to the City of Winters Mid-Management Employees Association, at the end of each month.
- E. The City shall notify the Association of changes in bargaining unit membership in a form of check-off authorization, as approved by both the City and the Association.
- F. Upon written request from the Association, the City shall within thirty (30) calendar days, terminate the employment of an employee who fails to comply with the requirements of this article.
- G. An employee with lawfully established valid objections to membership or financial support of an Association shall be permitted to make in lieu payments to the Association or to other organizations as established by law, in accordance with the provisions of Section 3502.5 of the California Government Code.

ARTICLE 6 - NO STRIKE/NO LOCKOUT

The City and Association agree that it is mutually beneficial to resolve differences through negotiation. During the term of this MOU, the City agrees that it will not cause lockout of employees and the Association agrees that it will not sanction or cause a strike, slowdown, stoppage of work or other job action. Compliance with the request of other labor organizations is included within this prohibition.

ARTICLE 7 - LAYOFF PROCEDURES

If the City finds it necessary to reduce the work force due to lack of funds and/or work, the City may lay-off employees as follows:

- A. The City shall notify the Association ninety (90) days prior to any actual lay-

off in order to meet and confer to explore alternatives to laying off employees.

- B. Employees shall be laid off in seniority order, with an employee with the least seniority in a classification affected by lay-off to be laid off first. Employees noticed for lay-off will receive (1) month base pay if they are actually laid off.
- C. Within seventy-two (72) hours of lay-off notice, an employee may exercise bump down rights by bumping into any lower rated classification covered in this MOU for which the employee is qualified. Employees bumped by higher seniority employees may themselves have the option of bumping down.
- D. The name of every employee laid off or bumped down, pursuant to this article, shall be placed on a reemployment list which shall be kept for a period of twelve (12) months. Such employees shall have precedent over any other individual applying for a position. Any reinstatement, shall be made in the reverse order of lay-off, or bump down.
- E. Employees actually laid off must exercise reinstatement with twenty (20) days after the City deposits written notice of recall from lay-off in the United States mail addressed to the employee's last know address by certified mail return receipt requested. An employee who fails to respond will be removed from the reemployment list noted in Section D of this article.

ARTICLE 8 - BASE WAGES AND STEPS, BENEFITS, AND WAGE PLAN ADMINISTRATION

- A. Base Wages and Steps: Addendum A provides a wage range with five (5) steps, also known as base wage steps, for each classification. The CPI-W will be the base for COLA Increases for all positions within this Association and will be reviewed annually. Compensation and Classification surveys will be conducted at a minimum of every three (3) years.
- B. Benefits: The City provides the following benefits pursuant to the terms and conditions noted. Monthly benefits shall be prorated for any partially worked month.
- C. Fair Labor Standards Act provisions shall be used to determine which benefits are required to be used in calculating overtime pay.
 - 1. Uniform allowance - The City shall provide the Building Official with uniform service and two pairs of OSHA approved safety shoes every year.
 - 2. Bilingual Incentive - An employee who has completed original probation and uses both English and another language, written

and/or spoken on the job, and the use of such skill is required by the job description to carry out job duties, shall receive \$200.00 per month, based upon successful completion of a qualified testing firm. Bilingual incentive is applicable to any classification and wage step noted in Addendum A only as long as bilingual skills are required by the job description and Department Head and approved by the City Manager prior to recruitment. The City will retain Cooperative Personnel Services to do the testing. This will apply to all employees eligible for the incentive

3. Insurance - Employees receive up to \$1,550 per month to purchase various health, dental, and other insurance to which the City may subscribe. Money left over after an employee has purchased the insurance coverage desired will be paid to the employee in taxable wages. The City agrees to pick up the increase effective January 1, 2012 on health premiums. The City shall pay the cost of Long Term Disability Insurance and the cost of a \$30,000 Life Insurance Policy for each employee in this Association. The City of Winters will pay for the vision plan with MES Vision for all employees. Dependent cost must be paid for my employee.
4. Public Employee's Retirement System (PERS) - Employees shall join the PERS system as a condition of employment. The City subscribes to the 2%@55 modified formula retirement plan. The City shall pay the employer rate and the employee rate of 7%. The City agrees to obtain actuarial from PERS for discussion regards a higher retirement plan in one year.
5. Social Security (FICA) - Employees are required to join the Federal Social Security System as a condition of employment. The City shall pay the employer costs. The employee shall pay the employee contributions prescribed by Federal rules and regulations.
6. State Unemployment Insurance (SUI) - The City shall pay all State Unemployment Insurance costs.
7. Deferred Compensation - The City of Winters contributes 4% of employee individual salary in to a deferred compensation contribution plan. Only plans approved by the City in its deferred compensation program will be eligible for City contribution. At the time of this contract ratification, the City offers four deferred compensation providers from which employees may select. An employee who has increased their

personal contribution into a Deferred Compensation plan the City will contribute \$500 annually. (Employer contribution is frozen at this time.)

8. Longevity Incentive - An employee who has completed five (5) consecutive years employment is eligible to receive a lump sum amount equal to one-half (1/2) month's base wage payable at the beginning of the sixth (6th) year and each year thereafter until the employee leaves City employment.
9. CALGOVEBA- All employees covered under this Memorandum of Understanding agree to participate in the California Government VEBA (CALGOVEBA), a Individual health reimbursement account, pursuant to IRS Tax-exempt code 501 (c)(9). All employees agree to a \$25.00 per pay period contribution.

Employee Category	Mandatory Contribution
0-6 Years of Service	\$25.00 per pay period
7 + Years of Service	\$50.00 per pay period

C. Wage Plan Administration

1. Employees shall be paid according to a bi-weekly payroll plan which has twenty-six (26) pay periods in a calendar year.
2. Employees shall normally be paid by twelve noon (12:00 p.m.) on or before every other Wednesday.
3. When the normal pay day falls during an employee's annual vacation leave, the employee may receive a vacation advance on the last working day prior to beginning vacation leave, provided a written request is submitted to the Finance Office at least five (5) working days in advance and the amount requested is less than the employee's regular paycheck based on straight time hours.
4. Work performance evaluations shall be completed by the employee's supervisor within ten (10) working days prior to the employee's anniversary date. At this time consideration may be given for a step advance. The evaluation shall include the following elements:
 - a. A written record to be reviewed and acknowledged in writing by the employee. No change will be made after this review without the acknowledgment of both the

supervisor and employee.

- b. A discussion between the supervisor and employee on the content of the performance evaluation.
- c. A provision whereby an employee may submit a written response to any statement made on the evaluation which must be filed with the evaluation and forwarded to the supervisor. Such responses, and any written acknowledgment by a reviewing official, all become part of the evaluation.

If the evaluation is satisfactory or better, the employee may be granted a step increase. If the evaluation is less than satisfactory a step increase will not be granted, provided however that inadequate work performance has been previously documented. A withheld step increase may be granted following any subsequent review period of satisfactory work performance by the employee. The review period shall be less than ninety (90) days. A step increase granted after this review shall not be retroactive back to the anniversary date.

ARTICLE 9 - PROBATION, NEW CLASSIFICATION, RECLASSIFICATION, ACTING APPOINTMENTS, PROMOTION, DEMOTION

All employees shall be provided with a copy of Government Code Section 3100-3109 and sign and Oath of Allegiance and Declaration of Permission to Work as part of their new employee orientation.

- A. Probation: The probation period is a time to obtain the best fit for an employee in a new job or classification and for terminating the employment relation if work performance or adjustment to the work relation if it does not meet the expectations of the City.
 - 1. All original or promotional appointments shall be tentative and subject to a probation period of six (6) months.
 - 2. The probation period may be extended up to six (6) months by the City as a result of an employee's unfavorable performance evaluation.
 - 3. During the probation period, an employee will be evaluated at the end of two (2), four (4), and six (6) months.
 - 4. During the probation period, a newly hired employee may be

discharged without right of appeal if the City deems the employee/employer relationship and/or the employee's performance does not warrant formal appointment to the position.

5. During the probation period a promoted employee may be returned to the job previously held if the City deems that formal appointment is not warranted. An employee may appeal such decision pursuant to all rules and regulations dealing with discipline.
- B. New Classifications: The City may establish new job classifications. Employees desiring to compete for such positions will be evaluated in the same manner as any candidate aspiring to receive appointment.
- C. Reclassification is a change to an existing job class as a result of changes in the function, duties, and/or responsibilities as determined by the City.
1. The City may reclassify any job within the City service to accommodate changed job duties not anticipated in the original classification.
 2. Reclassification shall not be used to avoid restrictions surrounding promotions or demotions, or to assume new duties and responsibilities not originally assigned to the position.
 3. An employee whose job is reclassified shall receive the wage step in the reclassified position's range that is higher but closest to the wage step currently held, but in no case shall a wage be paid which is higher than the wage range.
- D. Action Appointments: The City may appoint an employee to an acting capacity in a higher job classification. The employee shall receive two hundred dollars (\$200.00) per month for each full month of service while in the acting capacity.
1. Service in an acting capacity shall not continue beyond six (6) months except upon mutual agreement of the City and employee.
 2. An employee having served in an acting capacity and subsequently appointed to the position shall establish a new anniversary date retroactive to the beginning of the acting appointment. If the employee does not meet the minimum requirements for the position, then the anniversary date will not

be set until the minimum requirements are met.

- E. Promotion: The City may advance an employee to a job classification having a higher base wage range.
 - 1. A promoted employee shall receive an increase to the next higher step at least five (5) percent above that currently held provided that it does not exceed the wage range established for the new classification.
 - 2. A promoted employee shall be subject to a six (6) month probationary period. An employee rejected during the probationary period shall be reinstated to the job classification previously held at the same wage step the employee had prior to the promotion. A rejection pursuant to this section shall not be considered a demotion as defined in Section F.
 - 3. Nothing in this section shall be construed as limiting the City's right to advertise a promotional position to any candidate desiring to apply. Any qualified employee may apply and will be evaluated in the same manner as any candidate aspiring to receive appointment to the position.

- F. Demotion: The City may, with cause, demote an employee to a lower job classification.
 - 1. A demoted employee shall receive a minimum decrease in wage equivalent to one (1) wage step in the employee's current job classification, provided however, that no employee shall receive a salary that exceeds the maximum salary established for the lower job classification.
 - 2. A new anniversary date shall be established as of the day on which the employee is formally demoted to the lower job classification.
 - 3. Employees being demoted shall not lose any years of service credit or seniority.

ARTICLE 10 - PERSONNEL RECORDS

Personnel records, except payroll records, are deemed confidential. Access to personnel records of an employee shall be limited to the City Manager, Administrative Services

Director, and the Director of the Department to which an employee is assigned. An employee and/or their representatives, designated by the employee in writing, shall be allowed to review the employee's personnel records during regular business hours. An employee shall receive, upon written request, a copy of any document placed in the employee's personnel file.

ARTICLE 11 - HOURS OF WORK

The normal work shift is one (1) work day consisting of eight (8) hours. The work shift is one (1) work day consisting of eight (8) hours. The work period for all employees within the bargaining group shall be seven (7) days in length commencing at 12:00 midnight.

- A. The work shift is normally 8:00 a.m. to 5:00 p.m. for employees within City Hall. Employees (such as Public Works Employees) for whom the City deems a different schedule to be desirable or necessary shall work according to such other schedule, as deemed necessary by the Public Works Director.
- B. Employees shall receive one (1) rest period of not more than thirty (30) minutes, or two (2) rest periods of fifteen (15) minutes each during a work shift. Pursuant to Department of Labor guidelines the department shall determine the time and manner in which rest periods shall be taken. Rest periods are paid time and shall be taken at the work site.
- C. Employees shall receive one (1) sixty (60) minute lunch break during a work shift. Lunch breaks shall be scheduled by the department with due consideration to the desires of an employee. Lunch breaks are not paid time and may be taken away from the work site.
- D. Lunch breaks and rest periods are not cumulative and shall not be used to arrive late or leave work early.

ARTICLE 12 - OVERTIME

Although all classifications listed in this Memorandum of Understanding are part of the Association bargaining unit, for purposes of the Fair Labor Standards Act (FLSA), the City may designate certain positions exempt per Department of Labor guidelines. The City will inform said employees in writing and place a copy of said notice in the employee's personnel file.

- A. Work Period: The work period for all employees within the bargaining group shall be seven (7) days in length commencing at 12:00 midnight Saturday.
- B. All employees, except those deemed exempt, required to work hours in excess of the standard work period of forty (40) hours in a seven (7) day cycle, or more than eight (8) hours in a day shall receive overtime pay at the rate of time and one-half the regular rate of pay.

- C. Except in emergency situations, all overtime must have written authorization of a supervisor prior to starting overtime work. Where prior written authorization is not feasible, explicit verbal authorization must be obtained and followed up by written authorization as soon as practical. Dispatched calls necessitating overtime work before or beyond a regular shift are considered authorized. An employee's failure to obtain prior written approval, will result in denial of the overtime request.
- D. Employees may be provided with a locker for personal convenience. Employees may or may not utilize the locker for storage and clothes changing purposes at their own discretion. Employees are expected to change clothes during normal shift hours and time spent in changing clothes before or after a shift, or during lunch, are not considered hours worked and are not compensable in any manner whatsoever.
- E. Compensatory time off may be requested by an employee in lieu of overtime pay, and if approved by the City, shall be provided at time and one-half for all hours worked over forty (40) hours in a week or over eight (8) hours in a day. Employees may accrue up to forty (40) hours of compensatory time. Unused time on the books as of the first pay period in December shall be paid to an employee. Unused compensatory time on the books shall be paid at termination of employment.
- F. In the event an employee is not permitted to have an uninterrupted meal period, such employee shall be paid for actual interrupted time at the overtime rate if the employee works a full shift that day.

ARTICLE 13 - SICK LEAVE

- A. Employees shall receive sick leave at the rate of eight (8) hours per month for each calendar month of service. Sick leave may be accumulated to a maximum of nine hundred sixty (960) hours. Hours may be reaccumulated if the sick leave balance falls below the maximum.
- B. Sick leave granted by the City and used by an employee shall be deducted from the employee's accrued sick leave balance.
- C. Employees granted a leave of absence or absent from duty for one (1) or more days when not authorized by the City shall not accrue sick leave for the pay period in which the absence occurred. Sick leave shall not be accrued by an employee absent from duty after separation from City service. Sick leave balances at separation shall be forfeited.
- D. If an employee is absent from work for more than three (3) consecutive days, evidence, in the form of a physician's certificate or otherwise, may be required to determine the adequacy of reasons for an employee's sick leave

absence.

- E. An employee may take five (5) days off of Sick Leave for bereavement which shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. Bereavement may be granted for death involving members of the immediate family (for this purpose, members of the immediate family shall be defined as: spouse, mother, father, sister, brother, children, grandparents, mother-in-law, or father-in-law).
- F. The City shall institute a Sick Leave Incentive Program for all Bargaining Unit employees. The Sick Leave Incentive shall be one percent (1%) of an employee's base annual salary. The Sick Leave Incentive shall be paid during the first week of December.

For employee's to be eligible for the Sick Leave Incentive, they must not have used more than forty-eight (48) hours of sick leave between December 1 and November 30. Sick Leave used for work related injuries or illnesses shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. The effective date for determination of work related injuries or illnesses shall be based upon a medical report.

ARTICLE 14 - HOLIDAYS

- A. Employees shall receive the following holidays:
 - 1. New Year's Day
 - 2. Martin Luther King's Birthday
 - 3. President's Day
 - 4. Half Day - Good Friday
 - 5. Cesar Chavez Day (Recognized Only – Monday through Friday)
(No additional day off if falls on Saturday or Sunday)
 - 6. Memorial Day
 - 7. Independence Day
 - 8. Labor Day
 - 9. Veteran's Day
 - 10. Thanksgiving Day
 - 11. Day After Thanksgiving Day
 - 12. December 24th
 - 13. December 25th
- B. Every employee shall receive two (2) floating holidays per year. If an employee fails to take their floating holidays off, one between January 1st - June 30th and the other between July 1st - December 31st, the employee will forfeit their floating holiday credit.

- C. If any holiday falls on a Sunday, the Monday following will be observed as the holiday. If it falls on a Saturday, the Friday preceding will be observed.
- D. In the event that a holiday falls on an employee's regularly scheduled work day and the employee is required to work, the employee shall be paid for actual hours worked and may elect to receive an additional eight (8) hours paid at straight time rate or eight (8) hours added to the employee's vacation accrual.

ARTICLE 15 - VACATIONS

- A. Employees shall earn paid vacation leave on a monthly basis at each pay period during the month. Vacation time shall be prorated in any partially worked month and the accrual rate shall be effective on the first day beginning the new benchmark year.

<u>YEARS</u>	<u>DAYS</u>
0 - 3	12 days
4 - 6	15 days
7 - 9	17 days
10 - 12	20 days
13 - 16	22 days
17 - 22	25 days
23 - PLUS	27 days

- B. Scheduling of employee vacation leave shall be at the employee's discretion with the Department Head's approval. Any scheduling conflicts shall be resolved with employee's seniority with City employment. If there is a tie then the tie will be resolved according to Departmental Seniority.
- C. Vacation leave granted by the City and used by an employee shall be deducted from the employee's accrued vacation leave. Vacation leave shall not be granted to an employee after separation from City service.
- D. All employees shall take at least one (1) week {5 straight working days} away from the job each year. However, all employees will be allowed to carry over one (1) previous year's vacation allowance. For example, an employee earning ten (10) days could carry over 10 days minus 5, which must be used. In the second year the employee would have 5 carryover days plus 10 days earned, minus 5 which must be used, and thus may carryover 10 days to the third year. In the third year the employee must lower their vacation accumulation to 10 days.
- E. Employees granted a leave of absence or absent from duty for one (1) or more days when not authorized by the City shall not earn vacation leave for

the pay period in which the absence occurred.

- F. Employees may cash in up to sixty-four (64) hours of vacation leave per year providing the employee takes at least one week off as specified in Article 16-D with the approval of the City Manager. (Cash out is frozen at this time.)
- G. In the event that a holiday recognized in this MOU occurs during an employee's scheduled vacation leave, that holiday shall not be considered as vacation leave.
- H. An employee separated from City service shall be compensated for vacation hours on the books.

ARTICLE 16 - TRAINING SCHOOL FEES

When, as a condition for continued employment, the City requires attendance at a school or training establishment and where fees are charged, such fees shall be paid by the City. An employee required to attend such school shall suffer no loss of wages or benefits. This article does not apply to employees who do not meet the minimum schooling, license, or certification requirements of their classification. For such employees the City reserves the right to work out a separate agreement to assist the employee in achieving minimum requirements in a reasonable time.

Non-mandatory attendance at training schools/facilities which improves the performance of regular job duties and/or prepares for job advancement are not compensable as hours in excess of an employee's normal work shift. Any time spent in excess of the normal work shift will not be counted as working time and is not compensable in any manner whatsoever. Time spent in studying and other personal pursuits are not compensable hours of work under any conditions. This includes travel time to and from training facility, non-mandatory training, outside of an employee's work shift.

ARTICLE 17 - TIME OFF TO EMPLOYEE REPRESENTATIVES

The City shall allow two (2) City employee representatives time off from normal duties without loss of wages or benefits when formally meeting and conferring with representatives of the City in matters within the scope of representation. In no case shall overtime be paid for such meeting and conferring. Association meetings during which association business is discussed may occur during normal work hours provided Department Heads are notified at least one (1) week prior to the meeting and that meetings are of a reasonable duration and frequency.

ARTICLE 18 - WORKER'S COMPENSATION INSURANCE

Worker's compensation Benefits shall be provided in accordance with State law, Yolo County Public Agency Risk Management Insurance Authority and any other applicable

rules and regulations.

- A. Industrial Injuries and Accidents.
 - 1. Employees shall report any work related injury or illness which requires medical treatment to the appropriate department supervisor as soon as physically possible. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
 - 2. Employees shall report any work related injury or illness which does not require medical treatment to the appropriate department supervisor as soon as possible, in any event by the end of the employee's shift during which the injury or illness occurred. Supervisors must complete, by law, an OSHA Form 301 incident report and turn it in to the Administrative Services Department.
- B. Accident Reporting. Employees shall report any accident which results in any injury or property damage to other parties to the appropriate department supervisor as soon as physically possible.
- C. Medical Treatment. Any employee suffering from any work related injury or illness which requires emergency medical treatment shall immediately seek such treatment from a City designated physician or medical facility. Employees can seek treatment from their own physician or facility also.
- D. Leave of Absence for Industrial Disability Qualification. An employee suffering a work related injury or illness which disables that employee from the performance of regular job duties, may request a leave of absence for industrial disability. Such a request may be submitted in the form of a worker's compensation claim. Any dispute regarding such claim shall be resolved in the appropriate jurisdiction as defined by statute or policy.
- E. Compensation for any employee on a leave of absence pursuant to the worker's compensation sections of the California Labor code, may have accumulated sick leave, vacation, and compensatory hours prorated to supplement temporary disability compensation payments provided that the total amount does not exceed the employees base monthly salary.
- F. Temporary light duty. The City may make jobs available for the employee who can perform light duty assignments approved by the employee's physician and the City.

ARTICLE 19 - LEAVE OF ABSENCE

Any employee who has successfully completed the original probationary period may

request a leave of absence for a period not to exceed one (1) year.

- A. The City shall have sole discretion in approving or disapproving any employee request for a leave of absence or in granting any pay or benefits. Any leave of absence exceeding thirty (30) days must be approved by the City Council.
- B. Military leave shall be granted in accordance with the provisions of State Law.

ARTICLE 20 - DISCIPLINE

Full authority for administering discipline for just cause, up to and including discharge, is retained by the City.

- A. Improper employee conduct may be cause for disciplinary action. Improper conduct includes, but is not limited to, the following:
 - 1. Fraud in securing appointment.
 - 2. Incompetency.
 - 3. Inefficiency.
 - 4. Insubordination.
 - 5. Dishonesty.
 - 6. Drunkenness on duty.
 - 7. Addiction to the use of controlled substances.
 - 8. Inexcusable absence without leave.
 - 9. Immorality.
 - 10. Discourteous treatment of the public or other employees.
 - 11. Improper political activity while on duty.
 - 12. Willful disobedience.
 - 13. Misuse of City property.
 - 14. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a City employee.
 - 15. Unlawful retaliation against any other City officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of the City or any other appropriate authority any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.
- B. Disciplinary Action.

The purpose of the disciplinary action is to correct deficiencies in employee

performance and to assure improvement to meet job standards. Whenever any of the above actions are to be taken, the Department Head shall notify the City Manager. The City Manager shall be responsible for determining that the process is outlined in this Section.

1. Oral or Written Reprimand.

When the Department Head or immediate supervisor determines more severe action is not immediately necessary, an oral or written reprimand can be prepared detailing the deficiency or problem observed. If the reprimand is put in writing, a copy is to be filed in the employee's personnel file after being signed by and a copy given to the employee. Refusal to sign shall be noted before filing. Failure to correct deficiencies and improve to meet standards may result in further discipline including suspension, reduction in pay, demotion and discharge.

2. Suspension.

The Department Head may suspend an employee for cause and without pay, upon approval of the City Manager, for up to thirty (30) calendar days after the appropriate disciplinary proceedings. The City Manager may authorize immediate suspensions in an emergency situation or when the seriousness of a matter warrants. The disciplinary proceedings shall determine whether the immediate suspension shall be with or without pay. No employee shall be suspended without pay for more than thirty (30) calendar days in any calendar year.

3. Reduction-in-Pay

The Department Head, upon approval of the City Manager, may reduce an employee's pay for cause to a lower step or range as a disciplinary action.

4. Demotion.

The Department Head, upon approval of the City Manager, may demote an employee for cause as a disciplinary action.

5. Discharge: .An employee may be discharged by the Department Head for cause upon approval of the City Manager. Permanent employees shall be discharged only after appropriate disciplinary proceedings. The Appointing Authority may suspend the employee with pay immediately, as provided in 2 of this Section, pending the proper disciplinary process. Prompt disciplinary processing shall follow.

C. Notice of Proposed Disciplinary Action.

Except in cases of emergency or when immediate action is required, notice shall be given by the Department Head to the affected employee in accordance with procedures established by the City Manager. Such procedures shall be developed in accordance with State law. In cases of emergency or when immediate action is required, the affected employee shall be verbally informed of the reasons for the immediate action and shall be served with a notice of proposed disciplinary action as soon as possible thereafter.

D. Disciplinary Hearing.

The disciplinary hearing is an informal meeting at which the employee has an opportunity to rebut the charges against him/her or to state any mitigating circumstances. The City Manager or his/her designee shall hear and consider the employee's response.

E. Notice of Decision.

Following receipt and consideration of the written response or facts stated at the disciplinary hearing, or following no response by the required date, the Department Head shall prepare a notice of the action to be taken and effective date. The notice shall be delivered to the employee and a copy filed with the City Manager preferably before the effective date, or as soon thereafter as possible.

F. Appeal of Decision.

In the event that an affected employee is not satisfied with the decision after the hearing, the decision may be appealed in writing to the City Council within thirty (30) calendar days from the date of filing, the City Council shall hear the matter. After due consideration, the City Council shall give its written recommendation for dispensation of the appeal to the Appointing Authority and to the employee within ten (10) calendar days.

G. Employees may, if they choose to, have an association or other representative present at all stages of the disciplinary process provided that the representative is not a party to the action involved.

H. Retribution for Appeal.

No employee shall be penalized in any way for availing himself/herself of, or participating in the appeal process.

ARTICLE 21 - GRIEVANCE PROCEDURES

A grievance is an alleged violation of a specific clause of this MOU. The Association may grieve an action or inaction pursuant to the procedures herein specified.

- A. Informal Grievance Procedure. The first attempt to settle a grievance will be through discussion with the immediate supervisor. Every effort should be made to find a solution by informal means at the lowest level of supervision. If the matter is not settled, the employee shall then have the right to file a formal appeal in writing to the department head.
- B. Formal Grievance Procedure. An employee filing a formal appeal shall do so in accordance with the following:
 - 1. Department Review. The appeal shall be presented in writing to the employee's department head who shall render a decision in writing within fifteen (15) work days after receiving the appeal. If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Manager. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the department head, the appeal shall be deemed to have been abandoned and terminated.
 - 2. City Manager Review. The City Manager or a designated representative shall discuss the grievance with the employee. The City Manager may designate a fact finding committee for advice concerning the appeal. The City Manager shall render a decision in writing to the employee within fifteen (15) working days of the appeal.

If the employee determines that further appeal is necessary, or if no answer has been received within the time period, the employee may present a written appeal to the City Council. Should the employee fail to take action within fifteen (15) work days after receiving a decision, or non-decision from the City Manager, the appeal shall be deemed to have been abandoned and terminated. Appeal to the City Council. On receipt of an appeal, the City Council may make such investigations as it deems necessary. The City Council will decide whether or not to hear the appeal or appoint a hearing officer or body.

The employee may request that the appeal be considered at a public or closed meeting. The City shall notify the employee requesting the hearing of the date, time, and place of the meeting. Unless incapacitated, the employee making the appeal shall appear personally at the hearing.

After conducting any investigation or hearing, the City Council shall cause its findings to be prepared in writing and shall certify the findings. Such findings

shall be countersigned and filed as a permanent record by the City Manager. Any member of the City Council may submit a minority or supplemental report which shall be part of the permanent record.

If due to the absence from the City, or illness or disability of a majority of the City Council, an employee would be deprived of a right of a hearing, and in the event the employee were demoted, reduced in pay, or dismissed from City employment, the City Manager shall defer action until the Council is able to function, unless the case is deemed an emergency, in which event, the City Manager may suspend the employee with pay until the Council is able to function.

D. Conduct of Grievance Procedure.

1. The time limits specified in this Article may be extended to a definite date by mutual agreement of the employee and the appellate person or body.
2. The employee may be represented by a person of their choosing in preparing and presenting the grievance at any level of review.
3. The employee shall be assured freedom from reprisal for using the grievance procedures

ARTICLE 22 - JURY DUTY

An employee may be excused from the regular responsibilities of their positions when called for jury duty. Employees called for jury duty shall notify the City of the call and if, in the opinion of the City, the absence of the employee would result in undue disruption of work, the City may file a request with the court for an exemption from jury duty. An employee shall not suffer loss of pay or benefits while actually serving on jury duty under the supervision of the court.

ARTICLE 23 - INSPECTION PRIVILEGES/POSTING OF NOTICES

- A. With City approval, authorized agents of the Association shall have access to City premises during work hours (8:00 a.m. to 5:00 p.m.), Monday through Friday for purposes of adjusting disputes, investigating working conditions and such other matters as may be needed. Access shall be conducted so as not to interfere with the conduct of City services and safety or security standards.
- B. City bulletin boards may be used for transmitting notices of Association meetings, elections, results of elections, and other matters pertaining to Association business. Notices must be signed by an authorized Association representative and a copy provided to the City Manager.

ARTICLE 24 - SAFETY AND HEALTH

The City will provide protective devices, safety apparel, equipment and facilities pursuant to applicable regulations or laws. Employees shall utilize such protective devices, safety apparel, equipment and facilities when needed or required and failure to do so may be cause for disciplinary action.

ARTICLE 25 - WORK BY MANAGEMENT PERSONNEL

It is agreed that management personnel will not perform work which is normally performed by employees covered in this MOU. Management and/or supervisory personnel may perform any work required or directed in the event of an emergency or to assure that a department is meeting its service goals.

ARTICLE 26 - NON-DISCRIMINATION

Neither the City or the Association shall discriminate against any employee or applicant for employment because of race, color, creed, age, sex, national origin, disability, or Association or non-Association activities.

ARTICLE 27 - SAVINGS PROVISION

If any provision(s) of this Memorandum of Understanding are held contrary to law, such provision(s) shall be deemed invalid except to the extent permitted by law, but all other provisions will continue in full force and effect. On occurrence of such an event, the parties shall meet and confer in good faith as soon as practical to renegotiate only the invalidated provision(s).

ARTICLE 28 - TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall remain in full force and effect from January 1, 2012 and from year to year thereafter unless one party serves notice on the other.

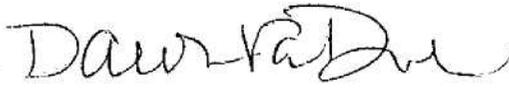
ARTICLE 29 - CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the negotiations which resulted in this MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understandings set forth in this MOU constitute the complete and total contract between the City and the Association with respect to wages, hours, and terms and conditions of employment and shall remain in full force and effect for the term of this MOU, provided, however, that the parties may, upon mutual agreement, renegotiate any part or provision of this MOU, during its term.

Any prior or existing Memorandum of Understanding between the parties, past practices or conflicting rules and regulation regarding matters within the scope of representation are

hereby superseded and terminated in their entirety.

Approved by the City of Winters Mid-Management Employee Association on the 13 day of DEC, 2011.

BY:  
Association Representative

Accepted for submittal to the City Council on the ___ day of _____, 2011.

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

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ___ day of _____, 2011.

Woody Fridae,, Mayor

ATTEST:

Nanci G. Mills, City Clerk

ADDENDUM A

MID-MANAGEMENT SALARY SCHEDULE
JANUARY 1, 2012
(JULY 1, 2008 LAST INCREASE - 2.5%)
NEW CLASSIFICATION - ADMINISTRATIVE COORDINATOR

Position	A	B	C	D	E
Administrative Coordinator	5,616	5,897	6,192	6,502	6,827
Building Official	5,356	5,624	5,905	6,200	6,510
Grant Writer/Management Analyst	3,871	4,065	4,268	4,481	4,705



RESOLUTION NO. 2011-52

**MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
MANAGER'S SERIES EMPLOYEES**

**Effective
January 1, 2012**

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**ARTICLE I
GENERAL PROVISIONS**

1.1 Application

1.1.1 This Resolution applies to the following management employees:

Environmental Services Manager
Public Works Superintendent

1.2 Term

1.2.1 Except where the context otherwise determines or otherwise provides, the provisions of this Resolution shall apply from January 1, 2012.

ARTICLE II COMPENSATION

2.1 Salary

2.1.1 The salary schedule for employees covered by this Resolution are set forth in Exhibit A.

2.1.1. Salary ranges will be established based on results of a market survey and the consolidation of existing paid benefits into salary as specified in Article II and Article III below.

2.2 Administrative Leave

2.2.1 All employees covered by this Resolution shall receive 10 days administrative leave per fiscal year beginning July 1st. Actual accrual occurs in the same manner as sick leave. This administrative leave shall be in addition to accrued vacation leave and other leaves provided by the City. Administrative leave shall be subject to the same rules for usage and accounting as vacation leave except as provided below:

2.2.2 Each employee may request in advance of accrual and receive Administrative time off which has not been accrued, and if the employee separates from employment before the time is accrued, the amount will be deducted from vacation time on the books or in cash.

2.2.3 If employee would like to cash in his or her administrative leave time, they may cash in up to forty hours (40) must be accrued and on the books at the time the request is made. (Cash out of accrued leave is frozen at this time.)

2.2.4 No employee may carry over any administrative leave balance past June 30 each year. (Carry over is accepted while cash out is frozen.)

2.3 **Cellular Phones.**

2.3.1 Cellular Phones. Employees covered by this Resolution are entitled to use a cellular telephone to conduct City business and emergencies.

2.4 **Deferred Compensation.**

2.4.1 The City of Winters contributes 4% of employee individual salary in to a deferred compensation contribution plan. Only plans approved by the City in its deferred compensation program will be eligible for City contribution. At the time of this contract ratification, the City offers four deferred compensation providers from which employees may select. An employee who has increased their personal contribution into a Deferred Compensation plan the City will contribute \$500 annually. (Employer paid deferred compensation is frozen at this time.)

2.5 **CALGOVEBA**

All employees covered under this Memorandum of Understanding agree to participate in the California Government VEBA (CALGOVEBA), a Individual health reimbursement account, pursuant to IRS Tax-exempt code 501 (c)(9). All employees agree to the contributions based on each pay period:

Salary reduction: Contribution:

Employee Category	Mandatory Contribution
0-4 Years of Service	\$12.50 per pay period
5 + Years of Service	\$50.00 per pay period

2.6 **Social Security.**

Employees are required to participate in Social Security. The City shall pay the employer costs as determined by the applicable rules and regulations. The employee shall pay their portion of Social Security as determined by the rules and regulations.

2.7 **State Unemployment Insurance (SUI).**

2.7.1 The City shall pay all State Unemployment Insurance costs.

2.8 **Longevity Incentive.**

2.8.1 An employee who has completed five (5) consecutive years employment is eligible to receive a lump sum amount equal to one-half (1/2) month's base wage payable at the beginning of the sixth (6th) year and each year thereafter until the employee leaves City employment.

ARTICLE III MEDICAL AND RELATED BENEFITS

3.1 **Medical Insurance**

3.1.1 The City shall make available to all covered employees, the CalPERS medical insurance program. Employees shall have the option of enrolling in any of the plans provided by CalPERS.

3.1.2 The City shall contribute up to the following amounts towards employee cafeteria plan to include cost coverage of health, dental and any other optional insurance plan that is offered by the City of Winters. The City agrees to pick up the increase in dental and health premiums when they go into effect January 1, 2012. The City of Winters will pay for the vision plan with MES Vision for all employees. Dependent cost must be paid for by employee.

Employee plus family up to \$1550/mo

3.1.3 Employees providing proof of dual coverage under PERS or other medical insurance programs may decline to accept medical coverage. These employees shall be eligible for a payment of \$650 per month.

3.2 **Dental Insurance**

3.2.1 For all employees covered by this Resolution the City shall provide coverage in the City's dental insurance program for the employee and any eligible dependents. The benefit shall be paid by the cafeteria amount and the employee to pay a deductible or co-pay.

3.3 **Long Term Disability Insurance**

3.3.1 The City shall provide to all employees covered by this Resolution coverage in the long term disability insurance plan. Employer paid.

3.4 **Life Insurance**

3.4.1 The City shall maintain in effect life insurance for all employees covered by this Resolution in the amount of \$30,000 of coverage. Employer paid.

ARTICLE IV LEAVES

4.1 Holidays

4.1.1 Employees shall receive the following holidays:

New Year's Day	Labor Day
Martin Luther King's Birthday	Veteran's Day
Presidents Day	Thanksgiving Day
Half Day Good Friday	The Day after Thanksgiving Day
Memorial Day	December 24 th (Christmas Eve)
Independence Day	December 25 th (Christmas Day)
Cesar Chavez Day (Recognized Only – Monday through Friday)	

4.1.2 In addition, each management employee shall receive two (2) floating holidays per year. If an employee fails to take their floating holidays of, one between January 1st – June 30th and the other between July 1st – December 31st, the employee will forfeit their floating holiday credit.

4.1.3 If any holiday falls on a Sunday, the Monday following will be observed as the holiday. If it falls on a Saturday, the Friday preceding will be observed.

4.2 Vacation Leave

4.2.1 Each employee shall earn paid vacation leave on a monthly basis at each pay period during the month. Vacation time shall be prorated in any partially worked month and the accrual rate shall be effective on the first day beginning the new benchmark year.

Years of Service	Vacation Leave Earned Per Month
0 through 3 years	12 days
4 through 6 years	15 days
7 through 9 years	17 days
10 through 12 years	20 days
13 through 16 years	22 days
17 through 22 years	25 days
23 through plus years	27 days

4.2.2 Upon approval of the City Manager, employees may, at his/her request unused vacation leave hours paid directly to him/her at their regular hourly rate of pay, but must leave one weeks vacation time on the books.

4.2.3 An employee separated from City service shall be compensated for vacation hours on the books.

4.3 Sick Leave

4.3.1 Each employee covered by this Resolution shall accrue sick leave at the rate of one (1) day (8 hours) per month for each calendar month of service. Sick leave may be accumulated to a maximum of nine hundred sixty (960) hours. Hours may be re-accumulated if the sick leave balance falls below the maximum.

4.3.2 If an employee is absent from work for more than three (3) consecutive days, evidence, in the form of a physician's certificate or otherwise, may be required to determine the adequacy of reasons for an employee's sick leave absence.

4.3.3 An employee may take five (5) days off of Sick Leave for bereavement which shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. Bereavement may be granted for death involving members of the immediate family (for this purpose, members of the immediate family shall be defined as: spouse, mother, father, sister, brother, children, grandparents, mother-in-law, or father-in-law).

4.3.4 The City has implemented a Sick Leave Incentive Program for all employees. The Sick Leave Incentive shall be one percent (1%) of an employee's base annual salary. The Sick Leave Incentive shall be paid during the first week of December.

For employees to be eligible for the Sick Leave Incentive, they must not have used more than forty-eight hours of sick leave between December 1 and November 30. Sick Leave used for work related injuries or illnesses shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. The effective date for determination of work related injuries or illnesses shall be based upon a medical report.

4.4 Catastrophic Illness or Injury

4.4.1 Each employee covered by this Resolution may donate portions of their accrued but unused vacation or administrative leave balances to other employees who have suffered catastrophic illness or injury. Employees receiving donations of time from other employees must first exhaust all available vacation, compensatory, administrative and sick leave.

ARTICLE V RETIREMENT

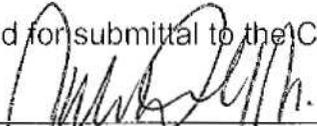
5.1.1 The City will continue its participation in the Public Employee's Retirement System during the term of this agreement.

- 5.1.2 The formula in effect for Miscellaneous members is the 2% @ 55 formula.
- 5.1.3 The City will continue to pay the employee's share to the retirement system.
- 5.1.4 The City provides the sick leave conversion benefit as specified in the Government Code, Section 20965 to miscellaneous category of employees.
- 5.1.5 The City shall maintain the PERS single highest year option for miscellaneous category of employees.

ARTICLE VI OTHER COMPENSABLE ITEMS NOT SET FORTH HEREIN

- 6.1 Other Compensable Items Not Set Forth Herein
- 6.1.1 Other items not set forth herein which are compensable as terms and conditions of employment of the employees covered by this Resolution shall continue to be compensated by the City of Winters at the rate applicable on January 1, 2011 unless determined otherwise by the Winters City Council in accordance with law or required otherwise by law.

Accepted for submittal to the City Council on the ____ day of December, 2011.

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

Approved by the City of Winters Mid-Management Employee Association on the ____ day of ____, 2011.

BY:  BY: _____
 Association Representative

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ____ day of December, 2011.

 Woody Fridae, Mayor

ATTEST:

 Nanci G. Mills, City Clerk

EXHIBIT A
MONTHLY SALARY RANGES

CITY OF WINTERS
EXEMPT MANAGER'S SALARY SCHEDULE
JANUARY 1, 2011
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - NO CHANGE)

Position	A	B	C	D	E
Environmental Services Manager	5,583	5,862	6,155	6,463	6,786
Public Works Superintendent	5,583	5,862	6,155	6,463	6,786



RESOLUTION NO. 2011-53

**MEMORANDUM OF UNDERSTANDING
CITY OF WINTERS
MANAGEMENT (DEPARTMENT HEAD) EMPLOYEES**

**Effective
January 1, 2012**

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**ARTICLE I
GENERAL PROVISIONS**

1.1 Application

1.1.1 This Resolution applies to the following management employees:

Chief of Police
Director of Administrative Services
Director of Community Development and Building
Director of Financial Management
Housing Manager

1.2 Term

1.2.1 Except where the context otherwise determines or otherwise provides, the provisions of this Resolution shall apply from January 1, 2012.

ARTICLE II COMPENSATION

2.1 Salary

2.1.1 The salary schedule for employees covered by this Resolution are set forth in Exhibit A.

2.1.1.1 Effective January 1, 2012, salary ranges will be established based on results of a market survey and the consolidation of existing paid benefits into salary as specified in Article II and Article III below.

2.2 Administrative Leave

2.2.1 All employees covered by this Resolution shall receive 12 days administrative leave per fiscal year beginning July 1st. Actual accrual occurs in the same manner as sick leave (one (1) eight (8) hour day each month). This administrative leave shall be in addition to accrued vacation leave and other leaves provided by the City. Administrative leave shall be subject to the same rules for usage and accounting as vacation leave except as provided below:

2.2.2 Each employee may request in advance of accrual and receive Administrative time off which has not been accrued, and if the employee separates from employment before the time is accrued, the amount will be deducted from vacation time on the books or in cash.

2.2.3 If employee would like to cash in his or her administrative leave time, they may cash in up to fifty-six hours (56) must be accrued and on the books at

the time the request is made. (Cash out of accrued leave is frozen at this time.)

2.2.4 No employee may carry over any administrative leave balance past June 30 each year. (Carry over is accepted while cash out is frozen.)

2.3 **Cellular Phones.**

2.3.1 Cellular Phones. Employees covered by this Resolution are entitled to use a cellular telephone to conduct City business and emergencies.

2.4 **Deferred Compensation.**

2.4.1 The City of Winters contributes 7% of employee individual salary in to a deferred compensation contribution plan. Only plans approved by the City in its deferred compensation program will be eligible for City contribution. At the time of this contract ratification, the City offers four deferred compensation providers from which employees may select. An employee who has increased their personal contribution into a Deferred Compensation plan the City will contribute \$500 annually. (Employer paid deferred compensation is frozen at this time.)

2.5 **CALGOVEBA**

All employees covered under this Memorandum of Understanding agree to participate in the California Government VEBA (CALGOVEBA), a Individual health reimbursement account, pursuant to IRS Tax-exempt code 501 (c)(9). All employees agree to the contributions based on each pay period:

Salary reduction: Contribution:

Employee Category	Mandatory Contribution
0-10 Years of Service	\$100 per pay period
11-20 Years of Service	\$150 per pay period
20+ Years of Service	\$200 per pay period

Terminal/Annual Leave Contribution:

Employee Category	Mandatory Contribution
0-5 Years of Service	50% value of leaves
6-10 Years of Service	75% value of leaves
11-20 Years of Service	75% value of leaves
20+ Years of Service	75% value of leaves

2.6 **Social Security.**

Employees are required to participate in Social Security. The City shall pay the employer costs as determined by the applicable rules and regulations. The employee shall pay their portion of Social Security as determined by the rules and regulations.

2.7 **State Unemployment Insurance (SUI).**

2.7.1 The City shall pay all State Unemployment Insurance costs.

2.8 **Longevity Incentive.**

2.8.1 An employee who has completed five (5) consecutive years employment is eligible to receive a lump sum amount equal to one-half (1/2) month's base wage payable at the beginning of the sixth (6th) year and each year thereafter until the employee leaves City employment.

ARTICLE III MEDICAL AND RELATED BENEFITS

3.1 **Medical Insurance**

3.1.1 The City shall make available to all covered employees, the CalPERS medical insurance program. Employees shall have the option of enrolling in any of the plans provided by CalPERS.

3.1.2 The City shall contribute up to the following amounts towards employee cafeteria plan to include cost coverage of health, dental and any other optional insurance plan that is offered by the City of Winters. The City agrees to pick up the increase in dental and health premiums when they go into effect January 1, 2012. The City of Winters will pay for the vision plan with MES Vision for all employees. Dependent cost must be paid for by employee.

Employee plus family up to \$1625/mo

3.1.3 Employees providing proof of dual coverage under PERS or other medical insurance programs may decline to accept medical coverage. These employees shall be eligible for a payment of \$735 per month.

3.2 **Dental Insurance**

3.2.1 For all employees covered by this Resolution the City shall provide coverage in the City's dental insurance program for the employee and any eligible dependents. The benefit shall be paid by the cafeteria amount and the employee to pay a deductible or co-pay.

3.3 **Long Term Disability Insurance**

3.3.1 The City shall provide to all employees covered by this Resolution coverage in the long term disability insurance plan. Employer paid.

3.4 **Life Insurance**

3.4.1 The City shall maintain in effect life insurance for all employees covered by this Resolution in the amount of two-times employee's annual salary. Employer paid.

ARTICLE IV LEAVES

4.1 **Holidays**

4.1.1 Employees shall receive the following holidays:

- | | |
|--|---|
| New Year's Day | Labor Day |
| Martin Luther King's Birthday | Veteran's Day |
| Presidents Day | Thanksgiving Day |
| Half Day Good Friday | The Day after Thanksgiving Day |
| Memorial Day | December 24 th (Christmas Eve) |
| Independence Day | December 25 th (Christmas Day) |
| Cesar Chavez Day (Recognized Only – Monday through Friday) | |

4.1.2 In addition, each management employee shall receive two (2) floating holidays per year. If an employee fails to take their floating holidays of, one between January 1st – June 30th and the other between July 1st – December 31st, the employee will forfeit their floating holiday credit.

4.1.3 If any holiday falls on a Sunday, the Monday following will be observed as the holiday. If it falls on a Saturday, the Friday preceding will be observed.

4.2 **Vacation Leave**

4.2.1 Each employee shall earn paid vacation leave on a monthly basis at each pay period during the month. Vacation time shall be prorated in any partially worked month and the accrual rate shall be effective on the first day beginning the new benchmark year.

Years of Service	Vacation Leave Earned Annually
0 through 3 years	12 days
4 through 6 years	15 days
7 through 9 years	17 days
10 through 12 years	20 days
13 through 16 years	22 days

17 through 22 years 25 days
23 through plus years 27 days

4.2.2 Upon approval of the City Manager, employees may, at his/her request cash in their unused vacation leave hours paid directly to him/her at their regular hourly rate of pay, but must leave one weeks vacation time on the books.

4.2.3 An employee separated from City service shall be compensated for vacation hours on the books.

4.3 Sick Leave

4.3.1 Each employee covered by this Resolution shall accrue sick leave at the rate of one (1) day (8 hours) per month for each calendar month of service. Sick leave may be accumulated to a maximum of nine hundred sixty (960) hours. Hours may be re-accumulated if the sick leave balance falls below the maximum. Employees in service 20 or more years will receive ½ cash out, up to 500 hours.

4.3.2 If an employee is absent from work for more than three (3) consecutive days, evidence, in the form of a physician's certificate or otherwise, may be required to determine the adequacy of reasons for an employee's sick leave absence.

4.3.3 An employee may take five (5) days off of Sick Leave for bereavement which shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. Bereavement may be granted for death involving members of the immediate family (for this purpose, members of the immediate family shall be defined as: spouse, mother, father, sister, brother, children, grandparents, mother-in-law, or father-in-law).

4.3.4 The City has implemented a Sick Leave Incentive Program for all employees. The Sick Leave Incentive shall be one percent (1%) of an employee's base annual salary. The Sick Leave Incentive shall be paid during the first week of December.

For employees to be eligible for the Sick Leave Incentive, they must not have used more than forty-eight hours of sick leave between December 1 and November 30. Sick Leave used for work related injuries or illnesses shall not be counted as part of the forty-eight (48) hours Incentive Sick Leave Bonus, but will be subtracted from accrued sick leave. The effective date for determination of work related injuries or illnesses shall be based upon a medical report.

4.4 **Catastrophic Illness or Injury**

4.4.1 Each employee covered by this Resolution may donate portions of their accrued but unused vacation, sick or administrative leave balances to other employees who have suffered catastrophic illness or injury. Employees receiving donations of time from other employees must first exhaust all available vacation, compensatory, administrative and sick leave.

ARTICLE V RETIREMENT

5.1.1 The City will continue its participation in the Public Employee's Retirement System during the term of this agreement.

5.1.2 The formula in effect for Miscellaneous members is the 2% @ 55 formula. The Police Safety retirement is 3% @ 55.

5.1.3 The City will continue to pay the employee's share to the retirement system.

5.1.4 The City provides the sick leave conversion benefit as specified in the Government Code, Section 20965 to miscellaneous category of employees.

5.1.5 The City shall maintain the PERS single highest year option for miscellaneous category of employees.

ARTICLE VI PUBLIC SAFETY DIRECTORS

6.1 Special Provisions for Public Safety Directors.
Public Safety Directors covered by this Resolution shall have separate provisions regarding retirement, vehicle use, uniform allowance and holiday time use.

6.1.1 Police Chief. The Chief of Police shall receive the same safety retirement benefits and uniform allowance as provided to safety personnel. The City of Winters shall provide a City vehicle for use by the Chief of Police.

ARTICLE VII OTHER COMPENSABLE ITEMS NOT SET FORTH HEREIN

7.1 Other Compensable Items Not Set Forth Herein

7.1.1 Other items not set forth herein which are compensable as terms and conditions of employment of the employees covered by this Resolution

shall continue to be compensated by the City of Winters at the rate applicable on January 1, 2011 unless determined otherwise by the Winters City Council in accordance with law or required otherwise by law.

Accepted for submittal to the City Council on the ____ day of December, 2011.

BY: 

John W. Donlevy, Jr., City Manager

APPROVED, RATIFIED, AND ORDERED IMPLEMENTED by the Winters City Council on the ____ day of December, 2011.

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

EXHIBIT A
MONTHLY SALARY RANGES

CITY OF WINTERS
EXEMPT SALARY SCHEDULE
JANUARY 1, 2011
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE -- NO CHANGE)

Position	A	B	C	D	E
City Manager					10,398
Department Heads	6,855	7,198	7,558	7,936	8,333



1-1-11

RESOLUTION NO. 2011-54

SALARY RANGES

CITY OF WINTERS

**Effective
January 1, 2012**

**CITY OF WINTERS
DEPARTMENT DIRECTORS EXEMPT SALARY SCHEDULE
JANUARY 1. 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - NO CHANGE)**

Position	A	B	C	D	E
City Manager					10,398
Department Heads	6,855	7,198	7,558	7,936	8,333

**MANAGERS EXEMPT SALARY SCHEDULE
JANUARY 1. 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - NO CHANGE)**

Position	A	B	C	D	E
Environmental Services Manager	5,583	5,862	6,155	6,463	6,786
Public Works Superintendent	5,583	5,862	6,155	6,463	6,786

**MID-MANAGEMENT SALARY SCHEDULE
JANUARY 1. 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE)
(NO CHANGE TO BUILD. OFF. OR GRANT WRITER - ADDITION OF ADMINISTRATIVE COORDINATOR)**

Position	A	B	C	D	E
Administrative Coordinator	5,616	5,897	6,192	6,502	6,827
Building Official	5,356	5,624	5,905	6,227	6,510
Grant Writer/Management Analyst	3,871	4,065	4,268	4,481	4,705

**WINTERS EMPLOYEES ASSOCIATION SALARY SCHEDULE
JANUARY 1. 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - FOR ALL OTHER CLASSIFICATIONS)
(5% ON MAINT. WORKER CLASSIFICATIONS - NO CHANGE ON OTHERS)**

Position	A	B	C	D	E
Administrative Assistant/Finance	3,192	3,352	3,520	3,696	3,881
Community Services Officer	2,649	2,781	2,920	3,066	3,219
Maintenance Worker I	2,205	2,315	2,431	2,553	2,681
Maintenance Worker II	2,917	3,063	3,216	3,377	3,546
Maintenance Worker III (Senior)	3,545	3,722	3,908	4,103	4,308
Maintenance Worker IV (Field Sup)	4,311	4,527	4,753	4,991	5,241
Recreation Coordinator	2,271	2,385	2,504	2,629	2,760
Records Clerk II	2,493	2,618	2,749	2,886	3,030

**CONFIDENTIAL SALARY SCHEDULE
JANUARY 1. 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - NO CHANGE)**

Position	A	B	C	D	E
Administrative Assistant/Admin.	3,192	3,352	3,520	3,696	3,881
Executive Asst. to City Manager	3,114	3,269	3,432	3,604	3,784

**POLICE DEPARTMENT
JANUARY 1, 2012
JULY 1, 2008 (LAST INCREASE - 2.5% INCREASE - NO CHANGE)**

Position	A	B	C	D	E
Police Officer	4179	4388	4607	4837	5079
Corporal	4379	4588	4807	5037	5279
Sergeant	4910	5156	5414	5685	5969
Lieutenant	5685	5969	6267	6580	6909

**FIRE DEPARTMENT
EFFECTIVE JANUARY 1, 2010
(NO CHANGE)**

Position	A	B	C	D	E
Captain	4910	5156	5414	5685	5969
Engineer	4379	4588	4807	5037	5279
Firefighter	4179	4388	4607	4837	5079

**PART TIME SALARY SCHEDULE
JANUARY 1, 2012
(NO CHANGE)**

Recreation Leader I	8.25 per hour
Recreation Leader II	8.75 per hour
Recreation Leader III	9.25 per hour
Recreation Leader IV	9.75 per hour
Director	13.25 per hour
Cashier	8.25 per hour
Lifeguard I	9.25 per hour
Lifeguard II	9.75 per hour
Lifeguard III	11.25 per hour
Lifeguard IV	11.75 per hour
Supervising Guard	14.25 per hour
Pool Manager	17.25 per hour
Community Center Attendant	7.75 – 16.00 per hour
Intern/ Management Project Staff	9.00 – 35.00 per hour
After School Instructional Aide	12.00 - 15.00 per hour
After School Site Coordinator	20.00 - 22.00 per hour
After School Coordinator /Teacher	33.00 - 38.00 per hour

ADMINISTRATIVE COORDINATOR

PURPOSE

To provide administrative support in the public safety environment including management of records, property, and/or evidence; office management; reception; research; document preparation; and, supervision.

WORKING CONDITIONS

Work is conducted primarily in an office setting. It includes pressure generated by frequent interruptions, deadlines, complaints and volumes of work. Conditions may include occasional attendance at meetings which are conducted in the evening. May also include occasional weekend or irregular hours.

PHYSICAL DEMANDS

Work may include prolonged sitting, as well as moderate lifting, carrying reaching, stooping, pulling and pushing activities; manual dexterity; clear speech; and visual and hearing acuity.

DISTINGUISHING CHARACTERISTICS

Mid-management position. This is the primary administrative position in the public safety environment, reporting directly to the Chief of Police/Fire Chief. It requires a considerable degree of initiative, independent judgment and tact in dealing with confidential and sensitive matters. Exercises full supervisory responsibility for the work of technical and clerical positions.

ESSENTIAL JOB FUNCTIONS - Duties may include, but are not limited to, the following:

Plan, coordinate, supervise and review the work of departmental personnel assigned to public safety administrative support activities. Act as custodian of records. Monitor and oversee the release of information/public records related to public safety incidents, reports and litigation matters, in accordance with all relevant federal, state and local laws.

Coordinate with other City departments and governmental agencies in the processing of a wide variety of documents.

Perform administrative office management duties including maintaining departmental calendars and appointment schedules; arranging meetings and training sessions; distributing mail; monitoring and ordering office supplies; ensuring maintenance and repair of office equipment.

Initiate and maintain a variety of manual and computerized filing and record keeping systems; gather or trace information for preparation of periodic statistical, financial and operational reports. Maintain manuals and update resource materials.

Administration of the department budget; prepare budget reports, compile information for annual budget request; secure cost bids and make budget recommendations; monitor and control expenditures.

Operate standard office equipment including computer hardware such as hard and floppy disk drives and printers, and software including spreadsheets, data bases, file management, and word processing systems; adding machines, copiers, fax machines, telephone systems, pagers and communications radios.

Answer multi-line telephone and receive visitors; evaluate needs and direct callers. Respond to inquiries and resolve complaints regarding a wide range of issues related to departmental operations.

Provide research assistance on a variety of administrative issues; participate in conducting surveys and studies by gathering, compiling, tabulating and reporting data.

Compose and prepare a wide variety of written documents including confidential and sensitive memos and correspondence, reports, resolutions, contracts, agreements, charts, tables, spreadsheets and press releases. Edit written documents prepared by other departmental personnel for correct format, English usage, grammar, spelling and punctuation.

Recommend organizational and procedural changes affecting administrative activities of the department.

Make every reasonable effort to continually improve the manner in which the job is performed and increase the quality of service to the public.

Hire, train and supervise, and evaluate administrative personnel.

Manage records personnel to ensure compliance with federal, state and local mandates for release of information.

Management of Live Scan, Cal Photo and Critical Reach programs.

Act as Agency Terminal Coordinator for Department of Justice information system.

Liaison for Department of Justice, District Attorney, Probation and Superior and Traffic Courts regarding record administration.

Perform related duties as assigned.

Specific to Police Department: Oversee and monitor the record keeping, storage, release, and purging of property and evidence in accordance with federal, state and local laws.)

Specific to Fire Department: Oversee preparation of agenda, minutes, development and preparation of resolutions/ordinances, and proper noticing requirements.

OTHER JOB FUNCTIONS

Serve as department representative at a variety of interdepartmental and/or public meetings. May take notes and transcribe into finished document.

DESIRABLE QUALIFICATIONS

Knowledge and Abilities:

Knowledge of the principles, procedures, methods, laws and regulations governing public safety records and evidence management; of modern office practices, procedures and equipment including computer hardware and software and transcription equipment; of correct business correspondence formats, correct English usage, spelling, grammar and punctuation; of filing and indexing and cross referencing methods; of basic record keeping and accounting practices; of basic research methods; of principles of supervision, training and evaluation. Ability to operate a keyboard with sufficient speed and accuracy to meet the needs of the department (minimum speed 50 wpm net); to work independently; to organize, prioritize and coordinate work activities; to supervise, train and evaluate assigned personnel; to analyze situations accurately and adopt effective courses of action; to work efficiently under pressure and with frequent interruptions; to prepare clear and concise written documents; to compile and maintain accurate records; to perform moderately complex business math calculations; to interpret and apply related laws and rules; to communicate clearly and concisely, both orally and in writing; and to establish and maintain effective work relationships with a variety of people contacted in the course of work.

Education and Experience:

Any combination equivalent to experience and education that would likely provide the required knowledge and abilities would be qualifying. A typical way to obtain the knowledge and abilities would be:

Education:

Equivalent to completion of the twelfth grade supplemented by college level course work in public safety records, supervision or a related field.

Equivalent to a Bachelor's degree from an accredited college or university with major course work in public administration or a related field is preferred.

Experience:

Four years of increasingly responsible clerical and administrative experience in a relevant public safety agency.

Other Requirements:

Ability to operate a keyboard with sufficient speed and accuracy to meet the needs of the department (minimum speed 50 wpm net).

Select positions require possession of a valid California Drivers License and a satisfactory driving record as a condition of initial and continued employment.

Desired Specific to Police Department: Possession of a Basic Records certificate issued by California Police Officer Standards and Training Commission (POST) is required. Possession of a POST Records Supervisor/Management certificate is desirable.

Desired Specific to Fire Department: Possession of or ability to obtain CFAA Professional Recognition Program Certification Level I and Level II is desirable



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: December 20, 2011
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Sergio Gutierrez, Chief of Police *SG*
SUBJECT: Designated Level I Reserve Officer Resolution

RECOMMENDATIONS: Staff recommends that the City Council of the City of Winters approve a resolution that formally approves the requirements of the Reserve Police Officer Program to include the position of "Designated" Level I Reserve Officer within the Winters Police Department. Staff has provided background information that supports why the resolution should be approved.

BACKGROUND:

The Winters Reserve Police Officer Program is composed of members of our community or neighboring communities and who choose to dedicate a portion of their time to community service by working as part-time employees or volunteers with law enforcement agencies. These officers work with full-time regular officers to provide law enforcement services at the city, county, district and state levels. These officers work with full-time regular officers to provide law enforcement services at the city, county, district and state levels. Approximately 600 law enforcement agencies currently employ nearly 6200 reserve officers.

Penal Code 830.6(a)(2) states whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve park ranger, a reserve police officer of a regional park district, transit district, community college district, or school district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve officer of a community service district that is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a

police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1. A transit, harbor, or port district reserve police officer, or a city or county reserve peace officer who is not provided with the powers and duties authorized by Section 830.1, has the powers and duties authorized in Section 830.33, or in the case of a reserve park ranger, the powers and duties that are authorized in Section 830.31, or in the case of a reserve housing authority patrol officer, the powers and duties that are authorized in subdivision (d) of Section 830.31, and a school district reserve police officer or a community college district reserve police officer has the powers and duties authorized in Section 830.32.

Reserve peace officers may perform a number of general and specialized law enforcement assignments, including but not limited to:

- Uniformed patrol
- Investigations
- Marine/boat patrol
- Search and rescue
- Mounted posse
- Special events
- Translators
- Computer specialists
- Chaplains

Many law enforcement agencies established reserve programs during the Second World War. Since that time the number of reserve peace officers has increased and their duties and responsibilities have expanded. The legislature has recognized the importance of reserve peace officers and has adopted standards for selection and training, which have enhanced the professionalism of the reserve peace officer program

Reserve peace officers are required by the California Commission on Peace Officers Standards and Training [POST] to meet the same selection standards (e.g. personal history investigation and medical and psychological screening) as full-time regular officers.

The Legislature has established three levels of reserve peace officer to provide flexibility to law enforcement agencies. The duties of the different levels of reserve officer are described below:

Level III Penal Code sections 830.6(a)(1) and 832.6(a)(2)

- Level III reserve officers may perform specified limited support duties, and other duties that are not likely to result in physical arrests, while supervised in the accessible vicinity by a Level I reserve officer or a full-time regular officer. Additionally, Level III reserve officers may transport prisoners without immediate supervision.

Level II Penal Code sections 830.6(a)(1) and 832.6(a)(2)

- Level II reserve officers may perform general law enforcement assignments while under the immediate supervision of a peace officer who has completed the Regular Basic Course. These officers may also work assignments authorized for Level III reserve officers without immediate supervision.

Level I Penal Code sections 830.6(a)(1) and 832.6(a)(1)

- Level I reserve officers may work alone and perform the same duties as full-time regular officers.

"A Level I reserve" refers to a trained reserve officer as described in Penal Code section 832.6 (a)(1), and who is assigned specific police functions whether or not working alone [830.6 (a)(1)] OR to the prevention and detection of crime and the general enforcement of the laws of this state [830.6 (a)(2)] whether or not working alone.

Upon appointment by the Chief of Police, Reserve Police Officers who have qualified as Level I Reserve Police Officers pursuant to the listed California Penal Codes and, in addition, have completed a minimum of 484 working hours, or have a comparable experience of five years as a Reserve Police Officer or Reserve Deputy Sheriff in another jurisdiction and one year with the Winters Police Department, or have a Basic POST Certificate and one year as a Reserve Police Officer or have been a full-time paid Police officer in the last three years shall have those peace officer powers and duties as provided by Subsection (2) of Subsection (a) of 830.6 of the California Penal Code. Such officers shall be known as "Designated Level I Reserve Police Officers."

The authority of a "Designated" Level I Reserve, assigned to the prevention and detection of crime and the general enforcement of the laws of this state, shall include the full powers and duties of a peace officer as provided by Penal Code section 830.1. A Level I reserve is "designated" by authority of a city ordinance or a county resolution [Penal Code section 830.6 (a)(2)].

The authority of a "non-designated" Level I reserve shall extend only for the duration of assignment to specific police functions, as provided by Penal Code section 830.6 (a)(1).

The Staff is recommending the City Council adopt the resolution establishing the position of "Designated" Level I Reserve Officer.

FISCAL IMPACTS:

None.

ATTACHMENTS:

- Designated Level I Resolution

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS AUTHORIZING AND EMPOWERING POLICE RESERVES RATED AS "DESIGNATED" LEVEL 1 TO HAVE FULL PEACE OFFICER POWERS AND DUTIES

WHEREAS, BY STATUTE, the state legislature has provided that police reserves who are rated as "designate" Level 1 reserves may be empowered by local government bodies to have those full peace officer powers and duties as provided by Penal Code Section 830.1; and

WHEREAS, the City of Winters Police Department would benefit from the use of "designated" Level 1 reserves in providing police protection services in the City of Winters; and

WHEREAS, the goals of the policy are to provide the Chief of Police the Authority to appoint specific "non-designated" Level I Reserve Officers with the title of Designated Level I Reserve Officer; and

WHEREAS, the authority of a "non-designated" Level I reserve shall extend only for the duration of assignment to specific police functions. [Penal Code section 830.6(a) (1)]; and

WHEREAS, a Level I reserve has to be "designated" by authority of a city ordinance or county resolution. [Penal Code section 830.6(a) (2)] and
NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINTERS THAT THE CITY OF WINTERS' POLICE RESERVES RATED "DESIGNATED" LEVEL 1 ARE HEREBY AUTHORIZED AND EMPOWERED TO HAVE FULL PEACE OFFICER POWERS AS PROVIDED FOR IN CALIFORNIA PENAL CODE SECTION 830.1.

BE IT FURTHER RESOLVED THAT ALL SUCH LEVEL 1 POLICE RESERVES SHALL MEET THOSE ADDITIONAL REQUIREMENTS PROVIDED IN THE POLICIES OF THE CITY OF WINTERS POLICE DEPARTMENT.

PASSED AND ADOPTED THIS 20TH DAY OF DECEMBER, 2011, BY THE FOLLOWING VOTE:

**AYES:
NOES:
ABSTAIN:
ABSENT:**

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: December 20, 2011
FROM: John W. Donlevy, Jr., City Manager. *JWD*
SUBJECT: Creekside Estates Development Agreement- Extension

RECOMMENDATION:

That the City Council:

1. Conduct a Public Hearing; and
2. Approve the First Amendment to the previously approved Development Agreement for development of the property commonly known as the Creekside Estates Property between the City of Winters and Donald Miller, pursuant to Government Code sections 65864 through 65869.5 in order to make certain changes to the improvements required of the developer, to change the name of the developer to "Catholic Bishop of Sacramento, a California corporation sole", and to extend the term of the Development Agreement for an additional eight years.
3. Make Findings, pursuant to Government Code section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, makes and adopts the following findings:
 - a. That the Amendment promotes the public health, safety, and welfare of the community because the Amendment will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.
 - b. That the Amendment is consistent with the City's General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City's General Plan.
4. The City Council finds and determines that it can be seen with certainty that adoption of the proposed Ordinance will not have a significant effect on the

environment. Thus, the adoption of Ordinance 2012-01 is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

5. Introduce Ordinance 2012-01, AN ORDINANCE OF THE CITY OF WINTERS APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE CREEKSIDE ESTATES DEVELOPMENT DATED DECEMBER 22, 2005, BETWEEN THE CITY OF WINTERS AND DONALD MILLER, TO EXTEND THE TERM OF THE DEVELOPMENT AGREEMENT FOR AN ADDITIONAL EIGHT YEARS, REMOVE FUNDING REQUIREMENTS FOR FACILITIES THAT HAVE BEEN BUILT, AND MODIFY LANGUAGE CONCERNING PARK COSTS

BACKGROUND:

In December, 2004, the City Council approved the Creekside Estates Subdivision and Development Agreement for a 13.7 acre, 41 single family unit subdivision. The details of the project and agreement are attached in the Planning Commission Staff Report included herein as Exhibit A.

Although approved, the project has not moved forward and the development agreement and entitlements are due to expire on December 22, 2011 unless an extension is approved by the City Council prior to this date.

The project was originally advanced by Donald Miller who passed away in 2007. The project was willed to heirs of Mr. Miller's Estate who subsequently sold the property and development agreement to the Catholic Bishop of Sacramento who desires to extend the agreement.

A Public Hearing was held before the Winters Planning Commission on December 14, 2011 and was unanimously recommended for approval to the City Council.

DISCUSSION:

Since 2007, the City has modified and/or extended the development agreements for nearly all of the residential subdivisions which had been approved during a three year period, including Winters Highlands, Callahan Estates and Ogando Hudson. The Creekside Estates Subdivision has basically sat dormant during the time, primarily due to the passing of Donald Miller.

Some of the key themes in the revisions and extensions to the previous development agreements have included:

- Eight Year extensions on the entitlements for the projects;
- Removal of advanced funding requirements for the public safety facility and payment requirements for the library.
- Modified language regarding park costs and infrastructure improvements to reflect

economic changes in costs for land.

Modifications have also been made related to payment schedules for permits and impact fees to reflect challenges to overall subdivision financing and the ability of developers to finance projects.

Creekside Estates Development Agreement:

Staff is recommending that the Development Agreement be amended as follows:

Section 1. Section 2.3(b) of the Development Agreement is amended to provide that the term of the Development Agreement shall be extended for an additional eight (8) years, commencing on the date written above in the introductory paragraph ("Effective Date").

This recommendation is consistent with previous extensions given to other developments. It is done to reflect the economy and the projected time period before the housing market is expected to start again.

Section 2. Section 2.9(d) of the Development Agreement is amended to delete the address to which notice shall be given to Developer and to replace it, as follows:

Catholic Bishop of Sacramento, a California corporation sole
Pastoral Center
2110 Broadway
Sacramento, CA 95818
Telephone: (916) 733-0100
FAX (916) 733-0295

This simply changes the name of the developer.

Section 3. Section 4.1(b) of the Development Agreement is amended to read as follows:

As a condition to the approval of this Agreement by the City, Developer's predecessor presented to the City Council a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement provides, in addition to other matters as the parties agreed, that the Developer will pay to the School District, at the time of the issuance of a building permit, certain "Level 2" fees and will voluntarily pay certain "Level 3" fees, as those terms are commonly used in the K-12 education community. Should Developer and School District amend their agreement to change the amount or payment of the "Level 2" and/or "Level 3" fees, Developer shall provide a copy of such amendment to the City.

Section 4. Section 4.1(b)(1) and (2) and Section 4.1(c) are deleted from the Development Agreement.

Under the previous development agreements, developers were required to pay the Winters Joint Unified School District Level 3 impact fees toward school infrastructure. This is essentially a double payment. The economic reality is that this requirement is now viewed as a hindrance toward any subdivision being able to financially move forward and is recommended for deletion.

The WJUSD will still receive the Level 2 Impact Fees which will ensure that they receive 100% of the funds they are legally entitled to and currently receive from any other single family home development. The estimated fiscal benefit/loss per unit is \$5,600.

An important note regarding this section is that there currently exists a separate agreement between this project and the Winters Joint Unified School District. While the City can waive this requirement, only the WJUSD can rescind the agreement. That ultimately will be decided by the District and the developer.

Section 5. Section 4.2(e)(2) of the Development Agreement related to the estimated cost of park infrastructure improvements is amended to read as follows:

2. The estimated costs of the infrastructure improvements and development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer based on an estimated cost index of park improvements of municipal park projects developed within the previous 24 month period.

Section 6. Section 4.2(e)(3) is deleted from the Development Agreement.

The previous development agreement established dollar amounts which were based on costs for 2004. Modifications to these sections simply allows for the most current cost index to be used when the development proceeds.

Section 7. Section 4.3 of the Development Agreement, entitled "Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility" is deleted as the facility has been constructed.

The Public Safety Facility has been constructed and the costs are now incorporated into the City's Impact Fee Program. The funding previously anticipated will be collected as part of permits and impact fees collected.

Section 8. Section 4.4 of the Development Agreement, entitled "Payment to Library Fund" is deleted, but the Section 4.4 entitled "Annuity in Lieu of Mello-Roos District" shall not change.

The Library has been constructed and the fees incorporated into the City's Impact Fee Program thus alleviating this requirement.

Section 9. Section 4.7 of the Development Agreement ,entitled "Urban Water Management Plan," is renumbered to be section 4.6.

This was a found typo in the previously adopted development agreement.

Section 10. Section 4.8 of the Development Agreement, entitled "Water Well," is deleted as a well has already been constructed.

The Water Well has been constructed and the fees incorporated into the City's Impact Fee Program thus alleviating this requirement. Funds will be collected as part of the permit process.

Section 11. The effective date of this First Amendment shall be the date as written above in the introductory paragraph. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and remain in full force and effect.

General Plan Consistency:

Pursuant to Government Code section 65867.5, the City Council is required to confirm that based on the project description and all written and oral evidence presented to the City Council, that the project is consistent with the City's General Plan.

As presented in 2005, the project is entirely consistent with the City's General Plan in zoning and conformity in its adoption.

The City Council can thus make the following findings:

- A. That the Amendment promotes the public health, safety, and welfare of the community because the Amendment will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.
- B. That the Amendment is consistent with the City's General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City's General Plan.

CEQA:

Because the adoption of the amendment provides no material changes to the project or will have a significant environmental impact, the City Council is required to make a finding that the project is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA

Guidelines.

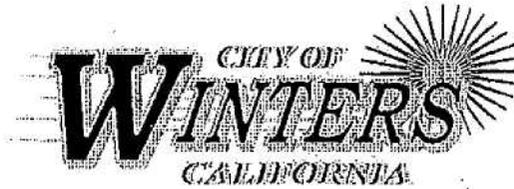
FISCAL IMPACT:

The most significant impact will be in the reduction of the Level 3 School Impact fees which will see a reduction of \$5,600 per unit, or approximately \$224,000. The offset to this is that development generally generates new students at a rate of approximately .72 students per unit which provides an average daily attendance income of approximately \$6,000 per student. At 41 units, the student generation would be 29.52 or \$177,120 per year or a payback of approximately 1.25 years to recover the funds. In discussions with the WJUSD, they currently have declining enrollment and this funding could dramatically help the District.

All other changes in funding will be captured through the collection of impact fees.

Attachments:

Exhibit A: Planning Commission Staff Report Approving Creekside Estates- November 23, 2004
Exhibit B: Creekside Estates Development Agreement
Ordinance 2012-01
First Amendment Document



CITY OF WINTERS PLANNING COMMISSION STAFF REPORT

TO: Members of the Planning Commission
 FROM: Heidi Tschudin, Contract Planner
 HEARING: November 23, 2004
 SUBJECT: ***CREEKSIDE ESTATES SUBDIVISION***

SUMMARY OF PROJECT

The project is a proposed residential subdivision of 13.7 acres to create up to 41 single-family lots. In order to proceed with the project the following City approvals are needed:

- General Plan Amendment to designate the property for larger lots
- Rezoning to designate the property for larger lots
- Development Agreement
- Tentative Subdivision Map

LOCATION

The project site totals 13.7 acres comprised of APNs 003-430-12 (11.0 acres) and 003-120-04 (2.75 acres) located south of Grant Avenue (SR 128) and west of Main Street, adjacent to the Rancho Arroyo Unit 2 subdivision. Situs address is 898 Grant Avenue, Winters, California, 95694.

BACKGROUND

The application was received June 1, 2003. Additional information to complete the project was requested on July 22, 2003 and the application was determined to be complete on September 3, 2003. Subsequent information necessary for the CEQA analysis was received through May 12, 2004. The project was then stayed for a period while the City Council contemplated the Callahan and Highlands CEQA determinations which had citywide implications regarding the use of negative declarations. On August 17, 2004 the City Council upheld the use of a Mitigated Negative Declaration for the Callahan Estates project, thus clearing the way for continued use of Mitigated Negative Declarations on other projects where appropriate. Work on subject project resumed at that point. On September 28, 2004 a Community Workshop was held before the Planning Commission to introduce the Creekside Estates project and receive early community input. On October 9, 2004 an on-site Community Open House was held by the applicant to allow the community to visit the site and ask questions about the specifics of the site and the proposed project. The draft Mitigated Negative Declaration was released for public review on October 15, 2004. The review period for the Negative Declaration extended for 31 days from October 15, 2004 through November 15, 2004.

DETAILED PROJECT DESCRIPTION

Based on the tentative map dated "revised February 2, 2004" (see Attachment A), the project proposes 38 single-family lots that would range in size from 6,878 square feet (Lot B) to 23,858 square feet (Lot 38), generally increasing in size and decreasing in density from the northeast to the southwest. Over 70 percent (27 of 38 lots) would be 8,000 square feet in size or larger. The average proposed lot size is 10,744 square feet.

The project site is oddly shaped which creates constraints for lot layout and site planning. It is further affected along the southwesterly boundary by Dry Creek, from which the General Plan requires a 50-foot buffer from top of bank. Grant Avenue (SR 128), a Caltrans facility, borders the property along the north.

Eleven of the proposed lots would back up to Dry Creek and be subject to a 50-foot setback from the top of the creek bank. Thirteen would back up to Grant Avenue (State Highway 128). Proposed improvements for the Grant Avenue frontage along the south side of Grant Avenue include road widening (an additional 27 feet from the existing edge of the pavement), curb and gutter, and an eight-foot wide meandering sidewalk within 20-feet of landscaped area. A six-foot privacy fence is proposed along the rear boundary of the lots that back onto Grant Avenue including Lot 4 that backs onto Main Street. The remaining 14 lots would be interior lots to the project.

The project proposes an extension of Cody Street and of Dry Creek Lane into the site to form a loop and one cul-de-sac. All streets are proposed to be built to meet City local street standards (57-foot right-of-way with separated sidewalks and six-foot wide parkway strip).

Initial discussions with the City involved a project alternative that would have replaced Lots 7, 9, and 10 with split lot duplexes in order to achieve the City's affordable housing requirements. Another alternative would have created a six-lot "bungalow court" in the area of the property between Dry Creek Lane, Main Street, Cody Street and Grant Avenue. Both of these alternatives created design and financing challenges that made them less than favorable. As proposed, all required affordable housing (6 units) would be provided offsite on a 1.7-acre multifamily (R-4 site) (APN 003-370-15) located near the southeast corner of East Street and East Baker Street directly west of the Winters Apartments. This property was previously identified in a June 1997 City study as a priority site for affordable housing. The Community Housing Opportunities Corporation (CHOC) is currently in escrow to purchase this site for the construction of 34 very low income apartment units. In order to satisfy the applicant's affordable housing obligation for the proposed Creekside Estate project, the applicant would provide CHOC with \$260,000 towards the purchase of the site.

LAND USE ANALYSIS

The 1992 General Plan was the subject of a certified Environmental Impact Report that examined the environmental impacts associated with adoption of the General Plan, including the development of the site as Low Density Residential. At the time the General Plan was adopted this site was designated Low Density Residential (LR) and zoned Single Family Residential (R-1) (7,000 square foot minimum). In August of 1997 and again in June of 2001 the City Council approved Mitigated Negative Declarations for prior subdivisions of the 2.75-acre parcel. In February of 2003 the City redesignated and rezoned the site to increase the density and decrease the lot size. The assumed yield for the General Plan EIR analysis, based on the original designation, was 3.08 du/ac or 42 units.

The project site has been designated in the General Plan as Medium Density Residential (MR) since it was redesignated by the City in February 2003 from Low Density Residential (LR). The project proposes a General Plan amendment to designate the property back to the Low Density Residential designation.

The project site has been zoned on the City's Zoning Map as Single Family Residential, 6,000 Square Foot Average Minimum (R-2) since it was rezoned by the City in February 2003 from Single Family Residential (R-1) (7,000 square foot average minimum lot size). The project proposes a rezoning back to the Single Family Residential, 7,000 Square Foot Average Minimum (R-1) zone.

These designations would allow for a density range of 1.1 to 7.3 dwelling units per acre, a minimum average lot size requirement of 7,000, and a minimum lot size requirement of 6,000.

There are 13.7 acres in total on which 38 units are shown. This would result in a density of 2.8 du/ac which falls within the allowable range and is therefore consistent with the General Plan. The average lot size is 10,744 square feet which meets the minimum average requirement. The smallest proposed lot is Lot 8 totaling 6,878 square feet. This falls within the minimum lot size requirement of 6,000 square feet and is therefore consistent with the regulatory requirements.

POLICY ANALYSIS

General Plan

The project has been reviewed for consistency with the policies of the General Plan. Conditions have been identified in some cases, to ensure consistency. For all policies, the project appears to be consistent. The Planning Commission, and ultimately the City Council, must confirm this finding in order to approve the project.

Policies I.A.5, I.F.2, I.F.3, IV.H.5, and IV.H.6 related to funding and timing of school facilities have been superseded by State law (Proposition 1A/5B 50, 1998, Government Code Section 65996), as described in the Initial Study of the Negative Declaration.

Other Applicable Plans

The project site falls within the redevelopment area of the City of Winters known as the Community Development Project Area. The Community Development Director has indicated that the project is consistent with the requirements of the redevelopment plan and policies with regard to the proposed affordable housing plan, and that no other redevelopment issues are relevant to the review of the project.

Bikeway System Master Plan

The Bikeway System Master Plan for Winters was last updated in 2002. This plan shows a bicycle facility along Grant Avenue. Consistent with community and Commission discussions regarding connectivity and an off-street trail system, the project will be required to accommodate a planned Class 1 (off-street multi-purpose trail) along the south side of Grant Avenue.

Development Review Committee

The project was reviewed by the City's Development Review Committee on March 12, April 23, and July 23, 2003. The Committee discussed increasing the lot sizes, adding a "Welcome to Winters" sign at the western corner of the project site along Grant Avenue, and the need for heavy landscaping along Grant Avenue. As a result of the Committee review the project was revised to include larger lot sizes. Conditions requiring the community sign and a design specification for the Grant Avenue bike path have been added. It was acknowledged at the DRC that the applicant could address affordable housing on or off site and that there was no on-site park land proposed (see Attachment F).

Affordable Housing Committee

General Plan Policy II.A.8 requires projects of 50 units or more to submit for review by the City's Affordable Housing Committee. This project would result in fewer than 50 units and therefore did not trigger this requirement.

CONSISTENCY WITH OTHER REGULATIONS

Zoning Ordinance

The project has been reviewed for consistency with the requirements of the Zoning Ordinance. Conditions have been identified to ensure consistency. For all requirements of the Zoning Code, the project appears to be consistent. The Planning Commission, and ultimately the City Council, must confirm this finding in order to approve the project.

Pursuant to Section 8-1.4211, design review is required of this project, and has been made a condition of approval.

Other City Regulations

The project has been reviewed by the Contract Engineer for consistency with the State Subdivision Map Act. Conditions have been identified where necessary to ensure consistency.

INFRASTRUCTURE

Sewer System

Sanitary sewer service is proposed to be provided by an existing 8-inch sewer main in Dry Creek Lane. Connection will be made at the intersection of Cody Street and Dry Creek Lane. The City's Draft Sewer Master Plan identifies a potential deficiency in capacity on the Edwards Street sewer line if the Creekside Estate sewer flows are directed to Edwards Street via Dry Creek Lane. Creekside Estates will be required to commission a detailed study to evaluate the capacity available in the Edwards Street sewer line and will be required to provide facility improvements to accommodate the Creekside Estates Development.

Wastewater Treatment Plant

The City's Wastewater Treatment Plant (WWTP) is currently permitted to 0.92 million gallons per day (mgd). WWTP Phase 1B has been constructed which puts current capacity at 0.92 mgd. In December 2002, the estimated number of new dwelling units that could be served under current capacity was approximately 600 units. It was anticipated that over the following year approximately 200 dwelling units would be entitled to hook-ups based on approved maps and maps that were in the entitlement process. At this time, it is still anticipated that 200 units will be entitled to sewer hook-ups. The subject Creekside Estates project is included within those 200 assumed hookups. The City continues to monitor the WWTP on an annual basis to assess available capacity. The Phase 2 expansion of the WWTP will bring the capacity to 1.2 mgd. The timing of this expansion is not set. The Phase 2 expansion is not needed to serve this project.

Water System

An 8-inch water loop is proposed on-site to provide water service. This line would connect to the existing 8-inch water main in Cody Street. In addition, an 8-inch water line shall be required to be constructed from the future Creekside Road to Taylor Street. The location of the easement for the water line has yet to be determined.

The Draft Water Master Plan identifies that the city currently requires a new well to serve the existing City and the Creekside development. If a new well is required, the applicant shall be required to advance fund the land acquisition, design, and construction of a new municipal water well and waterline conveyance piping. The location of the new well has yet to be finalized. Two locations are under consideration: One in the vicinity of Valley Oak Drive and the Highlands Canal on the west edge of the City limits and the other location directly north of the terminus of West Main Street at the Rancho Arroyo Detention Pond.

Drainage System

Storm drainage for the project is proposed to be provided by an existing 48-inch storm drain along the west side of Lots 1, 9, and 10. The project would connect to this storm drain in two places where it would intersect existing storm drains in Grant Avenue and Cody Street.

Off-Site Infrastructure

The project would be required to fund and construct off-site improvements necessary to support the development. Such improvements would include, but not be limited to a water well, water lines, sewer lines and storm drainage lines. To the extent that acquisition or subsequent CEQA clearance is necessary for such work that would be the responsibility of the developer.

Flooding

The project does not fall within the City's General Plan Flood Overlay Area. The site is designated on federal floodplain maps as Zone A (within the 100-year floodplain) in the creek and Zone C (outside of the 100-year floodplain) on the remainder of the property above the high bank. A 50-foot setback from the high bank is required under the City General Plan and Zoning Ordinance and as such, no work is proposed within a federally designated flood area.

HOME DESIGN

An analysis of home design, facades, and elevations has not yet been performed as design review approval has not been requested at this stage in the process. Pursuant to Section 8-1.4211 of the Zoning Code design review is required of this project and has been made a condition of approval.

AFFORDABLE HOUSING

The total number of proposed units is 38. The City requires a 15 percent affordable component comprised of 6 percent very low income, and 9 percent low to moderate income. Therefore the requirements for this project would be six affordable units comprised of three very low income units, two low income units, and one moderate income units.

The applicant is proposing to contribute \$260,000 towards the purchase of an alternative site on which 34 very low income apartment units would be constructed through a partnership of the City Community Development Agency (redevelopment) and CHOC.

Alternatively Lots 7, 9, and 10 at the entrance of the project on either side of the proposed extension of Dry Creek Lane, would be converted to split-lot duplex lots thus creating six half-plex lots which would be deed restricted to satisfy the affordable housing requirement on-site. This would increase the total number of proposed lots to 41 and the density to 3.0 du/ac. The proposed size of the affordable lots would range from 3,377 square feet (7B, 9B, and 10A) to 4,258 square feet (7A). The minimum lot area for an affordable split lot is 3,500 square feet (see Zoning Ordinance, Table 3B, Footnote 2, page 82). As such the layout of these proposed split lots will need to be modified to reflect the minimum allowable lot size. A condition of approval has been added to address this issue should the Planning Commission determine the project should meet the affordable housing requirement onsite.

PARK REQUIREMENT

The City requires the development of public parkland in conjunction with subdivision development at a ratio of 5 acres per 1,000 persons, and has a goal of 7 acres per 1,000 persons. Using the applicable Department of Finance factor for household size of 3.248 persons per household, and assuming 41 total units (affordables included) the project triggers the need for between 0.67 and 0.93 acres of developed

parkland $(3.248 \times 41 \text{ dus}) + 1,000 \times 5 = 0.67 \text{ acres}$; $(3.248 \times 41) + 1,000 \times 7 = 0.93 \text{ acres}$). The project includes no on-site public parkland. The applicant proposes to pay an equivalent fee for the development of parkland off-site. This fee would be required to address both the full acquisition costs and the full development costs for equivalent parkland.

Assuming this remains a large lot project, the staff believes it makes sense for this project to contribute towards off-site park land as discussed in the staff exhibit for the Callahan Estates project (also on tonight's agenda). The staff has identified several options for park development throughout the proposed neighborhoods on the City's west side. Depending on the option chosen, the park fees paid by the Creekside project would be used to implement the favored scenario.

GROWTH RATE AND PROJECT PHASING

The applicant proposes no project phasing. All lots would be immediately available for sale with no restriction on timing of development. However, the applicant anticipates selling all lots to individual owner-builders or small custom builders, rather than to merchant builders. To the extent that this occurs, homes are likely to become available for occupancy at a more varied rate and pace. Nonetheless, given the City's concern with growth issues this issue merits review for every project.

The General Plan (adopted May 19, 1992) anticipated a population cap of 12,500 by 2010 (Policy I.A.1). The current population is 6,868 (January 1, 2004 Department of Finance estimate) and there are 2,189 housing units (January 1, 2004 Department of Finance estimate). The City would have to experience a growth rate of almost ten percent annually over the next seven years (2004 through 2010) to reach the population cap. In other words, the City's growth is lagging behind what was anticipated in the General Plan, which is the basis for all of the fee programs and infrastructure planning in place today. Because the economy is cyclical, it is inevitable that growth will occur in "chunks" during times when the market is favorable, rather than smoothly over time as might be more desirable from a community standpoint. It appears that the City is facing one of those "chunks" in 2004 with four development applications currently in process.

The 1992 General Plan EIR assumed a yield of approximately 42 units from the project site, which would yield a population of approximately 136 persons (using the applicable Department of Finance factor for household size of 3.248 persons per household). The proposed project (assuming 41 units which includes the affordable units onsite) would generate substantially that amount. Therefore, the proposed project would be consistent with the General Plan EIR assumptions for the project site.

Over the last few years (1999 – 2003) the City has grown by an average of 63 new units per year (315 + 5).

Calendar Year	Certificates of Occupancies Issued	Building Permits Issued
2003	107	100
2002	83	56
2001	39	45
2000	36	46
1999	50	36
TOTALS	315	283

The applicant is proposing no phasing for the project. The request is to be allowed to build out the project based on the market, without restrictions.

The status of other known proposals is as follows:

- Cottages (30 single family lots on 2.9 acres): Status – approved; under construction.

- Winters Townhomes (15 multifamily units on 1.2 acres): Status – approved; five units under construction.
- Winters Highlands (379 single family lots and 64 multifamily units on 102.6 acres): Status – continued; EIR under preparation.
- Callahan Estates (120 single family lots on 26.4 acres): Status – Scheduled for second hearing before the Planning Commission.
- Ogando-Hudson (65 single family lots on 16.0 acres): Status – application received and under review.
- Greyhawk (897 single family lots and 225 multifamily units plus additional non-residential land uses on 400.0 acres): Status – withdrawn.
- Springfield Ranch (1,700 single family lots and 200 multifamily units plus additional non-residential land uses on 851.2 acres): Status – withdrawn.

Assuming for the purposes of this discussion that the Highlands, Callahan, Ogando-Hudson, and Creekside proposals are all approved, that would total up to 669 units on top of the 45 associated with the already approved Cottages and Winters Townhomes projects. Left solely to market forces, the timing of these units would be significant for a town the size and scale of Winters. There is currently a population of about 6,868 and about 2,189 residential units in the City. In numbers alone the pending projects represent about a 35 percent increase in both population and total number of housing units.

Although anticipated in the General Plan, and planned for in terms of infrastructure and services, this magnitude of change is of concern to many citizens and should be discussed. The City Manager has been exploring the phasing of this development potential, including how and to what degree it could be successfully "metered" through development agreements. The desirability of this from a community point of view must be balanced with project feasibility from the developer's point of view, infrastructure financing costs, the City's affordable housing requirement, and the realities of modern subdivision financing.

DEVELOPMENT AGREEMENT

The City will require that a Development Agreement (DA) be executed for this project. Under the City's DA enabling ordinance, there must be a resulting "net benefit" to the community from entering into such an agreement. The community benefits to the City from the Creekside Estates agreement are anticipated to include Level Three fee payments to the schools as well as other net community benefits yet to be identified. In addition, if approved the Development Agreement will be used to "lock in" project features such as the lot layout, design review requirements, conditions of approval, mitigation measures, phasing (if any), payment of impact fees, etc.

A draft of the Creekside Estates Development Agreement has not yet been prepared. However, the key deal points for the agreement as they are envisioned at this time are outlined below:

- All conditions of approval and mitigation measures shall be fully implemented. These include installation of a new municipal water well; various street extensions, connections, and improvements; full participation in small/local builder program; reimbursement to City for cost of CEQA monitoring mitigation measures; and other items.
- Through a separate agreement with the school district, the developer shall pay Level 3 school mitigation fees for all market rate units.
- For the operations and maintenance costs necessary to off-set any fiscal deficit projected for the project, the Developer shall create and fund an annuity. The basis for the annuity is the difference

between the cost of city service and the taxes generated by the dwelling unit in property and transfer taxes.

- The developer shall advance the fees of \$4,297 per unit (or whatever rate the fees may be at the time) for the purpose of construction of the police/fire station and corporation yard facility.
- Developer shall make a cash contribution to the City library fund, payable at the time the first final map for the project is recorded.
- Developers shall advance funding for, and/or pay a fair share of the cost of, preparation of a City Urban Water Management Plan.
- Assuming the project park requirement is not satisfied on-site, the applicant is responsible for the value of the land plus the value of the improvements that would have otherwise been required in order to satisfy the General Plan requirement. This has been calculated to be 0.93 acres for the Creekside Estates project.

CEQA CLEARANCE

A draft Negative Declaration (see Attachment D) was circulated on October 15, 2004, for a 31-day comment period extending through November 15, 2004. All comment letters received within the comment period are attached for the Commission's review (see Attachment C). Each letter is discussed briefly below:

- US Army Corps of Engineers – This letter speaks to the Corps jurisdiction over the bed of Dry Creek. This has been acknowledged and discussed in the Biological Resources reports and the Negative Declaration Initial Study. The project adheres to the City's 50-foot setback to protect the creek and therefore, the potential for impact is avoided. No impact will occur and the Corps jurisdictional area will be avoided.
- Robert Fischer – This comment requests that no building occur near Moody Slough Road and Niemann Street, and suggests that development is better suited along SR 128 (Grant Avenue). It appears this comment may have been intended for other projects before the City. The subject project is consistent with the wishes of the writer.
- Jeff TenPas – This letter speaks to concerns about odor emanating from the East Street Pumping Station. The writer is concerned that the subject project will worsen this situation. The odor issue is believed to be operational (tied to the nut season and effluent from Mariani's) and not related to additional residential flows going through the pump station. The City is investigating the concern with the City's sewer plant engineers (Eco-Resources) and will provide follow-up information to the Commission and Mr. TenPas.
- Tim Caro – The letter poses questions about the Biological Resources Assessment used as the basis of the Negative Declaration and makes recommendations regarding methods for doing the biological review. The applicant's biologist and the City's peer reviewer biologist have been asked to attend the Planning Commission hearing to respond to these and other questions that may arise regarding the biological resources on the site.

A resolution approving the Negative Declaration and adopting the Mitigation Monitoring Plan will be prepared for final action by the City Council if this project is approved.

COMMUNITY WORKSHOP

On September 28, 2004 the Planning Commission conducted a community workshop on this project. The minutes from that meeting are attached (see Attachment E). Some of the key points raised at that meeting and a brief explanation of how they have been addressed are as follows:

- Fence design along Grant Avenue -- A condition of approval has been included to require masonry columns, steel rails, and wood fencing, with maintenance to be a homeowner responsibility.
- Grant Avenue bike trail design -- A condition has been included to widen this right-of-way area to meet minimum standards and to require submittal and approval of a landscaping plan.
- Pedestrian pathway from Grant Avenue between lots at west end -- The proposed trail system would provide safe and logical routes for students without creating safety and privacy concerns for future homeowners. A cut-through has not been included, however, as proposed by staff in the exhibit accompanying the Callahan discussion, the bike path would be part of an overall linked trail system that would take children to the school on a safe and connected path.
- Location of affordable units -- The Planning Commission should reach a consensus as to whether they should be located off-site as proposed or on-site which could be accommodated through a prior site design.
- Erosion along Dry Creek -- The General Plan and Zoning Ordinance require a 50-foot setback from the top of the bank. This will protect the riparian and habitat values of the creek and also provide safety for residents and property from the creek during storm events.

PLANNING COMMISSION ACTION

Given the City's recent February 2003 decision to increase density on this site, the applicant's request to reverse that action raises policy issues that require deliberation. Presumably the City is seeking to achieve more units on this property -- the applicant's proposed project would not have that result. Under the General Plan about 42 units were presumed. Under the 2003 City-initiated rezoning which remains in place today about 100 units would be allowed. The project as proposed (with all affordable units satisfied off-site) would result in 38 units.

However, notwithstanding the City's 2003 action, it is relevant to note that the property is small, irregular in shape, and encumbered by both a 50-foot setback from Dry Creek and right-of-way needs along Grant Avenue. In short the constraints affecting the site tend to support a lower density product. Furthermore, the City is in need of large lot, higher-end, move-up housing for local residents and the proposed project would fulfill that need. Other projects currently being processed would better and more appropriately fulfill the need for smaller lots and more dense types of single-family product. In light of these circumstances the staff is inclined to recommend support for the project.

Should the Planning Commission concur, recommended conditions of approval are attached (see Attachment B). The Planning Commission's action to approve this project is advisory to the City Council and would automatically move forward to the Council for final action. To recommend approval the Planning Commission should take the following actions:

- 1) The Planning Commission recommends that the City Council approve a resolution finalizing and adopting the Creekside Estates Negative Declaration and adopting the Mitigation Monitoring Plan.
- 2) The Planning Commission recommends that the City Council approve an ordinance adopting the Creekside Estates Development Agreement.
- 3) The Planning Commission recommends that the City Council approve a resolution to amend the General Plan to change the land use designation for 13.7 acres comprised of APNs 003-430-12 and 003-120-04 from Medium Density Residential (MR) to Low Density Residential (LR).
- 4) The Planning Commission recommends that the City Council approve an ordinance rezoning 13.7 acres comprised of APNs 003-430-12 and 003-120-04 from Single Family Residential, 6,000 Square

Foot Average Minimum (R-2) to Single Family Residential, 7,000 Square Foot Average Minimum (R-1).

- 5) The Planning Commission recommends that the City Council approve Tentative Subdivision Map No. 4645 creating ____ lots on 13.7 acres comprised of APNs 003-430-12 and 003-120-04

If the Planning Commission determines that the recent redesignation of the site to allow smaller lots should stand, then the project should be denied. A denial is considered a final action on the project and would not move forward to Council unless an appeal is filed. To deny the project the Planning Commission should take the following action: The Planning Commission denies this project due to inconsistency with the General Plan and City zoning map.

ATTACHMENTS

- A. Tentative Map
- B. Draft Conditions of Approval
- C. Negative Declaration Comment Letters
- D. Negative Declaration and MMP (separately bound and distributed)
- E. Minutes from September 28, 2004 Community Workshop
- F. July 23, 2003 DRC Notes

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
City of Winters
318 First Street
Winters, CA 95694
Attn: Community Development Department



YOLO Recorder's Office
Freddie Dakley, County Recorder
DOC- 2005-0063213-00

Rec'd 118-Winters - HC
Thursday, DEC 22, 2005 08:52:00
Ttl Pd \$0.00 Nbr-0000614355
FRT/R5/1-99

AN AGREEMENT
BETWEEN
THE CITY OF WINTERS AND
DONALD MILLER
RELATING
TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE
CREEKSIDE PROPERTY

CONFORMED COPY
NOT COMPARED
WITH ORIGINAL

AN AGREEMENT
BETWEEN
THE CITY OF WINTERS AND
DONALD MILLER
RELATING
TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE
CREEKSIDE PROPERTY

THIS AGREEMENT is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and DONALD MILLER, (the "Developer"), under the authority of section 65864 *et seq.* of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County.

FACTS AND CIRCUMSTANCES

This Agreement is entered into based on the following facts and circumstances, among others:

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.
2. The Developer is in the business of developing residential communities in northern California, including the development of property in the manner which promotes the goals envisioned by the City for its residents.

City of Winters/Miller/ Final 4/14/05
817017-4 04691/0011

3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the property owned by the Developer, commonly known as the Creekside Property, is through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5 (commencing with Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. It is the intent of the Parties in entering into this Agreement to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain vested rights to develop the Creekside Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

THE PARTIES AGREE AS FOLLOWS:

TABLE OF CONTENTS

This Agreement is divided into articles, sections, and subsections as set forth below. The title of an article, section, or subsection is for the convenience of the Parties only and a title is not intended to alter the content or meaning of any article, section or sub-section.

Article 1. Definitions

Article 2. General Provisions

2

Article 3. Development of the Property

Article 4. Special Development Obligations

Article 5. Default, Remedies, and Dispute Resolution

Article 6. Hold Harmless and Indemnification

ARTICLE 1

DEFINITIONS

The following words and phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

Section 1.1 "Agreement" means this agreement.

Section 1.2 "Application fees" means the amount paid by the Developer for the processing of any land use entitlement or for an amendment to this Agreement.

Section 1.3 "Building Permit" means the ministerial permit issued for the construction of a residential housing unit upon the payment of all applicable fees.

Section 1.4 "Creekside Property" or "The Property" means the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcel Nos. 003-430-12 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres). A map showing its location is attached as Exhibit A.

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Section 1.5 "Creekside Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, adopted for The Property concurrently with the approval of this Agreement in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Creekside Estates Tentative Subdivision Map is attached as Exhibit C.

Section 1.6 "Creekside Estates" means the single family residential development created by the Creekside Estates Tentative Subdivision Map.

Section 1.7 "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (E.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

Section 1.8 "City of Winters" means the physical boundaries of the City of Winters.

Section 1.9 "Condition of approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

Section 1.10 "Conditions of Approval" means the conditions placed on the approval of the Creekside Estates Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

Section 1.11 "Developer" means Donald Miller and/or his successors in interest.

Section 1.12 "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

Section 1.13 "Final subdivision map" or "final map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

Section 1.14 "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of The Property for such things as traffic circulation, sewer and water conveyance facilities, and similar matters.

Section 1.15 "Land Use Entitlement" means either a Discretionary or Ministerial Approval issued to The Property by the City under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or federal law, which permits development on The Property. Examples: zoning; a conditional use permit; a tentative or final subdivision map; a building permit; a sewer or water connection.

Section 1.16 "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

Section 1.17 "Mitigation Measures" means the requirements placed on the development of The Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for The Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

Section 1.18 "Off-site improvement" means a public improvement constructed outside the physical boundaries of The Property.

Section 1.19 "On-site improvement" means a public improvement constructed within the physical boundaries of The Property.

Section 1.20 "Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

Section 1.21 "Public Improvements" or "Infrastructure" means facilities constructed for use in accommodating residential use on The Property. Examples: roads; sewer and water lines; traffic signals.

Section 1.22 "Vesting law" means any State or federal law which gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated by Reference.

Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

Section 2.2 Property to be Developed.

The property to be developed under this Agreement is the property commonly known in the City of Winters as the Creekside Property, Yolo County Assessor's Parcel Nos. 003-430-12 and 003-120-04. In this Agreement the Creekside Property will, in most instances, be referred to simply as "The Property."

Section 2.3 Agreement to be Recorded; Effective Date; Term.

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5.

b. The term of this Agreement is six (6) years, commencing on the date it is recorded. The term may be extended by mutual consent of the Parties. It may be terminated as provided in Article 5.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of The Property: (a) is for the benefit of and is a burden upon The Property; (b) runs with The Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of The Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of The Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In any event, no owner or tenant of an individual completed residential unit within Creekside Estates shall have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

a. The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

b. No assignment shall be effective until the City, by action of its City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1. The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2. The proposed assignee has adequate experience with residential developments of comparable scope and complexity to Creekside Estates and has successfully completed such developments.

c. The provisions of subsection b. do not apply to the sale of five (5) or fewer finished residential lots to individual buyers or builders.

d. The special development conditions set forth in Article 4 are not severable, and any sale of The Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

Section 2.6. Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Title 11, Chapter 2, Article 6 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal application fees.

Section 2.7 Whole Agreement; Conflict with City Code

a. This Agreement, together with any subsequent addenda, amendment or modification, shall constitute the entire agreement of the

Parties as to the development of The Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. The provisions of Title 11, Chapter 2 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venge; Attorney Fees; Alternative Dispute Resolution.

a. This Agreement shall be interpreted according to the laws of the State of California. Any litigation concerning its meaning shall be venued in the Superior Court of Yolo County. The prevailing Party in such litigation, as determined by the court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

b. Nothing herein shall preclude the Parties from entering into a separate agreement to resolve any matter concerning this Agreement by a method other than litigation in court, including binding arbitration.

Section 2.9 Notices.

a. Formal written notices, demands, correspondence, and communications between the City and the Developer shall be given if sent to the City and the Developer by any one of the following methods:

1. Via certified U.S. Mail, return receipt requested.
2. Via an overnight mail service of the type normally used by the business community, such as Federal Express, UPS Overnight, and California Overnight.

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3. By facsimile, provide a "hard" copy is sent at the same time by regular U.S. Mail.

b. The written notices, demands, correspondence, and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate.

c. Notices to the City shall be given as follows:

City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager
Telephone (530) 795-4910 x 110
FAX (530) 795-4935

d. Notices to the Developer shall be given as follows

Donald Miller
P.O. Box 457
Davis, California 95617
Telephone (530) 753-2596
FAX (530) 753-5693

ARTICLE 3

DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements; One or more Final Subdivision Maps.

a. The Property will be developed under the following land use entitlements, all of which are approved contemporaneously with the recording of this Agreement:

1. A rezoning of The Property from Single Family Residential, 6,000 Square Foot Average Minimum (R-2) to Single Family Residential,

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7,000 Square Foot Average Minimum (R-1). The rezoning is approved contemporaneously with this Agreement.

2. The Creekside Estates Tentative Subdivision Map consisting of approximately forty (40) single family residential lots on 13.7 acres. Of the forty (40) residential lots four (4) must be made available to local builders as defined by the City's land use regulations.

The Creekside Estates Tentative Subdivision Map is approved contemporaneously with the approval of this Agreement.

3. This Agreement as adopted on May 17, 2005 by Ordinance No. 2005-03 is effective as of upon recording 2005.

4. Subsequent discretionary approvals (such as design review) pursuant to the City's generally applicable land use regulations.

b. The Developer may apply for and receive one final subdivision map for Creekside Estates, or the Developer may chose to file separate final maps for various phases of Creekside Estates. If the Developer chooses to file final maps by phase, the number of phases and the size of each shall be at the discretion of the Developer, subject to the requirement for adequate infrastructure as provided in section 3.8.

c. Under the provisions of Government Code section 66452.6(a), the life of the Creekside Estates Tentative Subdivision Map is co-terminus with the life of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the development of The Property according to the terms of this Agreement conforms with the General Plan of the City of Winters.

Section 3.3 Vested Rights of Developer.

a. The Developer shall, solely with respect to The Property, have the right to the following land use entitlements regardless of subsequent amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or other ordinance, resolution, rule, or regulation adopted by the City.

1. The right to the number of single family residential building lots, and the density of development (dwelling units per acre) of those units, as shown on the Creekside Estates Tentative Subdivision Map.

2. Exclusion from any subsequently enacted building moratoria.

3. The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established as a condition to the Creekside Estates Tentative Subdivision Map.

5. The mitigation measures set forth in Exhibit D.

b. Subdivision a. does not apply to changes effecting development of The Property as mandated by State and/or federal laws effective after the

date this Agreement is recorded. In the event of such changes, the City will permit the development of The Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained By the City.

a. Except as specifically provided in section 3.2, all regulations of the City as expressly provided by State law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of The Property. Such regulations include, but are not limited to:

1. Discretionary approvals.
2. Subdivision standards in effect when a final subdivision map

is approved.

3. The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to The Property under its general police

power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 Other Vesting Laws Inapplicable.

a. It is the intent of the Parties that the provisions of this Agreement shall supersede any provision of State or federal law pertaining to the vested rights of the Developer to develop The Property, whether those laws are currently in force or become effective after this Agreement is recorded. The laws in effect as referenced in the preceding sentence include, but are not limited to, provisions of the Government Code pertaining to Development Agreements (§ 65864 *et seq.*) and Development Rights [vesting tentative maps] (§ 66498 *et seq.*).

b. Notwithstanding subsection a., however, to the extent that a State and/or federal law which becomes effective after this Agreement is recorded shall be made specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

c. The Developer shall not make any application to develop The Property, in whole or in part, under any vesting law, unless the right to do so is specifically granted by State and/or federal law which becomes effective after the date of the recording of this Agreement.

Section 3.6 Commencement of Development.

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred fifty (150) days after this Agreement is recorded, submit for approval by the City the final map for Creekside Estates (or the first phase, as the case may be) and accompanying

subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, inclement weather, acts of God, natural disasters, acts of the State and/or federal government, a referendum of the ordinance adopting this Agreement, or third party litigation challenging the validity of this Agreement. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.

d. Any time limit prescribed for any action required by this Agreement shall be extended by the number of days during which circumstances beyond the control of the Developer preclude the action from being taken.

Section 3.7 Maximum Number of Building Permits Per Year.

a. The Developer may apply for and receive as many single family building permits as there are lots remaining in Creekside Estates.

b. No building permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement.

Section 3.8 Installation of Public Improvements.

a. Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Creekside Estates. When the final map for all of Creekside Estates (or a phase, as the case may be), is approved, the Developer shall enter into a

separate written agreement with the City by which it contracts to build and dedicate the public improvements required either in all of Creekside Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by law.

b. If the Developer proceeds by filing final maps for various phases of Creekside Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase (both on-site and off-site of the entirety of Creekside Estates) must be constructed before the next phase to insure the orderly development of infrastructure within the City of Winters. In such an instance, the additional infrastructure required outside a particular phase will be built by the Developer during the construction of the phase for which a final map is approved, and the agreement to construct the public improvements for that phase shall include an obligation to build the additional infrastructure outside the boundaries of that phase.

Section 3.9 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Creekside Estates Tentative Subdivision Map, acquire the property rights necessary to construct or otherwise provide the public improvements contemplated by this Agreement.

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such

public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the final subdivision map for Creekside Estates (or the first phase as the case may be) is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire the property interests. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, and for purposes of eminent domain, the City's attorney fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

Section 3.10 Reimbursement for Oversizing of Public Improvements; Advance Funding of Certain Improvements; Credit for Improvements Installed.

a. In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Creekside Estates. These improvements will benefit other

properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

b. There are two sources from which the Developer may be reimbursed for oversizing:

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property to reimburse the Developer its *pro rata* share of the cost of the oversizing. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of the payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. In any instance in which oversizing is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the prorata share to be borne by The Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing

properties or from mitigation fees as described in subsection b.

1. When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

2. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

3. If benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a building permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a building permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the building permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as

determined by the City Engineer. (Example: If a fee of \$1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of \$5,000, then the Developer will be credited with having paid that fee for 5 building permits.)

Section 3.11 Subsequent Discretionary Approvals.

To the extent any discretionary approvals are required to develop The Property after this Agreement is recorded, the Developer shall apply for those approvals in the same manner as any other person applying for land use entitlements from the City. All application fees then applicable for the type of land use entitlement(s) sought shall apply.

Section 3.12 Review of Agreement.

Reviews by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Title 11, Chapter 2, Article 7 (Review) of the Winters Municipal Code.

Section 3.13 Compliance with Government Code Section 66006.

As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of The Property.

ARTICLE 4
SPECIFIC DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

a. The Developer acknowledges and agrees that the mitigation of the impact of Creekside Estates on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that its intention entering into this Agreement is to mitigate the impact on schools to the greatest reasonable extent, in accordance with the terms of an agreement negotiated between the Developer and the Winters Joint Unified School District. A copy of the agreement is attached as Exhibit E.

b. As a condition to the approval of this Agreement by the City, the Developer shall present to the City Council, at the time of the first reading of the ordinance approving this Agreement by the City Council, a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement shall provide, in addition to such other matters as the parties to it may agree, that the Developer will pay to the School District, at the time of the issuance of a building permit:

1. For each of the forty (40) residential units in Creekside Estates, fees designated as "Level 2" fees as that term is commonly used in the K-12 education community; and

2. For all units in Creekside Estates, except any very low income and low income affordable units, "Level 3" fees as that term is commonly used in the K-12 education community.

c. The Developer acknowledges receipt of the document dated October 2004 adopted by the School District entitled "School Facility Needs Analysis" prepared by Government Financial Strategies, Inc. This document will be used by the Developer and the School District in reaching the agreement referred to in subsection b.

Section 4.2 0.9 +/- Acre Park.

a. Developer shall provide a 0.9 +/- acre neighborhood park ("the Park Obligation"). The Park Obligation consists of three components:

1. Providing land.
2. Providing infrastructure.
3. Planning, developing, and equipping the park.

b. The Parties acknowledge that it is in the best interests of the community that the City accept a sum of money which represents the monetary value of the Park Obligation rather than have the Developer include a fully operational 0.9 +/- acre park within Creekside Estates. The payment of the Park Obligation by the Developer is in lieu of payment of any park impact fees as provided by City ordinance.

c. Developer agrees to satisfy the Park Obligation as follows.

1. At the time of filing the final map for Creekside Estates (or the first phase thereof, as the case may be) a payment of one hundred percent (100%) of the amount calculated by the City Engineer as set forth in e. below.

2. An additional fifty percent (50%) of the amount calculated under 1. above, payable as follows:

a) The additional fifty percent (50%) shall be divided by the number of market rate units in Creekside Estates (36 units). The resulting amount shall be paid each time a building permit is issued for one of the thirty-six (36) market rate units.

b) If at the end of thirty (30) months from the recording of the final map for Creekside Estates (or the first phase thereof, as the case may be), the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining amount owing within ten (10) business days of being notified of the City to do so. (Example: If at the end of 30 months, the Developer has obtained twenty (20) building permits for market rate units and has paid fees under this subsection, then the Developer, upon notice from the City, shall pay the fees owed under this subsection for the remaining 16 market rate units.)

d. Once all amounts owed under c., above, have been paid, the Developer will have satisfied the Park Obligation.

e. The Park Obligation shall be computed by the City Engineer as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to The Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City within ninety (90) days thereafter, unless the Parties agree to a different date. The appraisal shall determine the fair market value of 0.9 +/- acres of The

Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this Agreement.

2. The estimated cost of the infrastructure improvements will be calculated by the City Engineer using the per acre cost of Sixty Thousand Dollars (\$60,000).

3. The estimated cost of the development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer using the per acre cost of Two Hundred Twenty-Nine Thousand Five Hundred Dollars (\$229,500).

4. To the total determined by adding the costs determined under 1., 2., and 3., above, shall be added five percent (5%) for administration, including, but not limited to, the use of eminent domain by the City as necessary to acquire park land.

Section 4.3 Advance Funding of Fees For Construction of Police/Fire/Corporation Yard Facility.

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel shown on Exhibit F. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for Creekside Estates (or the first phase, as the case may be), pay to the City development fees as follows:

1. A police facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

2. A fire facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

3. A general municipal facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

b. Each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit.

c. If, at the time of the actual issuance of a building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

Section 4.4 Annuity in Lieu of Mello-Roos District.

a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of Creekside Estates per the document entitled EPS Fiscal Impact Analysis for Creekside Estates, dated February 21, 2005. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.

b. The funding of the annuity will be created and funded as follows:

1. From the escrow for the sale of each residential lot to a third party the Developer will pay to the City the sum of Sixty Five Hundred Dollars (\$6,500.00).

2. The City will invest the amounts received under this section in an annuity, or other similar investment, which will create a stream of income to be paid into the City's General Fund to pay for the increase in the cost of municipal services resulting from the development of Creekside Estates.

Section 4.4 Payment to Library Fund.

Prior to recording of the final map for Creekside Estates (or the first phase, as the case may be) the Developer shall pay to the City the sum of Twenty-Five Thousand Dollars (\$25,000.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

Section 4.5 Affordable Housing.

Lot numbers 7 and 9 as shown on the Creekside Estates Tentative Subdivision Map will be divided in two to create four (4) affordable housing units (one (1) moderate income, two (2) low income, and one (1) very low income unit).

In addition, Developer is required to create two (2) affordable units off-site. In lieu of constructing two (2) off-site affordable housing units, the Developer shall, at the time of filing of the final map for Creekside Estates (or the first phase thereof, as the case may be) pay to the City Two Hundred Thousand Dollars (\$200,000.00).

Section 4.7 Urban Water Management Plan.

a. The Developer shall pay the cost of the preparation of a City Urban Water Management Plan. Payment shall be due and payable no later than the date upon which the final map for Creekside Estates (or the first phase, as the case may be) is recorded. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the Management Plan, as provided by section 3.10, to be paid by other developments benefiting from the Management

Plan, but only those commonly identified as Creekside, Winters Highlands and Hudson-Ogando.

b. The amount and timing of reimbursement under this section shall be the subject to a separate reimbursement agreement between the City and the Developer.

Section 4.8 Water Well.

At the time of filing the final map for Creekside Estates (or the first phase thereof, as the case may be) the Developer shall pay its pro-rata share of the construction of a water well at a location designated on the Creekside Estates Tentative Subdivision Map, or such other location on that map as selected by the City Engineer, in an amount finally determined by the City Engineer. The pro-rata share is currently estimated to be Twenty-Six Hundred Dollars (\$2,600.00) per lot.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

Section 5.1 Application of Article. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

Section 5.2 City's Remedies

a. The City's remedies under this Agreement are as follows:

1. Termination of the Agreement after giving the Developer the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of Creekside Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. Specific performance as provided in subsection c.

4. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5. An action for damages as provided in subsection d.

b. Default by the Developer.

i. Notice of Default. With respect to a default by the Developer under this Agreement, the City shall first submit to the Developer a written notice of default identifying with specificity those obligations of the Developer which have not been performed. Upon receipt of the notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default. The Developer shall complete the cure of the default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy the default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

2. Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the Council in accordance with the notice and hearing

requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

3. Modification or Termination of Agreement. If, after the public hearing, the City Council determines Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement.

c. Specific Performance. The City may seek specific performance to compel the Developer to do any, or all, of the following:

1. To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

2. To dedicate and properly complete any public improvements which are required by this Agreement.

3. To complete, demolish or make safe and secure any uncompleted private improvements located on The Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by The Developer in its sole discretion.

d. The City may institute an action for damages for the amount of any money owed to it under Article 4, or the cost of performing any act required of the Developer under Article 4, or the cost to complete any public improvements required to be installed under the final map (or any phase, if applicable) for Creekside Estates.

5.3 Developer's Remedies.

a. The Developer's remedies under this agreement are as follows:

1. An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of Creekside Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

b. Default and Notice of Default. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For

the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorney fees for actions under a. above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorney fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

a. The Parties represent and declare that this Agreement creates no partnership, joint venture, or other legal entity between them.

b. In entering into this Agreement, the City is acting under the statutory and/or police powers which it holds as a municipal corporation of the State of California and which authorize it to regulate the development of land within its boundaries and to provide for the general health safety and welfare.

c. In entering into this Agreement, the Developer is acting in a purely private capacity as an owner of real property within the City of Winters, which property is subject to the jurisdiction of the City acting in the capacity set forth in subsection b.

Section 6.2 No Liability for Acts of the Developer.

a. It is expressly understood that the development of Creekside Estates is an undertaking that may create for the Developer liability to third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and sub-contractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers,

agents, and employees from any claim of injury to person or property arising out of the operations of the Developer in the development of Creekside Estates under the terms of this Agreement or otherwise.

c. Notwithstanding anything in Article 5 to the contrary, the City shall have any remedy available to it at law and/or equity to enforce the provisions of this section or to collect damages for any breach of it.

Section 6.3. Duty to Defend Challenges to this Agreement.

a. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

b. The Parties jointly agree to cooperate jointly to defend any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

c. In the event of any such challenge, each Party shall bear its own attorney fees and other litigation expenses.

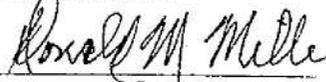
d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorney fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. Notwithstanding subsection b, the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. However, nothing herein obligates the Developer,

should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.

DEVELOPER

DONALD MILLER



Dated: May 13, 2005

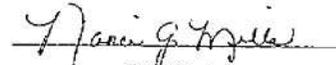
CITY OF WINTERS

By: 

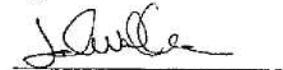
Mayor

Dated: July 29, 2005

Attest:


City Clerk

Approved as to form:


John Wallace, City Attorney

 6-25-05
Tim Taylor of Somach, Simmons & Dunn, Attorneys for Developer

This Agreement was adopted by Ordinance No. 2005-03 of the City Council of the City of Winters. Ordinance No. 2005-03 was adopted on May 17, 2005 and is effective on the date it is recorded with the Yolo County Recorder.

LIST OF EXHIBITS:

- EXHIBIT A Location Map of Creekside Property
- EXHIBIT B Legal Description of Creekside Property
- EXHIBIT C Creekside Estates Tentative Subdivision Map
- EXHIBIT D Conditions of Approval, including Mitigation Measures
- EXHIBIT E School Agreement
- EXHIBIT F Map of 3.45+/- Parcel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of California } ss.
 On 7/21/05 before me, Shelly A. Gunby, Notary Public
Date Name of Officer (e.g., Jane Q. Notary Public)
 personally appeared Dave Martinez
(Name of Signer)
 personally known to me
 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(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Shelly A. Gunby
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer _____

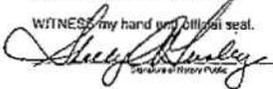
Signer's Name: _____

Individual
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing: _____

NOTARY PUBLIC
 Top of Thumb Area

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Yuba } ss.
 On 5/13/05 before me, Shelly A. Gurney, Notary Public
(Notary Public in and for the State of California)
 personally appeared Donald M. Miller
Name of Signer(s)
 personally known to me
 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(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
 WITNESS my hand and official seal.

Notary Public

OPTIONAL
 Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent repetition and reattachment of this form to another document.

Description of Attached Document
 Title or Type of Document: _____
 Document Date: _____ Number of Pages: _____
 Signer(s) Other Than Named Above: _____

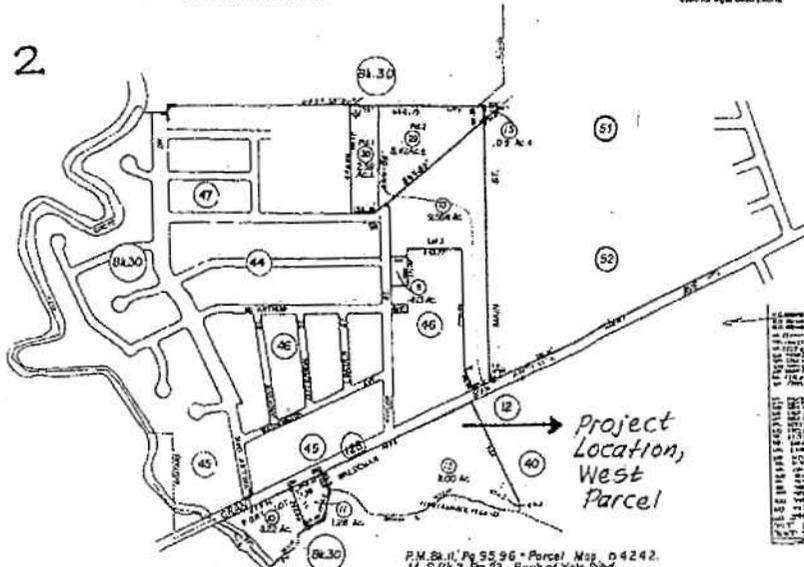
Capacity(ies) Claimed by Signer
 Signer's Name: _____
 Individual
 Corporate Officer - Title(s): _____
 Partner - Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of Thumb Here

EXHIBIT A
Location Map of Creekside Property

2 of 2



M.B.S. Bl. 7, Pg. 42 - Pat. Lot 16, Woburns Subd.
 M.B.S. Bl. II, Pg. 64 - L.W. Vickrey Enterprises
 P.M. Bl. 5, Pg. 60 - Joe Opando - # 3030.
 P.M. Bl. 7, Pg. 56 - Pat. Map 3209 for Vickrey Enterprises, Inc.
 P.M. Bl. 7, Pg. 59 - Pat. Map 3338 for Vickrey Enterprises, Inc.
 M.B. Bl. 13 Pg 75-78 - Dry Creek Unit I, # 3188.
 75-81

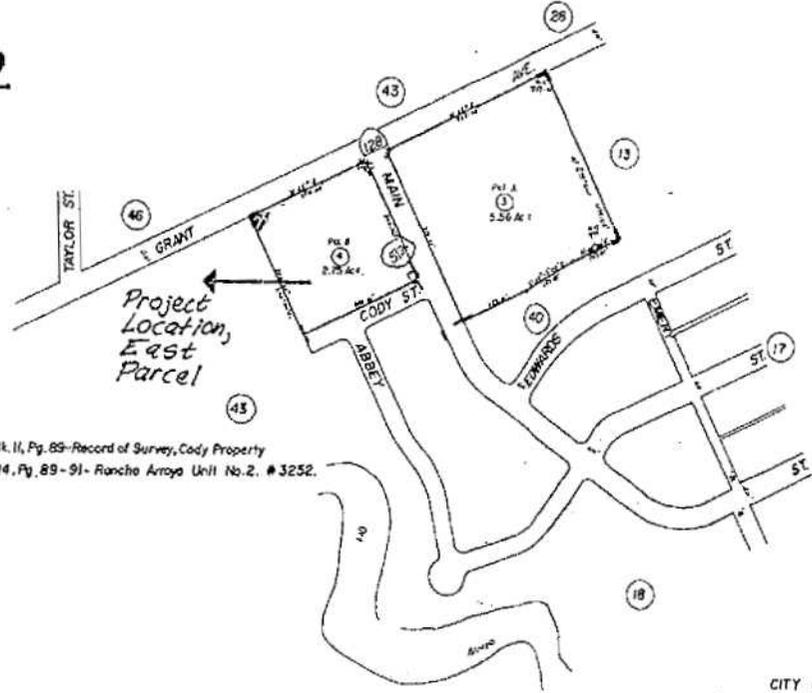
P.M. Bl. II, Pg. 95-96 - Parcel Map D 4242.
 M. S. Bl. 3, Pg. 23 - Bank of Yolo Subd.
 P.M. Bl. 00, Pg. 34, 35 - Pat. Map 84268.
 M.B. Bl. 00, Pg. 170 to 174 - Subd. # 4264.

(formerly 30-15)
 NOTE - Assessor's Block Number Shown in Ellipses
 Assessor's Parcel Number Shown in Circles

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100	100	100	100

CITY OF WINTERS
 Assessor's Map Bl. 3, Pg. 43.
 County of Yolo, Calif.
 86/78

1 of 2



M.B.S. Bl. II, Pg. 89 - Record of Survey, Cody Property
 M.B. Bl. 14, Pg. 89 - 91 - Rancho Arroyo Unit No. 2, # 3252.

NOTE - Assessor's Block Number Shown in Ellipses
 Assessor's Parcel Number Shown in Circles

CITY OF WINTERS,
 Assessor's Map Bl. 3, Pg. 12.
 County of Yolo, Calif.
 86/78

EXHIBIT B
Legal Description of Creekside Property

ORDER NO. : 3111001021-GH

The land referred to is situated in the County of Yolo, City of Winters, State of California, and is described as follows:

PARCEL NO. 1

Beginning at a point on the Northerly line of Rancho Rio de Los Pinos, distant thereon North 65° East, 23.37 chains, more or less, from the Northwest corner of Lot 16 of Waldemars Survey of Subdivision of a portion of Rancho Rio de Los Pinos; said point of beginning being also the Northeast corner of a tract of land now or formerly owned by G. B. Moore; thence from said point of beginning, North 65° East, along the said Northerly line of said Rancho 62 rods 10 feet to the Northwest corner of a tract of land now or formerly owned by A. B. Wilson; said Northwest corner of said Wilson's land being located North 25° West 39.0 feet and South 65° 1625.70 feet to the Northwest corner of Block 1, D. P. Edwards Addition to the Town of Winters according to the Official Plat thereof, filed for record in the office of the Recorder of Yolo County, California, in Book 39 of Deeds, Page 394; thence South 25° East, along the West line of said Wilson's land, 44 rods to a point; thence South 00° 29.5' West 4 rods, 6 feet and 6 inches to the center of dry arroyo; thence Northwesterly along the said center of said arroyo 75 rods, more or less, to the Southeast corner of the first mentioned tract of land now or formerly owned by Moore; thence North 25° West, along the East line of said Moore's land 7 rods to the point of beginning.

APN: 003-430-12

PARCEL NO. 2

Lot 8 of Subdivision No. 3252, Rancho Arroyo No. 2, recorded on July 27, 1987, in Book 14 of Maps, Pages 89, 90 and 91, Yolo County Records, and as corrected by Certificate of Correction recorded September 21, 1988, in Book 1969, Page 380, Official Records.

APN: 003-120-04

EXHIBIT C Creekside Estates Tentative Subdivision Map

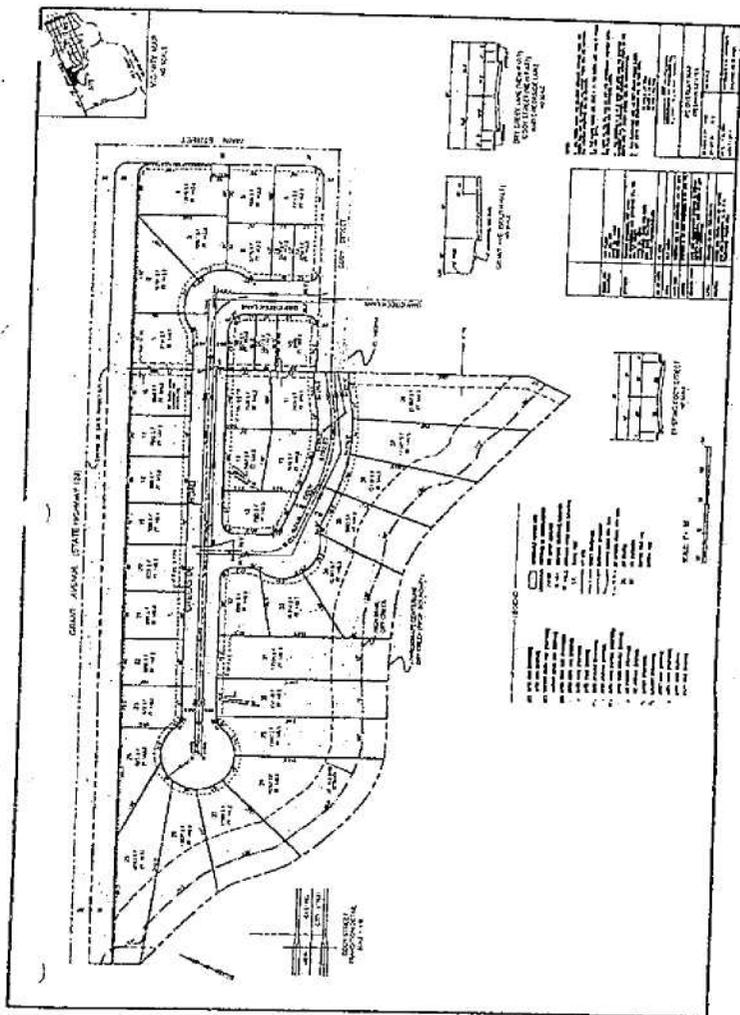


EXHIBIT D
Conditions of Approval, including
Mitigation Measures

FINDINGS OF FACT AND CONDITIONS OF APPROVAL
for the CREEKSIDE ESTATES SUBDIVISION PROJECT
(Final revised -- approved by City Council on April 19, 2005)

FINDINGS OF FACT

Findings for Adoption of Mitigated Negative Declaration

1. The City Council has considered the proposed Mitigated Negative Declaration before making a decision on the project.
2. The City Council has considered comments received on the Mitigated Negative Declaration during the public review process.
3. The City Council finds that the environmental checklist/initial study identified potentially significant effects, but: a) mitigation measures agreed to by the applicant before the mitigated negative declaration and initial study were released for public review would avoid the effects or mitigate the effects to a point where clearly no significant impact would occur; and b) there is no substantial evidence, in light of the whole record before the City, that the project as revised to include the mitigation measures may have a significant effect on the environment.
4. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Winters.
5. The Mitigated Negative Declaration has been prepared in compliance with CEQA and the State CEQA Guidelines, and as amended/revised is determined to be complete and final.
6. The custodian of the documents, and other materials, which constitute the record of proceedings is the Community Development Director. The location of these items is the office of the Community Development Department at City Hall, 318 First Street, Winters, California 95694.
7. The Mitigation Monitoring Plan is hereby adopted to ensure implementation of mitigation measures identified in the Mitigated Negative Declaration. The City Council finds that these mitigation measures are fully enforceable as conditions of approval of the project, and shall be binding on the applicant, future property owners, and affected parties.
8. The City Council hereby adopts the Creekside Estates Subdivision Mitigated Negative Declaration.

Findings for General Plan Amendment

1. Amendment of the General Plan to redesignate this property for larger lots is in the best interest of the citizens of Winters and necessary to provide "move up" housing which is currently in short supply within the City.

Findings for Rezoning

1. The public health and general welfare warrant the change of zone and the change of zone is in conformity with the General Plan.

Findings for PD Overlay and PD Permit

2. The project, as modified and conditioned, is consistent with the General Plan and the purposes of Section 8-1.5117 of the Zoning Ordinance.

3. Deviations from specified provisions of the basic zoning district on the property have been justified as necessary to achieve an improvement design for the development and/or the environment. The development complies with the remaining applicable provisions of the basic zoning district on the property.
4. The proposed development, as modified and conditioned, is desirable to the public comfort and convenience.
5. The requested plan, as modified and conditioned, will not impair the integrity or character of the neighborhood nor be detrimental to the public health, safety, or general welfare.
6. Adequate utilities, access roads, sanitation, and/or other necessary facilities and services will be provided or available.
7. The development, as modified and conditioned (including execution of the Development Agreement) will not create an adverse fiscal impact for the City in providing necessary services.

Findings for Amendment of the Bikeway System Master Plan

1. The amendment to the Bikeway System Master Plan results in increased bicycle trail standards for the City resulting in a net benefit to the community and net increase in protected routes for alternative circulation.

Findings for Tentative Subdivision Map (G.C. 66474)

1. The proposed map is consistent with the General Plan.
2. The design and improvement of the proposed map is consistent with the General Plan.
3. The site is physically suitable for the type of development.
4. The site is physically suitable for the proposed density of development.
5. The design of the subdivision and the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. The design of the subdivision and type of improvements will not cause serious public health problems.
7. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Findings for Development Agreement

1. The DA is consistent with the objectives, policies, general land uses and programs specified in the General Plan.
2. The DA is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is or will be located.
3. The DA is in conformity with and will promote public convenience, general welfare and good land use practice.
4. The DA will not be detrimental to the health, safety and general welfare.

5. The DA will not adversely affect the orderly development of property or the preservation of property values.
6. The DA will meet the intent of Section 11-2.202(a) (Public Benefits) of the City Code.
7. The DA is consistent with Ordinance 2001-05 (Development Agreements).

CONDITIONS OF APPROVAL

The following conditions of approval are required to be satisfied by the applicant/developer prior to final map, unless otherwise stated.

General

1. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project Applicant shall defend, indemnify, and hold harmless the City or its agents, officers and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense which includes court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the subdivider in good faith approves the settlement, and the settlement imposes not direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning Commission, any advisory agency to the City, local district and the City Council.
2. All conditions identified herein shall be fully satisfied prior to acceptance of the first final map unless otherwise stated.
3. The project is as described in the Negative Declaration (as corrected in the final resolution of approval). The project shall be constructed as depicted on the maps and exhibits included in the Negative Declaration, except as modified by these conditions of approval. Substantive modifications require a public hearing and Council action.

General Plan Requirements

4. Pursuant to General Plan Policy II.A.19, a minimum of ten percent of the single-family lots (4 lots) shall be offered for sale to local builders or owner-builders.
5. Pursuant to General Plan Policy II.C.1 and VI.F.2, energy efficient design shall be used. At a minimum this shall include: maximization of energy efficient techniques as identified in the July 27, 2004 Planning Commission staff report on "Proposed Energy Resolution" (attached), and attainment of EPA Energy Star Standards in all units; low emission furnaces; and avoidance of dark colored roofing. A minimum of 12 of the market-rate homes shall have a minimum of 2.4kW (peak-rated DC watts) photovoltaic solar energy system. The developer shall identify these lots on the final map and purchasers shall be notified prior to sale.
6. Pursuant to General Plan Policy II.D.4 and IV.A.1 necessary public facilities and services shall be available prior to the first occupancy of the project.

7. Pursuant to General Plan Policy IV.A.4 (second sentence), the developer shall pay in-lieu fees for the increment of parkland not provided on site, or at the City's discretion may construct needed improvements according to City specification in lieu of paying the fees.
8. Pursuant to General Plan Policy VI.C.7, drought-tolerant and native plants, especially valley oaks, shall be used for landscaping roadsides, parks, schools, and private properties. Pursuant to General Plan Policy VI.C.8, drainage-detention areas shall incorporate areas of native vegetation and wildlife habitat. All homes in this subdivision shall have "low application rate" lawn sprinkler systems, as approved by the Planning Commission.
9. Pursuant to General Plan Policy IV.B.14, there shall be a water meter on each new hook-up.
10. Pursuant to General Plan Policy IV.C.2, adequate sewer service shall be provided prior to the issuance of any individual building permit.
11. Pursuant to General Plan Policy IV.J.2, all new electrical and communication lines shall be installed underground.
12. Pursuant to General Plan Policy VI.A.6, grading shall be carried out during dry months, when possible. Areas not graded shall be disturbed as little as possible. Construction and grading areas, as well as soil stockpiles, should be covered or temporarily revegetated when left for long periods. Revegetation of slopes shall be carried out immediately upon completion of grading. Temporary drainage structures and sedimentation basins must be installed to prevent sediment from entering and thereby degrading the quality of downstream surface waters, particularly Putah Creek. The full cost of any necessary mitigation measures shall be borne by the project creating the potential impacts. Pursuant to General Plan Policy VII.B.3, should the City allow any grading to occur during the rainy season, conditions shall be implemented to ensure that silt is not conveyed to the storm drainage system.
13. Pursuant to General Plan Policy VI.E.6, construction-related dust shall be minimized. Dust control measures shall be specified and included as requirements of the contractor(s) during all phases of construction of this project and shall be included as a part of the required construction mitigation plan for the project.
14. Pursuant to General Plan Policy VII.A.1, VII.A.2, and VII.C.4 all site work and construction activities shall be in accordance with the requirements of the City, and other applicable local, regional, state, and federal regulations.
15. Pursuant to General Plan Policy VII.C.1, necessary water service, fire hydrants, and access roads shall be provided to the satisfaction of the Fire Chief and Winters Fire Protection District standards.
16. Pursuant to General Plan Policy VII.C.2, a minimum fire-flow rate of 1,500 gallons per minute is required for all residential uses.
17. Pursuant to General Plan Policy VIII.D.2, street trees shall be planted along all streets, in accordance with the City's Street Tree Plan and Standards. There shall be a minimum of one street tree in the center front of each single-family lot, and on both frontages for corner lots. All trees shall be of a type on the approved street tree list and shall be a minimum of fifteen gallons in size with a mature tree canopy of at least a thirty-foot diameter within five years. The intent is that majestic street tree species that create large canopies at maturity will be required in all medians and streetside landscape strips. The goal is create maximum shade canopy over streets and sidewalks.
18. Pursuant to General Plan Policy VIII.D.4, a permanent mechanism for the ongoing maintenance of street trees is required, to the satisfaction of the City Manager and City Finance Director.
19. Pursuant to General Plan Policy VIII.D.7, all lighting including street lighting, shall be designed, installed, and maintained to minimize excess light spillage, unnecessary brightness and glare, and degradation of night sky clarity.

Dry Creek Protections

20. Pursuant to General Plan Policy VI.D.1, the Dry Creek corridor shall be protected by a 50-foot setback from the bank within which no structure may be constructed or placed and the natural terrain and vegetation shall be preserved and protected.
21. Pursuant to General Plan Policy VI.D.2, except for trails, the Dry Creek corridor shall be preserved as much as possible in its natural state. Access and trails shall not eliminate or degrade riparian habitat values and shall be sited to minimize impacts on sensitive wildlife habitat or riparian vegetation.
22. Pursuant to General Plan Policy VI.D.3, trees and shrubs planted within the corridor shall be selected from a list of native plants approved by the City. Non-native trees and shrubs should be removed. New irrigation or planting within the dripline of existing native oaks within the protected area of the creek corridor are prohibited.
23. Pursuant to General Plan Policy VI.O.8, brush clearing, mowing of natural vegetation, fire breaks, or similar activities are prohibited in the corridor unless a demonstrated need exists to protect the public health, safety, or welfare as determined by the Fire Protection District or other public agency with legal jurisdiction.
24. The entirety of these conditions related to restrictions within the 50-foot setback shall be disclosed to each buyer as a written notification, the wording for which shall be approved by the City Attorney.
- 24.1 There shall be no improvements placed within the high creek banks of Dry Creek. This shall be disclosed to each buyer of a lot adjoining Dry Creek as a written disclosure. Wording shall be approved by the City Attorney.
- 24.2 Lots adjoining Dry Creek shall include a written disclosure to each buyer that the creek is a dynamic entity with banks that may erode or shift over time. The 50-foot setback is imposed for that reason. Wording shall be approved by the City Attorney.

Negative Declaration Mitigation Measures

25. Mitigation Measure #1: Outdoor light fixtures shall be low-intensity, shielded and/or directed away from adjacent areas and the night sky. All light fixtures shall be installed and shielded in such a manner that no light rays are emitted from the fixture at angles above the horizontal plane. High-intensity discharge lamps, such as mercury, metal halide and high-pressure sodium lamps shall be prohibited. Lighting plans shall be submitted for approval as part of facility improvement plans to the City with certification that adjacent areas will not be adversely affected and that offsite illumination will not exceed 2-foot candles.
 - Prior to issuance of a building permit, the applicant shall submit a photometric and proposed lighting plan for the project to the satisfaction of the Community Development Department to ensure no spillover light and glare onto adjoining properties.
26. Mitigation Measure #2:
 - a. Construction equipment exhaust emissions shall not exceed District Rule 2-11 Visible Emission limitations.
 - b. Construction equipment shall minimize idling time to 10 minutes or less.
 - c. The prime contractor shall submit to the District a comprehensive inventory (i.e. make, model, year, emission rating) of all the heavy-duty off-road equipment (50 horsepower or greater) that will be used an aggregate of 40 or more hours for the construction project. District personnel, with assistance from the California Air Resources Board, will conduct initial Visible Emission Evaluations of all heavy-duty equipment on the inventory list.

An enforcement plan shall be established to weekly evaluate project-related on-and-off-road heavy-duty vehicle engine emission opacities, using standards as defined in California Code of Regulations, Title 13, Sections 2180 - 2194. An Environmental Coordinator, CARB-certified to perform Visible Emissions Evaluations (VEE), shall routinely evaluate project related off-road and heavy duty on-road equipment emissions for compliance with this requirement. Operators of vehicles and equipment found to exceed opacity limits will be notified and the equipment must be repaired within 72 hours.

Construction contracts shall stipulate that at least 20% of the heavy-duty off-road equipment included in the inventory be powered by CARB certified off-road engines, as follows:

175 hp - 750 hp	1996 and newer engines
100 hp - 174 hp	1997 and newer engines
50 hp- 99 hp	1998 and newer engines

In lieu of or in addition to this requirement, the applicant may use other measures to reduce particulate matter and nitrogen oxide emissions from project construction through the use of emulsified diesel fuel and/or particulate matter traps. These alternative measures, if proposed, shall be developed in consultation with District staff.

27. Mitigation Measure #3: Homes constructed as a part of the project shall contain only low-emitting EPA certified wood-burning appliances or natural gas fireplaces.
28. Mitigation Measure #4: Focused surveys for Valley Longhorn Elderberry Beetles (VELB) shall be conducted by a qualified biologist to determine presence of the species. The surveys shall be conducted, data collected, and mitigation required according to the USFWS' guidance document Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS 1999). If no plants are found then no further mitigation is required. If plants are found they shall be avoided and a 20-foot buffer from the dripline is required, if the plants can not be avoided then consultation with the USFWS is required and a mitigation plan should be prepared for approval by the Service. At a minimum the mitigation plan should include acquisition of credits at an approved mitigation bank or implementation of onsite mitigation and monitoring plan that includes transplantation of plants and planting elderberry seedlings. If the potential for take is identified following surveys, the project proponent will implement the referenced guidelines through coordination with the USFWS under Section 10 of the federal Endangered Species Act.
29. Mitigation Measure #5: The project proponent shall mitigate for potential project-related impacts to nesting raptors by conducting a pre-construction survey of all trees suitable for use by nesting raptors on the subject property or within 500 feet of the project boundary as allowable. The preconstruction survey shall be performed no more than 30 days prior to the implementation of construction activities. The preconstruction survey shall be conducted by a qualified biologist familiar with the identification of raptors known to occur in the vicinity of the City of Winters. If active special-status raptor nests (e.g. Swainson's hawk or white-tailed kite) are found during the preconstruction survey, a 0.25-mile (1,320-feet) buffer zone shall be established around the nest and no construction activity shall be conducted within this zone during the raptor nesting season (typically March-August) or until such time that the biologist determines that the nest is no longer active. The buffer zone shall be marked with flagging, construction lathe, or other means to mark the boundary of the buffer zone. All construction personnel shall be notified as to the existence of the buffer zone and to avoid entering the buffer zone during the nesting season. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.
30. Mitigation Measure #6: The project proponent shall mitigate for potential project-related impacts to burrowing owl by conducting a pre-construction survey no more than 30 days prior to the initiation of construction activity. The pre-construction survey shall be conducted by a qualified biologist familiar with the identification of burrowing owls and the signs of burrowing owl activity. If active burrows are found on the project site, the California Department of Fish and Game (CDFG) shall be consulted regarding appropriate mitigation measures for project-related impacts to burrowing owl. Pursuant to the CDFG document entitled "Staff Report on Burrowing Owl Mitigation" (September 25, 1995), it is

likely that replacement habitat will be required by CDFG. The guidelines include specific mitigation to protect nesting and wintering owls and to compensate for loss of breeding sites. In general, if the project would remove habitat of an occupied breeding site (e.g., if an active nest and surrounding habitat are removed), the project proponent will be required to compensate by preserving 6.5 acres of suitable habitat for each active nest site. In addition, the project proponent must install artificial burrows to offset the direct loss of the breeding site. Implementation of this mitigation measure shall be confirmed by the City of Winters prior to the initiation of construction activity.

31. Mitigation Measure #7: The project proponent shall mitigate for potential project-related impacts to Swainson's hawk foraging habitat by complying with the Yolo County Memorandum of Understanding (MOU) regarding project-related impacts to Swainson's hawk foraging habitat. The MOU requires the project proponent mitigate at a 1:1 ratio for every acre of suitable Swainson's hawk foraging habitat that is impacted by the project. The City shall review the MOU with DFG to determine whether or not the portion of the project area that was planted in orchard is subject to the mitigation fee. A fee shall be collected by the City of Winters for impacts to up to 13.7 acres of potential Swainson's hawk foraging habitat. The fee shall be payable to the Wildlife Mitigation Trust Account. Funds paid into the trust account shall be used to purchase or acquire a conservation easement on suitable Swainson's hawk foraging habitat and for maintaining and managing said habitat in perpetuity. The cost per acre for acquisition and maintenance of foraging habitat is reviewed annually and the project proponent shall be charged at the rate per acre at the time of project approval. Payment shall be made to the trust account prior to the initiation of construction activity and shall be confirmed by the City of Winters prior to the issuance of a grading permit.
32. Mitigation Measure #8: If cultural resources (historic, archeological, paleontological, and/or human remains) are encountered during construction, workers shall not alter the materials or their context until an appropriately trained cultural resource consultant has evaluated the situation. Project personnel shall not collect cultural resources. Prehistoric resources include chert or obsidian flakes, projectile points, mortars, pestles, dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or adobe foundations or walls, structures and remains with square nails, and refuse deposits often in old wells and privies. If the bone is uncovered and it appears to be human, California law mandates that the Yolo County coroner be contacted. If the bone is likely to be Native American in origin, the coroner must contact the Native American Heritage Commission in Sacramento to identify the most likely descendants.
33. Mitigation Measure #9: A Geotechnical Report shall be prepared for the subdivision by a qualified engineer to confirm onsite soil capabilities and geological conditions and make recommendations to be followed in subsequent home construction. Grading of the site, design of foundations for proposed structures and construction of other related facilities on the property shall follow the criteria identified in the report.
34. Mitigation Measure #10:
 - a. Several soil samples shall be collected from a burn area on the southerly side of the metal barn and tested for priority pollutant metals.
 - b. Several soil samples shall be collected from the orchard area and from the vicinity of the irrigation well (a former chemical mixing area) and tested for the presence of organochlorinated pesticides. A water sample from the irrigation well shall also be collected and tested for organochlorinated pesticides.
 - c. The two on-site water wells shall be properly abandoned in accordance with State and County regulations.
 - d. The open sewage trench on the westerly side of the residence shall be properly closed and abandoned in accordance with County regulations for sewer and septic systems.
35. Mitigation Measure #11: All aspects of the project shall be subject to design review to ensure compatibility with the surrounding area and satisfaction of the Community Design Guidelines and other applicable principles of good neighborhood design. Prior to issuance of a building permit for

each home, the builder shall submit for design review and approval. The developer is responsible for securing design review approval for the Grant Avenue landscape area and fencing.

36. Mitigation Measure #12: Where the facades of two-story homes are located within 47 feet of the Grant Avenue roadway centerline, the building plans shall be reviewed by a qualified acoustical professional to identify the acoustical treatments necessary for the units to meet the 45 dB Ldn interior noise level criteria. If these homes are located more than 47 feet from the Grant Avenue roadway centerline, no additional acoustical analysis is necessary.
37. Mitigation Measure #13: The applicant shall fund the preparation of a fiscal impact analysis to examine project impacts on the City's general fund. The applicant shall enter into a Development Agreement with the City that includes provisions acceptable to the City Council for mitigating any projected fiscal deficit. This may include an on-going Mello-Roos Community Facilities District (CFD) to fund eligible services, a Lighting and Landscaping District which could fund eligible park and landscaping expenses, establishment of an annuity the interest proceeds of which would cover the projected deficit, or other acceptable mechanisms.
38. Mitigation Measure #14: The applicant shall pay park mitigation fees to satisfy the obligation for 0.9-acre of developed parkland. Fees shall include both the value of the land and improvements that would otherwise be constructed if the parkland was provided on-site.
39. Mitigation Measure #15: a. Install a traffic signal at the intersection of Grant Avenue/I-505 Northbound Ramps. The traffic signal would need to be installed after construction and occupancy of 40 single family dwelling unit "equivalents" citywide (i.e., multi-family housing units are 0.6 single family dwelling unit "equivalents").
b. The applicant shall pay a fair share of the cost for design and installation of a traffic signal at the intersection of Railroad Avenue/Main Street at buildout.
40. Mitigation Measure #18: The proposed systems for conveying project sewage, water, and drainage shall be finalized and approved by the City Engineer prior to final map. The project applicant shall commission a detailed study to evaluate the capacity available in the Edwards Street sewer line and shall provide facility improvements to accommodate the proposed Creekside Estates development. The project is required to fund and construct off-site improvements necessary to support the development. Such improvements could include, but not be limited to a water well, water lines, sewer lines and storm drainage lines. Should property acquisition or additional CEQA clearance be required for off-site improvements, this will be the responsibility of the developer.
41. Mitigation Measure #17: If necessary, the applicant shall fund the up-front costs of design and construction of a new water well and associated conveyance pipeline (including site acquisition and CEQA clearance if necessary). The location of the well shall be at a site satisfactory to the City. This cost is subject to later fair share reimbursement. Building permits shall be issued for individual units only after the City has established that water supply will be available to serve the units.

Community Development

42. Construction activities shall be limited to 7:00 am to 7:00 pm, Monday through Friday only (holidays excluded) in compliance with the City's Noise Ordinance and Standard Specifications.
43. Foundations shall be poured in place, onsite. No pre-cast foundations will be permitted. This shall be stipulated in all construction contracts.
44. The main electrical panel for each residence shall be located at the exterior of the building and capable of total electrical disconnect by a single switch throw.
45. All address numbering shall be clearly visible from the street fronting the property. All buildings shall be identified by either four (4) inch high illuminated numbers or six (6) inch high non-illuminated numbers on contrasting colors. Naming of streets and address numbering shall be completed by a

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committee comprised of the Community Development Department, the Fire District, the Police Department, and the Postal Service.

46. The applicant shall pay all development impact fees, fees required by other entities, and permit fees.
47. The applicant shall be responsible for any additional costs associated with the processing of this project including but not limited to: plan check, inspections, materials testing, construction monitoring, and other staff review and/or oversight including staff time necessary to ensure completion/satisfaction of all conditions of approval and mitigation measures. The applicant shall, on a monthly basis, reimburse the City for all such costs. Project applicant shall pay all development impact fees adopted by the City Council and shall pay fees required by other entities.
48. BIKE WAYS: Class II bike lanes (on-street) shall be provided on Main Street. Class I bike trail (off-street) shall be provided on Grant Avenue. The tentative map shall be adjusted if necessary to incorporate the appropriate rights-of-way, to the satisfaction of the City Engineer.
49. FENCING: Prior to issuance of first building permit the developer shall install perimeter fencing along the north south and east property lines as specified. Design specifications shall be submitted for City approval prior to construction. East Side: With approval of adjacent property owners, the applicant shall retrofit existing wood privacy fencing with metal posts. Where adjacent owner objects, no retrofit is required. North Side: The fencing along Grant Avenue shall be comprised of reinforced masonry columns with a concrete curb, steel interim posts, steel rails, and redwood fencing. West and South Sides: The applicant shall install 6-foot ornamental iron fencing no closer than ten feet to the high creek bank. Maintenance of all fencing shall be the responsibility of the homeowner to the approved specification of the City. This shall be disclosed to each buyer as a written disclosure. Wording shall be approved by the City Attorney.
50. Deleted
51. The minimum square footage for the six half-plex plots shall be 3,500 square feet.
52. Deleted
53. The Grant Avenue cross-section on the map shall be corrected to show a 24-foot width and a 10-foot bike path. A landscaping plan for the path area shall be submitted for review and approval by the City. Heavy landscaping is required to provide shielding of residential structures from Grant Avenue.
54. The rear portion of proposed lot 25 shall be modified to create additional area in the public right-of-way to allow for construction of a community "Welcome to Winters" sign. The applicant shall be responsible for design and construction of the sign. A design specification, including color, materials, and sign copy shall be submitted for review and approval by the City.

Design Review

55. Pursuant to Section 8-1.4211 of the Zoning Code design review is required of this project. All home designs must be reviewed and approved as consistent with the City's design review requirements.
56. Prior to recordation of the Final Map, a deed restriction shall be recorded against each property that precludes conversion of garage area to livable areas.
57. Repetition of facades within builder tracts (subdivisions) shall be avoided. Abrupt changes in facades between builders shall be avoided.
58. In order to achieve architectural diversity, the developer shall offer a minimum of three floor plans and nine elevations (three per plan).
A minimum of half of the required elevations shall include brick or stone veneer installed to a minimum height three feet from grade, with no more than a four-inch opening at the base. The veneer shall wrap

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around all sides of the structure visible from the front and sides so that it terminates at a point where the yard fencing begins.

Each elevation for a particular floor plan shall be distinctive, with a unique roof design, architectural detailing, and application of exterior materials. Single story and two-story plans shall be varied.

59. The same (or substantially similar) elevation may appear no more than twice on one side of a block, or three times on either side of facing blocks, and may not be opposite or kitty-corner from the same elevation on the opposite side of the block. In addition, no more than ten percent of the homes can share the same elevation within a development.
60. A minimum of 50 percent of all detached units shall have useable front porches (minimum 6-feet by 8-feet). The remaining 50 percent shall have other prominent useable architectural features such as courtyards, balconies, and/or porticoes.
61. Units on opposing sides of a street shall be compatible in terms of design and color.
62. Lights along local streets shall not exceed 20-feet in height and shall be spaced to meet illumination/safety requirements. Lights along collector and arterial streets shall be as low as feasible in order to maintain pedestrian scale. Historic-style street lamps shall be used along all streets.
63. Entry walks to individual residences shall be separated from the driveway by a landscaped area.
64. Exterior colors on residential units shall not be restricted.
65. Single family structures shall be consistent with applicable development standards identified in Tables 3A and 4, and Section 8-1.5302, of the Zoning Ordinance.
66. Fencing and parking shall be consistent with the applicable requirements of Section 8-1.6001 and 8-1.6003 of the Zoning Ordinance.
67. Landscaping and signage shall be consistent with the applicable requirements of Section 8-1.6004 and 8-1.6005 of the Zoning Ordinance.
- 67.1 UNIVERSAL DESIGN: Universal design features shall be incorporated as an option in residential units. These features shall include first floor passage doors and hallways, a handicap accessible path of travel from either the driveway or sidewalk to the entrance of the residential units, and other features determined by the Community Development Department.
68. Garages shall be subordinate to the main living area. The garage portion of the front facade must be less than 50 percent of the front elevation. The garage must generally be recessed from the rest of the front facade by 10 or more feet. Flush garages may be used in no more than 30 percent of the units provided a heavy porch or architectural feature is used and that at least 2-feet of differential between the garage facade and the front facade is maintained. Garage forward design is prohibited.

Affordable Housing

69. The tentative map and affordable housing plan shall be modified to denote the obligation to deed restrict Lots 7a and b, and 9a and b as affordable -- 1 restricted to very low income occupants, 2 restricted to low income occupants, and 1 restricted to moderate income occupants.
70. Prior to recordation of the Final Map, an inclusionary housing agreement shall be prepared and executed for the identified income-restricted units/properties. Deed restrictions shall be recorded against each income-restricted property to ensure permanent affordability.
71. The construction of the affordable units shall keep pace or exceed the construction of the market rate units.

72. Fifty percent of the affordable for-sale (single family) units shall have 3 bedrooms and 2 baths and fifty percent shall have 4 bedrooms and 2 baths.

Street Improvements

73. All proposed roads within the subdivision shall comply with the City's Public Works Improvement Standards and Construction Specifications, dated September 2003 or as amended.
74. Grant Avenue:
 - a) South half improvements shall be constructed from the western terminus of the tentative map to the eastern terminus of this Tentative Map with the first final map on the project. Applicant shall acquire the necessary right of way to construct full frontage improvements on the south half of Grant Ave. per the City of Winters Public Works Improvement Standards.
 - b) The south half improvements shall include all necessary right-of-way and improvements to include a 12-foot northbound left turn lane, two eastbound travel lanes (26-feet), six-foot class two bike lane, and a 24-foot landscape corridor that will include an 10-foot Class 1 concrete pedestrian/bike path.
 - c) The improvement plans shall include the design of a complete traffic signal that includes the conduit, pull boxes, signal poles and signal foundations, street lighting, and cabinets. The project proponent shall install all traffic signal improvements necessary for installation of a future new signal at the Grant Avenue and West Main Street intersection. This is a reimbursable expense.
 - d) Applicant shall be responsible for construction of a privacy wall along entire Grant Avenue frontage in conjunction with the landscaping corridor. Prior approval of fencing design is required.
 - e) No driveways shall be allowed to front load onto Highway 128 (known as Grant Avenue).
 - f) A non-access restriction shall be shown on the final map along Grant Ave. frontage.
75. Main Street:
 - a) No driveways shall be allowed to front load onto West Main Street within 140-feet of the tangent of the face of curb on Grant Ave.
 - b) A northbound left turn lane shall be required on West Main Street at Grant Ave.
 - c) A non-access restriction shall be shown on the final map along Main Street frontage.
76. Intersection Enhancement Details: Island Planters and crosswalks shall be constructed of colored brick pavers, stamped concrete or other enhanced feature as approved by the City Engineer.
77. Local Streets: Local streets shall provide for ADA compliant sidewalk turnouts where sidewalk widths do not meet ADA.
78. Tentative Map Street Cross-Sections, Sheet 1 of 1, dated February 8, 2005): Conditions and Changes shall be made as follows:
 - a) Street Cross section details, including all intersection geometric design, complying with the conditions of approval, shall be revised on tentative map, submitted to the City, and approved by the City Engineer prior to submitting a final map and improvement plans.

b) A signing and striping, and stop plan is required and shall be approved by the City Engineer. All signing and striping shall be in accordance with the City of Winters Public Improvements Standards and Construction Standards.

c) Street light types shall be those historic types as approved by the City. If necessary, the applicant shall fund the analysis for designing standards and details for spacing historic lights. This is a reimbursable expense. Improvement plans shall be designed to those standards once approved.

Storm Drainage and Site Grading

79. A comprehensive storm drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The drainage plan shall demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to existing downstream facilities and to prevent additional flooding at off-site downstream locations. All necessary calculations and assumptions and design details shall be submitted to the City Engineer for review and approval. The design features proposed by the applicant shall be consistent with the most recent version of the City's Storm Drainage Master Plan criteria and Public Improvement Standards. The plan shall incorporate secondary flood routing analysis and shall include final sizing and location of on-site and off-site storm conduit channels, structures and (detention basins if required). The Storm Drainage Plan shall be submitted for approval prior to submittal of the first final map and/or construction drawings for checking. The applicant shall pay the cost associated with all improvements required by the plan.
80. A topographic survey of the (excluding Dry Creek to its high bank) site and a comprehensive grading and drainage plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading and drainage plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
81. The Tentative map Grading and Drainage plan showing grading and drainage information including topographic information, drainage routing, pipe slopes and sizing and locations and overland drainage routing are preliminary only and do not constitute approval in any way. Final approval for the grading and Drainage Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.
82. Construction materials for storm drainpipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).
83. Applicant shall be required to coordinate with FEMA through the City's Floodplain Administrator to determine if a CLOMR or LOMR is needed for the project as a result of possible impacts to Dry Creek or Pulah Creek Flood Plain. Applicant shall obtain all necessary permits and CLOMRs/LOMRs as required prior to First Final Map approval.
84. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls.
85. Drainage fees shall be paid prior to issuance of a building permit.
86. All perimeter parcels and lots shall be protected against surface runoff from adjacent properties in a manner acceptable to the City Engineer.

87. If disposal and sharing of the excavated soil from the construction of the Development occurs, prior to approval of the first Final Map, Applicant shall prepare a written agreement with the other participating property owners and submit to the City.
88. All projects shall include implementation of post-construction best management practices (BMP). Post construction BMP's shall be identified on improvement plans and approved by the City Engineer.
89. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit.
90. An erosion and sedimentation control plan shall be included as part of the improvement plan package. The plan shall be prepared by the applicant's civil engineer and approved by the City Engineer. The plan shall include but not be limited to interim protection measures such as benching, sedimentation basins, storm water retention basins, energy dissipation structures, and check dams. The erosion control plan shall also include all necessary permanent erosion control measures, and shall include scheduling of work to coordinate closely with grading operations. Replanting of graded areas and cut and fill slopes is required and shall be indicated accordingly on plans, for approval by City Engineer.
91. Landscaped slopes along streets shall not exceed 5:1. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes. Exceptions shall require approval of the City Engineer.
92. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.
93. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.
94. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.
95. Construction equipment and engines shall be properly maintained.
96. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.
97. Construction practices will minimize vehicle idling.
98. Potentially windblown materials will be watered or covered.
99. Construction areas and streets will be wet swept.

Wastewater and Sewer Collection System

100. The applicant shall obtain a no-cost Wastewater Discharge Permit from the Public Works Department prior to the issuance of a Building Permit.
101. The property shall be connected to the City of Winters sewer system, with a separate sewer lateral required for each parcel, in accordance with City of Winters Public improvement standards and Construction Standards.
102. A comprehensive Sewer Collection System Plan shall be submitted for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. A registered civil engineer for project shall prepare the sewer collection system plan. The plan shall include final sizing and location of conveyance facilities, structures, and engineering calculations. The applicant shall pay the cost associated with all improvements required by the plan. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

103. The Tentative Map Sewer Plan showing sewer routing, pipe slopes and sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Sewer Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.

104. Construction of sewer mains deeper than 16-feet at the bottom of the pipe shall be connected to laterals by a parallel mains and connections at Manholes.

Water Infrastructure

105. All materials and installation of the water system shall be at the applicant's expense per City of Winters Public Improvement Standards and Construction Standards.

106. If required, per the Subdivision Map Act, project Applicant shall obtain a Water Verification (WV) prior to approval of final map that addresses the following:

a) Actual water service to the subdivision will be predicated upon satisfaction of terms and conditions set by the water supplier

b) The WV is non-transferable, and can only be used for the specific tentative map for which it was issued.

c) The WV shall expire along with the tentative map subdivision map if a final map is not recorded within time allowed under law

d) Until such time as actual service connections are approved for the subdivision, the water agency may withhold water service due to a water shortage declared by the water agency.

107. Based on City water modeling, a new well is needed to serve the first phase of development. Developer shall advance fund the construction of new water well and required water system conveyance pipelines with the project per Mitigation Measure #17. In addition, the applicant shall acquire the parcel for the new well prior to approval of the first map subject to fee credits and/or reimbursements.

108. The Tentative Map Water Plan showing water routing, sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Water Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval. Applicant shall comply with making changes to water system distribution pipe sizes and alignments based on the results of the specific water modeling performed for the development. Applicant shall pay for all required water modeling for identifying water infrastructure needs to serve its development and shall construct offsite water improvements to connect to the City water distribution system.

109. At the time the Building Permit is issued, the applicant will be required to pay the appropriate City connection Fees. All domestic water services will be metered. Water meters shall be installed on all water services to the satisfaction of the City Engineer.

110. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the City Engineer or his designated agent.

111. Per the City of Winters Cross Connection Control Program, fire protection systems are required to maintain approved backflow prevention, at the applicant's expense. Required location, service size and flow-rate for the fire protection system must be submitted. Actual location is subject to the

review and approval of the Public Works Department, Fire Department, and Community Development Department.

112. The City of Winters Plan Review Fee applies and is due upon submittal of the maps and plans for review.

113. FINAL PLANS, PERIODIC TESTS FOR FIRE HYDRANTS: All final plans for fire hydrant systems and private water mains supplying a fire hydrant system shall be submitted to the City of Winters Fire Department for approval prior to construction of the system. All fire protection systems and appurtenances thereto shall be subject to such periodic tests as required by the City of Winters Fire Department.

114. WATER PRESSURE: All water lines and fire hydrant systems must be approved by the Fire Chief and operating prior to any construction taking place on the site. Prior to issuance of building permits, water flow must be measured and certified for adequacy by the Winters Fire District.

115. REFLECTORS FOR FIRE HYDRANTS: Any fire hydrant installed will require, in addition to the blue reflector noted in Standard Drawings, an additional blue reflector and glue kit that is to be supplied to the City of Winters Fire Department for replacement purposes.

116. All construction, new or remodeling, shall conform to the most current Uniform Fire Codes, the Winters Fire Prevention Code, and section of the National Fire Codes that the Winters Fire Chief or his/her agent may find necessary to apply.

117. Prior to approval of the first final map, a comprehensive water system plan shall be prepared by a registered civil engineer for project, and shall be submitted to the City Engineer for review and approval. The master plan shall include final sizing and location of conveyance facilities, structures, and engineering calculations. Said plan shall also include provisions for cost sharing among affected adjacent development for facilities sized to accommodate the plan area. The applicant shall pay the cost associated with all improvements required by the plan, and an appropriate reimbursement agreement shall be drafted to reimburse the applicant for oversize improvements on a pro rata basis per the Project level Development Agreement. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

118. Applicant shall be required to loop water system to the new water well. This will include connecting the development water system to Taylor Street water system.

119. Forty-eight hours notice shall be given to the Winters Fire District prior to any site inspections.

120. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.

121. When the fire protection facilities are in the City of Winters, the developer shall contact the Winters Fire District Chief or his/or agent prior to construction for a pre-construction meeting.

122. All required fire accesses that are to be locked shall be locked with a system that is approved by the Fire Chief or his/her agent.

123. Submit three sets of plans for each fire suppression sprinkler system to the Fire Department for review and approval prior to the issuance of each building permit.

124. All residences shall have fire suppression sprinkler systems meeting or exceeding NFPA 13-D. Water laterals shall be appropriately sized to accommodate sufficient water flows for fire suppression sprinkler systems. In no instance shall a water lateral be less than 1.5-inches in size.

General Public Works and Engineering Conditions

125. The conditions as set forth in this document are not all inclusive. Applicant shall thoroughly review all City, state, and federal planning documents associated with this tentative map and comply with all regulations, mitigations and conditions set forth.
126. The applicant agrees to adhere to the terms of the ordinance (Ordinance No. 96-02) adopted by the City Council to address impact fees to be paid for development of property within the Rancho Arroyo Drainage District, to offset costs associated with drainage improvements.
127. Closure calculations shall be provided at the time of initial map check submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the map shall be directly verifiable by information shown on the closure calculation print out. The point(s) of beginning shall be clearly defined and all lot acreage shall be shown and verifiable from information shown on the closure calculation print out. Additionally, the square footage of each lot shall be shown on the subdivision map. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.
128. A subdivision map (Final or Parcel) shall be processed and shall be recorded prior to issuance of a Building Permit. The Developer shall provide, to the City Engineer, one recorded Mylar copy and four print copies of the final map from the County, prior to issuance of the first building permit.
129. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.
130. A registered landscape architect shall design landscape and privacy wall improvements and improvements shall be per City Standards, as applicable.
131. Joint trench/utility/composite plans shall be submitted to the City Engineer for review, prior to approval of the final map and improvement plans.
132. All existing and proposed utilities (Electric, phone/data, and cable) within 100 feet of the project boundary shall be installed underground per the undergrounding ordinance and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers.
133. Street lighting location plan shall be submitted and approved by the Department of Engineering, prior to approval of improvement plans and final recordation of Map.
134. Roads must be constructed and paved prior to issuance of any building permit. Under specific circumstances, temporary roads may be allowed, but must be approved by the City of Winters City Engineer and Fire Department.
135. Occupancy of residential units shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.
136. If relocation of existing facilities is deemed necessary, the applicant shall perform the relocation, at the applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.
137. A Subdivision Improvement Agreement shall be entered into and recorded prior construction of improvements, issuance of any building permits, or recordation of a final map.
138. At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform to the standards described in Section 8771 of the Business and Professions Code. All monuments necessary to establish the exterior boundaries of the subdivision shall be set or referenced prior to recordation of the final map.

Easements and Right of Way

139. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.
140. The applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the Public Works Department.
141. A ten (10) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City and may be required elsewhere as requested by the utility companies and approved by the City.
142. Per the project level Development Agreement, prior to approval of first set of improvement plans and final map, Applicant shall acquire all rights of way and easements necessary to construct off-site and on-site improvements associated with the tentative map.

Reimbursements for Applicant Install Improvements

143. Applicant shall pay appropriate reimbursements for benefiting improvements installed by others, in the amount and at the time specified by existing reimbursement agreements. Where the City has deemed appropriate for reimbursement, the applicant will receive reimbursement from other parties for improvements that benefit those parties.

Landscaping and Lighting

144. Project proponents shall enter into the City wide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of parks, open space, street lighting, landscaping, sound walls, and other related aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to the sale of any buildable lots or parcels within the project area.
145. Applicant of multi-family residential, commercial and industrial project shall provide refuse enclosure detail showing bin locations and recycling facilities to the approval of the Public Works Department.
146. Prepare, and submit for approval, a utility site plan prior to preparation of final improvement plans.
147. Prepare improvement plans for any work within the public right-of-way and submit them to the Public Works department for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Developer shall provide, to the City Engineer, one Mylar original and four sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer.
148. Each residence in the cul-de-sac must be able to accommodate parking for 3 vehicles: either (3) on site parking spaces or two (2) on site spaces and (1) on street space. The on street space shall be along the frontage of the subject property with no more than a 10-foot overlap across the frontage of adjacent parcels.
149. Conform to County Health regulations and requirements for the abandonment of a septic tanks and water wells.
150. Existing public and private facilities damaged during the course of construction shall be repaired by the subdivider, at his sole expense, to the satisfaction of the City Engineer.
151. The area of each lot, in square feet, shall be calculated and shown on the Final Map.
152. Encroachment permits if necessary from will be acquired from Yolo County, Caltrans, and PG&E.

- 153. All utility poles that are to be relocated in conjunction with this project shall be identified on the improvement plans, with existing and proposed locations indicated.
- 154. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.
- 155. Prior to recording of the final map, if required, provide evidence of payment for the Habitat Mitigation Fee. This fee is paid to the Yolo County Planning Department.
- 156. If improvements are constructed and/or installed by a party or parties other than the Applicant, which improvements benefit Applicant's property, prior to issuance of a building permit (approval of the final map) on Applicants property, Applicant shall pay a proportionate share of the costs of said improvements, including interest, prior to the issuance of building permit(s) (approval of the final map) to Applicant.



PLANNING COMMISSION STAFF REPORT
July 27, 2004

TO: Chairman and Planning Commissioners
FROM: Jenaye Shepherd – Management Intern
SUBJECT: Agenda Item VIII #1, Discussion Item – Proposed Energy Resolution.

Please find attached the proposed Energy Resolution and a Power Point Presentation.

The proposed Energy Resolution will require newly constructed homes to follow a number of energy efficient techniques and allow all new homes to be built to EPA Energy Star Standards, which in California is 15-percent less energy use than required by Title 24. Many of these energy saving strategies have rebates available and a short money return period. Implementing this resolution will not only save energy and money, but it will also increase the comfort ability for many residents in Winters.

Attachments:

- 1. Proposed Energy Resolution
- 2. Power Point Presentation

Planning Commission/Energy Efficiency Resolution PC Staff Rpt 27Jul04

PROPOSED ENERGY RESOLUTION

City of Winters, July 2004

PREFACE

This document is a proposal to improve the energy performance of all new single family homes by implementing measures that reduce their individual energy consumption and energy use related to their construction. The intent is to improve performance over Title 24 energy standards and to qualify homes for Energy Star ratings while insuring that the added cost can be amortized by energy savings. Implementation of these improvements would be through resolution or ordinance.

The State of California is increasingly facing limitations to its electric infrastructure, including both transmission and distribution systems and generation capacity, which will be worsened by the forecasted doubling of California's population by the year 2040¹. Most of this problem results from residential air conditioning, which is responsible for 40% of California's peak load. The California Energy Commission is responding to this problem by supporting development of technologies that reduce residential peak load, by introducing "time-dependent valuation" of energy into the 2005 energy standards, and by promoting photovoltaics through a "Zero Energy New Homes" program.

Two federal programs, Zero Energy Buildings, and Building America have been in operation for over three years to promote the construction of homes that are more energy efficient and that utilize renewable energy sources. The objective of these programs is to improve our energy independence and security. Research completed under these programs has demonstrated that energy efficiency and photovoltaics can be cost-effective, is well received by homebuyers, and has the current potential to reduce energy use by 70% or more.

With the support of the Building America program, Davis Energy Group compiled a list of efficiency measures that are proposed to be enacted by resolution of the Winters City Council. These measures are grouped under the major categories of Site Planning & Landscape; Building Envelope, Appliances, and HVAC; Photovoltaic Systems; and Waste Reduction. The primary objectives of this proposal are to:

- Utilize site planning principals to facilitate improved cooling performance of new homes and that reduce transportation energy use
- To employ a list of cost-effective energy efficiency measures that enable homes to qualify under the Energy Star label, and that result in a positive cash flow for the buyers
- To require photovoltaics for those homes for which the systems will be readily affordable

Rather than allow builders to employ a performance approach to verify Energy Star ratings, we propose that a prescriptive list of measures that have been predetermined to

¹ CALTRANS Office of Community Planning

be cost-effective be required be required on all homes. This approach greatly reduces the burden of verification on plan checkers and building inspectors.

The following sections define the proposed measures and provide background, justification, and detail on each. Appendix F of the California Environmental Quality Act pertaining to energy conservation is also attached for reference.

1 SITE PLANNING & LANDSCAPE

1.1 Subdivision maps shall comply with Section 66473.1 of the California Subdivision Map Act by providing lots that allow homes to be sited with their fronts facing either north or south, to the maximum extent feasible.

Section 66473.1 of the Subdivision Map Act states: "The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure." When it was drafted almost 30 years ago the act did not anticipate the need to reduce air conditioning peak load, nor the development of photovoltaics for residential applications. However, the principals on which was based still apply. Most streets must be orientated east-west in order to facilitate siting homes so that they use less cooling energy.

When windows are exposed to direct sunlight in summer, the resulting solar heat gain increases air conditioning energy use and compromises comfort. Since most windows are located in the front or back of homes, homes oriented with their fronts facing east or west can use over 50% more energy for cooling than homes facing north or south. East and west-facing windows are very difficult to shade. Comfort problems are particularly apparent on the second floor of two-story homes, because heat added by the sun rises to the upper floor. South-facing windows can be shaded by roof overhangs in summer and allow sunlight into the house in winter, thereby reducing heating bills.

Photovoltaic systems and solar water heaters perform much more efficiently when modules are located on south-facing roofs. Also, facing the majority of windows to the south can reduce winter heating energy use.

1.2 Deciduous street trees shall be provided by the developer, spacing and species to be approved by Planning Commission and/or listed on the City of Winters approved tree list.

Trees reduce local temperatures in summer by shading streets and roofs, and by evaporating moisture. On warm summer days urban areas can be 6-8% warmer than the surrounding agricultural areas. Street trees also improve the appearance of neighborhoods and contribute to higher property values. The City adopted an approved tree list but some new colorful varieties are available that are not on the list, such as the Chinese Tallow Tree (*Sapium sebiferum*) and the Autumn Fantasy maple (*Acer Freemanii* x). The City should also designate specific trees that are suitable for various street applications (primary feeder, secondary feeder, etc.)

1.3 Residential streets that provide access to dwellings shall not be wider than the City's adopted street standard.

Streets absorb the sun's rays and give off heat, increasing the need for air conditioning. Narrower streets are easier to shade with trees and tend to slow traffic down, improving neighborhood safety, are less expensive to build, and reduce rainwater run-off. Currently, the minimum street width is 35'. The Village Homes development in Davis has 20' and 26' street widths and provides off-street parking areas. It is recommended that the City review the current street guidelines and encourage developers to build narrower streets with off-street visitor parking areas. Alleys, such as those provided in Putah Creek Hamlet, are another alternative to parking areas.

1.4 Paved paths shall be provided to facilitate bike/pedestrian traffic to schools. Paths shall not cross secondary collectors.

Winters Highlands and Callahan Estates developments will be within easy walking distance of Shirley Rominger School, but current street layouts do not provide for easy pedestrian access, and require several streets to be crossed that are primary or secondary collectors. As a result, parents are likely to drive students to school. The auto exhaust will degrade local and regional air quality, and the children will be deprived of exercise. Obesity is becoming an enormous problem, which making provisions for increased pedestrian and bicycle activity can help solve.

2 BUILDING ENVELOPE, APPLIANCES, AND HVAC

2.1 All houses shall be built to EPA Energy Star standards.

The top builders in the country are building whole developments to EPA Energy Star standards, which in California is 15% less annual energy use than required by Title 24 energy standards. The added costs of improvements needed to meet the Energy Star rating when amortized over 30 years is more than offset by annual energy savings, so the buyer typically experiences a positive cash flow, even if the builder marks up these improvements. Thus, the buyer saves money and the builder makes more on the sale of the house. Studies have also shown that energy efficient homes have a higher resale value. Efficient neighborhoods are quieter (less air conditioner noise), and there is less air pollution from combusted natural gas.

The utilities and California at large benefits because most measures that save energy also reduce peak electricity load, meaning that utilities are not as pressed to add generating capacity and transmission-distribution systems to serve the loads added by new development. Because of the high cost of building new power-plants, and of running inefficient "peaker" plants, the costs that utilities would pass on to ratepayers is not as great. Everyone benefits.

Improvements that are implemented now are likely to yield much bigger payoffs to homeowners in the future. Last year Alan Greenspan gave testimony before the House Committee on Energy and Commerce that "Canada, our major source of imported natural gas, has had little room to expand shipments to the United States, and our limited capacity to import liquefied natural gas (LNG) effectively restricts our access to the

world's abundant supplies of gas." He also said "We are not apt to return to earlier periods of relative abundance and low prices anytime soon." Dwindling supplies resulted in an increase in the market price for natural gas of nearly 73% since the previous year. Regulation of energy prices will not protect consumers from these price hikes for long, and there is nothing in the near future that is likely to improve this scenario. Since most of California's electricity is generated by natural gas plants, the price of electricity is certain to be affected as well.

Analysis Davis Energy Group has completed under the Department of Energy sponsored Zero Energy Home and Building America programs has identified specific measures that are particularly cost-effective, market ready, and currently being used by many builders. If made mandatory, the following measures will assure that homes meet Energy Star standards:

- **High performance windows.** Most windows that are now installed by production builders are treated with a special "Low E" coating that reduces the amount of heat that is transmitted by the glass, and that reduces the amount of light transmitted in the non-visible spectrum. This property reduces solar heat gain without making the windows appear dark. Builders should only install windows that have a U-value of 0.36 and solar heat gain coefficient (SHGC) of 0.36 or lower.
- **Energy Star roof tiles.** Several companies, including Hanson Roof Tile in Dixon, are producing concrete roof tiles using pigments that reflect sunlight, even in darker colors. This higher reflectivity reduces summer attic temperatures and cooling loads, and helps keep neighborhood temperatures lower. Composition shingles with higher reflectivity are expected to be on the market soon.
- **Minimum R-38 ceiling insulation.** Deeper ceiling insulation results in better performance of buried ducts, as well as reducing heat gain and loss through the attic. The added cost for R-38 compared to the minimum standard R-30 is minimal.
- **Insulated headers.** Solid wood headers waste wood and degrade wall thermal performance. Insulated headers are similar to web trusses except they include two webs which sandwich foam insulation. Experience has shown they are less expensive than solid wood, don't cause cracking due to shrinkage, and since they are lighter, make walls easier to stand.
- **Air conditioners that meet the 2006 DOE minimum efficiency standard of 13 SEER.** Currently air conditioner manufacturers are not allowed to sell units that have a "SEER" rating of under 10. The U.S. Department of Energy proposed, and congress approved, a minimum rating of 13, effective in 2006. Since the proposed development will be required to install 13 SEER air conditioners on part of the homes (due to the build-out schedule), they should be installed on all new homes. The DOE standards are based on cost-effectiveness to the buyer.
- **Duct leakage HERS-certified to be not more than 6%.** Duct leakage can substantially degrade heating and air conditioning efficiency, and proper sealing is very inexpensive if done during construction. Since many ducts are not accessible after the houses are built, proper sealing can only be done during construction. The Energy Commission provides for independent Home Energy Rating System (HERS)

raters to test ducts when Title 24 credit is taken for tight ducts. This testing is necessary to assure proper installation.

- **Ducts installed in accordance with the California Energy Commission's 2005 Standards "Buried Duct" compliance option.** The 2005 energy standards will allow credit to be taken for ducts that are buried in attic insulation instead of suspended from roof trusses. According to a large Sacramento HVAC contractor, there is no added cost to install ducts in this fashion.
- **Pilotless, tankless gas water heaters.** Depending on how much hot water is used, these appliances reduce natural gas use by about 30 to 90% compared to storage type water heaters. They are available from several manufacturers and are seen increasingly in production homes. Since they heat water instantaneously they do not run out of hot water, and they do not take up valuable floor space.
- **Engineered "home run" hot water distribution systems using PEX pipe.** With conventional piping systems, it is not uncommon to have half of the hot water generated by the water heater lost in the piping, and a substantial amount of water is wasted while waiting for hot water to arrive at the tap. "Home run" piping that is properly designed saves energy and shortens hot water waiting times, thereby saving water. The cost for these systems is becoming comparable to that of conventional copper systems.
- **Energy Star approved dishwashers.** These are widely available in all popular brands, and save water as well as energy. Since dishwashers are permanently installed by the builder, they are not subject to easy replacement like refrigerators and clothes washers.
- **Fluorescent lights provided in all ceiling can fixtures and bathroom fixtures.** Fluorescent lights provide the same light output at less than a third of the electricity use and heat generation of incandescent lights, and last many times longer. The size, configuration options, cost, reliability, and color rendition of compact fluorescent lights (CFL's) have improved to the point that they are acceptable substitutes for incandescent lamps in most applications. Fixture manufacturers are beginning to introduce more fixtures designed for fluorescent lamps. The prolific use of ceiling can lights by builders provides a good opportunity to improve lighting efficiency by installing only CFL flood lamps, which can be screwed in to the conventional fixtures. Globe CFL's are good substitutes for incandescent lamps in most fixtures installed at bathroom mirrors. Efficient linear T8 lamps with electronic ballasts also provide very high quality light when used above kitchen cabinets for indirect lighting, and T5's provide excellent light for under counter applications.

3 PHOTOVOLTAIC SYSTEMS

Solar photovoltaic systems are becoming more economical every year, and there are new breakthroughs in technology that are likely to make these systems more competitive with conventionally generated electricity as time goes on. Currently, the California Energy Commission offers a \$3.00 per Watt rebate for residential systems that are grid-connected, that is they feed excess power into the utility's power lines rather than storing

it in batteries. PG&E also offers a time-of-use rate that allows homeowners to "sell" power to PG&E at a higher price during the day (12-6 PM) than they purchase it for during night and morning hours. California also offers a 15% tax credit to purchasers of PV systems.

In addition, the DOE sponsored Zero Energy Homes and Building America programs offers assistance to builders who combine energy efficiency improvements with photovoltaic (PV) systems. The reason that states and the federal government are supporting PV systems is that they are seen as a solution to both local electricity supply problems and a contributor to our national energy security.

Recent studies have shown that these incentives combine to make PV marginally cost-effective at current electric prices, which are likely to increase significantly over the 20 year life of the systems. PV systems are becoming increasingly common on production homes, and manufacturers such as General Electric and Sharp Electronics are aggressively marketing systems to residential builders. PV modules are now available that are easy to install and blend in with concrete roof tiles and other roofing materials.

3.1 All new homes shall be constructed with a minimum of 240 ft² of south roof area that is free of vents, chimneys, and other obstructions to facilitate future installation of solar electric systems.

Making homes easier to retrofit with PV systems reduces the future cost of installing these systems while not adding significantly to the construction cost. Allowing for 200 ft² of PV module area will assure that future systems can have a significant impact on reducing electric use.

3.2 All new homes having a conditioned floor area of 2500 ft² or greater shall be equipped with 1" minimum size conduit between the attic space and the main electrical panel to facilitate wiring for future photovoltaic systems.

Conduit is inexpensive to install while homes are under construction. Pre-installing conduit will further reduce the cost of installing PV systems, especially in larger two-story homes.

3.3 All new homes having a conditioned floor area of 3500 ft² or greater shall be equipped with a functioning photovoltaic system with an STC rating of 1.5 kW or greater.

On larger, less affordable, homes a small PV system may constitute only 1% of the selling price and the cost is more easily borne by the buyer. Also, energy savings are greater in larger homes because the PV system typically offsets higher tier rates. Experiences from other builders offering PV systems show that the cost for systems is lower when some or all of the homes are scheduled to have PV systems (instead of offered as buyer options), and that the added cost rarely discourages buyers. Providing PV systems on 100% of the larger homes will help mitigate the added electricity load contributed by the new developments, and will reduce carbon and other emissions from natural gas combustion by electricity generation plants.

4 WASTE REDUCTION

Construction projects contribute substantial waste to landfill sites. Much of this waste can be eliminated by implementing simple recycling measures that can reduce the builders' disposal costs.

4.1 All construction waste shall be separated to allow recycling of wood, steel, and gypsum products.

This is a measure that has been adopted by several "green building" programs, including the Alameda County Waste Management Board's Green Builder Program. Energy savings resulting from this measure include reduced fuel costs for waste transport and landfill vehicles, reduction of the energy required for extraction of raw materials, and the potential use of wood waste in plants that generate electricity from biomass.

Proposed Energy Standards for New Residential Construction

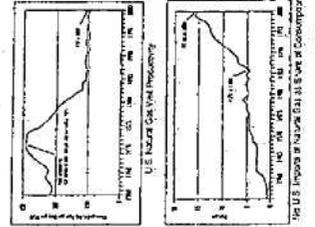
David Springer, Davis Energy Group
 Jenaye Shepherd, Management Intern

Sponsored by  **MWD**
 Metropolitan Water District of Southern California

Vision Statement

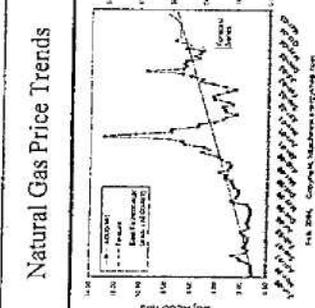
We are approaching a crossroads, where instead of having more energy available from fossil fuels each year we will have less. Implementing strategies that reduce energy use beyond what is required by California Title 24 standards can yield utility bill savings that exceed the amortized cost of the energy improvements, thereby benefiting homeowners and prolonging our supply of non-renewable energy.

Natural Gas Availability



Source: U.S. Energy Information Administration

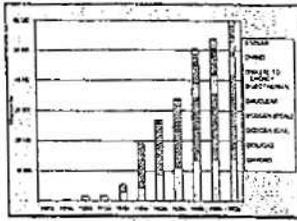
Natural Gas Price Trends



Source: Energy Information Administration

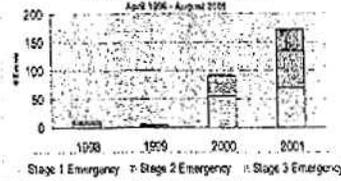
Where Does Electricity Come From?

Cumulative Generating Capacity in California by Decade and Primary Energy Type

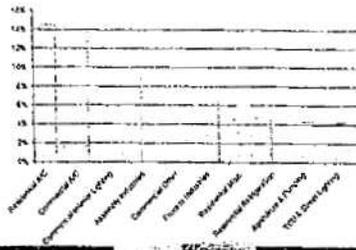


Do We Have Enough Electrical Capacity?

ISO Emergency Declarations



What Are the Greatest Contributors to the Electricity Capacity Problem?



Approach

- Develop strategic list of energy measures
- Identify means of implementation
 - Citywide
 - Resolution
 - Ordinance
 - Development specific
 - Developmental agreements

Energy Saving Opportunities

- Categories:
 1. Site Planning and Landscape
 - Building energy use
 - Transportation energy use
 2. Building Energy Efficiency
 - Building envelope
 - Appliances
 - HVAC
 3. Renewables (Solar)

1. SITE PLANNING & LANDSCAPE

1.1. Comply with the California Subdivision Map Act by providing lots that allow homes to be sited so that they face to the north or south.

"In approving new residential subdivisions the City shall promote the maximum feasible east-west alignment of lots for southern solar exposure, as required by the State Subdivision Map Act."

- Policy VI.F.1, Written General Plan

"Encourage solar oriented street design."

- Written Design Guidelines

Importance of Street Orientation

- North-south streets:
 - Cause most of window area to face east-west
 - Increases air conditioner use
 - Limits passive solar heating performance
 - Limit south roof area for current or future application of solar electric systems and solar water heating

Using Orientation and Architecture to Control Solar Gain



South-facing windows are easily shaded by roof overhangs

Other methods can be used but they are costly



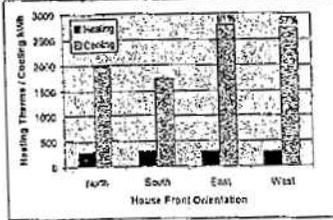
Zero Lot Lines



- Eliminate east-west exposure
- Reduce outside wall surface area, reducing heat gain & loss
- Allow for higher densities without losing aesthetic appeal

WINTERS

Orientation and Heating & Cooling Energy



House Front Orientation	Heating Therms	Cooling kWh
North	~1000	~2500
South	~1800	~1500
East	~2800	~1000
West	~2800	~1000

Typical 2000 Winterville Homes Lot Lines (North-South)

WINTERS

Street Trees

1.2. Deciduous street trees shall be provided by the developer, spacing and species to be approved by Planning Commission.

"Parkways of at least 5 feet should be provided within the landscape parkway and should be a variety that typically develops a large-scale canopy that will extend partially over the street."

Winters Residential Design Guidelines

WINTERS

Tree Information Resources

- City of Winters Master Street Tree List
- SMUD Tree Program
- Sacramento Tree Foundation Program



WINTERS

Street Widths

1.3. "Residential streets that provide access to dwellings should [shall] not be wider than the City's adopted street standard."

Winters Residential Design Guidelines

- Insure consistency between the General Plan, Design Standards, Circulation Master Plan, and other planning documents

WINTERS

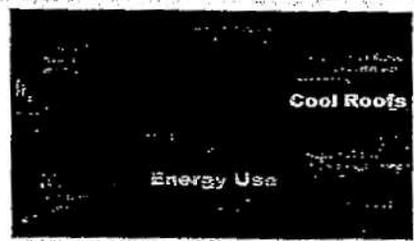
Narrow Streets

- Discourage speeding and increase safety
- Reduce the amount of pavement exposed to the sun
- Allow for higher housing densities and/or more open space and landscaping
- Are easier to shade with trees



WINTERS

"Heat Island" Effects



WINTERS

Street Width Specifications

- Winters Design Standards
 - Primary collector: 50' (70' with median)
 - 2 - 12' travel lanes
 - 5' bike lanes
 - Secondary collector: 40'
 - 2 - 12' travel lanes
 - no bike lanes
 - Local residential: 35'
 - 2 - 10' travel lanes
 - no bike lanes
- Village Homes: 20 - 26'
 - Off street parking
 - On street bike lanes

WINTERS

Bike and Pedestrian Paths

1.4. Paved paths shall be provided to facilitate bike/pedestrian traffic to schools and parks. Paths shall not cross secondary collectors.

"The land use pattern and design of new development in Winters shall facilitate pedestrian convenience and the use of non-automobile forms of transportation."

- Policy I.A.8, Winters General Plan



Bike and Pedestrian Paths

"The Bikeway System Master Plan Update recommends the development of a comprehensive bikeway system in Winters...[that] effectively connects all residential neighborhoods with the major activity centers in the City, such as downtown, schools, parks, and the library."

- Bikeway System Master Plan Update (2002)



Bike and pedestrian paths...

- Improve safety by keeping people and bikes away from cars
- Improve air quality by reducing auto trips
- Save time by reducing traffic congestion




...can be integrated into neighborhoods...




6

...and keep people fit!



Prevalence of Obesity* Among U.S. Adults

*Defined as 15 lb. overweight

Source: Mokdad, A.H. et al. J Am Med Assoc. 1999



2. BUILDING ENERGY EFFICIENCY

2.1. All houses shall be built to EPA Energy Star standards (15% better than current Title 24) using prescribed methods




The Value of Energy Efficiency

- **Buyers:**
 - Energy savings can exceed incremental mortgage costs
 - Tax credits (up to \$2000 in pending legislation*)
 - Hedge against rising energy costs
 - Improved comfort and health
 - Better quality home
- **Builders:**
 - Improve reputation for building quality homes
 - Earn entitlements

*SB 2311 - Feinstein



The Value of Energy Efficiency

- **Utilities**
 - Economic advantages from decreased peak load
 - Lower generating costs
 - Less stress on T & D systems
- **Societal & National**
 - Reduced risk of brownouts
 - Improved air quality
 - Reduced water use (local & utility)
 - Reduced carbon emissions
 - Improved energy security



7

Energy Star Homes

- Northern California production builders who are currently building to meet Energy Star standards:
 - Bozart, Cronin, D.R. Horton, Greenbriar, Hoffman, KB, Lennox, Morrison, New American, Padco, Premier, Pulte, Renaissance, Shea, Sunnehill, Sunquest...
- Energy Star homes provide a positive cash flow to the buyer and better resale value



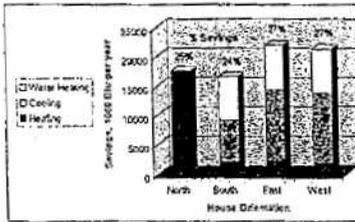
WSP

How to Meet Energy Star

- "Prescriptive" requirements easier to enforce than "performance" standards
- Proposed Prescriptive Measures
 - High performance windows
 - Energy Star approved distribution
 - Pilotless, tankless water heaters
 - Engineered "bore out" hot water piping using PEX pipe
 - 13 SEER air conditioners
 - Tightly sealed eave (leakage < 6%)
 - "Ducted" ducts
 - Minimum R-38 ceiling insulation
 - Insulated headers
 - Fluorescent lights
 - Energy Star roof tiles

WSP

Energy Savings Resulting From Application Of These Measures*



*Based on 1000 Btu per year of savings at 1000 Btu per year of energy use

WSP

Envelope Measures

- All windows shall have U-value and SHGF of 0.36 or lower
 - Prescriptive requirement of Title 24
 - Utilized by most production builders
 - Retain good indoor visibility, provide privacy
- All roof tiles shall be Energy Star rated
 - Reflective pigments available in dark colors
 - Locally manufactured



WSP

Envelope Measures

- All homes shall have minimum R-38 blown-in ceiling insulation
 - Inexpensive to increase from R-30 rating required by Title 24
 - Enhances duct performance
- Insulated headers shall be used instead of solid wood headers
 - Less expensive
 - Conserves forest products



WSP

HVAC

- Air conditioners shall have a minimum SEER* rating of 13.0
 - DOE efficiency regulations will increase minimum efficiency from 10 SEER to 13 SEER in 2006
 - Many of the homes in the planning area will be built after 2006
 - SEER 13 air conditioners are readily available



*SEER = seasonal energy efficiency ratio

WSP

HVAC

- Ducts shall be sealed to provide a maximum tested leakage of not more than 6% of the furnace fan flow
 - Duct leakage degrades furnace and air conditioner efficiency
 - Consistent with the California Energy Commission "tight duct" standard
 - Ducts are tested by certified HERS raters



WSP

HVAC

- Ducts shall be installed in accordance with the California Energy Commission's 2005 Standards "Buried Duct" compliance option
 - Ducts covered by attic insulation instead of suspended from trusses
 - Can be done at no additional cost
 - Improves R-value from 4.2 to as high as 14 for R-38 attic insulation

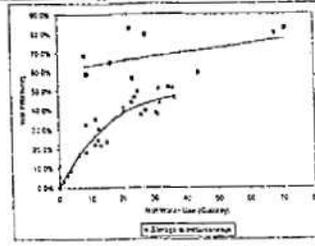
WSP

Water Heating

- All water heaters shall be instantaneous (tankless) gas, and shall have no standing pilot
 - Available from at least four manufacturers
 - 30-90% more efficient than gas storage types
 - Little risk of running out of hot water
 - Responsive to changing hot water usage



Water Heater Efficiency Comparison



Hot Water Piping

- All hot water piping shall be engineered "home run" type and all hot water pipes to kitchens shall be insulated
 - Direct runs of small diameter PEX tubing from water heater to fixtures
 - Code approved
 - No increase in cost
 - Less water and energy waste
 - Meets 2005 Title 24 requirements



Appliances

- All dishwashers shall be Energy Star listed
 - Only appliance that is always installed by the builder
 - Use less electrical energy
 - Use less water



Lighting

- Fluorescent lights shall be provided in all ceiling can fixtures and bathroom fixtures
 - Less one third the energy use compared to incandescent
 - Decreases load on the air conditioner
 - Costs are falling and longevity is improving
 - Sizes and color rendition close to incandescent



3. SOLAR PHOTOVOLTAICS

- 3.1. To facilitate future installation of solar electric systems, all new homes shall have a minimum of 240 ft² of south roof area that is free of obstructions.



The owners of this Livermore, California home built by Centex Homes have yet to pay for electricity.

PHOTOVOLTAICS (continued)

- 3.2. All new homes having a conditioned floor area of 2500 ft² or greater shall be equipped with a 1" or larger conduit between the attic space and the main electrical panel to facilitate wiring for future photovoltaic systems.
- 3.3. All new homes having a conditioned floor area of 3500 ft² or greater shall be equipped with a functioning photovoltaic system with an STC rating of 1.5 kW or greater.

PV System Benefits

- Current California rebates of \$3.00 per Watt (after July 1)
- California 7½% tax credit
- Can yield a positive cash flow with rebates and time-of-use rates applied
- Supported by federal programs



Pending Legislation & State Programs

- SB 1652 - Murray
Requires at least 25% of all single-family homes built as part of a development larger than 25 homes to have PV systems starting in 2006.
- California Zero Energy New Homes Energy Commission program will provide \$8 million in funding to develop zero energy communities and business models.

WoodZap

Building-Integrated PV Systems



"Zero Energy" model home in San Ramon, California



General Electric "building-integrated" PV modules being installed with tool tie

WoodZap

4. WASTE REDUCTION

- 4.1. Construction waste shall be separated, and wood, steel, and gypsum products shall be recycled
- Reduces impact on Yolo County landfill site
 - Reduces transportation and disposal costs
 - Waste wood can be used to generate electricity (Woodland Biomass Power Ltd.)

WoodZap

SUMMARY OF BENEFITS

- Energy savings and peak demand reduction
 - Energy Star measures and PV systems
 - Narrow streets, bike paths & street trees
- Water savings
 - Hot water distribution savings, reduced power plant load
- Air quality, health & safety improvements
 - Narrow streets, bike paths & street trees
 - Energy Star design and PV systems
- Reduced load on utility trans. & dist. System
- Reduced waste

WoodZap

12

EXHIBIT E
School Agreement

MUTUAL BENEFIT AGREEMENT BETWEEN

DONALD M. MILLER

AND

WINTERS JOINT UNIFIED SCHOOL DISTRICT

THIS MUTUAL BENEFIT AGREEMENT ("Agreement") is entered into this 20th day of April, 2005, by and between

DONALD M. MILLER,
hereinafter referred to as "Developer"

whose address is
20 College Park
Davis, CA 95616

and

WINTERS JOINT UNIFIED SCHOOL DISTRICT

Yolo County, California, hereinafter
referred to as "District"
whose address is
909 West Grant Avenue
Winters, CA 95694

RECITALS:

A. WHEREAS, *Developer* is the owner and developer of certain real property commonly referred to as the Creekside Estates Project described on Exhibit "A", attached hereto and incorporated herein by reference (hereinafter "the Property"); and

B. WHEREAS, the Property is located within the boundaries of the District; and

C. WHEREAS, *Developer* represents to the District that it proposes to construct residential dwelling units within the District, consisting of thirty-six (36) market rate, single family residential units, and four (4) affordable units on site, one (1) affordable unit will be for moderate income persons, two (2) will be for low income persons, and one (1) will be for very low income persons. (Collectively, the 40 single family residential dwelling units shall be referred to as "the Project"); and

D. WHEREAS, the District's facilities are currently at capacity and the District has the authority to levy fees on developers to mitigate the impact that future development will have

on the District's school facility needs within certain limits prescribed by law; and

E. WHEREAS, the District is currently levying fees pursuant to Government Code section 65995.5 ("Level II fees"); and

F. WHEREAS, *Developer* and the City of Winters are intending to enter into a development agreement which will provide for the voluntary payment by *Developer* of additional impact fees to the District of the equivalent of Level III fees on thirty-seven (37) residential units in the Project; and

G. WHEREAS, *Developer* and the District desire to set forth the agreements between them in writing so that the Agreement may be enforced by the District.

NOW, THEREFORE, in consideration of the terms and conditions herein set forth, the District and *Developer* do hereby agree as follows:

1. *Developer* agrees to mitigate the impact on District facilities as a result of the Project by the payment of the equivalent of Level III fees in effect as of the date of payment as specifically described herein, which will be payable in two installments as follows:

A. Payment of the equivalent of Level II fees which are in effect at the time *Developer* seeks issuance of a building permit, covering the square footage of residential construction for each single family residential unit, to be payable prior to the time a building permit is issued.

B. Payment of additional voluntary fees to be calculated as the difference between the first installment of Level II fees previously paid pursuant to Paragraph A above, and the current Level III fees in effect at the time of payment of the second installment, covering the square footage of residential construction for each single family residential unit, to be payable at the close of escrow on the sale of said single family residential unit.

2. The payments described in paragraph 1 shall be paid on the thirty-six (36) market rate residential units, and one (1) affordable residential unit for moderate income persons within the Project.

3. This Agreement and specifically paragraph 1, shall not apply to any residential units in the Project constructed specifically for low and very low income persons, it being acknowledged by the parties that those residential units would remain subject to the statutory Level II fees as described in Paragraph E hereof.

4. *Developer* shall not be required to pay directly to the District any fees or charges in addition to the payments described in Paragraph 1. Nothing contained herein shall prevent the District from seeking other means of mitigation or additional funding for school facilities from other sources, but nothing herein obligates the District to do so. In addition, nothing contained herein shall prevent the City of Winters from requiring other impact fees from *Developer* for purposes other than school impact mitigation which may also benefit District properties.

5. A. It is anticipated that an executed copy of this Agreement will be attached as an exhibit to the Development Agreement between *Developer* and the City.

B. The District shall provide *Developer* and/or its successors in interest with two appropriate releases within a reasonable time for each single family residential unit for which *Developer* has paid the fees agreed upon in this Agreement as follows:

- 1) The first release shall be conditioned upon the payment in full of Level II fees as described in Paragraph 1A and shall serve to authorize the City to issue a building permit.
- 2) The second release shall be provided after the payment of the fee described in Paragraph 1 B.

C. The City has advised both the District and *Developer* that no building permit will be issued until *Developer* has paid the required Level II fees pursuant to Paragraph 1 A above and the District has notified the City of such payment by delivering a copy to the City of the release specified in B. 1) of this paragraph 5.

D. The District shall provide a release from the recorded memorandum of this Agreement to *Developer*, or to an escrow holder designated by *Developer*, when *Developer* has paid the District the additional fees for a single family residential unit, described in Paragraph 1 B.

E. No fee shall be required for issuance of a building permit for subdivision improvements (including, but not limited to utilities, curb, gutter, sidewalk, roads, alleys, grading, walls or monuments).

6. *Developer* acknowledges that the payments established in this Agreement are in excess of the Level II fees the District is authorized by statute to impose and agrees that it is entering into this Agreement voluntarily and that it waives any right to protest, challenge or object to the payments as set forth in this Agreement.

7. The District acknowledges that the legal limitations on the amount of payments established in this Agreement may be hereafter be amended or adjusted by legislative or administrative action, or may be invalidated or augmented as a result of court action, and agrees that it waives any right to school impact fees from *Developer*, its successors or assigns, other than as provided for in this Agreement.

8. This Agreement is for the benefit of the Project and is intended to preserve its value and enhance its development. *Developer* agrees that for the benefit of the District, the City, and for itself, that it will construct and pay for any and all road improvements (including, in addition to the traveled way, such items as shoulders, bike lanes, sidewalks, and utilities) along any District property which may be required by the City or otherwise, and that it will not seek reimbursement for such improvements from the District.

9. A. The parties agree that the Project shall be held, transferred and encumbered,

subject to the provisions of this Agreement, which is for the use and benefit of each and every person or entity who now or in the future owns any portion or portions of said real property. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives. *Developer* shall be permitted to sell or assign all or any portion of the properties described in Exhibit A to any other individual, partnership, corporation, licensed contractor, or limited liability company for purposes of development of residential lots or residences on such lots, subject to said assignee assuming all *Developer's* obligations hereunder.

B. A Memorandum of this Agreement in the form of Exhibit "B" to this Agreement shall be recorded in the Office of the County Recorder of Yolo County, California. Such Memorandum shall be executed by the parties before a notary, and shall constitute a covenant which shall run with the land; provided however, as to any lot within the Callahan Parcel on which a dwelling unit has been constructed, and for which an occupancy permit has been issued, and escrow for the sale to a third party has closed, this Agreement shall be deemed terminated and of no further force or effect.

C. Upon *Developer's* payments as described in Paragraph 1 hereof, District agrees to execute any documents necessary or convenient including, but not limited to a lien release and escrow instructions in order to release any lien existing on said lot by virtue of this Agreement or the Memorandum of Agreement referenced herein.

10. The parties acknowledge that in consideration of the payments as provided in this Agreement, the Callahan Parcel will be exempt from and excluded from inclusion in any landowner Mello-Roos Community Facilities District formed by the District for the purposes of financing the acquisition and development of school facilities. This section is not intended to prevent the school district from using State funds under the Leroy Greene Lease Purchase Act or other applicable legislation including, but not limited to, land donations, general obligation bonds, or other sources of funding to finance the acquisition, design, construction, or reconstruction of school facilities.

11. Should any suit brought by either party against the other for the enforcement of any rights of either party against the other pursuant to the provisions of this Agreement, or by reason of any alleged breach of any of the provisions of this Agreement or arising from this Agreement, then and in such event, the successful party in such action shall be entitled to receive from the unsuccessful party all costs incurred in connection with such suit, including a reasonable allowance for attorneys' fees incurred by the successful party.

12. All notices or other communications to be given hereunder shall be in writing and shall be deemed received when personally delivered by commercial courier or otherwise, or three business days after deposit in the United States mail, postage prepaid, addressed as follows:

Developer:

Mr. Donald M. Miller
20 College Park
Davis, CA 95616

District:

Winters Joint Unified School District
909 West Grant Avenue
Winters, CA 95694
Attn.: Dale J. Mitchell, Superintendent

ORDER NO. : 3111001021-GH

EXHIBIT A

13. Should the provisions of State law preclude the District from levying statutory developer fees or remove the statutory limits on developer fees, this Agreement shall be considered a current obligation of *Developer* for each and every single family residential unit planned for the Project whether or not a building permit has been issued, and as such shall have the protection of the California and United States Constitutions.

14. *Developer's* obligations to make any payment under the terms of this Agreement is expressly conditioned upon approval by the City of a Development Agreement between the City and *Developer*. Should this condition not be satisfied then this Agreement shall be void, and of no further force and effect. The District shall in that event execute a release of the Memorandum of Agreement.

15. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

16. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives.

17. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all previous negotiations among them. Except as otherwise expressly provided, neither this Agreement nor any of its terms may be amended, modified or waived except by written agreement. This Agreement shall, however, be construed in light of and in conjunction with the Mutual Benefit Agreement between the City of Winters and the District.

18. This Agreement shall be governed and construed in accordance with the laws of the State of California.

19. This Agreement shall be effective on the same date as the Development Agreement between *Developer* and the City is recorded in the Office of the County Recorder of Yolo County.

WINTERS JOINT UNION SCHOOL DISTRICT DEVELOPER

By Dale J. Mitchell

DEVELOPER

By Donald M. Miller

Donald M. Miller

The land referred to is situated in the County of Yolo, City of Winters, State of California, and is described as follows:

PARCEL NO. 1

Beginning at a point on the Northerly line of Rancho Rio de Los Potos, distant thereon North 65° East, 23.37 chains, more or less, from the Northwest corner of Lot 16 of Waldemars Survey of Subdivision of a portion of Rancho Rio de Los Potos; said point of beginning being also the Northeast corner of a tract of land now or formerly owned by G. B. Moore; thence from said point of beginning, North 65° East, along the said Northerly line of said Rancho 62 rods 10 feet to the Northwest corner of a tract of land now or formerly owned by A. B. Wilson; said Northwest corner of said Wilson's land being located North 25° West 39.0 feet and South 65° 1625.70 feet to the Northwest corner of Block 1, D. P. Edwards Addition to the Town of Winters according to the Official Plat thereof, filed for record in the office of the Recorder of Yolo County, California, in Book 39 of Deeds, Page 394; thence South 25° East, along the West line of said Wilson's land, 44 rods to a point; thence South 00° 29.5' West 4 rods, 6 feet and 6 inches to the center of dry arroyo; thence Northwesterly along the said center of said arroyo 75 rods, more or less, to the Southeast corner of the first mentioned tract of land now or formerly owned by Moore; thence North 25° West, along the East line of said Moore's land 7 rods to the point of beginning.

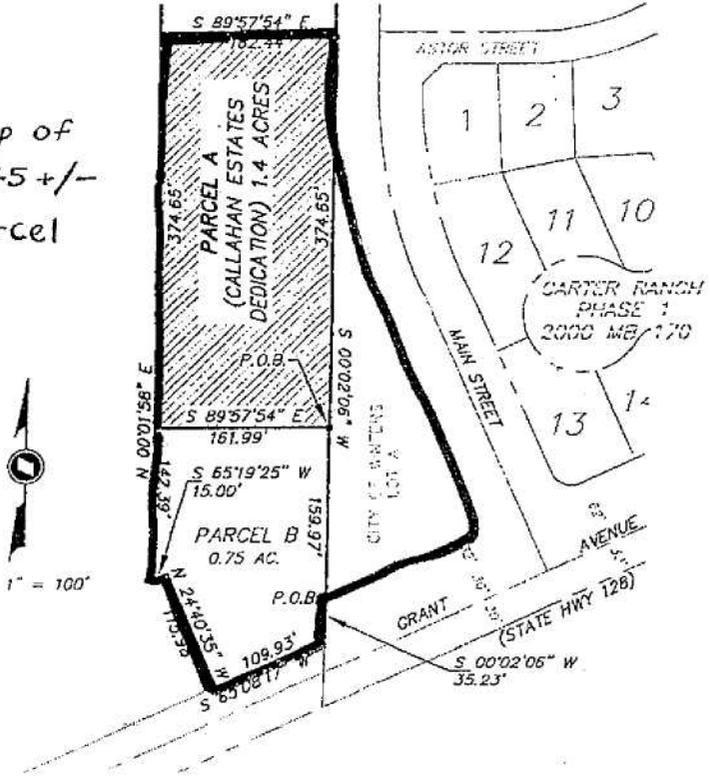
APN: 003-430-12

PARCEL NO. 2

Lot B of Subdivision No. 3252, Rancho Arroyo No. 2, recorded on July 27, 1987, in Book 14 of Maps, Pages 89, 90 and 91, Yolo County Records, and as corrected by Certificate of Correction recorded September 21, 1988, in Book 1969, Page 380, Official Records.

APN: 003-120-04

Map of
3.45 +/-
Parcel



SCALE: 1" = 100'

LM
 CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING
 LAURENCE AND NICHOLS
 200 COURT STREET, WOODLAND, CA 95692
 PHONE (916) 862-1750
 FAX (916) 862-4607

YOLO COUNTY, CALIFORNIA
 A PORTION OF LOT 3
 BANK OF YOLO SUBDIVISION
 BOOK 3, MAPS & SURVEYS, PAGE 23
 BEING A PORTION OF SECTION 21,
 TOWNSHIP 8 NORTH, RANGE 1 WEST,
 M.D.M.
 MARCH 30, 2005

ORDINANCE NO. 2012-01

AN ORDINANCE OF THE CITY OF WINTERS APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE CREEKSIDE ESTATES DEVELOPMENT DATED DECEMBER 22, 2005, BETWEEN THE CITY OF WINTERS AND DONALD MILLER, TO EXTEND THE TERM OF THE DEVELOPMENT AGREEMENT FOR AN ADDITIONAL EIGHT YEARS, REMOVE FUNDING REQUIREMENTS FOR FACILITIES THAT HAVE BEEN BUILT, AND MODIFY LANGUAGE CONCERNING PARK COSTS

WHEREAS, the City of Winters ("City") and Donald Miller ("Miller") entered into that certain Development Agreement dated December 22, 2005 ("Development Agreement"); and

WHEREAS, the Development Agreement provides for the residential development of 41 single-family units ("Project") on 13.7 acres of certain real property in the City ("Property"); and

WHEREAS, after Miller passed away in 2007, his heirs subsequently sold the Property to the Catholic Bishop of Sacramento ("Developer"); and

WHEREAS, the Property has not been developed, and the parties now desire to extend the term of the Development Agreement for an additional eight years and to make other changes to it; and

WHEREAS, on December 14, 2011, the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed amended Development Agreement were heard and at which the amended Development Agreement was comprehensively reviewed; and

WHEREAS, on December 20, 2011, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed amendment to the Development Agreement were heard and at which the amended Development Agreement was comprehensively reviewed; and

WHEREAS, the City Council reviewed and studied the amended Development Agreement and found it complies with the California Environmental Quality Act ("CEQA").

NOW THEREFORE BE IT RESOLVED:

SECTION 1. ADOPTION OF AMENDMENT. Pursuant to California Government section 65868, the City Council hereby approves the amendment to the Development Agreement, attached hereto as **Exhibit A** ("Amendment").

SECTION 2. FINDINGS. Pursuant to Government Code section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council makes and adopts the following findings:

A. That the Amendment promotes the public health, safety, and welfare of the community because the Amendment will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.

B. That the Amendment is consistent with the City's General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City's General Plan.

SECTION 3. CEQA. The City Council finds and determines that it can be seen with certainty that adoption of this Ordinance will not have a significant effect on the environment. Thus, the adoption of this Ordinance is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption with the Yolo County Recorder's Office within five (5) working days of adoption of this Ordinance.

SECTION 4. RECORDATION. Pursuant to Government Code section 65868.5, within ten (10) days following the execution of the Amendment, the City Clerk shall record with the County of Yolo Recorder a copy of this Amendment.

SECTION 5. SEVERABILITY. If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more of such be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

The foregoing ordinance was introduced on December 20, 2011, and passed and adopted during a regular meeting of the City Council of the City of Winters on January 17, 2012, by the following vote to wit:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):
ABSTAIN: Council Member(s):

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

EXHIBIT "A"
AMENDMENT TO THE DEVELOPMENT AGREEMENT

RECORDED AT REQUEST OF AND
WHEN RECORDED MAIL TO:

CITY OF WINTERS
318 First Street
Winters, CA 95695
Attention: City Clerk

(Space Above this Line for Recorder's Use Only)

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF WINTERS AND
THE CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA
CORPORATION SOLE**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "First Amendment") is entered into as of December _____, 2011, by and between the CITY OF WINTERS, a municipal corporation (the "City") and the CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE, a California nonprofit corporation, (the "Developer").

Recitals

A. The City previously entered into a Development Agreement with Donald Miller, who owned certain real property commonly known as the Creekside Estates Property, with Yolo County Assessor's Parcel Numbers 003-430-120 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres) (the "Property" or "Creekside Estates Property"). The Development Agreement provides for the residential development of the Property. Any capitalized terms used but not defined in this First Amendment shall have the meanings given in the Development Agreement.

B. Donald Miller's successors subsequently transferred the Property to the Developer, who was assigned all rights and obligations under the Development Agreement as Donald Miller had.

C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain changes to, and extend the term of, the Development Agreement.

D. City has given the required notice of its intention to adopt this First Amendment and has conducted public hearings thereon pursuant to Government Code section 65857. As

required by Government Code section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards, and land use designations specified in the City's General Plan.

E. On December 14, 2011, the City of Winters Planning Commission, the initial hearing body for purposes of Development Agreement review, recommended approval of this First Amendment. On December 20, 2011, the City of Winters City Council adopted Ordinance No. _____ approving this First Amendment and authorizing its execution.

Agreement

Section 1. Section 2.3(b) of the Development Agreement is amended to provide that the term of the Development Agreement shall be extended for an additional eight (8) years, commencing on the date written above in the introductory paragraph ("Effective Date").

Section 2. Section 2.9(d) of the Development Agreement is amended to delete the address to which notice shall be given to Developer and to replace it, as follows:

Catholic Bishop of Sacramento, a California corporation sole
Pastoral Center
2110 Broadway
Sacramento, CA 95818
Telephone: (916) 733-0100
FAX (916) 733-0295

Section 3. Section 4.1(b) of the Development Agreement is amended to read as follows:

As a condition to the approval of this Agreement by the City, Developer's predecessor presented to the City Council a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement provides, in addition to other matters as the parties agreed, that the Developer will pay to the School District, at the time of the issuance of a building permit, certain "Level 2" fees and will voluntarily pay certain "Level 3" fees, as those terms are commonly used in the K-12 education community. Should Developer and School District amend their agreement to change the amount or payment of the "Level 2" and/or "Level 3" fees, Developer shall provide a copy of such amendment to the City.

Section 4. Section 4.1(b)(1) and (2) and Section 4.1(c) are deleted from the Development Agreement.

Section 5. Section 4.2(e)(2) of the Development Agreement related to the estimated cost of park infrastructure improvements is amended to read as follows:

2. The estimated costs of the infrastructure improvements and development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer based on an estimated cost index of park improvements of

municipal park projects developed within the previous 24 month period.

Section 6. Section 4.2(e)(3) is deleted from the Development Agreement.

Section 7. Section 4.3 of the Development Agreement, entitled "Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility" is deleted as the facility has been constructed.

Section 8. Section 4.4 of the Development Agreement, entitled "Payment to Library Fund" is deleted, but the Section 4.4 entitled "Annuity in Lieu of Mello-Roos District" shall not change.

Section 9. Section 4.7 of the Development Agreement, entitled "Urban Water Management Plan," is renumbered to be section 4.6.

Section 10. Section 4.8 of the Development Agreement, entitled "Water Well," is deleted as a well has already been constructed.

Section 11. The effective date of this First Amendment shall be the date as written above in the introductory paragraph. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the date first above written.

CITY:	DEVELOPER:
CITY OF WINTERS _____ Mayor	CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE, a __ _____ By: _____ Its: _____
ATTEST: _____ City Clerk	



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: December 20, 2011
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Request for Authorization to Send Correspondence on Behalf of the City to Congressmen Mike Thompson and John Garamendi Requesting a Congressional Investigation into the Bid Process and Plans Involving Markley Cove Resort at Lake Berryessa.

RECOMMENDATION: That the Council authorize the City Manager to send correspondence on behalf of the City to Congressmen Mike Thompson and John Garamendi requesting a congressional investigation into the bid process and plans involving Markley Cove Resort at Lake Berryessa.

BACKGROUND: In 2005 the City learned that the concession contracts at Lake Berryessa were coming to an end and that new contracts would be awarded by the Bureau of Reclamation. The City of Winters has made it clear to the BOR throughout the process that as a gateway city to the lake their decision would affect the economic interests of the city. The BOR's Record of Decision and statements from their spokesperson indicated that "in deference to the City of Winters economic interests" Markley Cove Resort would remain open.

The BOR went through the bid process for concession contracts twice, having thrown out the decisions of the first process announcing that the process had been "flawed." The second bid process resulted in a contract for the Markley Cove concession that will likely cause the resort to be closed for a prolonged period of time. A closure of the resort is in direct conflict of the Record of Decision and would result in a severe economic hardship for the City of Winters.

Due to concerns over the second bid process and subsequent awarding of the contracts the City Manager is requesting authorization to send the attached letters to Congressmen Mike Thompson and John Garamendi requesting that Congress conduct an investigation to ensure

that the decisions made by the Bureau of Reclamation accurately reflect the Lake Berryessa Record of Decision.

FISCAL IMPACT:

None.

ATTACHMENTS:

1. Draft letter to Congressman Mike Thompson
2. Draft letter to Congressman John Garamendi

December 20, 2011

The Honorable Mike Thompson
Napa District Office
1040 Main Street, Suite 101
Napa, CA 94559

RE: Request for Congressional Investigation – Lake Berryessa Concessions

Dear Congressman Thompson:

The City of Winters respectfully requests a formal congressional investigation into the bid process and plans involving Markley Cove Resort at Lake Berryessa.

Winters, as you well know, has a vital economic interest in Lake Berryessa as a whole, and particularly in the continuous operation of Markley Cove Resort. As a "Gateway City" to the lake, we derive major economic benefits from the traffic going to and from Lake Berryessa and particularly to Markley Cove Resort. In these tough economic times we cannot afford to lose these benefits.

In 2005, the Public was advised that the concession contracts at Lake Berryessa were coming to an end and that new contracts would be awarded. Winters took a proactive stance at an early point in the process and made it clear to the Bureau of Reclamation that our economic interests were at stake.

The BOR indicated an understanding of our needs. When the Lake Berryessa Record of Decision was published in 2006, the BOR spokesperson publically stated that "in deference to the City of Winters economic interests" Markley Cove Resort would remain open. Documentation singling out Markley Cove in the ROD and in the Bid Prospectus support this statement.

The actual bid process for the seven concessions on the lake began in June 2007. Initially the Markley Cove Concession contract was awarded to the current concession contractor. This contractor stated he would make major improvements to Markley while keeping it open to the public, ensuring that our economic interests would remain secure.

In 2009, the BOR announced that the Bid Process was "flawed" and the concession awards needed to go out to bid again. It was not made clear in what way the process was "flawed." Following the second bid process, the Markley concession contract was

taken away from the current concession contractor and awarded to a large corporation based in Arizona that had already been awarded five resorts during the first bidding process. Those five resorts after being closed for three years are still closed or minimally operational. It would pose a severe economic hardship for Winters if the same were to happen with the Markley Cove resort.

Of particular concern to the City of Winters are the bid process that was used, the implementation of the Record of Decision and the consistency of the actions being taken with regards to the Record of Decision.

The current status of Markley Cove seems to be completely up in the air and probably destined to a prolonged closure! The current concessionaire has indicated their intention to remove all facilities when their lease expires. This means the location will close, which is in direct contradiction to what Winters has been promised. Furthermore, both BOR and Pensus have described the replacement proposal as being a "30 Year Plan".

The prospect of closure will be a significant economic hit to the City of Winters. Imagine the impacts of closing Lake Shasta, Yosemite, Lake Nacimiento and others on the "gateway" communities, It would be devastating and it will be similar to Winters.

The BOR will argue that Markley Cove "will not close". The fact is that all of the boats, storage slips, launching facilities, cabins, water and wastewater systems will be removed when the current vendor leaves. The BOR may claim a hiking trail will remain and it will be "open", but the reality is that it will take many years to re-establish what currently exists and thrives at this location.

In summary, we believe it is important that Congress conduct an investigation into the above to ensure that the decisions being made by the Bureau of Reclamation accurately reflect the Lake Berryessa Record of Decision.

Thank you for your consideration of our concerns. If you have any questions or need further information, please do not hesitate to call.

Sincerely,

John W. Donlevy, Jr.
City Manager

December 20, 2011

The Honorable John Garamendi
Fairfield District Office
609 Jefferson Street
Fairfield, CA 94533

RE: Request for Congressional Investigation – Lake Berryessa Concessions

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Sincerely,

John W. Donlevy, Jr.
City Manager



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council members
DATE: December 20, 2011
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Dan Maguire, Housing Programs Manager *DM*
SUBJECT: Update and Discussion of City Property Lease and Response to City Request for Proposal - 318 Railroad Avenue (APN # 003 204 005)

RECOMMENDATION:

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

BACKGROUND:

The City re-issued a Request for Proposals ("RFP") for interested businesses to lease and operate a commercial business in the City-owned building at 318 Railroad Avenue. The City received two (2) proposals in response to the "Invitation to Submit a Lease Proposal". At the November 1, 2011 Council meeting, Staff updated City Council on the review of the proposals using the criteria outlined in the Invitation to Submit a Lease Proposal and recommended the proposal submitted by Dave and Carol Lorenzo as the preferred response. Staff received direction from City Council to hold off on proceeding with a lease for the property pending resolution on the status of the City-owned property at 314 Railroad Avenue. Subsequently, City Council approved the Lease Addendum – Assignment of Lease to Shaunie Briggs for the 314 Railroad property. Additionally, Staff has since received financial projections from Dave Lorenzo in support of their proposal.

FISCAL IMPACT:

\$16,000 (for bathroom remodel to create an ADA compliant bathroom).

ATTACHMENTS:

Lorenzo response to the Revised RFP
Lorenzo Financial Projections

10/13/11

The City of Winters
City Community Development Agency
Attention: Dan Maguire

David and Carol Lorenzo
28984 Road 87 D
Winters, CA 95694
Home phone (530) 795-1362
David's cell (530) 681-1106
Carol's cell (530) 681-1107

Trade Name: J J's Tavern
Business: Bar/Tavern

Base Rent: First and second month free rent. \$1,100.00 per month for the first year. \$1,200.00 per month for the second year. Should monthly gross sales exceed \$40,000.00 in any given month after the first year, the base rent of \$1,500.00 will be paid that month.

Hours of Operation: Sunday -
Thursday 10 AM - 12 AM
Friday and Saturday 10 AM - 2 AM

Number of Employees: Aprox. 3-
full time and aprox. 4-part time.

Term of Lease: After the second
year of operation, the lease will
remain the same until the
city begins development of the
proposed hotel.

Business Experience: 35 years
experience in retail (Supermarket,
mini market/gas station).

Sincerely,

 and Carol Gounzo

Business References:

DBI phone # 707-249-3587
Southern Wine + Spirits phone # 916-300-1793
V. Santoni phone # 530-666-4447
Young's Market phone # 916-997-8781

Start-Up Costs: Approximately
20-25 thousand dollars.

Lease Agreement:

After 2 years the lease
will remain the same, but will
be on a month to month basis
until the city begins the
development of the proposed
hotel.

This proposed offer is ~~provisional~~ contingent on
the acquisition of a type 48
liquor license.

JUG
Profit & Loss
January through December 2011

	Jan 12	Jul 12	Aug 12	Sep 12	Oct 12
Income					
Alcohol and Beverage Sales	22,000.00	22,000.00	22,000.00	20,000.00	20,000.00
Total Income	22,000.00	22,000.00	22,000.00	20,000.00	20,000.00
Cost of Goods Sold					
Purchases	5,850.00	5,850.00	5,850.00	5,850.00	5,850.00
Sales Tax in gross sales (7.5%)	1,487.00	1,487.00	1,487.00	1,352.00	1,352.00
Supplies	350.00	350.00	350.00	350.00	350.00
Total COGS	7,687.00	7,687.00	7,687.00	7,552.00	7,552.00
Gross Profit	14,313.00	14,313.00	14,313.00	12,448.00	12,448.00
Expense					
Advertising and Promotion	100.00	100.00	100.00	100.00	100.00
Amortize Start Up Expenses	1,389.00	1,389.00	1,389.00	1,389.00	1,389.00
Bank Service Charges	100.00	100.00	100.00	75.00	75.00
Business Licenses and Permit	0.00	0.00	0.00	0.00	0.00
Dues and Subscriptions	0.00	0.00	0.00	0.00	0.00
Equipment Rentals	150.00	150.00	150.00	150.00	150.00
Insurance Expense	350.00	350.00	350.00	350.00	350.00
Janitorial	175.00	175.00	175.00	175.00	175.00
Music and Entertainment	450.00	450.00	450.00	450.00	450.00
Office Supplies	50.00	50.00	50.00	50.00	50.00
Payroll Expense	3,792.00	3,792.00	3,792.00	3,792.00	3,792.00
Payroll Taxes	529.00	529.00	529.00	529.00	529.00
Professional Fees	250.00	250.00	250.00	250.00	250.00
Rent Expense	1,100.00	1,100.00	1,100.00	1,100.00	1,100.00
Repairs and Maintenance	0.00	0.00	0.00	300.00	0.00
Security	60.00	60.00	60.00	60.00	60.00
Telephone Expense	65.00	65.00	65.00	65.00	65.00
Utilities	864.00	864.00	864.00	864.00	864.00
Total Expense	9,424.00	9,424.00	9,424.00	9,699.00	9,399.00
Net Income	4,889.00	4,889.00	4,889.00	2,749.00	3,049.00

payroll expense = \$8.75 x 40 hours

payroll taxes = \$529 x 15.9% = \$84

purchases = amount / (1.075) = \$5,850

start up expenses - estimate @ \$300 over 3 years

JJ'S
Profit & Loss
January through December 2011

	Nov 11	Dec 11	TOTAL
Income			
Alcohol and Beverage Sales	20,000.00	20,000.00	250,000.00
Total Income	20,000.00	20,000.00	250,000.00
Cost of Goods Sold			
Purchases	5,850.00	5,850.00	70,200.00
Sales Tax in gross sales (7.25%)	1,352.00	1,352.00	16,899.00
Supplies	350.00	350.00	4,200.00
Total COGS	7,552.00	7,552.00	91,299.00
Gross Profit	12,448.00	12,448.00	158,701.00
Expense			
Advertising and Promotion	100.00	100.00	1,200.00
Amortize Start Up Expenses	1,389.00	1,389.00	16,668.00
Bank Service Charges	75.00	75.00	1,025.00
Business Licenses and Permits	0.00	0.00	1,110.00
Dues and Subscriptions	0.00	0.00	150.00
Equipment Rentals	150.00	150.00	1,300.00
Insurance Expense	350.00	350.00	4,200.00
Janitorial	175.00	175.00	2,100.00
Music and Entertainment	450.00	450.00	5,400.00
Office Supplies	50.00	50.00	600.00
Payroll Expenses	3,792.00	3,792.00	45,504.00
Payroll Taxes	528.00	528.00	6,348.00
Professional Fees	250.00	250.00	3,000.00
Rent Expense	1,100.00	1,100.00	13,200.00
Repairs and Maintenance	400.00	0.00	1,200.00
Security	80.00	90.00	720.00
Telephone Expense	65.00	65.00	780.00
Utilities	1,064.00	1,064.00	11,368.00
Total Expense	9,999.00	9,999.00	116,373.00
Net Income	2,449.00	2,449.00	42,328.00

payroll expenses = 88.75 x 40 hours

payroll taxes = 3792 x 13.66% = 528

purchases = amount 800, dbi 250, de

start up expenses - estimate @ 3500