



Winters City Council Meeting
Public Safety Facility – EOC Meeting Room
702 Main Street
Tuesday, August 21, 2012
AGENDA

5:00 p.m. – Executive Session

AGENDA

Safe Harbor for Closed Session – Pursuant to Government Code Section 54954.5

Pursuant to Government Code Section 54956.8 – Real Estate Negotiations – Grant Avenue Commercial Project, APN's 003-370-028, 003-370-029, 003-370-030 – Real Property Negotiator City Manager John W. Donlevy Jr.

Pursuant to Government Code Section 54956.8 – Real Estate Negotiations - Downtown Hotel between Railroad Avenue, Abbey Street, First Street and Newt's Expressway, Winters, CA, Real Property Negotiator City Manager John W. Donlevy, Jr.

Pursuant to Government Code Section 54957 - Public Employee Performance Evaluation – City Manager

Pursuant to Government Code Section 54957 - Public Employee Performance Evaluation – City Attorney

6:00 p.m. – Community Choice Aggregation Workshop

7:00 p.m. – Regular Meeting

AGENDA

Members of the City Council

*Cecilia Aguilar-Curry, Mayor
Woody Fridae, Mayor Pro-Tempore
Harold Anderson
Wade Cowan
Michael Martin*

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

NOTICE TO THE PUBLIC

The numerical order of items on this agenda is for convenience of reference; **times listed are estimates.** Items may be taken out of order upon request of the Mayor or Councilmembers. Persons may address the City Council on agenda items by completing a "Request to Address the City Council" and present it to the City Clerk prior to the start of the meeting. Speakers shall restrict their comments to issues that are within the subject jurisdiction of the City Council and limit their comments to three (3) minutes per person. The Brown Act, with certain exceptions, does not permit the City Council to discuss or take action on issues that are not listed on the agenda.

7:00 p.m. Call to Order

Roll Call

Pledge of Allegiance

Approval of Agenda

7:35 p.m. **COUNCIL/STAFF COMMENTS**

7:40 p.m. **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.

7:45 p.m. 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 August 7, 2012 (pp 1-11)
- B. Introduction and Consideration of Five Resolutions presented by the League of California Cities Regarding Environmental Quality, Public Safety and Revenue & Taxation (pp 12-41)
- C. Resolution 2012-32, A Resolution of the City Council of the City of Winters Approving and Agreement for Professional Consulting Services to the City of Winters by AK& Company for SB 90 State Mandated Cost Reimbursement in the Amount of \$3,000 (pp 42-56)

7:50 p.m. DISCUSSION ITEMS

1. Approval of Lease Agreement Between the City of Winters and RISE for that Certain Property at 201 First Street, Winters, CA (pp 57-64)
2. Yolo County Measure H (No Backup)

**CITY OF WINTERS AS SUCCESSOR AGENCY TO THE WINTERS
COMMUNITY DEVELOPMENT AGENCY**

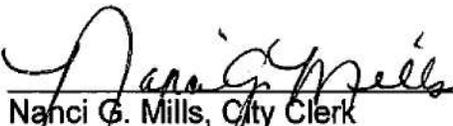
- 1.
-

8:25 p.m. CITY MANAGER REPORT

8:30 p.m. ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the August 21, 2012 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 August 15, 2012, 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) 794-6701. 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. Persons needing disability-related modifications or accommodations in order to participate in public meetings, including persons requiring auxiliary aids or services, may request such modifications or accommodations by calling the Office of the City Clerk (530) 794-6701 at least 48 hours prior to the meeting.

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.

How to obtain City Council Agendas:

View on the internet: www.cityofwinters.org/administrative/admin_council.htm
Any attachments to the agenda that are not available online may be viewed at the City Clerk’s Office or locations where the hard copy packet is available.

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

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

Winters Library – 708 Railroad Avenue

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

Winters Joint Unified School District – 909 W. Grant Avenue

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 August 7, 2012

Mayor Cecilia Aguiar-Curry called the meeting to order at 6:30 p.m.

Present: Council Members Harold Anderson, Wade Cowan, Woody Fridae, Michael Martin, and Mayor Cecilia Aguiar-Curry
Absent: None
Staff: City Manager John Donlevy, City Attorney John Wallace, City Clerk Nanci Mills, Director of Financial Management Shelly Gunby, Police Chief Sergio Gutierrez, City Planner Jim Bermudez, Housing Programs/Redevelopment Manager Dan Maguire, and Management Analyst Tracy Jensen.

The Pledge of Allegiance was led by Police Chief Sergio Gutierrez.

Approval of Agenda: City Manager Donlevy said there were no changes to the agenda. Motion by Council Member Anderson, second by Council Member Cowan to approve the agenda. Motion carried unanimously.

COUNCIL/STAFF COMMENTS: Council Member Anderson attended an Oversight Board meeting on 8/6, as well at the Yolo County Transportation District's grand opening at their new, \$6 million dollar facility in Woodland; attended a Community Choice Aggregation meeting in Davis on 7/18 and announced the next meeting/workshop has been scheduled for 8/21/12 at 6:00 p.m. at the Public Safety Facility EOC room following the City Council closed session @ 5:00 p.m. and prior to the City Council meeting at 7:00 p.m.

Council Member Fridae will attend a 2X2 meeting with the County on 8/8; announced the opening of the Winters Theater Company's production of "Twelfth Night" on 8/10 at the City Park; school starts on 8/13; the Earthquake Festival will be on 8/24.

Council Member Cowan attended the Northern Solano County Association of Realtors tour of the Public Safety Facility and Lake Berryessa, where Jeff Laird of the Bureau of Reclamation was the speaker; the Youth Day committee held a meeting and are moving forward with Rubber Duck Derby on 9/16. They will be

selling rubber ducks @ the Earthquake Festival, with the prizes being a percentage of the proceeds from the duck sales and will be announced prior to the event.

Council Member Martin also attended the Northern Solano County Association of Realtors tour of the Public Safety Facility and Lake Berryessa and reported that Pegasus is trying to get out of their contract. Linda Frazier gave a presentation about Markley Cove's challenges and their future. He also thanked the volunteers who drove the houseboats for the lake tour. Council Member Martin, along with Mayor Aguiar-Curry recently attended a Solano College Board of Governors meeting to discuss the education needs of Winters and reported there will be a bond issue on the upcoming November ballot to improve facilities at their main campus.

Mayor Aguiar-Curry thanked Council Member Martin for his instrumental involvement with Solano College; along with Council Member Anderson met with David Okita of Solano County Water Association on 7/25 to talk about water licensing and received an update on Putah Creek; met with the City of Davis Mayor Pro Tem Dan Wolk to discuss common goals between Winters and Davis, with Winters hosting a social gathering on 8/17 from 4:30 – 6:00, location TBD; attended a breakfast sponsored by Solano County Board of Realtors in Davis on 7/31 and thanked Council Members Cowan and Martin for attending; met with RISE Director Tico Zendejas regarding RISE opportunities for the City of Winters; also met with Linda Glick, a local who has been instrumental in helping us with mental health ideas and getting additional resources in Winters; met with Superintendent Cushenberry on 8/1 regarding opportunities for Winters Broadband and the linkage between City, County, School District, Solano Community College and economic development for our region; attended a SACOG Land Use meeting and a SACOG orientation; met with Francois Corn at a meeting with Sarah Worley from the City of Davis, along with Davis City Council member Rochelle Swanson to discuss a seed central, seed press and economic development opportunities in the region; reminded Council of the City Council Challenge to the Winters School Board for the PTA work day on 8/11; Wade & Kathy Cowan have already begun by painting the Waggoner cafeteria; attended the Yolo County Board of Supervisors meeting today to support City Manager Donlevy's presentation regarding emergency medical services; the Festival de la Comunidad will be on 9/29 and volunteers are needed.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, July 17, 2012

- B. Minutes of the Joint Meeting of the Winters City Council and Winters Joint Unified School District Board Held on Tuesday, July 12, 2012
- C. Resolution 2012-30, A Resolution of the City Council of the City of Winters Confirming Delinquent Utility Bills

City Manager Donlevy gave a brief overview. Council Member Cowan noted a correction to the Council comments portion of the minutes of the 7/17/12 City Council meeting. Motion by Council Member Martin, second by Council Member Fridae to approve the Consent Calendar. Motion carried unanimously.

DISCUSSION ITEMS

- 1. **Waive Second Reading and Adopt Ordinance 2012-06, an Ordinance of the City Council of the City of Winters Approving Zoning Changes of Certain Properties in the I-505/Grant Avenue Planning Area**

City Planner Jim Bermudez gave a brief overview and asked Council to adopt Ordinance 2012-06, which was introduced on 7/17/12, which would allow the City Clerk to being the recordation process of the Notice of Determination.

Motion by Council Member Cowan, second by Council Member Martin to adopt Ordinance 2012-06, approving zoning changes of certain properties in the I-505/Grant Avenue Planning Area.

Council Member Fridae said he originally voted against this ordinance at the 7/17/12 City Council meeting because he has a problem with the specified planned uses. He acknowledged the hard work put in by the planning staff and the Economic Development Advisory Committee (EDAC), and added that he didn't want to highway serving commercial, business park and industrial designations to conflict with downtown. He specified an area in Dixon that is off of the freeway that includes a large grocery chain, as well as many small businesses, ie: hair and nail salons, dry cleaners, auto parts, investment/financial, nursery, medical offices, personal storage, service station, daycare, bank, dentist, and mortgage businesses. These are not examples of highway serving commercial, yet they are drawing people to that area. The City of Dixon spent \$12 million dollars in redevelopment funds on downtown Dixon and it's dead. He wants to be sure that the City is going to address permitted, conditionally permitted, and non-permitted. The definitions need to be cleaned up and clarified. The EDAC worked more on the design aspect side and not on the economic development side. Council Member Fridae wants the ability to say no.

City Manager Donlevy said the clean-up of the I-505/Grant area is the beginning part of moving forward on economic development. The EDAC identified short,

intermediate steps needed to energize development. The downtown is covered by form based code and they have done a great job with a clear direction. But it is time to move forward and put in the infrastructure to support the desired elements, adding that staff has started working on assemblage. The gelling of the Storm Drain Master Plan, Complete Streets Plan, the Putah Creek Nature Park, and the Grant Avenue corridor needs to happen to create an entirely new paradigm. The new zoning definitions will read much differently and be much more attractive.

Council Member Fridae said this was reassuring and was exactly what he was hoping to hear. The suggestion that we move into that direction is dynamic and fits with our community and concluded by saying he supported this.

Mayor Aguiar-Curry said the big box stores and larger businesses have investors that want a certain population. These zoning changes will assist us in fine-tuning the process for a better project.

Council Member Cowan asked whether the signed resolutions contained in the packet, 2012-27, 2012-28, and 2012-29 were corrected to reflect the correct vote from the 7/17/12 City Council meeting. Mayor Aguiar-Curry confirmed that they had been corrected.

Under the motion previously made by Council Member Cowan and seconded by Council Member Martin, the motion carried with the following vote:

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

Mayor Aguiar-Curry thanked City Planner Jim Bermudez and City staff for all their hard work.

2. Purchase and Installation of In-Car Camera System for the Winters Police Department

Chief Sergio Gutierrez gave an overview with a slide presentation and video clips and used the acronym C.O.A.T. (Criminal, Officer Safety, Administrative, Training), which "embraces and covers", to describe the benefits of the in-car camera systems to the Winters Police officers. He cited the case of Deputy Jeffrey Mitchell, who was killed in a rural area with no in-car camera. He also cited the case of Deputy Jose Tony Diaz, who was killed and had an in-car camera. The recording captured on the camera was played back in court, the events were re-created, which was a very valuable tool for the trial and led to the

conviction of the suspect. Chief Gutierrez said a picture speaks a thousand words, a video speaks millions. These new, stand-alone systems will not interfere with the officer's other equipment in the car. The in-car camera systems are portable, rugged, easy to use, and includes a built-in microphone and a full color high resolution camera, which is secure and separate from an in-car camera.

Council Member Martin asked if the transmitting signal could be compromised. Chief Gutierrez said the information is automatically safeguarded and downloaded onto two hard drives inside the device. The officers will not have to manually remove any external data storage devices. Editing will only occur by those authorized (supervisor) and operates through a wireless downloading system. An audit trail will show what was deleted and/or corrected, with the data remaining in the system for one year. Council Member Martin asked about the possible theft of the signal. Chief Gutierrez said precautions will be taken to prevent theft. Council Member Martin said he saw problems with a potential high-profile case and was concerned about removing information, which could be detrimental to the officer or to the case. Chief Gutierrez said all edited information will be reviewed by the Chief of Police and the system will require two people to edit.

Mayor Aguiar-Curry asked if the officers are required to tell suspects they are being recorded. Chief Gutierrez said only if they ask; the officer is not required to announce it.

Of the three bids that were received, Watch Guard 4RE was the lowest bid and they offer a complete package necessary for our department. City Manager Donlevy asked if the system will also record in-car suspects and Chief Gutierrez said yes.

Council Member Fridae asked how many car camera systems and how many body cameras would be purchased? Chief Gutierrez said a car system and one body camera would be purchased for each of the six patrol cars, with the information downloaded at the station.

Council Member Martin asked if a suspect is in the back seat and is being recorded, would it be critical to read them their rights and is this recording admissible in court? Chief Gutierrez said at this point in the process, rights are not read to the suspect.

Council Member Cowan asked if the systems can be turned on and off manually in a pursuit situation. Chief Gutierrez said there are triggers that can be set to activate the camera, ie: opening the door, taking out the shotgun, turning on the lights & sirens, etc.

Mayor Aguiar-Curry asked if the police officers will receive specific training? Will there be a procedure manual available? Will all officers follow the same rules? The system must have consistency. Chief Gutierrez said yes, policies and procedures will be applied through YCPARMIA to make sure we're in compliance. Training will be provided by Watch Guard. Mayor Fridae asked if new officers will receive additional training. Chief Gutierrez said any new officer will see the system in the field by the field training officer. Mayor Aguiar-curry said the backup of information is crucial and asked if the information will be stored offsite or maintained on-site. Chief Gutierrez said the information will be saved on one, on-site server.

Mayor Aguiar-Curry asked if there was a secondary backup and asked about maintenance of the cameras. Chief Gutierrez said all of the equipment, as well as the software, included a five-year warranty. Additional five year warranties and software protection plans are available as well. Mayor Aguiar-Curry asked if any other local agencies have this type of system. Chief Gutierrez said the Yolo County Sheriff has had this system since 2008, if not before. Mayor Aguiar-Curry said a backup and audit trail are the main issues and asked about the timeline to purchase the systems. Chief Gutierrez said the purchase will take place as soon as it is approved and will report back to Council after six months.

Council Member Martin said this was a great idea and in his prior career, performances were evaluated after each incident. It was also easier to get a conviction in court. Officers should be well-trained on the system in order to protect themselves regarding complaints that are received by residents.

Richard Kleeberg, 209 Abbey St., said the camera system concept is an excellent idea. As a practicing attorney in his younger days, these systems will provide evidence that is invaluable. He suggested receiving testimonials from other agencies who have used this system for at least a year, and also recommended asking for a performance bond, which covers 50% of the cost for three years. Some of these types of business have gone out of business and at this point, a warranty is of no value.

Chief Gutierrez said Mr. Kleeberg's points were well made, but he has researched their product, reviewed the testimonials of those agencies who support the systems, and Watch Guard has been around for at least four years, and estimated closer to 7 or 8 years.

Council Member Anderson asked which agencies in the region utilize Watch Guard. Chief Gutierrez said the Yolo County Sheriff's Department utilizes Watch Guard and the Cities of Woodland and Davis utilize the Arbitrator 360 system. Council Member Fridae asked if there are independent cameras on the police tasers. Chief Gutierrez said yes.

Council Member Cowan asked Chief Gutierrez whether he considered getting a Performance Bond. Chief Gutierrez said he had not considered it due to the history and background of Watch Guard Video, and doesn't anticipate doing so.

Mayor Aguiar-Curry asked with equipment like this, should we have a bond in place? City Manager Donlevy said the Police Department could require it under a separate policy one might purchase and Chief Gutierrez confirmed the camera is a proprietary system with a specific brand name. He also added that the integration between the computer system and the server is separate, or on a stand-alone system.

Motion by Council Member Anderson, second by Council Member Fridae to approve staff recommendation and award the contract to Watch Guard Video for the purchase and installation of the Watch Guard 4RD in-Car Camera Systems for all Winters Police patrol vehicles from Watch Guard Video and authorize \$75,700, which includes a contingency over and above the quote of \$65,572.66.

Chief Gutierrez thanked Council for their support.

3. Conversion to Paperless Agendas and Purchase of iPads

City Clerk Nanci Mills gave an overview and assured Council Member Fridae that printed agendas would still be available for the public. Ms. Mills explained that once an agenda is placed in someone's drop box on their iPad, they would also be able to view it on their phone as well as their home computer. The iPad includes 2gb, with the provision for more, if needed, at a cost of \$9.99/month. City Manager Donlevy recommended taking the agenda out of the drop box and storing it elsewhere to avoid any additional charges.

Council Member Anderson asked how the iPads would be connected. Ms. Mills said WiFi, which can be found locally at City Hall and Steady Eddy's and added that data connections have not been factored into the price. Mayor Aguiar-Curry suggested coming into City Hall to download agendas and added that this would be a benefit, as other committees, including SACOG, have already begun using the iPad drop box. Yolo County Housing Authority is also picking up the \$9 fee for extra storage. Council Member Fridae said the drop box can also be installed on home computers to view the agendas, which can then be downloaded when you come to the meeting.

Mayor Aguiar-Curry said there will be a learning curve and assured Council that the drop box is a secure area, which requires a personal login. Council Member Martin said this is long overdue. It would be more cost-saving than imagined and would also be easier on staff. Council Member Fridae added that it would pay for

itself in one year. Council Member Anderson added that Apple is also pushing the Cloud concept.

Motion by Council Member Fridae, second by Council Member Cowan to approve the conversion to automated agenda packets and purchase of Apple iPads for use by the City Council and Department Heads at a cost of \$7,900. Motion carried unanimously.

4. Economic Development Concepts- Agricultural Industrial/Aggregation Hub for West Yolo County

City Manager Donlevy gave an overview, with the focus on taking the economic development concept to a "Rural Urban Connection Strategy" to help the rural small and medium size farms expand as an agricultural hub. In western Yolo County, there are thousands of areas of untouched farm land that falls into nine key areas: processing, distribution, storage, research, marketing/brokerage, regulatory, financing, value adding and farm supply. The growing demand in Winters is affecting local farms and ranches. The storage of products prior to sending the product out of the area, as well as value adding (processing raw product to marketable product) are both key issues. In Capay, box-making is critical in order to ship the product. Infrastructure is needed to take the next step.

City Manager Donlevy said SACOG is interested in becoming a partner with Winters, as Winters sits strategically between I-5 & I-80. The USDA, State Department of Agriculture, UCD, Yolo and Solano counties, Capay Valley, as well as SACOG are all included in the ag industrialization concept. There are a number of key steps to pursue, beginning with planning. The vision is to create an overall network to take a farm from seasonal to annual, which has been exemplified by Hay Kingdom and Mariani's expansion along the I-5 corridor. One of the considerations to be pursued is more land to enable the expansion beyond the overall sphere. Working within the region and partnering with the public and private sectors to lend a basic understanding of the products that are needed are additional considerations. This concept includes creating an environment (farming region), thus creating hundreds of jobs by this type of concept. An economic analysis needs to go into this, as well as working with local partners. There are three major farm families within the Winters area who pull it off, which is very significant in regards to industrial development. But overall, we're looking for sustainability. The next step is research and will take a major staff effort.

Council Member Martin said the quality of property needs to be considered for the overall plan in regards to expansion. He does not want to go onto prime Class 1 soil or productive farmland to complete the process. A lot of nuts grown in the area are currently going out of the area for processing. Having a source in the area will reduce the carbon footprint and make it more viable for the farmer. Development is coming whether we want it to or not.

Council Member Fridae said keeping it local will keep the jobs and housing in balance. If residents aren't driving out of town to work, they are more apt to shop locally, thus reducing the carbon footprint. There is no retail outlet for most of the local products grown in the area, so having someplace like the old Nut Tree to display wines, cheeses, etc. is essential.

Council Member Anderson asked if this wasn't a cooperative exercise. City Manager Donlevy said not entirely. There are similar aspects, ie: small, family farms working together as described by CAFF (Community Alliance with Family Farmers) at a recent Rotary meeting.

Council Member Martin asked about funding through other agencies. City Manager Donlevy said there is funding through other agencies, including SACOG, who has money and whose Executive Director is excited about the concept. The advantage is that Winters fits the mold.

Mayor Aguiar-Curry said many communities are trying to do this and time is of the essence. Davis and West Sacramento don't have the land. Now is the time to do it. This would be a good opportunity to work with UC Davis' research labs, who wants to get back to their agricultural roots. UCD has money for research and this could be a powerful agricultural hub. This plan is good for Winters and Mayor Aguiar-Curry said she's "all in" and looks forward to moving it along. She is anxious to see the implementation of the hub and recommended tapping local investors.

Council Member Anderson asked about the economic aspect regarding the cost of labor, ie: increased wages and employee benefits. City Manager Donlevy said we need to bring in non-government jobs in order to position ourselves. Council Member Fridae said there will be a varied strata of jobs. Mayor Aguiar-Curry said there aren't many processors in California and asked if a study had been done of all the old processors in Yolo County. Mayor Aguiar-Curry thanked City Manager Donlevy for talking to many local farmers and suggested contacting Terra Firma Farms as well.

5. Putah Creek Appointments

Motion by Council Member Fridae, second by Council Member Cowan to appoint Sally Brown and Kurt Balasak to the Winters Putah Creek Committee. Motion carried unanimously.

**CITY OF WINTERS AS SUCCESSOR AGENCY TO THE WINTERS
COMMUNITY DEVELOPMENT AGENCY**

Agency Chairman Fridae opened the meeting of the City of Winters as Successor Agency to the Winters Community Development Agency at 8:25 p.m.

- 1. Resolution 2012-31, A Resolution of the City of Winters as Successor Agency to the Winters Community Development Agency Adopting the Recognized Obligation Payment Schedule for the period January 1, 2013-June 30, 2013 as required by AB1484**

Director of Finance Gunby said the Agency is receiving the same ROPS (Recognized Obligation Payment Schedule) as previously provided as the Department of Finance requested submittal of the January 1, 2013 to June 30, 2013 ROPS was not available at the time the agenda packet was distributed.

Ms. Gunby reported a few things had changed. Monthly payments have been replaced by payments for a 6-month period and the funding sources are identified. All entries are the same until line 15, repayment to the Winters Cemetery District, whose pass through agreement requested payment for the last four years. Termination dates have been requested for all contracts. Rent and funding for the Visitor Center at 11 Main Street and the Dance Studio at 305 First Street have expired and are continuing on a month-to-month basis. Council Member Martin asked about continuing on a month-to-month basis. Ms. Gunby said the City will continue to pay rent from month to month and continue to rent the facilities. City Manager Donlevy said the City will continue until we're told not to by either the Department of Finance or the City Council. Ms. Gunby said the rent payments for 11 Main Street and 305 First Street are included in ROPS through December, 2012. If it is not approved by the Department of Finance for the period January, 2013 through June, 2013, the City must be notified by November 1, 2012. The ROPS for January 1, 2013 through June 30, 2013 is due to the Department of Finance by September 1st. The Oversight Board approved it at their meeting yesterday.

Council Member Martin asked if the ROPS could be changed at any time by the State. Ms. Gunby said the Oversight Board has no say about what happens to the money, but the Department of Finance does.

Council Member Cowan confirmed with Ms. Gunby that the "Conditional Waiver and Release Upon Final Payment" for the Public Safety Facility was included in the agenda packet in error.

Motion by Agency Member Aguiar-Curry, second by Agency Member Anderson to adopt Resolution 2012-31, adopting a Recognized Obligation Payment Schedule in compliance with AB1X26. Motion carried unanimously.

CITY MANAGER REPORT: City Manager Donlevy gave an update of the Board of Supervisors meeting regarding emergency services. The Fire Department provides basic life support services and rely on advanced life support services to come through an Emergency Management System. Council Member Fridae said he remembers in 2002 he was appalled to discover there were no emergency management services and the ambulance service response was 20 minutes.

City Manager Donlevy became the appointee for the City Managers Group Emergency Coordination Council for four years to try and improve services until they ran him off. For the last seven years, he had given up until recently.

The City of Winters, along with three other cities, the County, the Tribe and UCD produced an extensive evaluation of emergency services which produced some interesting information. A fun fact: at one time, Winters had their own ambulance service: Barb Karlen and Peg Dozier drove an ambulance, and Winters was the only city in a ten county region to be given a non-exclusion declaration, which helped highlight a number of gross inequities. The recommendations included dispatching, quality assurance, agreements and ordinance managing services in the County. The City Managers Group sent a letter to the Board of Supervisors with their recommendations. City Manager Donlevy commended Fire Chiefs McAlister, Dozier and Kidder for their teamwork in getting together documents to use as leverage. Look forward to dramatic improvements as this item will come back before Council in January, 2013.

Mayor Aguiar-Curry said the newer County Supervisors were shocked that Winters was not included in the JPA, although Winters is located in Yolo County. She also reminded everyone that the Earthquake Festival is coming up on 8/24 and volunteers are needed.

ADJOURNMENT: At 8:53 p.m., Mayor Aguiar-Curry adjourned the meeting to the Executive Session of the City Council scheduled for 5:00 p.m. on August 21, 2012 at the Public Safety Facility EOC Training Room, followed by the Community Choice Aggregate Workshop at 6:00 p.m. and the City Council meeting at 7:00 p.m.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

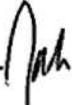
Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers

DATE: August 14, 2012

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

FROM: Nanci G. Mills, Director of Administrative Services/City Clerk 

SUBJECT: Guidance to the Voting Delegate for the League of California Cities Annual Conference Relative to the Five Policy Resolutions Being Considered

RECOMMENDATION: Discuss and provide direction to the voting delegate.

DISCUSSION: The League of California Cities has identified five resolutions that will be considered at the upcoming annual conference. Mayor Aguiar-Curry is attending the conference and has been assigned the voting delegate responsibility by the Council. Council Member Anderson will also be attending the conference as an alternate delegate. A brief description of each resolution and staff comments (in italics) follows:

Resolution 1- Oppose California Desert Protection Act of 2011- This resolution proposed by the City of Needles requests that the League adopt a resolution encouraging Cities to adopt resolutions opposing the Desert Protection Act of 2011. This act proposes to set aside an additional 1.6 million acres of Mojave Desert in national monuments, parks and reserves. The City of Needles is concerned that this designation will remove areas necessary for alternative energy development, certain types of recreational use and other beneficial uses.

The policy basis for Council support of this resolution appears to be limited to the concept of supporting home rule and local control. Otherwise, this issue has no apparent direct impact on Winters. In addition, the Winters City Council, and any other City Council, could choose to take a position on this act, following proper due process, without this policy resolution being adopted by the League of California Cities. The resolution appears unnecessary.

Resolution 2- Suspension of Implementation of AB 32- This resolution proposed by the City of Needles encourages all cities to adopt resolutions that would request the suspension of the implementation of AB 32 (California Global Warming Solutions Act);

examination of implementing regulations for conflicts with other state and federal regulations; examination of the economic effect of implementing AB 32; and request the State to "encourage the resolution of internal conflicts between and among existing Federal programs...".

The City Council elected to enroll in The Climate Registry in 2008, which is a voluntary greenhouse gas registry which requires annual measurement verification. As with Resolution 1, the Winters City Council could directly take a position on these issues without a resolution from the State of California. While portions of the resolution appear to reflect common sense and good government, others appear to be more philosophical or political. This resolution appears unnecessary.

Resolution 3- Court Fine Distribution and Transparency- This resolution proposed by the City of Glendora seeks the League's support to lobby for city authority to audit the distribution of court imposed fines and fees for criminal and traffic violations and to seek legislative changes to the distribution formula so that cities receive revenue that "covers" the cost of issuing, processing and testifying (if necessary) of criminal cases and traffic violations.

This resolution does relate to an issue the City faces as the amount of revenue the City receives from traffic citations is a small fraction of the overall cost of the ticket. In addition, it is difficult to track where the rest of the money is going- which leads to a perceived lack of transparency and reduced credibility of government overall. While a higher percentage of revenue back to the City is a desired outcome, it is important to recognize that the existing distribution of fines and penalties provides important funding for the courts and other related services. The resolution appears to reflect this. Staff believes there is value in Council support for this resolution.

Resolution 4- Internet Crimes Against Children- This resolution proposed by the San Diego County Division of the League seeks a League resolution to increase public awareness of internet crimes against children; advocating for tougher laws for child pornographers; and advocating for additional and permanent funding for internet crimes against children.

The wording of the resolution appropriately provides direction to the League to advocate on this issue. Staff believes that there is value in Council support for this resolution.

Resolution 5- Emergency Management Mission for California Cities- This resolution proposed by the League Public Safety Policy Committee seeks a resolution from the League that encourages cities to actively pursue employee and resident emergency preparedness and encourages cities to actively engage residents in emergency preparedness programs that promote creating a family plan in the promotion of self-reliance in the instance of an emergency.

This resolution promotes good common sense and governmental practice. Adopting the resolution would support efforts the City is already making. On the other hand, the City Council and staff can and have embraced the suggested program without a league policy

resolution, so to an extent the resolution is not necessary. Staff is neutral on this resolution.

FISCAL IMPACT: None.

ATTACHMENT: Resolution package from the League of California Cities.



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

July 12, 2012

TO: Mayors, City Managers and City Clerks
League Board of Directors

RE: Annual Conference Resolutions Packet
Notice of League Annual Meeting

Enclosed please find the 2012 Annual Conference Resolutions Packet.

Annual Conference in San Diego. This year's League Annual Conference will be held September 5 - 7 at the San Diego Convention Center in San Diego. The conference announcement has previously been sent to all cities and we hope that you and your colleagues will be able to join us. More information about the conference is available on the League's Web site at www.cacities.org/ac. We look forward to welcoming city officials to the conference.

Annual Luncheon/Business Meeting - Friday, September 7, 12:00 p.m. The League's Annual Business Meeting will be held at the San Diego Convention Center.

Resolutions Packet. At the Annual Conference, the League will consider the five resolutions introduced by the deadline, Saturday, July 7, 2012, midnight. These resolutions are included in this packet. We request that you distribute this packet to your city council.

We encourage each city council to consider the resolutions and to determine a city position so that your voting delegate can represent your city's position on each resolution. A copy of the resolutions packet is posted on the League's website for your convenience: www.cacities.org/resolutions.

The resolutions packet contains additional information related to consideration of the resolutions at the Annual Conference. This includes the date, time and location of the meetings at which resolutions will be considered.

Voting Delegates. Each city council is encouraged to designate a voting delegate and two alternates to represent their city at the Annual Business Meeting. A letter asking city councils to designate their voting delegate and two alternates has already been sent to each city. Copies of the letter, voting delegate form, and additional information are also available at: www.cacities.org/resolutions.

**Please Bring This Packet to the Annual Conference
September 5 - 7 — San Diego**

I. INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, five resolutions have been introduced for consideration by the Annual Conference and referred to the League policy committees.

POLICY COMMITTEES: Three policy committees will meet at the Annual Conference to consider and take action on resolutions referred to them. The committees are Environmental Quality, Public Safety, and Revenue & Taxation. These committees will meet on Wednesday, September 5, 2012, at the San Diego Marriott Marquis & Marina Hotel in San Diego. Please see page iii for the policy committee meeting schedule. The sponsors of the resolutions have been notified of the time and location of the meetings.

Two other policy committees may also be meeting: Administrative Services and Employee Relations. Administrative Services will meet pending League Board (July 19 & 20) action to determine whether the committee will review any November General election ballot initiatives. Employee Relations will meet if the Legislature acts on pension reform in August. If pension reform is passed, the committee will meet to discuss the details of the proposal. For now, please plan to attend the meeting at the Annual conference. If for some reason this changes, League staff will send an email notifying the committee.

Three policy committees will not be meeting at the annual conference. These committees are: Community Services; Housing, Community & Economic Development; and Transportation, Communication, & Public Works.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 6, at the San Diego Convention Center, to consider the reports of the three policy committees regarding the five resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president. Please check in at the registration desk for room location.

ANNUAL LUNCHEON/BUSINESS MEETING/GENERAL ASSEMBLY: This meeting will be held at 12:00 p.m. on Friday, September 7, at the San Diego Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Session of the General Assembly. This year, that deadline is 12:00 p.m., Thursday, September 6. If the petitioned resolution is substantially similar in substance to a resolution already under consideration, the petitioned resolution may be disqualified by the General Resolutions Committee.

Resolutions can be viewed on the League's Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224.

II. GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities and the League is through the League's eight standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the Board of Directors.
 - (c) Consider important issues not adequately addressed by the policy committees and Board of Directors.
 - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

**III.
LOCATION OF MEETINGS**

**Policy Committee Meetings
Wednesday, September 5, 2012
San Diego Marriott Marquis & Marina Hotel
333 W. Harbor Drive, San Diego**

**POLICY COMMITTEES MEETING AT ANNUAL CONFERENCE TO
DISCUSS AN ANNUAL CONFERENCE RESOLUTION**

9:00 a.m. – 10:30 a.m.	Environmental Quality; Revenue and Taxation
10:30 a.m. – 12:00 p.m.	Public Safety

**TENTATIVE POLICY COMMITTEE MEETINGS AT ANNUAL CONFERENCE
TO DISCUSS OTHER ISSUES**

9:00 a.m. – 10:30 a.m.	Administrative Services
10:30 a.m. – 12:00 p.m.	Employee Relations

Note: These policy committees will **NOT** meet at the Annual Conference:
Community Services
Housing, Community & Economic Development
Transportation, Communication & Public Works



**General Resolutions Committee
Thursday, September 6, 2012, 1:00 p.m.
San Diego Convention Center**



**Annual Business Meeting and General Assembly Luncheon
Friday, September 7, 2012, 12:00 p.m.
San Diego Convention Center**

**IV.
KEY TO ACTIONS TAKEN ON RESOLUTIONS**

Resolutions have been grouped by policy committees to which they have been assigned. **Please note that one resolution has been assigned to more than one committee. This resolution is noted by this sign (♦).**

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

ENVIRONMENTAL QUALITY POLICY COMMITTEE

		1	2	3
3	Desert Protection Act			
4	Global Warming			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
♦1	Fines and Forfeitures			
2	Internet Crimes Against Children			
5	Emergency Management Mission for California Cities			

REVENUE AND TAXATION POLICY COMMITTEE

		1	2	3
♦1	Fines and Forfeitures			

Please note: These committees will ***NOT*** meet at the annual conference: Community Services; Housing, Community & Economic Development; and Transportation, Communication & Public Works

Information pertaining to the Annual Conference Resolutions will also be posted on each committee's page on the League website: www.cacities.org. The entire Resolutions Packet will be posted at: www.cacities.org/resolutions.

KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

Action Footnotes

- * Subject matter covered in another resolution
- ** Existing League policy
- *** Local authority presently exists

KEY TO ACTIONS TAKEN

- A - Approve
- D - Disapprove
- N - No Action
- R - Refer to appropriate policy committee for study
- a - Amend
- Aa - Approve as amended
- Aaa - Approve with additional amendment(s)
- Ra - Amend and refer as amended to appropriate policy committee for study
- Raa - Additional amendments and refer
- Da - Amend (for clarity or brevity) and Disapprove
- Na - Amend (for clarity or brevity) and take No Action
- W - Withdrawn by Sponsor

Procedural Note: Resolutions that are approved by the General Resolutions Committee, as well as all qualified petitioned resolutions, are reported to the floor of the General Assembly. In addition, League policy provides the following procedure for resolutions approved by League policy committees but *not* approved by the General Resolutions Committee:

Resolutions initially recommended for approval and adoption by all the League policy committees to which the resolution is assigned, but subsequently recommended for disapproval, referral or no action by the General Resolutions Committee, shall then be placed on a consent agenda for consideration by the General Assembly. The consent agenda shall include a brief description of the basis for the recommendations by both the policy committee(s) and General Resolutions Committee, as well as the recommended action by each. Any voting delegate may make a motion to pull a resolution from the consent agenda in order to request the opportunity to fully debate the resolution. If, upon a majority vote of the General Assembly, the request for debate is approved, the General Assembly shall have the opportunity to debate and subsequently vote on the resolution.

V.
2012 ANNUAL CONFERENCE RESOLUTIONS

RESOLUTIONS REFERRED TO ENVIRONMENTAL QUALITY POLICY COMMITTEE

3. RESOLUTION ENCOURAGING CALIFORNIA CITIES TO OPPOSE THE CALIFORNIA DESERT PROTECTION ACT OF 2011

Source: City of Needles

Referred To: Environmental Quality Policy Committee

Recommendation to General Resolutions Committee:

WHEREAS, in 1993 Senator Diane Feinstein introduced the California Desert Protection Act of 1994 which became federal law and was passed by the United States Congress on October 8, 1994, and

WHEREAS, this act established the Death Valley and Joshua Tree National Parks and the Mojave National Preserve in the California desert; and

WHEREAS, this act designated 69 wilderness areas as additions to the National Wilderness Preservation System within the California Desert Conservation Area (CDCA), the Yuma District, the Bakersfield District, and the California Desert District of the Bureau of Land Management permits grazing in such areas; and

WHEREAS, the Act abolished Death Valley National Monument, established in 1933 and 1937, and incorporated its lands into a new Death Valley National Park administered as part of the National Park System. Grazing of domestic livestock was permitted to continue at no more than the then-current level. The Act also required the Secretary of the Interior to study the suitability of lands within and outside the boundaries of the park as a reservation for the Timbisha Shoshone Tribe; and

WHEREAS, the Act abolished Joshua Tree National Monument, established in 1936, and incorporated its lands into Joshua Tree National Park; and

WHEREAS, the Act established the Mojave National Preserve, consisting of approximately 1,419,800 acres (5,746 km²; 2,218.4 sq mi), and abolished the East Mojave National Scenic Area, which was designated in 1981. The preserve was to be administered in accordance with National Park System laws. Hunting, fishing and trapping were permitted as allowed by federal and state laws, with certain exceptions. Mining claims were governed by the National Park System laws, and grazing was permitted to continue at no more than the then-current level; and

WHEREAS, the Act required the Secretary of the Interior to ensure that American Indian people have access to the lands designated under the Act for traditional cultural and religious purposes, in recognition of their prior use of these lands for these purposes. Upon the request of an Indian tribe or religious community, the Secretary must temporarily close specific portions to the general public to protect the privacy of traditional cultural and religious activities; and

WHEREAS, flights by military aircraft over the lands designated by the Act were not restricted or precluded, including over flights that can be seen or heard from these lands; and

WHEREAS, Congress found that federally owned desert lands of southern California constitute a public wildland resource of extraordinary and inestimable value for current and future generations; these desert wildlands have unique scenic, historical, archeological, environmental, ecological, wildlife, cultural,

scientific, educational and recreational values; the California desert public land resources are threatened by adverse pressures which impair their public and natural values; the California desert is a cohesive unit posing difficult resource protection and management challenges; statutory land unit designations are necessary to protect these lands; and

WHEREAS, Senator Dianne Feinstein, author of the 1994 California Desert Protection Act has introduced legislation "California Desert Protection Act of 2011" that will set aside new land in the Mojave Desert for conservation, recreation and other purposes; and

WHEREAS, the proposed legislation will take AN ADDITIONAL 1.6 million acres of Bureau of Land Management land out of potential development, including mining exploration, by designating two new "National Monuments", one adjacent to the Mojave National Preserve which will take 1.5 million acres out of BLM multiple use in addition to 800,000 acres out of private ownership and one adjacent to the Joshua Tree National Park; and

WHEREAS, this legislation will result in just about every square inch of the desert spoken for, either for military use, national parks, wilderness and special conservation areas, Indian reservations and other types of land management (half of the lands under BLM management are protected under wilderness or special conservation area restrictions); and

WHEREAS, projects, such as California mandated solar energy development, that would disturb or destroy habitat must make up for that loss by purchasing private habitat at ratios of at least three acres for every one acre disturbed; and

WHEREAS, at that rate, even in the nation's largest county, San Bernardino, just three solar projects on federal land will require an amount of private land acquisition of 22,000 acres, or roughly 34 square miles, land will come off of the county's tax rolls and we will literally run out of mitigation land after a handful of projects; and

WHEREAS, the Federal Energy Policy Act of 2005 requires that 10,000 megawatts of renewable energy be generated on public land in the west. To meet California's mandate of having 33 percent of our energy come from renewable sources, it requires more that 20,000 megawatts of production and they are looking mainly at public lands. If we approve that much solar, the result would be a regulatory lockdown on the rest of the Desert by the Federal Fish and Wildlife Service and the State Department of Fish and Game; and

WHEREAS, the Desert Protection Act of 1994 encompassed 1.5 million acres or 2,218.4 square miles plus an additional 800,000 acres of private land or 1,250 square miles; Fort Irwin, 1,000 square miles; 29 Palms Marine Base, 931.7 square miles and they have also applied for an additional 420,000 acres in 2008, or 659.375 square miles totaling 6,059.48 square miles; and

WHEREAS, the California Desert Protection Act of 2011 will take OVER 2,300 square miles, not including the acreage of wilderness located outside any of the above mentioned areas (this total mileage would roughly encompass Rhode Island, Delaware, and Connecticut); and

WHEREAS, these public lands have long supported a range of beneficial uses and efforts have been made to protect the desert inhabitants. Let's not destroy the desert or our ability to use and enjoy it.

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the

League encourages California cities to adopt resolutions in opposition to the California Desert Protection Act of 2011.

//////////

League of California Cities Staff Analysis

Staff: Kyra Ross, Legislative Representative, (916) 658-8252
Committee: Environmental Quality Policy Committee

Summary:

This resolution encourages California cities to oppose the California Desert Protection Act of 2011.

Background:

The California Desert Protection Act of 2011 (S. 138) is legislation proposed by Senator Dianne Feinstein which would provide for conservation, enhanced recreation opportunities, and development of renewable energy in the California Desert Conservation Area. The Measure would:

- Create two new national monuments: the 941,000 acres Mojave Trails National Monument along Route 66 and the 134,000 acres Sand to Snow National Monument, which connects Joshua Tree National Park to the San Bernardino Mountains.
- Add adjacent lands to Joshua Tree National Park, Death Valley National Park and Mohave National Preserve;
- Protect nearly 76 miles of waterways;
- Designate five new wilderness areas;
- Designate approximately 250,000 acres of Bureau of Land Management wilderness areas near Fort Irwin;
- Enhance recreational opportunities; and,
- Designate four existing off-highway vehicle areas in the California Desert as permanent.

S. 138 is a re-introduction of S. 2921, the California Desert Protection Act of 2010 which is now dead. S. 138 was introduced in January 2011 and was referred to the Senate Committee on Energy and Natural Resources. The measure has not yet been set for hearing by the Committee.

Fiscal Impact:

Unknown. No direct fiscal impact to city general funds.

Existing League Policy:

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

Specific to this Resolution, existing policy offers no specific policy on this issue.

The League's Strategic Priorities for 2012, as adopted by the League Board of Directors, include:

2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

>>>>>>>>>>

4. RESOLUTION REQUESTING CONSIDERATION OF SUSPENSION OF IMPLEMENTATION OR REVISION OF THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT (AB 32 of 2006)

Source: City of Needles

Referred To: Environmental Quality Policy Committee

Recommendation to General Resolutions Committee:

WHEREAS, in 2006 the California Legislature adopted the California Global Warming Solutions Act, commonly referred to as AB 32 (Health & Safety Code §§38500 et seq.); and

WHEREAS, AB 32 aims to reduce California's greenhouse gas emissions (GHGs) to 1990 levels by 2020 (Health & Safety Code §38550) and to 80 percent below 1990 levels by 2050; and

WHEREAS, the California Air Resources Board (CARB) is the government agency charged with determining how the AB 32 goals will be reached (Health & Safety Code §38510); and

WHEREAS, CARB's implementation of AB32 aims to reduce California's GHG emissions by 169 million metric tons of carbon dioxide equivalent (MMTCO₂E) through a variety of strategies, including sector-specific regulations, market mechanisms, voluntary measures, fees, incentives and other policies and programs; and

WHEREAS, there are portions of the state that have been designated as nonattainment for the national ambient air quality standards (NAAQS) for Ozone and PM, nonattainment for state ambient air quality standards (SAAQS) for Ozone, PM, Sulfates and Hydrogen Sulfide, and identified by CARB pursuant to as overwhelmingly impacted by transported air pollution from upwind air basins; and

WHEREAS, areas designated nonattainment are mandated under the provisions of the Federal Clean Air Act (FCAA) to require pursuant to New Source Review (NSR) rules, Best Available Control Technology (BACT) and offsetting emissions reductions (Offsets) on major new or modified stationary sources of those nonattainment air pollutants and their precursors (42 U.S.C. §§7502(c)(5), 7503) regardless of whether or not the area so designated has any control or not over the pollution causing the nonattainment finding; and

WHEREAS, the United States Environmental Protection Agency (USEPA) has requested that a program be developed to implement the Prevention of Significant Deterioration (PSD) which will require additional analysis for new or modified sources of attainment pollutants including but not limited to greenhouse gases, which will also necessitate emissions reductions and BACT in some cases for attainment pollutants; and

WHEREAS, due in part to the limited number of existing sources of air pollutants and the overwhelming impact of transport some or a majority of the cities have few if any available emissions reductions available to provide such offsets; and

WHEREAS, many technologies used to attain BACT levels of air pollution control are based upon the combustion of fossil fuels which also causes emissions of GHGs; and

WHEREAS, there are a variety of Federal regulations promulgated and proposed by the USEPA regarding greenhouse gasses that have the potential to conflict both directly and in their implementation with regulatory measures to implement AB32 as adopted and proposed by CARB; and

WHEREAS, there are a variety of other mandates and regulations at the State level (municipal waste diversion, renewable energy mandate etc.) which have the potential to conflict both directly and in due to their implementation with regulatory measures to implement AB32 as adopted and proposed by CARB; and

WHEREAS, such conflicts severely impede the cities or state as well as regulated industry efforts to comply with both the applicable Federal regulations and regulations implementing AB32; and

WHEREAS, the existing and proposed regulations on both the State and Federal level result in an overall regulatory structure that is inconsistent and confusing making it virtually impossible or incredibly slow to start any new large scale projects within the State at a time where California infrastructure and its economy are in most need of refurbishment; and

WHEREAS, the existing and proposed regulations and unclear guidelines will also make it more difficult for smaller, pollution transport impacted air districts like the MDAQMD, to properly implement and enforce the regulations;

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League encourages the existing 482 California cities to adopt resolutions requesting a suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32 of 2006) until such time as the legal and regulatory inconsistencies can be resolved; and

BE IT FURTHER RESOLVED, that California cities request the California Air Resources Board and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32 and for potential direct and indirect conflict with other existing regulations at both the State and Federal level including but not limited to the potential for gains in one area to jeopardize progress in another; and

BE IT FURTHER RESOLVED, that California cities request the California Air Resources Board and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity "flight" from California; and

BE IT FURTHER RESOLVED, that California cities request the State of California by and through its Governor, Legislature, and applicable state agencies should encourage the resolution of internal conflicts between and among existing Federal programs by supporting items including but not limited to: reopening the Federal Clean Air Act, New Source Review Reform, and efforts to regulate GHGs under a comprehensive Federal program.

////////

League of California Cities Staff Analysis on Resolution No. 4

Staff: Kyra Ross, Legislative Representative, (916) 658-8252
Committee: Environmental Quality Policy Committee

Summary:

This resolution encourages California cities to:

- 1.) Adopt resolutions requesting the suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32) until such time as the legal and regulatory inconsistencies can be resolved;
- 2.) Asks cities to request the California Air Resources Board (CARB) and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32, and for potential conflict with other existing regulations at both the State and Federal level including, but not limited to, the potential for gains in one area to jeopardize progress in another; and,
- 3.) Asks cities to request the CARB and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity "flight" from California; and,
- 4.) Asks cities to request the State to encourage the resolution of internal conflicts between and among existing Federal programs by supporting items, including but not limited to:
 - a. Reopening the Federal Clean Air Act;
 - b. New Source Review Reform; and,
 - c. Efforts to regulate greenhouse gas emissions under a comprehensive federal program.

Background:

AB 32 passed in 2006 and requires the State to reduce greenhouse gas emissions to 1990 levels by 2020. As the implementing agency, CARB developed and passed a Scoping Plan in 2008, outlining emission reduction measures to help the state meet its statutory reduction of greenhouse gas emissions. Since 2008, a number of measures outlined in the Scoping Plan have been implemented. Measures of interest to cities include: voluntary local government 15% reduction in greenhouse gas emissions; regional transportation-related greenhouse gas targets; landfill methane control; and green building codes.

At the same time, many of California's 15 air basins are facing ongoing challenges to meeting federal air quality standards. It's important to note that regulation of air quality in California is separated into two levels of regulation. CARB regulates air pollution from cars, trucks, buses and other sources, often referred to as "mobile sources". Local air districts regulate businesses and industrial facilities. Local air districts are the bodies that regulate ozone, PM 2.5 and PM 10. Ground level ozone (ozone), more commonly referred to as smog, is a pollutant that forms on hot summer days (not to be confused with the ozone that forms in the upper atmosphere or stratosphere). Ozone is not directly emitted by one source but comes from a combination of volatile organic compounds and nitrogen oxides. In the presence of sunlight, especially on hot summer days, this mixture forms ozone. Particulate Matter (PM) is made up of fine solid or liquid such as dust, fly ash, soot, smoke, aerosols, fumes, mists, and condensing vapors. US EPA has set health based standards for particles smaller than 10 microns (PM 10) and particles smaller than 2.5 microns (PM 2.5). When these particles become airborne, they can be suspended in the air for long periods of time. Both PM 10 and PM 2.5 have been determined to cause serious adverse health effects.

According to an April 2012 report by the California Air Pollution Control Officer's Association "California's Progress Toward Clean Air":

Despite significant improvements, air quality remains a major source of public health concern in large metropolitan areas throughout California. The San Joaquin and South Coast Air Basin

continue to face significant challenges in meeting the federal health-based standards for ozone and fine particles, despite their regional and state-level controls on mobile and stationary sources that are the most stringent in the nation. In 2007, both regions sought extension for meeting the 1997 8-hour federal ambient air quality standard for ozone. A comparable challenge faces each region with respect to attainment of the 1997 PM2.5 standard. Due to continued progress in health research, the federal EPA lowered the ambient concentration for the 8-hour ozone and 24-hour PM 2.5 standards in 2008 and 2006, respectively. The net effect of these stricter standards is to raise the performance bar for California air basins. This will extend the timeframe for attainment in highly polluted regions as well as increase the number of basins with non-attainment status. Challenges also exist for air districts across California who are in attainment with the federal standards, as they continue to strive for attainment of the State's health-based ozone and PM standards, which are more stringent than the standards adopted by the US EPA.

According to the Sponsor, areas designated nonattainment are mandated under the provision of the federal Clean Air Act to require (pursuant to New Source Review Rules) Best Available Control Technology (BACT) and offsetting emissions reduction on major new or modified stationary sources of those nonattainment air pollutants and their precursors regardless of whether or not the area so designated has any control and not over the pollution causing the nonattainment finding.

The Sponsor also notes that there are a variety of other mandates and regulations at the state level that have the potential to conflict both directly and indirectly with the implementation of AB 32 measures being proposed and implemented by CARB. Two measures pointed out by the Sponsor are the existing mandate for local jurisdictions to divert 50% of solid waste from landfills (Public Resources Code 41780) and the state Renewable Portfolio Standard (RPS) that requires all retail sellers (Investor Owned Utilities, electric service providers, and community choice aggregators) and all publicly owned utilities to procure at least 33% of electricity delivered to their retail customers from renewable resources by 2020.

Fiscal Impact:

Unknown. No direct fiscal impact to city general funds.

Existing League Policy:

Specific to this Resolution, existing policy states:

Air Quality

- The League believes cities should have the authority to establish local air quality standards and programs that are stricter than state and federal standards. The League opposes efforts to restrict such authority.
- The League opposes legislation redirecting the funds authorized by Health and Safety Code Section 44223, which are currently used by local governments for locally based air quality programs.
- The League opposes air quality legislation that restricts the land use authority of cities.

Climate Change

- The League recognizes that climate change is both immediate and long term, with the potential for profound environmental, social and economic impacts to the planet and to California.
- Through the Global Warming Solutions Act of 2006 (AB 32 (Nuñez) Chapter 488, Statutes of 2006) California has embarked on a plan that requires the reduction of greenhouse gas emissions to 1990 levels by 2020. Although uncertainty remains about the pace, distribution and magnitude of the effects of climate change, the League recognizes the need for immediate actions to mitigate the sources of greenhouse gas emissions and has adopted the following principles:
 1. **Action Plans for Mitigating Greenhouse Gas Emissions.** Encourage local governments to complete

an inventory of greenhouse gas emissions, set appropriate reduction targets, and create greenhouse gas emission reduction action plans.

2. **Smart Growth**. Consistent with the League's Smart Growth policies, encourage the adoption of land use policies designed to reduce sprawl, preserve open space, and create healthy, vibrant, and sustainable communities.
3. **Green Technology Investment Assistance**. Support tax credits, grants, loans and other incentives to assist the public, businesses, and local agencies that invest in energy efficient equipment and technology, and fuel efficient, low emission vehicles.
4. **Energy and Water Conservation and Efficiency**. Encourage energy efficiency, water efficiency, and sustainable building practices in new and existing public, residential and commercial buildings and facilities. This may include using the U.S. Green Building Council's LEED program or similar systems.
5. **Increase the Use of Clean Alternative Energy**. Promote the use and purchase of clean alternative energy through the development of renewable energy resources, recovery of landfill methane for energy production and waste-to-energy technologies.
6. **Reduction of Vehicle Emissions in Public Agency Fleets**. Support the reduction of vehicle emissions through increased fuel efficiency, use of appropriate alternative fueled vehicles, and/or low emission vehicles in public agency fleets. Encourage the use of appropriate alternative fueled vehicles, and/or low emission vehicles in private fleets.
7. **Climate Change Impacts**. Encourage all levels of government to share information to prepare for climate change impacts.
8. **Coordinated Planning**. State policy should encourage and provide incentive for cities to coordinate and share planning information with neighboring cities, counties, and other governmental entities so that there are agreed upon regional blueprints and strategies for dealing with greenhouse gas emissions.
9. **Water Supply for New Development**. Encourage exchange of water supply information between state and local agencies, including information on the impacts of climate change on state and local water supplies.
10. **Recycles Content and Green Purchasing Policies**. Encourage the adoption and implementation of recycled content and green procurement policies, if fitness and quality are equal, including the adoption of an Environmental Management System and authorization of local agencies to consider criteria other than only cost in awarding contracts for services.

Additionally, the League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

Finally, the League's Strategic Priorities for 2012, as adopted by the League Board of Directors, include:

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) **Support Sustainable and Secure Public Employee Pensions and Benefits**: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) **Promote Local Control for Strong Cities**: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) **Build Strong Partnerships for a Stronger Golden State:** Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

RESOLUTIONS REFERRED TO PUBLIC SAFETY POLICY COMMITTEE

◆1 **A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.**

Source: City of Glendora

Referred to: Public Safety and Revenue & Taxation Policy Committee

Recommendation to General Resolutions Committee:

WHEREAS, the primary purpose of criminal and traffic laws is to improve safety for the public, where the cost involved to implement enforcement falls primarily upon local law enforcement agencies throughout the State; and

WHEREAS, if State laws are to be effectively enforced then local cities must have a fair revenue structure to pay the cost of making arrests and issuing citations for criminal and traffic violators; and

WHEREAS, the significant inequity in the amount cities receive in relation to the full cost of a citation and/or arrest results in an unfair distribution of revenue to cities that are generated by court fines, fees, surcharges, penalties and assessments levied on offenders; and

WHEREAS, the current inefficiencies in the system makes it practically impossible for cities to insure transparency and effectively audit, administer and manage public funds that are generated by cities and distributed by the State and County; and

WHEREAS, to adequately protect and serve the public during this time of declining revenue and deteriorating services the inequities in the system needs to be changed; and

WHEREAS, court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements; and

WHEREAS, once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed by the court has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections; and

WHEREAS, the current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected; and

WHEREAS, Counties and the State have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed; and

WHEREAS, in December 2011 at the request of the Glendora Police Department the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the City of Glendora received about 12% (\$253) of the \$2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit were sent to collection or warrants. Based on those results, the city received an average of \$21, while the State and County received an average of \$172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the State and County's share of 86.75%; and

WHEREAS, issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the time of a records clerk tasked with entering citations into the database costing approximately \$82 per hour. If the citation is challenged the cost increases another \$135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation currently is between \$82 and \$217, while the sample audit reveals the city is receiving about \$21 in cost recovery; and

WHEREAS, officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the State issuing citations due to the complexity and "Priority of Distribution" they must follow from the State of California. "Priority Distribution" is triggered when a court reduces a fine for a citation. This process prohibits Judges from reducing penalty assessments and thus the only discretion Judges have in reducing fines, fees and costs is to reduce the base fine, or city portion, of the total fine. This process has a significant impact on the amount of money cities issuing the citation will receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priorities on the distribution list and often find themselves receiving significantly less share-or no share after deducting State and County fees and surcharges; and now there let it be

RESOLVED by the General Assembly of the League of California Cities, assembled in San Diego on September 7, 2012, that the League of California Cities calls upon the State Legislature and Governor to:

1. Create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations;
2. Enact legislation that changes the "Priority Distribution" mandate so cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations; and
3. That any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed, not just from the city base fine.

////////

Background Information on Resolution No. 1

Source: City of Glendora

Background:

Court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected.

Once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts, depending on the fine, fee, surcharge or penalty assessment imposed by the court and California has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different government code.

County and state have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed.

At the request of the City of Glendora, in December 2011, the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the Glendora received about 12% (\$253) of the \$2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit had been sent to collection or warrants. Based on those results, the city received an average of \$21, while the state and county received an average of \$172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the state and county's share of 86.75.%

Issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the records clerk tasked with entering citations into the database costing approximately \$82 per hour. If the citation is challenged the cost increases another \$135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation that is currently between \$82 about \$217, while the sample audit reveals the city is receiving about \$21 in cost recovery.

Officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the state because when a court reduces a fine it triggers a process called "Priority Distribution." This process prohibits Judges from reducing penalty assessments imposed by the county and state and thus the only discretion that Judges have in reducing fines is to reduce the Base Fine (City Portion) of the total fine. This mandate has a significant impact on the amount of money cities issuing the citation receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priority on the distribution so often they find themselves receiving significantly less share-or no share after deducting state and county fees and surcharges.

The primary cost to implement enforcement falls upon local law enforcement agencies throughout the state. This Resolution calls upon the State Legislature and Governor to create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations. In addition, legislation should be developed and passed that changes the "Priority Distribution" mandate so the cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations and that any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed.

////////

League of California Cities Staff Analysis on Resolution No. 1

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214
Committee: Public Safety Policy Committee

Staff: Dan Carrigg, Legislative Representative, (916) 658-8222
Committee: Revenue and Taxation Policy Committee

Summary:

This Resolution urges the League of California Cities, through legislative or administrative means, to clarify the authority for cities to audit the distribution of court imposed fines, fees, penalty assessments and administrative costs for criminal and traffic violations.

It also urges the League to seek legislative changes to the "Priority Distribution" statutory formula so that cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations. The current statutory formula allows reductions to the base fine but maintains the same level of penalty assessments, based upon the full penalty charge.

Finally, any reductions that may occur in fines, fees, assessments or costs determinations should be equally distributed from the total fine imposed, not just from the city base fine.

This Resolution raises several policy questions:

- 1) Should cities have the authority to request audits and receive reports from a county or the state on the local share of revenue resulting from criminal and traffic violation penalties?
- 2) Should cost-recovery be a driving factor in setting monetary penalties for criminal or traffic violations?
- 3) Should reductions (as ordered by a judge) to the fines owed by violators be taken just out of the base fine, or should the base fine and related penalty assessments be reduced proportionately?

Background:

In California, criminal offenders may have additional penalty assessments made to their base fines. These penalty assessments are based on the concept of an "abusers fee," in which those who break certain laws will help finance programs related to decreasing those violations. For example, drug and alcohol offenses and domestic violence offenses are enhanced by special assessments on fines that directly fund county programs designed to prevent the violations. All other criminal offenses and traffic violations are subject to penalty assessments that are used to fund specific state programs.

According to the Resolution sponsor, the City of Glendora, the court-ordered collection of penalty fines and additional assessments, as well as the subsequent revenue distribution, is a complex system where few audits are conducted to determine if cities are receiving their share of collections. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities.

The League recently held in-depth policy discussions related to audit authority in light of the misconduct charges against the City of Bell in 2011. The League convened a technical working group to review audit legislation and administrative efforts by the State Controller's Office. Following the work of this group, the League Board adopted principles supporting transparent, accurate financial and performance information. (See "Existing Policy" section below.) However, these principles did not address expanding cities' audit authority over the state, counties, or other public agencies.

The sponsors state that there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed, there are more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections.

Generally, the base fines for criminal and traffic citations are significantly lower than the additional penalty assessments levied by the state and counties. In some instances, the penalty assessment for state and local programs can be three or four times the amount collected by the city or county agency that issued the citation through their local enforcement authority. The amount each program account receives is based on a statutory formula. For example, if a driving under the influence (DUI) fine is \$1000, specific dollar amounts proportionate to the base fine are added under six different code sections for a total price tag of \$3,320 for the offense.

Some examples of program accounts receiving penalty assessment revenues include Peace Officer Standards and Training (POST), victim witness protection and services, court security, court construction, forensic laboratories for DNA identification, and automated fingerprint identification. The impact of programs largely funded, if not solely funded, by penalty assessment revenue casts a wide net of stakeholders including counties, sheriffs, district attorneys, public defenders, fish and game wardens, victim advocates, and access to the judicial system advocates. Cities are also partial benefactors of penalty assessment funded programs related to law enforcement.

For the last three decades, this policy area has been under great scrutiny and study but with little reform taking place. The recommendations from past studies and reports to consolidate penalty assessment accounts or their collections efforts, which would require legislative action, have likely not gained traction because of the inevitable loss of revenue for the specific programs and the affected interest groups.

In 1986, the Legislature enacted Senate Concurrent Resolution 53, requiring the Legislative Analyst Office (LAO) to study the statutory penalty assessments that are levied by the courts on offenders and the state programs that the funds support. The completed 1988 study found a complicated system of collection and distribution of penalty funds. The LAO was unable to fully identify the source offenses that generated penalty revenues because of limitations in most county collection systems.

In 2005, the California Research Bureau issued a report for the Assembly Public Safety Committee on county penalty assessments that drew similar conclusions. They stated the complexity of the system means poor revenue collection, disproportionate justice for debtors, and undermines the usefulness of fines as a punishment or deterrent. They recommended efforts to streamline and consolidate collections, funding, and appropriations.

After some delay, the state created the Administrative Office of the Court's Court-Ordered Debt Task Force, which is charged with evaluating and exploring means to streamline the existing structure for imposing and distributing criminal and traffic fines and fees. This Task Force has been asked to present preliminary recommendations to the Legislature regarding the priority in which court-ordered debt should be satisfied and the use of comprehensive collection programs. Currently, the League of California Cities has two appointments to the Task Force. However, the Task Force has been put on hiatus and has not met for approximately 12 months due to significant state cuts to the court budget in recent years.

Currently, legislation was introduced this year to address the issue of cities not recouping the costs of issuing citations. The response has been to increase the base fine and not change penalty assessments. Assembly Bill 2366 (Eng) would increase the base fine of "fix-it" tickets from \$10 to \$25 dollars. This has largely been successful in the legislative fiscal committees because with every increase to the base fine for the issuing agency, so increases the state and county share of penalty assessments proportionately.

Lastly, in most instances when the legislature takes into consideration a fine increase, be it for manufacturer product responsibility or criminal acts, the legislature focuses on how the increased fine will alter behavior, not on recovering the costs of enforcing that violation.

Fiscal Impact:

Unknown. Potential additional revenue received by cities, if any, would vary based on total citations issued and collected.

Existing League Policy:

Related to this Resolution, existing policy offers:

- Cities and the League should continue to emphasize efficiency and effectiveness, encouraging and assisting cities to achieve the best possible use of city resources.
- The League supports efforts to preserve local authority and accountability for cities, state policies must ensure the integrity of existing city revenue sources for all cities, including the city share and situs allocation, where applicable, of property tax, sales tax, vehicle license fee, etc.

Audit Principles Adopted by the League Board

- Given the State already has substantial authority to examine local government financial practices, and recognizes the significant resources required by auditors and local governments to complete audits, additional authority should only be granted to a State agency when there are documented insufficiencies in its existing authority.
- Governmental financial audits and performance audits ensure financial integrity and promote efficient, effective and accountable local government.
- Transparent, accurate financial and performance information is necessary for citizens to have confidence that their interests are being served, and for decision makers to be accountable for ensuring that public funds are spent appropriately and effectively.
- Public trust is inspired when auditors perform their work with independence, objectivity and integrity, remaining free from personal, external and organizational impairments to that independence, both in fact and in appearance.
- Public confidence in government is maintained and strengthened when financial and performance information is collected, managed and reported in accordance with nationally recognized professional accounting and auditing standards.

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

>>>>>>>>>>

2. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES RAISING PUBLIC AWARENESS AND SUPPORTING TOUGHER LAWS RELATED TO INTERNET CRIMES AGAINST CHILDREN

Source: San Diego County Division
Referred To: Public Safety Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, technology has brought significant changes to our society over the past two decades, many of which have had a positive effect on our quality of life while some have threatened the safety and well-being of our young children; and

WHEREAS, the internet has made victimization of children easier than ever before; and

WHEREAS, the internet has also significantly increased the availability of child pornography, with more than 6.5 million images being shared via the internet , compared to only a few hundred photos less than a generation ago; and

WHEREAS, some see viewing child pornography as a “victimless crime,” however these images are never completely eradicated from the internet and the victims continue to have their horrific photos viewed over and over again by pedophiles for sexual gratification; and

WHEREAS, in 2007 the National Center for Missing and Exploited Children reported it had identified 9.6 million images and videos of child pornography and believed there were millions more not identified; and

WHEREAS, in the 2006 Butner Redux Study, 98 percent of convicted child pornographers had molested children before their capture; and

WHEREAS, the United States is the number one producer and consumer of child pornography in the world, with more than 624,000 child pornography users identified nationwide.

NOW THEREFORE BE IT RESOLVED by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League of California Cities:

1. Desires to increase public awareness and educate others about the critical issue of internet crimes against children statewide.
2. Requests the League advocate for the State Legislature to adopt tougher laws for child pornographers.

3. Requests the League advocate for additional and more permanent funding for Internet Crimes Against Children Task Forces (ICAC) statewide.

////////

Background Information on Resolution No. 2

Source: San Diego County Division

Background:

Technology has brought significant changes to our society over the past two decades. While most have had a positive effect on our quality of life, many have threatened the safety and well-being of our young children.

The internet has made victimization of children much easier than ever before. Today, pedophiles can network with one another online, encourage one another to commit crimes against children, and share tips on evading law enforcement. Worse yet, they often use the internet – social media sites, in particular – to find and prey on young children. Many times, these innocent children are lured away from their homes by these perpetrators and never seen again.

The internet has also significantly increased the availability of child pornography. More than 6.5 million child abuse images are being shared via the internet today. Before this technology was in place, the number of photos available numbered in the few hundreds.

While some see viewing child pornography as a “victimless crime,” nothing could be further from the truth. One study showed that 98 percent of convicted child pornographers had molested children before being captured (Butner Redux Study, 2006).

Additionally, these images can never be completely eradicated from the internet once they are placed online. Therefore, victims continue to suffer the irrevocable damage of knowing their horrific photos are being viewed over and over again for sexual gratification by pedophiles.

Many believe these horrendous crimes happen mostly in other countries. Sadly, the United States is the number one producer and consumer of child pornography in the world, and American children are the primary victims. More than 624,000 child pornography users have been identified nationwide and thousands of these reside in San Diego County.

While the internet is exploited by these predators to harm children, it ironically is the same tool used by law enforcement to track down and arrest these criminals.

Your help is urgently needed to secure resources for this effort, increase public awareness, work to support tougher laws and educate others on this critical issue. While San Diego has one of the nation’s 61 ICAC task forces, its six trained investigators are overwhelmed with cases due to funding shortfalls.

With your help, these predators can be taken off the street and our children will be safer. Here is what needs to be done:

Change state law. The current “wobbler” (misdemeanor and felony) wording should be eliminated. All child pornography charges should be made a straight felony.

Strengthen sentencing. State sentencing on child pornography cases needs to be more in line with

federal sentencing.

Toughen discovery statutes. State discovery statutes should be amended to comply with the Adam Walsh Act. Child pornography is contraband that is easily reproduced and should be treated as such.

Change pornography evidence rules. Stop the practice of giving copies of child pornography evidence to the defense. Instead, provide the defense a secure area where they can view the evidence but not take possession of it.

Strike current law about possession/distribution of child pornography. Currently, state law allows for a defendant's conviction for possession and distribution of child pornography to be set aside if he/she has complied with all probation conditions, pursuant to Penal Code Section 1203.4.

Strengthen disclosure laws. If applying for any job other than public office, licensure by any state or local agency, or for contracting with the state lottery, a convicted possessor of child pornography does not need to disclose their prior conviction. That allows people who have been convicted of possessing or dealing in photos of child exploitation to get closer to children. PC 1203.4 already has exceptions for convictions of PC 286(c), 288, 288a(c), 2813.5, 289m, felony 261.5(d) and 42001(b) of the Vehicle Code. These convictions may not be set aside per PC 1203.4 and must always be disclosed. PC 311.1, 311.2, 311.3, 311.4, 311.10 and 311.11 should be added to the list of charges to which this type of relief does not apply.

Update reporting laws. The existing mandatory reporting law should be updated to include librarians and computer technicians.

Provide permanent funding for ICAC. Significantly more permanent funding is needed for Internet Crimes Against Children Task Forces (ICAC's). They are tasked with investigating crimes against children involving electronic devices. The crimes include child pornography, child molestation and peer-to-peer bullying. ICAC task force's are severely undersized and underfunded to keep up with the magnitude of the growing problem.

Increase public awareness. Public awareness of the issue needs be heightened particularly to parents and children as well as all public officials and the community in order to protect our children against these unspeakable crimes.

////////

League of California Cities Staff Analysis on Resolution No. 2

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214
Committee: Public Safety Policy Committee

Summary:

This Resolution seeks to increase public awareness of the prevalence of internet crimes against children. To help promote this goal, the Resolution requests the League of California Cities advocate for legislation that creates tougher laws for child pornographers and provides additional, more permanent funding for Internet Crimes Against Children (ICAC) Task Forces.

Background:

According to the Resolution sponsors, the U.S. Census Bureau (2005) estimates that there are over 24.5 million internet users in the United States between the ages of 10 and 17. They cite that the rapid growth of internet accessibility has brought forth helpful tools for our children and youth. Unfortunately, it has also brought with it the increased potential for online victimization including unwanted exposure to sexual material, unwanted sexual solicitations, and online harassment.

The Internet Crimes Against Children (ICAC) Program was created to help federal, state and local law enforcement agencies enhance their investigative responses to offenders who use the internet, online communication systems, or computer technology to sexually exploit children. The program is funded by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The program is a national network of 61 coordinated task forces representing over 3,000 federal, state, and local law enforcement and prosecutorial agencies. These agencies are engaged in proactive investigations, forensic investigations, and criminal prosecutions.

In FY 2009, ICAC Program received \$25 million under the Omnibus Appropriation Act to support ICAC task forces, training, and technical assistance. The ICAC Program received an additional \$50 million through the **American Reinvestment and Recovery Act** to support ICAC task forces, training, technical assistance, and research. In each of the past two fiscal years, the program received \$30 million nationally.

Existing California law addresses the policy area extensively in the areas of solicitation, pornography, and harassment with additional penalties often levied when the victim is a minor less than 14 years of age. Internet-based crimes against minors have been a popular topic in recent legislative proposals especially as new web-based technology is brought into the market. Legislation has included both increased penalties and greater protections or remedies for victims.

Fiscal Impact:

Unknown. No direct fiscal impact to city general funds.

Existing League Policy:

Related to this Resolution, existing policy offers:

The League believes that the children of California must be recognized as our state's most valuable resource. Their development, education, and well-being are key to our state's future. Further, it is essential that each child have the support needed to become a productive citizen in the world of the 21st Century.

The League supports the promotion of public safety through stiffer penalties for violent offenders.

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) **Build Strong Partnerships for a Stronger Golden State:** Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

>>>>>>>>>>

5. A RESOLUTION CALLING FOR AN EMERGENCY MANAGEMENT MISSION FOR CALIFORNIA CITIES

Source: League Public Safety Policy Committee

Referred To: Public Safety Policy Committee

Recommendation to General Resolutions Committee:

WHEREAS, emergency management is a basic responsibility of city government and a fundamental duty of all city employees; and

WHEREAS, prepared, disaster resilient communities save lives, prevent injuries, protect property, promote economic stability, and rapid recovery; and

WHEREAS, employees who have a family plan and supplies will be more likely to stay at work or come to work after an emergency incident; and

WHEREAS, the National Incident Management System (NIMS) provides guidelines and requirements to ensure a national coordinated emergency response system, including training requirements; and

WHEREAS, the Standardized Emergency Management System (SEMS) provides the foundation for California cities to ensure a state-wide coordinated, standardized emergency response system. SEMS is intended to be flexible and adaptable to the needs of all emergency responders in California; and

WHEREAS, emergency managers are responsible for promoting and encouraging personal, family and community preparedness and readiness. It is critical to focus on and support public education and training to ensure that the public understands that government entities may need time to recover from disaster situations, and to spread the message that disaster resilience, or the ability to recover from a disaster situation, requires participation from the whole community; and

WHEREAS, The League of California Cities (League) recognizes that cities, counties and the state do not have the reserves to support residents with food, water, and other necessary supplies after an "emergency event". Now, therefore let it be

RESOLVED, at the League General Assembly, assembled at the League Annual Conference on September 7, 2012, in San Diego, that the League encourages cities to actively pursue employee and resident emergency preparedness. In addition, the League encourages cities to actively engage residents in emergency preparedness programs that promote creating a family plan, including having supplies of food and water, in the promotion of self-reliance.

//////////

League of California Cities Staff Analysis on Resolution No. 5

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214

Committee: Public Safety Policy Committee

Summary:

This Resolution seeks to create a clear statement of support for emergency preparedness in the League of California Cities existing policy and guiding principles. Specifically, it requests that the League encourages cities to actively pursue employee and resident emergency preparedness and to engage residents in

emergency preparedness programs that promote creating a family plan, that includes provisions for supplies of food and water, in the promotion of self-reliance, with the ultimate goal of creating “disaster resilient” cities.

Background:

This resolution was brought to the Public Safety Policy Committee by that committee’s Emergency and Disaster Preparedness Subcommittee to create a clear statement of support for emergency response, management, and recovery efforts as a community. While the League has extensive policy that supports related activities, there is no explicit statement of support in the existing policy or guiding principles.

In addition, numerous articles in *Western City Magazine*, the League’s monthly publication, have featured case studies and best practices about emergency response and disaster preparedness. This topic has been a key component of the Public Safety Committee’s work program for the last five years.

Fiscal Impact:

Unknown. This Resolution does not seek to create new requirements for the League or cities. Possible costs to cities that take steps to educate community members about disaster preparedness could be off-set by future limited damage and loss of life or injury due to those preparedness efforts.

Existing League Policy:

Related to this Resolution, existing policy provides:

The League supports the 2-1-1 California telephone service as a non- emergency, human and community services and disaster information resource.

The League supports “Good Samaritan” protections that include both medical and non-medical care when applicable to volunteer emergency, law enforcement, and disaster recovery personnel. The League also supports providing “Good Samaritan” protections to businesses that voluntarily place automated external defibrillators (AEDs) on their premises to reduce barriers to AED accessibility

The League supports activities to develop and implement statewide integrated public safety communication systems that facilitate interoperability and other shared uses of public safety spectrum with local state and federal law enforcement, fire, emergency medical and other public safety agencies.

The League supports a single, efficient, performance-based state department (the California Emergency Management Agency) to be responsible for overseeing and coordinating emergency preparedness, response, recovery and homeland security activities.

The League supports disaster recovery legislation that includes mitigation for losses experienced by local government.

The League’s Mission Statement is “to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.”

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:

1) **Support Sustainable and Secure Public Employee Pensions and Benefits:** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) **Promote Local Control for Strong Cities:** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

>>>>>>>>>>

RESOLUTION REFERRED TO REVENUE AND TAXATION POLICY COMMITTEE

- ◆1 **A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.**

Resolution #1 also referred to Public Safety Policy Committee. **Please see Public Safety Policy Committee section for the resolution, background and staff analysis information.**



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: August 21, 2012
THROUGH: John W. Donlevy, Jr., City Manager *JD*
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*
SUBJECT: State Mandated Cost Claiming Services.

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution 2012-32, A Resolution of the City Council of the City of Winters approving an Agreement for Provision of Professional Consulting Services to the City of Winters by AK & Company for SB90 State Mandated Cost Reimbursement Claim and authorize the City Manager to execute the contract.

BACKGROUND:

The State of California has mandated that cities and counties must provide certain services and programs, and under state law, the State of California is required to reimburse the cost of providing those programs and services. Cities and Counties must submit claims to the State of California in order to receive the reimbursement. The City of Winters began submitting claims in February 2002 and the state currently has remitted to the City of Winters approximately \$90,252. Although most of the mandates are expected to be suspended in the 2012-2013 California state budget, the City must continue to file the claims in order to receive payment when the state budget includes the repayment of past claims, and the payment of current claims. The cost of submitting the claim to the state is reimbursed by the state.

FISCAL IMPACT:

The City will receive approximately \$6,000 in funds for the current fiscal year to offset the cost of providing services and programs. Our policy is to use these funds, when received, to help provide funding for our equipment replacement funds.

ATTACHMENTS

Consultant Services Agreement
Resolution 2012-32

RESOLUTION 2012-32

RESOLUITON OF THE CITY COUNCIL OF THE CITY OF WINTERS APPROVING AN AGREEMENT FOR PROVISION OF PROFESSIONAL CONSULTING SERVICES TO THE CITY OF WINTERS BY AK & COMPANY FOR SB 90 STATE MANDATED COST REIMBURSEMENT IN THE AMOUNT OF \$3,000.00

WHEREAS, the City finds it prudent to submit a claim to the State of California for reimbursement for the cost of state mandated programs; and

WHEREAS, AK & Company has presented the City with a proposal to prepare the claim for reimbursement of state mandated programs;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Winters hereby approves the contract with AK& Company in the amount of \$3,000 to file the claim for reimbursement for the cost of state mandated programs and authorizes the City Manager to execute the contract with AK & Company

PASSED AND ADOPTED by the City Council, City of Winters, this 21st day of August 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK



CONSULTANT SERVICES AGREEMENT
AGREEMENT No. _____

THIS AGREEMENT is made at Winters, California, as of August 21, 2012, by and between the City of Winters ("the CITY") and AK& Company(CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANTS shall provide to the City the Services described in Exhibit "A", which is the CONSULTANT'S Proposal dated July 30, 2012. Consultant shall provide said services at the time, place, and in the manner specified by the City of Winters and Exhibit "A".

2. PAYMENT. The Consultant shall be paid for the actual costs, for all time and materials expended, in accordance with the Schedule of Fees included in Exhibit "B", but in no event shall total compensation exceed three thousand dollars (\$3,000), without the City's prior written approval. City shall pay consultant for services rendered pursuant to the Agreement and described in Exhibit "A".

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

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

CONSULTANT

By: _____

ATTEST:

By: _____
Nanci G. Mills, CITY CLERK

**AGREEMENT FOR PROVISION OF
PROFESSIONAL CONSULTING SERVICES TO THE
CITY OF WINTERS**

This AGREEMENT is entered into on the 21st day of August, 2012, both by and between ak & company ("Consultant" for the purposes of this Agreement) and the City of Winters ("City" for the purposes of this Agreement).

PURPOSE:

Article XIII B of the State of California's Constitution allows local agencies to recover costs associated with provision of certain activities that have been mandated by the State. City has determined that provision of Consultant's services to prepare and file mandated cost reimbursement ("SB 90" for the purposes of this Agreement) claims is the most cost effective and efficient method to complete this process. Consultant has knowledge and experience in completion of the data collection, preparation and submission of SB 90 claims to the State of California. City agrees that Consultant will assist City in the preparation and submission of reimbursement claims involving these state mandated programs.

City and Consultant mutually agree to the following terms and conditions:

- 1) Consultant's Professional Services. Consultant will perform the following services:
 - a) Based upon City's timely provision of accurate and complete information, by February 15, 2013, prepare and submit FY 2011-2012 SB 90 Annual Claims to the State Controller's Office (SCO), according to the SCO FY 2011-12 Annual Claiming Instructions.
 - b) Based upon City's timely provision of accurate and complete information, by February 14, 2013, if necessary, prepare and submit SB 90 Amended Claims to the State Controller's Office.
 - c) Based upon written instruction from City and based upon City's timely provision of accurate and complete information, prepare and submit SB 90 New Claims according to Claiming Instructions issued during FY 2012-2013. New Claims are those with a claim due date other than February 15, 2013.

Consultant shall determine the method, details and means of preparing and filing SB 90 claims and agrees to perform the specific services listed in Exhibit A, for each category of claim.

- 2) City's Duties. City's duties under this Agreement are to cooperate with Consultant in the performance of this Agreement and perform the specific services listed in Exhibit B, within the timeframes specified.
- 3) Exhibits. Exhibits A and B are attached and incorporated as part of this Agreement.

- 4) Term of Agreement. This Agreement shall become effective immediately upon signing and continue in effect through September 30, 2013. This Agreement may be extended by mutual written consent of the parties for two consecutive one-year periods.
- 5) Staff. "Consultant" includes all staff required to complete performance of this Agreement's services. Services included in this Agreement will be completed by Consultant or under Consultant's supervision.
- 6) Costs of Agreement and Method of Compensation – Annual and Amended Claims. In exchange for Consultant's provision of the services in Items 1) a) and 1) b), City agrees to compensate Consultant in a Fixed Fee in the amount of three thousand dollars (\$3000). This fee will be paid in two equal installments: Fifty percent (50%) or \$1500 will be due and payable within 30 days of City's receipt of invoice following execution of the Agreement and fifty percent (50%) or \$1500 will be due and payable within 30 days of City's receipt of invoice following filing of Annual Claims. Any penalties incurred in Item 8) will be invoiced at this time.
- 7) Costs of Agreement and Method of Compensation – New Claims. In exchange for Consultant's provision of the services in Item 1) c), City agrees to compensate Consultant based on each New Claim Program. For each New Claim Program, compensation will consist of a Flat Fee in the amount of one thousand seven hundred fifty dollars (\$1,750) for up to three New Claim Program back year claim filings, and an additional \$175 for each additional back year program claim filing.
- 8) City's Provision of Staff and Data. City agrees to designate a responsible staff member as its SB 90 Coordinator. Consultant will inform City's designated SB 90 Coordinator and department staff of the data and documentation necessary for timely claims submission. Consultant will presume that all data provided by City is correct and complete. City agrees to be fully responsible for the accuracy and timeliness of the data provided. City agrees there will be no Consultant liability for unfiled or late claims resulting from insufficient data or data not provided by the agreed upon deadlines.

City and Consultant agree that Consultant-requested data must be provided by City staff either within three (3) weeks of the request or three (3) weeks prior to the filing deadline, whichever occurs first. Data not received within this timeframe will not be considered to be provided in a timely fashion. City agrees to pay Consultant an additional fee of \$250 per week or portion thereof for data received by Consultant after the agreed upon deadline.

All Annual Claims data requested must be provided to ak & company no later than **FRIDAY, NOVEMBER 9, 2012.**

For any New Claim, City and Consultant agree that Consultant will receive written direction from the City prior to beginning the data collection and claim preparation process. City will provide such notification to Consultant within one week of the Consultant's initial notification of each New Claim.

- 9) Third Party Obligations. The only parties to this Agreement and entitled to enforce the terms of the Agreement are City and Consultant. No right or benefit, direct or indirect, is given to any third parties.
- 10) Records and Inspections. In accordance with State law, Consultant will maintain complete, accurate records concerning all matters covered under this Agreement. During normal business hours, City will have reasonable access to these records. A thirty (30) day written notice will be provided by City when it intends to inspect or audit these records. Prior to being granted such access, any City employee, consultant, subcontractor or agent will execute a non-disclosure agreement.
- 11) Waiver of Submission of Claims. Submission of claims pursuant to Items 1) a), 1) b), and 1) c) of this Agreement may be waived. If a waiver is exercised by either party, Consultant will be paid by City for all work completed prior to and until the waiver's date of effect. The amount paid will not exceed the dollar amount indicated in Items 6) or 7). In case of a waiver, Consultant will be paid based on the hours of work required to submit the claims that were completed prior to the effective date of the waiver. This time will be reimbursed at the rate of \$150 an hour, not to exceed the dollar amount in Items 6) or 7).
- a) At Option of City. Pursuant to a specific State Claiming Instruction, at City's discretion, City may instruct Consultant not to file a specific claim or claims. This instruction must be in writing and provided to Consultant at least thirty (30) days prior to the due date of the claim. The date Consultant receives City's written instruction will be the effective date of City's waiver.
- b) At Option of Consultant. At Consultant's discretion, Consultant may advise City of the reasons it does not intend to file a specific claim. The date Consultant mails its notification to City will be the effective date of Consultant's waiver. City will expect Consultant to file any pertinent claim that meets the minimum limit set by the State.
- 12) No Waiver of Rights and Remedies. In no event will any City payment to Consultant constitute a waiver by City of any breach of covenant or any default that may exist on the part of Consultant. Payment made by City while any such breach or default does not impair or prejudice any City right or remedy in respect to such breach or default.
- 13) Consultant Audit Liability. Consultant will presume that all statistical and financial data provided by City is correct and complete. Consultant will provide workpapers and records to State Controller's Office (SCO) auditors if an audit should occur. Any State disallowance of amounts paid to City under the claim or claims for whatever reason will be solely City's responsibility. If City so requests, Consultant will assist City in defending claims at the desk audit level, provided such a disallowance amounts to at least ten percent (10%). No contest by Consultant for reductions of less than 10 percent (10%) will be made. Preparation of Incorrect Reduction Claims is not included in any part of this Agreement. If travel is required, Consultant is to be reimbursed for travel expenses and mileage at the City's rate in effect at the time of the travel.

- 14) Independent Contractor. In performing the scope of services of this Agreement, City and Consultant agree that Consultant is an independent contractor with complete control of the work and manner in which it is performed. For no purposes are the Consultant or Consultant's employees considered agents or employees of the City.
- 15) Insurance. General liability, automobile and professional liability insurances will be maintained by Consultant.
- 16) Limitation of Liability. Consultant will not be liable for consequential, special, indirect, or punitive damages. For any reason whatsoever, foreseeable or not, will Consultant's liability exceed the total amount paid to Consultant under this Agreement.
- 17) Changes. If either City or Consultant requires changes in the scope of services included in this Agreement, they must be mutually agreed upon by and between City and Consultant. Any changes will be included in a written and duly executed amendment to this Agreement.
- 18) Notices. Under this Agreement, any signatures, reports, bills or notices required will be adequate if sent by either City or Consultant via postage paid USPS mail to the address noted below:

Contact Name: Shelly Gunby **Title:** Director of Financial Management

Agency: City of Winters

Address: 318 First St. Winters, CA

Phone #: 530-795-4910 x104 **Fax #:** 530-795-4935

Email Address: shelly.gunby@cityofwinters.org

ak & company
3531 Kersey Lane, Suite M
Sacramento, CA 95864

Phone #: 916 972 1666
Fax #: 916 972 1666
email: akcompany@um.att.com

Any notices will be considered delivered after five (5) days of being deposited in a USPS mailbox.

- 19) Complete Agreement. City and Consultant agree that this Agreement and any subsequent documents incorporated by specific reference contain all the terms and conditions previously agreed upon. No other agreements regarding this Agreement will bind either City or Consultant in any way.
- 20) Severability. If any portion, section, provision, part, or term of this Agreement are found to be in conflict with either a law of the United States of America or the State of California, or otherwise be unenforceable, the remaining portions, sections, provisions, parts or terms will be deemed severable and shall remain in full force and effect.

- 21) Receipt of Agreement. Consultant must receive a signed copy of this Agreement by **FRIDAY, AUGUST 31, 2012** to ensure that the data collection process can proceed in order to warrant that Annual Claims will be submitted in a timely fashion.

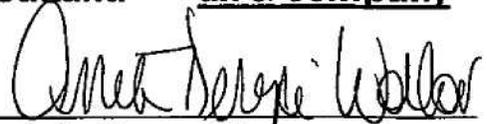
- 22) Signature Authority. The individual(s) signing this Agreement certify to the following:
 - a) He or she is authorized to sign this Agreement on behalf of City;
 - b) City has all approvals necessary to enter into this Agreement;
 - c) This Agreement is a valid, enforceable obligation of City upon execution.

THEREFORE, The City and the Consultant execute this Agreement as of the date below.

City: City of Winters

Consultant: ak & company

By: _____
(City Official)

By: 
Anita Kerezsi Worlow

Title: _____

Title: Principal

Date: _____

Date: 7/20/12

Taxpayer I.D. Number: 20-3180401

ATTEST:

By: _____
(City Official)

Title: _____

Date: _____

EXHIBIT A
SERVICES TO BE PERFORMED BY CONSULTANT

Annual and Amended Claims - Consultant will perform the following professional services:

- a. By February 15, 2013, prepare and submit FY 2011-2012 SB 90 Annual Claims to the State Controller's Office (SCO), according to the SCO FY 2011-2012 Annual Claiming Instructions, as specified in 1) (a).
- b. Prepare and submit amended SB 90 claims, as necessary, to the State Controller's Office (SCO), as specified in 1) (b).
- c. Schedule at least one site visit per year to discuss eligible programs with City's SB 90 Coordinator, and conduct meetings with individual departments affected by each reimbursable mandate program.
- d. Establish a workable timeframe and plan for data to be collected by staff and submitted to Consultant in order to submit the City's claims prior to the SCO deadlines.
- e. Advise City staff regarding reliable and defensible types of source documentation.
- f. Include both direct and indirect costs in SB 90 claims submitted by Consultant. Consultant may choose to use either the SCO ten percent (10%) indirect cost rate or to calculate a higher rate.
- g. Provided that City financial records are available and delivered to Consultant in a timely manner, Consultant will use relevant salary and expenditure data to prepare an Indirect Cost Rate Proposal (ICRP) for all City departments included in City's claims. If not provided in a timely manner, Consultant will use the SCO 10%.
- h. Complete all eligible claims and provide City with hard copies of the claims submitted.
- i. Deliver all signed claims to the SCO by specified deadlines.
- j. Forward to City a copy of the Claims Transmittal signed by the SCO to acknowledge receipt of claims.
- k. Advise City of SCO issues associated with any SB 90 claims prepared and submitted by Consultant.
- l. If necessary, act as a Sacramento liaison with the SCO in desk reviews or field audits for claims that were prepared and submitted by Consultant.

EXHIBIT A
SERVICES TO BE PERFORMED BY CONSULTANT

New Claims – Upon written direction from City, Consultant will perform the following professional services:

- a. Prepare and submit SB 90 New Claims to the State Controller's Office (SCO), according to the SCO issuance of New Claiming Instructions, as specified in 1) (c).
- b. Advise City staff regarding reliable and defensible types of source documentation.
- c. Establish a workable timeframe and plan for data to be collected by staff and submitted to Consultant in order to submit the claims prior to the SCO deadlines.
- d. Include both direct and indirect costs in SB 90 claims submitted by Consultant. Consultant may choose to use either the SCO ten percent (10%) indirect cost rate or to calculate a higher rate.
- e. Provided that City financial records are available and delivered to Consultant in a timely manner, Consultant will collect relevant salary and expenditure data to prepare an Indirect Cost Rate Proposal (ICRP) for all City departments included in City's claims. If not provided in a timely manner, Consultant will use the SCO 10%.
- f. Complete all eligible claims and provide City with hard copies of the claims submitted.
- g. Deliver all signed claims to the SCO by each new claim deadline.
- h. Forward to City a copy of the Claims Transmittal signed by the SCO to acknowledge receipt of claims.

EXHIBIT B
CITY'S DUTIES

City's duties in performance of this Agreement:

- a. Return executed Agreement by Friday, August 31, 2012.
- b. Coordinate all site visits, monitor staff activities and work with Consultant to collect and obtain necessary records, data and documentation needed by Consultant to prepare and submit SB 90 claims to the State Controller's Office (SCO) by the required deadlines.
- c. Provide Consultant requested data either within three (3) weeks of the request or three (3) weeks prior to the filing deadline, whichever occurs first. Data not received within this timeframe will not be considered to be provided in a timely fashion.
- d. Ensure that Annual Claims data is provided in its entirety to Consultant no later than Friday, November 9, 2012.
- e. For any New Claim Program, provide written direction to Consultant prior to Consultant beginning the data collection and claim preparation process. City will provide such direction to Consultant within one week of Consultant's initial notification of each New Claim Program, upon City determination that any New Claim Program filing will provide sufficient City reimbursement.
- f. Respond to Consultant inquiries within a reasonable timeframe.
- g. Ensure Consultant is paid within 30 days following City's receipt of an original invoice and acceptance by City of the materials, supplies and services provided by Consultant.

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.
 - (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 CITY'S 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.
- (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.



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: August 21, 2012
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Dan Maguire, Housing Programs Manager
SUBJECT: Lease Agreement Between the City of Winters and RISE for that
Certain Property at 201 First Street, Winters, CA

RECOMMENDATION:

Staff recommends the City Council approve and authorize the execution of a Lease Agreement between the City and RISE ("Rural Innovations in Social Economics, Inc.") for the Property at 201 First Street (the "Property").

BACKGROUND:

RISE Incorporated established an office in Winters three years ago. RISE was contracted through Yolo County Alcohol Drug Mental Health to provide Prevention and Early Intervention youth mental wellness services in Winters. RISE employs 2.5 full time employees to run prevention/early intervention programs for all school age youth, with 126 youth participating in their programs the last fiscal year (2011/2012). Youth participate in a variety of age specific support groups that range from small (3-4 students) to large (10-30 students), as well as individual case management for the most at risk youth population. The mission for this contract is to promote mental wellness in youth, with all youth served as there are no income requirements for these services.

RISE recently received funding through First 5 Yolo to provide a Family Resource Center model in the City of Winters. Through this initiative RISE provides a variety of services to families with children ages 0-5. The project allows RISE to work with the population to provide resource and referral services available in Yolo County. The services (through one full time employee) include providing parent education workshops, bi-monthly food distribution, financial literacy, and CASE Management services for the parents/guardians of the 0-5 population.

Services such as fax, copies, use of computers, employment services, form assistance, social services/unemployment assistance, and a variety of other walk-in services are available on a daily basis.

DISCUSSION:

Relocation of RISE is essential to the growth of the business. Relocation to a larger location will allow for expansion of services. Since establishing an office in Winters, RISE has outgrown its' initial location (312-A Railroad Ave.) and needs more space than is available at the current location (106-C Main Street).

Expansion of RISE and relocation to a larger space on First Street would offer the City many benefits. RISE is looking to bring new services to the Winters community and is committed to program grant writing to expand their community wide services.

The attached Master Lease (the "Lease") provide for the City to lease a portion of the Premises to RISE for \$1,400 per month for a period of 18 months.

FISCAL IMPACT:

\$25,200 in lease payments (\$1,400 per month for 18 months).

ATTACHMENTS:

Lease by and between the City and RISE Inc.

LEASE

THIS LEASE, is executed in duplicate at Winters, California as of _____, 2010, by and between the City of Winters Community Development CITY, a municipal corporation and general law city ("CITY" or "Landlord"), and _____, R.I.S.E., ("Tenant").

RECITALS

- A. CITY is the owner of that certain real property located at 201 First Street, Winters, California, more commonly known as the Rogers Building or the old library site (the "Premises").
- B. CITY wishes to lease the northern half of the Premises, approximately 3,300 square feet, to Tenant.
- C. Tenant is leasing the property for the conduct of its business.

AGREEMENT

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

1. Recitals. The recitals above are incorporated by reference as though fully stated herein.
2. Leasing. Landlord Leases to Tenant and Tenant Leases from Landlord, at the rent and upon all the terms and conditions set forth herein, the Premises.
3. Term. The term of this Lease shall be for eighteen (18) months, commencing on _____ (the "Commencement Date") and expiring, unless sooner terminated as provided in the Lease, on _____ (the "Lease Term").
4. Rent. Commencing on the Commencement Date, Tenant shall pay as rent, without deduction or set-off, ONE THOUSAND, FOUR HUNDRED DOLLARS (\$1,400.00) per month (the "Lease Rent"). If the Lease Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month.
5. Security Deposit. Upon signing of this Lease by Landlord and Tenant, Tenant will pay to Landlord as a "Security Deposit" the amount of ONE THOUSAND, FOUR HUNDRED DOLLARS \$1,400.00). If Tenant fails to pay Lease Rent, additional rent, or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of the Security Deposit for the payment of any such or other sums to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit(s), Tenant shall within thirty (30) days after written demand therefore deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount stated herein. Tenant's failure to do so shall be a material

breach of this Lease. Within thirty (30) business days of expiration of the Lease Term and Tenant's vacating of the Premises, Landlord shall return to Tenant the Security Deposit or so much thereof as has not been properly applied by Landlord.

6. Other Charges. Tenant is obligated to pay maintenance, repair and replacement costs, taxes, utilities (including but not limited to electricity, gas, water, sewer, and garbage), and other charges directly to the providing or taxing persons or entities. Any sums owed by Tenant to Landlord under this Lease shall be considered "additional rent" and shall be due and payable in the same manner as Lease Rent.

7. Tenant's Maintenance and Repair. Tenant shall, at its own expense, undertake to keep, maintain and repair all portions of the Premises, including without limitation, all Tenant's personal property and trade fixtures, during the term of this Lease, in good working and sanitary order, condition and repair, reasonable wear and tear and damage by casualty not caused by the negligence of Tenant or its agents, contractors or employees excepted. Tenant shall be liable for any damage to the Premises resulting from the acts or omissions of Tenant or its authorized representatives.

8. Holding Over. If Tenant remains in possession of the Premises after the expiration of the Lease Term, with the express written consent of Landlord, such occupancy shall be a tenancy from month to month at the rental and on the terms set forth in this Lease, plus all other charges payable hereunder.

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

10. Assignment. Tenant may not assign or sub-sublet ("Transfer") the Premises or Tenant's interest in the Lease, or any portion thereof, without prior written consent and approval of both the Landlord and Master Landlord. Before any Transfer shall be effective the assignee or sub-subtenant must assume, in writing, all of the obligations of Tenant under this Lease. Any such Transfer shall not, in any way, affect or limit the liability of Tenant under the terms of this Lease even if after such Transfer the terms of this Lease are materially changed or altered without the consent of Tenant, the consent of whom shall be unnecessary. Regardless of Landlord's consent, no Transfer shall relieve Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the rent and other sums due, and to perform and to comply with all other obligations of Tenant hereunder. Any assignee shall deliver to Landlord, before the assignment shall be effective, a written original of the assignment of this Lease and the party's agreement to be bound by and to perform and observe all terms, covenants and conditions of Tenant under this Lease (including all restrictions on use, assignment and subletting) and to assume all obligations of Tenant under this Lease, which instruments must be satisfactory in form and content to Landlord. Tenant shall pay to Landlord any and all consideration paid or payable by any sub-subtenant or assignee in excess of the rent payable by Tenant to Landlord hereunder. Consent to any one assignment or Lease shall not be deemed consent to any subsequent assignment or Lease. In the event of default by any sub-subtenant, in

the performance of any of the terms hereof, Landlord may proceed directly against Tenant or any guarantor(s) or anyone else responsible for the performance of this Lease, including the assignee or sub-tenant, without the necessity of first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord. Landlord may consent to subsequent assignments or Leases or amendments or modifications to this Lease or any lease, without notifying Tenant, any successor of Tenant, or anyone else liable under this Lease without obtaining its or their consent thereto and such action shall not relieve Tenant or any such other parties of liability under this Lease.

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

12. Use and Continuous Operating Covenant.

(a) The Premises shall be used and occupied only for the Tenant's current business and for no other purpose.

13. Indemnity and Insurance.

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

(b) Insurance. Tenant shall carry such insurance as required of under CITY standards, as follows:

Tenant shall maintain a commercially available general liability policy insuring against bodily injury and property damage on the Property in the amount of not less than One Million Dollars (\$1,000,000). CITY shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to CITY. Tenant waives all rights of subrogation against CITY and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Agreement. Tenant shall furnish CITY with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to CITY prior to the cancellation or material change of any insurance referred to herein. .

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

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

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

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

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

To Landlord: City of Winters
 Attn: DAN MAGUIRE
 318 First Street
 Winters, CA 95694
 Telephone: (530) 795-4910
 Facsimile: (530) 795-4935

To Tenant: The Tenant -

 Winters, CA 95694
 Telephone: () _____
 Facsimile: () _____

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

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

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

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

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

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

LANDLORD:

TENANT:

City of Winters

The Tenant

By: _____

By: _____

Its: City Manager

By _____

Its: Owners/Authorized Officers

Approved as to Form:

By: _____

John C. Wallace, City Attorney