



Winters Continued City Council Meeting  
City Council Chambers  
318 First Street  
Thursday, November 1, 2012

*Members of the City Council*

*Cecilia Aguiar-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*

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**AGENDA**

**6:00 p.m.**

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

Roll Call

Pledge of Allegiance

Approval of Agenda

**COUNCIL/STAFF COMMENTS**

**PUBLIC COMMENTS**

At this time, any member of the public may address the City Council on matters, which are not listed on this agenda. Citizens should reserve their comments for matter listed on this agenda at the time the item is considered by the Council. An exception is made for members of the public for whom it would create a hardship to stay until their item is heard. Those individuals may address the item after the

public has spoken on issues that are not listed on the agenda. Presentations may be limited to accommodate all speakers within the time available. Public comments may also be continued to later in the meeting should the time allotted for public comment expire.

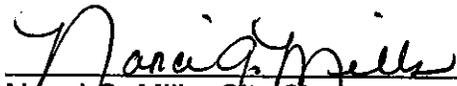
## DISCUSSION ITEMS

1. Wastewater Maintenance Service Contract and Operations
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## CITY MANAGER REPORT

### ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the November 1, 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 October 29, 2012, and made available to the public during normal business hours.

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

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

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Wednesday at 10:00 a.m.

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**CITY COUNCIL  
STAFF REPORT**

**TO:** Mayor and City Council  
**DATE:** November 1, 2012  
**FROM:** John W. Donlevy, Jr., City Manager *JWD*  
**SUBJECT:** Wastewater Services and Service Contract

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**RECOMMENDATION:**

That the City Council consider:

1. A Service Contract between the City of Winters and Southwest Water Company Services Inc for operations, maintenance and management of wastewater operations; or
2. City Staff resumption of operations, maintenance and management of wastewater operations.

**BACKGROUND:**

At the October 16, 2012 City Council Meeting, an extensive discussion was held regarding the operation and management of the City's wastewater services. Under consideration was whether to have City Staff resume the operations of the City facilities or to continue with SWWC as the contract operator.

Staff was directed to enter into negotiations with Southwest Water Company (SWWC) on the development of a revised contract for services within the existing scope.

**DISCUSSION:**

Attached to this staff report is a revised services contract for the consideration of the City Council. The following is an overview of the agreement:

**Contract:**

The proposed agreement is an extensive expansion of the previous contract entered into in 2002 between the City and Eco Resources, now SWWC. Some of the key expansions include:

- **General Conditions:** Expanded to include more definitions and guiding provisions within the agreement.
- **Section IV Scope of Services:** The most extensive additions are definitions of services to be provided and performance requirements. This sections now adds:
  - Defined staffing grades and the specification of personnel to be assigned to the Winters facility.
  - An Operator In Training Program which will enable assigned City personnel to become certified in wastewater operations.
  - Defined reporting requirements.
  - Enhanced interaction requirements between City personnel and SWWC management and supervisory personnel.
  - Electronic submittal requirements for maintenance data and reports.
  - GIS submittals of collection system maintenance data.
- **Section V** provides for the payment of \$29,000 per month.
- **Section VI Indemnification:** This section has been completely re-written.
- **Section VII General Provisions:** Expanded to include a transfer fee for assignment of the Contract by SWWC. Section 7.9 includes a requirement for SWWC to reimburse City expenses for the development of this agreement.
- **Section VII Termination/Renewal/Breach:** This section has been re-written to provide for the following:
  - A two (2) year agreement with the ability of the City to renew for one additional year;
  - a 90 day termination clause;
  - expanded termination obligations; and
  - a breach of contract provision which reduces compliance from 90 to 30 days.
- **Section IX Disputes:** This section has been added to guide how issues regarding the Contract are resolved.

**Contract Provisions Not Completed:**

As of the writing of this Staff Report and the draft agreement, the following sections have not yet been completed and are in development:

1. The establishment of a *deferred maintenance list* to remedy the backlog of items needing to be addressed.
2. Section 4.42 *Insurance* is still in development with the City's risk management agency.
3. Section 1.11 relating to licensing is not yet complete.

4. Section VI regarding *indemnity* is still in review by City legal.

Staff is working to have these items completed by the meeting.

**Contract Provisions Not Agreed to by City Staff and SWWC:**

Not all items included in this Contract have been agreed to by the City Staff and SWWC. These include the following:

- Section 7.4- Staff has included a transfer fee of 10% of the residual value of the agreement in the event SWWC wishes to sell/assign the Contract. SWWC does not want this included in the Contract.

Staff justification for this clause is based on the idea that while an assignment clause is acceptable, the City should be compensated for the ensuing need to re-train and orientate a new operator. The value of this contract, if signed is approximately \$1 million. SWWC can essentially sell the agreement the day after it is signed. A similar provision is included in the City's solid waste agreement and Staff desires that it be included in this agreement.

- Section 7.9- Staff has included a requirement that SWWC reimburse the City for Staff and contract legal expenses for the development of this agreement.

SWWC provided a slightly updated edition of the previous Contract which was wholly unacceptable. The agreement was required to be completely re-written by Staff with review from contract legal. This has incurred time and effort which is justifiably reimbursable to the City.

- 8.2- Staff has included a termination clause which enables to the City to terminate the agreement with 90 days notice.

The prior agreement with SWWC did not have a termination clause and only included a "breach" clause. During periods of severe conflict with the prior agreement, the City was essentially unable to terminate the contract because of the lack of the termination clause. "Breach" is extremely difficult to establish (absent extensive definition) and typically requires litigation to end the contract. The 90 day clause is typical of all City contracts and is recommended for this agreement. SWWC is asking for a two (2) year initial term (without a termination clause) and that termination can only occur after the completion of the initial term with a 90 day notice.

***Staff has asked that SWWC provide a letter detailing their position on each of these sections for the consideration of the City Council.***

**Cost Analysis:**

The proposed monthly cost by SWWC for Year 1 is \$29,000 per month. The following is background on the last 10 years of costs for this contract.

- The initial monthly cost was \$21,900 and the current monthly cost is \$28,664. This equates to a 31% increase over the last 9 years of the agreement based on a CPI formula adjustment.
- The increase to \$29,000 is essentially an additional 1% increase. The annual increase would equal \$4,032.

Staff received the cost information from SWWC late on Monday, October 29, 2012. A financial comparison of the contract versus the City Staff Option will be provided to the City Council prior to the special meeting and will be reviewed in detail as part of the presentation.

**FISCAL IMPACT:**

To be determined.

**CITY OF WINTERS  
SERVICE CONTRACT**

This service contract ("CONTRACT") is entered into as of this 1st day of December 2012 (the "Effective Date") by and between the City of Winters, California ("CITY") and SWWC Services, Inc. ("SWWC").

**I. RECITALS**

**WHEREAS, CITY owns and has control over the facilities described in Attachment "A" (hereinafter called FACILITY); All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by CITY or installed by SWWC at the City Facilities under the terms of this Agreement shall remain the exclusive property of CITY unless specifically provided for otherwise in this CONTRACT; and**

**WHEREAS, SWWC is a corporation specializing in the business of supplying operation and management services for such wastewater treatment facilities and collection systems; and**

**WHEREAS, SWWC has previously provided services to CITY since approximately 1990; and**

**WHEREAS, this CONTRACT supercedes and replaces the agreement dated December 1, 2002 between the CITY and SWWC Services, Inc. formerly known as ECO Resources, Inc., as well as all subsequent addenda and amendments.**

**II. GENERAL PROVISIONS**

**1.1. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of California.**

**1.2. This CONTRACT shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.**

**1.3. All notices shall be in writing and transmitted to the**

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party's address stated above. All notices shall be deemed effectively given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express; delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or when received by the party for which notice is intended, if given in any other manner.

- 1.4. This CONTRACT, including all Appendices, which are incorporated herein by this reference, is the entire agreement between the parties.
- 1.5. This CONTRACT may be modified only by written agreement signed by both parties. Wherever used, the terms "SWWC" and "CITY" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.6. If any term, provision, covenant or condition of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.
- 1.7. It is understood that the relationship of SWWC to CITY is that of independent contractor. The services provided under this CONTRACT are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators of municipal wastewater treatment facilities in California and otherwise similarly situated. However, such services shall not be considered engineering services, and nothing herein is intended to imply that SWWC is to supply professional engineering services to CITY, unless specifically stated in this CONTRACT to the contrary.
- 1.8. If any litigation is necessary to enforce the terms of this CONTRACT, the prevailing party shall be entitled to reasonable attorney's fees directly

attributed to such litigation, in addition to any other relief to which it may be entitled.

1.9. Nothing in this CONTRACT shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

1.10. Prior to the commencement of work under this CONTRACT, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary. See definition of Written Approval for authorization limits on City representatives.

1.11. Pursuant to California Business and Professions Code Section 7030(a), every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A LATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826



NOW, THEREFORE, in consideration of the promises and terms contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### III. STATEMENT OF PURPOSE

This CONTRACT provides for SWWC to furnish to CITY certain services necessary for the proper maintenance and operation of FACILITY; and to receive compensation from CITY for those services rendered in accordance with the below-presented terms and conditions.

#### IV. TERM OF CONTRACT

This CONTRACT shall remain in effect from the date first written above for a two (2) year period thereafter, subject to the right of either party to terminate as set forth in Article 8.

#### IV. SCOPE OF SERVICES

Unless otherwise specifically stated, all costs for the below listed services are to SWWC's account and included as part of the base CONTRACT price.

- 4.1. SWWC shall provide all labor, materials, equipment and services to operate, maintain and/or monitor the City Facilities on a 24-hour per day, seven-day per week schedule with coverage as necessary to comply with Applicable Law. SWWC shall respond to call-out alarms within a reasonable period of time following receipt of same, provided however, that such response time shall not exceed 1 hour. SWWC will address alarms remotely whenever possible.
- 4.2. Staffing. Except for sick days, holidays, vacations and training, SWWC will staff FACILITY with one Grade III Operator and one (1) Grade I Operator or Maintenance Technician who are trained and competent in wastewater and sewer collection. Management support will be provided by a minimum of a Grade V Operator who will be present in the City a minimum of one day per week. City will provide allowances for lower license grade operators during periods of vacations, training and personal leave based on written notification from SWWC. SWWC will staff FACILITY five (5) days per week, with overall operational responsibility seven (7) days per week with routine inspections completed during weekends and holidays.
- 4.3. Certifications, Training, Safety. SWWC will staff FACILITY with employees possessing necessary certifications as may be required by governmental agencies including at a minimum one (1) Grade III Operator and one (1) Grade I Operator or Maintenance Technician. SWWC will maintain an education and safety program for SWWC employees. The cost of this program will be the responsibility of SWWC. As may be feasible, SWWC will extend to CITY personnel the opportunity for participation in such programs, at no additional cost to CITY. The City may assign one (1) employee to serve as an Operator In Training to work with SWWC personnel and gain the necessary experience and knowledge to qualify for water distribution certification.
- 4.4. SWWC will staff the FACILITY with employees who have met appropriate licensing

and certification requirements of the State of California.

4.5. The City's decision to award the CONTRACT to SWWC was based in part on the City's interest in having the individuals identified below continue in these positions in operating, maintaining and managing the FACILITY.

- Roger Migchelbrink
- Jim Keating
- Ron Bell

In the event there are any temporary or permanent changes in the circumstances surrounding or positions of the above individuals, then the parties shall work together to mutually agree on any replacements to operate, maintain and manage the FACILITY.

4.6. The Company shall use its best effort to maintain a stable work force with low turnover particularly in key positions such as the project manager, assistant project manager, operations supervisor, and maintenance supervisor. Management, supervisory, or staff promotions shall not negatively impact services through vacant positions.

4.7. SWWC shall not change or reassign positions without prior written notice to City, and shall not replace any of them with individuals to whom City has a reasonable objection or that do not have appropriate certification and licensing. To the extent the CITY reasonably objects to any replacement employee recommended by SWWC, the parties shall address such dispute in accordance with Section IX herein.

4.8. Any occurrences where SWWC employees are found to be under the influence or using illegal substances shall be cause for immediate termination of such employee.

4.9. SWWC shall provide an Operator In Training Program for selected CITY personnel to participate and receive appropriate wastewater certifications.

4.10. SWWC shall provide ongoing training and education for appropriate personnel in all necessary areas of modern wastewater process control, operations, maintenance, safety, and supervisory skills.

- 4.11. SWWC shall provide computerized programs for maintenance, process control, cost accounting (except for the Annual Fee), and laboratory Quality Assurance/Quality Control. SWWC shall, within 10 days of City's written request, identify to CITY each computer program used to maintain the information described above and deliver a complete copy of all computer data files related to maintenance, process control, cost accounting and laboratory Quality Assurance/Quality Control at the CITY Facilities to CITY. SWWC shall deliver digital copies of all computer data files to City with the submittal of the monthly reports.
- 4.12. SWWC shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by CITY and assist CITY in enforcing existing equipment warranties and guarantees.
- 4.13. SWWC shall provide the CITY with full documentation that preventive maintenance is being performed on CITY-owned equipment, in accordance with manufacturer's recommendations, at intervals and in sufficient detail as may be determined by the CITY and within the agreed upon and approved maintenance budget. Such a maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory. SWWC shall provide a monthly written report of corrective and preventive maintenance performed.
- 4.14. Visits may be made at any time by CITY representatives. Keys for the City Facilities shall be provided to CITY by SWWC upon execution of this agreement. All City representatives visiting the City Facilities shall comply with SWWC's operating and safety procedures.
- 4.15. SWWC will maintain an employee safety program in compliance with all Applicable Laws.
- 4.16. SWWC may recommend modifications to the process and/or CITY Facilities as necessary to operate the CITY Facilities in compliance with Applicable Laws and prudent operating practices. Upon City's Written Approval of the proposed modifications and issuance of an appropriate contract modification, SWWC shall perform the modifications and invoice the costs thereof, if any, to the CITY. No modification shall be made without CITY's prior Written Approval if the complete Cost of the modification will exceed Two Thousand Dollars (\$2,000.00) or will affect the

Basic Monthly Rate or SWWC' other compensation.

- 4.17. SWWC shall inform City of, and get City's Written Approval prior to performing, any activity or work that would affect the Basic Monthly Rate or any expenses that are passed through to City.
- 4.18. As certified operator of the CITY Facilities, SWWC will prepare and sign all monthly operating reports as authorized and required by the following State, Federal and local governments: Regional Water Quality Control Board, Central Region; State Department of Health Services; Yolo Solano Air Quality Control Board, County Environmental Health Services; and USEPA. SWWC shall provide CITY with copies of all reports within ten (10) days of submitting the reports to an outside agency.
- 4.19. SWWC will provide laboratory testing and sampling presently required by plant performance portions of any applicable NPDES permit, the Clean Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees. SWWC will provide, through an outside contract firm or by SWWC staff, laboratory testing and sampling presently required by plant performance portions of the NPDES permit(s), the Clean Water Act and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees (collectively "Applicable Law").
- 4.20. SWWC representatives shall attend, as required for wastewater related business, scheduled meetings with CITY, including but not limited to City Council meetings, study sessions and staff meetings. SWWC shall provide monthly updates to the City Council at the second City Council Meeting of each month to include presentation of the monthly report, corrective actions taken, repairs and system maintenance summary.
- 4.21. SWWC representatives shall meet with the City as otherwise reasonably requested. SWWC shall provide periodic support services to City in developing plans for City Facilities and/or researching wastewater-related issues as requested by City as part of its Services and without additional compensation. If SWWC contends that CITY has requested support services that entitle SWWC to additional compensation, SWWC will notify CITY, in writing, will perform the requested support services and the parties will endeavor to resolve the dispute in accordance with Section IX. The SWWC General Manager shall meet bi-annually with the City Manager in Winters to review and discuss overall operations and the status of the Contract.

- 4.22. SWWC will monitor and respond to any alarm signals from the security systems the CITY has had installed at the CITY Facilities.
- 4.23. Effluent Criteria. Except as otherwise set forth in the CONTRACT, SWWC will operate FACILITY within the order No. R5-2002-0136, revised January 4, 2007 . SWWC will operate and maintain the FACILITY on a best efforts basis if and when effluent flow has exceeded the permitted capacity.
- 4.24. Scope. SWWC will pay all necessary expenses required for the normal operation and Preventative and Corrective maintenance as defined herein of FACILITY which include (1) all personnel cost, (2) chemicals, (3) fuels and lubricants, (4) normal operating supplies, and (5) maintenance repairs of equipment as set forth herein.
- 4.25. Maintenance. For purposes of this CONTRACT the following shall apply:
- 4.26. Definitions: "Preventative Maintenance" is defined as periodic scheduled maintenance in accordance with industry standards. "Corrective Maintenance or Repairs" is defined as any non-preventative maintenance or repair which costs less than two thousand dollars (\$2,000) for any one event other than repair of damages caused by Force Majeure (as hereinafter defined). "Capital Maintenance, Repairs or Replacements" is defined as any non-preventative maintenance which costs more than two thousand dollars (\$2,000) for any one event .
- (b.) To the limits provided below SWWC will provide Preventative Maintenance and Corrective Maintenance or Repairs for FACILITY equipment, consistent with good preventative maintenance practice or manufacturer's specifications. CITY shall have the right to inspect maintenance records, damaged or defective equipment and repairs maintained by SWWC during normal business hours.
- Costs for corrective repairs which are found to be the result of damages caused by SWWC personnel shall be borne exclusively by SWWC.
- 4.27. Except as otherwise provided in this CONTRACT, SWWC's Base Lump Sum Price shall

include all "Preventative Maintenance", "Corrective Maintenance or Repairs", and "Capital Maintenance, Repairs or Replacements" of the FACILITY. The total obligation of SWWC for these items will not exceed an aggregate limit of \$20,000 in any one year (excluding the cost of labor of individuals assigned by SWWC to work at the FACILITY an average of 30 or more hours per week in each six month period and the cost of SWWC supervision of these or any other individuals or subcontractors hired or assigned to undertake such repairs.). CITY shall reimburse SWWC for any of these maintenance costs that are in excess of the \$20,000 per year.

4.28. Individual repairs costing more than \$2,000 per incident or individual repairs of lesser value, all on this same cost basis, that occur after SWWC has reached the aggregate \$20,000 limit must be approved by the CITY, which approval shall not be unreasonably withheld or delayed, but will be performed by SWWC if so directed by the CITY. If maintenance and repair expenditures are necessary to continue operation of the FACILITY and to provide for public safety and environmental protection, SWWC shall proceed with the repairs after making every reasonable effort to first contact and obtain approval for the repairs from the CITY or its designated representative, or proceed with the repairs consistent with alternative policies and procedures approved by the CITY.

4.29. The \$20,000 aggregate limit per year and \$2,000 limit per incident shall be increased annually using the percentage change in the Consumer Price Index, San Francisco-Oakland-San Jose Region all Urban Consumers referred to in Attachment B. SWWC will provide a monthly report to the CITY, in a form approved by the CITY, reporting all maintenance and repair expenditures for the previous month and the total amount of funds unexpended of the aggregate limit. Within 30 days of the end of each contract year, the unexpended portion of the aggregate limit shall be credited by SWWC to the CITY or, at the approval of CITY, rolled into the following year.

4.30. During the term of CONTRACT, SWWC shall use methods of operation and maintenance which will not cause deterioration of CITY's FACILITY beyond normal wear and tear. Damages to facilities and equipment caused by SWWC shall be repaired at the expense of SWWC.

4.31. By February 1 of each year, SWWC shall submit to CITY a recommended list of Capital Improvement Maintenance, Capital Maintenance, Repairs or Replacements expenditures to CITY for FACILITY. Emergency items needed for the safety of personnel will be given first

priority. SWWC will submit, upon request, documentation of the cost effectiveness of “repair versus replace” recommended by SWWC. CITY will review the list and adjust, approve or disapprove the capital plan.

4.32. Plant Loadings. FACILITY Wastewater Treatment Plant currently has a permitted capacity of 0.92 million gallons per day. Present average annual sewage flows being treated are 625,000 gallons per day (0.625 MGD) Present plant loadings for the specified CONTRACT compensation are as follows:

Flow	BOD <sub>5</sub>	Suspended Solids
<u>(Avg. MGD)</u>	<u>(Avg. Lbs/Day)</u>	<u>(Avg. Lbs/Day)</u>
0.92	1918	<u>1918</u>

Both parties agree that if the one hundred eighty (180) day average daily flow and loadings are in excess of those shown above, SWWC will be entitled to a compensation adjustment as set forth in Paragraph C of Attachment B.

4.33. 4.7 Reports. SWWC will prepare and sign as certified operator all monthly operating reports as required by the state, federal and local governments. SWWC shall also perform the necessary laboratory sampling and analyses as required by Order No. R5-2002-0136 revised 4 January 2007 , which is currently in existence, for the Wastewater Treatment Plant. SWWC will submit reports to the Regional Water Quality Control Board, Central Region, with copies of all such reports going to CITY’s City Manager or their designee.

One (1) copy of an Operations Report shall be provided monthly and submitted to CITY by the 15<sup>th</sup> of the following month. The report shall cover the following minimum information:

- i Data required by the California Regional Water Quality Control Board;;
- i Overview statement of operation and any significant events;
- i Operations log and activities;
- i Monthly call out report, including emergency call-outs;
- i Staff safety meetings;
- i Monthly maintenance summary;
- i Staff training meetings; and
- i Projects completed and Projects under repair.

A summary Annual Report (three copies) shall be prepared at year end to describe operational and maintenance standing and significant occurrences of the previous year. Reports shall be submitted to CITY by March 15 of each year. The Annual Report shall be presented to the City Council at the second regularly scheduled meeting in April of each year.

**4.35 Sewer Collection System.** SWWC will be responsible for the inspection of manholes and annual cleaning of the gravity sewer lines and manholes (as defined in Appendix X). SWWC will periodically inspect the general area of location of the force mains once each month for leaks. Said inspection and annual cleaning information data shall be submitted in a digital format suitable for inclusion in the City's GIS system.

SWWC will clean 53,000 linear feet of sewer lines, and their related manholes, annually. Both parties acknowledge that this amount of cleaning covers most, but not all, of CITY's system with annual cleaning. As the operating entity, SWWC will have to select, subject to prior CITY approval, which portions of the sewer system needs to be cleaned in any given year, and shall document to CITY in a digital format said cleaning. Should CITY decide to add more line cleaning to this scope, the price will be fifty cents (\$0.50) per linear foot per year. Cleaning shall be subject to inspection by City.

**4.36 Storm Drain System.** During the term of this CONTRACT, SWWC will clean 10,000 linear feet of storm lines, and 140 catch basins, annually. Storm system callouts shall remain the responsibility of CITY. Both parties acknowledge that this amount of cleaning covers most, but not all, of CITY's systems with annual cleaning. As the operating entity, SWWC will have to select, subject to prior CITY approval, which catch basins and portions of the storm system needs to be cleaned in any given year, and shall document to CITY said cleaning. Should CITY decide to add more line cleaning to this scope, the price will be fifty cents (\$0.50) per linear foot per year. Should CITY decide to add more catch basins, the price will be \$50.00 per basin per year.

**4.37 Sewer/Storm Repair Work.** From time to time it may be necessary for CITY to perform sewer/storm repair work. SWWC has the capability to perform such work. If requested by CITY, SWWC shall have the option of performing such work as prescribed in Paragraph D of Attachment B.

**4.38 Collection System Access.** SWWC shall in areas determined to have location access problems, utilize "hand rods" or "flex snakes" to clear stoppages.

**4.39 Emergency Response.** SWWC shall respond to emergency calls within one hour

(60 minutes) from the time of the notification, or when reasonably able to do so, whichever is earlier.

SWWC will respond to emergency calls concerning the FACILITY 24 hours per day, seven (7) days per week, including holidays.

SWWC shall maintain, on-site, hydroflush unit for sewer emergency response.

4.40 Fines. While this CONTRACT is in force, and so long as FACILITY meets applicable regulatory permit or customary design criteria for wastewater treatment, and as long as CITY has not rejected SWWC's operational recommendation which would have corrected or prevented any violation of regulations resulting in actions, SWWC will pay any and all fines or penalties against CITY or SWWC (or its agents) as a result of actions taken by the California Water Quality Control Board and any and all regulatory agencies regarding the City of Winters Sanitary Sewer system..

4.41 Fines, Violations, Investigations and Sanctions: Upon SWWC's receipt of notice of any and all sanctions, violations, fines or investigations pertaining to SWWC operation of the FACILITY, SWWC shall notify the CITY within one business day of same. SWWC's failure to notify the CITY is grounds for immediate termination of the CONTRACT.

4.42 SWWC Insurance. SWWC shall maintain during the life of CONTRACT the following insurance:

(a) Public Liability and Property Damage

\$1,000,000 (combined single limit)  
\$2,000,000 (general aggregate)

(b) General Liability

\$1,000,000 (combined single limit)  
\$2,000,000 (general aggregate)

(c) Automotive Liability

\$1,000,000 (combined single limit)

(d) Umbrella Liability

\$2,000,000 in excess of underlying coverage

(e) Worker's Compensation

Per state and federal law, SWWC waives the right of subrogation

Such policies shall name the CITY, its officers, agents, employees, elected and appointed boards, as additional insured according to its insurable interest under these policies during the term of CONTRACT. Evidence of said insurance and endorsements shall be supplied on the forms attached hereto as Attachment C and be consistent with the requirements therein contained. In addition, SWWC agrees to provide CITY with proof of such insurance and will endeavor to give CITY thirty (30) days written notice of cancellation or material change in said policies. Subcontractors shall also be included as insured by SWWC or, SWWC shall be required to provide CITY with satisfactory evidence that all Subcontractors meet the same requirements as listed herein prior to commencement of any work by those Subcontractors.

Any Deductibles or Self Insured Retention shall be eliminated as respects the CITY, its officers, agents, employees, elected and appointed boards.

CITY and its insurance carrier shall waive subrogation rights against SWWC and provide SWWC with a certificate to that effect.

**4.43 Lateral Connections.** SWWC shall provide the following services for CITY's fifteen hundred (1500) lateral sewer connections (hereinafter LATERALS) as set forth herein. LATERAL repairs or replacements will remain the responsibility of CITY.

SWWC will provide all labor, vehicles, major equipment, tools, and consumables it deems necessary to conduct emergency cleaning work on LATERALS if blockages do occur. CITY will ensure SWWC's right to unimpeded access to any LATERAL cleanout in this scope of work, and agrees that SWWC will not be responsible for LATERALS where no cleanout exists, or where one exists but not within reasonable access from the street. SWWC's scope of responsibility under CONTRACT shall be in the direction from said cleanout to CITY's main line. If SWWC has performed more than 100 LATERAL call outs in one calendar year, SWWC shall meet with the CITY and agree to negotiate compensation for cleaning over 100 LATERALS.

CITY agrees the SWWC will not be responsible for cleaning blockages due to collapsed or damaged LATERALS (e.g., LATERAL is reduced to less than half of its original diameter). Further, upon satisfaction of the following criteria, SWWC shall notify CITY that this replacement criteria has been satisfied and that said LATERAL shall, after seven calendar days, be removed from SWWC's scope until replaced or repaired by CITY:

- (a) LATERAL deterioration so severely inhibits maintenance that more than four emergency cleaning calls per year occur at any given site,;
- (b) SWWC has performed reasonable and timely preventative maintenance,; and
- (c) SWWC has performed four emergency cleanings within a twelve month span and SWWC has notified CITY of said fact.

4.44 Sludge Disposal. The present treatment system employed at CITY does not provide for separate sludge treatment or disposal. Sludge accumulates in the existing pond system. Periodic removal of sludge and ultimate disposal shall be performed by SWWC or other agent of CITY in accordance with Regulatory Agency Requirements and at the direction of CITY. However, the cost of such services are not included in the price submitted by SWWC and shall be borne by CITY.

SWWC shall advise CITY as to when the sludge accumulated in the pond system should be removed and provide CITY with an estimated cost for said service. At City's option, it may contract with another provider for sludge removal or do it with City personnel and equipment.

#### 4.45 Additional Services

1. Industrial Waste Monitoring Program. SWWC shall provide CITY with industrial waste monitoring and sampling services as herein described. The service to be provided to the CITY by SWWC shall include the management of the Pretreatment Program for the CITY sewer, collection and treatment system. The scope of services shall include sampling (determining the proper sampling point), collecting and transporting samples, analysis and disposal of samples, and reporting of analytical results to CITY. This will ensure users are in compliance with all governing laws relative to and/or imposed against the CITY regarding wastewater compliance and monitoring

4.46 Billing. SWWC shall itemize all billings to CITY. All bills involving extra work, CPI increases, etc., shall include copies of applicable invoices, receipts, time and materials sheets, etc.

4.47 Weed abatement & Mowing – SWWC will provide the additional weed abatement as currently required in the FACILITY. SWWC will mow the spray fields of the modified FACILITY as needed,; additional mowing approved by the CITY will be charged to the CONTRACT's maintenance fund as set forth herein.

## V. CITY'S DUTIES

The CITY shall be responsible for the following issues:

5.1 Payment. CITY shall pay to SWWC the base monthly sum of \$ 29,000 due on the fifteenth day of the month after the month for which service is rendered. Late payments will be subject to a service charge of one and one-half (1.5%) per month or the maximum legal rate, whichever is less. Interest shall accrue from the 31<sup>st</sup> day following the date of invoice until payment is received by SWWC. Price adjustments shall be made in accordance with Attachment A.

5.2 Capital Expenditures. CITY shall pay all approved capital expenditures, except as described in Paragraph 4.5. Capital expenditures are defined, for purposes of CONTRACT, to include expenditures for Capital Maintenance, Repairs, or Replacements and non-routine expenditures for the purchase of new equipment or other FACILITY items, usually preplanned, which significantly extend service life, and which are determined to be capital expenditures in accordance with generally accepted accounting principles. SWWC will provide CITY reasonable justification for capital expenditures, prior to acquisition and after CITY approval. SWWC shall have the right to make emergency capital expenditures if such expenditures are necessary to continue operation of FACILITY in order to provide for public safety and environmental protection and shall notify CITY immediately of its actions. CITY will reimburse SWWC for these emergency Capital expenditures.

5.3 Extraordinary Costs. CITY shall pay increases in maintenance expense, repair cost or other expenses resulting from extraordinary or unusual occurrences associated with Force Majeure (as hereinafter defined).

5.4 Electricity. The CITY shall pay for all such costs associated with electrical consumption and usage.

## VI. INDEMNITY AND LIMITATIONS

6. SWWC hereby agrees to defend, indemnify and hold harmless the City of Winters, its elected and appointed officials, employees and agents, from all third party liability, fines, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorneys' fees and other defense costs, resulting from injury to or death sustained by any person (including SWWC' employees), damage to property, or other loss or damage (hereafter, collectively, "Claims") which Claim arises from SWWC' negligence or

willful misconduct in connection with this Agreement; provided, SWWC shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault.

- 6.1. SWWC further agrees to defend, indemnify and hold harmless the City of Winters, its elected and appointed officials, employees and agents, from all Claims resulting from violation or alleged violation of any Applicable Law relating solely to the City Facilities arising from SWWC' negligence or willful misconduct under this Contract. As to those Claims, SWWC' obligations to defend, indemnify and hold harmless will be limited to violations or alleged violations of Applicable Law arising from SWWC' negligence or willful misconduct. SWWC shall be liable for only that percentage of total damages that correspond to its percentage of fault.
- 6.2. CITY shall indemnify and hold harmless SWWC, its directors, officers, employees, and agents from any third party claim, loss, liability, damage, injury, or expense, including attorney's fees, which directly arise from CITY's negligent actions, willful misconduct or omissions under this Agreement.
- 6.3. CITY agrees that, with the exception of such liability as may arise out of the gross negligence or willful misconduct of SWWC in performing services under this Agreement, CITY shall indemnify, defend and hold harmless SWWC, its directors, officers, employees and agents from and against any and all Claims arising solely from dischargers into CITY's sewer system which violate CITY's Industrial Water and Sewer Ordinance(s), whenever occurring; and the CITY Facilities' inability to operate or operation at a reduced capacity on account of Unforeseen Circumstances, whenever occurring, or other causes beyond SWWC' control.
- 6.4. Neither party nor their affiliated companies, nor the officers, agents and employees or contractors of any of the foregoing, shall be liable to the other in any action or claim for consequential or special damages, loss of profits, loss of opportunity, loss of product or loss of use. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.
- 6.5. SWWC shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring after the effective date of this Agreement of the effluent quality requirements provided for in Appendix C that are solely the result of SWWC' negligence, breach of contract or willful misconduct. CITY

will provide documents as reasonably requested to assist SWWC to contest any such fines in administrative proceedings and/or in court prior to any payment by SWWC. SWWC shall pay the cost of any such contest.

- 6.6. CITY shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on CITY and/or SWWC that are not a result of SWWC' negligence, breach of contract or willful misconduct or are otherwise directly related to the ownership of the CITY Facilities and shall indemnify and hold SWWC harmless from the payment of any such fines and/or penalties.
- 6.7. Each party shall obtain and maintain insurance coverage of a type and in the amounts described herein. Each party assumes the risk of loss or damage to its respective property, from any cause, including the actual or alleged negligence or strict liability of the other party, and shall maintain broad form property insurance in order to protect both parties against any such loss. Each party shall provide the other party with satisfactory proof of insurance.
- 6.8. Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement arising out of or related to events occurring during the term of the Agreement or any renewals thereto.
- 6.9. This Section intentionally left blank.
- 6.10. **Abnormal Conditions.** Notwithstanding Section 4 xx ("Effluent Criteria") or any other provision of this CONTRACT, should FACILITY loading exceed FACILITY design parameters, or should influent contain abnormal, toxic or other substances which cannot be removed or treated by the existing FACILITY or contain discharges which violate the applicable sewage ordinances, SWWC will use its best efforts to maximize plant performance, but shall not be responsible for associated effluent characteristics or damages, fines, penalties, or claims resulting therefrom. SWWC agrees to return FACILITY effluent to CONTRACT limits within twenty (20) days after influent returns to acceptable limits.
- 6.11. **Force Majeure.** SWWC shall not be deemed to be in default if performance of the obligations required by this CONTRACT is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, accident, civil commotion, epidemic, act of government, its agencies or officers, or any other legitimate cause beyond the control of the parties ("Force Majeure"). Upon the occurrence of any such event, SWWC shall operate FACILITY on a best efforts basis and shall not be responsible

for effluent characteristics or damages, fines, penalties, or claims resulting therefrom.

## VII. GENERAL PROVISIONS

7.1 **New Equipment.** Any operations equipment owned by SWWC during the term of CONTRACT shall remain the property of SWWC. In the event SWWC sells such equipment, CITY shall have first option to purchase.

7.2 **Independent Contractor.** The relationship of SWWC to CITY is that of an independent contractor. None of the employees or agents of SWWC shall be considered employees of CITY.

7.3 **Enforcement.** The failure of either party to enforce its rights as to any provisions of CONTRACT shall not construed as a waiver of its right to enforce such provisions in the future.

7.4 **Assignment.** Except if such assignment shall be to an affiliate or successor of either party, there is a transfer of 50% or more of the stock of SWWC, or there is a merger or consolidation, of either party, this CONTRACT cannot be assigned without the written consent of CITY, which consent shall not be unreasonably withheld, delayed or denied. Any assignment of CONTRACT shall be subject to an assignment fee of ten percent (10%) of the remaining value of the CONTRACT to be paid to CITY prior to the effect of the assignment.

7.5 **Equal Opportunity.** SWWC is an equal opportunity employer with an approved affirmative action program. (M/F/H/V/R).

7.6 **Entire Agreement.** This CONTRACT contains the entire agreement between CITY and SWWC and supersedes all prior or contemporaneous communications, representations, or promises. This CONTRACT may be modified only by written amendment signed by both parties.

7.8 **Notices.** All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid. Notices required to be given to SWWC shall be addressed as follows:

Notice required to be given to SWWC shall be addressed as follows:

SWWC Services, Inc.  
12535 Reed Road  
Sugar Land, Texas 77478  
Attn: President

Draft Contract to City Council with Final Revisions- 10-29-2012

WITH A COPY TO: SWWC Services, Inc.  
c/o SouthWest Water Company  
1325 N. Grand Avenue, Suite 100  
Covina, California 91724-3603  
Attn: General Counsel

Notices required to be given to CITY shall be addressed as follows:

Mr. John Donlevy  
City Manager  
City of Winters  
310 First Street  
Winters, CA 95694

7.9 SWWC shall compensate CITY up to \$10,000 toward staff, legal and consulting costs associated with the development and renewal of this CONTRACT.

#### **VIII. TERMINATION/RENEWAL/BREACH**

8.1 The term of this CONTRACT shall be two (2) years commencing on the Effective Date (the "Initial Term") December 1, 2012. At CITY's discretion, this CONTRACT may be extended for an (1) additional year period by providing at least ninety (90) days' advance written notice to SWWC.

8.2 CITY may terminate this CONTRACT with ninety (90) days' written notice.

8.3 In the event that this CONTRACT is terminated for any reason, CITY shall pay to SWWC amounts earned through the date of termination under this CONTRACT for services satisfactorily performed and accepted by CITY.

8.4 Upon notice of termination by CITY, SWWC shall assist CITY in assuming or transferring operation of the City Facilities. CITY shall pay SWWC all amounts earned through the date of termination under this CONTRACT.

8.5 Upon termination of this CONTRACT and all renewals and extensions of it, SWWC will return the FACILITY to CITY in the same condition as they were upon the effective date of this Agreement, ordinary wear and tear excepted, except that improvements performed by SWWC will be in new condition. Equipment and other personal property

purchased by SWWC for use in the operation or maintenance of the FACILITY shall remain the property of SWWC upon termination of this CONTRACT, unless the property was paid for by CITY, or CITY specifically reimbursed SWWC for the cost incurred to purchase the property, or this CONTRACT provides to the contrary. No later than 45 days before this CONTRACT terminates, or such other time as the parties may agree, SWWC will prepare and deliver to City an itemized inventory of the equipment and property SWWC has purchased under this CONTRACT. City and SWWC shall review the inventory and attempt to reach agreement on the distribution of property and equipment. At City's option, City may purchase equipment and property items that SWWC has purchased under this CONTRACT.

**8.6 Breach.** For the duration of this CONTRACT, in the event of material breach by either party, providing that such dissatisfied party first provides written notice of such breach to the other party and such breach is not corrected within thirty (30) calendar days from the date of said notice, the dissatisfied party may terminate the CONTRACT. The thirty (30) calendar day correction period may be extended by mutual agreement of both parties. The party receiving such notice shall be given this time as an opportunity to correct the breach; provided, however, that if said breach is not corrected within said time period, the CONTRACT may be terminated and considered null and void. In the event of termination, CITY shall refund to SWWC the unamortized portion of any capital funds provided under the terms of this CONTRACT

## IX DISPUTES

9. Claims and contractual disputes (demands for monetary contract issues, compensation or damages or time extensions) arising from or relating to this agreement shall be decided by the parties in accordance with this section.

9.1. Initially, and promptly after identification of a claim or dispute, CITY's representative and the SWWC project manager shall meet face-to-face to review and consider the claim. This meeting shall occur at the earliest practicable date and shall be for the express purposes of: (1) exchanging and reviewing all pertinent documents and information relating to the matters and issues in dispute, (2) freely and candidly discussing each party's position, and (3) reaching agreement upon a reasonable, compromise resolution of the claim.

- 9.2. If the CITY representative and the SWWC project manager are unable to resolve the claim, a senior representative from CITY and a senior representative from SWWC each shall review the claim in detail and then meet face-to-face to discuss and resolve the matter. This meeting of senior management representatives shall occur no later than 15 days after the meeting of the CITY representative and the SWWC project manager, unless the parties both agree upon a longer period of time. CITY and SWWC each shall promptly designate a senior representative for purposes of this section. Either party may, if necessary, designate a different senior representative at any time during the course of the project.
- 9.3. If any claim remains unresolved after the meeting of the senior management representatives, CITY and SWWC agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator. Unless the parties both agree upon a longer period of time, the mediation shall be held no later than 90 days after the meeting of the senior management representatives. No later than 30 days prior to the mediation date, the parties shall exchange in a cooperative and forthright manner all documents, data and information relating to the claim, excepting only those items protected by the attorney/client or other applicable privilege. The mediation shall be conducted at a mutually acceptable location in Solano County or Sacramento County, California. The parties shall share equally the mediator's fee for the mediation.
- 9.4. If any claim remains unresolved after the parties have attempted to resolve the matter in conformity with the terms and procedures of this section, or if either party refuses to participate in such procedures promptly and in good faith, either party may commence litigation.

IN WITNESS WHEREOF, CITY and SWWC have caused this CONTRACT to be duly executed as of the day and year first above written.

CITY OF WINTERS

SWWC Services, Inc.

By \_\_\_\_\_

By \_\_\_\_\_  
Keith Fischer  
President

Attest \_\_\_\_\_

By \_\_\_\_\_

**ATTACHMENT A**

FACILITY consists of the CITY OF WINTERS Wastewater Treatment Plant and Sewer Collection System.

1. **Sewer Collection System.** The sewer collection system consists of approximately 83,000 lineal feet (16 miles) of sewer collection pipe varying in size, plus, to the above limitations, LATERAL lines previously described as privately owned lines and laterals.

2. **Wastewater Treatment Plant.** The wastewater treatment facilities are located at two sites:

I. **In-Town Plant Site**

A. **Headworks**

1. **Communication Equipment**
2. **Pumping Plant East Street**

B. **Primary Treatment (not in service)**

1. **Primary Clarifier**
2. **Primary Sludge Pumping**
3. **Anaerobic Digestion Tank**

C. **Control Building**

II. **Oxidation System Location**

- A. **Aeration Pond with Mechanical Aerators**
- B. **Oxidation Ponds Systems**
- C. **Waste Spray Irrigation Pump System**
- D. **Waste Spray Irrigation Piping System**

III. **Sewage Lift Station**

- A. **Lift Station #2 (East Rio Villa)**
- B. **East Street Pump Station**
- C. **Carter Ranch Lift Station**
- D. **Walnut Lane Lift Station**
- E. **Lift Station #5**

## ATTACHMENT B

### A. CPI Index Increase or Decrease

This CONTRACT may be reviewed annually for compensation increases or decrease, based on the San Francisco-Oakland-San Jose CPI Index as published by the Bureau of Labor Statistics. The annual average increase or decrease reported will be utilized to increase or decrease the compensation of the year following the reported year.

### B. Change of Scope

Should the scope of services be changed due to change of NPDES permit requirements or any other change initiated or mandated by a proper governmental authority, SWWC and CITY shall negotiate any price changes required.

It is anticipated that there may be significant changes in the scope of FACILITY's unit operations (new facilities, new flowsheet, or similar fundamental change) during the term of this CONTRACT. In the event such changes do occur, both parties shall mutually agree on any change in compensation (up or down) to correspond to such a change in scope. In the event that the parties cannot in good faith reach such mutual agreement by the commencement date of said new operations, either party may terminate this CONTRACT upon thirty (30) days written notice to the other party.

### C. Additional Field Work

#### 1. Additional Costs

If after the term of the CONTRACT begins, SWWC must incur added costs to comply with changes in the effluent criteria or plant loadings, the CITY and SWWC will attempt in good faith to negotiate an appropriate amount of additional compensation payable to SWWC.

#### 2. Overhead and Profit

Overhead and profit rate shall be established at fifteen percent (15%) of the total dollar value of the work performed.



1. The insured scheduled above includes the Insured's officers, officials, and employees.
2. This insurance shall be primary as respects the insured shown in the schedule above. Any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the Entity.

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Signature-Authorized Representative

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Address

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CG 20 10 11 85 Insurance Services Office, Inc. Form (Modified)