



**Winters City Council Meeting
City Council Chambers
318 First Street
Monday, November 19, 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*

6:00 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 54956.9 – Status of Anticipated Litigation by Legal Counsel John C. Wallace - 314 Railroad Avenue, Winters, CA, APN # 003 204 006

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

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

6:30 p.m. – Regular Meeting

AGENDA – pp 1-4

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

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

- A. Minutes of the Continued Meeting of the Winters City Council Held on Thursday, November 1, 2012 (pp 5-11)

- B. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, November 6, 2012 (pp 12-18)
- C. City Manager Contract Amendment (pp 19)

PRESENTATIONS

- 1. Winters Chamber of Commerce / Visitors Center Update (pp 20)

DISCUSSION ITEMS

- 1. Public Hearing, Introduction and Waive the First Reading of Ordinance 2012-07, An Ordinance of the City Council of the City of Winters Adding Title 5, Chapter 5.44 to the Winters Municipal Code to Permit and Regulate Taxi Cabs within the City of Winters (pp 21-31)
- 2. City Council Vacancy – December, 2012 (pp 32-36)
- 3. Wastewater Services – Southwest Water Agreement (pp 37-63)

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

CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the November 19, 2012 regular meeting of the Winters City Council was provided to Council via electronic mail, which could be downloaded onto their devices, and posted on the outside public bulletin board at City Hall, 318 First Street on November 14, 2012, and made available to the public during normal business hours.

Nancy Jensen for Nanci G. Mills

Nanci G. Mills, City Clerk

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Wednesday at 10:00 a.m.

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Minutes of the Winters Continued City Council Meeting
Held on November 1, 2012

Mayor Aguiar-Curry called the meeting to order at 6:00 p.m. City Manager Donlevy, at Council Member Fridae's suggestion, opened the meeting in honor of Winters Express Editor Debra DeAngelo's 20th anniversary.

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, Director of Financial Management Shelly Gunby, Public Works Superintendent Eric Lucero, Environmental Services Manager Carol Scianna, and Management Analyst Tracy Jensen.

Carol Scianna led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy indicated there were no changes to the agenda. Motion by Council Member Fridae, second by Council Member Martin to approve the agenda as presented. Motion carried unanimously.

COUNCIL/STAFF COMMENTS: None

PUBLIC COMMENTS: Debra DeAngelo said the Chamber Mixer will be held one week early on Monday, November 5th at 5:30 at the Visitor's Center due to the Veteran's Day holiday. There will be a gourmet nacho bar catered by El Puebla.

DISCUSSION ITEMS

1. Wastewater Maintenance Service Contract and Operations

City Manager Donlevy gave an overview and said the contract provided by Southwest Water was basically the same contract as the ECO Resources contract from 10 years ago. The contract was given an overall upgrade to cover many deficient areas, including the following: General Conditions, the expansion of Section IV, Scope of Services, Section V, City's Duties, including payment changes, Section VI, Indemnification, which was completely re-written, and Section VII, General Provisions, including a Transfer Fee. The City is also asking for reimbursement to cover City expenses for updating the agreement. Section VIII, Termination/Renewal/Breach was given an overhaul to include a two-year contract term with a 90 day termination for both parties. The breach section has been changed from 90 days to 30 days, and Section IX, Disputes, was added and a No Bid, No Compete clause was included. Section 7.9 has been added to include reimbursement for staff time and contract legal services up to \$10,000.

Basically, the contract provided by Southwest Water is the ECO Resources contract with some slight changes. The City included Section 8.2, a termination clause enabling the City to terminate the agreement with a 90-day notice, which is the same as any other contract held by the City, including legal, engineering, etc. The only two exceptions to this are the Fire Services Agreement with the City of Dixon and the Waste Management Agreement, both of which include a 180 day termination provision.

Director of Financial Management Shelly Gunby distributed a cost analysis which included four options: 1) City Operation, 2) Continuation of Southwest Water Services with a 2-Year Contract w/3rd Year Option with City OIT (Operator in Training) assigned 50% or 20 hours/week, 3) Contract and Full Time OIT assigned to Sewer & Additional Public Works Maintenance Worker II, or 4) City Operation with Full Time OIT and Public Works Maintenance Worker II. Council Member Cowan asked for clarification about the projected costs. Ms. Gunby said every expense is expected to increase 2% per year. Cost allocation is a standard operation and not all expenditures are the same. Expenditures vary based on salary increases, Cost of Living Adjustments (COLA), CalPERS, and health insurance.

City Manager Donlevy clarified that Option 1 includes three full-time employees, Option 2 is a contract for contractual services, Option 3 includes a contract, half of Maintenance Worker 4 as OIT and includes 1 full-time Maintenance Worker I as backfill, and Option 4 includes a contract with one full-time Maintenance Worker 4 working in sewer and one full-time Maintenance Worker I as backfill.

Regarding Option 2 which includes a half time position from public works with no backfill, Council Member Martin asked if this wouldn't complicate things. Ms. Gunby said based on Option 1, that's what the City was planning on doing. Council Member Martin said the allocation between funds can become an issue

for some who wants to see a legitimate formula used for confirmation purposes. Ms. Gunby said a study determines what is charged for each fund and is based on data. From this data a model is prepared for the City to use and is reviewed by the City's consultants.

Mayor Aguiar-Curry asked if the OIT at 50% for two years could be replaced by one full-time employee trained in one year. City Manager Donlevy said a full-time employee couldn't be taken out of everything to train for one year, but it is ultimately the Council's decision. Council Member Cowan asked about an OIT assigned 80% instead of 100%. Mayor Aguiar-Curry asked if a part-time person could be hired to perform the job of the OIT if he were to train 100% and Public Works Superintendent said it would be possible but the part-time person would not be as good a worker or have the knowledge of the OIT. Mr. Lucero added that he would rather have two part-time employees instead of one full-time employee. Council Member Martin said the City would be putting all their eggs in one basket if only one person was being trained and asked if there was another person in public works who knows where things are. Mr. Lucero said cross-training happens every day, just not as quickly or efficiently as with senior employees.

Ms. Gunby said there are general fund savings in nearly every scenario of the City Operation Projected Costs on Page 2. Council Member Martin reviewed Options 1 & 2 and inquired about the total deficits. Ms. Gunby said the deficits for each option are listed but have not been totaled for all four years projected. City Manager Donlevy said Option 1 includes a one-time start-up capital expense of \$147,000 and asked Council to review the Other Operating Expenses included with each option.

Council Member Anderson said Option 1 includes the City's initial proposal with cross training and asked why the City would consider Options 2 or 3, contract with OIT and no cross training. City Manager Donlevy said this would allow one person to come out as an operator. Council Member Anderson said it doesn't make sense to not cross train as this is a big benefit for the City.

Mayor Aguiar-Curry asked if the City has transfer fees on any other City contracts. City Manager Donlevy said Waste Management would owe us one-half million dollars if they were to sell the contract. This would be the case only if Southwest Water were to sell the contract to another provider, and not if they were purchased by another company. This is specified in General Provisions, Section 7.4, Assignment. Council Member Fridae asked if this provision existed before. City Manager Donlevy said no, but staff time has to be worth something. The City's next legal bill will include these incurred charges.

Council Member Martin asked if costs are incurred with regular contract renewal. City Manager Donlevy said the City's standard services agreement is stapled to a provider's proposal, but in this instance we don't have that. The City had four

working days and a weekend to re-write and prepare the contract, including all provisions. In this case, we wrote everything. Council Member Cowan said Southwest Water did provide a contract, albeit it was pretty much the same contract. Staff wanted to make changes to accommodate the City, and to expect Southwest Water to know what those changes were is an impossible task. Writing down the changes and having Southwest Water alter the contract is unrealistic. Staff used their time to do this and Southwest Water shouldn't have to be charged for the changes. City Manager Donlevy confirmed the \$10,000 reimbursement described in Section 7.9, General Provisions, can be removed.

Council Member Anderson confirmed the mediation language in Section 9.3, Disputes, should say Yolo and Sacramento Counties and not Solano County. City Manager Donlevy said there is a reciprocal indemnity in both the 6.1 and 6.8 provisions. Council Member Martin asked under what cause and who would have the authority to terminate the contract under Section 8.2 – Council or staff? City Manager Donlevy said the agreement is with the City so Council would be responsible and cause is not specified. Council Member Martin said 90 days with no cause is not desirable. City Attorney Wallace said you can specify on a contract termination for material breach, wherein it affects the City in a way it can't be cured, ie: spill. Under Section 8.6, Breach, thirty days can be changed to 90 days. There is no effective termination clause in the original contract.

City Manager Donlevy said the breach clause requires corrective action and the need to litigate. The clause provided by Southwest Water is almost exactly what ECO Resources had provided before. For example, partial repair is the issue. Two years is not a very long period of time. If a term clause is not desired, then it can be removed. It's up to the Council's discretion. Council Member Martin said some issues might warrant 90 days and asked why not 180 days? City Manager Donlevy said history says this clause may come in handy. Council Member Fridae asked why we wouldn't want the power. Council Member Cowan said Mr. Martin is right, they could be fired for no cause. Council Member Anderson asked Attorney Wallace for specifics. City Attorney Wallace said a breach clause can include conditions for termination. Council Member Martin said the City is currently working under a 20 year old contract – this one is much better than the one before. The issues are minor and staff will be more willing to come to Council. Council Member Cowan agreed that staff would come and report. City Manager Donlevy said it is important that the Council is fully aware of what's going on, including the ability for staff to respond.

Ms. Stone said they met with their boss and legal, who reviewed the contract before sending it to Mr. Donlevy, agreeing to most everything. Southwest Water did ask for the third year; City Manager Donlevy wants two. Southwest Water added a third year option, including a 50% OIT. Specification of personnel and defined staffing grades have been included and usually aren't. Three items the Southwest Water Board of Directors did not agree on were the \$10K for the City to create the contract, no term for convenience and the signability clause, which

they don't have in any of their contracts. Ms. Stone also said the Southwest Water employees specified in the contract would be able to renew permits and write the necessary reports at no additional charge. Mayor Aguiar-Curry asked how much the necessary permits cost. City Manager Donlevy thought the cost was approximately \$150K. Ms. Stone said Southwest Water prepared a report for the City of Red Bluff and saved them \$30K. Language can be added to the contract as the City of Winters does not have the expertise or resources to prepare said reports and don't have to pay extra for this service. City Manager Donlevy said Southwest Water was knowledgeable in what we were doing and were of no help during the Cease and Desist Order.

Council Member Martin said Ms. Scianna brought up a valid point regarding Option 2, a 2-year contract with 3rd year option and 50% OIT. The future is uncertain regarding revenue streams, deficits, and unknown costs as far as the State is concerned. We are purely looking at cost and this is the cheapest contract we could get. It will also give us time to look at the third year to consider contract renewal.

Council Member Fridae said he was in favor of doing business in-house and we would be pretty close if you take out the investment in capital outlay. The City can't offer employees pay increases like we would like to, but we will be able to expand their expertise. He added that a two-year contract might be better.

Council Member Cowan agreed with Council Member Martin by taking advantage of Southwest Water's offer of an OIT and make an investment in City personnel to make them qualified to do these jobs. Council Member Fridae asked City Manager Donlevy if he felt comfortable with a two-year contract. City Manager Donlevy said the City has been working with Roger and Jim and they have been awesome. This is a \$1.8 million dollar thing we're doing. The Council can agree to any of the four options offered and pledge to move forward.

Council Member Anderson said Council is investing in the future, making the City sustainable by having our own program, which will take time to set up. City Manager Donlevy said Ms. Stone mentioned freebies, but Southwest Water has not done groundwater monitoring, provided a Sewer Main Management Program (SMMP) or performed water treatment. Ms. Stone said she has sent a note for Southwest Water to write a SMMP for the City of Winters.

Council Member Anderson said now that we have each other's attention, the City has two or three years to make a decision. Mayor Aguiar-Curry said operations with Mr. Lucero and Ms. Scianna have been working great, but the OIT was a turning point for her. Ms. Aguiar-Curry said she wants our staff to get to the next level by obtaining education and the necessary certifications and to look to the future. She expressed disappointment in the lack of cross training but City Manager Donlevy said this was not the case. Council Member Fridae suggested getting offers to help in writing and that he would like to see it added to the

contract. Ms. Stone said she can do the legwork and perform sampling, which doesn't require an engineer.

Council Member Martin asked to retract his earlier comment regarding no training until the third year. Council Member Anderson asked for language in the contract providing specific reasons for termination. City Attorney Wallace said he must approve the contract as to form. Council Member Martin asked if any issues or problems were anticipated. City Attorney Wallace said Ms. Stone indicated there was not a problem. Sections 7.4, Assignment, 7.9, City Compensation, and 8.2, Termination with a 90-day Notice, must be addressed. Council Member Anderson asked if the assignment clause would apply if the contract was sold to another company. City Manager Donlevy said only if the contract was sold to another company would it apply. If the entire company was sold, it wouldn't apply. Roger Migchelbrink said he, Jim Keating and Ron Bell would go with the contract.

City Manager Donlevy said Council doesn't have to take any staff recommendations, including the 10% transfer fee of the residual value of the agreement in the event Southwest Water sells the contract. Does Council want the City Attorney to expand on the breach clause? Remove Section 8.2, Termination? Council Member Martin prefers a two year contract and if the City is not happy with the service, the agreement could be terminated. Ms. Stone said Southwest Water really wanted a three-year contract but have agreed to a two-year contract. City Attorney Wallace said Sections 7.4, Assignment, and 7.9, Staff Compensation would be deleted. Section 8.2 would use Southwest Water's language and authorize the City Attorney to expand Section 8.6, Breach, regarding grounds of termination. Council Member Anderson wants to keep the term clause with grounds. Council Member Fridae confirmed that Council is to give direction and have staff bring back for final approval. City Attorney Wallace said he will take direction regarding language and Council Member Anderson agreed to review.

Mayor Aguiar-Curry said Option #2 is the preferred option of Council, which includes an OIT assigned to 50%. Ms. Aguiar-Curry asked how this will affect the public works department. Mr. Lucero said they would make it work. On behalf of the Council, Mayor Aguiar-Curry gave direction to staff to work with Southwest Water on Option 2, including the specific language for the breach and termination clauses, and the request for attorney's fees. City Manager Donlevy said the updated contract will be brought back to Council at the November 19th meeting.

CITY MANAGER REPORT: None

ADJOURNMENT: The meeting was adjourned at 7:38 p.m. following an informal motion by Council.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



Minutes of the Regular Meeting of the
Winters City Council Held on November 6, 2012

6:00 p.m. – Executive Session

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

City Manager Donlevy reported out from Executive Session that Council Member Anderson recused himself from the real estate negotiations and the hotel negotiations, and that there was no reportable action taken in Executive Session.

6:30 p.m. – Regular Meeting

Mayor 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, Management Analyst Tracy Jensen.

Corinne Martinez led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy requested that Consent Item B be moved to Discussion Item #4.

COUNCIL/STAFF COMMENTS: Council Member Anderson attended the Yolo County Transportation District meeting; attended the Taste of Capay and Yolo Community Fund Foundation meeting.

Council Member Fridae said an update on the habitat JPA would serve as a better report under Discussion Item #3. Mr. Fridae said he is part of an ad hoc committee who call themselves Winters Bike Group, who promote biking around town for students. The committee is looking for bicycles for high school students to use to go back and forth to the ag site. Mr. Fridae and Mr. Donlevy attended a bike auction at UCD and purchased 8 bikes. The committee is looking for donations to purchase additional bikes. Please contact Mr. Fridae, Mr. Donlevy or Mr. Matt Piers to donate. A bike fix-up day will be scheduled sometime in December. Mr. Donlevy is looking into a race for kids to participate in, free helmets, etc. The committee has a lot of great ideas.

Council Member Cowan attended the recent Harvest Festival, which was well attended in spite of the Giants game being on the same night; attended the 2X3 with the school board regarding water issues and impact fees; attended the last Planning Commission meeting, who gave the green light to the Catholic church expansion and alley activation projects; attended the Chamber Mixer last night.

Council Member Martin also attended the Chamber mixer last night and enjoyed great company and great food catered by El Puebla; also attended the 2X3 with the school board and will report back with cost saving measures for the school district. A presentation will also come back to Council.

Mayor Aguiar-Curry said she was looking forward to hearing that Mike had won the election for a seat on the Solano College Board; attended the Taste of Capay; on October 22 with Dan Maguire toured the Capay Valley with visitors from Japan, who are looking for possible locations for their manufacturing business, including Winters. This was their second visit to Winters. Yolo County Housing toured facilities in Woodland, West Sacramento, and Knights Landing,

which are beautiful facilities for people who need them; attended a non-profit meeting in Davis, which included Winters Friends of the Library and Putah Creek Council to see how the non-profit groups can work together; attended a LAFCO meeting; attended Career Day at WHS with Council Member Cowan, which was a great experience, squashing numerous rumors about Taco Bell and In-N-Out Burger. The Rotary Club served a great lunch at this event. Attended a Fork to Farm initiative in Sacramento; attended a SACOG meeting in Sacramento with City Manager Donlevy regarding the Ag Hub and funding for a feasibility study. The Local Government Commission was also there asking the agencies for help. Attended a WRA board meeting; attended Food Connect; attended the 2X2 with the County, where resources and needs provided by programs like First 5, Department of Social Services and RISE are needed in our community. Statistics show that families are struggling in Winters and Yolo County.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, October 16, 2012
- B. Award for Construction of 2012 Sewer Main Rehabilitation, Project No. 12-01 (**Moved to Discussion Item #4**)
- C. Application for Parade Permit and Amplified Sound Permit Application – St. Anthony's Parish "Our Lady of Guadalupe Celebration"

City Manager Donlevy gave an overview of the two remaining consent items. Motion by Council Member Fridae, second by Council Member Martin to approve the Consent Calendar. Motion carried unanimously.

DISCUSSION ITEMS

1. Capital Improvement Projects Report

City Manager Donlevy gave an overview, outlining ongoing major City project projects. The Putah Creek Bridge Upgrade project will provide outreach and advertisement. Mayor Aguiar-Curry asked about signage on the freeway. City Manager Donlevy said initial signs will notify local bridge users of the upcoming interruptions and once construction begins, other signs will be erected. Mayor Aguiar-Curry asked about lighting for the soccer field and said she had been approached about including a skateboard park in Orchard Village Park. City Manager Donlevy said there is no lighting planned for the park.

City Manager Donlevy said the Railroad Avenue/Dry Creek Slough Bridge Project is in pre-design and a meeting was held last week with Cal Trans regarding the roundabout on Grant Avenue. The project is in the works and geometrics need to be completed before going to the Planning Commission. The signal lights are now working at Matsumoto Lane & Grant Avenue and we will be discussing the Sewer Main Rehabilitation project shortly.

Mayor Aguiar-Curry asked if the City has funding for City Park upgrades. City Manager Donlevy said the City has received grant funding and staff must bring their recommendations to the Council, where they can give direction on how to split it up. Mayor Aguiar-Curry asked if there was a time frame in which the money had to be spent. City Manager Donlevy said yes, there is a time frame but we have time. Workforce Housing has afforded us the money, it has been earmarked and they can't pull it away. They are just waiting for us to spend it.

2. Approval of Alley Activation Plan, an Addendum to the Winters Downtown Master Plan

Council Member Anderson recused himself and City Attorney Wallace left the dais due to a possible conflict of interest.

City Manager Donlevy gave an overview. Two sessions have been held in the alley with City Council and Planning Commission members. The alley activation plan is not advertised as part of the Downtown Master Plan but rather as an addendum, which conforms to each of the elements of the Downtown Master Plan. An art park concept has been approved to go along with this. The addendum will not only slide into the Downtown Master Plan, it is the only element not completed yet. All other major capital projects have been accomplished.

Council Member Martin asked about the sewer line work in the alley and whether adjustments will be made in the interim to make it accessible. City Manager Donlevy said the sewer line in the alley will be replaced, but there shouldn't be much interim time as there is not much space. City staff will work out a schedule with the business owners and residents. Council Member Martin asked what the finished surface will be and City Manager Donlevy said asphalt.

Motion by Council Member Cowan, second by Council Member Martin to approve the Alley Activation Plan, an Addendum to the Winters Downtown Master Plan. Motion carried unanimously, with one absent.

3. Habitat Conservation Program JPA

City Manager Donlevy gave an overview. Due to financial issues that have arisen, staff is recommending for Council to give Council Member Fridae the authority to represent the City of Winters at the HCP JPA meeting on November 15th regarding the settlement of costs and a strategy to move forward.

The HCP JPA has a deficit of \$670K through the end of 2012. City Manager Donlevy has been directed by the JPA board to work together to come to a solution with the county to settle debts and come up with a strategy to move forward. The City of Winters has never put any money into the habitat JPA as the City has its' own mitigation program. The City of Winters is a member of the JPA and as such does have an obligation, which is likely legally binding, to share expenses that have been incurred. One option of repayment is included in Attachment C, the Yolo Natural Heritage Program Interim Funding Needs, which member contributions are based on a 95%/5% split, with the allocation for Winters being 5%. Staff is recommending paying 5%, or \$31,874.55 through the impact fee fund and to hold it as a reimbursable item to come back through the JPA or mitigation impacts. A key to moving forward is to settle the debt (\$31,000-\$34,000) and give Council Member Fridae the authority to represent the City of Winters at the November 15th meeting.

City Manager Donlevy said Wildlife Conservation will award the JPA a grant of \$600,000, allowing the JPA to take documentation and put HCP into a first administration draft, which should be done by June, 2013. The draft plan is the decision point. Should Winters stay in the game or not? The JPA is eligible for millions of dollars for conservation. Contra Costa and Yolo Counties have exclusive access to \$23 million dollars for conservation. There is money out there. At the City Manager's meeting held today, it is recommended that the JPA stay on budget with \$600,000 to work with for the administrative draft.

Council Member Fridae said while looking at the development occurring in 2005, it took shrewd leadership to go out and do mitigation cleanly and structured in such a way that we now have sites with development rights and the ability to come back with a development. Other people saw it as a bigger plan for a bigger development and went along with it. We were able to obtain our mitigation credits under the radar, yet we saw the reason to stick with the County to be neighborly and for the future. HCP JPA committee member Fridae said the money has not been managed well after working on it for 10 years. The process City Manager Donlevy laid out is to get it back to a functioning joint power to use for mitigation. We will reluctantly make the offer as it will help us facilitate development where mitigation needs to be done. The City is not really happy about paying 5%, but we will be reimbursed eventually, which makes it tolerable.

Council Member Martin said moving forward, who is going to be overseeing the program? City Manager Donlevy said the City Managers have stepped in and appointed a new interim executive director, who will report to the City Managers, and brought in a project manager (Heidi Tschudin.) They will be on a short leash

as far as spending discretion. If the JPA board runs out of money, they will have to go back to the jurisdictions for more money. Council Member Fridae said this is the last time. City Manager said \$670K settles through 2012. \$600K clicks in at 2013. There is a pot of \$23 million dollars sitting down there, which could result in a very successful habitat or a miserable failure. The Fish and Wildlife Department can't see this fail. Council Member Fridae said this is a slow process and we're one of two agencies (Yolo and Contra Costa counties) who are well-positioned to receive grant money. Council Member Anderson said this has been a colossal failure and he doesn't see reimbursement happening. We have to get a handle on the JPAs. Council Member Martin and Mayor Aguiar-Curry both agreed and said the City is on the hook and have to pony up the funds, although it is not a good way to operate. We must pay attention to the JPAs.

City Manager Donlevy said this goes back to 2005 when we put together our own mitigation plan. The HCP JPA tried to scuttle our program which is why we're paying a smaller amount. Mayor Aguiar-Curry said it was a shame that it has come to this.

Motion by Council Member Martin, second by Council Member Cowan to authorize Mayor Pro-Tem Woody Fridae to agree to the member contribution based on 95%/5% to settle debts of the Yolo County Habitat Conservation Program JPA and resolve ongoing funding issues, not to exceed \$34,000. Motion carried unanimously.

4. Award for Construction of 2012 Sewer Main Rehabilitation, Project No. 12-01

City Manager Donlevy gave an overview. Staff received two bids and has awarded the contract to Southwest Pipeline & Trenchless Corp., whose bid came in at \$1,457,461. The method to be used will be plastic re-lining of the sewer pipes, which is done without trenching and tearing up the streets and has a fifty-year life expectancy.

Council Member Martin asked if the scope was available on the City's website. City Manager Donlevy said yes, it has also been forwarded to the Express. City staff will notify residents of any disruption. Mayor Aguiar-Curry suggested creating a construction map to keep residents informed of construction in their neighborhood. Council Member Cowan said he was glad to hear about the lining process from 5,700 to 19,300 feet, basically 4.5 times the sewer lines for the same amount of money.

Council Member Fridae asked for a more in-depth description of the method of rehabilitation. City Manager Donlevy said the contractor would insert a plastic sleeve into the sewer line, inflate it and encapsulate the inside of the pipe. City

Manager Donlevy confirmed that Southwest Pipeline & Trenchless Corp. is not the same as Southwest Water Company.

Motion by Council Member Fridae, second by Council Member Anderson to award the construction contract for the 2012 Sewer Main Rehabilitation, Project No. 12-01, to Southwest Pipeline and Trenchless Corp. for \$1,457,461, authorize a construction funding limit of \$1,570,000 for the contract plus contingency, authorize the City Manager to execute the contract on the City's behalf, and approve the attached revised Project Budget Sheet. Motion carried unanimously.

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

1.

CITY MANAGER REPORT: None

ADJOURNMENT: Mayor Aguiar-Curry continued the meeting to Monday, November 19, 2012.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Tracy Jensen for Nanci G. Mills, City Clerk



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members
DATE: 11-19-2012
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: John C. Wallace, City Attorney
SUBJECT: City Manager Contract Amendment

RECOMMENDATION: Approval.

BACKGROUND: The City of Winters has an employment with the City Manager. As part of the ongoing review of the contract, Amendment of the contract is recommended. Amendments include the following:

1. Administrative Leave. The existing contract precludes the ability to “cash out” unused Administrative Leave for 2 year period ending in June, 2012. This amendment would extend this provision to 2013. Any remaining accruals will be zeroed out by July 1, 2013.
2. Vacation leave. This amendment sets the maximum cash-out accrual at 500 hours and provides that any amounts in excess of 500 hours would only be deposited in deferred compensation or medical savings accounts. This limitation is to serve as the model for other employee agreements.
3. Deferred Compensation. The amendment continues the current agreement regarding deferred compensation.

FISCAL IMPACT: Financial savings for the City of Winters.



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: November 19, 2012
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Dan Maguire, Economic Development and Housing Manager *DM*
SUBJECT: Winters Visitor Center Update

RECOMMENDATIONS:

Staff recommends the City Council: 1) receive the presentation from the Winters Chamber of Commerce updating the status of the Winters Visitor Center, and 2) provide staff direction relative to that presentation.

BACKGROUND:

In February 2009, the Community Development Agency ("CDA") approved a lease agreement for the use of 11 Main Street. The proposed use was for the development of a "destination location". The goals were to either recruit a destination business for the space, or develop an Agency sponsored location to spur local economic and business development.

On May 5, 2009, the CDA Board of Directors approved the Winters Visitor Center Concept Plan, approved a Consultant Services Agreement with DaRe, LLC for interior design and multi-media center development, and authorized an agreement between the CDA and the Winters Chamber of Commerce for staffing and management. The CDA entered into a sublease agreement with the Chamber on July 1, 2009.

The City, as Successor Agency to the Redevelopment Agency, was able to continue the financial support of the Visitor Center through ROPS ("Recognized Obligation Payment Schedule") 1 and 2, covering the periods of January through December of 2012. Most recently, the DOF disallowed the support of the Visitor Center on ROPS 3, which covers the period of January 1, 2013 through June 30, 2013. Based on the DOF ruling, the City as Successor Agency to the Redevelopment Agency is no longer able to provide funding from Tax Increment as a recognized obligation payment.

FISCAL IMPACTS:

To Be Determined



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: 11-19-2012
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, City Attorney
SUBJECT: Public Hearing, Introduction and Waive the First Reading of Ordinance 2012-07, an Ordinance of the City Council of the City of Winters Adding Title 5, Chapter 5.44 to the Winters Municipal Code to Permit and Regulate Taxi Cabs within the City of Winters

RECOMMENDATION: None.

BACKGROUND: Under the California Vehicle Code, each City in California has the authority to regulate taxicab service and require a permit to do so. Fees equivalent to the staff cost in regulating can be charged without violating California law. Interest has been shown for the service, and hotel negotiations are in progress. Under this ordinance, like other cities, the Police Department will handle permitting and regulation. The fee section of the ordinance has been left blank for staff figures on the cost of regulation.

FISCAL IMPACT: Staff time and costs, to be offset by fees.

**CITY OF WINTERS
ORDINANCE NO. 2012-07**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
ADDING TITLE 5, CHAPTER 5.44 TO THE WINTERS MUNICIPAL CODE TO
PERMIT AND REGULATE TAXICABS WITHIN THE CITY OF WINTERS**

The City Council of the City of Winters, State of California does ordain as follows:

SECTION 1: PURPOSE

The purpose of this ordinance is to permit and regulate taxicabs within the City of Winters, pursuant to California Vehicle Code Sections 16501, 21100, and 21112. With a hotel application pending, and interest shown, the City Council will regulate taxicabs to insure the safety, and safe treatment, of its citizens.

SECTION 2: Chapter 5.44 of Title 5 of the Winters Municipal Code is hereby added to read as follows:

**Chapter 5.44
TAXICABS**

Sections:

- 5.44.010 Definitions.
- 5.44.020 Certificate – Required.
- 5.44.030 Certificate – Application.
- 5.44.040 Certificate – Copy to police chief.
- 5.44.050 Certificate – Hearings.
- 5.44.060 Certificate – Issuance of denial.
- 5.44.070 Certificate – Transferability.
- 5.44.080 Certificate – Annual fees.
- 5.44.090 Insurance.
- 5.44.100 Certificate – Quarterly fees.
- 5.44.110 Driver's license – Required.
- 5.44.120 Driver's license – Application.
- 5.44.130 Driver's license – Chauffeur's license required.
- 5.44.140 Driver's license – Investigation.
- 5.44.150 Driver's license – Approval or rejection.
- 5.44.160 Taxi permit – Contents.
- 5.44.170 Driver's license – Display.
- 5.44.180 Permit – Suspension or revocation.
- 5.44.190 Compliance required.

- 5.44.200 Vehicle – Inspection.
- 5.44.210 Vehicle – Identification.
- 5.44.220 Fare rates.
- 5.44.230 Refusal to pay legal fare.
- 5.44.240 Solicitation of passengers.
- 5.44.250 Manner of receiving and discharging passengers.
- 5.44.260 Cruising prohibited.
- 5.44.270 Additional passengers.
- 5.44.280 Refusing to carry orderly Persons prohibited.
- 5.44.290 Prohibited acts of drivers.
- 5.44.300 Call box – Establishment.
- 5.44.310 Call box – Use by other vehicles.
- 5.44.440 Overall service.
- 5.44.330 Manifests.
- 5.44.340 Accident reports.
- 5.44.350 Advertising.
- 5.44.360 Enforcement.

For statutory provisions authorizing cities to license and regulate vehicles for hire, see Vehicle Code §§16501, 21100 and 21112; for provisions on the financial responsibility of commercial passenger vehicles, see Vehicle Code §16500 et seq.

5.44.010 Definitions.

The following words and phrases when used in this chapter have the meanings as set out in this section:

A. “Call box stand” means a place alongside a street, or elsewhere, where the city council has authorized a holder of a certificate of public convenience and necessity to install a telephone or call box for the taking of calls and the dispatching of taxicabs or to maintain a cab stand.

B. “Certificate” means a certificate of public convenience and necessity issued by the city council authorizing the holder thereof to conduct a taxicab business in the city.

C. “Cruising” means the driving of a taxicab on the streets, alleys, or public places of the city in search of or soliciting prospective passengers for hire.

D. “Driver’s permit” means the permission granted by the chief of police to a person to drive a taxicab upon the streets of the city.

E. “Holder” means a person to whom a certificate of public convenience and necessity has been issued.

F. “Manifest” means a daily record prepared by a taxicab driver of all trips made by said driver showing time and place of origin, destination, number of passengers, and the amount of fare of each trip.

G. “Open stand” means a public place alongside the curb of a street or elsewhere, in the city which has been designated by the city council as reserved exclusively for the use of taxicabs.

H. “Person” includes an individual, a corporation or other legal entity, a partnership, and any unincorporated association.

I. "Rate card" means a card issued by the city council for display in each taxicab which contains the rates of fare then in force.

J. "Taxicab" means a motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than eight persons and not operated on a fixed route.

K. "Waiting time" means the time when a taxicab is not in motion from any time of acceptance of a passenger or passengers to the time of discharge, but does not include any time that the taxicab is not in motion if due to any cause other than the request, act or fault of a passenger or passengers.

5.44.020 Certificate – Required.

No person shall operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without having first obtained a certificate of public convenience and necessity from the city council.

5.44.030 Certificate – Application.

An application for a certificate of public convenience and necessity shall be filed, in duplicate, with the office of the city clerk upon forms provided by the city together with a non-refundable application fee set by resolution of the city council. The application shall be verified under oath and shall furnish the following information:

- A. The name and address of the applicant;
- B. The financial status of the applicant, including the amounts of all unpaid judgments against the applicant and the nature of the transaction or acts giving rise to said judgments;
- C. The experience of the applicant in the transportation of the passengers;
- D. Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a certificate;
- E. The number of vehicles to be operated or controlled by the applicant;
- F. The color scheme or insignia to be used to designate the vehicle or vehicles of the applicant;
- G. Such further information as the chief of police of the city may require.

5.44.040 Certificate – Copy to police chief.

On receipt of an application for a certificate of public convenience and necessity, the city clerk shall immediately forward a copy thereof to the chief of police.

5.44.050 Certificate – Hearings.

Upon the filing of an application for a certificate of public convenience and necessity, the city clerk shall fix a time and place for a public hearing thereon. Notice of such hearing shall be given to the applicant and to all persons to whom certificates of public convenience and necessity have been theretofore issued. Any interested person may file with the city clerk a memorandum in support of or opposition to the issuance of a certificate.

5.44.060 Certificate – Issuance of denial.

A. If the city council finds that further taxicab service in the city is required by the public convenience and necessity and that the applicant is fit, willing, and able to perform such public transportation and to conform to the provisions of this chapter and the rules promulgated by the city council, then the chief of police shall issue a certificate stating the name and address of the applicant, the number of vehicles authorized under said certificate and the date of issuance; otherwise, the application shall be denied.

B. In making the above findings, the city council shall take into consideration the number of taxicabs already in operation, whether existing transportation is adequate to meet the public need, the probable effect of increased service on local traffic conditions, and the character, experience, and responsibility of the applicant.

5.44.070 Certificate – Transferability.

No certificate or public convenience and necessity may be sold, assigned, mortgaged or otherwise transferred.

5.44.080 Certificate – Annual fees.

A. No certificate shall be issued or continued in operation unless the holder thereof has paid an annual license fee of \$_____ for the right to engage in the taxicab business and \$_____ per year for each vehicle operated under a certificate of public convenience and necessity.

B. Each permit shall be issued annually and shall expire at the end of said period.

5.44.090 Insurance.

No certificate of public convenience and necessity shall be issued or continued in operation unless there is in full force and effect a liability insurance policy issued by an insurance company authorized to do business in the state for each vehicle authorized in the amount of one million dollars for bodily injury to or death of any one person, and subject to the limit of one million dollars for each person injured or killed of at least two million dollars for such injury to, or the death of, three or more persons in any one accident, and for damage to property of at least two hundred and fifty thousand dollars resulting from any one accident. A copy of every policy of insurance and renewals thereof shall be provided by applicant and filed with the chief of police.

5.44.100 Certificate – Quarterly fees.

No certificate of public convenience and necessity shall be issued or continued in operation unless the holder thereof has paid a quarterly license fee of \$_____ for the right to engage in the taxicab business and \$_____ each quarter for each vehicle operated under a certificate of public convenience and necessity.

5.44.110 Driver's license – Required.

No person shall operate a taxicab for hire upon the streets of the city, and no person who owns or controls a taxicab shall permit it to be so driven, and no taxicab licensed by the city shall be so driven at any time for hire, unless the driver of said taxicab has first obtained and then has in force a taxicab driver's license issued under the provisions of this chapter.

5.44.120 Driver's license – Application.

A. An application for a taxicab driver's permit shall be filed with the chief of police on forms provided by the city. Such application shall be verified under oath and shall contain such information as the chief of police may require.

B. Each application shall be accompanied by a certificate from a reputable physician of the city certifying that, in his opinion, the applicant is not afflicted with any disease or infirmity which might make him an unsafe or unsatisfactory driver.

5.44.130 Driver's license – Chauffeur's license required.

Before any application for a driver's license is finally passed upon by the chief of police, the applicant shall show that he has a current motor vehicle, class I, II or III license issued by the state.

5.44.140 Driver's license – Investigation.

The police department shall conduct an investigation of each applicant for a taxicab driver's license and a report of such investigation and a copy of the traffic and police record of the applicant, if any, shall be attached to the application for the consideration of the chief of police.

5.44.150 Driver's license – Approval or rejection.

The chief of police upon consideration of the application for a permit and the reports and certificate required to be attached thereto shall approve or reject the application. If the application is rejected, the applicant may request a personal appearance before the city manager to offer evidence why his application should be reconsidered.

5.44.160 Taxi permit – Contents.

A. Upon approval of an application for a taxicab driver's permit, the chief of police shall issue a permit to the applicant which shall bear the name, address, color, age, signature and photograph of the applicant.

B. Such permit shall be in effect for the remainder of the calendar year. A permit for every calendar year thereafter shall issue upon the payment of the annual fee unless the permit for the preceding year has been revoked.

5.44.170 Driver's license – Display.

Every driver licensed under this chapter shall post his permit in such a place as to be in full view of all passengers while such driver is operating a taxicab.

5.44.180 Permit – Suspension or revocation.

The chief of police is given the authority to suspend any permit issued under this chapter for a driver's failing or refusing to comply with the provisions of this chapter, such suspension to last for a period of not more than twenty days. The chief of police is also given authority to revoke any permit for failure to comply with the provisions of this chapter. However, a permit may not be revoked unless the driver has received notice and has had an opportunity to present evidence in his behalf before the city manager.

5.44.190 Compliance required.

Every driver licensed under this chapter shall comply with all city, state and federal laws. Failure to do so will justify the chief of police suspending or revoking the permit.

5.44.200 Vehicle – Inspection.

A. Prior to the use and operation of any vehicle under the provisions of this chapter said vehicle shall be thoroughly examined and inspected by the police department and found to comply with such reasonable rules and regulations as may be prescribed by the chief of police. These rules and regulations shall be promulgated to provide safe transportation and shall specify such safety equipment and regulatory devices as the chief of police shall deem necessary there for.

B. Every vehicle operating under this chapter shall be periodically inspected by the police department at such intervals as shall be established by the chief of police to insure the continued maintenance of safe operating conditions.

C. Every vehicle operating under this chapter shall be kept in a clean and sanitary condition.

5.44.210 Vehicle – Identification.

Each taxicab shall bear on the outside the name of the owner; and, in addition, may bear an identifying design approved by the city council. No vehicle covered by the terms of this chapter shall be licensed whose color scheme, identifying design, monogram, or insignia to be used thereon shall, in the opinion of the city council, conflict with or imitate any color scheme, identifying design, monogram or insignia used on a vehicle or vehicles already operating under this chapter, in such a manner as to be misleading or tend to deceive or defraud the public; and provided further, that if, after a license has been issued for a taxicab under this chapter, the color scheme, identifying design, monogram, or insignia thereof is changed so as to be, in the opinion of the city council, in conflict with or imitates any color scheme, identifying design, monogram, or insignia used by any other person, owner or operator, in such a manner as to be misleading or tends to deceive the public, the permit of or certificate covering such taxicab or taxicabs shall be suspended or revoked.

5.44.220 Fare rates.

The fare rates shall be adopted by council resolution and amended by council resolution from time to time as council may determine proper.

5.44.230 Refusal to pay legal fare.

It is unlawful for any person to refuse to pay the legal fare of any of the vehicles mentioned in this chapter after having hired the same, and it is unlawful for any person to hire any vehicle defined in Section 5.44.010 with intent to defraud the person from whom it is hired of the value of such service.

5.44.240 Solicitation of passengers.

A. No driver shall solicit passengers for a taxicab except when sitting in the driver's compartment of such taxicab or while standing immediately adjacent to the curb side thereof.

B. No driver shall solicit patronage in a loud or annoying tone of voice or by sign or in any manner annoy any person or obstruct the movement of any persons, or follow any person for the purpose of soliciting patronage.

C. No driver, owner, or operator shall solicit passengers at the terminal of any other common carrier, nor at any intermediate points along any established route of any other common carrier.

5.44.250 Manner of receiving and discharging passengers.

Drivers of taxicabs shall not receive or discharge passengers in the roadway but shall pull up to the right-hand sidewalk as nearly as possible or in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers, except upon one-way streets, where passengers may be discharged at either the right-hand or left-hand sidewalk, or side of the roadway in the absence of a sidewalk.

5.44.260 Cruising prohibited.

No driver of a taxicab shall cruise in search of passengers.

5.44.270 Additional passengers.

No taxicab driver shall permit any other person to occupy or ride in said taxicab unless the person or persons first employing the taxicab consent to the acceptance of additional passenger or passengers.

5.44.280 Refusing to carry orderly Persons prohibited.

No taxicab driver shall refuse or neglect to convey any orderly person or persons, upon request, unless previously engaged or unable or forbidden by the provisions of this chapter to do so.

5.44.290 Prohibited acts of drivers.

It is a violation of this chapter for any driver of a taxicab to solicit business for any hotel, motel or rooming house, or to attempt to divert patronage from one hotel, motel or rooming house to another. Neither shall such driver engage in

selling intoxicating liquors or solicit business for any house of ill repute or use his vehicle for any purpose other than the transporting of passengers.

5.44.300 Call box – Establishment.

The city council is authorized and empowered to establish call box stands upon the streets of the city in such places as in its discretion it deems proper. A holder desiring to establish a call box stand shall make written application to the chief of police. The applicant must attach to the application the written approval of the abutting property owners of said space consenting to the creation of such stand. Upon filing of the application, the police department shall make an investigation of the traffic conditions at said place and shall thereafter file their written recommendation to the city council. The city council shall then either grant or refuse the application. When a call box stand has been established as provided in this section, it shall be used solely by the holder to whom the same was granted and his agents and servants and no other holder shall be permitted to use the same.

5.44.310 Call box – Use by other vehicles.

Private or other vehicles for hire shall not at any time occupy the space upon the streets that has been established as call box stands.

5.44.440 Overall service.

All persons engaged in the taxicab business in the city operating under the provisions of this chapter shall render an overall service to the public desiring to use taxicabs. Holders of certificates of public convenience and necessity shall maintain a central place of business and keep the same open twenty-four hours a day for the purpose of receiving calls and dispatching cabs. They shall answer all calls received by them for services inside the corporate limits of the city as soon as they can do so, and if said services cannot be rendered within a reasonable time, they shall notify the prospective passengers how long it will be before the call can be answered and give the reason there for. Any holder who refuses to accept a call anywhere in the corporate limits of the city at any time when such holder has available cabs; or who fails or refuses to give overall service shall be deemed a violator of this chapter and the permit granted to such holder shall be revoked at the discretion of the city council.

5.44.330 Manifests.

A. Every driver shall maintain a daily manifest upon which are recorded all trips made each day, showing time and place of origin and destination of each trip and amount of fare and all such completed manifests shall be returned to the owner by the driver at the conclusion of his tour of duty. The forms for each manifest shall be furnished to the driver by the owner and shall be of a character approved by the chief of Police.

B. Every holder of a certificate of public convenience and necessity shall retain and preserve all driver's manifests in a safe place for at least the calendar year

next preceding the current calendar year, and said manifests shall be available to the police department.

5.44.340 Accident reports.

All accidents arising from or in connection with the operation of taxicabs which result in death or injury to any person, or in damage to any vehicle, or to any property in an amount exceeding the sum of \$ _____ shall be reported within twenty-four hours from the time of occurrence to the police department.

5.44.350 Advertising.

Subject to the rules and regulations of the chief of police, it is lawful for any person owning or operating a taxicab or motor vehicle for hire to permit advertising matter to be affixed to or installed in or on such taxicabs or motor vehicles for hire.

5.44.360 Enforcement.

The police department of the city is given the authority and is instructed to watch and observe the conduct of holders and drivers operating under this chapter. Upon discovering a violation of the provisions of this chapter, the police department shall report the same to the chief of police, who will order to take appropriate action.

SECTION 3: ENVIRONMENTAL REVIEW

This ordinance is not subject to the California Environmental Quality Act ("CEQA" pursuant to 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment. Taxicabs by their nature should decrease, and not increase, vehicle use in Winters, California.

SECTION 4: Effective Date

This ordinance shall become effective January 3, 2013, provided it is published in full or in summary within fifteen (15) days after its adoption in a newspaper of general circulation.

This ordinance was introduced, after public hearing, and the title thereof read at the regular meeting of the City Council on November 19, 2012, and adopted, after the second reading, at the regular meeting of the City Council on December 4, 2012.

On a motion by Council Member _____, seconded by Council Member _____, the foregoing ordinance was passed and adopted by the City Council of the City of Winters, State of California, this 4th day of December, 2012, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

MAYOR CECILIA AGUIAR-CURRY

ATTEST:

NANCI G. MILLS, CITY CLERK



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members
DATE: November 19, 2012
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, City Attorney
SUBJECT: City Council Vacancy – December, 2012

RECOMMENDATION: Discuss the procedure the City Council wishes to use to appoint a resident and registered voter in the City of Winters to the Winters City Council, to fill the unexpired term of Councilman Michael Martin. Then instruct staff on how to proceed.

BACKGROUND: Council Member Mike Martin has been elected to the Solano Community College District Board. Because the district includes Winters, California law on "Incompatible Officer" requires Councilman Martin to resign his seat on the Winters City Council. His last meeting will be December 4, 2012.

LEGAL ANALYSIS: Under the California Government Code, within 60 days after the vacancy occurs (in this case December 4th), the Winters City Council must either:

1. Appoint a Winters resident to the Winters City Council to fill the unexpired term (to June, 2014); or
2. Call for a Special Election to fill the term. Since the Special Election cannot take place within 114 days of the Call, in practical terms this would be spending money to have a six month vacancy, and then to get a Council member for just over a year.

PLEASE NOTE: To serve on the Winters City Council you must be **both** a resident **and** a registered voter.

The relevant Section of the California Government Code is included below. Also included is a suggested procedure to use for the appointment.

FISCAL IMPACT: None for appointment, and the City Clerk can provide an estimate of the cost of a special election.

CALIFORNIA GOVERNMENT CODE

36512. (b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

Winters City Council – Optional procedures to fill the City Council vacancy:

State law does not prescribe any procedure for selection of an appointee. Therefore,

The City Council may choose any selection method it desires. The Council may choose to solicit applications and may interview applicants (at an open and public meeting), either collectively or by subcommittee, similar to the process that the Council uses when it interviews applicants for appointed commissions and advisory committees. Staff recommends that the Council establish tonight the process it wishes to use, so that the process will be finished and a decision made the first part of February, 2013.

The City Council can schedule adjourned or special meetings as needed to meet the decision deadline. .

Should the Council decide to fill the vacancy by appointment, the Winters City Clerk would provide notice to the public and establish a timetable with deadlines.

After the interviews, noticed and open to the public, the City Council by majority vote can select a new City Council member.

Sample application forms are attached.



APPLICATION OF INTEREST FOR WINTERS CITY COUNCIL

FILING DEADLINE: _____

City of Winters
318 First Street – Winters, CA 95694
(530) 795-4910, Ext. 101

Submittal Requirements (Completed applications must contain the following items)

- Completed, signed Application
- Completed, signed Supplemental Application
- Resume

Information Sheet (Please Print)

NAME: _____
(Last) (First) (Middle)

ARE YOU A RESIDENT OF THE CITY OF WINTERS? YES ___ NO ___
(If you have questions about your residency, please consult the City Attorney, John C. Wallace, at (530) 795-4910, Ext. 165

ARE YOU A REGISTERED VOTER WITHIN THE CITY OF WINTERS? YES ___ NO ___
(If you have questions about your registration status, please contact the Yolo County Registrar of Voters)

ADDRESS: _____

BUSINESS PHONE: _____ HOME PHONE: _____

OCCUPATION: _____

PLACE OF EMPLOYMENT: _____

EDUCATION: _____

FIELD OR SPECIALTY: _____

AREAS OF SPECIAL INTEREST: _____

ORGANIZATIONS: _____

ELECTED OFFICES HELD: _____

COMMUNITY WORK: _____

(i.e. Little League, Soccer, Chamber of Commerce)

I, the undersigned, am sincerely interested in serving in this position for the City of Winters and, if appointed, will be available for evening meetings as may be required.

(Signed)

(Date)

RETURN TO: WINTERS CITY CLERK, City Hall, 318 First Street, Winters, CA 95694

CITY OF WINTERS

CITY COUNCIL SUPPLEMENTAL APPLICATION QUESTIONNAIRE

This questionnaire will assist the City Council in assessing your qualifications and experience for the City Council vacancy.

Please print the answers to these questions on plain paper and return with your application to:

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

1. Please explain your two most important reasons for wanting to serve on the City Council.

2. In your opinion, what is the most important asset/perspective you would bring to the City Council?

3. What role do you feel the City Council plays in making Winters a desirable community in which to live and/or work?

4. What are the five most critical issues facing the City during the next five years?

(Signature)

(Date)

(Print Name)



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members
DATE: 11-19-2012
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, City Attorney
SUBJECT: Southwest Water Agreement

RECOMMENDATION: Approval, and Council Authorization for the Mayor to sign this final contract version.

BACKGROUND: This 2 year agreement was approved generally at the last October meeting. The City Attorney was directed to amend Paragraphs 8.2 and 8.6 of the proposed Agreement, dealing with termination clauses. The 10% cost in Paragraph 7.4 was deleted, and the \$10,000 reimbursement, Paragraph 7.9, was deleted in its entirety per Council direction. After input from staff and Councilman Harold Anderson, language was drafted and sent to Kelly Silk, an SWWC staff attorney. A 3-way phone call took place on November 13, 2012, between Ms. Silk, the City Attorney, and Kathy Stone. A number of changes to the Agreement were requested by SCCW. One of the requested changes was to increase the allowable Emergency Response time to 2 hours, from 1 hour. After the phone call Staff requested that Paragraph 4.3 be changed to allow for the training of more than one employee. Since the increase in Emergency Response time was not part of the City Council's direction to the City Attorney, I asked the Mayor to discuss this problem with Kathy Stone of SWWC, who agreed to drop the 2 hour request to 90 minutes. A series of renegotiating steps took place, resulting in the contract before you. The major changes are the change in response to 90 minutes and the OIT change. Minor changes have been agreed to by staff, and SWWC is in agreement.

FISCAL IMPACT: The City Manager will report on this aspect.

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 supersedes 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 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. 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. Contract operations of the City of Winters Wastewater Facility and collection systems are governed by the State Water Resources Control Board under regulation Title 23, Division 3, Chapter 26, Article 11 Contract Operators.

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 90 minutes. SWWC will address alarms

remotely whenever possible.

4.2 Staffing. Except for sick days, holidays, vacations and training, SWWC will staff FACILITY with one (1) 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 five days per month. 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 multiple employees to serve as Operators In Training to work with SWWC personnel and gain the necessary experience and knowledge to qualify for wastewater operator 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 up to two (2) selected CITY personnel (maximum 40 hours per week) to participate and receive appropriate wastewater certifications. The cost of the certification process, including the \$100 fee for certification and the approximate fee of \$200 for the correspondence course through CSU, are the costs of the CITY. SWCC cannot guarantee that any particular employee will actually pass the course.

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' 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 ₅	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 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 15th 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 90 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 in year 1 of the Contract and \$29,580 in year 2 of the Contract 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 31st day following the date of invoice until payment is received by SWWC.

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

6.0 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 there from. 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 there from.

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.

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.

7.7 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

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 W. Donlevy, Jr.
City Manager
City of Winters
310 First Street
Winters, CA 95694

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 a (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 for cause. For purposes of this contract, "cause" means any or all of the following:

- a. Intentional damage to property of the City of Winters;
- b. Intentional engagement in any competitive activity which constitutes a breach of duty of loyalty or of the obligations under this agreement;
- c. Intentional breach of CITY's policies and procedures;
- d. Willful misconduct that is demonstrably and materially injurious to CITY, monetarily or otherwise;
- e. Persistent failure to supply sufficiently skilled workers or proper materials.

- f. Persistent disregard of laws, ordinances, or rules, regulations or orders of a public authority, specifically CITY and state and federal agencies with jurisdiction over the subject matter of this agreement.
- g. Persistent multiple failures to comply with CITY's Performance Standards, attached to this Agreement.

Except as specifically provided for in Paragraph 8.6 below otherwise, these causes shall be subject to notice and remedial response by SWWC during the 90-day period.

- 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 party and such breach is not corrected within sixty (60) calendar days from the date of said notice, the dissatisfied party may terminate the CONTRACT. The sixty (60) calendar day correction period may be extended by mutual agreement of both parties. The parties receiving such notice shall be given this time as an opportunity to correct the breach; provided, however, that is said breach is not corrected within said time

period, the CONTRACT may be terminated and considered null and void. Both parties acknowledge that CITY is subject currently to a Cease and Desist Order (“The Order”) issued by the California Regional Water Quality Control Board (“CRWQCB”) in January of 2007, due to prior problems with the Wastewater Treatment Facility (“WWTF”). That order is incorporated by reference into this CONTRACT. Because another major violation of the Order, particularly a large spillage of wastewater, would not only endanger the health and safety of the citizens of Winters and El Rio Villa and cause environmental damage, but would affect the ability of CITY to provide wastewater treatment services, monetary damages will not correct and remedy such a major violation. Under the theory that evidence of persistent negligence in operation of the WWTF will lead to a major violation of The Order, the parties agree as follows:

NOTWITHSTANDING Paragraph 8.2 and the language in this paragraph recited above, the following shall be considered INCAPABLE of correction and warrant an immediate termination of the CONTRACT:

- a. A spill of wastewater in excess of 1,000 gallons, due to the intentional act, negligence or gross negligence in whole or in part of SWWC.
- b. Multiple violations of the duties of SWWC, again due to the intentional acts or gross negligence in whole or in part by SWWC, under Paragraph 4.18 of this CONTRACT (Reporting to regulatory agencies); Paragraph 4.23 (adherence to WDR’s); Paragraph 4.41 (failure to notify CITY); and Paragraph 4.33 (failure to submit required reports), and similar requirements as detailed in Attachment B to CRWQCB Order No. R5-2002-0136, and CRWQCB Revised Monitoring and Reporting Program No. R5-2002-0136 REV 2). Both are incorporated by Reference to this CONTRACT.

In the event of such material breaches, CITY, through its City Council, shall have both the right to terminate the CONTRACT and the right to immediate possession and control of CITY’s property and WWTF facilities.

IX DISPUTES

- 4.0 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.

- 4.1. 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.
- 4.2. 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.
- 4.3. 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.
- 4.4. 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- Wastewater Agreement
November 19, 2012
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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.

INSURER: ISO FORM CG 20 10 22 85: (MODIFIED)
POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
ENDORSEMENT NUMBER:

EXHIBIT 1-A

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE E

Name of Organization

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to SWWC's liability arising out of "SWWC's work"

Modifications to ISO form CG 20 10 11 85:

for that insured by or for SWWC.

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.

Signature-Authorized Representative

Address

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

Attachment C - Performance Standards

As per each section within the scope of services, performance standards are as follows:

- 4.1 Provision of labor, materials, equipment and services to operate facilities on a 24 hour per day, seven day a week schedule.
- 4.1 Response time not to exceed 90 minutes for emergency and after hour call outs.
- 4.2 Except for sick days, holidays, vacations and training, Staffing with one Grade III operator, one Grade 1 operator or maintenance technician.
- 4.2 Grade V operator in the City a minimum of five days per month.
- 4.3 Maintenance of certifications of Winters personnel as required by law.
- 4.4 Staffing is provided with personnel with appropriate certifications.
- 4.4 Staffing with the persons named in the contract.
- 4.6 Maintenance of a stable workforce.
- 4.7 SWWS shall not change or reassign personnel without prior written notification.
- 4.8 SWWC personnel shall not be found to be under the influence of illegal substances while on duty.
- 4.9 SWWC shall provide on-site training as part of an Operator in Training Program. Other parts of the program, including certification and coursework, shall be the responsibility of City. SWWC cannot warrant or guarantee certification.
- 4.10 SWWC shall provide City with documentation of training provided to assigned personnel.
- 4.11 SWWC shall obtain computer programs for maintenance, cost accounting and laboratory quality assurance/quality control actually used by SWWC.
- 4.11 SWWC shall provide complete copies of all data files related to system maintenance.
- 4.11 Digital copies of all computer data files shall be submitted with the monthly reports.
- 4.12 SWWC shall maintain all manufacturers warranties on new equipment purchased.
- 4.13 SWWC shall provide City with full documentation that preventative maintenance is being provided on all City owned equipment.
- 4.14 SWWC shall provide keys and access to all facilities.
- 4.15 SWWC will maintain safety programs in conformance with all applicable laws.
- 4.17 SWWC will get City's written approval on any activity which would affect the basic monthly rate.
- 4.18 SWWC will prepare, sign and submit all monthly operating reports as required to be submitted to regulatory agencies.
- 4.19 SWWC will provide laboratory testing and sampling as required by regulatory agencies.
- 4.20 SWWC representatives shall attend all scheduled meetings, required meetings and staff meetings pertaining to the wastewater facility.
- 4.20 SWWC Operations Manager shall attend the second City Council Meeting of each month to present the monthly report, corrective actions taken, repairs and system maintenance summary.

- 4.21 SWWC shall meet with City as reasonably requested.
 - 4.21 SWWC shall provide support services in developing plans for City facilities and/or researching wastewater related issues requested by City.
 - 4.21 SWWC General Manager shall travel from Houston to 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 alarm and security systems.
 - 4.23 SWWC will operate City facility in conformance with applicable permits and orders.
 - 4.24 SWWC will adequately supply and maintain each facility and related equipment.
 - 4.26 SWWC will supply the City with a comprehensive preventative maintenance program for each facility and associated equipment. This should include preventative checklists, maintenance schedules, standard operating procedures, operations manuals and best management practices. This program will be developed cooperatively by SWWC and CITY
 - 4.26- 4.30 Performance will be based on the overall quality of operation and the condition of facilities and equipment based on periodic performance audits by the City.
 - 4.31 Submittal of capital improvement recommendations and documentation in a complete and proactive manner.
 - 4.33 Standards will include that the reporting will be done in a timely and complete manner. Presentations to the City Staff and City Council should exhibit the overall status of the system and detail progress towards maintenance and repairs.
 - 4.35 SWWC shall present a comprehensive collection system maintenance program which includes the cleaning and inspection of sewer mains, manholes and ancilliary facilities.
 - 4.35 SWWC shall submit an annual report detailing the force mains.
 - 4.35 SWWC shall clean 53,000 linear feet of sewer lines.
 - 4.35 SWWC shall submit inspection and cleaning data in a digital format suitable for inclusion in the City's GIS system.
 - 4.36 SWWC shall clean 140 catch basins.
 - 4.39 SWWC shall respond to all emergency calls concerning facilities 24 hours per day, 7 days per week, including holidays.
 - 4.40 SWWC shall pay all any and all fines or penalties taken against the City by regulatory agencies so long as such fines or penalties are the direct result of acts or omissions by SWWC.
 - 4.41 SWWC shall notify the City within one business day upon receipt of notice of any and all sanctions, violations, fines or investigations relating to Winters facilities.
 - 4.42 SWWC shall provide required insurance documentation.
 - 4.43 SWWC shall provide lateral services for up to 1500 laterals within the City.
 - 4.45 SWWC shall provide an Industrial Waste Monitoring Program.
 - 4.47 SWWC shall provide weed abatement and mowing on a regular basis for all facilities.
- 6.0-6.11 SWWC shall provide indemnification as provided for in the Contract.

In the event there are any inconsistencies between the terms of the Contract and the Performance Standards, the Performance Standards shall prevail.