



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, December 17, 2013

*Members of the City Council*

*Cecilia Aguiar-Curry, Mayor  
Woody Fridae, Mayor Pro-Tempore  
Harold Anderson  
Wade Cowan  
Bruce Guelden*

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

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**5:30 p.m. – Executive Session**

**AGENDA**

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

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

Pursuant to Government Code Section 54956.9 – Existing Litigation – Claudia Covarrubias, Veronica Alvarado, Rebecca Rivas and Lusila Gomez – Case # 34-2013-80001650 – City Manager and Attorney at Law Ethan Walsh

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**6:30 p.m. – Regular Meeting**

**AGENDA**

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

Roll Call

Pledge of Allegiance

Approval of Agenda

## COUNCIL/STAFF COMMENTS

### PUBLIC COMMENTS

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

### CONSENT CALENDAR

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

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, December 3, 2013 (pp 5-9)
- B. Claim Against the City of Winters – Karen Treat – Deny and Refer to YCPARMIA (Yolo County Public Agency Risk Management Insurance Authority) (pp 10-12)
- C. Resolution 2013-45, A Resolution of the City Council of the City of Winters Approving an Adjustment to the 2013-2014 Adopted Budget (pp 13-14)

## PRESENTATIONS

Andy Pignataro, State Farm Insurance agent and Coordinator of the State Farm Celebrate My Drive Promotion for Winters High School

Introduction of the 2013 Winters High School Warrior Football Team – Northern Section Division III Champions

Presentation by Pacific Gas and Electric (PG&E) of their proposed “Winters Center of Excellence” Training Facility

## DISCUSSION ITEMS

1. Second Hearing and Possible Adoption of Ordinance 2013-03, an Ordinance of the City of Winters, Extending Section 17.200.030, Subsection (B) (1) to the Winters Municipal Code Pertaining to Affordable Housing Requirements (pp 15-19)
2. Public Hearing and Approval of Resolution 2013-42, a Resolution of the City Council of the City of Winters Approving a Grantee Performance Report 2011-2012 (pp 20-32)
3. Public Hearing and Approval of Resolution 2013-43, a Resolution of the City Council of the City of Winters Approving a Program Income Reuse Plan (pp 33-69)
4. City Manager’s Employment Contract Agreement (pp 70-85)

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

- 1.
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## CITY MANAGER REPORT

## INFORMATION ONLY

## ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the December 17, 2013 regular meeting of the Winters City Council was personally delivered to each Councilmember's mail boxes in City Hall and posted on the outside public bulletin board at City Hall, 318 First Street on December 11, 2013, and made available to the public during normal business hours.

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

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

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

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

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*View on the internet: [www.cityofwinters.org/administrative/admin\\_council.htm](http://www.cityofwinters.org/administrative/admin_council.htm)  
Any attachments to the agenda that are not available online may be viewed at the City Clerk's Office or locations where the hard copy packet is available.*

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

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

*Winters Library – 708 Railroad Avenue*

*City Hall – Finance Office - 318 First Street*

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

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Wednesday at 10:00 a.m.

Videotapes of City Council meetings are available for review at the Winters Branch of the Yolo County Library.



Minutes of the Winters City Council Meeting  
Held on December 3, 2013

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**Executive Session**

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

Mayor Aguiar-Curry reported that there was no reportable action taken in Executive Session.

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**Regular Meeting**

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

Present: Council Members Harold Anderson, Wade Cowan, Woody Fridae, Bruce Guelden and Mayor Cecilia Aguiar-Curry  
Absent: None  
Staff: City Manager John Donlevy, City Attorney John Wallace, City Clerk Nanci Mills, Housing Programs Manager Dan Maguire, Fire Chief Aaron McAlister, Fire Captain Brad Lopez, Firefighters Ruben Valencia, Chris Osborne, and Kyle Vaudrin, and Management Analyst Tracy Jensen.

Dave Adams led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy said there would be a short presentation given by Greg Lanzaro, Winters resident and member of the governing board of the Sacramento-Yolo Mosquito & Vector Control District, who spoke on behalf of retiring manager David Brown.

**COUNCIL/STAFF COMMENTS**

**PUBLIC COMMENTS:** None

**CONSENT CALENDAR**

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, November 19, 2013
- B. Approval of Resolution No. 2013-41, a Resolution of the City Council of the City of Winters, Accepting the Public Utility Easement (PUE) along Matsumoto Lane across the frontage of Burger King/AMPM, Authorize the City Clerk to prepare a Notice of Acceptance
- C. Proclamation Honoring the Capital Region Chapter of the American Red Cross Yolo County's 13<sup>th</sup> Annual Red Cross Heroes Recognition Event
- D. Proclamation in Recognition of Medic Ambulance Service
- E. Proclamation Honoring David Brown, District Manager for the Sacramento-Yolo Mosquito & Vector Control District on his Retirement from Service

City Manager John Donlevy gave an overview. Motion by Council Member Guelden, second by Council Member Fridae to approve the consent calendar. Motion carried unanimously.

**PRESENTATIONS**

Fire Chief Aaron McAlister said the last year brought new levels of emergency medical services in the Winters community, and as the Yolo LEMSA (Local EMS Agencies) unfolded, it provided Winters with a window of opportunity to create the Winters zone. Medic Ambulance, who has always been a leading company in innovation and technology, stepped up and petitioned to serve the Winters area. Medic took some risks, thought outside the box, made some bold moves and brought competition to Winters. A partnership was formed, with paramedics working side by side with the Winters firefighters with a new level of cooperation and Chief McAlister asked to take a few moments to recognize Medic Ambulance for their service to the Winters community. Ultimately they were not the successful bidder through the RFP process, so it is appropriate that we recognize them as they prepare to conclude their service in Winters.

Mayor Aguiar-Curry thanked Medic Ambulance for making a difference in Winters, read aloud and presented the Proclamation to Helen Pierson, Medic Ambulance CFO. Ms. Pierson thanked Winters for allowing Medic to serve the City and that the resulting relationship was special and unique. She said they are right next door and if we need them, they're only a phone call away. The EMS community is not a competition but a circle of friends that extends and

crosses paths, and for that they are grateful. On behalf of Medic Ambulance, Ms. Pierson thanked the Council for the proclamation.

## **DISCUSSION ITEMS**

### **1. Public Hearing, Introduction, and Consideration by the Winters City Council of Ordinance 2013-03, an Ordinance of the City of Winters Code pertaining to Affordable Housing Requirements**

Housing Programs Manager Dan Maguire gave an overview. Mayor Aguiar-Curry opened the public hearing at 7:09 p.m. and closed the public hearing at 7:09 p.m. with no public comment.

Motion by Council Member Cowan, second by Council Member Anderson to waive the first reading, read by title only and introduce Ordinance 2013-03 to extend Section 17.200.030, Subsection (B) (1) to the Winters Municipal Code Pertaining to Affordable Housing Requirements. Motion carried with the following vote:

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

### **2. Animal Services Review – JPA/Local Regulation/Parks**

City Manager Donlevy gave an overview of the four recommended actions being presented by staff. After discussing several aspects of a Joint Powers Agreement (JPA), staff suggested bringing back to Council a draft that reflects both the JPA and the current model, take the hybrid model and address capital and cost breakdown, and whether they are in or outside of the JPA model. Mayor Aguiar-Curry asked to bring this item back after all of the other city councils have reviewed the JPA plan.

Patty Finfrock, 435 Abbey Street, said she is a responsible pet owner but doesn't always obey the rules when it comes to off leash. She said she appreciated Council addressing and considering this issue and encouraged them to designate an off leash area.

Sally Brown, 24 E. Main Street, echoed Patty's comments and said responsible dog owners don't want to violate the rules, but need a designated space for their dogs to be off-leash. The flood plain area of the creek with well marked boundaries and signage listing the responsibilities for dog owners would be ideal.

If rules are posted, dog owners can help enforce the rules as posted. Sally said she would be interested in being part of a volunteer group and added that the last Sunday in February is spay day (for dogs and cats), sponsored by Sacramento Area Animal Coalition. She suggested having a booth on Youth Day, where Yolo County Animal Services could give rabies shots and provide information about low cost/no cost spay & neutering. The easier it is and the more information that can be provided would make it easier to comply. Winters could become a model town in terms of how we treat our animals and how responsible we are. Due to the duration of the bridge project and limited access to the south side of the creek, Sally suggested the north side of the creek down near Creekside Way might be an acceptable off leash area.

Pierre Neu, 204 Main Street, re-emphasized that pet owners can do a good job of reminding people of the rules if they were posted and could be referred to, which would make it easier for everyone. He added that their animals need a place to run.

City Manager Donlevy suggested bringing back to Council a package by the first meeting in February, 2014 and develop some rules to address the creek area, including a signage plan and general rules, and concurrently introduce license enforcement, leashes, and vicious animals. He added that current ordinance modifications would be brief.

Council Member Fridae said he likes the idea of having present tonight a core group of people who are interested in responsible pet ownership under recommended action #4, the formation of a local animal group who can help develop a consensus for recommended action #2, the development of a park plan including signage, off leash areas, rules and regulations, and recommended action #3, the enhancement of current City ordinances which provide citation authority and enhanced regulations. City Manager Donlevy said as part of action #4, a couple of successful events will be needed to start the process. The City can't do what a volunteer group can do.

Sally Brown suggested a new business outreach to put in a pet food store, which might carry premium dogs foods, shots, and dog bathing, as these items and services must be obtained out of town.

Council Member Anderson said early in the animal ordinance discussion where mandatory spay/neuter was discussed, he asked if exceptions could be made for purebred or herding dogs. City Attorney Wallace said like the City of Santa Cruz, a mandatory certificate from a veterinarian for an un-altered animal could be obtained to avoid violations and fines. Exclusions apply and the certificate is costly.

Mayor Aguiar-Curry thanked those in the audience for coming and speaking regarding this important topic.

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

1. Resolution SA-2013-04, Approval and Adoption of Revised Long Range Property Management Plan Pursuant to Health and Safety Code Section 34191.5

Agency Chair Woody Fridae opened the Successor Agency at 8:11 p.m.

Housing Programs Manager Dan Maguire gave an overview.

Motion by Agency Member Aguiar-Curry, second by Agency Member Cowan to approve Resolution SA-2013-04, adopting a revised Property Management Plan and submitting the Property Management Plan to the Oversight Board for approval. Motion carried with the following vote:

AYES: Agency Members Aguiar-Curry, Anderson, Cowan, Guelden,  
Agency Chair Fridae

NOES: None

ABSENT: None

ABSTAIN: None

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**CITY MANAGER REPORT:** A heads up to everyone regarding an updated schedule of PG&E meetings that will be going out. At the recent high school play-off football game held in Hamilton City, he was proud to be one of 1,500 fans from Winters. A lot of credit goes to the home team for battling it out. It was a great night for Winters and he complimented the kids, who represented the City well. It was pretty awesome to see the community there.

**ADJOURNMENT:** Mayor Aguiar-Curry adjourned the meeting at 8:32 p.m.

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Cecilia Aguiar-Curry, MAYOR

**ATTEST:**

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Nanci G. Mills, City Clerk



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers

**DATE:** December 17, 2013

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

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

**SUBJECT:** Claim Against the City of Winters – Karen Treat

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**RECOMMENDATION:**

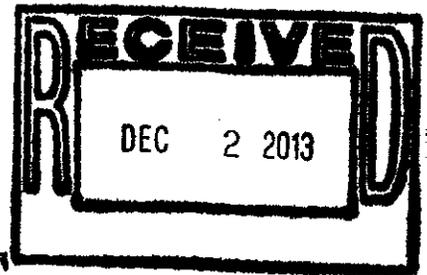
It is recommended that the City Council deny the claim and refer to Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA).

**BACKGROUND:**

Anytime the City of Winters receives a Claim for Damages to Person or Property, the claim is denied and referred to YCPARMIA to handle the investigation.

**FISCAL IMPACT:**

Not to exceed the City's \$1,000 deductible, with any costs in excess to come from funds pooled at the JPA.



CLAIM FOR DAMAGES  
TO PERSON OR PROPERTY

TO: (Entity) City of Winters,

1. Claims for death, injury to person or to personal property must be filled out not later than six months after the occurrence. (Gov. Code Sec. 911.2)
2. Claims for damages to real property must be filled not later than 1 year after the occurrence.
3. Read entire claim form, both sides, before filing.
4. See page 2 for diagram upon which to locate place of accident.
5. This claim form must be signed on page 2 at bottom.
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.

NAME OF CLAIMANT <u>Karen Treat</u>		Date of Birth of Claimant <u>7/27/49</u>
Home Address of Claimant <u>281 Mandarin circle</u> <u>Vacaville CA 95687</u>		City and State <u>retired</u>
Business Address of Claimant <u>0</u>		Home Telephone Number <u>707.448.9444</u>
		Business Telephone Number
Give address and telephone number to which you desire notices or communications to be sent regarding this claim: <u>Stan Leventhal, 1912 N. Broadway #210, Santa Ana</u> <u>CA 92706 714.835.7800</u>		
When did DAMAGE or INJURY occur? Date <u>6/11/2013</u> Time <u>5:00 p.m.</u>	Section 111 of the Medicare Medicaid & S-CHIP Extension Act requires the entity to report certain claims to the federal government. Please indicate if the claimant is: 65 years of age or older, or is receiving Social Security Disability Insurance Benefits for 24 or more months, or has End Stage Renal Disease. If yes, you may be required to provide additional information to process your claim. <u>YES</u> / NO (circle one)	
If claim is for Equitable Indemnity, give date claimant served with the complaint: Date _____		

Where did DAMAGE or INJURY occur? Describe fully, and locate-on-diagram on Page 2. Where appropriate, give street names and address and measurements from landmarks.

Sidewalk at 18 Main Street, Winters, CA

Describe in detail how the DAMAGE or INJURY occurred:

Karen Treat was walking on sidewalk when she tripped and fell due to differential in the height of the pavement in excess of one inch.

Names of any employees involved in INJURY or DAMAGE:

Why do you claim the Entity is responsible?

unknown

Describe in detail each INJURY or DAMAGE: Fractured Wrist

The amount claimed, as of the date of presentation of the claim, is computed as follows:

Damages incurred to date (exact)		Estimated prospective damages as far as known	
Damage to property.....	\$ 0	Future expenses for medical and hospital care.....	\$ UNKNOWN
Expenses for medical and hospital care...	\$ 50,000 est	Future loss of earnings.....	\$ NONE
Loss of earnings.....	\$ NONE	Other prospective special damages.....	\$ UNKNOWN
Special damages for.....	\$	Total estimate prospective damages.....	\$ UNKNOWN
General Damages.....	\$ 750,000		
Total damages incurred to date.....	\$ 600,000		
Total amount claimed as of date of presentation of the claim:		\$ 800,000	

Was damage and/or injury investigated by police? NO If so, what city? \_\_\_\_\_  
 Were paramedics or ambulance called? NO If so, name city or ambulance \_\_\_\_\_  
 If injured, state date, time, name and address of doctor of your first visit Sutter Davis Hospital Staff  
June 11, 2013

WITNESSES to DAMAGE or INJURY. List all person and addresses of persons known to have information:

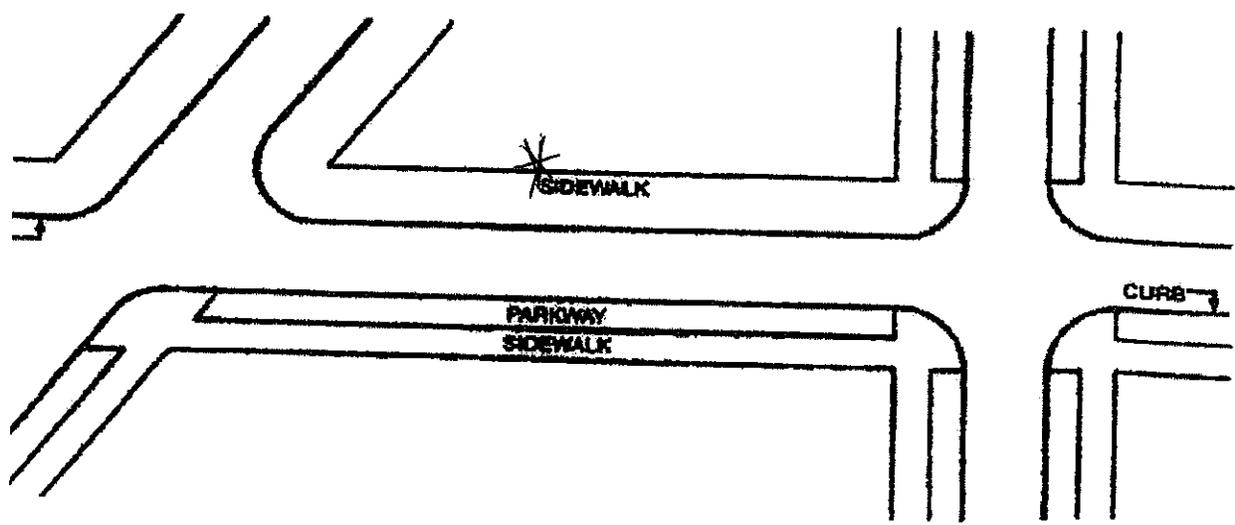
Name <u>Mike Mitchell</u>	Address _____	Phone _____
Name <u>Helen Utz</u>	Address <u>429 Buckeye St, Vacaville</u>	Phone _____
Name <u>Pam &amp; Duane Bayougn</u>	Address <u>452 Russell, Winters</u>	Phone <u>(530) 795-3218</u>

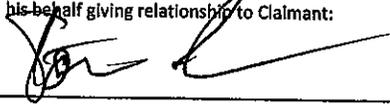
DOCTORS and HOSPITALS

Hospital <u>Sutter Davis Hospital</u>	Address <u>2000 Sutter Place, Davis</u>	Date Hospitalized <u>June 11, 2013</u>
Doctor _____	Address _____	Date of Treatment _____
Doctor _____	Address _____	Date of Treatment _____

**READ CAREFULLY**

For all accident claims place on following diagram names of streets, including North, East, South and West. Indicate place of accident by "X" and by showing house numbers or distance to street corners.	NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.
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Signature of Claimant or person filing on his behalf giving relationship to Claimant: 	PRINT Name: <u>Stan Leventhal</u>	Date: <u>11/22/2013</u>
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NOTE: CLAIMS MUST BE FILED WITH THE CLERK OR GOVERNING BOARD (Gov. Code Sec. 915a). Presentation of a false claim is a felony (Pen. Code Sec. 72)



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Council Members  
DATE: December 17, 2013  
THROUGH: John W. Donlevy, Jr., City Manager  
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*  
SUBJECT: Resolution 2013-45 amending the adopted 2013-2014 Budget

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**RECOMMENDATION:**

1. Approve Resolution 2013-45 amending the adopted 2013-2014 Budget, in the amount of \$5,000
2. Authorize the City Manager or his designee to purchase the Plotter

**BACKGROUND:**

In the past few months, the staff has used the Plotter for a lot of projects and it has been a tremendous resource for staff in notifying citizens of activities throughout the City. Recently, the Plotter has broke, and it is extremely expensive to repair due to the age of the Plotter.

Staff has researched the costs, and believes that purchasing a new Plotter is the best alternative. The cost of the Plotter would be approximately \$4,340. Staff has recommended a \$5,000 budget adjustment to be sure to allow for sales tax and shipping and installation of the Plotter. The Plotter would be paid for from the Capital Equipment Replacement Fund.

**FISCAL IMPACT**

Expenditure of \$5,000 from Fund 427, Capital Equipment Replacement Fund.

**ATTACHEMENTS:**

Resolution 2013-45

**CITY COUNCIL  
RESOLUTION 2013-45**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WINTERS AMENDING THE CITY OF WINTERS 2013-2014  
ADOPTED OPERATING BUDGET**

**WHEREAS**, every local agency is required to adopt a budget for the subsequent fiscal year for estimated revenues and expenditures; and

**WHEREAS**, certain changes in City Services have taken place since the adoption of the City of Winters 2012-2014 budget; and

**WHEREAS**, the City Council and Staff members have thoroughly reviewed and analyzed the proposed budget in order to determine the needs of the City of Winters; and

**WHEREAS**, it has been determined that the City is in need of a new Plotter,

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Winters that the adopted operating budget for fiscal year 2013-2014 be amended as follows:

Section 1. Capital Equipment Replacement Fund is adjusted as follows:

- a. Increased by \$5,000.000 in account 427-52213-999 for the purchase of a new Plotter not previously included in the 2013-2014 Budget.

**PASSED AND ADOPTED** by the City of Winters this 17th day of December 2013 by the following vote:

**AYES;  
NOES;  
ABSTAIN;  
ABSENT;**

\_\_\_\_\_  
Cecilia Aguiar-Curry, Mayor

**ATTEST:**

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



CITY COUNCIL  
STAFF REPORT

**TO:** Honorable Mayor and Council Members  
**DATE:** December 17, 2013  
**THROUGH:** John W. Donlevy, Jr., City Manager  
**FROM:** Dan Maguire, Economic Development and Housing Manager *DM*  
**SUBJECT:** Second Hearing and Possible Adoption of Ordinance 2013-03, an Ordinance of the City of Winters Code Pertaining to Affordable Housing Requirements.

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**RECOMMENDATION:**

Staff recommends that the City Council take the following actions:

- 1) Receive Staff Report
- 2) Waive second reading, read by title only, and adopt:  
Ordinance 2013-03, Extending Section 17.200.030, Subsection (B) (1) to the Winters Municipal Code Pertaining to Affordable Housing Requirements

**BACKGROUND:**

In 1992, the City of Winters completed and adopted a comprehensive update of its General Plan. As part of this effort, the City also adopted the seven elements required for a General Plan. Subsequently, Legal Services of Northern California (LSNC) challenged the adequacy of the City's Housing Element, one of the required seven elements, and brought suit against the City in Yolo County Superior Court. The City incurred significant expenses during its defense and eventually, a stipulated judgment was agreed to by all parties in 1994 and entered in Superior Court. The key provisions of the judgment included the City's adoption of an inclusionary housing ordinance in 1994 (Ordinance 94-10), which required that 15 percent of all new housing be affordable to very low-, low-, and moderate income households.

The Affordable Housing Steering Committee (AHSC), along with numerous stakeholders, including the Yolo County Housing Authority, Legal Services of Northern California (LSNC), Mercy Housing, and other stakeholders started studying potential revisions to the existing Inclusionary Housing

Ordinance (IHO) at the AHSC meeting on November 24, 2008. Over the course of the year, the AHSC and the aforementioned stakeholders have met several times, and agreement on the final version of the IHO was reached at the AHSC meeting on November 3, 2009. The Planning Commission reviewed the proposed ordinance at their meeting on November 26, 2009 and voted to recommend adoption of Ordinance 2009-18 to the City Council. The City Council introduced the foregoing Ordinance at the regular meeting of the City Council on December 15, 2009, and was passed and adopted and a regular meeting of the City Council held on January 5, 2010.

#### **DISCUSSION:**

The affordable housing requirements contained in this ordinance were the culmination of the City's efforts to develop an affordable housing program that promotes a balance between encouraging the development of market-rate housing and mixed use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of very low-, low-, and moderate income households within the City.

The adopted amendment included an exemption for developments of 15 dwelling units or less located in the Community Development Agency Project Area from the requirement to provide affordable housing. It was the consensus of the AHSC and the other participants that small infill projects would continue to be severely constrained if the requirements of the existing IHO (Ordinance 94-10) were imposed. By allowing the exemption for small projects in the project area, it was anticipated this change would encourage infill development that encourages "smart growth". The section of Ordinance 2009-18 that established the exception {Section 17.200.030, Subsection (B) (1)} included language wherein the exemption would expire on December 31, 2013, unless extended by the City Council.

The original intent of the expiration of the exemption ("sunset clause") was to give staff, stakeholders, and the City Council the opportunity to evaluate the results of the implementation of the exemption. Since adoption of the Ordinance, there has been no significant residential development in Winters. Staff is recommending City Council extend the exemption with an amendment that would establish a new expiration date of October 31, 2021. This extension would align the exemption to the Ordinance to cover the current planning period of the recently adopted Housing Element Update (January 1, 2013 to October 31, 2021). Staff discussed the proposed extension of the exemption with the members of the AHSC at a meeting on November 20, 2013. Based on their review, the extension was presented to the Planning Commission at their meeting on November 26, 2013, with the Planning Commission voting to recommend the amendment to the City Council. The City Council held a Public Hearing and introduced Ordinance 2013-03 at the Council meeting of December 3, 2013.

#### **PROJECT NOTIFICATION:**

Public notice advertising for the public hearing on this Amendment was prepared by the Community Development Department in accordance with notification procedures set forth in the City of Winters Municipal Code and State Planning Law. A legal notice was published in the Winters Express on Thursday, November 21, 2013. Copies of the staff report and all attachments for the proposed Amendment have been on file, available for public review at City Hall since Wednesday, November 27, 2013.

#### **ENVIRONMENTAL DETERMINATION:**

Pursuant to Section 15061 (b) (3) of the State CEQA Guidelines, a project is exempt from the California Environmental Quality Act when it can be seen with certainty that there is not possibility that the proposed Amendment may have significant effect on the environment. This Amendment entails the extension of a section of the Zoning Code regarding Affordable Housing, and therefore, constitutes administrative changes to the Zoning Code. As such, they will have no adverse effect on the environment; consequently, the project is not subject to environmental review under CEQA pursuant to Section 15061 (b) (3).

**RECOMMENDATION:**

Staff recommends that the City Council approve the proposed Ordinance 2013-03 by making the affirmative motions as follows:

**I MOVE THAT THE WINTERS CITY COUNCIL WAIVE THE SECOND READING, READ BY TITLE ONLY, AND ADOPT ORDINANCE 2013-03 TO AMEND CHAPTER 17.200.030 (B) (1) TO THE WINTERS MUNICIPAL CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS**

**ATTACHMENTS:**

- 1) Ordinance 2013-03

**ORDINANCE NO. 2013-03**

**AN ORDINANCE OF THE CITY OF WINTERS AMENDING SECTION 17.200.030 OF THE ZONING CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS**

The City Council of the City of Winters hereby ordains as follows:

**SECTION 1. Recitals.**

- A. The City of Winters undertook a comprehensive study and analysis of its affordable housing program, which prompted certain revisions to the affordable housing program for the City in 2009.
- B. Following that study and analysis the City adopted Ordinance 2009-18, which was the culmination of the City's efforts to develop an affordable housing program that promotes a balance between encouraging the development of market-rate housing and mixed use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of individuals of very low, low and moderate income within the City.
- C. Ordinance 2009-18 included an exemption to the affordable housing requirements set forth in that ordinance for projects of 15 units or less that are located in the project area for the City's former Redevelopment Agency.
- D. The exemption is to expire on December 31, 2013, and the City desires to extend the expiration date for such exemption.
- E. The City of Winters Planning Commission received the staff report at the Planning Commission Meeting of November 26, 2013 regarding this Ordinance, which amends the Zoning Code to repeal Section 17.60.030(B) and add Chapter 17.200 pertaining to affordable housing requirements within the City, and has recommended approval of the Ordinance.
- F. The City Council of the City of Winters has provided public notice of its intention to amend the Zoning Code to adopt Chapter 17.200, and conducted a public hearing thereon on December 3, 2013.
- G. The proposed amendment of the Zoning Code set forth herein to add Chapter 17.200 is consistent with the goals, policies, and objectives of the City of Winters General Plan, and in particular, the Housing Element, as adopted on October 15, 2013.
- H. The proposed amendment of the Zoning Code to add Chapter 17.200 has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

**SECTION 2.** Subdivision (B)(1) of Section 17.200.030(B)(1) of the Winters Municipal Code is hereby amended to read as follows:

1. **Former Redevelopment Project Area.** The fifteen percent (15%) inclusionary housing requirement provided in Subsection A above shall not apply to development projects within the boundaries of the Winters Community Development Agency Redevelopment Project Area that contain fifteen (15) or fewer residential units. This exception shall expire on October 31, 2021, unless extended by the City Council. Any development project that has not acquired a vested right to develop in accordance with existing laws and regulations by such expiration date shall be required to comply with the provisions of this chapter.

**SECTION 3. Effective Date.**

This Ordinance shall be in full force and effective 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this Ordinance to be published and posted in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on December 5, 2013, and was passed and adopted at a regular meeting of the City Council held on December 17, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Cecilia Aguiar-Curry, MAYOR

ATTEST:

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



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: December 17, 2013  
THROUGH: John W. Donlevy, Jr., City Manager  
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*  
SUBJECT: Approval of Grantee Performance Report

---

**RECOMMENDATION:**

Staff recommends the following:

1. City Council hold a public hearing for comment on the attached Grantee Performance Report for Fiscal Year 2011-2012
2. Adopt Resolution 2013-42 Approving the Grantee Performance Report for Fiscal Year 2011-2012
3. Authorize the City Manager or his designee to submit the Grantee Performance Report for Fiscal Year 2011-2012 to HCD.

**BACKGROUND:**

Staff has been contacted by HCD regarding the need for Grantee Performance Reports for years in which we expended Program Income for Economic Development. In the past, there was no requirement for this report for items funded from Program Income, however, now HCD is requiring that a Grantee Performance Report be submitted for Fiscal Year 2011-2012, due to the fact that we entered into a loan agreement with Main Street Cellars.

The report has been completed by staff, indicating the amount of the loan, what the loan is for, number of jobs to be created, and actual results. The only assistance was to the Main Street Cellars.

**FISCAL IMPACT:**

None

**ATTACHMENTS**

Grantee Performance Report  
Resolution 2013-42

**CITY COUNCIL  
RESOLUTION 2013-42**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WINTERS APPROVING THE GRANTEE PERFORMANCE  
REPORT FOR FISCAL YEAR 2011-2012**

**WHEREA** the City of Winters has utilized CDBG funding to provide loans for housing rehabilitation, homeowner assistance and business assistance; and

**WHEREAS**, the City of has utilized the program income to provide additional assistance throughout the City of Winters; and

**WHEREAS**, HCD requires that the City of complete a Grantee Performance Report for each period in which program income is spent; and

**WHEREAS**, a loan was made to Main Street Cellars in the Fiscal Year 2011-2012; and

**WHEREAS**, a properly noticed public hearing was held on December 17, 2013 to receive comments on the Grantee Performance Report,

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Winters that the City Council of the City of Winters Approves the Grantee Performance Report and authorizes the City Manager or his designee to submit the Report to HCD.

**PASSED AND ADOPTED** by the City of Winters this 17th day of December 2013 by the following vote:

**AYES;  
NOES;  
ABSTAIN;  
ABSENT;**

\_\_\_\_\_  
Cecilia Aguiar-Curry, Mayor

**ATTEST:**

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

# Grantee Performance Report

Report Period (FY)

2012

Standard Agreement #

1111

Please Check One

Annual GPR

Final GPR

Jurisdiction Name:

City of Winters

Name of Contact:

Shelly Gunby

Address of Contact:

318 First Street

Winters, CA 95694

**FOR 2012 REPORTS- VERY IMPORTANT - IGNORE POP-UP MESSAGES ABOUT FORM COMPATABILITY. CLICK "CONTINUE"**

Telephone Number:

5307946704

E-Mail Address: shelly.gunby@cityofw

## SUMMARY OF ACTIVITIES

Complete the information above indicating the fiscal year and the Standard Agreement number. Indicate if this report represents an "Annual GPR" (Grantee Performance Report) or if this represents a "Final GPR" for which you are closing and finished the activity. Select from the following activities based on the matrix codes in your Standard Agreement. Check the box next to the activity and use the button to the right to be directed to the page to use in completing this report for each activity. If you have any questions regarding the correct matrix code, contact your CDBG Representative. If the activity has the option of two pages, the second page under the column heading "In Support of Housing" represents those activities with a National Objective Code of Low and Moderate Housing (LMH). For non-housing activities, use the button to the left.

		In Support of Housing (LMH)
(01) Acquisition of Real Property	<input type="checkbox"/> Page 1	
(02) Disposition	<input type="checkbox"/> Page 1	
(03) Public Facilities & Improvements*	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03A) Senior Centers	<input type="checkbox"/> Page 6	
(03B) Handicapped Centers	<input type="checkbox"/> Page 6	
(03C) Homeless Facilities	<input type="checkbox"/> Page 6	
(03D) Youth Centers	<input type="checkbox"/> Page 6	
(03E) Neighborhood Facilities	<input type="checkbox"/> Page 6	
(03F) Parks, Recreation Facilities	<input type="checkbox"/> Page 6	
(03G) Parking Facilities	<input type="checkbox"/> Page 6	
(03H) Solid Waste Disposal Imp.*	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03I) Flood Drainage Improvement*	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03J) Water/Sewer Improvements*	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03K) Street Improvements*	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03L) Sidewalk Improvements*	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03M) Child Care Centers	<input type="checkbox"/> Page 6	
(03N) Tree Planting	<input type="checkbox"/> Page 6	<input type="checkbox"/> Page 3
(03O) Fire Station/Equipment	<input type="checkbox"/> Page 6	
(03P) Health Facilities	<input type="checkbox"/> Page 6	
(03Q) Abused and Neglected Children Facilities	<input type="checkbox"/> Page 6	
(03R) Asbestos Removal	<input type="checkbox"/> Page 6	
(03S) Facilities for Aids Patients	<input type="checkbox"/> Page 6	
(03T) Operating Costs of Homeless/Aids	<input type="checkbox"/> Page 6	
(04) Clearance and Demolition	<input type="checkbox"/> Page 1	
(04A) Cleanup of Contaminated Sites	<input type="checkbox"/> Page 1	
(05) Public Services - General	<input type="checkbox"/> Page 7	
(05A) Senior Services	<input type="checkbox"/> Page 7	
(05B) Handicapped Services	<input type="checkbox"/> Page 7	
(05C) Legal Services	<input type="checkbox"/> Page 7	
(05D) Youth Services	<input type="checkbox"/> Page 7	

(05E) Transportation Services	<input type="checkbox"/>	Page 7	
(05F) Substance Abuse Services	<input type="checkbox"/>	Page 7	
(05G) Battered and Abused Spouses	<input type="checkbox"/>	Page 7	
(05H) Employment Training	<input type="checkbox"/>	Page 7	
(05I) Crime Awareness	<input type="checkbox"/>	Page 7	
(05J) Fair Housing Activities	<input type="checkbox"/>	Page 7	
(05K) Tenant/Landlord Counseling	<input type="checkbox"/>	Page 7	
(05L) Child Care Services	<input type="checkbox"/>	Page 7	
(05M) Health Services	<input type="checkbox"/>	Page 7	
(05N) Abused & Neglected Children	<input type="checkbox"/>	Page 7	
(05O) Mental Health Services	<input type="checkbox"/>	Page 7	
(05P) Screening Lead Paint & Hazards	<input type="checkbox"/>	Page 7	
(05Q) Subsistence Payments	<input type="checkbox"/>	Page 7	
(05R) Homeownership Assistance - not direct	<input type="checkbox"/>	Page 2	
(05S) Rental Housing Subsidies	<input type="checkbox"/>	Page 5	
(05T) Security Deposits	<input type="checkbox"/>	Page 5	
(05U) Housing Counseling	<input type="checkbox"/>	Page 7	
(06) Interim Assistance	<input type="checkbox"/>	Page 7	
(08) Relocation*	<input type="checkbox"/>	Page 7	<input type="checkbox"/> Page 5
(09) Loss of Rental Income*	<input type="checkbox"/>	Page 7	<input type="checkbox"/> Page 5
(11) Privately Owned Utilities*	<input type="checkbox"/>	Page 6	<input type="checkbox"/> Page 3
(12) Construction Housing	<input type="checkbox"/>	Page 1	
(13) Direct Homeownership Assistance	<input type="checkbox"/>	Page 2	
(14A) Rehabilitation - Single Unit Residential	<input type="checkbox"/>	Page 4	
(14B) Rehabilitation - Multi - Unit Residential	<input type="checkbox"/>	Page 4	
(14C) Public Housing Modernization	<input type="checkbox"/>	Page 4	
(14D) Rehabilitation - Publicly-Owner Residential Buildings	<input type="checkbox"/>	Page 4	
(14E) Rehabilitation Publicly/Private Commercial Industry	<input type="checkbox"/>	Page 8	
(14F) Energy Efficiency Improvements	<input type="checkbox"/>	Page 4	
(14G) Acquisition for Rehabilitation	<input type="checkbox"/>	Page 4	
(14I) Lead Based Paint, Hazards Test Abatement	<input type="checkbox"/>	Page 4	
(15) Code Enforcement	<input type="checkbox"/>	Page 7	
(16A) Residential Historic Preservation	<input type="checkbox"/>	Page 4	
(16B) Non-Residential Historic Preservation	<input type="checkbox"/>	Page 6	
(17A) CI Land Acquisition/Disposition	<input type="checkbox"/>	Page 8	
(17B) CI Infrastructure Development	<input type="checkbox"/>	Page 8	
(17C) Building Acquisition, Construction, Rehabilitation	<input type="checkbox"/>	Page 8	
(17D) Other Commercial/Industrial Improvements	<input type="checkbox"/>	Page 8	
(18A) ED Direct Financial Assistance for For-Profits	<input checked="" type="checkbox"/>	Page 8	
(18C) Micro-Enterprise Assistance	<input type="checkbox"/>	Page 9	
(19E) Operation and Repair Foreclosed Property	<input type="checkbox"/>		<input type="checkbox"/> Page 5

In Support  
of Housing  
(LMH)

**Certification:**

I have reviewed the information contained in this report and certify that to the best of my knowledge that it is true and accurate, and that supporting documentation is maintained and available for State Review

Signature of Authorized Representative

Printed Name & Title **John W. Donlevy, Jr., City Manager**

Date **18-Dec-13**

6/10/2008

This section applies to Economic Development activities that facilitate the creation of business and jobs. Check off the activity you are reporting. If more than one activity is being reported, you will need to create a duplicate sheet. Do not use this page to report on Micro Enterprise activities, use page nine (9).

Page 9

- Rehabilitation Publicly/Private Commercial Industry (14E)
- Commercial/Industrial Land Acquisition/Disposition (17A)
- Commercial Industrial Infrastructure Development (17B)
- Building Acquisition, Construction, Rehabilitation (17C)
- Other Commercial/Industrial Improvements (17D)
- ED Direct Financial Assistance for For-Profits (18A)
- Health Facilities - Jobs (03P)

**Program Description**

IDIS cdbg 6

Check all statements that are applicable to this activity. This activity will include:

- a. One-for-One Replacement (Reconstruction) complete Appendix A.
- b. Public improvement activity for which a Special Assessment will be levied.
- c. Displacement of household, business, farms, nonprofits, complete Appendix B.
- d. Creating a new Revolving Fund/Revolving Loan Account (RLA).
- e. The designation of an economic development "Favored activity".
- f. The funding of Colonia(s).
- g. Brownfield Activity Indicate the number of remediated acres:
- h. Historic Preservation Area.
- i. Presidential Declared Disaster.
- l. Limited Clientele by Nature/Location or Presumed Benefit, complete Appendix C.
- m. A Subrecipient Agreement for this activity, complete Appendix D.
- n. A designation of Slum and Blight, complete Appendix E.

**Section 3**

**Economic Opportunities for Low & Very Low Income**

Check box if the grant award is over \$200,000 in CDBG funds.

Check box if you have a construction contract or subcontract greater than \$100,000.

If both boxes are checked, you are required to comply with Section 3 reporting requirements pursuant to HUD (24 CFR 135). Attach a Section 3 report and submit the report with this GPR.

**Minority Contractor Information**

Provide the total dollar amount of this activity that will be directed towards Firms owned wholly or in substantial part by:

Minority group members

Women

Other (Specify)

Value of Contract

<input type="text" value=""/>
<input type="text" value=""/>
<input type="text" value=""/>

**TYPE OF ASSISTANCE**

1. What type of financing was provided to the beneficiaries:

Grants  Loans   
 No loans or grants

2. Indicate the number of grants and/or loans provided this Report Period:

Grants  Loans

3. Indicate the total number of grants and/or loans provided for the entire contract term:

Grants  Loans

4. When assistance is provided in the form of loans, enter the terms of financing:

	Interest Rate (%)	Number of Months (#)	Loan Amounts (\$)
a. Amortized Loan:	3%	120	70,000
b. Deferred Payment/ Forgiveness Loan:			

**DIRECT BENEFIT**

This page allows you to report on race/ethnicity and income levels of employees for LMJ activities and people for an LMA service area :

Race & Code	Totals	
	All	Hisp
White (11):	0	0
Black/African American (12):	0	0
Asian (13):	0	0
American Indian/Alaskan Native (14):	0	0
Native Hawaiian/Other Pacific Isl. (15):	0	0
Am. Indian/Alaskan Native & White (16):	0	0
Asian & White (17):	0	0
Black/African Am. & White (18):	0	0
Am. Indian/Alaskan & Bick/Afrcn (19):	0	0
Other Multi-Racial (20):	0	0
<b>TOTALS</b>	<b>0</b>	<b>0</b>

Number of Female Head of Households

**INCOME LEVELS**

The number of employees based on income levels:

Employees Total all years

Extremely Low (<30%)	0	0
Low (31%-50%)	0	0
Moderate (51%-80%)	0	0
Non-Low/Moderate Income (+80%)	0	0
Totals	0	0

**Jobs**

1 <b>Proposed:</b>	Full Time		Part Time Weekly Hours	
	Total	Low & Mod	Total	Low & Mod
Expected to Create:	0	0	68	68
Expect to Retain:	0	0	68	68

2 <b>Actual:</b>	Full Time		Part Time Weekly Hours	
	Total	Low & Mod	Total	Low & Mod
Created:	0	0	0	0
Retained:	0	0	0	0

3 What number of jobs have employer sponsored health care benefits:  
 Created: 0 Retained: 0

4 What number were unemployed prior to the jobs created under this activity:

5 Indicate the type of jobs being created or retained:

	Type of Jobs Created:	Jobs Retained:
Officials and Managers	0	0
Professional	0	0
Technicians	0	0
Sales	0	0
Office and Clerical	0	0
Craft Workers (skilled)	0	0
Operatives (semi-skilled)	0	0
Laborers (unskilled)	0	0
Service Workers	0	0

**Business Assistance**

1 **Businesses assisted:**

Number of Existing:	0
Number of New:	1
Total:	1

2 **Of the EXISTING Businesses assisted:**

Number expanding:	0
Number relocating:	0

3 The number of businesses assisted with commercial façade treatment/business building rehab: 0

4 If the activity is serving a Low and Moderate Area, indicate the number of businesses that provide goods or services to meet the needs of a service area, neighborhood or community 0

5 Specify Duns number for each business assisted:

**Name of Business Assisted**

**DUNS Number**

Winters Wine Company, LLC dba Main Street Cellars

96-675-6608

**Accomplishment Narrative (Please provide Activity Accomplishment Narrative**

Loan provided funds for Furniture, Fixtures and Equipment and working capital

**PUBLIC FACILITIES AND IMPROVEMENTS IN SUPPORT OF JOBS**

If the activity has a matrix code from the 03 series (03A-03T) and creates jobs, than complete the following questions:

1. Indicate the number of households assisted, according to the following:

- a. Total benefiting for the program year
- b. Now have new access to this public facility (community facility) or infrastructure improvement (public works):
- c. Now have improved access to this type of public facility (community facility) or infrastructure improvement (public works):
- d. That are served by the public facility (community facility) or infrastructure improvement (public works) that is no longer substandard:


- 2. If the activity provides beds and shelter to the homeless,
  - a. What number of homeless persons were given overnight shelter:
  - b. Indicate the number of beds created in overnight shelter or other emergency housing:


**Grantee Performance Report**

*Appendix B - Displacement*

Report Period

0

Standard Agreement

0

Indicate the census tract of origin:

[Redacted]

Indicate the City:

[Redacted]

Race & Code	Displaced		Remain		Relocated	
	All	Hisp	All	Hisp	All	Hisp
White (11):	0	0	0	0	0	0
Black/African American (12):	0	0	0	0	0	0
Asian (13):	0	0	0	0	0	0
American Indian/Alaskan Native (14):	0	0	0	0	0	0
Nat.Hawaiian/Oth Pacific Isl (15):	0	0	0	0	0	0
Am. Indian/Alaskan Nat. &White (16):	0	0	0	0	0	0
Asian & White (17):	0	0	0	0	0	0
Black/African Am. & White (18):	0	0	0	0	0	0
Am.Indian/Alskn & Blck/Afrcn (19):	0	0	0	0	0	0
Other Multi-Racial (20):	0	0	0	0	0	0

Indicate the census tract of those relocated:

[Redacted]

Indicate the City:

[Redacted]

Race & Code	Displaced		Remain		Relocated	
	All	Hisp	All	Hisp	All	Hisp
White (11):	0	0	0	0	0	0
Black/African American (12):	0	0	0	0	0	0
Asian (13):	0	0	0	0	0	0
American Indian/Alaskan Native (14):	0	0	0	0	0	0
Nat.Hawaiian/Oth Pacific Isl (15):	0	0	0	0	0	0
Am. Indian/Alaskan Nat. &White (16):	0	0	0	0	0	0
Asian & White (17):	0	0	0	0	0	0
Black/African Am. & White (18):	0	0	0	0	0	0
Am.Indian/Alskn & Blck/Afrcn (19):	0	0	0	0	0	0
Other Multi-Racial (20):	0	0	0	0	0	0

If there is more than one census track, indicate the additional census track and race distribution of those relocated.

[Redacted]

Indicate the City:

[Redacted]

**Grantee Performance Report**  
*Appendix C - Presumed Benefit & Nature and Location*

Report Period  
0

Standard Agreement  
0

**1. Presumed Benefit**

IDI:

If the activity is funded under a National Objective Code of Low and Moderate Income Clientele, indicate the number of beneficiaries that fall into one or more of the following categories. Use the following income levels when reporting on the beneficiaries race and income on other pages of the GPR.

Number of:

- |   |                    |
|---|--------------------|
| <input type="checkbox"/> Abused Children                                  | Extreme Low Income |
| <input type="checkbox"/> Battered Spouses                                 | Low Income         |
| <input type="checkbox"/> Severely Disabled Adults (Per Census Definition) | Low Income         |
| <input type="checkbox"/> Illiterate Adults                                | Low Income         |
| <input type="checkbox"/> Persons with Aids                                | Low Income         |
| <input type="checkbox"/> Homeless Persons                                 | Extreme Low Income |
| <input type="checkbox"/> Migrant Farm workers                             | Low Income         |
| <input type="checkbox"/> Elderly Persons                                  |                    |
- Use Moderate Income if at a center with services, if not center based, use Low Income

**2. Nature and Location**

Provide a narrative description of how the nature/location of this activity benefits low and moderate persons:

**Grantee Performance Report**  
*Appendix D - Sub-recipient Agreement*

Report Period  
0

Standard Agreement  
0

## ORGANIZATION CARRYING OUT ACTIVITY

Indicate if the activity will be carried out by one of the following:

- Grantee employees
- Contractors
- Grantee employees & contractors
- By others under a Sub-recipient Agreement

If you are using a Sub-recipient Agreement, indicate the name of the Organization:

Activity is being carried out by:

- A 105 (a) (15) entity as defined under the Housing and Development Act
- Another unit of local government
- Another public agency

Indicate all that applies to this organization:

- Non-profit organization
- For-profit entity
- A faith-based organization
- An institution of higher education

*Code Section 105(a) (15) is from the Housing and Development Act and provides the provision of assistance to neighborhood-based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization, community economic development or energy conservation projects.*

**Grantee Performance Report**  
*Appendix E - Slum & Blight Area*

Report Period

0

Standard Agreement

0

Provide a description of the boundaries of the designated area  
(Not the census tract/block data required for LMA)

Boundaries:

Percent of Deteriorated Buildings/Qualified Properties:

%

Public Improvement/Type Condition:

Provide a brief description identifying each type of improvement / type of condition

Slum/Blight Designation Year



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: December 17, 2013  
THROUGH: John W. Donlevy, Jr., City Manager  
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*  
SUBJECT: Approval of Program Income Reuse Plan

---

**RECOMMENDATION:**

Staff recommends the following:

1. City Council hold a public hearing for comment on the attached Program Income Reuse Plan
2. Adopt Resolution 2013-43 Approving the Program Income Reuse Plan
3. Authorize the City Manager or his designee to submit the Program Income Reuse Plan to HCD

**BACKGROUND:**

Staff has been contacted by HCD regarding the need for an updated Program Income Reuse Plan. A Program Income Reuse Plan details how the funds that we receive in payment for loans made with CDBG funds is to be used in the future. The plan requires that we set up Revolving Loan Accounts (RLA) for specific activities and deposit loan repayments into those RLA's. The City does have a Program Income Reuse Plan on file with HCD, however, it is outdated and they have requested that we submit a new plan.

The new plan is a standardized plan, similar to a standard agreement. The only option the City has in the plan is how the loan repayments are deposited into one of 4 RLA's. The old plan allowed us to say housing loan payments were deposited into housing RLA's and Business loan payments were deposited into business RLA's. Under the new plan, we must deposit a certain percentage of each loan repayment into the RLA's as determined by the plan.

Our new plan states that we will deposit 15% into Housing Rehabilitation Single Family (1-4 units), 15% into Homeowner Assistance, 35% into Business Assistance and 35% into Microenterprise Financial Assistance.

While each deposit must be deposited as above, should we have need to have more funding than in a particular RLA, we can transfer funds between the RLA's with a publicly noticed hearing and permission from HCD.

Should we determine in the future that we need to make permanent changes to the percentage of each payment that is deposited into the RLA's, we can submit a new Program Income Reuse Plan with revised distribution amounts.

**FISCAL IMPACT:**

None

**ATTACHMENTS**

Program Income Reuse Plan

Resolution 2013-43

**CITY COUNCIL  
RESOLUTION 2013-43**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WINTERS ADOPTING A PROGRAM INCOME REUSE PLAN**

**WHEREA** the City of Winters has utilized CDBG funding to provide loans for housing rehabilitation, homeowner assistance and business assistance; and

**WHEREAS**, the City of Winters receives payments from individuals and business for repayment of loans from CDBG funding; and

**WHEREAS**, HCD requires that the City of Winters have a Program Income Reuse Plan in place to direct and determine how the loan payments are to be distributed; and

**WHEREAS**, a properly noticed public hearing was held on December 17, 2013 as required by HCD,

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Winters that:

Section 1. The Program Income report (attached)

- a. is adopted by the City of Winters City Council.
- b. be submitted to HCD by the City Manager or his designee.

**PASSED AND ADOPTED** by the City of Winters this 17th day of December 2013 by the following vote:

**AYES;  
NOES;  
ABSTAIN;  
ABSENT;**

---

Cecilia Aguiar-Curry, Mayor

**ATTEST:**

---

Nanci G. Mills, City Clerk

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
(CDBG)  
PROGRAM INCOME (PI) REUSE PLAN  
WITH  
JURISDICTIONAL CERTIFICATIONS**

*This Agreement provides official notification of the Jurisdiction's PI Reuse Plan's (hereinafter, "PI Reuse Plan") approval under the State's administration of the Federal Community Development Block Grant Program (hereinafter, "CDBG" or "the Program") for Non-entitlement jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. The Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program.*

*By completing this PI Reuse Plan and signing the end of this document, the Authorized Representative certifies the Jurisdiction has read, understands and will adhere to the Program Income (PI) Reuse Plan detailed in the first section of this document, the PI definitions and rules in the second section of this document, and Department of Housing and Community Development (the Department herein) terms and conditions in the third section of this document.*

---

**SECTION ONE: PROGRAM INCOME (PI) REUSE PLAN**

---

**JURISDICTION:** City of Winters

**GOVERNING BODY ADOPTED ON:** 12/03/2013

This PI Reuse plan establishes policies and procedures for the administration and utilization of PI received as a direct result of eligible activities funded under the State of California CDBG Program (Department). All revenue received from CDBG funded activities are required to be used per this adopted plan.

**DISTRIBUTION OF PROGRAM INCOME**

*Introduction: There are six (6) methods of distribution for PI listed below. The four (4) non-Revolving Loan Account obligation methods are optional and can be used on a case-by-case basis as needed for activity funding by the Jurisdiction.*

*The use of one or more Revolving Loan Account (RLA) is mandatory under this adopted PI Reuse Plan.*

The City of Winters certifies that PI will only be distributed, as follows:

1. **Deposit into Revolving Loan Accounts (RLAs)**

The following RLAs are hereby established to utilize the \_\_\_\_\_ City of Winters \_\_\_\_\_ PI. *If an RLA activity is not going to be utilized, zero percent (0%) is to be indicated in percentage area below.* One or more of the RLAs will be utilized annually. The allocation of receipted PI to each RLA is as follows:

- A. 15 (insert percentage, 0 to 100 percent (0%-100%)) of PI received will be deposited into the **Housing Rehabilitation – Single Family (1-4 Units)** Revolving Loan Account (**HR-RLA**).
- B. 15 (insert percentage, 0 to 100 percent (0%-100%)) of PI received will be deposited into the **Homeownership Assistance** Revolving Loan Account (**HA-RLA**).
- C. 35 (insert percentage, 0 to 100 percent (0%-100%)) of PI received will be deposited into the **Business Assistance** Revolving Loan Account (**BA-RLA**).
- D. 35 (insert percentage, 0 to 100 percent (0%-100%)) of Receipted PI will be deposited into the **Microenterprise Financial Assistance** Revolving Loan Account (**ME-RLA**).

2. **PI Waiver Activity**

The \_\_\_\_\_ City of Winters \_\_\_\_\_ may utilize the Department's PI Waiver process to commit PI to eligible activities that are not considered RLAs. The \_\_\_\_\_ City of Winters \_\_\_\_\_ will follow all PI Waiver procedural requirements as stated in the Program Income chapter of the Grant Management Manual (GMM). The \_\_\_\_\_ City of Winters \_\_\_\_\_ will obtain prior Department approval before expending any PI funds on a Waiver project. A PI Waiver project can only be approved if the total project/program cost for the proposed activity is on hand in the Jurisdiction's PI account. The \_\_\_\_\_ City of Winters \_\_\_\_\_ understands that PI Waiver activities are limited to two "active" projects and/or programs and will remain active until close out has been completed and approved by the Department.

3. **Committal to Funding Application**

The \_\_\_\_\_ City of Winters \_\_\_\_\_ may choose to commit non-obligated RLA funds to one or more activities in an annual CDBG application for funding. Committed PI can only be expended when application and activities with committed PI are awarded, contracted, and have all special conditions cleared. PI committed to an application for grant funding must have the PI on hand at the time of application submittal and may not remove or add to the PI amount committed without prior Department approval.

**4. Augmenting Funding to An Awarded Activity/Project**

City of Winters may request that the Department allow PI to be added to a funded activity/project due to a funding short fall. To obtain Department approval, the City of Winters will submit justification to their CDBG Representative outlining in detail the need/reason for the augmentation of funding.

If the Department approves the augmentation (requires a Department contract amendment) the City of Winters would need to complete a Citizen Participation process before the Department would begin a contract amendment process.

This option only applies to awarded activities/projects and the Department will not approve adding a new activity to an awarded contract.

**5. Fund Program Income General Administration (PI GA) Activities**

The City of Winters may set aside up to seventeen percent (17%) of PI received from activities funded with CDBG funds for payment of eligible General Administration costs. The City of Winters may choose to move the PI GA to eligible CDBG activities, as noted above, but once the funds are removed from the PI GA account they cannot be put back at a later date.

**6. Return to the Department**

The City of Winters has the option to return PI back to the Department.

**ADMINISTRATIVE PROCESS FOR DISTRIBUTION OF PROGRAM INCOME**

*Introduction: CDBG is a federal funding source and requires a Citizen Participation process as part of utilizing any of the six (6) methods of distribution for PI listed above.*

*Below is a general description of how to conduct proper Citizen Participation process for each of the six (6) distribution methods. See the Department's current Grant Management Manual (GMM) Chapter on Citizen Participation for specific information and sample documents.*

City of Winters certifies that:

1. The PI Reuse Plan will be formally adopted via public hearing and resolution of City of Winters's Governing Body, executed by Authorized Representative and fully executed by the Department. After the PI Reuse Plan is executed, the Jurisdiction reserves the right to set aside up to seventeen percent (17%) of PI received for payment of eligible GA costs. RLA activities which have PI funds being deposited into them may be activated with written Departmental approval.

The PI Reuse Plan may be amended by the \_\_\_\_\_ City of Winters \_\_\_\_\_'s Governing Body to change the distribution percentages in a RLA via public hearing and resolution, and receipt of the Department's written approval.

2. All PI Waiver requests will be submitted for the Department's written approval. After the Department's review of the activity for Eligibility and National Objective compliance, the PI Waiver will be formally adopted via public hearing and resolution of the \_\_\_\_\_ City of Winters \_\_\_\_\_'s Governing Body, as part of the PI Waiver Special Condition Clearance process.
3. PI committed to an open CDBG Contract to augment funding for an activity or committed to a pending application for grant funds will be formally adopted via public hearing and approval via resolution for an annual application submittal. Department approval and PI must be on hand.
4. Once a PI Reuse Plan has been executed by the Department, it is then in effect. GA PI funds can then be expended for eligible costs. GA PI funds will not be expended once the Reuse Plan is terminated by either party or the Reuse Plan has reached the 5 year expiration.
5. PI will be returned to the Department after a public hearing and formal resolution is passed by the \_\_\_\_\_ City of Winters \_\_\_\_\_'s Governing Body.
6. Each of the above administrative processes must be in compliance with the CDBG Citizen Participation process as specified in federal regulations at 24 CFR 570.486, Local Government Requirements.

### **ADMINISTRATION OF ELIGIBLE ACTIVITIES AFTER DISTRIBUTION**

*Introduction: Administration of all CDBG eligible activities conducted under the distribution methods must be conducted in compliance with all current State and federal regulations and policies.*

*The \_\_\_\_\_ City of Winters \_\_\_\_\_ will follow the Department's guidance for administering RLA activities, PI Waiver activities, or activities funded with PI committed to an open grant contract per the Department's current GMM Chapter regarding PI.*

*If ineligible activities or costs are paid for with CDBG PI, those funds must be returned to the \_\_\_\_\_ City of Winters \_\_\_\_\_ PI account using local jurisdiction funds.*

#### **1. RLA Administration**

The \_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that the four RLAs under this PI Reuse Plan will be administered under the following criteria:

- A. RLAs with a balance must be "**substantially revolving**," which means on an annual basis at least 60 percent (60%) of the funds in an RLA must be used for loans which will be repaid to a PI account, based on the distribution noted in this plan. Up to the remaining 40 percent (40%) may be expended on non-revolving activities, which include Activity Delivery (AD), and grants for the same activity as the RLA.

**Note: General Administration costs are not considered part of the jurisdiction's RLA Activities and should not be used in the consideration of "substantially revolving".**

- B. A RLA which is the same activity as any funded open grant activity will be "substantially expended" before grant funds are requested for the grant activity.

The Department considers "substantially expended", to mean having no more than \$5,000 in a RLA.

- C. PI funds shall not be transferred between RLAs after execution of this Plan without following the proper CDBG Citizen Participation process, which includes a public hearing resulting in a certified resolution being submitted to the Department for written approval. However, the transfer of PI between RLAs each fiscal year, in the aggregate amount of \$5,000 or less, is not be subject to the Citizen Participation requirement, as stated above; but does require prior written Department approval.
- D. All PI funded activities shall be provided to project activities located within the boundaries of the City of Winters.

If an additional jurisdiction(s) receives benefit, a Joint Power's Agreement (JPA) between Jurisdictions(s) is required. The City of Winters must receive written approval from the Department prior to implementation and prior to parties' execution of the JPA between the parties.

- E. The City of Winters will submit program guidelines specific to each RLA activity for written Department approval. Once approval is issued to the Jurisdiction, the RLA will then be deemed active.
- F. This PI Reuse Plan will not be executed by the Department until all RLAs have clear distribution percentages listed above, and have Department approved program guidelines.

All CDBG PI Reuse Plans are limited to a five (5) year term from the date of execution.

PI funds within an RLA cannot be expended until this PI Reuse Plan is executed.

- G. Reporting on RLAs and other PI Activities will be required per the Department's current policies, including financial accounting of PI received and expended for RLAs and other PI Activities. Additionally, PI performance (National Objective data and beneficiary demographics) reported as HUD required accomplishment information will be required to be submitted in a timely manner or the Jurisdiction understands that it will be required to repay a PI account for ineligible cost or activities.

- H. AD costs are **only eligible** if one or more projects are funded and accomplishments (such as beneficiaries), for those activity(ies), on an annual basis, are reported on.

2. **Eligible RLA Activities**

The four (4) RLA(s) listed below each have a single eligible CDBG program activity. The \_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that all CDBG rules pertaining to each eligible activity will be followed.

A. **Housing Rehabilitation Revolving Loan Account**

The CDBG eligible activity under this RLA is a single-family housing rehabilitation program. The program will be used for the purpose of making loans to rehabilitate residential units (1-4 units), occupied by income eligible households. The CDBG National Objective of benefit to Low/Moderate-income (Low/Mod) households will be met by limiting program participants to households that have an annual income at or below eighty percent (80%) of HUD median income limits for the \_\_\_\_\_ City of Winters \_\_\_\_\_'s county. Households will be income qualified based on the income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Rehabilitation of "projects" (projects with five (5) or more units on one site) is not allowed under this RLA. Projects with five or more units must be funded via the annual grant process or through the PI Waiver process.

Jurisdictions wishing to include tenant occupied projects for the Housing Rehabilitation program must submit separate (distinguishable from the Owner Occupied Housing Rehabilitation guidelines) guidelines outlining the unique tenant occupied rules and processes.

The review and funding of requests for CDBG loans or grant assistance under this RLA shall be conducted under the Housing Rehabilitation Program Guidelines that have been adopted by \_\_\_\_\_ City of Winters \_\_\_\_\_ and approved in writing by the Department.

No more than 19 percent (19%) of program funds expended from this RLA shall be used for AD costs.

B. **Homeownership Assistance (Homebuyer) Revolving Loan Account**

The CDBG eligible activity under this RLA is acquisition of single family housing. The program will be used for the purpose of making loans to assist income eligible homebuyers to purchase a residential property (1-4 units). The CDBG National Objective of benefit to Low/Mod-income households will be met by limiting program participants to households that have an annual income at or below eighty percent (80%) of HUD median income limits. Households will be income qualified based on income calculation method specified in 24 CFR Part 5 and in accord with the Department's Income Manual.

The review and funding of requests for CDBG loans or grant assistance under this RLA shall be conducted under the Homeownership Assistance Program Guidelines that have been adopted by the City of Winters and approved in writing by the Department.

No more than 8 percent (8%) of the funds expended from this RLA shall be used for AD costs.

**C. Business Assistance Revolving Loan Account**

The CDBG eligible activity of Special Economic Development will be conducted under this RLA. Specifically, the RLA will fund a business assistance program that provides direct financial assistance for eligible businesses that propose projects which create or retain permanent jobs. The CDBG National Objective being met by the Special Economic Development activity will typically be benefit to Low/Mod-income persons. As such, at least fifty one percent (51%) of the full time job positions created or retained will be made available to persons whose households have an annual income at or below 80 percent (80%) or less of the City of Winters's county median income. Income eligibility is based on the income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Business assistance projects under this RLA program may also meet the National Objective of elimination of slums and blight, but this must be approved by the Department in writing as part of the initial business's loan application.

Local review and underwriting of business assistance projects requesting a CDBG loan under this RLA shall be conducted under the Business Assistance Program Guidelines that have been adopted by City of Winters and approved in writing by the Department.

Each individual project funding request made under this RLA program must be submitted for Department review and written approval, prior to closing the loan.

No more than 15 percent (15%) of the total funds expended for business assistance activities shall be used for AD costs.

**D. Microenterprise Assistance Revolving Loan Account**

The CDBG eligible activity of direct financial assistance to eligible microenterprise businesses will be conducted under this RLA. Specifically, the RLA will fund a microenterprise direct financial assistance program that provides financial assistance to start up or existing microenterprise businesses. Eligible businesses must meet the HUD definition of microenterprise. A microenterprise is defined as a business that has five (5) or fewer employees including the owner(s). The only CDBG National Objective which will be used for this activity is benefit to Low/Mod-income households. As such, micro business owners assisted

under this program must be documented as having an annual household income at or below 80 percent (80%) of the Jurisdiction's **county** median income, based on income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Local review and underwriting of microenterprise business assistance projects requesting a CDBG loan or grant under this RLA shall be conducted under the Microenterprise Financial Assistance Program Guidelines that have been adopted by the City of Winters and approved in writing by the Department.

Each individual project funding request made under this RLA program must be submitted for Department review and written approval, prior to closing the loan.

No more than 15 percent (15%) of the total funds expended for business assistance activities shall be used for AD costs.

**3. Administration of Non-RLA Program Income Expenditures**

**A. Program Income Waiver Eligible Activities**

City of Winters certifies that the PI Waiver Submission Process below will be followed if a PI Waiver is to be requested:

- 1) This process will involve discussion at a properly noticed public hearing, held in front of the City of Winters's Governing Body, and submission of a Certified Resolution as part of a PI Waiver Request to the Department, in accordance with current Department policy, and any subsequent policy, regulation, or statutory-guidance, in writing, from The Department.
- 2) Final commitment and expenditure of PI Waiver funds will not commence until clearance of all required Special Conditions have been met, and written Department approval has been issued to the City of Winters.
- 3) Reporting on PI Waiver activities will take place per current Departmental policies and include financial accounting of PI received and expended for PI Waivers and PI Waiver activity performance.
- 4) PI Waiver activities must be fully funded with program income already on hand. Therefore, future PI may not be pledged to the PI Waiver activity.
- 5) Only two (2) PI Waiver agreements may be open and active at any one time.

**B. Program Income Committed in an Annual Grant Application and Included in an Open Grant Agreement**

\_\_\_\_ City of Winters \_\_\_\_\_ certifies that the PI Committed to a funded Annual CDBG Application will be:

- 1) Funded with PI currently on hand;  
***Future PI may not be pledged to an open grant activity.***
- 2) Expended first and prior to requesting grant funds;
- 3) Administered in accordance with terms and conditions of the grant contract with the Department; and,
- 4) Reported using the Department's current PI and fiscal reporting forms. All PI activity performance data will be reported using grant and fiscal reports.

**C. Program Income Added to an Existing Open Grant**

\_\_\_\_ City of Winters \_\_\_\_\_ certifies that the PI committed to an existing CDBG Grant will be:

- 1) Approved by the Department, with a Grant Amendment fully executed before PI can be committed to a grant activity.
- 2) Funded with PI currently on hand.  
***Future PI may not be pledged to an open grant activity.***
- 3) Expended first and prior to requesting grant funds.
- 4) Administered in accordance with terms and conditions of the grant contract with the Department.
- 5) Reported using the Department's current PI and fiscal reporting forms. All PI activity performance data will be reported using grant and fiscal reports.

**4. Program Income General Administration (PI GA) Cost Limitation and Activities**

\_\_\_\_ City of Winters \_\_\_\_\_ certifies that no more than 17 percent (17%) of the total amount of PI received annually will be expended for PI GA costs. These funds will accumulate annually and be carried from one fiscal year to the next if unexpended.

If more funds are expended than what is available in PI GA, the Jurisdiction will be required to return the over-expended GA amount back into their PI Account. *Additionally, any ineligible PI GA costs will also be required to be returned to their PI Account.*

GA eligible costs for PI are the same as open grant agreements with the Department. See the current CDBG Grant Management Manual (GMM) for list of eligible activities and allowable costs.

PI GA activity costs will be reflected on fiscal reports submitted to the Department as per current reporting forms and policies.

**A. Planning Activities**

The \_\_\_\_\_ City of Winters \_\_\_\_\_ reserves the option of utilizing PI, within the 17 percent (17%) PI GA annual cap to fund planning studies for CDBG eligible activities.

All proposed planning activities must receive written Department approval prior to expending PI on the activity.

Eligible planning activities funded with PI are the same as open grant agreements with the Department. See current NOFA for a list of eligible planning studies.

All planning activities must have a final product (report or study) resulting from the expenditure of PI.

Upon completion of the planning activity, the study must be formally accepted by the Jurisdiction and submitted to the Department for review.

The planning activity costs will be reflected on fiscal reports submitted to the Department.

**B. Loan Portfolio and Asset Management Policies and Costs**

The \_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that it has asset management policies and loan portfolio servicing policies that are in compliance with HUD standards per 24 CFR Part 570. The use of CDBG funds creates public financial assets. The public financial assets created can be in the form of loans or other repayment instruments which result in PI. Financial assets may also be in the form of real property or chattel (equipment and fixtures). All assets created from the use of CDBG funds must be administered in compliance with OMB Circulars A-87, A-122 A-133, 24 CFR Part 85.

Loan payment tracking and collection systems must be put in place for collection purposes of all loans funded with CDBG. In addition, loan servicing policies and procedures must be in place to service the loan assets, ensuring repayment.

Costs of managing the portfolio of CDBG funded loans may be charged to PI under GA within the allowable limits set by the Department.

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## SECTION TWO: JURISDICTION ASSERTIONS AND CERTIFICATIONS

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### 1. Requirements of Program Income

The PI Reuse Plan is intended to satisfy the requirements specified in federal statute and regulation at Section 104(j) of the Housing and Community Development Act ("the Act"), as amended in 1992 and 24 CFR 570.489(e) and (f). These statutory and regulatory sections permit a unit of local government to retain PI for CDBG-eligible community development activities. Under federal guidelines adopted by the State of California's CDBG Program, local governments are permitted to retain PI as long as the local government has received advance approval from the State of a local plan that will govern the expenditure of the PI. This plan has been developed to meet that requirement.

City of Winters certifies that their PI will be used to fund eligible CDBG activities that meet a National Objective and any public benefit requirements. Eligible activities, National Objective and public benefit requirements are specified in Federal Statute at Sections 104(b), 105(a) of The Housing and Community Development Act of 1974, and in Federal Regulations at 24 CFR 570.482 and 24 CFR 570.483. The Jurisdiction understands, if it is determined that an activity/project funded with PI that does not meet a National Objective and/or meet the public benefit requirement, the Jurisdiction will be required to use its own local funds to repay the PI Account.

### 2. Definition of Program Income

"Program Income" means gross income earned by the Jurisdiction from grant-funded activities and is subject to CDBG regulatory requirements pursuant to 24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 570.504 - Program Income, 24 CFR Part 85 - Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Jurisdiction record the receipt and expenditure of PI as part of the financial transactions of the grant activity(ies).

For activities generating PI that are only partially funded with CDBG funds, such income is prorated to reflect the actual percentage of CDBG participation. Examples of PI include but are not limited to: payments of principal and interest on housing rehabilitation or business loans made using CDBG funds; interest earned on PI pending its disposition; interest earned on funds that have been placed in a revolving loan account; net proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; and, income (net of costs that are incidental to the generation of the income) from the use or rental of real property that has been acquired, constructed or improved with CDBG funds and that is owned (in whole or in part) by the participating jurisdiction or sub-recipient.

**3. Federal Nature of Program Income**

\_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that per 24 CFR 570.489(e)(2)(i), as amended in the CDBG Final Rule May 23, 2012, all PI received through a RLA, will be counted as PI regardless of the amount, and all PI generated through an open grant that is \$35,000 or less may either be:

- A. Counted and reported as PI, allowing the Jurisdiction to include that amount in its PI GA (17%) calculation; or,
- B. Not counted as PI and reported as such, which “de-federalizes” the funds, and allows them to be deposited into the Jurisdiction’s General Fund. Supporting accounting records and documentation must be in the Jurisdiction’s file to substantiate the calculations reported.

If PI is generated from a loan that is made partially from a RLA and partially from another source, then the PI accounting and reporting must reflect the correct amounts and proportions of PI from the RLA (counted and reported as PI Income) versus the amount generated from the other source, which may be accounted for and reported using either of the methods above.

**4. Definition of Excessive Program Income**

\_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that if there is excessive PI (\$500,000 or more), which includes GA, at the end of the fiscal year they will be required to submit a plan (included in the Reporting form) for expending the funds to the Department for review and approval. The \_\_\_\_\_ City of Winters \_\_\_\_\_ understands that if no plan is submitted, or the plan is not approved by the Department, it risks having to return the PI to the Department. The \_\_\_\_\_ City of Winters \_\_\_\_\_ agrees to use the Semi Annual PI Report forms to describe the reason(s) for the excessive amount and the method(s)/plan(s)/reason(s) the \_\_\_\_\_ City of Winters \_\_\_\_\_ will use to reduce the amount over the coming year.

Should the Jurisdiction choose to ‘accumulate’ PI to fund a project that will cost more than \$500,000, the Jurisdiction must identify the project in their Semi Annual PI Report form with a detailed narrative about the project and the expected timing for the project to start and complete, with completion including the meeting of a national objective. Approval of a PI balance above \$500,000 will be made on a case-by-case basis.

**5. Reporting of Program Income**

\_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that CDBG PI will be accounted for using the Department’s fiscal year (July 1 to June 30). All receipts and expenditures of PI in accordance with this PI Reuse Plan will be monitored and reported per the Department’s fiscal year cycle. \_\_\_\_\_ City of Winters \_\_\_\_\_ certifies that they will report using the Department’s reports/forms and will submit them in a timely manner.

6. **Duration of This Program Income Reuse Plan**

City of Winters and the Jurisdiction's Governing Body understand that this document is effective for five (5) years from the execution date by the authorized CDBG representative listed in this Agreement unless otherwise notified by the Department. The Department has the Authority to void the Agreement with notice for cause.

7. **Status of Program Income Upon Leaving State Non-Entitlement CDBG Program and Entering the CDBG Entitlement Program**

City of Winters certifies that the Jurisdiction's Governing Body may move the PI earned under the State program to the Entitlement Program if/when the Jurisdiction is authorized and chooses to participate in the CDBG Entitlement Program provided the Jurisdiction's Governing Body certifies that the City of Winters has:

- A. Officially elected to participate in the Entitlement Grant Program;
- B. Agrees to use such PI in accordance with Entitlement Program requirements; and,
- C. Sets up Integrated Disbursement Information System (IDIS) access and agrees to enter receipt of PI into IDIS.
- D. The City of Winters submits the above to the State and receives the Department's approval to no longer report State CDBG PI to the Department.

8. **Status of Program Income Upon Entering the State Non-Entitlement CDBG Program from the Entitlement CDBG Program**

City of Winters certifies that the Jurisdiction's Governing Body will inform the Department in writing of the Jurisdiction's decision to either:

- A. Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or
- B. Retain the program income and transfer it to the State CDBG program, in which case the Jurisdiction will certify that it will comply with the state's rules for program income and the requirements of 24 CFR 570.489(e) and (f).

9. **Amendment of PI Reuse Plan**

City of Winters certifies that it will adopt and submit for Department written approval a new version of this plan as updates are released by the Department.

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## SECTION THREE: DEPARTMENT TERMS, CONDITIONS AND AUTHORIZATION

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**TERMS AND CONDITIONS:** City of Winters certifies that all terms and conditions listed below have been read and understood, and will be implemented and followed:

### 1. **Authority & Purpose**

This Agreement provides official notification of the Jurisdiction's PI Reuse Plan's (hereinafter, "PI Reuse Plan") approval under the State's administration of the Federal Community Development Block Grant Program (hereinafter, "CDBG" or "the Program") for Non-entitlement jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. The Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program.

In accepting the PI Reuse Plan Approval, the Jurisdiction agrees to comply with the terms and conditions of this Agreement, all exhibits hereto and the representations contained in the Jurisdiction's PI Reuse Plan. Any changes made to the PI Reuse Plan after this Agreement is accepted must receive prior written approval from the Department of Housing and Community Development (Department).

### 2. **Distribution for Reuse of PI**

A. The Jurisdiction shall perform PI funded activities as described in the Distribution for Reuse in the PI Reuse Plan. All written materials or alterations submitted as addenda to the original PI Reuse Plan and which are approved in writing by the Department are hereby incorporated as part of the PI Reuse Plan.

The Department reserves the right to require the Jurisdiction to modify any or all parts of the PI Reuse Plan in order to comply with CDBG requirements. The Department reserves the right to review and approve all Work to be performed by the Jurisdiction in relation to this Agreement. Any proposed revision to the Work must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval shall not be presumed unless such approval is made in writing by the Department.

B. The PI funded activities shall principally benefit Low/Mod-income persons or households (Low/Mod) whose income is no more than 80 percent (80%) of the median area income.

**3. Sufficiency of Funds and Termination**

The Department may terminate this Agreement at any time for cause by giving at least 14 days written notice to the Jurisdiction. Termination shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

**4. Meeting National Objectives**

All activities performed under this Agreement must meet one of the National Objectives determined by the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974, as amended.

- A. Benefit to HUD defined Low/Mod-income person or household (LMI). The term Low/Mod-income is defined under CDBG as no more than 80 percent (80%) of the median area income, as determined by HUD, per Federal Regulation 24 CFR, Part 570.483(b); and/or;
- B. Prevention or elimination of slums or blight. In order for an activity to meet the National Objective of elimination of slums and blight, the activity must take place in an area that meets the definition of a blighted area and the project must be shown to eliminate blight or prevent further blight per Federal Regulation 24 CFR, Part 570.483(c).
- C. For Microenterprise Assistance activities, the Jurisdiction must only meet the benefit to Low/Mod-income person or household (LMI) National Objective.

**5. Inspections of Activities**

- A. The Department reserves the right to inspect any activity(ies) performed hereunder to verify that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Jurisdiction shall inspect any activity performed by contractors and subrecipients hereunder to ensure that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.

The Jurisdiction agrees to require that all activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

**6. Insurance**

The Jurisdiction shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Jurisdiction and the Department to be necessary for specific components of the activity(ies) described in this Reuse Plan.

**7. Contractors and Subrecipients**

- A. The Jurisdiction shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.
- 1) Contractors are defined as program operators or construction contractors who are procured competitively.
  - 2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.
- B. An agreement between the Jurisdiction and any contractor or subrecipient shall require:
- 1) Compliance with the applicable State and federal requirements of this Agreement, which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
  - 2) Maintenance of, at minimum, the State-required Workers' Compensation Insurance for those employees who will perform the activity(ies) or any part of it.
  - 3) Maintenance of, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the activity(ies) or any part of it.
  - 4) Compliance with the applicable Equal Opportunity Requirements described in this Agreement.
- C. Contractors shall:
- 1) Perform the activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.
  - 2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

- 1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of five (5) years from date of termination of this Agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, and any amendments, whichever is later.
- 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

8. **Obligations of the Jurisdiction with Respect to Certain Third Party Relationships**

The Jurisdiction shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Activities funded under this agreement with respect to which assistance is being provided under this Agreement to the Jurisdiction.

The Jurisdiction shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Jurisdiction, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974.

9. **Periodic Reporting Requirements**

During the term of this Agreement, the Jurisdiction must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Jurisdiction's performance under this Agreement will be based, in part, on whether it has submitted the reports on a timely basis.

- A. **Semi-Annual PI Expenditure/Performance Report:** Submit by January 31 and July 31 of each year regardless of whether or not the Jurisdiction has any unspent PI. PI Waivers or open Grants with no accomplishment are not excluded to the reporting requirement.
- B. **Annual Federal Overlay Reporting:** Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State Fiscal Year. Annual Reporting includes but is not limited to: Section 3, and Minority Owned Business/Women Owned Business (MBE/WBE).

- C. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.
- D. Any other reports that may be required as a Special Condition of this Agreement.

**10. Monitoring Requirements**

The Department shall perform a program and/or fiscal monitoring of the activity(ies). The Jurisdiction shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Jurisdiction's performance score on future applications.

Additionally, the Department reserve the right to suspend a jurisdiction's authority to expend PI (Waiver, RLA and/or PI attached to an open grant) based on significant compliance issues, reporting concerns or serious lack of cooperation in clearing PI monitoring findings.

**11. Signs**

If the Jurisdiction places signs stating that the Department is providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the project that the Department is a source of financing through the CDBG Program.

**12. Audit/Retention and Inspection of Records**

- A. The Jurisdiction must have intact, auditable fiscal records at all times. If the Jurisdiction is found to have missing audit reports from the SCO during the term of this Agreement, the Jurisdiction will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Jurisdiction will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Jurisdiction's audit completion plan is subject to prior review and approval by the Department.
- B. The Jurisdiction agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Jurisdiction agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Jurisdiction further agrees to maintain such records for a period of five (5) years after final

payment under this Agreement. The Jurisdiction shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.

- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Jurisdiction.
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.
- E. For the purposes of annual audits under OMB Circular A-133 (The United States Office of Management and Budget Circular for Audits of States and Local Governments), Jurisdiction shall use the Federal Catalog Number 14.228 for the State CDBG Program.
- F. Notwithstanding the foregoing, the Department will not reimburse the Jurisdiction for any audit cost incurred after the expenditure deadline of this Agreement.
- G. The jurisdiction understands that the expenditure of PI is covered under the OMB A-133 Single Audit Requirements and will meet all these requirements and report said PI Expenditure along with grant funds each fiscal year.

**13. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials**

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Jurisdiction, or its designees or agents, no member of the Governing Body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Jurisdiction shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

**14. Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Jurisdiction of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

**15. Litigation**

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Jurisdiction shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

**16. Lead-Based Paint Hazards**

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Jurisdiction with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. The Jurisdiction shall be responsible for the notifications, inspections, and clearance certifications required under these Regulations.

**17. Prevailing Wages**

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Jurisdiction shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Jurisdiction and a licensed building contractor, the Jurisdiction shall serve as the "awarding body" as that term is defined in the LC. Where the Jurisdiction will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

**18. Compliance with State and Federal Laws and Regulations**

- A. The Jurisdiction agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Jurisdiction, its subcontractors, contractors or subcontractors, and the Reuse activity(ies), and any other State provisions as set forth in this Agreement.
- B. The Jurisdiction agrees to comply with all federal laws and regulations applicable to the CDBG Program and to the activity(ies), and with any other federal provisions as set forth in this Agreement.

**19. Anti-Lobbying Certification**

The Jurisdiction shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this activity(ies) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

"The undersigned certifies, to the best of his or her knowledge or belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and,
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions."

**20. Bonus or Commission, Prohibition Against Payments of**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the Department's approval of the Application for such assistance; or,
- B. The Department's approval of the Applications for additional assistance; or,
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

**21. Citizen Participation**

The Jurisdiction is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

**22. Clean Air and Water Acts**

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

**23. Conflict of Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. The Jurisdiction shall report all perceived or actual conflicts of interest cases to the State for review before financial benefits are given.

**24. Environmental Requirements**

The Jurisdiction shall comply with the provisions of the National Environmental Policy Act (NEPA) by following the procedures contained in 24 CFR, Part 58. The Jurisdiction shall not undertake any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR, Part 58.22 until HUD or the Department has issued an environmental clearance.

25. **Equal Opportunity**

A. **The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances**

During the performance of this agreement, the Jurisdiction assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

B. **Rehabilitation Act of 1973 and the "504 Coordinator"**

The Jurisdiction further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR, Part 8, including, but not limited to, for Jurisdiction's with fifteen (15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

C. **The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance**

- 1) The activity(ies) to be performed under this Agreement are subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR, Part 135.34(a)(2).
- 2) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 3) The Jurisdiction will include these Section 3 clauses in every contract and subcontract for Work in connection with the activity(ies) and will, at the direction of the Department, take appropriate action pursuant to the contract or subcontract upon a finding that the Jurisdiction or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR, Part 135 and, will not let any contract unless the Jurisdiction or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- 4) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the activity(ies), binding upon the Jurisdiction, its successors, and assigns. Failure to fulfill these requirements shall subject the Jurisdiction, its contractors and subcontractors and its successors, to such sanctions as are specified by 24 CFR, Part 135 and those sanctions specified by this Agreement.

D. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or More

The Jurisdiction hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Jurisdiction furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

**26. Flood Disaster Protection**

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3 (a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said Act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.
- C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required

notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

**27. Federal Labor Standards Provisions**

The Jurisdiction shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from (1) providing, attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Jurisdiction shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

**28. Procurement**

The Jurisdiction shall comply with the procurement provisions in 24 CFR, Part 85.36: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

**29. Non-Performance**

The Department shall review the actual National Objective and/or Public Benefit achievements of the Jurisdiction. In the event that the National Objective and/or Public Benefit requirements are not met, the Department will require the recapture of the entire PI expended on that project/activity. Additional remedies may include suspending the Jurisdiction's authority to use PI funds until the Jurisdiction has developed capacity to ensure future PI funds will be used for eligible activities that will meet a National Objective.

**30. Relocation, Displacement, and Acquisition**

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any acquisition of real property is carried out by the Jurisdiction and assisted in whole or in part by funds allocated by CDBG.

**31. Uniform Administrative Requirements**

The Jurisdiction shall comply with applicable Uniform Administrative Requirements as described in 24 CFR, Section 570.502, including cited Sections of 24 CFR, Part 85.

**32. Section 3**

The Jurisdiction will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

**33. Affirmatively Furthering Fair Housing**

The Jurisdiction will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the Jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

**34. General Contract Conditions**

The following conditions apply to all activities, including set aside activities. The Jurisdiction must meet the conditions within ninety (90) days of this Agreement's execution. Failure to meet the following Special Conditions may result in termination of this Agreement.

**A. Environmental Compliance**

The Jurisdiction shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Jurisdiction. The level of compliance varies by activity. NEPA review must be completed by the Jurisdiction for each activity and approved in writing by Department staff prior to incurring costs on the activity(ies).

**B. Acquisition/Relocation Compliance**

The Jurisdiction must document its compliance with the Uniform Relocation Act, Section 104(d) before release of funds by the Department. The Jurisdiction must submit a specific relocation assistance plan for each activity which may result in temporary or permanent displacement. For projects where there will be temporary or permanent displacement, the Jurisdiction must submit signed General Information Notices (GINs) from

each tenant who was residing in the project at the time of Application submittal. If the Jurisdiction believes that there will be no displacement as a result of their activities, they must submit a letter explaining why no displacement or relocation will occur, which will be subject to written approval by the Department.

C. Site Control

The Jurisdiction shall demonstrate site control of the proposed project property by submitting evidence of one or more of the following to the Department:

- 1) Fee title;
- 2) A leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all Program requirements;
- 3) An option to purchase or lease;
- 4) A disposition and development agreement with a public agency;
- 5) A land sale contract, or other enforceable agreement for the acquisition of the property; or,
- 6) All easements and right-of-ways (required for completion of the CDBG project) must be obtained.

D. Funding Commitments and Project Cost Estimates

All funding required for project completion must be documented and committed. If all funding is not committed, the Department shall terminate this Agreement. If the Jurisdiction has applied for other funding prior to the execution of this Agreement, the Jurisdiction must notify the Department as soon as that application is approved or denied. If the Jurisdiction must apply for other funding after the execution date of this Agreement, the Jurisdiction must apply at the earliest possible opportunity offered by the other funding source(s) and notify the Department as soon as that application is approved or denied.

A current third-party cost estimate must be provided by the engineer or architect for the project.

E. Activity Administration Documentation

There are four methods of administering and/or completing RLA activities:

- 1) Use of in-house staff only;
- 2) Subrecipient agreement(s) with qualified non-profit(s);

- 3) Consultants/contractors/others obtained through federal procurement procedures; and,
- 4) Any combination of the above methods.

The Jurisdiction must provide the following documentation demonstrating that one or more of these methods were used for the GA of the RLA and for all activities carried out under this Agreement.

- 1) Use of in-house staff only: If not previously provided in the Application, submit staff resumes and duty statements that clearly identify that Jurisdiction staff has capacity and experience to complete administration of the proposed activities in the Application.
- 2) Subrecipient agreement(s) with qualified non-profit(s): Subrecipients, and their respective agreements with the Jurisdiction must adhere to all Program requirements. Submit the subrecipient agreement that was executed between the non-profit and the City of Winters. (Submitting draft documents for review prior to execution is recommended.) The scope of work in the subrecipient agreement must match the description of activity in this Agreement. Any parts of the activity description in this Agreement not covered by the subrecipient agreement must have separate procurement information. If the subrecipient is using CDBG funds to hire other consultants or subrecipients to do part or all of the Work then the procurement documentation or additional subrecipient agreements must be provided to the Department for review and approval.
- 3) Consultants: Submit procurement documentation that all third-party consultants are procured in accordance with Federal Procurement Procedures and the Grant Management Manual, as follows:

A copy of the document used to notify prospective consultants, such as a Request for Proposal or similar document.

A list of all bid respondents, showing respondents' contact information and the dollar amount of each proposal.

A brief description of the process used to select the consultant/contractor/other, including the rationale for the selection.

Additional information may be found in the Grant Management Manual, Program Operators.

#### F. Compliance With All Loans and/or Grant Agreements

Pursuant to this Agreement, the Jurisdiction must comply with State and Federal Laws and Regulations that pertain to matters applicable to the Jurisdiction. Prior to disbursement of any funds under this Agreement, the

Jurisdiction shall be in compliance with all loan and/or grant agreements to which it is a party, which are administered by the Department.

G. Easements and Rights-of-Way

If required for the completion of a CDBG project, the Jurisdiction must obtain all easements and rights-of-ways required for completion of the CDBG project within twelve (12) months of execution of this Agreement. Failure to obtain these may result in termination of this Agreement.

H. Section 504 Accessibility Requirements

- 1) Section 504 Regulations apply when CDBG funds are used on a new construction housing or public facility project or when an existing public facility or housing project with fifteen (15) or more units is being purchased and/or "substantially" rehabilitated. Qualified CDBG assisted housing projects are required to have a certain percentage of the units designed for and accessible to persons with mobility and sensory impairments.
- 2) For a federally assisted new construction housing project, Section 504 requires five percent (5%) of the dwelling units, or at least one unit, whichever is greater, to meet Uniform Federal Accessibility Standards or a standard that is equivalent or stricter, for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.
- 3) Under Section 504, alterations are substantial (i.e. substantially rehabilitated ) if they are undertaken to a housing project that has 15 or more units and the cost of the alterations is seventy-five percent (75%) or more of the replacement cost of the completed facility; and require that a minimum of five percent (5%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with mobility disabilities and an additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with hearing or visual disabilities.
- 4) The Jurisdiction shall provide documentation satisfactory to the Department verifying that the required housing units or public facility described in the project comply with the accessibility standards. CDBG funds will not be released until the necessary documentation is provided. All CDBG funded programs must, to the greatest degree possible, be conducted in buildings which meet Section 504 accessibility standards.

I. Grantee's Data Universal Numbering System (DUNS)

The Jurisdiction shall provide the Department with a DUNS number for any contractor or subcontractor prior to release of any funds under this Agreement.

35. Community Development Activity Conditions

A. Homeownership Assistance

If the Work to be performed under this Agreement involves Homeownership Assistance, the following additional special conditions apply:

- 1) Program Guidelines: The Jurisdiction must submit a copy of its Homeownership Assistance Program Guidelines and its PI Re-Use Plan to the Department for review and approval within ninety (90) days of the execution date of this Agreement.
- 2) If the Jurisdiction proposed to assist homebuyers to purchase newly constructed units in its CDBG application under the Homeownership Assistance activity, the following requirements must be met:
  - a) The units must have been available for sale to the general public;
  - b) Development of the new subdivision must not be dependent upon the funding of the homebuyer loan;
  - c) CDBG funds shall not be used for construction; and,
  - d) Homeownership Assistance loans will not be approved prior to the foundation of the housing being in place.

B. Housing Rehabilitation

If the Work to be performed under this Agreement involves Housing Rehabilitation, the following additional special conditions apply:

- 1) Program Guidelines: The Jurisdiction must submit a copy of its Housing Rehabilitation Program Guidelines and its PI Re-Use Plan to the Department for review and approval.
- 2) Affordable Rent: If the Jurisdiction's Housing Rehabilitation Program provides for rehabilitating rental properties, the Jurisdiction must submit to the Department its provisions for assuring affordable rent for the LMI occupants. Jurisdiction may include this information as part of the Housing Rehabilitation Program Guidelines.

**36. Economic Development Activity-Specific Conditions**

**A. Restrictions on CDBG-Assisted Public Property**

CDBG funds can be used by the Jurisdiction to purchase or rehabilitate public property. The change of use of real property provisions contained in 24 CFR 570.489(i) apply to real property within the unit of general local government's control (including activities undertaken by subrecipients), which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (currently \$100,000). The restrictions shall apply from the date CDBG funds are first spent for the property until five (5) years after completion of the project. See the Federal Regulations for the full text of this regulation. The Jurisdiction must provide documentation of proper restriction on assisted property.

**B. Business Assistance Activity**

- 1) Jurisdictions implementing Business Assistance (BA) Loans, shall submit program guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements" and with public benefit requirements contained in 24 CFR 570.482(f).
- 2) Jurisdictions implementing a BA loan shall provide a written Employment Agreement required to be executed between the Jurisdiction and the business owner [requirements of the Employment Agreement are described in 24 CFR 570.506 (b), (5), and (6)]. The written Employment Agreement must include a commitment by the business that the jobs are to be created or retained by the termination date of this Agreement and that at least fifty-one percent (51%) of all jobs created or retained (on a FTE basis) will be held by LMI persons. The Employment Agreement shall specify that, prior to receiving assistance, the business shall agree to:
  - a) Provide a listing, by job title, of the permanent jobs projected to be created;
  - b) Identify which jobs, if any, are part-time and the annual hours of work for each position;
  - c) Identify which jobs are projected to be filled by LMI; and,
  - d) Provide periodic reporting (semi-annual) not limited to: listing jobs, by job title, of all the permanent jobs actually filled, and which of those jobs are held by members of the LMI.

C. Microenterprise Assistance Activities

- 1) Jurisdictions implementing a Microenterprise Assistance activity for technical assistance and/or microenterprise loans, shall submit program guidelines that ensure compliance with CDBG requirements. Specifically, guidelines must ensure that all beneficiaries of the program are eligible micro enterprises, per HUD definitions. A microenterprise must:
  - a) Have all owners of the business documented as meeting HUD family income eligibility standards; and,
  - b) Have documentation that the business's owners and employees are five (5) or fewer in number.
- 2) When implementing a Microenterprise Program, the program guidelines shall include the proposed benefits, eligible activities and ongoing evaluation of program services. The guidelines will include a Beneficiary Tracking Plan, which defines the goals; identifies the roles and responsibilities of the service providers; identifies the market and focuses the outreach; defines the screening and referral process; and, tracks the beneficiaries through the program's level of service. The Beneficiary Tracking Plan shall also describe the roles and responsibilities of the Jurisdiction and/or program operator for meeting the reporting requirements of the State CDBG Program.
- 3) When implementing a Microenterprise Program that is part of an integrally-related component of a larger project where non-LMI persons will be extended training and supportive services, shall submit guidelines including the methodology describing how CDBG funds will only be used towards the assistance of LMI to LMI persons under the Jurisdiction's activity.
- 4) Jurisdictions implementing a Microenterprise activity for loans to microenterprises made with Grant funds or PI funds, shall submit guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR, Part 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."
- 5) If under this Agreement, a Microenterprise Façade Improvement activity is being implemented, the Jurisdiction shall submit program guidelines that ensure compliance with CDBG National Objective requirements, as described in 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."

D. Required Agreements for Assisted Businesses

The Jurisdiction shall execute a written agreement between the Jurisdiction and the business receiving CDBG funds (loans or grants) under this Agreement to ensure compliance with CDBG State and federal regulations. The written agreement shall contain language to ensure each business complies with the terms of this Agreement, Exhibit A, as well as each of the criteria as set forth in 24 CFR 570.506 (b)(4) and (c).

- 1) Each agreement between the Jurisdiction and the business(es) shall be submitted to the Department for review and written approval, prior to execution by the business and City of Winters.
- 2) Each agreement shall require the business to report employee information periodically (semi-annual) to the Jurisdiction. The report shall list each job position by job title and number of annual hours worked and LMI status. The report shall list all the permanent jobs actually created or retained, and identify which of those job positions are held by members of the LMI. Additionally, the report shall include the demographics of job holders (ethnicity/race, disability, status, gender, and head of household status).
- 3) Each agreement shall require the business(es) submit a Data Universal Numbering System (DUNS) number and be verified as not being on the current federal debarred list, prior to receiving any CDBG financial assistance. The agreement shall require proof of proper insurance for secured collateral and protecting the Jurisdiction. The agreement shall reference this Agreement between the Department and the Jurisdiction. The agreement shall contain all other special conditions as directed by the Department or local loan committee. The agreement shall include but is not limited to the following conditions:
  - a) Maintaining a specific annual debt service level; and,
  - b) Requiring a quarterly review of the businesses financial statements with the owner and accounting staff.

37. Community and Economic Development Planning Activities

A. Non-Implementation Activity

In some cases, the Department may allow a Jurisdiction to first complete a Household Income Survey and/or a Market Study in order to document low-income benefit for the proposed study. In such cases, the Jurisdiction must conduct the survey according to CDBG standards and submit the survey for review and written approval by the Department, prior to initiating any further study activities. All Non-Implementing/Planning Activities pursuant to this Agreement must be funded with PI General Administration (PI GA).

B. Implementation Activity

Implementation Activities are not permitted under this Agreement using PI GA funds.

Certified Approving Resolution Is Attached

*I certify that the foregoing is true and correct, and will follow all requirements of this agreement. I understand that my certification also acknowledges that serious compliance issue with the above requirements could result in the State suspending \_\_\_\_\_ City of Winters \_\_\_\_\_ authority to expend PI or may require \_\_\_\_\_ City of Winters \_\_\_\_\_ to return unused PI to the State until the \_\_\_\_\_ City of Winters \_\_\_\_\_ clears the serious compliance issues.*

\_\_\_\_\_  
Signature of Authorized Representative

12/18/2013  
\_\_\_\_\_  
Date Signed

John W. Donlevy, Jr., City Manager  
\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature of CDBG Section Chief

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Name of CDBG Section Chief



**CITY COUNCIL  
STAFF REPORT**

**TO:** City Council  
**DATE:** December 17, 2013  
**FROM:** Cecilia Aguiar Curry, Mayor and Harold Anderson, Councilmember  
**SUBJECT:** City Manager Employment Agreement- John W. Donlevy, Jr.

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**RECOMMENDATION:**

That the City Council:

Adopt RESOLUTION No. 2013-44, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS APPROVING A CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY AND JOHN W. DONLEVY, JR. AND AUTHORIZING MAYOR TO EXECUTE SAME

**BACKGROUND:**

Since 2011, there have been a number of modification to the California Government Code in relation to executive employment agreements. This has required that the City Council and City Manager, John W. Donlevy, Jr. review the employment agreement between the City and Donlevy to reflect the mandated provisions of the Government Code Section 53243 et seq.

Donlevy was hired in August, 2001 and his employment began on September 10, 2001.

**DISCUSSION:**

The attached resolution and employment agreement establishes the terms and conditions of employment as City Manager for John W. Donlevy, Jr. The following are some of the key provisions:

1. **Term:** The agreement is for a three (3) year period ending on December 31, 2016. The agreement allows for a two (2) year renewal beginning in January, 2017.

2. **Compensation:** Monthly pay is set at \$10,398, vacation is 18 days per year and all other benefits are the same as Department Heads with the City.
3. **Vacation Cash-out Accrual Cap:** The agreement provides that, at termination Donlevy may cash out a maximum of 500 hours in the form of cash. All vacation accrual in excess of 500 hours must be allotted to either deferred compensation or deposited in a medical savings account.
4. **Automobile:** The City provides an automobile for business, community and personal use.
5. **Donation to General Fund:** Donlevy will continue to donate both deferred compensation and administrative leave benefits (approximately \$14,000) to the City's General Fund in support of both the Community Center and City Pool through the end of Fiscal Year 2013-14.
6. **Termination:** The agreement provides a process for the termination of the City Manager. It includes a twelve month severance provision as well as the parameters for establishing cause which would not enable severance.
7. **Compliance with Government Code 53243:** Under Government Code Section 53243, the agreement is required to have a provision whereby no compensation and subsequent reimbursement by the City Manager occurs if any form of criminal acts occur based on Donlevy's employment with the City. The agreement includes this provision.

The agreement has been modified in its format but mostly resembles the provisions of the previous agreement between Donlevy and the City. As presented, the agreement includes no increases in compensation or benefits, yet establishes more onerous provisions to reflect compliance with the government code.

**FISCAL IMPACT:**

None by this action.

RESOLUTION No. 2013-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS  
APPROVING A CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY  
AND JOHN W. DONLEVY, JR. AND AUTHORIZING MAYOR TO EXECUTE SAME

WHEREAS, the City Council appointed John W. Donlevy, Jr. as City Manager and his employment began on September 10, 2001; and

WHEREAS, modifications in the Government Code regarding executive employment agreements has changed in recent years requiring a revision to the previous agreement between the City and Donlevy; and

WHEREAS, the parties have made the appropriate revision to reflect the mandates of the Government Code and reached agreement on matters relating to the employment conditions of the City Manager, as reflected by the written contract attached hereto and made a part hereof; and

WHEREAS, this Council finds that the provisions and agreements contained in said Employment Agreement are fair and proper and in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF WINTERS DOES HEREBY RESOLVE AS FOLLOWS:

- Section 1. The City Council hereby affirms the appointment and employment of John W. Donlevy, Jr., as City Manager on September 10, 2001.
- Section 2. The Employment Agreement between the City and John W. Donlevy, Jr. is attached hereto and incorporated herein, is hereby approved.
- Section 3. The Mayor is hereby authorized and directed to execute said agreement on behalf of the City of Winters.

PASSED AND ADOPTED by the City Council of the City of Winters this 17<sup>th</sup> day of December, 2013, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Cecilia Aguiar-Curry, MAYOR

ATTEST:

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Nanci G. Mills, City Clerk

## EMPLOYMENT AGREEMENT

**THIS AGREEMENT** is between the City of Winters, a municipal corporation (the “City”) and John W. Donlevy, Jr. (“Donlevy”). It is effective on the latest date next to the signatures on the last page (the “Effective Date”). This Agreement is entered into on the basis of the following facts, among others:

- A. The City Council of the City desires to employ Donlevy as the City Manager of the City, and Donlevy desires to accept this employment.
- B. The City and Donlevy desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

**BASED UPON THE FOREGOING, THE CITY AND DONLEVY HEREBY  
AGREE AS FOLLOWS:**

1. Employment. The City employs Donlevy as City Manager, and Donlevy accepts the employment, as of the effective date below. The City Manager shall also serve as the executive head of any other City-related entities (including but not limited to a successor agency, housing agency, financing authority, etc.) when designated to do so by the City Council.

2. Duties of Donlevy. Donlevy shall perform the duties established for the City Manager by state law, Section 2.08 of the City’s Municipal Code, the City Manager job description, the directions of the City Council, and as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Donlevy shall faithfully, diligently, and to the best of Donlevy’s abilities, perform all duties that may be required under this Agreement. Donlevy agrees that he has a duty of loyalty and a general fiduciary duty to the City. Donlevy shall devote the whole of Donlevy’s working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the City’s business and affairs.

(b) No Conflict. Donlevy shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. Donlevy shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Donlevy's City employment. Donlevy is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position. Donlevy shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, or which interferes with the performance of Donlevy's duties. Further, Donlevy shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Winters (except for stock ownership in any company whose capital stock is publicly held and regularly traded) without prior approval of the City Council. For and during the term of this Agreement, Donlevy further agrees, except for a personal residence or residential property acquired or held for future use as Donlevy's personal residence, not to invest in any other real estate property improvements within the corporate limits of the City without the prior consent of the City Council.

(c) Hours of Work. The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times. It is recognized that the City Manager must devote a great

deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule and location of work each day and week will vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

3. Term. The term of this Agreement shall be for a period of three (3) years from the Effective Date through December 31, 2016, unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee. At the City's option, this Agreement may be renewed for one additional two (2) year term beginning on January 1, 2017 by giving Employee notice of renewal no later than twelve (12) months prior to the end of the current term (i.e. not later than December 31, 2015). If no notice of renewal is given by City, the Agreement shall remain in effect for the remaining months of the current term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that allowing the Agreement to expire at the end of this Term or any renewal term shall not be deemed a termination triggering any severance payment whatsoever.

4. Annual Evaluation. Each year on or about the anniversary of the Effective Date, or at a time mutually agreed upon by the City Council and Donlevy, the City Council shall conduct an evaluation of Donlevy's performance and provide guidance and direction regarding the City Council's goals and objectives which Donlevy shall be tasked with implementing.

5. Compensation.

(a) Salary. Donlevy shall receive the gross base salary of ten thousand three hundred ninety-eight dollars (\$10,398) per month, payable on a pro-rata basis in the same

manner as all full time City employees, and subject to all applicable payroll taxes and withholdings. The salary may be subsequently amended by Resolution of the City Council.

(b) Annual Salary Adjustments. At the City Council's sole discretion, salary adjustments may be given to Donlevy at or around the time of the annual review and evaluation by the City Council or by a Salary Resolution of the City Council.

(c) Reduction in Salary or Benefits. In the event the City implements cost-saving measures, such as work furloughs, salary reductions changes to health or welfare benefits and allowances (as defined in Section 6), or any other changes to the monetary terms applicable to the City's department heads, Donlevy will receive the same downward adjustment or adhere to the same change in terms. In the event that such cost-saving measures are subsequently eliminated (i.e. former salary or benefit levels are restored) for the department heads, Donlevy will receive the same restoration of salary or benefits as the department heads.

6. Regular Benefits and Allowances. Except as otherwise provided in this Agreement, Donlevy will be eligible for all regular health and welfare benefits, and at the same levels, as are provided to the City's Department Head employees. Such benefits include health insurance, long term disability insurance, life insurance, longevity benefits, CalPERS miscellaneous employee retirement benefits, a deferred compensation (457) plan, workers compensation coverage, and unemployment benefits.

(a) For the CalPERS retirement benefit, the City shall pay both the employer contribution and Employee's contribution.

(b) City will contribute an amount equal to seven percent (7%) of Donlevy's salary to the 457 Plan provided by the City. However, for the period between July 1, 2013 and June 30, 2014, Donlevy agrees that such contribution shall be donated back to the City's General Fund to support City services.

(c) Donlevy shall be eligible for the City's cafeteria plan benefits contribution in the same amount provided to Department Head employees of the City. If Donlevy can provide proof of coverage from other sources, then the cafeteria contribution paid to him in cash or contributed to the 457 plan (subject to contribution limits established by law.)

7. Additional Benefits and Allowances. Donlevy shall receive the following additional benefits and allowances.

(a) Vacation; Administrative Leave; Sick Leave and Holidays.

(i) Vacation. Donlevy shall accrue eighteen (18) vacation days per year at a rate of twelve (12) hours per month. An accrual cap of five hundred (500) hours shall apply for hours which can be converted to cash value at the time of Donlevy's separation from City service (at the then-applicable salary rate) or at any other time approved by the City Council. Any vacation accrual in excess of five hundred (500) hours shall be deposited into either the City's deferred compensation plan or medical savings account.

(ii) Administrative Leave. Donlevy shall receive the same Administrative Leave benefit applicable to the City's Department Heads.

Sick Leave, Bereavement, and Holidays. Donlevy shall be entitled to observe the same City holidays, and to receive and use sick leave and bereavement leave on the same basis as other City employees. Accrued sick leave is not eligible for a cash-out at any time by Donlevy and any remaining accrued sick leave at time of Donlevy's retirement will be governed by the rules and restrictions as detailed in the then-existing CalPERS contract.

Automobile. Donlevy is on call twenty-four hours per day and shall be given exclusive and unrestricted use of a City automobile. The City shall be responsible for all insurance, operation, maintenance, and repair of the automobile and shall replace it on an as needed basis.

8. Termination of Employment.

(a) No Property Interest. Donlevy understands and agrees that Donlevy has no constitutionally-protected property or other interest in Donlevy's employment as City Manager. Donlevy understands and agrees that Donlevy works at the will and pleasure of the City Council, and that Donlevy may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. "Termination" by City, as used in this Agreement, shall also include 1) a request that the City Manager resign; 2) a reduction in salary or other financial benefits of the City Manager in a significant amount which is inconsistent with a reduction in salary or financial benefits for the City's Department Head employees; 3) a material reduction in the powers and authority of the City Manager (excluding placement on paid administrative leave); or 4) the elimination of the City Manager's position.

(b) In the event the City terminates Donlevy for any reason or no reason, the City and the Donlevy agree that no member of the City Council, the City Management staff, nor Employee shall make any written, oral or electronic statement to any member of the public, the press or any City employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City and the Manager. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

(c) Termination Immediately Before or Following City Council Election. Donlevy shall not be removed during the 90-day period immediately preceding or following a City election for membership on the City Council, nor during the 90-day period

immediately following any change in membership of the City Council. Nothing in this paragraph alters the “at will” status of Donlevy’s employment with City.

(d) Notice Required Of Donlevy. Donlevy may voluntarily terminate employment at any time by giving not less than thirty (30) days’ notice.

(e) Severance Pay. If Donlevy is asked to resign or is terminated as City Manager, then Donlevy shall be eligible to receive (i) a cash payment equivalent to the sum of Donlevy’s then-current monthly salary multiplied by twelve (12) or [pursuant to Government Code section 53260] by the remaining number of months in the Agreement, whichever is less; and (ii) the cash value, as determined by the City, of Donlevy’s monthly non-salary COBRA-eligible benefits multiplied by twelve (12) or by the remaining number of months in the Agreement, whichever is less. Any such cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Donlevy shall also be paid for any accrued, but unused, vacation leave and/or administrative leave. Eligibility for such severance payment is expressly conditioned upon Donlevy’s execution of (i) a waiver and release of any and all of Donlevy’s claims against City and all City employees/officials, and (ii) a covenant not to sue the City or any City employees/officials. No severance pay shall be paid until the foregoing conditions are met and any applicable revocation rights have expired. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section.

(f) Ineligibility for Severance Under Certain Conditions. If Donlevy is terminated because of conviction of any illegal activity involving personal gain to himself, fraud, moral turpitude, gross mismanagement of City affairs, or willful breach of this agreement, the City shall have no obligation to pay the aggregate severance sum designated.

(g) Termination Due to Death or Disability. This Agreement shall terminate automatically, without triggering any severance payment obligations, upon the death of Donlevy or upon separation of Donlevy from employment due to permanent disability which prevents him from performing the essential functions of the City Manager position even with reasonable accommodations. As used here, "disability" shall have the same meaning applicable under CalPERS retirement programs. Neither Donlevy nor his heirs, administrators, or assigns shall have any right under this Agreement to salary for periods after such death or disability, but they shall have such rights and benefits as are otherwise provided by law (including the right to receive the cash value of Donlevy's accrued vacation and administrative leave).

9. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) The cost to defend and indemnify Donlevy to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Donlevy and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, reasonable dues for Donlevy's membership in professional organizations associated with the office of City Manager. The City will allow Donlevy reasonable time away from the City to participate in the annual conferences of these organizations.

(d) Subject to budget approval, the cost of attending conferences or other events (i.e dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Donlevy's duties.

10. Indemnification. City shall defend, hold harmless and indemnify Donlevy against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise arising out of an alleged act or omission occurring in the performance of Donlevy's duties in accordance with the provisions of the California Government Code Section 825. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered there from.

11. Miscellaneous.

- (a) Notices. Notices given under this Agreement shall be in writing and shall be:
- (i) served personally; or
  - (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or
  - (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
  - (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City Clerk  
318 First Street  
Winters, CA 95694  
Fax: (530) \_\_\_\_\_

DONLEVY:

John W. Donlevy, Jr.  
1107 Roosevelt Avenue  
Winters, CA 95694

(b) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(c) Compliance with Government Code §§53243, 53243.1, & 53243.2.

If Donlevy is convicted of a crime involving an abuse of his office or position, all of the following shall apply:

(i) if Donlevy is provided with administrative leave pay pending an investigation, Donlevy shall be required to fully reimburse the City for such amounts paid;

(ii) if the City pays for the criminal legal defense of Donlevy (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Donlevy shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Donlevy may receive from the City shall be fully reimbursed to the City or void if not yet paid to Donlevy.

For this subsection, “abuse of office or position” means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(d) Attorney's Fees. Except as provided elsewhere in this Agreement, if any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(e) Severability. In the event any portion of this Agreement is declared illegal, unenforceable or void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Donlevy and City agree that venue for any dispute shall be in Yolo County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Donlevy may not assign this Agreement in whole or in part.

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

CITY OF WINTERS

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

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

DONLEVY

\_\_\_\_\_  
Employee

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

Alternate Section 3 Provision:

3. Term. The term of this Agreement shall be for a period of three (3) years from the Effective Date through December 31, 2016, unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee. The Term of this Agreement shall automatically renew and extend for an additional two (2) year term beginning January 1, 2017 unless written notice not to renew and extend is given by City to Donlevy no later than twelve (12) months prior to the renewal date (ie. Not later than December 31, 2015) If notice of non-renewal is given by City, the Agreement shall remain in effect for the remaining months of the current term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that allowing the Agreement to expire at the end of this Term or any renewal term shall not be deemed a termination triggering any severance payment whatsoever.