



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, November 18, 2014
6:30 p.m.
AGENDA

Members of the City Council

*Cecilia Aguiar-Curry, Mayor
Woody Fridae, Mayor Pro-Tempore
Harold Anderson
Wade Cowan
Pierre Neu*

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

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

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, November 4, 2014 (pp 5-8)
- B. Selection of Project Manager for Federal Projects (pp 9)
- C. Resolution 2014-35, A Resolution of the City Council of the City of Winters Amending the 2014-2015 Budget for Open Purchase Orders as of 6-30-14 (pp 10-11)
- D. Resolution 2014-36, A Resolution of the City Council of the City of Winters Authorizing the Execution of a Standard Agreement for the State of California Housing-Related Parks Program Grant (pp 12-25)
- E. Parade Permit and Amplified Sound Permit Applications for St. Anthony's Parish on Sunday, December 7, 2014 for Our Lady of Guadalupe Celebration (pp 26-32)
- F. Final Acceptance of Public Improvements for St. Anthony's Church (pp 33)

PRESENTATIONS

Presentation by Gene Ashdown, City of Winters Building Official and Safety Assessment Program Volunteer for the 2014 South Napa Earthquake That Occurred on August 24th, 2014

DISCUSSION ITEMS

- 1. Disposition and Development Agreement Between the City of Winters and Royal Guest LLC for the Development of a Downtown Hotel (pp 34-74)
- 2. Facility Bond Update by Brent Cushenbery, Winters Joint Unified School District Superintendent (pp 75-84)

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

1. None
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CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the November 18, 2014 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 November 13, 2014, and made available to the public during normal business hours.

Nanci G Mills by Tracy Jensen
Nanci G. Mills, City Clerk

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

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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 Regular Meeting of the Winters City Council
Held on November 4, 2014

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

Present: Council Members Harold Anderson, Wade Cowan, Woody Fridae,
Pierre Neu and Mayor Cecilia Aguiar-Curry
Absent: None
Staff: City Manager John Donlevy, City Attorney Ethan Walsh, City Clerk
Nanci Mills, Housing Programs Manager Dan Maguire, Public
Works Superintendent Eric Lucero, Environmental Services
Manager Carol Scianna, and Management Analyst Tracy Jensen.

Dave Adams led the Pledge of Allegiance.

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

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

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, October 21, 2014

- B. Street Closure Request and Amplified Sound Permit Application by Winters Chamber of Commerce for Friday, November 7th for a Street Festival Featuring Pikes Place Fish Throwers
- C. Forced Main Pigging (Cleaning) by Ryan Process

City Manager Donlevy gave an overview. Motion by Council Member Neu, second by Council Member Fridae to approve the Consent Calendar. Motion carried with the following vote:

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

DISCUSSION ITEMS

1. Second Reading and Adoption of Ordinance 2014-05, an Ordinance of the City Council of the City of Winters Approving a Third Amendment to the Development Agreement By and Between the City of Winters and Turning Point Acquisitions V, LLC for the Hudson Ogando Subdivision

City Manager Donlevy gave an overview. Motion by Council Member Cowan, second by Council Member Neu to waive the second reading and adopt Ordinance 2014-05 approving a third amendment to the Development Agreement by and between the City of Winters and Turning Point Acquisitions V, LLC for the Hudson Ogando Subdivision. Motion carried with the following vote:

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

2. Approval of a USDA Pre-Application for Loan/Grant for New Wastewater Pump Station and Upgrades to Existing Pump Stations at El Rio Villa and East Street

City Manager Donlevy gave an overview. Motion by Council Member Neu, second by Council Member Cowan to approve the USDA Pre-Application for Loan/Grant for a new Wastewater pump station and upgrades to the existing pump station at El Rio Villa and East St. Motion carried with the following vote:

AYES: Council Members Anderson, Cowan, Fridae, Neu, Mayor Aguiar-Curry
NOES: None

ABSENT: None
ABSTAIN: None

3. Approval of an Exclusive Negotiating Rights Agreement between the City of Winters and Urban Community Partners in Regards to a Downtown Mixed Use Project (APN# 003 224 001)

Council Member Anderson recused himself due to a possible conflict of interest.

Housing Programs Manager Dan Maguire gave an overview. Mayor Aguiar-Curry said this mixed-use project might tap into a new group of residents who prefer to rent space instead of buying a house. Ian Gillis, along with partners Keith McCoy and Will Leighton from Urban Community Partners said they want to create something different. Council Member Fridae asked if they planned to follow the previous illustrations and drawings of the project and Ian said they plan to build residential above retail. Council Member Cowan said the corner of Railroad and Main is one of the main corners in town and comes with a lot of expectations and he hopes Urban Community Partners will live up to the challenge. Mayor Aguiar-Curry said infill projects are important and walk ability is huge, and hopes they take full advantage of the large lot. Council Member Neu said he was looking forward to seeing what they come up with in 180 days. Mayor Aguiar-Curry welcomed Urban Community Partners to Winters.

Motion by Council Member Cowan, second by Council Member Fridae to approve the Exclusive Negotiation Rights Agreement between the City of Winters and Urban Community Partners in regards to a Downtown Mixed Use project. Motion carried with the following vote:

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

4. Joint Use Service Agreement with Winters Joint Unified School District

Council Member Anderson returned to the dais at this time.

Public Works Superintendent Eric Lucero gave an overview. Council Member Neu asked if this agreement had gone before the WJUSD union. Eric said if Council approves the agreement, he will then contact Brent Cushenbery. Mayor Aguiar-Curry asked if this would save the school and the City a lot of money. Eric said it would allow for more efficient water usage resulting in lower water bills, which would in turn save thousands of dollars. Council Member Cowan

said as a member of the 2X2 committee with the school district, he is eager to see this arrangement work and be beneficial for all.

Motion by Council Member Fridae, second by Council Member Anderson to approve the Joint Use Service Agreement with Winters Joint Unified School District. Motion carried with the following vote:

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

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

1. None

CITY MANAGER REPORT: Last Thursday was the conviction of William Gardner in the murder of Leslie Pinkston, so the case has become "un-gagged." The City Manager and Chief Gutierrez will work on a presentation to bring before Council to give a view of how the investigation, search, capture, and conviction of the suspect occurred and the incredible professional work done by the Winters Police Department. On November 18, a candlelight vigil will be held at 6:00 p.m. for Leslie Pinkston following the submission of a parade permit brought in today, which has been authorized. There will be no street closure and no parade, just a gathering on the sidewalk. Calie's Carnival will be held on Sunday, 11/9 to raise money for Leslie Pinkston's daughter's college fund.

The first interview for the project management for federally funded engineering projects was held, with two to follow. A recommendation will come before Council on 11/18, requesting authorization to select one of the engineering firms. Staff can then begin negotiating a contract, which will come back to Council on 12/2. Discussion will also include an overview of how staff will working with the new project manager and Ponticello Enterprises.

ADJOURNMENT: Mayor Aguiar-Curry adjourned the meeting at 7:10 p.m.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: November 18, 2014
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*
SUBJECT: Approve Selection of Project Manager for Federal Projects

RECOMMENDATION:

Staff recommends that the City Council approve the selection of Willdan Engineering as Project Manager for Federal Projects for the City of Winters, and authorize the City Manager to enter into contract negotiations with Willdan Engineering for providing Project Management services for Federal Projects.

BACKGROUND:

On September 16, 2014 the City of Winters sent out a Request for Qualifications (RFQ) for Project Management services associated with the delivery of federal aid projects. The RFQ response was due on October 10, 2014. The City received responses from the following firms:

- SalasO'brien
- Willdan Engineering
- Pennino Management Group

Staff reviewed the submittals, and interviewed all three respondents. After going through the interviews and using a scoring sheet to determine the best fit of experience and staffing, staff concluded that Willdan Engineering would be the best fit for the Project Management services for Federal Projects.

FISCAL IMPACT:

None at this time.



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: November 18, 2014
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Shelly A. Gunby, Director of Financial Management *Shelly*
SUBJECT: Budget Adjustments for Fiscal Year 2014-2015

RECOMMENDATION:

Approve Resolution 2014-35 Approving Budget Adjustments for Fiscal Year 2014-2015 for open purchase orders as of June 30, 2014.

BACKGROUND:

As of June 30, 2014 approximately \$303,614.19 in purchase orders that were issued but not all services and/or products have been rendered/received. These amounts were approved in the 2013-2014 budget. Each year, the amount of open purchase orders from the prior year are included as budget adjustments in the current year.

This is an annual budget adjustment to encumber the funds committed at year end for multiple year projects.

FISCAL IMPACT:

None

RESOLUTION 2014-35

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
AMENDING THE CITY OF WINTERS 2014-2015 ADOPTED OPERATING
BUDGET FOR OPEN PURCHASE ORDERS AS OF JUNE 30, 2014**

WHEREAS, On June 17, 2014 the City Council of the City of Winters adopted operating budget for Fiscal Year 2014-2015 and 2015-2016; and

WHEREAS, items budgeted in 2013-2014 had purchase orders issued, but merchandise was not delivered, or projects were incomplete as of June 30, 2014.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Winters that the adopted operating budget for fiscal year 2014-2015 be amended as follows:

Section 1: Increase budgeted expenditures in the following funds and accounts

a. 101-54419-161 Misc Professional Services-Housing and Ec. Dev	25,000.00
b. 101-52912-210 Technical Supplies-Police	3,653.78
c. 289-54411-660 Engineering-Dry Slough Bridge	17,087.03
d. 355-54419-510 Misc. Professional Svcs-RLF	5,000.00
e. 101-52913-310 Minor Tools-Fire	115.30
f. 101-52715-310 Vehicle Repair-Fire	323.40
g. 101-54411-161 Engineering –Housing	694.55
h. 278-54419-510 Misc. Professional Svcs-Prop 84 Park Grant	178,274.40
i. 102-54419-410 Misc. Professional Svcs-Planning	5,815.77
j. 621-57913-640 Capital Acquisitions-Sewer	87.35
k. 251-57611-210 Vehicle Additions-Police	1,732.57
l. 101-52914-210 Ammo-Police	61.81
m.278-54411-650 Engineering-Prop 84 Park Grant	40,829.00
n. 113-54419-510 Misc. Professional Svcs-Housing Bonds	24,939.23

PASSED AND ADOPTED by the City Council, City of Winters, this 18th day of November 2014 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: November 18, 2014

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

FROM: Dan Maguire, Economic Development and Housing Manager *DM*

SUBJECT: Resolution of the City Council of the City of Winters Authorizing the Execution of a Standard Agreement for the State of California Housing-Related Parks Program

RECOMMENDATION:

Staff recommends the City Council approve Resolution 2014-36, a Resolution of the City Council of the City of Winters, Authorizing Execution of a State of California Standard Agreement for Housing-Related Parks Grant.

BACKGROUND:

On April 21, 2009, the Community Development Agency (\$300,000 grant from Bond Proceeds) and the City Council (\$300,000 CDBG Loan) approved the funding for the development project known as the Almondwood Apartments, an acquisition and rehabilitation project for an existing 39 multi-family complex. The Almondwood Apartments had expiring affordability covenants and was at risk of conversion to market rate units. The rehabilitation of the property, located at 801 Dutton Street has been completed, with approximately \$30,000 per unit expended on the upgrades. As a result of the financial support from the City, the property now has a new 55-year affordability covenant. It is now owned by Central Valley Coalition for Affordable Housing, also the owner of the Orchard Village multi-family complex.

On October 2, 2013, the California Department of Housing and Community Development ("HCD") released a Housing-Related Park Program 2013 Designated Program Year Notice of Funding Availability ("NOFA"). This NOFA is a non-competitive grant based on granting park funds to communities that created new affordable housing, or substantially rehabilitated affordable housing, or preserved affordability housing during the period 2010 through June of 2013. The program rewards communities on a per bedroom basis, with additional funding provided for deeper affordability. They also

provide bonus funding for a variety of additional criteria, such as whether it was an infill project, whether the designated park targeted for the grant funds qualifies as being a infill supporting park, whether the community is deemed to be a park deficient community, and also rewards progress on the Regional Housing Needs Assessment ("RHNA") goals.

On November 3, 2014, Staff received the Award letter, Standard Agreement, and the Standard Agreement Exhibits for the award of \$117,225.00 for the Housing-Related Park grant. In a separate communication received on October 27, 2014, the State communicated that an authorizing resolution was a requirement of the grant. Staff will manage the grant

FISCAL IMPACT:

This successful grant award will result in \$117,225.00 being awarded to the City for the Walnut Park project.

ATTACHMENTS:

Resolution 2014-36

State HCD Award Letter, Standard Agreement, and Exhibits

Resolution No. 2014-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
AUTHORIZING EXECUTION OF THE STATE STANDARD AGREEMENT FOR
HOUSING RELATED PARKS PROGRAM GRANT

WHEREAS, The State of California, Department of Housing and Community Development (Department) issued a Notice of Funding Availability dated October 2, 2013 (NOFA), under its Housing-Related Parks (HRP) Program.

WHEREAS, By Resolution Number 2014-04, The City of Winters was authorized to apply for a HRP Program grant and submitted the 2013 Designated Program Year Application Package released by the Department for the HRP Program.

WHEREAS, The Department is authorized to approve funding allocations for the HRP Program, subject to the terms and conditions of the NOFA, Program Guidelines, Application Package, and Standard Agreement.

WHEREAS, The Department awarded Applicant an HRP Program Grant in the amount of \$117,275.00.

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

1. Applicant is hereby authorized and directed to enter into, execute, and deliver a State of California Standard Agreement (Standard Agreement), for an HRP Program Grant in the amount of \$117,225.00, and any and all other documents required or deemed necessary or appropriate to secure the HRP Program Grant from the Department, and all amendments thereto (collectively, the "HRP Grant Documents").
2. Applicant shall be subject to the terms and conditions as specified in the Standard Agreement. Funds are to be used for allowable capital asset project expenditures to be identified in **Exhibit A** of the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement. Applicant hereby agrees to use the funds for eligible capital asset(s) in the manner presented in the application as approved by the Department and in accordance with the NOFA and Program Guidelines and Application Package.
3. That the City Manager and any designee(s) are authorized to execute the HRP Grant Documents as required by the Department for participation in the HRP Program.

DULY AND REGULARLY ADOPTED this 18th day of November, 2014 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

The undersigned Mayor of the Applicant here before named does hereby attest and certify that the forgoing is a true and full copy of a resolution of the City of Winters City Council adopted at a duly convened meeting on the date above-mentioned, which has not been altered, amended or repealed.

CITY OF WINTERS

Cecilia Aguiar Curry, Mayor

ATTEST:

Nanci G. Mills, City Clerk

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
ADMINISTRATION AND MANAGEMENT DIVISION**

2020 W. El Camino Avenue, Suite 330, 95833
P. O. Box 952050, Sacramento, CA 94252-2050
(916) 263-6928 / FAX (916) 263-6917
www.hcd.ca.gov



NOV 02 2014

Mr. John W. Donlevy, Jr.
City Manager
City of Winters
318 First Street
Winters, CA 95694

Dear Mr. Donlevy, Jr.:

**Re: Housing-Related Parks Program
Contract No. 14-HRPP-9188**

Attached is an electronic copy of the State's Housing-Related Parks (HRP) Program Standard Agreement which includes the following:

- Standard Agreement (Std. 213)
- Exhibit A – Authority, Purpose, and Scope of Work
- Exhibit B – Budget Detail and Payment Provisions
- Exhibit C – State of California General Terms and Conditions (Incorporated by reference)
- Exhibit D – HRP Program General Terms and Conditions
- Exhibit E – HRP Program Special Terms and Conditions

To ensure efficient processing of the Standard Agreement, please do the following:

1. Review the Standard Agreement thoroughly and if necessary discuss the requirements with your legal and financial advisors;
2. Print five (5) copies of the Standard Agreement, Std. 213 cover page.
3. Ensure all copies of the Standard Agreement are signed by the appropriate authorized official as designated in the resolution. Please be sure to include the printed name, title and date signed. If a signed resolution was not submitted with the HRP Program Application, please return a certified copy of the resolution along with the signed Standard Agreement copies.
4. Return the five (5) copies of the Standard Agreement along with a certified copy of the resolution, if needed; no later than 30 days from the date of this letter to:

Department of Housing and Community Development
Business and Contract Services Branch
P.O. Box 952050
Sacramento, CA 94252-2050

Standard Agreements not returned within the required 30-day period may be subject to cancellation by the Department.

Maintain the electronic version of the Standard Agreement (Std. 213 and Exhibits A through D) in your pending file. Upon receipt of the five (5) original, signed Standard Agreement cover pages, HCD will complete the approval process and send you an electronic copy of the completed, fully executed, original Standard Agreement along with an originally signed copy sent by U.S. Mail.

Please contact James Johnson, your HRP Program representative, at james.johnson@hcd.ca.gov or (916) 263-7426 if you have any questions regarding the Standard Agreement or the provisions therein.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer P. Seeger". The signature is written in a cursive, flowing style.

Jennifer P. Seeger
HRP Program Manager

cc: Dan Maguire, Economic Development and Housing Manager

AGREEMENT NUMBER 14-HRPP-9188
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
 CONTRACTOR'S NAME
City of Winters
- The term of this Agreement is: **Upon HCD Approval through 09/30/2016**
- The maximum amount of this Agreement is: **\$117,275.00**
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A - Authority, Purpose and Scope of Work	2
Exhibit B - Budget Detail and Payment Provisions	2
Exhibit C - State of California General Terms and Conditions*	GTC - 610
Exhibit D - HRPP Terms and Conditions	2
Exhibit E - Special Terms and Conditions	1
Exhibit F - Additional Provisions	0

TOTAL NUMBER OF PAGES ATTACHED: 7 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.documents.dgs.ca.gov/ols/GTC-610.doc>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Service Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc) City of Winters		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 318 First Street, Winters, CA 95694		
STATE OF CALIFORNIA		
AGENCY NAME Department of Housing and Community Development		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Cathy Parr, Contracts Manager, Business & Contract Services Branch		
ADDRESS 2020 W. El Camino Ave, Sacramento, CA 95833		
		<input checked="" type="checkbox"/> Exempt per:SCM 4.04.A.3 (DGS Memo dated 6/12/81)

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

Housing-Related Parks (HRP) Program Grant

1. **Authority**

Pursuant to Chapter 8 of Part 2 of Division 31 of the California Health and Safety Code, commencing with Section 50700, as added by Section 1 of Chapter 641 of the Statutes of 2008, the State of California Department of Housing and Community Development (herein referred to as the "State" or the "Department") has established the Housing-Related Parks (HRP) Program (the "Program"). This Standard Agreement (the "Agreement") is entered into under the authority of, and in furtherance of the purposes of, the Program as set forth in Health and Safety Code Section 50701. Pursuant to Health and Safety Code Sections 50702 and 50704.5, the State has issued a Notice of Funding Availability, dated October 2, 2013 (NOFA) and Program guidelines dated September 2013 (the "Guidelines") governing the Program.

2. **Purpose**

In accordance with the authority cited above, the Contractor has applied to the State for financial assistance (the "Application") in the form of a grant from the Program (the "Grant"). The State has agreed to make the Grant, as a financial incentive based on the issuance of housing starts, for housing units affordable to very low- and low-income households by the Contractor pursuant to the terms of the NOFA, the Guidelines and this Agreement. Based on the representations made by the Contractor in its Application, which is hereby incorporated as if set forth in full, the State shall provide a Grant in the amount shown below for the purpose of paying for capital improvement(s) related to the acquisition, rehabilitation, or construction of a Park and Recreation Facility.

The State and the Contractor have agreed to enter into this Agreement in accordance with the terms and conditions herein, subject to all the provisions of the applicable statutes, the NOFA, the Guidelines and further subject to the State laws and requirements governing State contracts. Capitalized terms herein shall have the meaning of the definitions set forth in the Guidelines.

3. **Scope of Work**

Development of Walnut Park.

EXHIBIT A

Grant Timelines

No work performed prior to the effective date of this Agreement or after June 30, 2016, shall be funded. The effective date of this Agreement is the date it is executed by the State, after execution by the Contractor. All funds must be requested from the Department no later than April 30, 2016. For the purpose of this Agreement, no funds may be expended after June 30, 2016. It is the responsibility of the Contractor to monitor the project and timeliness of draws within the specified dates.

4. Grant Amount

The total amount of this Grant is \$ 117,275.00.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

HRP Program Grant

1. **Allowable Uses of Grant Funds**

- A. Grant funds shall only be used for projects approved by the State that involve the construction, rehabilitation, and/or acquisition of capital assets as defined by the California Government Code, Section 16727(a) that benefit the community within the Contractor's jurisdiction and as further set out in Section 108 of the Guidelines. Capital assets include tangible physical property with an expected useful life of fifteen (15) years or more, equipment with an expected useful life of two (2) years or more, or major maintenance, reconstruction, or demolition for purposes of reconstruction and/or retrofitting work.
- B. Incidental expenses shall not be paid by Grant funds unless they are directly related to the construction or acquisition of an eligible capital asset. Such expenses include costs associated with planning, engineering, construction management, environmental impact reports, appraisals, site acquisitions, or necessary easements.
- C. Grant funds shall not be expended for the administrative costs of persons directly employed by the Contractor or for other "soft" costs that are not directly related to the construction, rehabilitation or acquisition of capital assets.

2. **Performance**

Contractor shall take such actions, pay such expenses and do all things necessary to complete the Work specified in Exhibit A in accordance with the schedule for completion set forth therein and within the terms and conditions of this Agreement.

3. **Fiscal Administration**

- A. Term: The effective date of this Agreement is the date upon which it is executed by the State (the date stamped in the lower right portion of the Standard Agreement (Std. 213) through September 30, 2016. All funds must be requested by the Contractor by April 30, 2016 and expended by June 30, 2016. This Agreement shall terminate September 30, 2016.
- B. The Contractor shall make any and all request(s) for disbursement no earlier than ninety (90) days from the anticipated need for the funds, using the forms provided by the State. The forms will be made available at <http://www.hcd.ca.gov/hpd/hrpp>. The Contractor shall expend the funds within 90 days from the date of receipt from the State, or by June 30, 2016, whichever occurs earlier and subsequent supporting documentation shall be submitted to the Department.
- C. Failure to expend contract funds in a timely manner may affect future funding.

EXHIBIT B

- D. A separate checking account for the Grant funds is not required. However, the Contractor shall deposit Grant funds in an interest bearing checking or savings account, or the State may require the Contractor to deposit all Grant funds into a segregated account in an institution whose deposits are insured by the federal or state government. All interest earned from the deposit of Grant funds shall be used for allowable, Program purposes and accounted for to the State. All funds not expended within 90 days of receipt, or by June 30, 2016, as applicable, shall be returned to the State with accrued interest.
- E. The Contractor shall make a good faith effort to minimize the number of disbursement requests to the State by anticipating and requesting in advance the maximum amount of funds that can be expended within the (ninety) 90 day time frame.
- F. The Contractor shall inform the State within a reasonable amount of time in the event that expenditures related to an authorized project(s) are less than the total Grant award. The Contractor may expend the balance of Grant funds on additional capital assets projects, upon written State approval. Contractor shall provide the State with a letter of request that describes the additional project(s) to be funded.
- G. The Contractor shall immediately inform the State, no later than December 31, 2015, if the Contractor anticipates it will not be able to expend all Grant funds by June 30, 2016.
- H. The Contractor is responsible for maintaining records which fully disclose the activities funded by the Grant. Adequate documentation of each transaction shall be maintained to permit the determination, through an audit if requested by the State, of the accuracy of the records and the allowability of expenditures charged to Grant funds. If the allowability of expenditure cannot be determined because records or documentation are inadequate, the expenditure may be disallowed, and the State shall determine the reimbursement method for the amount disallowed. The State's determination of the allowability of any expense shall be final, absent fraud, mistake or arbitrariness.
- I. Any Grant funds remaining unexpended as of June 30, 2016, must be returned to the State with accrued interest. Checks shall be made payable to the Department of Housing and Community Development (HCD) and shall be mailed to the Department at the address below, no later than July 31, 2016.

Department of Housing and Community Development
Accounting Division
2020 W. El Camino Ave.
P.O. Box 952050
Sacramento, California 94252-2050

EXHIBIT D

HRP PROGRAM GENERAL TERMS AND CONDITIONS

HRP Program Grant

1. Report Requirements

During the term of this Agreement, the Contractor shall submit the following reports by the deadlines specified, or as otherwise required at the discretion of the State:

- A. The Contractor shall submit annual reports to the State thirty (30) days after December 31st of each year ("Annual Report"), during the term of this Agreement for as long as the Contractor has not expended all Grant funds. The Annual Report shall contain (1) the progress the Contractor has made in completing the approved projects partially or wholly funded by the Grant, including a description of the community benefit; (2) the amount of Grant funds drawn down and expended to date by the Contractor; and (3) a description of projects completed. The Contractor shall use the forms provided by the State made available at <http://www.hcd.ca.gov/hpd/hrpp>; and,
- B. Upon complete expenditure of the Grant funds, the Contractor shall submit a final report in a manner satisfactory to the State ("Final Report"). The Final Report shall be submitted to the State within 60 days of June 30, 2016, the date all funds must be expended. The Final Report shall contain (1) a description of the final capital assets constructed or purchased with the Grant funds; and, (2) the number of certificates of occupancy issued in relation to the number of building permits issued in the program year. The Contractor shall use the forms provided by the State made available at <http://www.hcd.ca.gov/hpd/hrpp>.

2. State Contract Coordinator

The state contract coordinator of this Agreement for the Department is the HRP Program Manager, Division of Housing Policy Development, or the Manager's designee ("State Contract Coordinator"). Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed first class to the State Contract Coordinator at the following address:

Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Ave, P.O. Box 95250
Sacramento, California 94252-2050
Attention: HRP Program Manager

3. Audit/Retention and Inspection of Records

Contractor agrees that the Department or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Contractor agrees to provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal

HRP Program Grant – Round 3
NOFA Date: 10/02/13
Rev. Date: 8/15/14
Prep Date: 8/20/14

EXHIBIT D

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 the California Public Contract Code Section 10115 et seq., the California Government Code Section 8546.7 and Title 2, California Code of Regulations, Section 1896.60 et seq. Contractor further agrees to maintain such records for a period of three (3) years after final payment under this Agreement. Contractor shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in the California Public Contract Code Section 10115.10.

4. Special Conditions

The State reserves the right to add any special conditions to this Agreement it deems necessary to assure that the policy and goals of the Program are achieved.

5. Prevailing Wages

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, Contractor shall ensure that the requirements of Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purpose of this requirement "construction work" includes, but is not limited to rehabilitation, alternation, 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 the properly licensed building contractor incorporating these requirements (the "construction contractor"). Where the construction contract will be between the Contractor and a licensed building contractor the Contractor shall serve as the "awarding body" as that term is defined in the California Labor Code. Where the Contractor 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 State may require a certification from the awarding body that prevailing wages have been or will be paid.

EXHIBIT E

HRP PROGRAM SPECIAL TERMS AND CONDITIONS

HRP Program Grant

The following Special Terms and Conditions are applicable to this Agreement and shall control notwithstanding anything to the contrary herein:

1. No grant funds will be disbursed until the Department has been provided with and approves an acceptable updated resolution authorizing the exact grant award amount encumbered by this Standard Agreement.

HRP Program Grant – Round 3
NOFA Date: 10/02/13
Rev. Date: 8/15/14
Prep Date:



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE : November 18, 2014
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Nanci G. Mills, Director of Administrative Services
SUBJECT: Parade Permit and Amplified Sound Permit Applications for St. Anthony Parish on Sunday, December 7, 2014 for Our Lady of Guadalupe Celebration

RECOMMENDATION: Staff is recommending the approval of the applications for Parade Permit and Amplified Sound Permit submitted by St. Anthony Parish

BACKGROUND: The procession is scheduled to take place on Sunday, December 7, 2014 between the hours of 11:30 p.m. to 12:00 p.m. The parade route is from the intersection of Main Street and Railroad Avenue and ending at St. Anthony Church at 511 Main Street, Winters, approximately one-half mile.

FISCAL IMPACT: St. Anthony will provide vested church members to provide traffic control at stop signs along the parade route. It is recommended a barricade be placed at Main and Cody Streets warning drivers traveling south from Grant Avenue of the procession ahead.



PARADE PERMIT APPLICATION

Today's Date: October 31, 2014 Date & Time of Parade: 12/7/14 - 11³⁰am - 12⁰⁰pm

Name of Organization: St. Anthony's Parish Contact Person: Noe Solonio

Phone Number & Email: 530-795-0454

Purpose of Parade: Celebration of Our Lady of Guadalupe

Type of Conveyance: On Foot, On Horseback, Mariachi Band (on Foot)

Number of People or Entries Enrolled: Participants from Congregation - Est. 200

Type of Safety Measures Provided (barricades, etc): Will provide traffic control

with vested members @ stop signs; will also provide clean-up crew following horses.

City Services Requested: Patrol lead, if possible.

** Attach map with proposed route of parade : From Intersection at Railroad & Main to St. Anthony's Church

Applicant Signature Noe Solonio

CITY USE ONLY

Fire Signature: _____

Police Signature: _____

APPROVED or DENIED by City Council on (date) _____

NOTES: _____

REV 042913

Date of Application: 10/31/14

To City Council: 11/18/14

Name of Person(s)/ Organization: St. Anthony's Parish

Contact: Noe Solonio

Business Address: 511 Main St.
Winters CA 95694

Telephone: 530-795-0454

Telephone: 530-795-2230

Type of Event: Procession / Parade
Our Lady of Guadalupe

Purpose of Event: (ie; fundraiser, parade, festival, etc.): Parade

Date/Time of Event: December 7, 2014 From: 11:30 am To: 12:00 pm

Location/Address of Event: From Intersection @ Railroad & Main to St. Anthony's

Rated Output of Amplifier in Watts: _____

Number of Speakers: _____

I have provided a list of and contacted all property owners adjacent to and within 300 feet of the event. Their approval of this event is indicated by their signature on the attached petition. Complaints about the sound will result in a warning and a request to reduce the volume. Additional complaints will result in the cessation of amplified sound. All amplified sound must be extinguished no later 10:00 p.m. pursuant to Winters Municipal Code Title VI; Chapter 7-Noise Control. Signing below certifies that all information contained within this application is correct. In the event that any of this information is found to be fraudulent, it may result in an automatic denial of this application.

Signature: Noe Solonio

For City Use Only

Proof of Insurance: N/A (Not City Property) Yes No

Rental Fee Paid: N/A (Not City Property) Yes No

Police Department: Approved Denied Date: _____

Authorized Signature: _____

City Council: Approved Denied Date: _____

Authorized Signature: _____

10-29-14

5:pm.

CITY OF WINTERS
AMPLIFIED SOUND
PERMIT APPLICATION

Address	Name	Signature
118 Main St	Montid Lopez	Montid Lopez
226 Second St	No Answer	
204 Second St	PIERRE NEU	Pierre Neu
206 Main St	Stephen Brewa	Stephen Brewa
208 main st	Joe Hamon	Joe Hamon
210 Mainst	No answer	
212 Main St.	No answer	
300 MAIN ST	M. Guntan	M. Guntan
302 Main St	No answer	
304 main St.	Carrie Gray	Carrie Gray
306 Main St.	No answer	
308 Main sr.	No answer	
310 Main St.	Drene Meece	Drene Meece
404 Main St	Drene Meece	Drene Meece
406 main St	Linda Hannon	Linda Hannon
408 Main St.	No Answer	
410 Main St.	No Answer	
414 Main St.	No Answer	
416 Main St.	No Answer	
422 Main St.	No Answer	
426 Main St.	No Answer	
428 Main St	Linda Hannon	Linda Hannon
430 Main St.	No Answer	

10/30/14
5:00 PM

CITY OF WINTERS
AMPLIFIED SOUND
PERMIT APPLICATION

114 Main St. Abe Lopez ~~Andrew Lopez~~
116 Main Chris Epping ~~Chris Epping~~
205 Main St. Steve Rutledge ~~Steve Rutledge~~
209 Main St. Veronica Moneragen ~~Veronica Moneragen~~
213 Main St. No answer
303 Main St. Susan Perry Susan Perry
305 Main St. Tammy Clark Tammy Clark
307 Main St. Jan Schubert Jan Schubert
309 Main St. Vacant
311 Main St. Ana Kormos Ana
412(a) Vacant
412(b) no answer
412(c) no answer
418 no answer
421 Main St. No answer
423 Main St. Angelica Barzjas Angelica Barzjas
427 Main St. No answer
431 Main St. Rafael Guzman Ryle Ann
433 Main St. no answer
435 Main St. no answer
437 Main St. Gerald Heffernon Gerald Heffernon
439 Main St. Brandon May Brandon May
451 Main St. Diane Bosse Diane Bosse

10/29/14 5 p.m.

CITY OF WINTERS
AMPLIFIED SOUND
PERMIT APPLICATION

Karla Ferguson	434 Main St	K. Ferguson
436 Main St	Approved but decided not sign.	
438 Main St.	No Answer	
456 Main St	Rosario Vazquez	
460 Main St	Chen P	
468 Main St	Richard C. Ben	
472 Main St	No answer	
476 Main St	Marion Darby	
480 Main St	Sue Romero	
484 Main St	Joseph TUSSE	
488 Main St	No answer	
500 Main St	Thank Trish	
504 Main St	No answer	
508 Main St	No answer	
512 Main St	NOX	
514 Main St	No answer	



TO: Honorable Mayor and Council Members
DATE: November 18, 2014
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Alan L. Mitchell, City Engineer
SUBJECT: **Final Acceptance of Public Improvements for St. Anthony's Church**

RECOMMENDATION: Staff recommends that the City Council accept the public improvements as complete and direct the City Clerk to file a Notice of Completion.

BACKGROUND: The project included a new 13,813 square foot, 700 seat church, and associated parking, at the southeast corner of Grant Avenue (State Route 128) and Main Street.

The Applicant entered into a Public Improvement and Maintenance Agreement, for required improvements within the public right of way (Main Street and Grant Avenue), which included curb, gutter and sidewalk, road widening and pavement overlay, signing and striping, decorative lighting, and extension of water, storm drain, and sewer pipelines. The Applicant obtained an encroachment permit for the work within State right of way.

The improvements have been constructed in accordance with the approved improvement plans and staff recommends the City Council accept the improvements and direct the City Clerk to file a Notice of Completion.

FISCAL IMPACT: No funding impacts are associated with this request.



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: November 18, 2014
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Dan Maguire, Economic Development and Housing Manager *DM*
SUBJECT: Disposition and Development Agreement between the City and Royal Guest LLC for the development of a Downtown Hotel

RECOMMENDATION:

It is recommended that the City Council: 1) receive the staff report; and 2) authorize the execution of a Disposition and Development Agreement (DDA) for the sale and development of a downtown hotel on City owned property.

BACKGROUND:

In January, 2014 Staff re-issued a Request for Proposals ("RFP") for interested parties to submit proposals to develop a Downtown Winters Hotel, to be located on the approximately 1 acre bounded by Newt's Expressway, Railroad Avenue, Abbey Street and First Street. The City received two (2) proposals in response to the RFP. This property has long been programmed for a downtown hotel site and is appropriately zoned D-A.

At the May 6, 2014 City Council meeting, Council received the staff report on the proposals and unanimously approved staff recommendation to authorize the City to enter into an Exclusive Negotiation Agreement ("ENA") with Royal Guest for the development of a downtown hotel.

At the May 13 City Council and Planning Commission Workshop, the workshop focused on assisting the developer and staff in the refinement of the proposal. City Council and Planning Commission received the developer's preliminary site plan and renderings and provided input.

Staff and Royal Guest' discussions during the ENA period resulted in a Letter of Intent

("LOI") from Royal Guest proposing the purchase of the City owned properties at fair market value, including those currently owned by the Successor Agency for the development of a 51 room downtown hotel. The project would also include meeting space and ground floor commercial space. The LOI provided the framework for the terms of the Disposition and Development Agreement (DDA). The Letter of Intent is included with this report.

Concurrent with staff's discussions with Royal Guest, Royal Guest has been in discussions with Charley Wallace for the purchase of the property owned by Charley Wallace (APN# 003 204 007). Royal Guest and Charley Wallace have reached an agreement in principal and are executing a LOI for the purchase of that property. Given the displacement of the Winters Express and other Wallace building tenants that will result from that sale and the hotel project build-out, the City is in discussions to rent the unoccupied portion of the City-owned property at 201 First Street (aka the Rodgers building/ Old Library).

Under the terms of the DDA the City will sell Royal Guest a clear site. As a result, the City will demolish the existing buildings on the City-owned properties prior to sale. Staff does have a cost estimate for that work prepared by VacaValley Excavating, which came in at just under \$100,000. It should be noted this is just an estimate for budgeting purposes, with that actual costs not known until the bid process is completed

In order to complete the terms of the DDA, the City will need to purchase the properties currently owned by the Successor Agency. That Purchase and Sale Agreement was approved by the Successor Agency board at the October 21, 2014 meeting; and subsequently approved by the Oversight Board on October 27, 2014. Upon approval by DOF, the City will need to complete the demolition, and in turn sell those properties (as well as the City owned property – the old Fire Station) to Royal Guest. Royal Guest would be responsible for demolition of the Wallace properties.

As outlined in the Successor Agency Long Range Property Management Plan, approved by the Department of Finance on December 20, 2013, those Successor Agency properties are to be transferred (sold) to the City "for future development in accordance with the redevelopment plan". The Purchase and Sale agreement between the Successor Agency and the City is based on fair market value, as established in appraisals that were done in December of 2013. The City in turn will sell the subject properties to Royal Guest at those same appraised values.

At the October 21, 2014 City Council meeting, Council approved the main deal terms for the Disposition and Development agreement. Those deal points are as follows:

Deal Terms for DDA:

The commitments from both parties in the DDA will be as follows:

Royal Guest:

- Purchase of certain City properties at fair market value of \$790,00
- Construction of 51 unit "boutique" hotel with conference/meeting space
- Brand will be Ascend Collection or Choice Hotel or better.
- Project Application to be submitted- December, 2014
- Architecture/Design/Site Plan to Planning Commission- December, 2014
- Construction Drawings/Submittals- February/March, 2015
- Property Purchase- March, 2015
- Construction Permit- March, 2015

City of Winters:

- Demolition of City owned properties and site preparation prior to sale- February, 2015 (\$125,000)
- Construction of City/public use parking lot. (\$200,000)
- Construction of City Alley/Paseo Improvements (\$60,000)
- Utility repair and improvements (water/sewer) (\$100,000)
- Abbey Street Improvements to allow diagonal parking (if needed) (\$100,000)

Total City property transfer costs, and offsite improvements are estimated at \$585,000.

Source of City contributions will come proceeds from the sale of the properties and maintenance/capital funds.

FISCAL IMPACT: \$490,000 for purchase of Successor Agency properties, with City receiving a share of proceeds from that sale as one of taxing agencies; \$300,000 in proceeds to the City from the sale of City owned property (old fire station); and approximately \$125,000 in cost to City for demolition of buildings on all properties sold by the City.

Estimated revenue from the project is approximately \$200,000 annually.

ATTACHMENTS:

Disposition and Development Agreement

**CITY OF WINTERS
DISPOSITION AND DEVELOPMENT AGREEMENT**

AKM Railroad, LLC—Downtown Hotel Project

This DISPOSITION AND DEVELOPMENT AGREEMENT (“Agreement” or “DDA”) is entered into as of November 18, 2014 (the “Effective Date”), by and between the CITY OF WINTERS, a California municipal corporation (“City”), and AKM RAILROAD, LLC (“Developer”), a California limited liability corporation

RECITALS

- A. The City of Winters (“City”) is the fee owner of approximately 20,300 square feet of real property consisting of two assessor’s parcels located at 12 and 14 Abbey Street between Railroad Avenue and First Street (the “City Parcels”), as depicted on the Map of the Project Site, attached hereto as Attachment No. 1 and as described in the Legal Description of the City Property, attached hereto as Attachment No. 2.
- B. The Successor Agency to the Community Development Agency of the City of Winters (the “Successor Agency”) is the fee owner of approximately 6,534 square feet of real property consisting of two assessor’s parcels located on Railroad Avenue between Abbey Street and Main Street adjacent to the City Property (the “Successor Agency Parcels”), as depicted on the Map of the Project Site (Attachment No. 1) and as described in the Legal Description of the City Property, attached hereto as Attachment No. 2. On December 2, 2013, the Oversight Board to the Successor Agency approved a Long Range Property Management Plan (the “LRPMP”) for the Successor Agency that declares that the Successor Agency will sell the Successor Agency Parcels to the City for future development purposes. The LRPMP was approved by the State Department of Finance (“DOF”) on December 20, 2013.
- C. In January 2014, the City issued a Request for Proposals for the development of a hotel-conference center project on the City Parcels and the Successor Agency Parcels, which are collectively referred to herein as the “City Property,” in anticipation that the City would acquire the Successor Agency Parcels and in turn sell them for the hotel-conference center development. Developer submitted a proposal for the development of a hotel development with additional ground floor commercial/retail space and the possibility of future expansion to include conference facilities.
- D. The Wallace Family Trust is the fee owner of approximately 6,665 square feet of real property consisting of a single assessor’s parcel located on Railroad Avenue, as depicted on the Map of the Property (the “Wallace Parcel”). Developer desires to acquire the Wallace Property to include as part of the proposed hotel development. Developer is negotiating with Wallace for the acquisition of the Wallace Parcel separate and apart from this Agreement.
- E. City and Developer have negotiated terms pursuant to which Developer will purchase the City Property and the Successor Agency Property from the City for the development of a hotel

and related improvements as more particularly described below (the "Hotel Project"), which will be located on the City Property and the Wallace Parcel (collectively, the "Project Site"). The proposed Hotel Project is consistent with the current City of Winters General Plan and Zoning Code and will result in the redevelopment of currently vacant and underutilized land, development of hotel rooms to accommodate increased tourism and guests to the Winters area, increased employment opportunities within the City and additional property taxes, sales taxes and transient occupancy taxes produced from the Project Site, which will result in future tax revenues for the benefit of the City and other affected taxing agencies that receive property taxes generated from the Project Site. Additionally, Developer has agreed to pay the City the full fair market value for the purchase of the City Property, which will provided additional general fund revenue for the City.

F. Based on the reasons identified in Recital E, above, together with the commitments and obligations of the Developer to develop the Project Site as contained in this Agreement, the City has determined that the sale of the Project Site to the Developer for development in accordance with this Agreement is in the best interest of the City.

NOW THEREFORE, the Parties hereby agree as follows.

Article 1 PURPOSE, PARTIES, AND PROJECT SITE

1.1 Recitals. The Recitals are hereby incorporated into this Agreement.

1.2 Purpose. The purpose of this Agreement is to set forth the obligations of the Parties and the terms and conditions precedent for the purchase and sale of the City Property from the City to the Developer, and the design, development, construction and operation of the Hotel Project on the Project Site.

The City has determined that the construction and operation of the Hotel Project by Developer within the City will stimulate direct and indirect economic activity within the City, will enhance the quality of life of residents and will provide substantial additional intangible benefits to the City. Further, Developer has agreed to pay fair market value for the City Property subject to the terms set forth in this Agreement. As such, the sale and development of the Project Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City, and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

1.3 Parties.

1.3.1 The City. The City is the City of Winters, a municipal corporation of the State of California. The principal office of the City is located at 318 First Street, Winters, California 95694. Whenever the term "City" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

1.3.2 The Developer. The Developer is AKM RAILROAD, LLC, a California limited liability company. The principal address of the Developer is 1111 Richards Boulevard, Davis CA 95616. Whenever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The parties anticipate that a partnership or other entity (the "Partnership") may be formed by the Developer for the purposes of acquiring and developing the Site, or any portion thereof. In the event such a Partnership is formed, and provided the Developer or an affiliate of Developer constitutes the sole general partner or managing member of the Partnership, it is the understanding and agreement of the parties that this Agreement may be assigned to and assumed by such Partnership; provided that such Partnership shall assume all the obligations of the Developer hereunder, in form and content satisfactory to the City. The term "affiliate" as used herein means an entity which is controlled by, under the common controls with, or controls the Developer.

The qualifications and identity of the Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, and the Developer shall not assign all or any part of this Agreement without the prior written approval of the City, which approval will be in the City's sole discretion exercised in good faith. This Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in the management or control of the Developer without City's prior written approval, which approval will not be unreasonably withheld. Except as otherwise provided in this Agreement, for an approved assignment to be effective, the Developer and assignee shall enter into an assignment and assumption agreement in a form reasonably approved by the City.

Notwithstanding the foregoing, the following assignments or transfers of this Agreement and the Project Site shall be permitted:

- a. the sale or lease of ground floor office or retail space to tenants or end-users, for occupancy upon completion;
- b. an assignment as security for a construction and/or development loan from a lender, subject to the approval by City pursuant to this Agreement, which approval shall not be unreasonably withheld, conditioned, or delayed;
- c. an assignment to a Partnership, as authorized above and in compliance with this Section 1.3; or.
- d. any other assignment or transfer after the issuance of a certificate of occupancy for the Hotel Project.

1.4 The Project Site; Acquisition from Successor Agency. The Project Site is comprised of (1) the City Parcels; (2) the two Successor Agency Parcels; and (3) the "Wallace Parcel. The City Parcels, Successor Agency Parcels and Wallace Parcel are generally shown on the Map of

the Project Site attached hereto as Attachment No. 1. However, only the City Parcels and the Successor Agency Parcels are being sold pursuant to this Agreement.

The City intends to acquire the Successor Agency Parcels from the Successor Agency, as is contemplated in the Successor Agency's approved LRPMP, and in turn sell the Successor Agency Parcels and the City Parcels to the Developer pursuant to the terms and conditions of this Agreement. The sale of the Successor Agency Parcels is subject to the review and approval of both the Oversight Board to the Successor Agency and the State Department of Finance. Such approvals and the acquisition of the Successor Agency Parcels by the City are conditions precedent to the Close of Escrow as defined herein, and in the event that the Oversight Board or State Department of Finance does not issue the required approvals or the City is otherwise unable to acquire the Successor Agency Parcels within the times provided in the Schedule of Performance attached hereto as Attachment No. 3, either Party may terminate this Agreement pursuant to Section 6.6 of this Agreement. The Developer intends to acquire the Wallace Parcel through a separate transaction directly with Wallace. Developer's acquisition of the Wallace parcel is also a condition precedent to the Close of Escrow, but that transaction is not a part of this Agreement.

The City Property contains certain on-site buildings and other improvements that City intends to demolish or salvage, clear, grub and remove (as may be needed and called for in the approved plans) prior to conveyance of the City Property to Developer (the "Demolition Work"). The Demolition Work shall include without limitation the removal of all foundations and other below grade improvements and any and all ground restoration that may be required to render the City Property buildable sites. Such Demolition Work shall be completed by the City within the times set forth in the Schedule of Performance.

Notwithstanding anything herein to the contrary, in the event future discretionary actions are required by the City, the City shall maintain its complete independent discretion regarding any approvals required for the development of a Project that is not consistent with this Agreement, and any necessary future environmental review under the California Environmental Quality Act ("CEQA") (Pub. Resources Code § 21000 et seq.).

Article 2 **DEFINITIONS**

2.1 Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

2.1.1 "City" and "Developer" shall have the definitions set forth in the Preamble, Recitals and Section 1.3.

2.1.2 "City Parcels" is defined in Recital A.

2.1.3 "City Property" is defined in Recital C.

2.1.4 "Damages" is defined in Section 3.12.4.

- 2.1.5 "Demolition Work" is defined in Section 1.4.
- 2.1.6 "DOF" means the California State Department of Finance.
- 2.1.7 "Escrow Agent" is defined in Section 3.3.
- 2.1.8 "Force Majeure" is defined in Section 7.5.
- 2.1.9 "Grant Deed" is defined in Section 3.2
- 2.1.10 "Hazardous Materials" is defined in Section 3.12.5.
- 2.1.11 "Improvements" means the private improvements to be developed on the Project Site as part of the Hotel Project, as more fully described in the Scope of Development.
- 2.1.12 "Indemnitees" is defined in Section 3.12.4.
- 2.1.13 "Oversight Board" is the Oversight Board of the Successor Agency to the Community Development Agency of the City of Winters
- 2.1.14 "Preliminary Title Report" is defined in Section 3.5.
- 2.1.15 "Purchase Price" is defined in Section 3.1.
- 2.1.16 "Hotel Project" is the hotel and related improvements to be developed on the Project Site, as more fully described in the Scope of Development.
- 2.1.17 "Project Site" shall have the definition set forth in Recital A.
- 2.1.18 "Schedule of Performance" means the schedule attached as Attachment No. 3.
- 2.1.19 "Successor Agency" is the Successor Agency to the Community Development Agency of the City of Winters.
- 2.1.20 "Successor Agency Parcels" is defined in Recital B.
- 2.1.21 "Title Company" is defined in Section 3.8.

Article 3 DISPOSITION OF THE PROJECT SITE

3.1 Purchase and Sale of the Project Site. The City agrees to sell to the Developer, and Developer agrees to purchase from the City, the City Property, within the time set forth in the Schedule of Performance, attached hereto as Attachment No. 3 and incorporated herein by

reference. The purchase price for the City Property collectively shall be SEVEN HUNDRED NINETY THOUSAND DOLLARS (\$790,000.00) (the “**Purchase Price**”). The Purchase Price constitutes the full fair market value of the City Property.

The Developer and City both acknowledge and understand that the City is selling the City Parcels and Successor Agency Parcels to Developer collectively, and the City will only sell the City Parcels to Developer provided that the City acquires the Successor Agency Parcel and is able to subsequently sell the Successor Agency Parcel to Developer. Further, the City Parcels and Successor Agency Parcels will be sold to the Developer for the purpose of construction of the Hotel Project, and not for speculation in undeveloped land.

3.2 Deposit. Within five (5) days of the opening of the Escrow as set forth in Section 3.3 of this Agreement, Developer shall deposit Twenty-Five Thousand Dollars (\$25,000.00) into an interest bearing escrow account with the Escrow Agent (the “Deposit”). The Deposit shall be fully refundable for sixty (60) days following the Effective Date of this Agreement as set forth in the introductory paragraph herein, during which period Developer shall have the opportunity to determine the suitability of the Property for Developer’s intended use in its sole and absolute discretion (the “Feasibility Period”). In the event that Developer determines prior to the expiration of the Feasibility Period that it does not desire to proceed with the Hotel Project, Developer may terminate this Agreement pursuant to Section 6.6 of this Agreement and the Deposit and all interest accrued shall be refunded to Developer in its entirety. If Developer does not terminate this Agreement prior to the end of the Feasibility Period, except as expressly set forth in Section 6.5 and Section 3.12.1, the Deposit shall become non-refundable in the event of termination of this Agreement by Developer as provided in Section 6.6 or based on Developer’s default as provided in Section 6.7, the Deposit shall be retained by City as liquidated damages as more specifically described in Section 6.8 of this Agreement.

3.3 Escrow. The City agrees to open an escrow account with Placer Title Company, located at 134 C Street, Davis, CA 95616, or any other escrow company approved by the City and the Developer, as escrow agent (“Escrow Agent”) within the time established in the Schedule of Performance, attached hereto as Attachment No. 3.

This Agreement constitutes the joint escrow instructions of the City and Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agency upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agency hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section 3.3 in writing, delivered to the City and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agency hereunder.

The City shall timely and properly execute, acknowledge and deliver to the Escrow Agency a grant deed (the “Grant Deed”) conveying to the Developer fee title to the City Property in accordance with the requirements of Section 3.3 of this Agreement.

The Developer shall pay into escrow to the Escrow Agent the following fees, charges, and costs promptly after the Escrow Agent has notified the Developer of the amount of such

fees, charges, and costs, but not later than two (2) business days prior to the date for the close of escrow:

3.3.1.1 One half (50%) of the escrow and recording fees, and

3.3.1.2 Any increase in title insurance premiums attributable to an ALTA title insurance policy, and for all special endorsements, if and as requested by the Developer as set forth in Section 3.8, below.

3.3.2 The City shall pay into escrow to the Escrow Agent the following fees, charges, and costs promptly after the Escrow Agent has notified the City of the amount of such fees, charges, and costs, but not later than two (2) business days prior to the date for the close of escrow:

3.3.2.1 Costs necessary to place the title to the City Property in the condition for conveyance required by the provisions of this Agreement;

3.3.2.2 One-half (50%) of the escrow fees;

3.3.2.3 The premiums for title insurance attributable to a CLTA standard form policy, to be paid by the City as set forth in Section 3.8 of this Agreement hereof;

3.3.2.4 Recording fees;

3.3.2.5 Notary fees;

3.3.2.6 Any state, county, or city documentary transfer tax, and

3.3.2.7 Ad valorem taxes, if any, upon the City Property for any time prior to conveyance of the City Property interest to Developer.

3.3.3 Upon receiving a written certification from both the City and the Developer that the conditions for conveyance to the Developer of the City Property have either been satisfied or waived and instructing the Escrow Agent to close escrow, and upon delivery of the Grant Deed and funds pursuant to Section 3.6 of this Agreement, the Escrow Agent shall record the Grant Deed in accordance with the terms and provisions of this Agreement (the "Close of Escrow"). The Close of Escrow shall occur not later than May 31, 2015 (the "Outside Date"). The Escrow Agent is further authorized to:

3.3.3.1 Pay and charge the City and the Developer, respectively, for any fees, charges, or costs payable pursuant to this Agreement. Before such payments are made, the Escrow Agent shall notify the City and the Developer of the fees, charges, and costs necessary to clear title and close the escrow;

3.3.3.2 Disburse funds and deliver any documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and Developer; and

3.3.3.3 Record the Grant Deed and any other instruments delivered through escrow, if necessary or proper, to vest fee title in the Developer in accordance with the terms and provisions of this Agreement, and pay any transfer tax from the escrow funds required by law.

3.3.4 All funds deposited with the Escrow Agent shall be delivered by wire transfer or other certified immediately available funds, and shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent, or by wire transfer if authorized by the Parties.

3.3.5 In addition to the rights of the parties set forth in Section 6, if the escrow is not in condition to close before the outside date for conveyance as set forth in the Schedule of Performance, then either party who then shall have fully performed their respective obligations set forth in this Agreement may, in writing, terminate this Agreement as set forth in Sections 6.5 or 6.6 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the Parties under this Agreement shall terminate in the manner set forth in Section 6.5 or 6.6 hereof, as the case may be, except any provisions which specifically provide for survival shall survive such termination and remain in full force and effect. If neither party shall have fully performed the acts to be performed before the time for conveyance set forth in the Schedule of Performance, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the ten (10) day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the City Property until instructed in writing by both the City and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 3.2.5 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance.

3.3.6 Any amendment of these escrow instructions shall be in writing and signed by both the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

3.4 Conveyance of Title and Delivery of Possession. Provided that Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of fee title to the City Property shall be completed on or prior to the date specified in the Schedule of Performance, or any extension of such time as may be mutually agreed to by the parties. Possession shall be delivered to the Developer concurrently with the conveyance of the City Property. The Developer shall accept its fee title and possession on or before said date.

3.5 Conditions Precedent to Conveyance. Close of escrow and conveyance of the City Property to the Developer shall be contingent upon satisfaction (or waiver by the party benefiting from such condition) of the following conditions precedent:

3.5.1 For Benefit of Developer:

3.5.1.1 Before the Close of Escrow, City shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of City contained herein shall be true and correct in all material respects.

3.5.1.2 The Oversight Board and State Department of Finance shall have approved the conveyance of the Successor Agency Parcels from the Successor Agency to the City, and the City shall have taken fee title interest in the Successor Agency Parcels.

3.5.1.3 The City shall have completed the Demolition Work on the Successor Agency Parcels.

3.5.1.4 Developer shall have acquired and taken possession of fee title to the Wallace Parcel.

3.5.1.5 Developer shall have reviewed and approved the condition of title of the City Property, as provided in Section 3.6 hereof.

Developer shall have reviewed and approved the environmental condition of the Site

3.5.1.6 City shall have executed and delivered the Grant Deed to the Escrow Agent.

3.5.1.7 Developer has received all City approvals required for the development of the Hotel Project, including design review, and approval of Developer's construction plans and drawings for the Hotel Project and all appeal periods for such approvals have expired;

3.5.1.8 City shall have paid into escrow its respective portions for all fees and costs associated with the transaction;

3.5.1.9 The Title Company shall be ready, willing, and able to issue the Title Policy to Developer at the Close of Escrow, subject only to the permitted exceptions described in Section 3.5; and

3.5.2 For Benefit of City:

3.5.2.1 Before the Close of Escrow, Developer shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

3.5.2.2 The Oversight Board and State Department of Finance shall have approved the conveyance of the Successor Agency Parcels from the Successor Agency to the City, and the City shall have taken fee title interest in the Successor Agency Parcels.

3.5.2.3 Developer shall have acquired and taken possession of fee title to the Wallace Parcel.

3.5.2.4 Developer shall have reviewed and approved the condition of title of the City Property, as provided in Section 3.6 hereof.

3.5.2.5 Developer shall have reviewed and approved the environmental condition of the Site, as provided in Section 3.12 hereof.

3.5.2.6 Developer shall have delivered the Purchase Price to the Escrow Agent;

3.5.2.7 Developer shall have paid into escrow its respective portions for all fees and costs associated with the transaction;

3.5.2.8 Developer's final construction plans and drawings for the Hotel Project have been approved by the City, pursuant to Section 4.4;

3.5.2.9 Developer has received all City approvals required for the development of the Hotel Project, including design review, and all appeal periods for such approvals have expired;

3.5.2.10 Developer has provided evidence, satisfactory to City in its sole and discretion exercised in good faith, that Developer has sufficient and binding financing commitments to complete the Hotel Project;

3.5.2.11 Developer has an executed construction contract for the Hotel Project with its general contractor;

3.5.2.12 Developer has delivered to the City proof of insurance, in compliance with Section 4.7 hereof;

3.5.2.13 Developer shall have obtained the commitments and approvals necessary to develop and operate the Hotel Project as an Ascend Hotel franchise through Choice Hotels International or comparable or higher level of franchise on the Project Site.

3.6 Conditions of Title. Within 30 days following execution of this Agreement, the City will submit to the Developer for review and approval a preliminary title report for the City Parcels and the Successor Agency Parcels, together with a copy of all underlying documents referred to therein ("Preliminary Title Report"), and will further provide an updated preliminary report at such time that the City takes fee title to the Successor Agency Parcels, and thereafter from time to time upon reasonable request of the Developer. The Developer shall approve or disapprove the Preliminary Title Report within the time established in the Schedule of Performance. Failure by the Developer to approve within such time shall be deemed disapproval.

The City shall be responsible for any costs and expenses necessary to place title to the City Property in the condition for conveyance of fee title to the City Property to the Developer as

required hereunder. If the Developer disapproves any title exception reflected in the Preliminary Title Report (or any updated preliminary report), and the City, within ten (10) days thereafter gives Developer written notice that the City elects not to remove such exception, the Developer may elect, within ten (10) days of receipt of the City's notice, to accept fee title to the Project Site subject to such exception or to terminate this Agreement by providing written notice thereof to the City. Notwithstanding the foregoing, City shall, without the requirement of Developer to object or City to refuse, remove all monetary liens (other than property taxes or assessments for amounts not yet delinquent) from the title to the City Property delivered to Developer at Close of Escrow, and shall remove from title or otherwise satisfy all exceptions it otherwise agrees to remove, in a form that is reasonably satisfactory to Developer prior to the Closing Date.

The City shall convey to the Developer fee interest in the City Property free and clear of all recorded liens, encumbrances, assessments, leases and taxes, except easements of record and encumbrances that are consistent with this Agreement or approved in writing by the Developer.

3.7 Time for and Place of Delivery of Grant Deed. Subject to any mutually agreed upon extensions of time, the City shall deposit the Grant Deed for the City Property with the Escrow Agency on or before the date established for the conveyance of the City Property in the Schedule of Performance (Attachment No. 3) for the conveyance of fee title to the City Property to Developer. Developer shall deposit the Purchase Price and all sums required hereunder with the Escrow Agent prior to the date for conveyance thereof, provided that the Escrow Agency shall have notified the Developer in writing that the Grant Deed, properly executed and acknowledged by the City, has been delivered to the Escrow Agency and that title is in condition to be conveyed in conformity with the provisions of Section 3.5 of this Agreement.

3.8 Recordation of Grant Deed. Upon close of escrow, the Escrow Agent shall record the Grant Deed in the land records of the Office of the County Recorder of Yolo County, and shall deliver to the Developer, with a copy to the City, the title insurance policy insuring fee title to the Project Site, in conformity with this Agreement.

3.9 Title Insurance. Concurrently with recordation of the Grant Deed, Placer Title Company or another title insurance company satisfactory to the City and the Developer having equal or greater financial responsibility ("Title Company"), shall provide and deliver to the Developer a title insurance policy issued by the Title Company insuring that title to the City Property is vested in the Developer in the condition required by this Agreement, and shall provide the City with a copy of the title insurance policy. The face amount of the title policy shall be equal to the Purchase Price.

The City shall pay only for that portion of the title insurance premium attributable to a CLTA standard form policy of title insurance for the City Property. The Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the Project Site. The Developer shall pay the entire premium for any increase in coverage and special endorsements, including extended ALTA coverage, if any, that may be requested by it.

3.10 Delivery of Possession. The City Property shall be conveyed to Developer free of any possession or right of possession by any person.

3.11 Payment of Taxes. All general and special real property taxes, bonds and assessments, if any, on the City Property, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to the close of escrow for the sale of the City Property to Developer shall be borne by the City. All general and special real property taxes, bonds and assessments levied or imposed for any period commencing after close of escrow for sale of the City Property to Developer shall be paid by the Developer.

3.12 Inspections and Conditions of the Project Site.

3.12.1 Inspections. Within the time established in the Schedule of Performance, the Developer shall, at its sole cost, conduct any additional investigation of the City Property, its physical condition, the soils and toxic conditions of the City Property and all other matters which in the Developer's sole and absolute judgment affect or influence the Developer's proposed use of the City Property and the Developer's willingness to develop the City Property pursuant to this Agreement. The Developer's investigation may include, without limitation, the preparation by a duly licensed soils engineer of a Phase One environmental assessment for the City Property. Within the time set forth in the Schedule of Performance, the Developer shall provide written notice to the City of the Developer's determinations concerning the suitability of the physical condition of the City Property. If, in the Developer's reasonable judgment, the physical condition of the City Property is unsuitable for the use or uses to which the City Property will be put, then the Developer in Developer's sole and absolute judgment shall have the option either: (a) to take any action necessary to place the City Property in a condition suitable for development, at no cost to the City; or (b) to terminate this Agreement by delivering written notice thereof to the City. If the Developer has not notified the City of its determinations concerning the suitability of the physical condition of the City Property within the time set forth in the Schedule of Performance (or any extension of such time mutually agreed to by the parties), the City shall have the right to terminate this Agreement pursuant to Section 6.6 hereof.

Notwithstanding that Developer completed its environmental review during the Feasibility Period, the parties acknowledge that environmental conditions that were not known or suspected during the Feasibility Period may become known or suspected after completion of the Demolition Work.

Developer shall have the right to conduct further inspection and investigation of the environmental conditions for a period of thirty (30) days following completion of the Demolition Work. In the event Developer discovers the existence of Hazardous Materials on or under the City Property within said thirty (30) day inspection period, Developer shall have the right to terminate this Agreement and notwithstanding any other provisions of this Agreement, including without limitation Article 6, Developer shall be entitled to the return of the Deposit.

"As-Is". In addition to the environmental assessments referenced above, the City shall deliver to the Developer all other information of which it has actual knowledge concerning the physical condition of the City Property, including, without limitation, information about any Hazardous Materials. The Developer acknowledges that the City

Property is being acquired "as is", in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and other matters affecting the City Property.

3.12.2 Indemnity. The Developer agrees, from and after the date of recording of the Grant Deed conveying fee interest in the Project Site to the Developer under this Agreement, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, claims, losses, damages, fines, penalties, expenses, or costs of any kind of nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees) ("Damages") whenever arising, not caused in whole or in part by the City resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration, and/or release of Hazardous Materials (as defined herein), at, on, in, beneath, or from the City Property, except if such Damages (a) resulted from fraud, negligence, misrepresentation, or failure to disclose by the Indemnitees, or (b) were caused in whole or in part by the Indemnitees. The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the any Hazardous Materials condition, at the Developer's sole cost.

3.12.3 Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein), at, on, in, beneath or from the City Property, except if such cause of action arises from the negligent or fraudulent misrepresentation or failure to disclose by the City relating to a representation or warranty of City which is false or misleading.

3.12.4 Hazardous Materials Defined. As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste that is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

3.12.5 Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the

performance of its obligations under this Agreement, and that the City would not have entered into this Agreement unless the Developer's obligations were as provided herein.

3.13 Preliminary Work and Right of Entry. Prior to the conveyance of fee interest in the City Property to the Developer, representatives of the Developer shall have the right of access to the City Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The City may require the Developer to execute a commercially reasonable right of entry agreement satisfactory to the City prior to entry onto the City Property for such purpose. Further, if the Developer desires to enter the Successor Agency Parcels prior to such time that the City acquires title to the Successor Agency Parcels, the Developer must obtain a right of entry agreement from the Successor Agency in a form satisfactory to the Successor Agency at its discretion. The Developer's inspections, examination, testing, survey and review of the City Property shall be at the Developer's sole cost and expense. The developer shall obtain the City's consent in writing prior to any proposed physical testing of the City Property, which consent shall not be unreasonably conditioned, withheld or delayed. The Developer shall repair, restore and return the City Property to its original condition after such physical testing, at Developer's sole cost and expense, provided that Developer shall have no obligation to remediate Hazardous Materials discovered during such testing. The Developer shall schedule any such inspections during normal business hours unless otherwise approved by the City. During this inspection period, the Developer shall at all times keep the City Property free and clear of any liens and encumbrances created by Developer.

The City shall make all data and information pertaining to the City Property available to the Developer. The City makes no warranty or representations, however, as to the completeness, correctness, or validity of such data and information. Copies of final data, surveys, and tests obtained or made by the Developer on the City Property shall be filed with the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits for such preliminary work from the appropriate governmental agencies.

Without limiting any other indemnity provisions set forth in this Agreement, the Developer shall indemnify, defend (with counsel approved by the City) and hold the City and its elected and appointed officers, officials, employees, contractors, agents and representatives harmless from and against all injury, damages, liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, or other expense resulting from or arising in connection with entry upon the City Property by the Developer or Developer's representatives or agents pursuant to this Agreement, except to the extent caused by pre-existing conditions (such as Hazardous Materials) or the negligence or willful misconduct of City. The Developer's indemnification obligations set forth in this Section 3.13 shall survive the close of escrow and termination of this Agreement. Prior to Developer's entry upon the City Property, the Developer shall provide the City with a certificate or other proof of insurance meeting the requirements set forth in this Agreement.

3.14 Submission of Evidence of Equity Capital and Mortgage Financing. If the Developer finances the development of the Hotel Project and related activities, all such financing (construction and permanent) shall be subject to the approval of the City, which approval will not be unreasonably withheld, conditioned, or delayed.

No later than the time specified in the Schedule of Performance, the Developer shall submit to the City evidence satisfactory to the City that the Developer has the equity capital and commitments for financing necessary for development of the Hotel Project. The City shall approve or disapprove such evidence of financing commitments within the time established in the Schedule of Performance.

Article 4
DEVELOPMENT OF THE PROJECT SITE

4.1 Scope of Development. The Developer shall develop the Hotel Project on the Site, as provided in the Scope of Development (Attachment No. 4 hereto), all in accordance with plans approved by the City.

4.2 Offsite Improvements. The City shall construct certain offsite public improvements as more particularly described in the Attachment No. 5, Public Improvement Work, which work shall be conducted by the City separate and apart from the Hotel Project (the "Public Improvements"). The Public Improvements shall be completed within the times set forth in the Schedule of Performance.

4.3 Development Review. Within the times established in the Schedule of Performance, the Developer shall submit to the City for review and approval all entitlements, construction plans, drawings and related documents for the construction and development work to be done on the City Property. Final construction plans and drawings are defined as those in sufficient detail to obtain a building permit.

The Developer shall obtain all approvals and permits that may be required under the City's normal plan check, development review and approval process for the construction and development work to be completed on the City Property, or applicable portion thereof, and shall pay all fees and costs associated with such review consistent with the City's normal entitlement process. The Hotel Project, and all plans, drawings and related documents for the development of the City Property, shall be consistent with the City's General Plan and Zoning Code. During the preparation of any drawings and plans for the development and construction work to be completed on the City Property, the Developer shall meet with City staff and communicate and consult informally and as frequently as is necessary to ensure that the formal submittal of any documents to the City pursuant to this Section 4.4 can receive prompt consideration.

The City shall approve or disapprove the plans, drawings and related documents submitted pursuant to this Section 4.4 in accordance with City's normal plan check procedures. Any disapproval shall state in writing the reasons for disapproval and the changes that the City requests be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder by the City. The Developer, upon receipt of a disapproval, shall revise such plans, drawings and related documents and resubmit them to the City as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City be entitled to require changes inconsistent with the Scope of Development and any previously approved items.

If the Developer desires to make any material change in the construction plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction plans, as modified by the proposed change, conform to the requirements of this Section 4.4, and other approvals previously granted by the City under this Agreement and the Scope of Development, the City shall approve the proposed change and notify the Developer in writing within thirty (30) days after submission to the City.

Based on the development and preliminary plans provided by Developer for the Hotel Project under this Agreement, City staff has made an initial determination that the development of the Hotel Project will be exempt from environmental review under the California Environmental Quality Act, under a Class 32 Categorical Exemption (CEQA Guidelines Section 15332) for Infill Development Projects. The Developer understands and agrees that any material changes made to the development plans or any elements of the Hotel Project may require environmental review, and Developer shall cooperate with City staff in the event any determination is made that would require any such environmental review as part of the development review and approval process.

4.4 Schedule of Performance. The Developer agrees to perform and advance development of the Hotel Project consistent with the Schedule of Performance attached hereto as Attachment No. 3. The Schedule of Performance is subject to revision as mutually agreed upon in writing between the Developer and the City pursuant to this Agreement. The City Manager shall have the authority to approve in writing, on behalf of the City, any such extensions of time he or she deems reasonable and appropriate, in accordance with the requirements of this Agreement.

4.5 Bodily Injury and Property Damage Insurance. Prior to the commencement of any work on the Project Site, including any preliminary work performed by the Developer pursuant to Section 3.13, the Developer shall furnish, or cause to be furnished to the City duplicate originals or appropriate certificates of insurance evidencing commercial general liability insurance on an occurrence basis insuring against bodily injury and property damage in a combined single limit of liability per occurrence in the amount of ONE MILLION DOLLARS (\$1,000,000), general aggregate limit of TWO MILLION DOLLARS (\$2,000,000) and builder's all risk insurance in an amount not less than the full insurable value of the improvements on the Site on a replacement cost basis, together with endorsements naming the City, and its elected and appointed officers, officials, employees, contractors, agents and representatives, as additional insureds. Developer shall further provide evidence of automobile liability insurance on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence, covering owned, non-owned and hired automobiles. Developer shall also provide evidence of worker's compensation insurance in the statutory amount required by law. Developer's contractor, and subcontractors if any, shall also submit evidence of liability insurance in the same form and amount as required by Developer.

4.5.1 The certificates of insurance shall be accompanied by all appropriate endorsements, and shall set forth the names of the insurance carriers, the policy numbers, the coverage limits, any applicable deductible or retention, and the policy effective and expiration

dates. The certificates of insurance shall also evidence that: (a) Developer's Federal Employer Identification Number ("FEIN") is as set forth in the Agreement; (b) Developer has procured and paid for the foregoing insurance coverage from companies either (i) having an A.M. Best rating of "A VII" or higher or (ii) otherwise acceptable to City in its sole discretion; (c) the person executing the insurance certificates is authorized by the applicable insurance carriers to do so; and (d) all insurance coverages required to be maintained by Developer pursuant to this Section 306 provide coverage on an "occurrence" basis and not on a "claims made" basis. The insurance certificates shall state that the insurer will provide Agency with thirty (30) days written notice in case of cancellation or non-renewal.

4.5.2 The insurance policies required by this Section 4.6 shall be endorsed by Developer's insurance carriers to reflect (a) that the coverages provided pursuant to the policies required by this Section 4.6, including any excess or umbrella policies, are primary over any other insurance coverage that may be available to City, and (b) that any other insurance coverage that may be available to City shall be excess over the coverages provided by the policies required by this Section 4.6, including any excess or umbrella policies, and (c) that the coverages provided pursuant to the policies required by this Section 4.6, including any excess or umbrella policies, shall not require contribution of any other insurance coverage that may be available to City, regardless of how such other insurance coverage of City is structured to apply in other insurance situations. Further, all policies, including excess or umbrella policies, shall provide coverage for claims by one insured against another insured and the policies shall not contain any cross-suits exclusions, cross-liability exclusions, or insured versus insured exclusions.

4.5.3 In addition to the insurance requirement of this Section 4.6, the Developer agrees to and shall indemnify, protect, defend and hold the City, its elected and appointed officers, directors, employees, agents and representatives, harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the City Property, or applicable portion thereof, and which is not caused by the act or negligence of the City, or its officers, agents, servants, employees or contractors.

4.6 City and Other Governmental Agency Permits. Prior to the commencement of any construction and development (or any work related thereto) upon the City Property, the Developer shall, at its own expense, secure, or cause to be secured, any and all approvals and permits which may be required by the City or any other governmental agency affected by such construction. All site work and construction activities shall be undertaken in accordance with the requirements of the City, and other applicable local, regional, state and federal rules, regulations and standards, including but not limited to: City building permit; grading permit; approved development plans; design review, and conditions specified in City conditional use permit if so required.

The Developer agrees to defend, indemnify, protect and hold harmless the City and its officers, employees, and agents from, regarding and against any and all liabilities, obligations, orders, claims, damages, fines, penalties and expenses of any kind whatsoever, together with fees (including, without limitation, reasonable attorneys' fees), whenever arising, resulting from or in

connection with the obligation to comply with all laws with respect to the construction of the Hotel Project, including, without limitation, all applicable federal and state labor laws and standards.

4.7 Intentionally Omitted.

4.8 Rights of Access During Construction. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the City Property without charges or fees, at normal construction hours during the period of construction and development for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing and developing the improvements. Nothing contained in this Section 4.9 shall be, or be deemed to be, a limitation of the rights of the City, under its regulatory authority, to access the City Property and inspect the City Property or the improvements being constructed thereon.

4.9 Anti-Discrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction and development of improvements on the Project Site as provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

4.10 Certificate of Completion. Upon the completion of the construction and development of any portion of the Hotel Project, the Developer shall send a written request to the City and the City shall furnish the Developer with a Certificate of Completion for such work, in a form suitable for recording in the Official Records of Yolo County, California. A Certificate of Completion is not a Certificate of Occupancy as may be issued by the City.

The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction and development work to be completed on that portion of City Property, as required by this Agreement. The City shall not unreasonably withhold the Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for any portion of the City Property after written request from the Developer, the City shall provide the Developer with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping or monuments not a part of a structure, the City may issue its Certificate of Completion upon the posting of a bond by the Developer in an amount representing a fair value of the work not yet completed.

After recording of a Certificate of Completion, any party then owning or thereafter leasing, subleasing, or otherwise acquiring any interest in that portion of the City Property covered by a Certificate of Completion shall not (because of such lease, sublease or acquisition) incur any obligation or liability under this Agreement.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation by the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. A Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

4.11 Records. The Developer shall maintain in accordance with generally accepted accounting principles, complete books and records relating to the construction, and development of the Hotel Project. Upon request for examination by the City, the Developer during all normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Developer shall permit the City to audit, examine and make excerpts or transcripts from these records.

4.12 Prevailing Wages. The parties contemplate that the construction of the Hotel Project pursuant to this Agreement will not be subject to the payment of prevailing wages under Labor Code Section 1720 et seq., as the Developer is paying full fair market value for the City Property. Notwithstanding the foregoing, the Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and to the extent required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Hotel Project. The foregoing indemnity shall survive any termination of this Agreement.

Article 5 USE OF THE SITE

5.1 Hotel Project. The Hotel Project shall be constructed on the Site as more fully described in the Scope of Development.

5.2 Obligation to Refrain from Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the City Property, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees of the Project. The foregoing covenants shall run with the land.

Article 6 DEFAULTS AND REMEDIES

6.1 Default. Subject to extensions of time set forth herein, or any other extension of time that may be agreed to by the parties, and the specific remedies set forth in sections 6.5-6.7 below, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure or commence to cure and diligently prosecute to completion any such default within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the non-defaulting party for damages caused by such default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

6.2 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy (including specific performance) consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Yolo, State of California, in any other appropriate court in that county, or in the Federal District Court in the Eastern District of California.

Further, the non-defaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement.

6.3 Applicable Law. The laws of the State of California, excepting those provisions dealing with choice of law, shall govern the interpretation and enforcement of this Agreement.

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

6.4 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

6.5 Termination by the Developer Prior to Conveyance. In the event that prior to conveyance of the City Property to the Developer:

6.5.1 If the Developer identifies any existing contamination on the City Property, and the Developer elects not to remediate any such existing contamination, or for any other reason the Developer determines that the condition of the City Property is not suitable for development pursuant to this Agreement; or

6.5.2 If any of the Developer's conditions precedent to conveyance are not satisfied by the time set forth in this Agreement despite City's good faith efforts to do so, and such failure is not cured within thirty (30) days after written notice from Developer or, if such failure cannot be reasonably cured within such 30 day period, the City is not diligently acting to cure such failure in a timely manner; or

6.5.3 Subject to Force Majeure, all conditions precedent to conveyance are satisfied or waived by the party benefiting from such condition and the City, despite City's good faith efforts, is unable to tender conveyance of fee interest in the City Property or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within fifteen (15) days after written demand by the Developer or, if such failure cannot be reasonably cured within such fifteen (15) day period, the City is not diligently acting to cure such tenure In a timely manner; or

6.5.4 The Developer is unable, despite diligent efforts, to acquire the Wallace Parcel within the time set forth in the Schedule of Performance.

6.5.5 The Developer is unable, despite diligent efforts, to secure reasonable financing necessary for development of the City Property, or otherwise determines that the development of the City Property is not feasible due to the economic conditions then in existence, and the City and Developer are unable to mutually agree upon an alternative approach, which may include modifications or amendments to this Agreement; or

6.5.6 The City is in default under any other provision of this Agreement and such default is not cured within the applicable time periods;

then this Agreement and any rights of the City or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Developer may, at the option of the Developer be terminated by written notice thereof to the City, as the Developer's sole and exclusive remedies for the matters described in this subsection. Upon such termination, and except for those provisions which are specifically intended to survive any termination of this Agreement, the parties shall have no further obligations to or rights against each other. Notwithstanding the foregoing, in the event that Developer terminates the Agreement pursuant to this Section 6.6 after the completion of the Feasibility Period, except for terminations as provided for in Section 3.12.1, based upon any default by City or the failure or inability of City to acquire the Successor Agency Parcels, the City shall retain the Deposit as liquidated damages as provided in Section 6.8 of this Agreement.

6.6 Termination by the City Prior to Conveyance. In the event that prior to conveyance of fee interest in the City Property to the Developer:

6.6.1 The Developer transfers or assigns this Agreement or any rights herein in violation of this Agreement; or

6.6.2 There is a change in the ownership or identity of the Developer or the parties in control of the Developer in violation of the provisions of this Agreement; or

6.6.3 The Developer does not submit the evidence required under Section 3.14 that it has the necessary commitment letters for financing for development of the City Property in the manner and by the date provided in this Agreement and such failure is not cured within thirty (30) days after written notice from City or, if such failure cannot be reasonably cured within such thirty (30) day period, the Developer is not diligently acting to cure such failure in a timely manner; or

6.6.4 The Developer does not submit the Deposit within the time provided herein; or

6.6.5 The Developer does not satisfy all its conditions precedent to Close of Escrow pursuant to this Agreement prior to the date set forth for Close of Escrow herein and such failure is not cured within fifteen (15) days after written demand by the City or, if such failure cannot be reasonably cured within such fifteen (15) day period, the Developer is not diligently acting to cure such failure in a timely manner, or

6.6.6 The Developer has not acquired title to the Wallace Parcel within the times provided for herein;

6.6.7 The Developer has failed to satisfy all of the conditions to Close of Escrow set forth herein prior to the Outside Date.

6.6.8 The Developer is in breach or default with respect to any other material obligation of the Developer under this Agreement prior to Close of Escrow; and if any default or failure referred to above shall not be cured within thirty (30) days after the date of written demand by the City or, if such default cannot be reasonably cured within such thirty (30) day period, the Developer is not reasonably acting to cure such default in a timely manner;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the City, may, at the option of the City, be terminated by the City by written notice thereof to the Developer, and provided such termination occurs after the end of the Feasibility Period, the City shall retain the Deposit as liquidated damages, and such liquidated damages and termination of this Agreement shall constitute the City's sole and exclusive remedies for the matters described in this subsection. Upon such termination, and except for those provisions which are specifically intended to survive any termination of this Agreement, the parties shall have no further obligations to or rights against each other.

6.7 Liquidated Damages

IF THIS AGREEMENT IS TERMINATED BY THE CITY FOR A DEFAULT OF THE DEVELOPER PRIOR TO CLOSE OF ESCROW OR BY DEVELOPER AFTER THE END OF THE FEASIBILITY PERIOD, THE DEPOSIT MAY BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS, MAKING IT NECESSARY FOR THE CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION THAT SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTED PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE CITY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT HELD BY THE CITY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE CITY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: _____

By: _____

6.8 Termination Following Conveyance. Following conveyance of the City Property, in addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement, including but not limited to specific performance under this Agreement.

Article 7
CITY'S REPRESENTATIONS AND WARRANTIES

7.1. City hereby represents and warrants to Developer that i) City has no actual knowledge of any Hazardous Materials on, in, or under the City Property that will remain on the City Property following the Demolition Work, and ii) that there are no relocation or similar benefits owed to tenants of the City Property in connection with the sale and development contemplated by this Agreement. City hereby agrees to indemnify Developer from any and all claims, losses, or obligations related to or resulting from the inaccuracy of any of the representations and warranties set forth above.

Article 8
GENERAL PROVISIONS

8.1 Conflicts of Interest. No member, official or employee of the City shall have any personal *interest*, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

8.2 Non-Liability of City Officials and Employees. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement, except as may be caused by intentional torts or criminal activities of any such City member, official or employee. Developer hereby waives and releases any claim it may have against the members, officials or employees of the City with respect to any default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement, except as may be caused by intentional torts or criminal activities.

8.3 Force Majeure. Subject to the limitations set forth below, performance by any party under this Agreement shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or other circumstances beyond the control of such party ("Force Majeure"). An extension of time for any such cause shall be for the period of the force majeure delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred eighty (180) days), if notice by the party claiming such extension is sent to the other party within

thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

8.4 Inspection of Books and Records. The City has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of the Developer pertaining to the Project Site as pertinent to the purposes of this Agreement.

The Developer also has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of the City pertaining to the Project Site as pertinent to the purposes of this Agreement.

8.5 Time is of the Essence. Time is of the essence in the performance of this Agreement.

8.6 Waiver. A waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise contained herein. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other act required to be performed at a later date.

8.7 Notices. All notices that are given pursuant to this Agreement shall be in writing. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card. Notices delivered by the United States Express Mail, Federal Express, Airborne Express or another overnight courier that provides next business day delivery (the "Express Courier") shall be deemed given on the next business day after deposit of the same with the Express Courier. If any notice is transmitted by facsimile (fax) transmission or similar means, the same shall be deemed received or delivered upon the transmission thereof, provided a copy is also given via personal delivery or deposited with the Express Courier by no later than the next business day after such facsimile transmission. If notice is given or received on a Saturday, Sunday or legal holiday, or on a business day after 5:00 P.M., it shall be deemed given or received on the next business day. For purposes of notice, the addresses of the parties are as follows, which may be changed by five (5) days prior written notice:

City: City of Winters
318 First Street
Winters, CA 95694
Attention: City Manager
Telephone: (530) 795-4910, Ext. 110
Facsimile: (530) 795-4935

With a copy to: Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attn: Ethan Walsh
Telephone: (916) 325-4000
Facsimile: (916) 325-4010

Developer: AKM Railroad, LLC
1111 Richards Boulevard
Davis, CA 95616
ATTN: Ashok Patel
Telephone: (916) 439-2555

With a copy to: Murphy Austin Adams Schoenfeld, LLP
304 "S" Street (95811-6906)
P. O Box 1319
Sacramento, CA 95812-1319
ATTN: Kent N. Calfee
Telephone: (916) 446-2300
Facsimile: (916) 503-4000

8.8 Entire Agreement. This Agreement, including all attachments hereto, contains the entire agreement between the parties with regard to the Project Site and supersedes all prior written and/or oral representations and/or agreements, including, but not limited to, any letter of intent between the parties.

8.9 Attorneys' Fees. If an action is filed by any of the parties hereto to enforce and/or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

8.10 Days. In computing any period of time by days as provided in this Agreement, the date of the act, event or default from which the designated period of time begins to run will not be included. If the date for performance or last day of any time period stated in this Agreement falls on a day that is not a business day, then the due date or the duration of such time period will be extended so that it ends on the next succeeding day that is a business day. A "business day" is a day of the week that is not a Saturday, Sunday, or legal holiday recognized by the banks, United States Postal Service or the Recorder of the County.

8.11 Relationship of the Parties. Nothing in this Agreement is intended to create a partnership or joint venture between the parties or make one party the agent of the other.

8.12 Headings. Any headings or captions used herein are inserted only as a matter of convenience and for reference only and in no way defines limit or describe the scope of this Agreement nor the intent of any of the provisions hereof.

8.13 Context. The words or phrases that are not proper nouns that begin with capital letters are defined terms that have the meanings that are assigned to them in this Agreement. The singular form shall include the plural and vice versa; adverbs such as "herein," "hereto," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; and the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to". "Recorded" means to be recorded in

the Official Records of the County of Yolo. Unless specified to the contrary, any reference to a section or paragraph shall be to a section or paragraph of this Agreement. All Attachments referred to in this Agreement are attached to it and incorporated herein and made a part of this Agreement by this reference.

8.14 Counterparts. This Agreement may be signed by the parties in different counterparts, and the signature pages combined shall create a document binding on all parties.

8.15 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

8.16 Modifications; Amendments. The Developer and City agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of the parties hereto, subtenants of Developer, lending institutions or bond counsel or financial consultants to Developer or the City, provided such requests are consistent with this Agreement and would not materially alter the basic business terms included herein.

Any waiver, alteration, change, modification or amendment of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. The City Manager shall be authorized to approve any modification or amendment to the Schedule of Performance or other minor modification or amendment hereto that does not alter the basic business terms included herein. Any substantive or significant alteration, change, modification or amendment of or to this Agreement shall require approval by the City Council.

8.17 Entire Agreement, Waivers and Amendments. This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through 28, inclusive, and Attachments Nos. 1 through 5 which, together with all documents and agreements referenced herein, constitute the entire understanding and agreement of the parties with respect to the Project Site.

This Agreement integrates all of the terms and conditions: mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

8.18 Time for Acceptance of Agreement by City. This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the City within thirty (30) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer may consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the City.

[SIGNATURES ON FOLLOWING PAGE]

_____, 2014

“CITY”

CITY OF WINTERS,
a California municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

_____, 2014

“DEVELOPER”

AKM RAILROAD, LLC a California limited
liability company

By: _____
Ashok Patel, Authorized Agent

ATTACHMENTS

Attachment No. 1	Map of the Project Site
Attachment No. 2	Legal Description of the City Property
Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Development
Attachment No. 5	Description of Public Improvements

ATTACHMENT NO. 1
Map of the Project Site

Downtown Hotel Site Plan



ATTACHMENT NO. 2
Legal Description of the Project Site

**EXHIBIT "A"
LEGAL DESCRIPTION**

THE LAND DESCRIBED HERBIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

THE NORTHERLY 24 FEET OF LOT 32 AND THE EASTERLY 3 FEET OF THE NORTHERLY 24 FEET OF LOT 28, BLOCK 10, WINTERS, AS SHOWN ON THE MAP FILED FOR RECORD ON MAY 22, 1875, IN BOOK S OF DEEDS PAGE 154, YOLO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY INTERSECTION OF RAILROAD STREET AND ABBEY STREET, IN THE CITY OF WINTERS AND RUNNING THENCE SOUTH 65 DEGREES WEST ALONG THE SOUTHERLY LINE OF ABBEY STREET A DISTANCE OF 100 FEET MORE OR LESS, TO A POINT DISTANCE THEREON 3 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY CORNER OF SAID LOT 32, BLOCK 10, THENCE SOUTH 25 DEGREES EAST PARALLEL WITH THE SOUTHWESTERLY CORNER OF SAID LINE OF SAID 32, A DISTANCE OF 24 FEET, THENCE NORTH 65 DEGREES EAST PARALLEL WITH THE SOUTHERLY LINE OF SAID ABBEY STREET A DISTANCE OF 163 FEET MORE OR LESS TO A POINT OF THE WESTERLY LINE OF SAID RAILROAD STREET 24 FEET TO THE POINT OF COMMENCEMENT.

ASSESSOR'S PARCEL NUMBER 003-204-005

PARCEL TWO:

THE EAST 6 FEET OF THE NORTH 60 FEET OF LOT 28 AND ALL OF LOTS 31 AND 32, BLOCK 10, TOWN (NOW CITY) OF WINTERS, SHOWN ON THE MAP THEREOF, FILED MAY 22, 1875 IN BOOK S OF DEEDS, PAGE 154, YOLO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST INTERSECTION OF RAILROAD STREET AND ABBEY STREET IN SAID CITY OF WINTERS, AND RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTH LINE OF ABBEY STREET, A DISTANCE OF 106 FEET TO A POINT, DISTANT THEREON 6 FEET SOUTHWESTERLY FROM THE NORTHWEST CORNER OF LOT 32 IN SAID BLOCK 10; THENCE SOUTHEASTERLY PARALLEL WITH THE SOUTHWESTERLY LINES OF LOTS 31 AND 32 A DISTANCE OF 60 FEET TO A POINT; THENCE, NORTHEASTERLY ALONG A LINE PARALLEL WITH THE SOUTH LINE OF ABBEY STREET TO AND ALONG THE SOUTH LINE OF LOT 31 106 FEET TO THE WEST LINE OF RAILROAD STREET; THENCE NORTHWESTERLY ALONG THE WEST LINE OF RAILROAD STREET, 60 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE NORTHERLY 24 FEET OF LOT 32 AND THE EASTERLY 3 FEET OF THE NORTHERLY 24 FEET OF LOT 28, BLOCK 10, WINTERS, AS SHOWN ON THE MAP FILED MAY 22, 1875 IN BOOK S OF DEEDS, PAGE 154, AS DESCRIBED IN DEED RECORDED MAY 7, 1951 IN BOOK 343 OF OFFICIAL RECORDS, AT PAGE 407, YOLO COUNTY RECORDS.

ASSESSOR'S PARCEL NUMBER: 003-204-006

**EXHIBIT "A"
LEGAL DESCRIPTION**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YOLO, CITY OF WINTERS, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

AN UNDIVIDED ½ INTEREST IN LOT 22, AND THE WEST 15 FEET OF LOT 23, BLOCK 10, TOWN (NOW CITY) OF WINTERS, SHOWN ON THE MAP THEREOF, FILED MAY 22, 1875 IN BOOK S OF DEEDS, PAGE 154, YOLO COUNTY RECORDS.

ASSESSOR'S PARCEL NUMBER 003-204-003

PARCEL TWO:

THE EAST 10 FEET OF LOT 23, AND ALL OF LOTS 24, 25, 26, 27 AND THE WEST 19 FEET OF LOT 28, BLOCK 10, TOWN (NOW CITY) OF WINTERS, SHOWN ON THE MAP THEREOF, FILED MAY 22, 1875 IN BOOK S OF DEEDS, PAGE 154, YOLO COUNTY RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF ABBEY STREET, A DISTANT THEREON 106 FEET SOUTHWESTERLY FROM THE SOUTHWEST INTERSECTION OF ABBEY STREET AND RAILROAD STREET, SAID POINT BEING DISTANT 6 FEET SOUTHWESTERLY FROM THE NORTHWESTERLY CORNER OF LOT 32, IN BLOCK 10; RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID ABBEY STREET 129 FEET; THENCE SOUTHEASTERLY PARALLEL WITH THE SOUTHWESTERLY LINE OF LOT 24, A DISTANCE OF 120 FEET TO THE NORTHWESTERLY LINE OF A 16 FOOT ALLEY AS SHOWN ON SAID MAP; THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF SAID ALLEY AND ALONG THE SOUTHEASTERLY LINES OF LOTS 23, 24, 25, 26, 27 AND 28, A DISTANCE OF 129 FEET TO A POINT DISTANT THEREON 6 FEET SOUTHWESTERLY FROM THE MOST SOUTHERLY CORNER OF LOT 29, BLOCK 10, THENCE NORTHWESTERLY PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT 28, A DISTANCE OF 120 FEET TO THE POINT OF COMMENCEMENT..

ASSESSOR'S PARCEL NUMBER 003-204-004

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

Action	Date
1. <u>Execution of Agreement by City.</u> The City shall authorize execution of this Agreement and deliver this Agreement to the Developer.	Within 30 days after execution and delivery by the Developer.
2. <u>City Acquisition of Successor Agency Parcels.</u> City will acquire the Successor Agency Parcels from the Successor Agency	Within 30 days following DOF approval of conveyance of parcels from Successor Agency to City.
3. <u>Submission of Preliminary Title Report.</u> The City shall cause to be prepared and delivered to the Developer a Preliminary Title Report for the City Property (to be updated following acquisition of Successor Agency Parcels by City).	Within 30 days following execution of Agreement by City.
4. <u>Approval of Preliminary Title Report.</u> The Developer shall approve the Preliminary Title Report for the Site.	Within 30 days after receipt of updated Preliminary Title Report from City (following acquisition of Successor Agency Parcels).
5. <u>Feasibility Period.</u> The Developer shall complete its investigations and approve or disapprove of the condition of the City Property, and decide whether to move forward with the Hotel Project.	Within 60 days after execution of this Agreement by the City.
6. <u>Demolition of Structures on Successor Agency Parcels.</u> City will demolish the existing structures on the Successor Agency Parcels.	Within 60 days following acquisition of title to the Successor Agency Parcels by the City from the Successor Agency but not less than 30 days prior to close of escrow.
7. <u>Acquisition of Wallace Parcel.</u> Developer shall acquire title to the Wallace Parcel.	Prior to or concurrently with the Close of Escrow.
8. <u>Submission of Site and Construction Plans and Construction and Operating Budget.</u> The Developer shall prepare and submit to the City final construction plans, drawings and related documents.	Within 60 days after execution of this Agreement by the City.
9. <u>Approval of Site and Construction Plans and Construction and Operating Budget.</u> The City shall approve the Developer's final construction plans.	In accordance with City's normal plan check and design review process.

Action	Date
10. <u>Submission of Evidence of Financing.</u> The Developer shall submit evidence of adequate financing to construct the Project.	Concurrently with approval of final Construction and Operating Budget, but in any event within 30 days prior to close of escrow.
11. <u>Approval of Evidence of Financing.</u> The City shall review and approve Developer's evidence of adequate financing to construct the Project.	Within 30 days after receipt thereof by the Agency.
12. <u>Satisfaction of All Conditions Precedent to Close of Escrow.</u> Developer and City, as applicable, shall complete all other conditions precedent to close of escrow provided for in Section 3.5.	At or prior to the close of escrow.
13. <u>Deposit of Grant Deed and Purchase Price.</u> Developer and City, as applicable, shall deliver into escrow the Grant Deed, Purchase Price, and all required funds.	Not later than two days prior to the close of escrow.
14. <u>Close of Escrow.</u> The City shall convey title to the City Property to the Developer, and the Developer shall accept such conveyance.	Prior to or concurrently with the close of Developer's construction loan for the Hotel Project, which shall occur no later than May 31, 2015.
15. <u>Merger of Project Site.</u> Developer shall secure City approval for merger or lot line adjustment as appropriate for the development of the Hotel Project	Within 60 days after Close of Escrow
16. <u>Certificates of Insurance.</u> The Developer shall deliver to the City certificates of insurance.	Prior to commencement of any work on the City Property.
17. <u>Commencement of Construction.</u> The Developer shall commence construction of the improvements on the Project Site.	Within 45 days after City approval of merger of City Property and Wallace Parcel.
18. <u>Completion of Construction.</u> The Developer shall complete construction of the improvements on the Site.	Within 18 months after commencement thereof.
19. <u>Issuance of Certificate of Completion; Return of Deposit.</u> The City shall furnish the Developer with a Certification of Completion for the Project and return any remaining portion of the Deposit to Developer.	Promptly after completion of all construction required to be completed by the Developer on the Site, and upon written request therefor by the Developer.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

The Project Site shall be developed by Developer in accordance with the provisions of this Agreement and the plans, drawings and related documents as approved by the City pursuant to entitlement and permit application processes.

The Developer shall construct, or cause to be constructed, on the Project Site a hotel-conference center consisting of three floors. The hotel-conference center will include 51 rooms above the ground floor. The first floor will include a lobby area, bar and bar area, café/restaurant space, commercial/retail space, and a 2,500 square foot conference center (the "Hotel Project").

Architectural Design. The architectural design of Hotel Project shall be consistent with the requirements of the City of Winters and in accordance with the Basic Concept Drawings attached hereto as Exhibit A and are incorporated herein by this reference.

Landscape design, signage, and screening for trash areas, fire related mechanical devices, rooftop equipment and other building elements with required screening for the Hotel Project, shall all be consistent with the standards of the City of Winters.

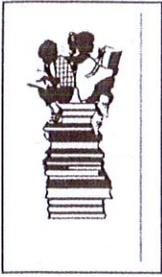
The development permit application materials submitted for the Hotel Project shall be those typically required by the City of Winters for development. These may include, but are not limited to, applications for building permits, encroachment permits over any City property, fence permit, zoning approval, sign permit and grading permit. The Developer's Improvements shall be constructed in accordance with the California Building Code (with City modifications, as applicable).

ATTACHMENT NO. 5

DESCRIPTION OF PUBLIC IMPROVEMENTS

The City intends to construct the following public improvements adjacent to the Site:

- A public surface parking lot consisting of approximately 40+ spaces on City-owned property known as Assessor's Parcel Numbers 003-204-003 and 003-204-004, located at the corner of First Street and Abbey Street.
- Alleyway and Paseo Improvements between First Street and Railroad Avenue as more particularly described in the City's Downtown Master Plan.
- Installation and/or relocation of water, sewer, storm drainage, electrical, gas and phone lines necessary for the construction of the Hotel Project on the Project Site and in conformance with the requirements of electrical, gas and telecommunication utility companies.



WINTERS JOINT UNIFIED SCHOOL DISTRICT
909 WEST GRANT AVENUE, WINTERS, CA 95694
530 / 795-6100 FAX 530 / 795-6114

BRENT CUSHENBERY
SUPERINTENDENT

**BOARD OF
TRUSTEES**

Dan Maguire
Michael Olivas
Robert Warren
Ralph Anderson
Rudolph Muldong

Thanks to the community's support for Measure R, a \$15 million school-facilities bond, we are now in a place to make greatly needed districtwide upgrades to our schools.

The Board of Education requested the tentative recommendations be presented to the school community for comments before it is presented for a vote to the Board of Education at its regular Board Meeting on November 20th.

Community input is of great importance to the Board of Education and District. Please join us at one of these upcoming presentations/discussions:

- Tuesday, Nov. 11, 6:30 p.m. at School District Office
- Wednesday, Nov. 12, 5 p.m. at ELAC Meeting, Waggoner Elementary School
- Wednesday, Nov. 12, 6:30 p.m. at PTA Meeting, Waggoner Elementary School
- Thursday, Nov. 13, 6:30 p.m. at School District Office
- Friday, Nov. 14, 7:00 a.m. at Steady Eddy's
- Monday, Nov. 17, 6:30 p.m. at School District Office
- Tuesday, Nov. 18, 6:30 p.m. at Winters City Council Meeting

The tremendous community support for Measure R is a great vote of confidence in our District. It's clear the community understands that our facilities should match the outstanding work that is taking place in our schools and the exceptional service our highly qualified, dedicated staff provides to all students.

A Facilities-Finance Committee consisting of 25 representatives -- including teachers, staff, administration, parents, community members and Board Members Robert Warren and Michael Olivas -- collaborated to create the facilities action plan.

The committee met six times since the passage of the bond to prioritize and create a tentative plan, which includes renovations and improvements at:

- Waggoner Elementary School
- Shirley Rominger Intermediate School
- Winters Middle School
- Wolfskill Continuation High School
- Winters High School and improvements to the Ag Site

The \$15 million facilities-bond will be issued as three \$5 million bond sales in 2014, 2016 and 2018. The work will be divided into two phases, as follows:

- Phase 1 improvements at the high school and Priority 1 improvements at the other schools (noted above) are estimated to be within available existing bond funds over the course of the three issuances.
- Phase 2 improvements at the high school are contingent upon "hardship dollars" through state funding and a state-level school facilities bond. There is no guarantee that the state will fund a future school-facilities bond, but the committee believes that it must leverage all possible dollars and desires to 'get in line' for possible future funding.

Meeting minutes from all committee meetings can be found at www.wintersjUSD.org.

If you are unable to attend a meeting but would like to offer your input, the tentative plan can be reviewed at www.wintersjUSD.org. Comments and questions can be submitted to Superintendent Cushenbery at bcushenbery@wintersjUSD.org.

WE LEARN TOGETHER / APRENDEMOS JUNTOS

NEWS RELEASE

Contact: Brent Cushenbery
(530) 795-6100

Nov. 7 , 2014
For Immediate Release

School Improvements to be Considered by School Board

The Winters Joint Unified School District's Facilities-Finance Committee recently approved a plan for making improvements to the schools and sent its recommendation to the Board of Trustees.

The five trustees will consider the recommendations at the next school board meeting on Nov. 20, and vote on whether or not to approve the tentative plan.

This action follows the passage of a \$15 million school-facilities bond measure—Measure R--by voters last June.

“The tremendous community support for Measure R is a great vote of confidence in our District,” WJUSD Superintendent Brent Cushenbery said. “It’s clear the community understands that our facilities should match the outstanding work that is taking place in our schools and the exceptional work our highly qualified, dedicated staff provides for all students.”

Before the passage of Measure R, the Board of Trustees provided direction to create a Facilities-Finance Committee that began meeting on March 28, 2013. Since then, the committee has met a total of 14 times. The committee assisted with the completion of an updated and approved facilities master plan, and provided guidance and input towards a successful facilities-bond passage. Agendas and minutes have been posted on the district website at www.wintersjUSD.org.

Following the passage of Measure R, which had 72 percent voter approval, the committee began the process of defining the specific facilities projects to undertake with the bond funds available.

Two trustees, Robert Warren and Michael Olivas, have attended every committee meeting. Following the successful passage of the bond measure, it was determined that the entire board would join the committee. Now the committee has 25 members including trustees, district administrative staff, city officials, business leaders, community members and parents.

The \$15 million facilities-bond will be issued as three \$5 million bond sales in 2014, 2016 and 2018.

The school district is working with architect Brian Whitmore of BCA Architects in Sacramento. Whitmore has made a series of presentations at the committee meetings, proposing different project priorities and construction phases.

One of the committee's tasks was to prioritize the various improvements. During the six meetings since the passage of the bond, the committee has determined that Priority 1 items at Waggoner Elementary School, Shirley Rominger Intermediate School, Winters Middle School and Wolfskill Continuation High School comprise the first deliverables within the first bond sale.

The committee and board also approved the plans for renovating Winters High School and improving its Ag Site in two phases.

Phase 1 improvements at the high school and Priority 1 improvements at the other schools are estimated to be within available existing bond funds over the course of the three issuances.

Phase 2 improvements at the high school are contingent upon “hardship dollars” through state funding and a state-level school facilities bond.

“The Facilities-Finance Committee understands that there is no guarantee that the state will fund a future school-facilities bond, but the committee felt that it must leverage all possible dollars and had a desire to ‘get in line’ for possible future funding,” Cushenbery said.

The trustees have also provided guidance to the superintendent to continue conversations with officials from Solano College regarding a joint-use facility, potentially leveraging some of the college’s Measure Q resources in a shared facility.

“One of the tenets that has been important to the trustees from the beginning is that our process is transparent and that it reflects the overall desires of our community,” Cushenbery said.

Greg Isom of Isom and Associates, a consultant who works with numerous school districts across the state on facilities projects, said, “I’ve worked with nearly 100 school districts and this district’s approach is one of the most transparent and inclusive that I’ve seen.”

Kurt Balasek, chairman of the Measure R campaign and a member of the school district’s Facilities-Finance Committee, said, “Having chaired the Measure R bond campaign for the school district, I am now proud to work with the school board through the committee to plan out repairs and renovations for the next several years. The committee contains a number of community members as well as key district personnel. I have found the process transparent and enlightening and can assure everyone in Winters who supported Measure R that your money is being managed in a very thoughtful manner.

“For those wishing to see dramatic changes, please be patient,” Balasek said. “Many of the proposed repairs require approval of the Department of the State Architects office and will take time. Also, the \$15 million raised with Measure R represents the bonding capacity of our small town and is sadly insufficient to complete even the necessary repairs. We anticipate state matching funds and the plan now in place allows us to move forward, but does not assume these funds will be available any time soon.”

Winters Elementary School Principal Greg Moffitt said, “The work of the Facilities-Finance Committee has allowed us to have honest conversations about our priorities and the schools we want for our students. We’ve identified priorities that need to be addressed now, and we’ve come to the conclusion that we also need to prioritize a plan for the future—a plan that ensures our students are in facilities that are prepared for new ways of teaching and learning.”

Winters High School Principal Paul Fawcett said, “On an annual basis, Winters High School conducts a school climate survey with its students. Year after year, the students emphasize their concern with our high school’s dilapidated and outdated facilities. By passing Measure R, the community has demonstrated its willingness to invest in our children’s future. Building Phase 1

and 2 of our high school will bring renewed and sustained excitement to our entire community. Pending board approval, the initial phase will focus on building state-of-the-art facilities for our specialty courses that will include the sciences, engineering and career technical education courses.”

Cushenbery said, “The 1,500 students, 150 district employees, the board and I are thankful to the community for its ongoing support and for the opportunity to invest the Measure R bond dollars in our education facilities.”

He added, “The Facilities-Finance Committee has prioritized the action plan for our facilities investments. We are eager to present these priorities to the community. A wide range of meetings are set to present our facilities plan and we are eager to hear your thoughts and questions.”

The meetings are scheduled as follows:

Wednesday, Nov. 12, 5 p.m. at ELAC Meeting, Waggoner Elementary School
Wednesday, Nov. 12, 6:30 p.m. at PTA Meeting, Waggoner Elementary School
Thursday, Nov. 13, 6:30 p.m. at School District Office
Friday, Nov. 14, 7:00 p.m. at Steady Eddy’s
Monday, Nov. 17, 6:30 p.m. at School District Office
Tuesday, Nov. 18, 6:30 p.m. at Winters City Council Meeting

For more information, contact Cushenbery at (530) 795-6100 or email him at bcushenbery@wintersjUSD.org.

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Priority 1 – Post Follow Up Meetings 10/16 & 10/23

Waggoner Elementary School

WAGGONER ELEMENTARY SCHOOL						
	Sub total	Sub total w/ MU	Proposed Budget			Notes
PRIORITY 1- CODE, HEALTH, SAFETY						
An automatic, addressable fire alarm system from a single manufacturer should be installed.	\$ 80,000	\$ 105,600	\$ 52,800	\$ 105,600	Yes	New Panel & Minor upgrades to the system
Wall anchorage at buildings with reinforced masonry walls with wood-framed roofs should be further evaluated. Seismic mitigation if required.	\$ 270,504	\$ 357,065	\$ 357,065	\$ 357,065	Yes	Campus Wide
Install wrought-iron fence and gates in front of school campus. Repair / replace unsecured areas of site fencing.	\$ 85,349	\$ 112,661	\$ 37,178	\$ -		Eliminated
Reconfigure bus drop-off/pick-up circulation, staff and visitor parking.	\$ 93,321	\$ 123,184	\$ -	\$ -		Eliminated
Provide accessible path of travel to all classrooms, playgrounds, parking lots, and common spaces.	\$ 83,313	\$ 109,973	\$ 54,986	\$ 54,986	Yes	All new concrete sidewalks
Renovate restrooms to meet current code.	\$ 100,000	\$ 132,000	\$ 66,000	\$ 132,000	Yes	1 boys and girls gang bathroom.
Replace non-compliant drinking fountains.	\$ 15,000	\$ 19,800	\$ 9,900	\$ 19,800	Yes	Campus Wide
New energy heating and ventilating systems at buildings with dated HVAC equipment.	\$ 563,550	\$ 743,886	\$ 74,389	\$ -		Eliminated
Roofing system (repair / replace)	\$ 620,000	\$ 818,400	\$ -	\$ -		New HVAC at Existing Buildings
Gate Repairs				\$ 16,500	Yes	Assume 5 gates
PA System Upgrade				\$ 19,800	No	Campus wide
Security Cameras (in lieu of Fencing)						Assume 30 Cameras
Hardware at Classrooms				\$ 34,848	Yes	Hardware at classrooms + 6 portables = 22 units
Replace Ramps/ Carpet/ Wall Covering @ Central Portables				\$ 65,102	Yes	6 Portables
Xlin Relocation				\$ 15,840	Yes	Relocate to Janitor Closet, provide ventilation, power, non combustable finishes
Solve Drainage/ Quad Paving				\$ 33,660	Yes	Lunch area paved = 3,600 SF Paving / drainage = 1,000 SF
Cafeteria Flooring				\$ 15,180	No	2,300 SF cafeteria + service line corridor
			\$ 2,522,568	\$ 652,318	\$ 870,982	

Design Contingency = 10% Markup (MU) = Escalation = 9% O&P/B = 10% = 62%



Priority 1 – Post Follow Up Meetings 10/16 & 10/23 Rominger Intermediate School

SHIRLEY ROMINGER INTERMEDIATE SCHOOL							
PRIORITY 1 – CODE, HEALTH, SAFETY							
Install wrought-iron fence and gates in front of school campus. Repair / replace unsecured areas of site fencing.	\$ 84,404	\$ 111,413		\$ 111,413	\$ -		Eliminated
Renovate restrooms to meet current code where required.	\$ 100,000	\$ 132,000		\$ 132,000	\$ 132,000	Yes	1 boys and girls gang bathroom
Replace non-compliant drinking fountains					\$ 19,800	Yes	Campus wide
Security Cameras (in lieu of Fencing)							Security Cameras
Gate Repairs					\$ 15,500	Yes	Assume 5 gates
Hardware at Classrooms					\$ 22,176	Yes	Hardware at classrooms = 14
Gym Flooring (Resilient)					\$ 57,024	No	5,400 SF
Gym Lighting Repair/ Paint Ceiling					\$ 29,093	No	5,400 SF paint over SFRM - 8 lights
			\$ 243,413	\$ 243,413	\$ 276,593		

Design Contingency = 10% Markup (MU) = Escalation 4% G.C. 9% O&P/B&I 9% = 32%



Winters Joint Unified School District
Facilities – Finance Committee Presentation, October 28, 2014

Priority 1 – Post Follow Up Meetings 10/16 & 10/23 Winters Middle School

WINTERS MIDDLE SCHOOL							
PRIORITY 1- CODE, HEALTH, SAFETY							
An automatic, addressable fire alarm system from a single manufacturer should be installed.	\$ 80,000	\$ 105,600	\$ 105,600	\$ 105,600	Yes	New Panel & Minor upgrades to the system	
Wall anchorage at buildings with reinforced masonry walls with wood-framed roofs should be further evaluated. Seismic mitigation if required.	\$ 276,300	\$ 364,716	\$ 364,716	\$ 364,716	Yes	Campus Wide	
Install wrought-iron fence and gates in front of school campus. Repair / replace unsecured areas of site fencing.	\$ 76,686	\$ 101,226	\$ 101,226	\$ -		Eliminated	
Reconfigure bus drop-off/pick-up circulation, staff and visitor parking.	\$ 186,558	\$ 246,257	\$ 246,257	\$ -		Eliminated	
Provide accessible path of travel to all classrooms, multi-purpose room, outdoor amphitheater, parking lots, and common spaces.	\$ 51,693	\$ 68,234	\$ 68,234	\$ 68,234	Yes	All new concrete sidewalks	
Thresholds at existing classroom building are too high. Path of travel around buildings should be replaced.	\$ 17,190	\$ 22,691	\$ 22,691	\$ 22,691	Yes	Campus Wide	
Renovate restrooms to meet current code.	\$ 100,000	\$ 132,000	\$ 132,000	\$ 132,000	Yes	1 boys and girls gang bathroom.	
Replace non-compliant drinking fountains.	\$ 15,000	\$ 19,800	\$ 19,800	\$ 19,800	Yes	Campus Wide	
New energy heating and ventilating systems at buildings with dated HVAC equipment.	\$ 575,625	\$ 759,825	\$ -	\$ 192,000	No	Winters Middle School	
Roofing system (repair / replace)	\$ 327,000	\$ 431,640	\$ 431,640	\$ 101,640	No	Roofing and Hazmat at Equip. Well	
Gym Flooring (Wood)				\$ 131,957	No	6,450 SF	
Security Cameras (in lieu of Fencing)				\$ 33,000	No	Assume 10 Cameras	
PA System Upgrade				\$ 19,800	No	Campus Wide	
Hardware at Classrooms				\$ 142,788	Yes	Classrooms 210 Portables 222	
Kiln Replacement				\$ 10,560	Yes	Replace Kiln	
Replace Ramps/ Carpet/ Wall Covering @ 9 Portables				\$ 151,144	Yes	9 Portables	
Replace Siding @ 12 Portables				\$ 151,144	Yes	12 Portables	
Lighting at Parking/ Behind Gym				\$ 22,000	Yes	25.5' x 6.5' x 7' @ 8' Wall/Truss	
Roofing at Portables 24 & 25				\$ 22,000	Yes	24 & 25	
Eye Wash Stations at (2) Science Rooms				\$ 1,976,390	Yes	2 Science Rooms	
			\$ 2,251,988	\$ 1,492,163	\$ 1,976,390		

Decision Confidence: 100% Markup (MO) = Escalation 4% CIG 3.24% BBL 1.9% 5.22%



Winters Joint Unified School District
Facilities – Finance Committee Presentation, October 28, 2014

Priority 1 – Post Follow Up Meetings 10/16 & 10/23 Wolfskill Continuation School

WOLFSKILL CONTINUATION						
DESCRIPTION	EST. COST	EST. COST	EST. COST	EST. COST	EST. COST	REMARKS
PRIORITY 1- CODE, HEALTH, SAFETY						
An automatic, addressable fire alarm system from a single manufacturer should be installed.	\$ 80,000	\$ 105,600	\$ -	\$ -	\$ -	New Panel & Minor upgrades to the system
Detailed structural review of existing classrooms building is required. Seismic mitigation if required.	\$ 83,340	\$ 110,009	\$ -	\$ -	\$ -	
Repair / replace unsecured areas of site fencing.	\$ 18,589	\$ 24,537	\$ -	\$ -	\$ -	Chainlink down 2 side
Provide staff and student parking. Provide drop-off for preschool.	\$ 45,125	\$ 59,565	\$ -	\$ -	\$ -	9500sqft parking lot
Provide accessible path of travel to all classrooms.	\$ 34,023	\$ 44,910	\$ -	\$ -	\$ -	All new concrete sidewalks
Renovate restrooms to meet current code. Finishes to be replaced. Remediate possible dry rot due to water damage.	\$ 100,000	\$ 132,000	\$ -	\$ -	\$ -	1 boys and girls gang bathroom
Replace non-compliant drinking fountains.	\$ 15,000	\$ 19,800	\$ -	\$ -	\$ -	
New energy heating and ventilating systems at buildings with dated HVAC equipment.	\$ 173,625	\$ 229,185	\$ -	\$ -	\$ -	New HVAC at Existing Buildings
Roofing system (repair / replace)	\$ 175,000	\$ 231,000	\$ -	\$ 11,880	No	At Boys Bathroom and Computer Server Area, 300 SF, Repair skylight flashing, Replace ceilings in restrooms
Accessible Stall/ P.O.T. to Front Door				\$ 52,800	Yes	Curb cut with van stall, loading area, ramp to main entry
			\$ 956,606	\$ -	\$ 64,680	

Design Contingency - 10% Markup (MU) - Escalation 4% C.C. 9% O&P/B&I 9% = 32%



Winters Joint Unified School District
Facilities – Finance Committee Presentation, October 28, 2014

High School Phase 1 Improvements Program:

Phase 1		
Administration		4,170
Principal	350	
VP - 2	300	
Secretaries/ Registrar - 4	480	
Admissions Area	400	
Counselors 2 w/ career center	590	
Conference	350	
Nurse/ Sick	150	
Meeting for Speech/ Therapy/ Psych	350	
Admin work area	350	
Admin publications	250	
Storage	600	
Migrant Ed		960
Class/ Office for Ed. w/ Comp.	960	
Detention		960
In-school Alternative Placement (single class)	960	
Sciences		6,930
3 Classrooms for Lecture	2,880	
3 Lab Spaces	3,600	
Office space/ storage in between (x3)	450	
Special Education		3,820
3 spaces (1 Life Skills w/ Kitchen/ Restroom)	3,120	
Sensory Room for Speech/ Physical Therapy	350	
Office/ Computer space	350	
Engineering		3,600
2 (Labs)	2,400	
1 computer	1,200	
Foods/ Culinary		3,000
1 Commercial	1,500	
1 Foods	1,500	
		23,440
Circulation, Support, Restrooms (15%)		3,516
		26,956

26,956	\$300/SF	\$ 8,086,800
Demo Old Library & Shelter		\$ 15,000
Demo Old Parking/ Quad		\$ 12,000
Lunch Shelter		\$ 450,000
Demo Storage Shed		\$ 5,000
Parking Area for Visitors/ ADA		\$ 45,000
1/2 Quad Area (6,000 SF)		\$ 150,000
		\$ 8,763,800
Soft Costs @25%		\$ 2,190,950
		\$ 10,954,750



Winters Joint Unified School District
 Facilities – Finance Committee Presentation, October 28, 2014

High School Phase 1 Improvements Conceptual Site Plan:

