



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, January 6, 2015
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, December 16, 2014 (pp 4-5)
- B. Approval of a Consultant Services Agreement for Project Management Services for Federally Funded Projects (pp 6-37)
- C. Resolution 2014-38, A Resolution of the City Council of the City of Winters Amending the Adopted 2014-2015 Budget to Update Standards and Specifications for Public Works Projects (pp 38-39)

PRESENTATIONS

Winters Police Chief Sergio Gutierrez Presentation of the Police Department's Load Bearing Vests

Yolo County Conservancy Chairman Chris Ledesma and Executive Director Petrea Marchand

DISCUSSION ITEMS

- 1. Engineering Services Update (pp 40-41)

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

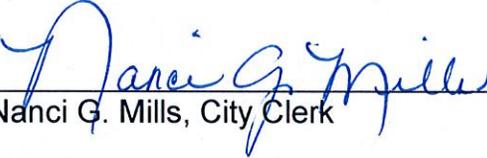
- 1. None

CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the January 6, 2015 regular meeting of the Winters City Council was posted on the City of Winters website at www.cityofwinters.org and Councilmembers were notified via e-mail of its' availability. A copy of the foregoing agenda was also posted on the outside public bulletin board at City Hall, 318 First Street on December 18, 2014, and made available to the public during normal business hours.


Nanci G. Mills, City Clerk

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

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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.

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Minutes of the Regular Meeting of the Winters City Council
Held on December 16, 2014

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

Present: Council Members Harold Anderson, Wade Cowan, Woody Fridae,
Pierre Neu and Mayor Cecilia Aguiar-Curry.
Absent: None
Staff: City Manager John Donlevy and City Clerk Nanci Mills.

Kathy Cowan led the Pledge of Allegiance.

Approval of Agenda: Motion by Council Member Fridae, second by Council Member Cowan 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, December 2, 2014
- B. Project Acceptance – Railroad Avenue Improvements, Project No. 13-02

City Manager Donlevy gave a brief overview. Motion by Council Member Fridae, second by Council Member Neu 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

PRESENTATIONS: None

DISCUSSION ITEMS: None

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

1. None

CITY MANAGER REPORT: The City has received the draft EIR from PG&E, met with engineers from Kennedy & Jenks regarding Chromium 6, Lake Berryessa is up 5 feet, and will be attending a Lake Berryessa meeting in Napa on Friday.

ADJOURNMENT: Mayor Aguiar-Curry wished everyone a Merry Christmas and adjourned the meeting at 6:52 p.m.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: January 6, 2015
FROM: John W. Donlevy, Jr., City Manager *John*
SUBJECT: Project Management- Federally Funded Projects

RECOMMENDATION:

That the City Council approve a CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF WINTERS AND WILLDAN ENGINEERING FOR PROJECT MANAGEMENT SERVICES FOR FEDERALLY FUNDED PROJECTS and authorize the City Manager to execute the agreement.

BACKGROUND:

In September 2014, the City Council authorized and the Staff conducted a Request for Proposal process seeking qualified firms to perform project management services for Federally funded construction projects. At the November 18, 2014 City Council Meeting, the Council authorized the selection of Willdan Engineering and directed Staff to develop a consulting services agreement.

DISCUSSION:

Willdan will serve in the capacities of project manager and inspector for the construction of the Dry Slough Bridge and the Grant Ave/Walnut Lane Roundabout Projects. The estimate for the services to be provided is a not to exceed amount of \$275,000.

FISCAL IMPACT:

Not to exceed \$275,000.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF WINTERS AND WILLDAN ENGINEERING
FOR PROJECT MANAGEMENT SERVICES FOR FEDERALLY FUNDED PROJECTS.**

THIS AGREEMENT for consulting services is entered into by and between the City of Winters, a municipal corporation in the State of California (hereinafter referred to as "City") and Willdan Engineering., a California Corporation (hereinafter referred to as "Consultant") as of January 6, 2015 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached hereto and incorporated herein as Exhibit A at the time and place and in the manner specified herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 15, 2017. Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or amended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Consultant's obligations hereunder. All work shall be accomplished consistent and in compliance with the contract cost principles and procedures and administrative requirements of CFR 48 Chapter 1 Part 31 and CFR 49 Part 18.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$275,000.00 based on the amounts described in Exhibit B and Exhibit C, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- At the City's option, a Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment approved by the City Manager, which shall not exceed the maximum amount allowed by the Winters Municipal Code.

2.4 **Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the Compensation Schedule attached hereto and incorporated herein as Exhibit B and Exhibit C.

2.5 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B and Exhibit C, and expenses not listed in Exhibit B and Exhibit C are not chargeable to the City.

2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.7 **Payment Upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8 of this Agreement, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Each order of work given will include applicable deliverables, milestones, and descriptions of work as generally described in Section 1, Services.

Any delays or time extensions for project deliveries where experienced or allowed shall be by written authorization of the undersigned.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City, and that such insurance is in effect prior to commencing work under this Agreement. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's Rate Schedule. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Verification of the required insurance is attached hereto and incorporated herein as Exhibit D.

- 4.1 **Variation.** The City may approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise fully protected.
- 4.2 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- 4.3 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:
 - Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, indemnify (including proportionate reimbursement of reasonable defense costs) and hold the City and its officials, officers, and employees harmless from and against losses to the extent caused by the negligence, recklessness, or willful misconduct of the Consultant ("Claims"). Consultant will bear all reasonable losses, costs, damages, expense and liability that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to hold harmless and indemnify the City shall not apply to the extent that such Liability is caused by the negligence or willful misconduct of the City.

However, notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant, Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program. Special sections and paragraphs have been included in this contract to insure and achieve compliance with professional services contract requirements of state and federal agencies.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

Consultant shall include the provisions of this Subsection in any subcontract required by the Contract Administrator of this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties, and it is acknowledged that portions of this Agreement are not applicable to locally funded projects.
- 8.3 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated costing in excess of \$15,000 as provided for herein, other than to the subcontractors noted in the Statement of Qualifications, and those prequalified by City, without prior written approval of the Contract Administrator.
- 8.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.5 **Options Upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to the following:
- 8.5.1 Immediately terminate the Agreement;
 - 8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2, Compensation, of this Agreement if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Yolo or in the United States District Court for the Eastern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City but has been under contract as a contract city engineer. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by Nanci Mills, City Clerk (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or her designee.

10.10 Notices.

Any written notice to Consultant shall be sent to:

Willdan Engineering
2240 Douglas Blvd, Suite 270
Roseville, CA 95661

Any written notice to City shall be sent to:

City of Winters
Attn: Nanci Mills, City Clerk
318 First St
Winters, CA 95694

10.11 Integration. This Agreement, including the Scope of Work, Compensation Schedule, Provisions Required for Public Works Contracts, and Insurance Requirements, attached hereto and incorporated herein as Exhibits A through N respectively, and Appendix A to Exhibit “N” represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. Execution of Exhibits E-M are required for state or federally funded projects.

Exhibit A	Scope of Work
Exhibit B and Exhibit C	Compensation Schedule
Exhibit D	Insurance Requirements
Exhibit E	Certification of Consultant
Exhibit F	Certification of Local Agency
Exhibit G	Non-Lobbying Certification
Exhibit H	Noncollusion Declaration
Exhibit I	Debarment and Suspension Certification
Exhibit J	Local Agency Consultant DBE Commitment
Exhibit K	Local Agency Consultant DBE Information
Exhibit L	Fair Employment Practices Addendum
Exhibit M	Nondiscrimination Assurances

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.13 Authorized Signature. Each person and party signing this Agreement warrants that they have the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

The parties have executed this Agreement as of the Effective Date.

CITY

CONSULTANT

City of Winters, a municipal corporation
of the State of California

Willdan Engineering

By: _____
John W. Donlevy, Jr City Manager

By: _____
Daniel Chow, President
City/County Engineering Group

Approved as to Form:

City Attorney

EXHIBIT “A”

SCOPE OF WORK

1. Under the direction of the City Manager, Consultant will provide project management for federal-aid transportation projects, including coordination with Caltrans Local Assistance, consultant selection and contract oversight, document preparation and review, funding programming, design, utility, right of way and construction phase coordination, and schedule and budget monitoring, all in accordance with the Caltrans Local Assistance Procedures Manual procedures, and all state and federal regulations. The City will issue a Work Order with specific project management tasks developed by the Consultant for each federal-aid project. The Consultant shall furnish and perform any of the Services described in the Work Order to the satisfaction of the City. Consultant may be asked to perform other tasks with the written authorization from the City.

EXHIBIT "C"

Intentionally blank

EXHIBIT "D"

INSURANCE REQUIREMENTS

Specific Insurance Requirements and Required Policy Limits

PROFESSIONAL SERVICES CONTRACTS:

Including, but not limited to architects, engineers, consultants, counselors, attorneys and accountants.

Consultant shall procure and maintain for the duration of its contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the consultant, his agents, representatives, employees or subcontractors.

Minimum scope of coverage

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Errors and Omissions liability insurance appropriate to the consultant's profession. Architects and Engineers coverage shall be endorsed to include contractual liability.

Minimum limits of insurance

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately for this project/location or the general aggregate limit shall be twice the required occurrence limit (e.g. \$2,000,000).
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: \$1,000,000 per claim and \$2,000,000 annual aggregate

Other insurance provisions

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials and employees are to be covered as insured as respects: liability arising out of work or operations as performed by or on behalf of consultant; or automobiles owned, leased, hired or borrowed by the consultant.

2. For any claims related to this project, the consultant's Commercial General Liability and Automobile Liability insurance coverage shall be primary insurance as respects the City, its officers, officials and employees. Any insurance or self-insurance maintained by the City, its officers, officials and employees shall be in excess of the consultant's insurance and shall not contribute with it.

Coverage shall not extend to any indemnity coverage for the negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Section 2782.8 of the Civil Code.

Waiver of Subrogation

The Workers' Compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials and employees for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

Deductibles and Self-Insurance Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees or the consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved in writing by the City.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to the City's requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Subcontractors

Consultants shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

EXHIBIT "E"

CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am the President and duly authorized representative of the Consultant, whose address is set forth below and that, except as hereby expressly stated, neither I nor the above firm that I represent has:

- a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement; nor
- b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor
- c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Dated: _____

Daniel Chow, President
Willdan Engineering
2240 Douglas Blvd, Suite 270
Roseville, CA 95661

EXHIBIT "F"

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the City Manager of the City of Winters and that the consulting firm of Willdan Engineering, or its representative, has not been required, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- a) employ, retain, agree to employ or retain, any firm or person; or
- b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Dated: _____

John W. Donlevy, Jr., City Manager
City of Winters

EXHIBIT "G"

NON-LOBBYING CERTIFICATION

The prospective participant certifies by signing this certification, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

Dated: _____

Daniel Chow, President
Willdan Engineering

EXHIBIT "H"

NONCOLLUSION DECLARATION

I, Daniel Chow hereby declare, under penalty of perjury under the laws of the United States, that the following statements are true and correct:

1. That the undersigned President of Willdan Engineering has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the services for which this contract is executed.
2. By signing below, I am deemed to have signed and to have agreed to the provisions of this declaration.

Dated: _____

Daniel Chow, President
Willdan Engineering

EXHIBIT "I"

DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

N/A

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall constitute signature of this Certification.

Dated: _____

Daniel Chow, President
Willdan Engineering

EXHIBIT "J"

**Exhibit 10-O1: Local Agency Consultant DBE Commitment
(Inclusive of all DBEs at time of proposal)**

Consultant to Complete this Section			
1. Local Agency Name: <u>City of Winters</u>			
2. Project Location: <u>City of Winters</u>			
3. Project Description: <u>City Project Management for Federal Contracts Services</u>			
4. Consultant Name: <u>Willdan Engineering</u>			
5. Contract DBE Goal %: <u>0</u>			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
Local Agency to Complete this Section		10. Total % Claimed	
16. Local Agency Contract Number: _____		0 %	
17. Federal-aid Project Number: _____			
18. Proposed Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:		11. Preparer's Signature _____	
19. Local Agency Representative Name (Print) _____		<u>Daniel Chow</u> 12. Preparer's Name (Print)	
20. Local Agency Representative Signature _____		<u>President</u> 13. Preparer's Title	
21. Date _____		14. Date _____	
22. Local Agency Representative Title _____		<u>(916-924-7000 ext1607)</u> 15. (Area Code) Tel. No.	
23. (Area Code) Tel. No. _____			

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Distribution: (1) Original – Submit with Award Package; (2) Copy – Local Agency files

EXHIBIT "K"

Exhibit 10-O2: Local Agency Consultant DBE Information (Inclusive of all DBEs listed at bid proposal)

Consultant to Complete this Section			
1. Local Agency Name: <u>City of Winters</u>			
2. Project Location: <u>City of Winters</u>			
3. Project Description: <u>City Project Management for Federal Contracts Services City Engineering Contract Services</u>			
4. Total Contract Award Amount: \$ <u>Work Order Amount</u>			
5. Consultant Name: <u>Willdan Engineering</u>			
6. Contract DBE Goal %: <u>0</u>			
7. Total Dollar Amount for <u>all</u> Subcontractors: \$ <u>0</u>			
8. Total Number of <u>all</u> Subcontractors: <u>0</u>			
Award DBE Information			
9. Description of Services to be Provided	10. DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
Local Agency to Complete this Section			13. Total Dollars Claimed
20. Local Agency Contract Number: _____			\$ <u>0</u>
21. Federal-aid Project Number: _____			14. Total % Claimed
22. Contract Execution Date: _____			<u>0</u> %
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:			
23. Local Agency Representative Name (Print) _____			
24. Local Agency Representative Signature _____		25. Date _____	
26. Local Agency Representative Title _____		27. (Area Code) Tel. No. _____	
Caltrans to Complete this Section			15. Preparer's Signature _____
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:			<u>Daniel Chow</u>
28. DLAE Name (Print) _____			16. Preparer's Name (Print)
29. DLAE Signature _____			<u>President</u>
30. Date _____			17. Preparer's Title
			916-924-7000ext1607
			18. Date _____
			19. (Area Code) Tel. No. _____

Distribution: (1) Copy -- Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.
 (2) Copy -- Include in award package sent to Caltrans DLAE (3) Original -- Local agency files

EXHIBIT "L"

Willdan Engineering. FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Willdan Engineering will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Willdan Engineering will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Willdan Engineering shall post in conspicuous places, available to employees for employment, notices to be provided by State setting forth the provisions of this Fair Employment section.

2. Willdan Engineering, its Consultant(s) and all subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of Willdan Engineering's consultants and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Willdan Engineering shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. Willdan Engineering will permit access to the records of employment, employment advertisements, application forms and other pertinent data and records by City, County, State, the State Fair Employment and Housing Commission or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) City may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Willdan Engineering was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Willdan Engineering has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, City shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by Willdan Engineering and by the surety under the performance bond, if any, and City may deduct from any monies due or thereafter may become due to Willdan Engineering the difference between the price named in the Agreement and the actual cost thereof to City to cure Willdan Engineering breach of this Agreement.

EXHIBIT " M "

WILLDAN ENGINEERING NONDISCRIMINATION ASSURANCES

Willdan Engineering hereby agrees that, as a condition to receiving any federal financial assistance from City or the State, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the Regulations), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which City receives federal financial assistance from the Federal Department of Transportation. Willdan Engineering hereby gives assurance that Willdan Engineering will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations.

More specifically, and without limiting the above general assurance, Willdan Engineering hereby gives the following specific assurances with respect to its Federal-aid Program:

1. That Willdan Engineering agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That Willdan Engineering shall insert the following notification in all solicitations for proposals for work or material subject to the Regulations made in connection with the Federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

Willdan Engineering hereby notifies all proposers that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That Willdan Engineering shall insert the clauses of Appendix A of this assurance in every agreement subject to the Act and the Regulations.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where Willdan Engineering receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where Willdan Engineering receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That Willdan Engineering shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by Willdan Engineering with other parties:

Appendix C;

(a) For the subsequent transfer of real property acquired or improved under the Federal-Aid Program; and

Appendix D;

(b) For the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Program.

8. That this assurance obligates Willdan Engineering for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property of interest therein, or structures, or improvements thereon, in which case the assurance obligates Willdan Engineering or any transferee for the longer of the following periods:

(a) The period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which Willdan Engineering retains ownership or possession of the property.

9. That Willdan Engineering shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that Willdan Engineering, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the Act, the Regulations, this Assurance and the Agreement.

10. That Willdan Engineering agrees that City, the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this Assurance.

11. Willdan Engineering shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any State assisted agreement or in the administration of City's DBE Program or the requirements of 49 CFR Part 26. Willdan Engineering shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of State assisted agreements. City's DBE Program Implementation Agreement is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to City of its failure to carry out its approved DBE Program Implementation Agreement, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

These Assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to City by State, acting for the U.S. Department of Transportation, and is binding on Willdan Engineering, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the Federal-aid Highway Program.

APPENDIX A TO EXHIBIT "M"

WILLDAN ENGINEERING

During the performance of this Agreement, Willdan Engineering, for itself, its assignees and successors in interest (hereinafter collectively referred to as "Consultant") agrees as follows:

(1) **Compliance with Regulations:** Consultant shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix b of the Regulations.

(3) **Solicitations for Sub-agreements, including procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

(4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to Consultant's books, records, accounts, other sources of information, and its facilities as may be determined by City, State or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to City, State or the FHWA as appropriate, and shall set forth what efforts Consultant was made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, City shall impose such agreement sanctions as it, the State or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to Consultant under Agreement within a reasonable period of time, not to exceed 90 days; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: Consultant shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

Consultant shall take such action with respect to any sub-agreement or procurement as City, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, Consultant may request City or State enter into such litigation to protect the interests of City or State, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

Appendix B, C, and D to Exhibit "M" are not applicable to this contract.
Exhibit C is not applicable to this contract



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: January 6, 2015
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Shelly A. Gunby, Director of Financial Management
SUBJECT: Resolution 2014-38 Amending Adopted 2014-2015 Operating Budget for Updating Standards and Specifications for Public Works and Engineering

RECOMMENDATION:

Staff recommends that the City Council approve Resolution 2014-38 Amending Adopted 2014-2015 Operating Budget for Updating Standards and Specifications for Public Works and Engineering.

BACKGROUND:

City Engineers Nick Ponticello and Alan Mitchell have advised the City of Winters that the Standards and Specifications for Public Works needs to be updated. They estimate that the cost of the update will not exceed \$15,000. The cost of this update was not included in the budget as adopted for 2014-2015. The project will be funded by impact fee accounts, specifically, Street Impact Fee, Water Impact Fee, Sewer Impact Fee, Storm Impact Fee and Park Impact Fees. The cost will be split evenly among the funds.

FISCAL IMPACT:

\$15,000 in increased costs, \$3,000 for each impact fee fund.

RESOLUTION No. 2014-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING THE CITY OF WINTERS 2014-2015 ADOPTED OPERATING BUDGET FOR UPDATING PUBLIC WORKS SPECIFICATIONS AND STANDARDS

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, subsequent to the adoption of the budget, City Engineer Nick Ponticello and Alan Mitchell proposed an update of the Public Works and Engineering Specifications and Standards for the City of Winters.

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. 411-54411-660 Street Impact Fee Engineering Fees	\$3,000.00
b. 417-54411-630 Water Impact Fee Engineering Fees	3,000.00
c. 418-54411-640 Sewer Impact Fee Engineering Fees	3,000.00
d. 412 54411-640 Storm Drain Impact Fee Engineering Fees	3,000.00
e. 413-54411-650 Parks Impact Fee Engineering Fees	3,000.00

PASSED AND ADOPTED by the City Council, City of Winters, this 6th day of January, 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Cecilia Aguiar-Curry, Mayor

ATTEST:

Nanci G. Mills, CITY CLERK



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: January 6, 2015
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: Engineering Services Update

RECOMMENDATION:

That the City Council receive an update on discussions related to engineering services.

BACKGROUND:

In September, 2014, Staff updated the City Council regarding an audit finding regarding the City's failure to follow Federal Procurement Procedures which disqualified certain engineering costs associated with billing from Ponticello Enterprises related to the North Bank Trail Project and will possibly require the City to return approximately \$121,000 to Caltrans from project reimbursement. The issue also facilitated a need for the City to find a new engineering firm for federally funded projects; specifically the Dry Slough Bridge and Grant Ave./Walnut Lane Roundabout.

The City Council requested that Staff and a City Council subcommittee (Curry/Cowan) meet with Ponticello to discuss the issue and to bring an update back to the City Council based on their findings.

This is a base report on solutions to address the problems associated with the procurement issues and with management of federal projects in the future.

DISCUSSION:

The issues related to the disqualification centered on two key issues:

1. Federal Procurement of Engineering Project Management services.
2. Grant compliance pursuant to Chapter 10 of the Caltrans Administrative Manual related to federally funded projects.

Following the audit finding, the City pursued the following:

1. Suspended work by Ponticello on all federally funded projects.
2. Issued the Request for Qualifications to adequately procure an engineering firm to manage the Dry Slough Bridge and Grant Ave./Walnut Lane Roundabout. Willdan Engineering has been selected and agreement is being presented for the consideration of the City Council.
3. Sought assistance from Yolo County Engineering for an inter-agency agreement to assist with project administration. This contract has subsequently been suspended and will now be incorporated into the Willdan agreement.
4. Sought Grant management assistance from outside agencies and within the private consulting.
5. The City will issue a revised RFQ for engineering services in 2016 for both City Engineering and Federal Projects Management.

The main issue Staff is dealing with regarding “grants” is the current situation with the lack thereof. Neither State nor federal grants are on the horizon. This complicates the issue of considering hiring either a City employee (not recommended if no grants exist) or the timing of bringing on outside assistance. The best prospect is to consider an inter-agency agreement with another city or county agency to share the services of someone to vet and administer future grants.

In regards to the RFQ for Engineering Services in 2016, the logic is to follow a period where current grant projects will be completed along with syncing federal procurement of engineering services on a six (6) year cycle as per the Caltrans manual.

Staff will provide additional comments at the City Council Meeting.

FISCAL IMPACT:

None by this action.