



**Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, February 3, 2015
6:30 p.m.
AGENDA**

Members of the City Council

(pp.1-4)

*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, January 20, 2015 (pp. 5-10)
- B. Waiver for Extended Work Hours for Creek Work Project (p. 11)
- C. Maintenance Work at Well #7 (pp. 12-15)

PRESENTATIONS

Elly Fairclough - Proclamation
Broadband Presentation – Christine Crawford, LAFCO

DISCUSSION ITEMS

- 1. Second Reading and Adoption of Ordinance 2015-01, Approving the Amended and Restated Development Agreement By and Between the City of Winters and GBH-Winters Highlands, LLC, for the Winters Highlands Subdivision (pp. 16-77)
- 2. Partnership with Boost – A Preschool Intervention Program (pp. 78-80)
- 3. Next Century Cities – City Membership (pp. 81-83)
- 4. Resolution 2015-03 Amending the City of Winters 2014-2015 Adopted Operating Budget - Budget Adjustment for Nature Park Conservation Easement (CE) Expenses not to exceed \$22,050 (pp. 84-96)

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

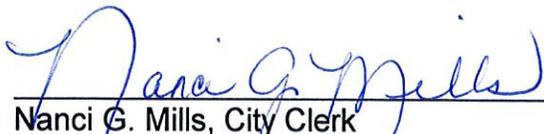
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CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the February 3, 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 January 28, 2015, and made available to the public during normal business hours.



Nanci G. Mills, City Clerk

Questions about this agenda – Please call the City Clerk’s Office (530) 794-6701. Agendas and staff reports are available on the city web page www.cityofwinters.org/administrative/admin_council.htm

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

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

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

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*View on the internet: www.cityofwinters.org/administrative/admin_council.htm
Any attachments to the agenda that are not available online may be viewed at the City Clerk’s Office or locations where the hard copy packet is available.*

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

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

Winters Library – 708 Railroad Avenue

*City Hall – Finance Office - 318 First Street
During Council meetings – Right side as you enter the Council Chambers*

City Council meetings are televised live on City of Winters Government Channel 20 (available to those who subscribe to cable television) and replayed following the meeting.

Wednesday at 10:00 a.m.

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



Minutes of the Winters City Council Meeting
Held on January 20, 2015

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

Present: Council Members Harold Anderson, Woody Fridae, Pierre Neu and Mayor Cecilia Aguiar-Curry.
Absent: Council Member Wade Cowan
Staff: City Manager John Donlevy, City Attorney Ethan Walsh, City Clerk Nanci Mills, Housing Programs Manager Dan Maguire, Environmental Services Manager Carol Scianna, Building Official Gene Ashdown, Associate Elliot Landes, and Management Analysts Jenna Moser and Tracy Jensen.

Jenna Moser led the Pledge of Allegiance.

Approval of Agenda: Motion by Council Member Fridae, second by Council Member Neu to approve the agenda. Motion carried with the following vote:

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

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS: Ernie Gaddini, who has traveled Rd. 89 to his business for many years, expressed his concern with periodic flooding on the east side of Rd. 89, north of Walnut Avenue. The trees and vineyards that have been planted in the area have helped the drainage and he loves the wonderful job that was done. Mayor Aguiar Curry thanked Mr. Gaddini for his comments.

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, January 6, 2015
- B. Resolution 2015-01, a Resolution of the City Council of the City of Winters in Support of the Designation of the Area Known as the Berryessa Snow Mountain Region as the Berryessa Snow Mountain National Monument
- C. Resolution 2015-02, a Resolution of the City Council of the City of Winters in Support of the Water Resources Association of Yolo County Acting as the Planning Forum for Development of a Groundwater Sustainability Agency
- D. Public Safety Facility Artwork Purchase

City Manager Donlevy gave an overview. Motion by Council Member Fridae, second by Council Member Neu. Mayor Aguiar-Curry clarified that Resolution 2015-02 is for the WRA to start a planning forum only. Motion carried with the following vote:

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

DISCUSSION ITEMS

1. Historical Preservation Committee

Council Member Fridae gave a brief overview and asked Council to provide direction on whether they wanted a committee or a full-fledged commission and suggested the establishment of an ad-hoc committee tasked with looking into how other cities are preserving the historic nature of their buildings. City Manager Donlevy suggested a short-term ad-hoc committee who would come in with recommendations and work with the Planning Commission.

John Pickerel, 488 Main Street, said he is willing to fight for awareness of the assets of the downtown and said it would be like financial dominoes if/when an earthquake hits.

City Attorney Walsh clarified the differences between a commission and a committee and their requirements, including the Brown Act, filing of conflict statements, and advising on land use or development.

Motion by Council Member Fridae to establish an ad hoc committee, request interested parties through the Winters Express, and authorize Council to use up to \$1,000 in staff time to get the committee established. Council Members Fridae and Neu will both be part of the committee and any decisions made by the

committee will not affect the sphere of influence. The ad hoc committee will have a 6-month time limit during which time they will report back to Council on a monthly basis. Motion seconded by Council Member Neu. Motion carried with the following vote:

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

2. Winters Highlands - Public Hearing and Consideration of the Proposed Amended and Restated Development Agreement and Amended Tentative Subdivision Map

City Manager Donlevy gave an overview. Council discussed Mello-Roos districts and were in agreement that they did not want them. There are currently no Mello-Roos districts in Winters. Council also discussed at length the 14 recommendations received from the Planning Commission, proposing changes to the original Development Agreement and the First and Second Amendments, including PV systems. Homes by Towne Division President Jeff Pemstein, Director of Land Acquisition & Development Jeremy Goulart and Planning & Design Associate Taylor Bolinger were present and responded to Council's numerous questions.

Mayor Aguiar-Curry opened the public hearing at 8:02 p.m.

Jeff Tenpas, 24 E. Main Street, wants phasing over 7-10 years and wants the energy efficiency to be held to a higher standard. Photovoltaic will soon be required and it would be advantageous to install it. He was also concerned about the "give-back" regarding the waste water treatment plant.

Valerie Whitworth spoke about the agreements made with the Dry Creek citizens group, which included notification to homeowners along the creek regarding additional waters added to the creek. There was a pipe installed under the highway to Dry Creek long ago. Would this provide drainage from the project and if so, what kind of water would be added as a result of drainage into Dry Creek? Valerie also referenced an agreement with Urban Streams.

Rebecca Fridae, 112 Liwai Village, said developers come and go and we should be in the driver's seat. Winters IS the amenity.

Monique Borgerhoff Mulder spoke to phasing and said the rate of development and the number of houses being built should be specified in the agreement. The developers should have to work with the bank. Mr. Caro insists that solar panels should be installed for efficiency to promote an energy conscious community.

Jim Hildenbrand said it's easy to get caught up in phasing and density. The financing requirements are correct and major infrastructure needs to be built. He requested this be visited when it is defined. The DA language is tool, so keep an open mind and keep things moving.

John Pickerel, 488 Main Street, said the way the phasing was presented makes it suspect. He asked Council to take a hard look at it. He added that PV is exciting.

Charley Wallace said he loves PV and they should be required on anything that is built. They are not on the new library but they should be. Mello-Roos is the kiss of death. Everyone should have to pay the same otherwise it will be them against us. We should all pay the same and shouldn't be penalized if the developers can't find financing.

Mayor Aguiar-Curry closed the public hearing at 8:22 p.m.

Council Member and Planning Commission liaison Wade Cowan was absent, but prepared a statement regarding this item that was read aloud by City Attorney Walsh that addressed phasing, solar and energy efficiency and lot availability for local builders.

Council Member Fridae provided a letter that had been submitted by Jess Powell, current Woodland resident who grew up in Vacaville and was sad to see that Winters is growing. His letter warns the City of overpopulating and the cost of bonds.

Homes by Town President Jeff Pemstein said they would pull Mello-Roos with the right to bring it back and if so, do it in an educational manner. He supports PV and it makes good business sense, but he would like to offer it as an option. A house built in 2006 is inferior to a house built today and they would like to install PV in half of the homes and consider other alternative ways of conserving energy. He doesn't want to put a number on it.

Mayor Aguiar-Curry asked about plug-in cars and Mr. Pemstein said now it is an option, but in the future could likely be a normal fixture. An agreement with the school district has already been signed and is consistent with the Hudson Ogando and Callahan agreements and is based on square footage, in addition to the average daily attendance funding from the state. Phasing will be an uphill battle with the bank and Homes by Towne will look at a different phasing plan, will ratchet it back to 2-3 units per month and take it to the bank.

Motion by Council Member Fridae to move staff recommendation, build no more than 100 units per year (down from 200), 20% of the houses built are to include PV (overall average) and no Mello-Roos financing. Second by Council Member Anderson. Motion carried with the following roll call vote:

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

Approve Resolution 2015-04 Approving a CEQA Addendum to the Winters Highlands Final Environmental Impact Report (SCH #2004012109) in Support of the Amended and Restated Development Agreement and Amended Tentative Subdivision Map for the Winters Highlands Subdivision.

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

Approve Resolution 2015-05 Approving an Amended Tentative Subdivision Map for the Winters Highlands Subdivision.

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

Introduce Ordinance 2015-01 Approving the Amended and Restated Development Agreement and Amended Tentative Subdivision Map, commonly known as the Winters Highlands Project, between the City of Winters and GBH-Winters Highlands, LLC.

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

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

1. None
-

CITY MANAGER REPORT: Last week attended the League of California Cities New Mayor and Council Member Conference with Council Member Neu. The demolition of the old firehouse will begin soon and the concrete will be removed in February. The downtown hotel design and site plan review will go to the Planning Commission next week. Will be attending the League of California

Cities City Manager Conference next Wednesday through Friday, where one of the speakers will be James Fallow, who will be talking about great small towns (like Winters!)

INFORMATION ONLY

1. July 2014 Investment Earnings Report
2. July 2014 Treasurer Report
3. August 2014 Investment Earnings Report
4. August 2014 Treasurer Report
5. September 2014 Investment Earnings Report
6. September 2014 Treasurer Report
7. October 2014 Investment Earnings Report
8. October 2014 Treasurer Report

ADJOURNMENT: Mayor Aguiar-Curry sent out good wishes to Mike Sebastian, City Treasurer, who has been quite ill and hopes he is getting well. Meeting was adjourned at 9:46 p.m.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



Memorandum

To: Honorable Mayor and Councilmembers
Date: February 3, 2015
From: Carol Scianna, Environmental Services Manager
Subject: Waiver for Extended Work Hours as Part of River Parkway Project this Summer

The final phase of the River Parkway Rechanneling project will begin late summer with completion expected in October. This work will consist of narrowing the remaining middle channel section of the Putah Creek and creating floodplains in the Nature Park, similar to the work that was done up and downstream of this area.

Solano County Water Agency will be the lead agency and they have requested a waiver regarding extension of work schedule which will allow the possibility of work on Saturday and/or Sunday if the need should arise for emergency or time sensitive work to be completed.

The project area will require the existing channel to be de-watered. To do so there may be the need to operate a pump and generator 24 hours a day 7 days a week for at most a two week period.

The waivers were discussed at the January meeting by the Winters Putah Creek Committee (WPCC) and there was consensus to support the waivers being requested. Per the WPCC suggestions, efforts will be made to minimize the generator noise using hay bales and placing the generator as far away from residences as possible. The neighbors that would be affected by the noise will be sent notification regarding the upcoming work.

318 First Street
Winters, CA 95694
Phone.530.795.4910
Fax. 530.795.4935

COUNCIL MEMBERS

Harold Anderson
Wade Cowan
Pierre Neu

MAYOR

Cecilia Aguiar-Curry

MAYOR PRO TEM
Woody Fridae

CITY CLERK

Nanci Mills

TREASURER
Michael Sebastian

CITY MANAGER
John W. Donlevy, Jr.



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: February 3, 2015
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Carol Scianna, Environmental Services Manager
SUBJECT: Maintenance Work at Well 7 estimated at \$6500.00

RECOMMENDATION: Staff recommends the Council approve necessary repair work to be done by Kirby Pump at Well 7, estimated at \$6500.

BACKGROUND: Staff has been concerned about the vibration and load noises that have developed at Well 7, we have had two different pump companies come out to access the situation and both agree that the pump needs to be pulled and bearings need to be replaced, rotor balanced and other parts to be tested and adjusted as needed. Staff has selected Kirby Pump to do the work.

FISCAL IMPACT: The estimated costs for these improvements are estimated at \$5700.00, staff has added \$800, for additional work that may be necessary once the pump has been pulled. Funds are available in the Water Department O & M budget.



KIRBY'S PUMP AND MECHANICAL, INC.

■ PUMP REPAIR
 ■ INSTALLATION
 3233 FITZGERALD ROAD
 RANCHO CORDOVA, CA 95742
 TELEPHONE (916) 635-2735
 FAX (916) 635-6090
 CONTRACTOR LIC. #538234

January 30, 2015

CITY OF WINTERS
 318 1st STREET
 WINTERS, CA 95694

REGARDING: Well #7
 ATT: CAROL

Full and transport motor:	\$760.00
Dis-assemble, dip and bake, replace bearings, balance rotor, assemble, test, and paint	\$4,122.00
Transport and install, test	\$760.00

The repair estimate does not include any machine work that may be necessary after dis-assembly and inspection.

Sales tax \$129-
total est. 5768 w

Sincerely Yours,

George Collier

Carol Scianna

Kirby *email 1/23*
on 1/26

From: George Collier [gcollier.kpm@sbcglobal.net]
Sent: Wednesday, January 14, 2015 10:26 AM
To: Carol Scianna
Subject: Re: Well #10

Carol -

Pull and transport motor to shop	- \$ 760.00		
Dis-assemble, dip and bake, replace bearings, balance rotor			
assemble, test, and paint	- 4,122.00 plus tax on \$1,723.00		
Transport and install, test	- 760.00	<i>129-</i>	<i>\$ 5771</i>

The repair estimate does not include any machine work that may be necessary after dis-assembly and inspection

George Collier
Kirby's Pump and Mechanical, Inc.

On Monday, January 12, 2015 4:11 PM, Carol Scianna <carol.scianna@cityofwinters.org> wrote:

Thanks for the update, this well is number 7. Look forward to getting your estimate

Carol Scianna
Environmental Services Manager
530-794-6715
carol.scianna@cityofwinters.org

From: George Collier [mailto:gcollier.kpm@sbcglobal.net]
Sent: Monday, January 12, 2015 3:36 PM
To: Carol Scianna
Subject: Well #10

Carol -

I am following up on Jay's inspection with Tony at Well #10.

- 1) The thrust bearing in the motor is going out. This needs to be addressed asap.
- 2) The ramp up and down times programmed in the VFD are way too long. On shut down, the ramp down is in excess of 30 seconds. This causes the pump to vibrate excessively. Ramp down should never be longer than ten seconds.

I am working on an estimate for the motor work and will send it over when complete.

George Collier
Kirby's Pump and Mechanical, Inc.

December 11, 2014

Carol Scianna
Environmental Services Manager
City of Winters

**RE: Well #7 Motor Re-Bearing, Balance
Dip and Bake**

Ms. Scianna,

Eaton Pumps is pleased to provide you with the following estimation for repair, removal and reinstallation of the 250 Hp US motor from the Winters well #7 location. The motor shall be removed, bearings replaced, balanced, cleaned, dipped and baked to bring the motor back to factory specifications. Once completed the motor shall be reinstalled and tested for operation.

The total cost estimation for the above repairs are \$6,135.00 including applicable state and local taxes.

Notes:

At this time no additional motor repairs appear to be required. Once inspected at motor facility if additional repairs other than described are needed we will notify of repair prior to completing and additional work.

If you have any further questions or concerns please give me a call. My office number (530) 661-6737 Mobile (530) 908-1266.

Thank you,



Eric N. Vincent
Attachments



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Councilmembers
DATE: February 3, 2015
FROM: David Dowswell, Community Development Director through
John W. Donlevy, Jr., City Manager
SUBJECT: Second Reading and Adoption of Ordinance 2015-01, an Ordinance of the
City of Winters Approving the Amended and Restated Development
Agreement By and Between the City of Winters and GBH-Winters
Highlands, LLC, for the Winters Highlands Subdivision

RECOMMENDATION:

That the City Council:

1. Receive a Staff Report on a proposed Winters Highlands Amended and Restated Development Agreement, and
2. Waive the second reading and adopt Ordinance No. 2015-01, approving the Amended and Restated Development Agreement by and between the City of Winters and GBH-Winters Highlands, LLC.

BACKGROUND:

On January 20, 2015, the City Council approved the Amended and Restated Development Agreement (DA), with the following changes made by the Council:

1. No more than 100 units could be built per year, and
2. Twenty percent of the homes shall be built with photovoltaic systems, and
3. Remove the language allowing the Developer to petition for Mello-Roos

financing.

All of the above changes have been made to the Amended and Restated DA, (Attachment A, Exhibit "A").

DISCUSSION:

The proposed Amended and Restated DA includes the following changes to the original DA and the First and Second amendments:

1. Term: Establishes a new term for the DA of ten (10) years effective from the date of recording. The DA is currently set to expire in 2016.
2. Right to Assign: The DA retains the provisions that give the City approval rights over the assignment of the DA to another developer, but adds technical requirements to help protect the developer's financial information.
3. Reduction in the Number of Units: Reduces the number of lots from 413 to 395 due to the Developer agreeing to pay an in-lieu fee to meet the affordable housing obligation. The Developer is converting the 18 duplexes or 36 lots into 18 single-family lots thereby reducing the total number of lots to 395.
4. Phasing of Development: The DA previously limited the number of units that could be developed on an annual basis as part of the Winters Highlands subdivision. The Amended and Restated DA eliminates the annual limits set forth in the DA, and instead includes a limitation to prevent the Developer from pulling building permits for more than 100 units in a single year.
5. Affordable Housing: Requires the developer pay an in-lieu fee of \$2,000,000 and offer land dedication to meet the obligation to provide a 30-unit low income apartment and 18 affordable duplexes within the subdivision, consistent with the amended Affordable Housing Plan approved by the City Council earlier this year. The developer will be providing 18 moderate income deed restricted affordable single-family homes within the subdivision.
6. Obligations to Winters Joint Unified School District: The obligations to the School District are amended based on new terms that were negotiated between the Developer and the School District directly.
7. Annuity: Revises the original DA by deleting Section 4.5 regarding the provision requiring a fiscal neutrality annuity payment of \$2,402 per unit. This is being deleted after the same requirement for the Hudson-Ogando Subdivision was recently deleted from that DA based on a revised fiscal analysis for the project that indicates these projects will not require the annuity to be fiscally neutral.

8. Park Improvements: The Amended and Restated DA does not change the obligations for the construction of the linear park within the development, but does clarify that in the event the park improvements exceed the cost estimate for those improvements, and the City opts to contribute to ensure that the park is constructed as designed, that future phases of the Development will not be delayed, provided that the Developer has paid its full obligation toward the cost of constructing the park.
9. Waste Water Treatment Plant: The original DA provided that the Developer would provide advance funding for a second phase of the City's wastewater treatment plant, and in exchange for that advanced funding, the Developer was guaranteed capacity in the City's treatment plant for a specific number of units. The Amended and Restated DA removes the advanced funding obligation, but also removes the guarantee of the availability of wastewater capacity. Instead, the City Engineer will determine whether there is sufficient capacity prior to issuing a final map for each phase of the project. Instead, the Developer has agreed to fund an update to the City's Wastewater Treatment Master Plan, and a financing plan to determine how to fund future expansion of the plant. The Developer will be eligible to receive reimbursement from future development for the cost of advance funding these studies.
10. Broadband Infrastructure: Revise to require the Agreement to include the installation of and dedication to the City of broadband conduit infrastructure for all units within the subdivision.
11. Removal of Requirements for Facilities Previously Constructed: The original DA included requirements for advance contributions to the construction of the Public Safety Facility, the Library and the Community Pool. The Developer provided funding for these facilities already, and they have been constructed. The requirements have been removed.
12. Removal of Miscellaneous Contributions: The Original DA also included certain miscellaneous contributions toward environmental education programs, development of the Putah Creek Park, and improvements to the Winters High School cafeteria, totaling \$450,000. The obligation to make those contributions has been removed.
13. Cooperation with Other Developments: Consistent with the Planning Commission direction, the Amended and Restated Development Agreement has added language that provides for cooperation between the developers of the Highlands, Hudson-Ogando and Callahan developments.

In addition to the above-mentioned amendments, the Amended and Restated Development Agreement no longer includes the section regarding Mello-Roos financing, limits the Developer to a maximum of 100 building permits to be pulled in a single year,

and includes a requirement that 20% of the units include photovoltaic systems. The language regarding the photovoltaic systems is the same language as was required of the Highlands development under the Conditions of Approval for the original Development Agreement for this project.

ATTACHMENTS:

- A. Ordinance, including Exhibit "A", the Amended and Restated Development Agreement

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTERS APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WINTERS AND GBH-WINTERS HIGHLANDS, LLC FOR THE WINTERS HIGHLANDS SUBDIVISION

WHEREAS, the City of Winters (“City”) and GBH-Winters Highlands, LLC (“Developer”) entered into that certain Development Agreement which was recorded in the official records of Yolo County as of May 30, 2006 (“Development Agreement”); and

WHEREAS, the Development Agreement provides for the residential development of certain real property, Yolo County APN 030-220-17, 030-220-17,030-220-19,030-220-49 and 030-220-50, located north of the terminus of Valley Oak Road and Main Street and south of Moody Slough Road and commonly known as the Winters Highlands Property (the “Project”); and

WHEREAS, the severe and adverse change in economic conditions that occurred subsequent to the execution of the Development Agreement by the City and Developer’s predecessor in interest resulted in a First Amendment to the Development Agreement; and

WHEREAS, in December 2006, the City executed a First Amendment to the Development Agreement to update the terms of the Development Agreement, and in March 2009, the City recorded a Second Amendment to the Development Agreement, both to make certain clarifications and modifications to the Development Agreement; and

WHEREAS, Developer and City desire to incorporate the clarifications and modifications of the First and Second Amendments, and make additional modifications to the obligations of Developer in connection with the Project, which clarifications and modifications are incorporated into an Amended and Restated Development Agreement (the “Amended and Restated Agreement”), in the form attached hereto and incorporated herein as **Exhibit A**; and

WHEREAS, on January 5, 2015, the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

WHEREAS, on January 20, 2015, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

WHEREAS, the City Council reviewed and studied the Amended and Restated Development Agreement, the Final Environmental Impact Report (“Final EIR”) prepared for the original Development Agreement, and the Addendum to the Final EIR prepared in connection with the Amended and Restated Development Agreement and found pursuant to Resolution No. 2015-04

that the Amended and Restated Development Agreement and associated approvals by the Council comply with the California Environmental Quality Act (“CEQA”).

NOW THEREFORE BE IT RESOLVED:

SECTION 1. ADOPTION OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT. Pursuant to California Government section 65868, the City Council hereby approves the Amended and Restated Development Agreement, in the form attached hereto as **Exhibit A.**

SECTION 2. FINDINGS. Pursuant to Government Code section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council makes and adopts the following findings:

A. That the Amended and Restated Development Agreement promotes the public health, safety, and welfare of the community because the Amended and Restated Development Agreement will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.

B. That the Amendment is consistent with the City’s General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City’s General Plan.

SECTION 3. CEQA. The City Council has reviewed and considered the information contained in the Addendum and supporting documentation in connection with the previously certified Final EIR. The City Council finds, as more specifically set forth in Resolution No. 2015-04 of City Council that the Addendum contains a complete and accurate reporting of the environmental impacts of the Amended and Restated Development Agreement, which impacts were fully addressed and mitigated in the Final EIR. The City Council further finds that the Addendum has been completed in compliance with CEQA and the State CEQA Guidelines, and that the Addendum reflects the independent judgment of the City of Winters. Based on these findings and the information set forth in Resolution No. 2015-04, the Council finds that no subsequent environmental review is not required for the Amended and Restated Development Agreement.

SECTION 4. RECORDATION. Pursuant to Government Code section 65868.5, within ten (10) days following the execution of the Amended and Restated Development Agreement, the City Clerk shall record with the County of Yolo Recorder a copy of the Amended and Restated Development Agreement.

SECTION 5. SEVERABILITY. If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more of such be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

The foregoing ordinance was introduced on January 20, 2015, and passed and adopted during a regular meeting of the City Council of the City of Winters on February 3, 2015, by the following vote to wit:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):
ABSTAIN: Council Member(s):

Cecilia Aguilar-Curry, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

EXHIBIT "A"

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Winters
318 First Street
Winters, California 95694
Attention: City Manager

No fee for recording pursuant
to Government Code Section 27383

(Space Above This Line Reserved For Recorder's Use)

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

GBH-WINTERS HIGHLANDS, LLC

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**AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF WINTERS AND GBH-WINTERS
HIGHLANDS, LLC RELATING TO THE DEVELOPMENT
OF THE PROPERTY COMMONLY KNOWN AS
THE WINTERS HIGHLANDS PROPERTY**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and GBH-WINTERS HIGHLANDS, LLC, a California limited liability company (the "Developer"), under the authority of § 65864 *et seq.* of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County. The City and the Developer are sometimes referred to herein as the Parties.

FACTS AND CIRCUMSTANCES

This Agreement is entered into based on the following facts and circumstances, among others:

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.
2. The Developer is in the business of developing residential communities in Northern California, including the development of property in a manner which promotes the goals envisioned by the City for its residents.
3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Winters Highlands Property and further described in Exhibit A and depicted in Exhibit B to this Agreement, is

through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. In order to meet these needs, the City and Developer entered into a Development Agreement approved by Ordinance No. _____ on _____, 2005 and recorded in the Official Records of Yolo County as Document No. _____, which Development Agreement has been amended by an Amendment No. 1 to Development Agreement dated _____ and recorded in the Official Records of Yolo County as Document No. _____, and an Amendment No. 2 to Development Agreement dated _____ and recorded in the Official Records of Yolo County as Document No. _____ (collectively, the "Original Development Agreement").

5. The City and Developer desire to enter into this Agreement to incorporate the previously approved amendments into a single document and make additional amendment to extend the term of the Original Development Agreement and to further update the term and conditions to reflect the current needs and objectives of the Parties.

6. It is the intent of the Parties in entering into this Agreement supersede and replace the Original Development Agreement in its entirety, and further to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain rights to develop the Winters Highlands Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the

City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions.

The following words or phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

1. "Agreement" means this Development Agreement.
2. "Application fees" means the amount paid by the Developer for the processing of any Land Use Entitlement or for an amendment to this Agreement.
3. "Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.
4. "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (e.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

5. "City of Winters" means the physical boundaries of the City of Winters.
6. "City Public Works Improvement Standards and Construction Specifications" means the City of Winters Public Works Improvement Standards and Construction Specifications, dated September, 2003, and as amended from time to time.
7. "Condition of Approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.
8. "Conditions of Approval" means the conditions placed on the approval of the Winters Highlands Land Use Entitlements, including the Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.
9. "Developer" means the GBH-Winters Highlands, LLC, a California limited liability company, and/or its successor(s) in interest.
10. "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.
11. "Final Subdivision Map" or "Final Map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

12. "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of the Property and used to pay for public facilities attributable to the development project.

13. "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval.

14. "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

15. "Mitigation Measures" means the requirements placed on the development of the Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for the Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

16. "Nexus Study" means a study used as the basis for imposing an Impact Fee on new development in accordance with California Government Code section 66000, *et seq.*

17. "Off-site improvement" means a public improvement constructed outside the physical boundaries of the Property.

18. "On-site improvement" means a public improvement constructed within the physical boundaries of the Property.

19. "Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

20. "Phase" means a Final Map for a portion of the Winters Highlands Tentative Subdivision Map.
21. "Phasing Plan" means the Phases planned for development of Winters Highlands, to be developed generally in the sequence shown on the Plan. The Phasing Plan for the Winters Highland Tentative Subdivision Map is attached as Exhibit E.
22. "Phasing Schedule" means the schedule for commencement and completion of certain Infrastructure in conjunction with each Phase of the Phasing Plan. The Phasing Schedule is attached as Exhibit F.
23. "Property" means the property commonly known as the Winters Highland Property, Yolo County Assessor's Parcels No. 030-220-17, 030-220-17,030-220-19,030-220-49 and 030-220-50.
24. "Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property.
25. "Winters Highlands Property" or the "Property" means the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcels No. 030-220-17, 030-220-17,030-220-19,030-220-49 and 030-220-50, and is more specifically shown and described in Exhibits A and B.
26. "Winters Highlands Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for the Property in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Winters Highlands Tentative Subdivision Map is attached as Exhibit C.

27. "Winters Highlands Subdivision" means the residential development created by the Winters Highlands Tentative Subdivision Map.

ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated By Reference.

Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Winters Highlands Property, Yolo County Assessor's Parcels No. 030-220-17, 030-220-17,030-220-19,030-220-49 and 030-220-50. A map showing the location and boundaries of the Property is attached as Exhibit B and a legal description describing the Property is attached as Exhibit A. In this Agreement the Winters Highlands Property will, in most instances, be referred to simply as the "Property."

Section 2.3 Agreement to be Recorded; Effective Date; Term.

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County, and upon recordation of this Agreement, it shall replace and supersede the Original Development Agreement in its entirety, and the Original Development Agreement shall be of no further force and effect.

b. The term of this Agreement is ten (10) years, commencing on the date it is recorded, unless otherwise extended in accordance with State law and City ordinances .

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In no event shall an owner or tenant of an individually completed residential unit within the Winters Highlands Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

a. The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

b. No assignment shall be effective until the City approves the assignment, which shall not be unreasonably withheld provided:

1. The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2. The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

c. Any request for City approval of an assignment shall be in writing and accompanied by audited financial statements of the proposed assignee and any additional information concerning the identify, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. To the extent permitted by law, all information submitted to the City shall constitute confidential and proprietary information, and the proposed assignee shall mark any material submitted to the City as such. The City shall have ten (10) business days to review all information provided by the proposed assignee after which all submitted information shall be returned to the proposed assignee. The City review and discussion of all materials submitted by the proposed assignee shall occur in a private meeting and shall not be discussed during a public hearing. To the extent permitted by law, the City agrees to maintain the confidentiality of all information provided by the proposed assignee in perpetuity.

d. The provisions of subsection b do not apply to the sale of: (i) any lots as shown on Exhibit C for which a Subdivision Improvement Agreement has been approved and entered into by the City and that are subject to a performance

bond for infrastructure improvements, (ii) any finished residential lot; or (iii) parcels designated for non-residential uses.

e. Notwithstanding subsection b above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

f. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property, in addition to the Winters Highlands Tentative Subdivision Map. The Parties recognize and acknowledge that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, the Land Use Entitlements and this Agreement. Nothing in this Section shall be deemed to constitute or require City consent to an assignment that consists solely of a reorganization of the Developer's business structure.

Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Title 11, Chapter 2, Article 6 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal Application fees.

Section 2.7 Whole Agreement; Conflict with Municipal Code.

a. This Agreement, together with any subsequent addenda, amendments, or modifications, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. The provisions of Title 15, Chapter 15.72 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venue; Attorneys' Fees; Dispute Resolution.

a. This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of Yolo County. The prevailing Party in such litigation, as determined by the court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

b. Nothing herein shall preclude the Parties from entering into a separate agreement to resolve any matter concerning this Agreement by a method other than litigation in court, including binding arbitration.

Section 2.9 Notices.

a. Formal written notices, demands, correspondence, and communications between the City and the Developer shall be given if sent to the City and the Developer by any one of the following methods:

1. Via certified U.S. Mail, return receipt requested.
2. Via an overnight mail service of the type normally used by the business community, such as Federal Express or UPS Overnight.
3. By facsimile, provided a "hard" copy is sent at the same time by regular U.S. Mail.

b. The written notices, demands, correspondence, and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. Notices to the City shall be given as follows:

City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager
Telephone (530) 795-4910 x 110
FAX (530) 795-4935

c. Notices to the Developer shall be given as follows:

Diana Reichert Meyer
President and CEO, Meyer Crest, Ltd.
725 Folger Avenue

Berkeley, CA 94710
Telephone (510) 845-1077
FAX (510) 845-1544

Section 2.10 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 2.11 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall insure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 2.12 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 5.2 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

Section 2.13 Unapproved Transfers Void. Any assignment or attempted Assignment that is inconsistent with Article 2 shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

Section 2.14 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise. Provided, however, notwithstanding anything to the contrary above, the holder of a mortgage or deed of trust, or the successors or assigns of such holder or owner through foreclosure, shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless the holder or owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the holder shall assume the obligations of Developer hereunder in a form acceptable to the City.

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

a. The Property shall be developed in accordance with the Conditions of Approval and the following ordinances, policies and Land Use Entitlements, all of which have been adopted or approved by the City Council:

1. Final Environmental Impact Report, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program (Resolution No. 2006-08 adopted on April 4, 2006).

2. Addendum to the Final Environmental Impact Report (Resolution No. _____ adopted on _____).

3. This Amended and Restated Development Agreement (Ordinance No. 2015-__ adopted _____, 20__ and effective on _____, (the "Enacting Ordinance")).

4. General Plan Amendment (applicable city-wide) to change the density range for the Medium Density Residential (MR) designation from 5.4-8.8 dwelling units per acre to 4.1-6.0 dwelling units per acre (Resolution No. 2006-09 adopted on April 4, 2006).

5. General Plan Amendment to change the Land Use Map for the Property (102.6 acres) as follows (a) 7.81 acres from Low Density Residential (LR) to Medium/High Density Residential (MHR); (b) 25.26 acres from (LR) to Medium Density Residential (MR); (c) 3.19 acres from MR to LR; (d) 7.11 acres from MR to MHR; (e) 3.89 acres from MR to Recreation and Parks (RP); (f) 0.31

acres from MR to High Density Residential (HR); (g) 11.47 acres from LR to RP; (h) 0.37 acres from LR to Public/Quasi-Public (PQP); (i) 4.99 acres from PQP to MR; (j) 2.39 acres from RP to HR; (k) 4.71 acres from RP to MHR; (l) 0.23 acres from PQP to MHR; (m) 6.66 acres from RP to MHR; (n) 1.51 acres from Open Space (OS) to RP; and, (o) 1.34 acres from RP to OS (Resolution No. 2006-09 adopted on April 4, 2006).

6. General Plan Amendment to change the Land Use Map for off-site property as follows: (a) 0.22 acres from RP to OS; (b) 0.02 acres from PQP to OS; (c) 2.44 acres from PQP to RP; (d) 0.29 acres from PQP to MHR; (e) 3.84 acres from LR to PQP; (f) 0.32 acres from PQP to Neighborhood Commercial (NC); (g) 0.48 acres from PQP to HR; (h) 2.09 acres from RP to HR; (i) 1.25 acres from NC to HR; (j) 1.94 acres from HR to LR; (k) 4.67 acres from RP to LR; (l) 0.48 acres from RP to PQP; (m) 0.07 acres from PQP to LR; and, (n) 3.16 acres from Rural Residential (RR) to LR. (Resolution No. 2006-09 adopted on April 4, 2006).

7. General Plan Amendment to modify the Flood Overlay Zone within the Land Use Element; and, re-designate Moody Slough Road as a Primary Collector in the Circulation Element (Resolution No. 2006-09 adopted on April 4, 2006).

8. Zoning Ordinance Amendments to change the Zoning Map for the Property (102.6 acres) as follows: (a) 7.81 acres from Single Family Residential 7,000 SF Average Minimum (R-1) to Single and Multi-Family Residential (R-3/PD); (b) 25.26 acres from R-1 to Single Family Residential 6,000 SF Average Minimum (R-2); (c) 3.19 acres from R-2 to R-1; (d) 7.11 acres from R-2 to R-3/PD; (e) 3.89 acres from R-2 to Parks and Recreation (P-R); (f) 0.31

acres from R-2 to High Density Multi-Family Residential (R-4); (g) 11.47 acres from R-1 to P-R; (h) 0.37 acres from R-1 to Public/Quasi-Public (PQP); (i) 4.99 acres from PQP to R-2; (j) 2.39 acres from P-R to R-4; (k) 4.71 acres from P-R to R-2; (l) 0.23 acres from PQP to R-3/PD; (m) 6.66 acres from P-R to R-3/PD; (n) 1.51 acres from Open Space (OS) to P-R; and, (o) 1.34 acres from P-R to OS (Ordinance No. 2006-03 adopted April 18, 2006 and effective on May 18, 2006).

9. Zoning Ordinance Amendments to change the Zoning Map for off-site property as follows: (a) 0.22 acres from Parks and Recreation (PR) to OS; (b) 0.02 acres from PQP to OS; (c) 2.44 acres from PQP to RP; (d) 0.29 acres from PQP to Multi-Family Residential (R-3); (e) 3.84 acres from Single Family Residential 7,000 Sf Minimum (R-1) to PQP; (f) 0.32 acres from PQP to Neighborhood Commercial (C-1); (g) 0.48 acres from PQP to High Density Multi-Family Residential (R-4); (h) 2.09 acres from PR to R-4; (i) 1.25 acres from C-1 to R-4; (j) 1.94 acres from R-4 to R-1; (k) 4.67 acres from PR to R-1; (l) 0.48 acres from PR to PQP; (m) 0.07 acres from PQP to R-1; and, (n) 3.16 acres from Rural Residential (R-R) to R-1. (Ordinance No. 2006-03 adopted April 18, 2006 and effective on May 18, 2006).

10. Planned Development (PD) Permit to allow for modification of the minimum lot area, lot width, and lot depth for R-3 lots as identified on the Winters Highlands Tentative Subdivision Map (Permit No. 2006-01 approved on April 4, 2006).

11. Exclusion of the Property from the West Central Master Plan (Resolution No. 2006-09 adopted on April 4, 2006).

12. Amendments to the Circulation Master Plan (adopted May 19, 1992) and Standard Street Cross Sections (adopted October 2, 2001) (Resolution No. 2006-09 adopted on April 4, 2006).

13. Amendments to the Bikeway System Master Plan (adopted November 19, 2002) (Resolution No. 2006-09 adopted on April 4, 2006).

14. Amendments to the Rancho Arroyo Storm Drain District Master Plan to modify the Rancho Arroyo drainage shed (Resolution No. 2006-09 adopted on April 4, 2006).

15. Winters Highlands Tentative Subdivision Map (Map No. 4507), as amended, with Findings of Fact and Conditions of Approval, on 102.6 acres creating 422 single-family lots (including 18 duplex lots) on 49.45 acres; a 2.01 acre parcel for 30 apartments; 10.63 acres for park land (plus a 10,000 SF well site); 7.43 acres of open space and wetlands; an exchange parcel of 0.04 acres to the Callahan Estates project; and 32.81 acres in public roads. (Resolution No. 2006-09 adopted on April 4, 2006, as amended by Resolution No. _____ adopted on _____).

16. A Lot Line Adjustment allowing an exchange of property with the adjoining Callahan Estates project (Resolution No. 2006-09 adopted on April 4, 2006).

b. Under the provisions of Government Code section 66452.6(a), the term of the Winters Highlands Subdivision Tentative Subdivision Map is hereby extended to be co-terminus with the term of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the General Plan of the City of Winters, as amended.

Section 3.3 Vested Rights of Developer.

Unless otherwise provided in this Agreement, the Developer shall have the vested right to develop the Property in accordance with the Land Use Entitlements described in Section 3.1 above, and in conformity with the City rules, regulations, policies, standards, specifications and ordinances (collectively "City laws") in effect on the date of adoption of the Enacting Ordinance.

Section 3.4 Rights Retained by the City.

This Agreement shall be construed to reserve to the City all power and authority to regulate the development of the Property, unless expressly limited herein. Notwithstanding any other provision of this Agreement, the following regulations and provisions shall apply to the development of the Property:

a) Application fees and charges of every kind and nature imposed by the City to cover the actual costs to the City of processing development applications or for monitoring compliance with any land use entitlements granted or issued.

b) Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are

uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

c) Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the City at the time of permit application.

d) City laws which may be in conflict with the Land Use Entitlements but which are reasonably necessary to protect the public health and safety, provided such City laws and regulations are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties.

e) New City laws applicable to the Property, (i) mandated by State or federal law; (ii) required for reasons of public health, safety or welfare, based upon findings adopted by the City Council; or (iii) which do not conflict with the vested right of Developer to develop the Property in accordance with the Land Use Entitlements described in Section 3.1 above, provided such new rules, regulations, policies, standards and specifications are uniformly applied to all substantially similar types of development projects and properties, and do not materially impact the Project.

f) Fees and charges which are in effect and collected at the time of the approval of a Final Subdivision Map or the issuance of a Building Permit, as provided in this Agreement or as generally applicable throughout the City of Winters, including, but not limited to, Impact Fees for traffic signalization, storm drainage infrastructure, sewer infrastructure, water

infrastructure, traffic and pedestrian circulation, library services and police and fire buildings and equipment.

Section 3.5 Other Vesting Laws Inapplicable.

a. It is the intent of the Parties that the provisions of this Agreement shall supersede any provision of State or federal law pertaining to the vested rights of the Developer to develop the Property, whether those laws are currently in force or become effective after this Agreement is recorded. The laws in effect as referenced in the preceding sentence include, but are not limited to, provisions of the Government Code pertaining to Development Agreements (section 65864 *et seq.*) and Development Rights [vesting tentative maps] (section 66498 *et seq.*).

b. Notwithstanding subsection a., however, to the extent that a State and/or federal law becomes effective after this Agreement is recorded and it is specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

c. The Developer shall not make any application to develop the Property, in whole or in part, under any vesting law, unless the right to do so is specifically granted by State and/or federal law which becomes effective after the date of the recording of this Agreement.

Section 3.6 Commencement and Phasing of Development.

a. The Developer shall have sole discretion to determine when the final map for Phase I of the Winters Highlands Subdivision, and accompanying subdivision improvement plans, are submitted for City review and approval.

b. Developer agrees to undertake the development of the five (5) Phases of the Winters Highlands Subdivision in sequential order (i.e., Phase I, Phase II, Phase III, Phase IV and Phase V), and to apply for a separate Final Map for each Phase of the Subdivision. Multiple Phases may be undertaken simultaneously provided that the Developer shall make application for each Final Map in sequential order as set forth in this subsection (b), and no more than two (2) Final Maps may be approved at one time.

c. Developer acknowledges and agrees that the approval of a Final Map for any Phase of the Winters Highlands Subdivision shall be contingent upon a determination by the City that the Developer has fully complied with the terms of this Agreement in the development of the prior Phase or Phases, in addition to satisfying the other requirements imposed by State statute, City law, the Land Use Entitlements or the Conditions of Approval.

Section 3.7 Maximum Number of Building Permits Per Year; Non-Market Rate Units.

a. To provide for orderly growth within the City of Winters, the Developer shall not be entitled to apply for and receive Building Permits for more than 100 single family residential units in a single calendar year for the Winters Highlands Subdivision, except that this limitation shall not apply to the deed restricted moderate income units as described below.

b. No Building Permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement, unless and until the City and Developer enter into a subsequent Development Agreement. This provision shall survive the termination of this Agreement.

c. Eighteen (18) moderate income deed restricted affordable housing units (the "Affordable Units") shall be constructed in the Winters Highlands Subdivision pursuant to the City's land use regulations and the Affordable Housing Plan adopted for the Winters Highland Subdivision. The Developer may apply for and receive building permits for these units at any time during the term of the Agreement, provided however; the Developer must complete the construction of the Affordable Units within each Phase of the subdivision prior to the issuance of building permits for market rate units within any subsequent phase.

d. The purpose of limiting the number of Building Permits issued in any year is to allow the City to meter growth in such a manner that the total number of new units built per year, within the Winters Highlands Subdivision and within other properties, does not exceed the number which can reasonably be served with municipal and education services without unduly impacting those existing units which receive such services.

e. In order to satisfy the City's needs for affordable housing in accordance with the approved Affordable Housing Plan for the Winters Highlands Subdivision, in addition to construction of the Affordable Units as set forth in Section 3.7(c), Developer shall do the following:

1. Pay an Affordable Housing fee of \$2,000,000, which shall be amortized over the market rate single family lots on a per unit basis. Fifty percent (50%) of the per unit fee will be paid at recordation of each Final Map equal to the number of lots included within the applicable Final Map. For example, if the fee were to be \$5,500 per market-rate unit, and Developer were to record a final map for 100 market rate units, Developer would pay \$275,000 at recordation of the Final Map. The remaining fifty percent (50%) will be paid at Close of

Escrow to the home buying public through sales proceeds or separate agreement, so long as the payment is concurrent with each home closing. As per the example presented above, and based on a \$5,500 fee, \$2,750 would be paid to the City at the closing for each individual housing unit. The City may, at its discretion, record a covenant, deed of trust or similar security instrument against each market rate lot to secure payment of the remaining portion of the fee at close of escrow.

2. Dedication of the Affordable Apartment Site (Lot A) – Developer shall grant fee title to that certain property designated as Lot A on the Tentative Subdivision Map (“Lot A”) to the City, to be used for the development of affordable multifamily units. The grant deed and any other documents necessary to effect conveyance of Lot A to the City shall be recorded concurrently with recordation of the Final Map for Phase 1 of the Subdivision.

3. Construct the 18 for-sale, Affordable Units, which shall be offered for sale to qualified households of moderate income (as defined in Health & Safety Code Section 50093) at an Affordable Housing Price (as that term is defined in Health & Safety Code Section 50025.5) within the Subdivision. The sale and affordability of the Affordable Units shall be restricted as required by the City’s Inclusionary Housing Ordinance, set forth in the Winters Municipal Code Chapter 17.200. The construction of these units will keep pace with market-rate construction as the City will not approve subsequent Final Maps, pursuant to Section 3.6(b), until all affordable units within the currently approved map(s) are constructed and offered for sale to qualified homebuyers.

Section 3.8 Installation of Public Improvements.

Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed

both on-site and off-site during the development of the Winters Highlands Subdivision. When the Final Map for each Phase of the Winters Highlands Subdivision is approved, the Developer shall enter into a separate written agreement ("Subdivision Improvement Agreement") with the City by which it commits to build and dedicate to the City or applicable public agency, the public improvements required by the Land Use Entitlements and the Conditions of Approval. Security for the construction of the improvements shall be provided as required by State law and City law.

Section 3.9 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Winters Highlands Tentative Subdivision Map, acquire the real property rights necessary to construct or otherwise provide the public improvements required by this Agreement, the Land Use Entitlements or the Conditions of Approval.

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the applicable Final Subdivision Map for the Winters Highlands Subdivision is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public

improvements as required by this Agreement or the Conditions of Approval, or b) if necessary, in accordance with and to the extent permitted by the procedures established by State law, use its power of eminent domain to acquire the property interests. Any such acquisition by City shall be subject to City's discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

Section 3.10 Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed.

a. In some instances, the Developer will be required to install public improvements to a size and/or capacity greater than that which is required to serve the residents of the Winters Highlands Subdivision, commonly referred to as "oversizing" improvements. In such an instance, the Developer shall be entitled to reimbursement for such oversizing of improvements from fees paid by other property owners at the time of development.

b. There are two sources from which the Developer may be reimbursed for oversizing improvements:

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property owner to

reimburse the Developer its *pro rata* share of the cost of the oversizing of improvements. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of a separate agreement between the City and the Developer which will provide that the Developer will be reimbursed from Impact Fees. Such Impact Fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

c. In any instance in which oversizing of improvements is required, the City Engineer shall identify the method of reimbursement the Developer will receive. Additionally, when the Developer will receive reimbursement from a benefiting property owner, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the *pro rata* share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property. When the Developer will receive reimbursement from Impact Fees, the City Engineer shall specify in the separate agreement the amount the Developer will be reimbursed and the approximate time when that amount will be paid.

d. The Developer shall have no recourse against the City if Impact Fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, or if a benefiting property fails to reimburse the Developer. However, the Developer retains all rights against the benefiting property owners.

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a Building Permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a Building Permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the Building Permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a Building Permit, the Developer shall be receive credit against such fee up to the actual cost of the installed improvement, or the estimate for such fee in the Nexus Study, whichever is less, as determined by the City Engineer. The City Engineer shall have the exclusive right to interpret this section in case of any disagreements concerning its applicability. This sub-section f. is not assignable, in whole or in part, it being the express intent of the Parties that it is to be applicable only to the Developer and to no third party unless this Agreement is specifically amended to provide otherwise.

Section 3.11 Subsequent Discretionary Approvals.

a. To the extent any Discretionary Approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those Discretionary Approvals in the same manner as any other person applying for such Discretionary Approvals from the City. All Application fees then applicable for the type of Discretionary Approvals shall apply. The City will review these applications in good faith within a reasonable time to insure that the Developer may proceed to develop the Property in the manner contemplated by this Agreement.

b. The only remaining Discretionary Approval which is contemplated

at this time is design review under the Zoning Ordinance.

Section 3.12 Review of Agreement.

Review by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Title 11, Chapter 2, Article 7 (Review) of the Winters Municipal Code.

Section 3.13 Compliance with Government Code Section 66006.

As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

Section 3.14 Subdivision Maps. A subdivision, as defined in Government Code section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Government Code.

Section 3.15 Deferral of Impact Fees. In order to assist the Developer during these critical economic times, and to encourage the Developer to proceed with construction of new affordable and market rate housing within the City of Winters, except as otherwise provided for herein, the City hereby agrees to defer all Impact Fees imposed by the City on building permits issued by the City, such that fifty percent (50%) of the Impact Fees shall be due at time of issuance of the building permit, and fifty percent (50%) shall be due at time of issuance of a certificate of occupancy. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable

Conditions of Approval, less any credits issued.

ARTICLE 4
DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

a. The Developer acknowledges and agrees that the mitigation of the impact of the Winters Highlands Subdivision on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that its intention upon entering into this Agreement is to mitigate the impact on schools to the greatest reasonable extent, in accordance with the terms of an agreement negotiated between the Developer and the Winters Joint Unified School District. A copy of the proposed agreement is attached as Exhibit G.

b. The Developer shall enter into an agreement with the Winters Joint Unified School District ("School District"), substantially in the form attached as Exhibit G, that provides, among other matters, that the Developer will pay to the School District:

1. For homes for which building permits are issued by the City on or before December 31, 2015: Three Dollars and Twenty Cents (\$3.20) per square foot of "assessable space," as that terms is defined in Section 65995(b)(1) of the California Government Code.

2. For homes for which building permits are issued by the City on or after January 1, 2016: Four Dollars and Twenty-Three Cents (\$4.23) per square foot of "assessable space," as that terms is defined in Section 65995(b)(1) of the California Government Code.

The Developer has represented to the City that it intends to fully and faithfully perform the agreement between the Developer and the School District, and the City has relied upon this representation in entering into this Agreement. A failure to perform the agreement with the School District by the Developer shall be deemed to be a default of this Agreement and subject to the provisions of Article 5.

Section 4.2 On-Site Park Improvements.

a. Developer shall fully improve, construct and dedicate a 10.86 acre linear park on Lots V, W and X within the Winters Highlands Subdivision, which includes a 0.23 acre well site, and as more particularly set forth in this Section 4.2 and in accordance with the Conditions of Approval. The dedication of this 10.86 acre park site exceeds the General Plan obligation by 0.56 acres, but is provided by the Developer as consideration for the benefits of this Agreement.

b. The City, through a public process, has or will create a conceptual design for the linear park, including improvements to the well site, and has provided the Developer with the conceptual design for the linear park, including improvements to the well site.

c. The Developer shall improve and construct the linear park concurrently with the construction of each Phase of the Subdivision, such that Lot X shall be developed concurrently with Phase I; Lot W shall be developed concurrently with Phase II; and Lot V shall be developed concurrently with Phase III. The park shall be constructed in accordance with the design provided and approved by the City, and in accordance with the City Public Works Improvement Standards and Construction Specifications. Any changes to the design or timing of construction shall be approved in writing by the City. If actual costs will exceed the estimated cost set forth in paragraph d. below, the parties will either (i) cooperate

on a re-design of the improvements such that the actual cost does not exceed the estimated cost, or (ii) the City may elect, in its sole and absolute discretion, to fund the difference between the actual cost and estimated cost, for construction of the improvements as initially designed. In the event that City elects to fund the difference between the actual cost and the estimated cost of construction as permitted herein, the City shall not withhold approval of a Final Map for any Phase of Winters Highlands based on a failure to complete construction of the linear park, provided that the Developer has actually funded improvements to the linear park in an amount equal to the total estimated cost of the fully developing the linear park as set forth in paragraph d. hereof.

d. The total estimated cost of fully developing the linear park, as of the effective date of this Agreement, is THREE MILLION TWO HUNDRED AND NINETY-TWO THOUSAND AND FORTY-NINE DOLLARS (\$3,292,049), computed by multiplying THREE HUNDRED AND THREE THOUSAND AND NINE HUNDRED AND SEVENTY-FIVE DOLLARS (\$303,975) per acre (including infrastructure improvements, construction, administration and site equipment) by 10.86 acres. The improvement, construction and dedication of the linear park by the Developer shall be in lieu of the payment of any park impact fees or park land dedication or Quimby Act fees otherwise required by City ordinance.

Section 4.3 Off-Site Park Improvements

a. Concurrently with the construction of the improvements for Phase I of the Winters Highlands Subdivision, the Developer shall provide utilities stubbed out to the southeast corner of the twenty-two (22) acre community park site located to the north of the Winters Highlands Subdivision park site, in a location selected by

the City, provided that such utility stubs shall not extend more than seventy-five feet (75') from the centerline of the adjacent public street.

b. Both the utility stub and \$250,000 contribution to the community park shall be included in the Developer's total park obligation pursuant to Section 4.2 (d) above. Developer agrees to provide the City with an engineer's estimate of cost for the installation of the utility stub to establish the credit for that improvement.

Section 4.4 Intentionally Omitted.

Section 4.5 Wastewater Treatment Plant Expansion.

a. An expanded and upgraded Wastewater Treatment Plant ("WWTP") may be needed in order to treat the wastewater from the Winters Highlands Subdivision, and other developing properties within the City. The Developer shall pay for the cost of (i) development of an update to the January 2007 Wastewater Treatment Plant Master Plan, which will update the available capacity of the WWTP and will determine what the next phase of WWTP expansion should be, when that phase will be triggered by development, and what the associated tasks and costs are for that expansion, and (ii) development and completion of a financing plan for the WWTP expansion, to establish the funding mechanism(s) required for the expansion.

b. The City anticipates that the update to the January 2007 Wastewater Treatment Plant Master Plan and the financing plan to be funded by Developer shall be used to develop updated Impact Fees to fund the cost of improvements to the WWTP that may be needed in order to treat the wastewater from the Winters Highlands Subdivision and other developing properties within the City. Such updated Impact Fees will take into account the cost of funding the update

to the January 2007 Wastewater Treatment Plant Master Plan and the financing plan, and the Developer shall be reimbursed from the updated WWTP Impact Fees that are levied against other developing properties for amounts funded in excess of Developer's pro rata share of the cost of such plans. Following adoption of updated WWTP Impact Fees in accordance with the plans, the Developer and City will enter into a separate reimbursement agreement, which will provide the terms pursuant to which the Developer will receive reimbursement from WWTP Impact Fees paid from other developing properties, and the City Engineer shall specify in the separate agreement the amount the Developer will be reimbursed and the approximate time when that amount will be paid. Notwithstanding the foregoing, the Developer shall be reimbursed solely from WWTP Impact Fees paid by other developing properties, have no recourse against the City if WWTP Impact Fees paid by others are insufficient to repay the Developer.

c. Developer agrees and acknowledges that pursuant to Conditions of Approval #36 and 136, included in Exhibit D attached hereto and incorporated herein, the City shall not approve a Final Map for any Phase of the Winters Highlands Subdivision unless and until the City Engineer determines, in his/her sole and absolute discretion, that the WWTP has adequate capacity to serve all residential units and other buildings to be constructed within that Phase at the time of consideration of the Final Map. In the event the WWTP does not have adequate capacity to serve the residential units and other buildings within the Phase the Developer may, at its option, fund the necessary expansion to the WWTP on its own or in conjunction with other interested developers, subject to reimbursement through an agreement entered into pursuant to Section 3.10 of this Agreement.

Section 4.6 New Sewer Pump Station.

a. Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay its *pro rata* share of the construction of a new sewer pump to be located at a site specified by the City Engineer. The new pump will be financed entirely by developer contributions without any reimbursement from the City.

b. The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly.

c. The Developer understands and acknowledges that no Building Permits shall be issued for any residential unit within the Winters Highlands Subdivision until the new sewer pump station is constructed and accepted by the City. Therefore, if the developer which is currently obligated to construct this facility fails to do so, Developer may be required to construct this facility in order to proceed with development of the Property.

Section 4.7 Urban Water Management Plan.

No later than the issuance of the 120th building permit for the Winters Highlands Subdivision, the Developer shall pay to the City its *pro rata* share of Ninety Thousand Dollars (\$90,000) for the cost for preparation of a City Urban Water Management Plan.

Section 4.8 Water Well.

a. A water well is required in order to provide water service to the Winters Highlands Subdivision and other developing properties which has been

constructed by the City (“Well No. 7”). A second water well may be required, depending upon the productivity of the first water well.

b. Conditions of Approval No. 37.- (Mitigation Measure 15) and No. 140, in part, require the Developer to pay its fair share obligation if the first water well is constructed by others. In addition, the Conditions of Approval require the Developer to advance the costs for the design and construction of a second water well, if the City Engineer determined that a second well is necessary in order to serve the Winters Highlands Subdivision.

c. Developer acknowledges and agrees that it will be required to pay the full amount of water development impact fees at the time of issuance of each building permit for the development, which shall be used, in part, to reimburse City for the costs of constructing Well No.7.

d. The amount and timing of reimbursement for funds advanced by Developer and related to the construction a second Well shall be set forth in a separate reimbursement agreement in accordance with the provisions of section 3.10 of the Agreement.

e. The Developer agrees to dedicate a second well site acceptable to the City and at no cost to the City. Developer also agrees to construct a second water well or pay its pro rata share of the cost of such facility, upon demand by the City Engineer. If Developer fails to dedicate the site, construct or pay for such facility upon demand and as determined by the City Engineer, then the City may withhold the issuance of Building Permits for the Winters Highlands Subdivision, in addition to other remedies available to the City.

Section 4.9 Pedestrian Circulation and Safety Improvements.

Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay to the City its *pro rata* share, as determined by the City Engineer, of the cost for the construction of pedestrian circulation and safety improvements at the intersection of Grant Avenue and Morgan Street pursuant to the Morgan Street Area Circulation Study, July 1999. The total cost for these improvements is currently estimated to be ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000).

Section 4.10 Walnut Street - Dutton Street- East Street Intersection Corridor.

Prior to the recordation of the Final Map for Phase I for the Winters Highlands Subdivision, the Developer shall pay to the City its *pro rata* share, as determined by the City Engineer, of the cost for the design and construction of intersection and roadway improvements within the Walnut Street - Dutton Street- East Street intersection corridor, also known as the Grant Avenue Access Project. The total cost for these improvements is currently estimated to be FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

Section 4.11 Flood Overlay Zone; Payment of Impact Fees.

a. As part of the Land Use Entitlement for the Winters Highlands Subdivision, Developer requested and City approved a General Plan Amendment to remove approximately thirty (30) acres of the Property from the Flood Overlay Area. This area of the Property is referred to herein as the "Winters Highlands Flood Overlay Area".

b. To accommodate the development of the Winters Highlands Flood Overlay Area, the drainage from this portion of the Property will be directed to the Rancho Arroyo Detention Basin. Developer shall fund and construct all

drainage improvements necessary to develop the Winters Highlands Overlay Area. The drainage improvements currently contemplated include a pump station in the Rancho Arroyo Pond and storm drainage piping. Developer understands and acknowledges that all costs for the drainage improvements relating to the Winters Highlands Overlay Area shall be paid for by Developer, and Developer shall not be entitled to reimbursement from the City or other property owners.

c. Notwithstanding the amendment of the General Plan to remove the Winters Highlands Overlay Areas from the General Plan Flood Overlay Area, Developer agrees to pay, with respect only to development within the Winters Highlands Flood Overlay Area, any drainage Impact Fee adopted or enacted by the City to fund drainage improvements in the General Plan Flood Overlay Area, at the applicable rate and at the time established by ordinance or resolution, less any credits are received for drainage improvements installed by the Developer. If the drainage Impact Fee is required to be paid prior to the approval of a final map, and a final map has already been approved for all or a portion of the Winters Highlands Flood Overlay Area prior to the Impact Fee being adopted, then the Impact Fee shall be paid at or prior to the issuance of any Building Permit for development within the portion of the Winters Highlands Flood Overlay Area covered by the final map. If a Building Permit has been issued within the portion of the Winters Highlands Flood Overlay Area covered by a final map prior to the Impact Fee being adopted, then the Impact Fee shall be paid by Developer to the City within ninety (90) days from the adoption or enactment of the drainage Impact Fee.

d. Developer waives any and all rights to challenge or protest the imposition or payment of a drainage Impact Fee for the General Plan Flood Overlay Area.

Section 4.12 Installation of Conduit. Developer shall provide design and construction for conduit and boxes suitable for broadband internet service to each residential unit, within the joint trench for the Winters Highlands Subdivision. The conduit shall be coordinated with all other utilities and shown on the joint trench composite plans. The conduit and boxes are to be constructed with the joint trench and completed before certificate of occupancy is issued. The utility company providing broadband internet service will install the wire necessary to provide the service; the timing of which will not delay the issuance of a certificate of occupancy.

Section 4.13 Cooperation and Reimbursement Agreement. The developers of Hudson-Ogando, Callahan Estates and Winters Highlands, referred to in this section as "Owners," intend to subdivide their respective properties into residential lots which will be served by public streets and improvements, easements and rights-of-way. Each Owner will require access to portions of the Other's property for purposes of installation of streets, utilities conduit, storm drains, sewer and other improvements for future use and/or dedication for the benefit of their respective residential project, as well as for the benefit of all the Owners. Public streets and improvements, easements and rights-of-way that are reasonably expected to benefit all of Owners are defined herein as "Joint Improvements." Joint Improvements may include, but are not limited to, streets, curbs, gutters, street lighting, sidewalks, joint trench, storm drains, storm water pumping station, sewer and water collection systems, sewer pump station, utilities, and other public improvements.

For the purpose of constructing the Joint Improvements as may be necessary and appropriate to serve the Owners and as may be required by Development Conditions affecting each Owner's Property, the Owners shall use best efforts to

enter into a “Joint Cooperative Development and Reimbursement Agreement.” The Joint Cooperative Development and Reimbursements Agreement shall be prepared and executed among the Owners prior to the City’s approval of the first final map associated with any of the Owner’s properties. The City shall not approve a final map for any of the Owner’s three respective project until the Owners submit to City the Joint Cooperative Development and Reimbursement Agreement executed by all the Owners, or the Owner applying for a final map can show to the reasonable satisfaction of the City Manager that it has used best efforts to enter into said agreement but has been unable to agree to terms with the other Owners.

Section 4.14 Installation of Photovoltaic. A minimum of 20 percent of the market-rate units in each Phase of the Winters Highlands Subdivision shall have a photovoltaic solar energy system capable of producing a minimum of 2.4kW (peak-rated DC watts) photovoltaic.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

Section 5.1 Application of Article. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

Section 5.2 Termination of Agreement.

a. This Agreement is terminable: (i) by mutual written consent of the Parties, or (ii) by either Party following an uncured default by the other Party under this Agreement, subject to the procedures and limitations set forth in this Agreement.

Any obligations of indemnification and defense relating to matters arising before termination of this Agreement shall survive termination of this Agreement.

b. Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, neither Party shall have any further rights or obligations under this Agreement. Subject to the subparagraph d. below. Each party understands that it may have sustained damages that arise, or may arise out of, or relate to the termination of this Agreement that may not be apparent and that are presently unknown. Each party waives, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for all such damages. The waivers and releases in this Agreement include waivers and releases of any claims for unknown or unanticipated injuries, losses, or damages arising out of or relating to termination of this Agreement by mutual written consent of the Parties.

c. Subject to subparagraph d. below. Each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, all rights or benefits that it has or may have under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

d. Nothing herein contained shall release or excuse Developer in the performance of its obligations to indemnify and defend the City as provided in this Agreement.

Section 5.3 City's Remedies.

a. The City's remedies under this Agreement are as follows:

1. Termination of the Agreement after giving the Developer the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Winters Highlands Subdivision pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. Specific performance as provided in subsection c.

4. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5. An action for damages as provided in subsection d.

6. The right to withhold the issuance of any permits, including building permits, as provided in subsection e.

b. With respect to a default by the Developer under this Agreement, the City shall:

1. First submit to the Developer a written notice of default identifying with specificity those obligations of the Developer which have not been performed. Upon receipt of the notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default. The Developer shall complete the cure of the default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy the default(s), provided

Developer has continuously and diligently pursued such remedy at all times until such default(s) is cured.

2. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

3. If, after the public hearing, the City Council determines Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement.

c. The City may seek specific performance to compel the Developer to do any, or all, of the following:

1. To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

2. To properly complete and dedicate any public improvements which are required by this Agreement.

3. To complete, demolish or make safe and secure any uncompleted private improvements located on the Property with the choice of whether to demolish, complete or secure such private improvements and the

method of such demolition, completion and securing such private improvements to be selected by the Developer in its sole discretion.

d. The City may institute an action for damages for the amount of any money owed to it under Article 4, or the cost of performing any act required of the Developer under Article 4, or the cost to complete any public improvements required to be installed under the final map (or any phase, if applicable) for The Winters Highlands Subdivision.

e. In the event of a default by Developer, or following notice of default by Developer and during the cure period specified in subparagraph b. above, the City shall have the right to refuse to issue any permits to which Developer would otherwise have been entitled pursuant to this Agreement or City ordinances, including but not limited to, building permits and certificates of occupancy, provided that such refusal shall not extend for a period of more than ninety (90) days unless the City Council, following consideration of evidence regarding the default by Developer, determines there is a reasonable basis to extend such period of refusal. This provision is in addition to and shall not limit any actions that the City may take to enforce this Agreement, the Land Use Entitlements or the Conditions of Approval.

Section 5.4 Developer's Remedies.

a. The Developer's only remedies under this agreement are as follows:

1. An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of The Winters Highlands Subdivision pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

b. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City has continuously and diligently pursued such remedy at all times until such default(s) is cured.

c. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City

of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6
HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

a. The Parties represent and declare that this Agreement creates no partnership, joint venture, or other legal entity between them.

b. In entering into this Agreement, the City is acting under the statutory and/or police powers which it holds as a municipal corporation of the State of California and which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

c. In entering into this Agreement, the Developer is acting in a purely private capacity as an owner of real property within the City of Winters, which property is subject to the jurisdiction of the City acting in the capacity set forth in subsection b.

Section 6.2 No Liability for Acts of the Developer.

a. It is expressly understood that the development of The Winters Highlands Subdivision is an undertaking that may create for the Developer liability to third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and sub-contractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers, agents,

and employees from any claim of injury to person or property arising out of or relating to this Agreement or the operations of the Developer in the development of The Winters Highlands Subdivision under the terms of this Agreement.

c. Notwithstanding anything in Article 5 to the contrary, the City shall have any remedy available to it at law and/or equity to enforce the provisions of, or to collect damages for, any breach of this Section 6.2.

Section 6.3 Duty to Defend Challenges to this Agreement.

a. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

b. The Parties agree to cooperate jointly to defend any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

c. In the event of any such challenge, each Party shall bear its own attorneys' fees and other litigation expenses, unless the City elects to tender the defense to the Developer pursuant to subsection e. below.

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto. Developer's obligation to pay any and all fees, costs or expenses awarded against the City is not affected by City's decision to tender, or not tender, the defense of an action to the Developer.

e. Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement

or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter.

REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE TO FOLLOW

"DEVELOPER"
GBH WINTERS HIGHLANDS, LLC,
a California limited liability company

By: _____

Its: _____

Dated: _____

"CITY"
CITY OF WINTERS, a municipal
corporation

By: _____
Mayor

Dated: _____

Attest: _____
City Clerk

Approved as to form:

Ethan Walsh, City Attorney

.....

LIST OF EXHIBITS

- A Legal Description of the Property
- B Map Showing Location and Boundaries of the Property
- C Winters Highlands Tentative Subdivision Map
- D Conditions of Approval
- E [Reserved]
- F [Reserved]
- G Form of Agreement Between Developer and Winters Unified School
District



TO: Honorable Mayor and Council Members

DATE: February 3, 2015

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

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

SUBJECT: Partnership with Boost – A Preschool Intervention Program

RECOMMENDATION:

Hear Presentation by Boost Team.

Staff respectfully requests that the City Council approve Partnership with Boost – A Preschool Intervention Program

BACKGROUND:

Boost is a Preschool Intervention Program that will provide services for all children in Winters ages two years old through entry to kindergarten. They will be providing an assessment for each preschool program providing three hours of assistance weekly to each preschool. They will be focusing on supporting language, social, behavioral, motor and learning skills to give children a boost.

Staff met with representatives from the Boost Program to talk about the feasibility of partnering together. Boost would seek out and apply for grants on behalf of the City of Winters. The City would be the grant applicant, and then if the grant was successful, the City would contract with Boost to carry out the grant activities.

The advantage of partnering together would be the increased ability to improve funding opportunities.

FISCAL IMPACT:

Staff time only. Boost will be seeking funding from a combination of collaborators, private funding sources and possible grants from Yocha Dehe and First Five Yolo.

boost

A Preschool Intervention Program

Revised January 20, 2015

Background

Research shows that for children who are challenged by language delays, delayed motor skill development, behavioral issues, cognitive delays, learning disabilities, emotional immaturity and/or a lack of social skills can best be helped as soon as these challenges are identified. "High quality early intervention services can change a child's developmental trajectory." (<http://www.nectac.org/~pdfs/pubs/importanceofearlyintervention.pdf>) The families of Winters are challenged by not being able to access the services their children need because: 1) there is a battle within medical insurance agencies regarding who is responsible for this coverage, 2) our local school district has had a very difficult time hiring competent providers and has limited financial resources, and 3) many children who need services don't qualify because of the current diagnostic system. Research also shows that social and emotional competence are the strongest indicators of learning success in school.

Business Model

Boost will provide services for all children in Winters age two years old through entry to kindergarten. The Boost team will provide a dynamic assessment for each preschool program collaborating with the preschool directors and teachers. Boost will also reach out to children in home day care settings, children not enrolled in preschool and the preschool children in Esparto. The Boost team will then provide three hours of assistance weekly in each program to work with all of the children in each program and provide support to the preschool directors. Additional consultations with a child psychologist and a behaviorist will also direct how the team supports the individual needs of the children. The team will focus on supporting language, social, behavioral, motor and learning skills of the children in each program to give all preschool children in Winters a boost. In addition to this direct intervention, parents will receive direction in avenues to access additional care as needed, and education and support for parenting their unique child.

Boost is currently networking with several different organizations to determine the best pass through organization. Boost is currently collaborating with: Beta Alpha Beta, Winters Joint Unified School District, Yolo Children's Alliance, Yolo Child Care services, RISE, the Yolo County Library, and the four preschools in Winters (The Tree House, Winters Parent Nursery School, The State Preschool and the Yolo Housing YCMA preschool). We are working to

establish additional collaborators with the City of Winters, Rotary Club of Winters, and the YES team. We are seeking funding from a combination of collaborators, private funding sources, Yocha Dehe and First Five Yolo.

The Boost team is made up of Jenne Myers, MA, CCC-SLP, (speech and language pathologist), Cheryl Moore MA ECE (an early childhood educator), Janet Andersen PT (a physical therapist) and Ravi Tumber (our public relations director).

Impact

Boost will initially benefit over 250 preschool aged children in Winters and Esparto. All children in the preschools where Boost is present will benefit from the additional specialized instruction in social, language, behavior, motor and learning skills. Evidence shows that children who are educated in social skills "have the added advantage of being strong problem solvers, more flexible thinkers and more skilled at collaboration" (The Incredible Flexible You). This will lead to fewer behaviors in the classroom when children are in our public schools which will maximize the educational experience allowing the teachers to focus on education and less on behaviors. In addition, there will be a potentially large financial savings for our school district and our public services in town. "In fact, for every dollar spent on early intervention services, localities can save anywhere between \$3.78 and \$17.07 in future costs related to special education and health. Not only is investing in early intervention the right thing to do, but it is also fiscally responsible." (<http://www.dcactionforchildren.org/node/1006>)

Evaluation of Effectiveness

The Boost team will complete a survey for each classroom every three months to see how Boost is impacting the programs. The current Winters Elementary School teachers in grades Kinder and 3rd grade will be asked to answer a 10 question questionnaire on a yearly basis to evaluate the effectiveness of the Boost program as the children move through the elementary years.

Projected Timeline

Our goal is to be ready to roll out the complete Boost program in August of the 2015/16 school year with the necessary funding for year one in place. We have procured funding to run a pilot program in one classroom January thru May of 2015 so that we will be ready to begin in August. The pilot is off to a great start.



**CITY COUNCIL
STAFF REPORT**

TO: Mayor and City Council
DATE: February 3, 2015
FROM: John W. Donlevy, Jr., City Manager *JWD*
SUBJECT: Next Century Cities- City Membership

RECOMMENDATION:

That the City Council approve City membership in the Next Century Cities Organization in support of broadband communications and access.

BACKGROUND:

Next Century Cities is an organization committed to the improvement and expansion of broadband and internet communication throughout the United States. They have invited the City of Winters to become a member of their organization and have a keen interest in highlighting our vision and leadership in the area of broadband technology in Yolo County.

Attached is the information detailing their goals and principles.

DISCUSSION:

On January 9, 2015, the Mayor and I participated in a conference call with the Executive Director and the marketing staff for Next Century Cities. They are extremely impressed with the advancements being made by our city and want to begin highlighting Winters in their national campaign and advocacy efforts.

They have also offered technical assistance in moving broadband initiatives forward in our community.

In order for them to assist the City, it is required that Winters become a member of their organization.

FISCAL IMPACT: There is no fee for membership.

NEXT CENTURY CITIES

Next Century Cities: Connecting Communities

Next Century Cities supports community leaders across the country as they seek to ensure that all have access to fast, affordable, and reliable Internet.

Across the country, innovative municipalities are already recognizing the importance of leveraging gigabit level Internet to attract new businesses and create jobs, improve health care and education, and connect residents to new opportunities. Next Century Cities is committed to celebrating these successes, demonstrating their value, and helping other cities to realize the full power of truly high-speed, affordable, and accessible broadband.

Our Principles

Next Century Cities believes that there is no single pathway to a smart, effective approach to next-generation broadband. What matters is meaningful choice, dedicated leadership, and smart collaboration. Our participating leaders and communities are committed to the following principles:

- **High-Speed Internet Is Necessary Infrastructure:** fast, reliable, and affordable Internet – at globally competitive speeds – is no longer optional. Residents, schools, libraries, and businesses require next-generation connectivity to succeed.
- **The Internet Is Nonpartisan:** because the Internet is an essential resource for residents and businesses in all communities, the provision of fast, reliable, and affordable Internet transcends partisanship. This collaboration welcomes leaders of all affiliations and beliefs who believe fast, reliable, and affordable high-speed Internet access is essential to secure America's Internet future.
- **Communities Must Enjoy Self-Determination:** broadband solutions must align with community needs—there is no perfect model that is universally appropriate. Towns and cities should have the right to consider all options – whether public, nonprofit, corporate, or some other hybrid – free from interference.
- **High-Speed Internet Is a Community-Wide Endeavor:** building effective next-generation networks requires cooperation across communities. It is critical to involve and include multiple stakeholders and perspectives to succeed, including businesses, community organizations, residents, anchor institutions, and others. Everyone in a community should be able to access the Internet on reasonable terms.
- **Meaningful Competition Drives Progress:** a vibrant, diverse marketplace, with transparency in offerings, pricings, and policies will spur innovation, increase investment, and lower prices. Communities, residents, and businesses should have a meaningful choice in providers.
- **Collaboration Benefits All:** innovative approaches to broadband deployment present diverse challenges and opportunities to communities and regions. Working together, cities can learn from the experiences of others, lower costs, and make the best use of next-generation networks.

NEXT CENTURY CITIES

A 21st Century Partnership

We invite cities to join Next Century Cities and strengthen the ability of communities nationwide to prosper and compete in the 21st century. Next Century Cities supports communities and their elected leaders, including mayors and other officials, as they seek to ensure that all have access to fast, affordable, and reliable Internet.

- **Elevating the Conversation:** cities that have or would like to develop truly next-generation networks are visionary cities, and their leaders recognize what it takes to be competitive in the 21st century. Next Century Cities will work with these leaders and their cities to make the case nationally and within communities that next-generation Internet is essential infrastructure that can deliver transformative benefits to communities today.
- **Supporting Cities:** communities stepping into the 21st century through next-generation networks face myriad challenges. It is essential to provide crucial support to facilitate these innovative projects. Next Century Cities and its partners will work to assist each other in overcoming obstacles to success.
- **Providing Tools for Success:** developing a next-generation network is a daunting task for a city of any size. It is important that communities have access to resources, advice, and tools to develop effective broadband Internet networks. Next Century Cities is committed to developing and aggregating resources to guide incipient projects, as well as tools to help those already equipped with this infrastructure better leverage their networks to yield community benefits.

We are excited to begin this initiative, and we look forward to working with diverse towns and cities across the country to lead a new conversation on what it will take to compete and thrive in the 21st century.

For more information, contact Deb Socia at Deb@NextCenturyCities.org.



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: February 3, 2015
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Carol Scianna, Environmental Services Manager
SUBJECT: Adopt Resolution 2015-03- Budget Adjustment for Nature Park Conservation Easement (CE) Expenses not to exceed \$22,050

RECOMMENDATION: Staff recommends the Council approve a budget adjustment in the amount not to exceed \$22,050 to cover the annual monitoring of Conservation Easement area, to complete the Phase 1 Environmental Site Assessment and amendment to Sacramento Valley Conservancy (SVC) agreement to include the merged parcel initially left out of the Easement area. The request is to increase the budget 101-54419-610 by \$17,150 for 2014-2015 and then an increase of \$4900 for 2015-2015.

BACKGROUND: Although there are Conservation Easement Funds set aside currently this account is not generating enough revenue to cover the annual monitoring costs. The City will need to add \$4900 to subsequent budget to allow for this ongoing expense. When the CE was designated there was a small ¼ acre parcel that was not included as part of the easement area. This oversight was not realized until all of the related documents including the agreement with SVC to hold and manage the Easement had been recorded. As a result it is now necessary to make the required amendments to these agreements which will also require the Phase 1 environmental to complete the task of getting this merged parcel officially added to the CE area.

FISCAL IMPACT: The adjustment will be part of the City's General Fund



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www.bskassociates.com

To: carol.scianna@cityofwinters.org

December 8, 2014

BSK Proposal Number ES1411156

City of Winters
Ms. Carol Scianna
Winters City Hall
318 First Street
Winters, California 95694

Subject: BSK Scope Proposal for the Winters Putah Creek Conservation Area Elderberry Monitoring Project

Dear Ms. Scianna,

BSK Associates (BSK) is pleased to provide the following Scope of Services in support of the City of Winters' Putah Creek Conservation Area Elderberry Monitoring project. BSK has prepared the following Scope of Services that describes the major elements of our work program to complete monitoring and an annual report. Our understanding of the proposed project is based upon the January 25, 2011 Long-term Management Plan (LTMP), site plans, and other information provided by the City of Winters (City).

SCOPE OF SERVICES

Task 1 Monitor Covered Elderberry Habitat - As part of the annual site walk-through, the Mitigation Property site's covered habitat as described in the LTMP will be examined for any changes, current condition, or pending environmental needs.

Task 2 Monitor Threatened/Endangered Animal Species - Monitor Valley Elderberry Longhorn Beetle (VELB) status by conducting population assessment surveys through borehole counts. The annual survey dates will generally occur from May-July. Any occupied plants will be mapped and individually numbered to allow repeatable data collection over subsequent survey years. Abundance of boreholes will be assessed quantitatively. The monitoring will consist of shrub height, presence of boreholes count, photo, and a health and vigor rating. Visually observe and record changes to occupied habitat, such as vegetation composition.

Task 3 Invasive Species Management - The annual walk-through survey will include a qualitative assessment (e.g., visual estimate of cover) of potential or observed weeds or other non-native plant species.

Task 4 Annual Report - Prepare annual report. Complete and circulate to the U.S. Fish and Wildlife Service (USFWS) and other parties by August 15, 2015.

BSK will make recommendations with regard to (1) any habitat enhancement measures deemed to be warranted, (2) any problems that need near short and long-term attention (e.g., weed removal, fence repair, erosion control), and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

SCHEDULE

BSK proposes to perform the tasks according to the LTMP schedule. This schedule is based on our assumption that we receive all required information from the City in a timely manner. BSK will make every attempt to meet the estimated schedule for those work tasks under our control.

BUDGET

BSK proposes to complete the tasks identified in the above Scope of Services on a time and materials basis per our hourly rates. The project applicant will be billed according to the provided 2015 Fee Schedule.

COST ASSUMPTIONS

The following assumptions were used in preparing this scope of work, budget, and schedule:

- The level of effort described herein is our best estimate based on current knowledge of the proposed project as described by City staff. A significant change in the scope may result in a revision of our schedule and fees.
- Should the estimated level of effort for completing technical reports, additional regulatory contacts, and other areas identified in the proposal and Scope of Services exceed the hours assumed, additional work would need to be authorized through a contract modification. BSK will strive to ensure that scope modifications are as few as possible and limited in cost.
- It is assumed that the project description will not change substantially in the course of BSK's work on the tasks identified in this Scope of Services.
- The City will provide comments on a *single* markup comment copy that provides clear direction for revisions. It is assumed that City's comments would not require new analyses.
- Meetings are not included in our proposed scope of work.

ESTIMATED FEES

Below, we have developed cost estimates for each of the tasks outlined above.

<u>Task 1</u>		
Monitor Covered Elderberry Habitat	\$	720
<u>Task 2</u>		
Monitor Threatened/Endangered Animal Species	\$	1,080
<u>Task 3</u>		
Invasive Species Management	\$	650
<u>Task 4</u>		
Annual Report	\$	2,400
Total:	\$	4,850

BSK will conduct the preparation of the above listed materials, reports, and or plans on a time and materials basis in accordance with the attached schedule of fees. We estimate that the above work can be completed for a fee of **\$4,850** and we will not exceed this amount without your written authorization.

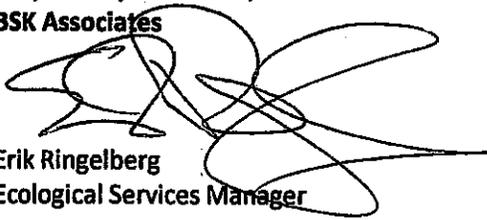
GENERAL CONDITIONS AND LIMITATIONS

BSK's services will be performed in a manner consistent with the level of care and skill ordinarily exercised by other professionals practicing in the same locale and under similar circumstances at the time the work is performed. No warranty, either express or implied, is included. The findings of the field studies may have a potential for negative impact on the value or suitability of the project site for some purposes. BSK cannot assume liability for any such negative impact(s).

CLOSING

Thank you for the opportunity to submit this Scope of Services and estimate. We look forward to working with you on this project. Please call Erik Ringelberg at (916) 853-9293, Ext. 112, if you have questions or require additional information or services.

Respectfully submitted,
BSK Associates


Erik Ringelberg
Ecological Services Manager



Robert "Tony" Martin, PG
Sacramento & Livermore Branch
Manager, Sacramento

Enclosures 2015 BSK Fee Schedule

BSK

Associates

Engineers & Laboratories



2015 Schedule of Fees

Engineering Services

BSK Associates
PERSONNEL RATES – 2015

PROFESSIONAL STAFF

Principal	(per hour)	\$190
Senior Professional	(per hour)	170
Project Professional II	(per hour)	150
Project Professional I	(per hour)	125
Staff Professional	(per hour)	100
Seismic GIS	(per hour)	150
GIS Specialist	(per hour)	88
CAD.....	(per hour)	77
Project Administrator	(per hour)	67
Administrative Assistant/Clerical.....	(per hour)	62
TECHNICIAN (Non-Prevailing Wage)		
Non-Destructive Inspection/Testing.....	(per hour)	\$98
Special Inspector	(per hour)	98
Engineering Technician.....	(per hour)	93
Technician	(per hour)	88

MISCELLANEOUS

Per Diem.....	(per day)	\$150
Litigation support.....	billed at 1.5 x standard rate	
Sworn deposition and arbitration/trial testimony.....	billed at 2 x standard rate (4 hr minimum)	
Vehicle Mileage		
2-Wheel drive.....	(per mile)	\$0.88
4-Wheel drive.....	(per mile)	2.00
Outside services	at fee	+ 15%



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F 916.853.9297
www.bskassociates.com

Sent via email

carol.scianna@cityofwinters.org

January 5, 2015

BSK Proposal # ES1411220

City of Winters
Ms. Carol Scianna
Winters City Hall
318 First Street
Winters, CA 95694

**SUBJECT: Scope of Services – Phase I Environmental Site Assessment
Yolo County Assessor’s Parcel Number 038-203-18
Creekside Way, Winters, California**

Dear Ms. Scianna:

Thank you for the opportunity to provide this proposed Scope of Services to conduct a Phase I Environmental Site Assessment (ESA) of the parcel identified as Assessor’s Parcel Number 038-203-18 located at Creekside Way, Winters, California (Site). The Site is used as part of an onsite mitigation bank for conservation of the Valley Elderberry Longhorn Beetle (VELB - *Desmocerus californicus dimorphus*) and its associated host elderberry shrubs (*Sambucus mexicana*). BSK understands that the Site has no structures and is unoccupied.

SCOPE OF SERVICES

Task 1 Phase I Environmental Site Assessment

The ESA will be conducted in accordance with American Society for Testing and Materials (ASTM) Standard E1527-13 requirement, including All Appropriate Inquiries for property characterization and assessment. The purpose of the ESA is to identify recognized environmental conditions (RECs) including historic and controlled environmental conditions (HRECs, and CRECs), if any, associated with the Site. According to ASTM Standard E1527-13, the term *recognized environmental conditions* means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. RECs include hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include *de minimis*

conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

Findings of the ESA will be used to: (1) develop a preliminary assessment of the environmental condition of the Site and the potential environmental liabilities associated with it (if any), and (2) evaluate the potential for soil, groundwater, and/or surface water contamination associated and potential for migration with the former or current generation, use, storage, handling, or disposal of hazardous materials and/or petroleum products on or in the immediate vicinity of the Site.

BSK will conduct a general reconnaissance of the Site and a drive-by survey of the surrounding area within approximately ¼ mile of the property boundaries. BSK will document the existing land use and the general environmental condition of the Site and immediately adjacent properties. BSK will also conduct interviews with personnel knowledgeable of the former and current uses of the Site and at adjacent sites if information for the Site is unknown. BSK will research and review the history of the Site and will document (to the extent practical and feasible) the former land use of the Site, as well as the potential for the former generation, use, storage, handling, or disposal of hazardous materials and/or petroleum products on the Site. Sources of historical information may include readily available historical aerial photographs, topographic or land use maps, Sanborn insurance maps, and street directories, as well as local building department records, property tax files, title information, and/or zoning and land use records.

In addition, BSK will review federal, state, and local regulatory agency information in accordance with the government records search requirements of ASTM E1527-13 to identify known or potential releases of hazardous materials and/or petroleum products on the Site and immediately adjacent properties. BSK will contact applicable regulatory agencies to obtain additional information regarding listed sites, as appropriate.

As part of the All Appropriate Inquiries standard, BSK will require documentation and/or reports that must include: a 50-year Chain-of-Title report; any known Environmental Liens or Activity and Use Limitations; any Specialized Knowledge of the site; Valuation Reduction for Environmental Liens; and Owner, Property Manager, and Occupational Information. BSK will provide a questionnaire, which will need to be completed by the Site operator. BSK will prepare a single ESA report that will present our findings, conclusions, and recommendations associated with the Site. A summary of the geologic/hydrogeologic setting, historical research findings, existing Site conditions, provided information (if any), and regulatory agency information will be included in the report.

The report will include a Site location map, a generalized Site and vicinity plan, and color photographs representative of the Site and recognized areas of environmental concern (if any).

Project management and professional service tasks will be conducted by or under the direction of a Professional Engineer or Geologist who is licensed by the State of California and experienced in performing ESAs. The ESA report will bear the signature of the P.G. or P.E.

FEE AND ANTICIPATED SCHEDULE

BSK proposes to initiate the tasks identified above immediately following approval of the scope. BSK proposes to perform the ESA in accordance with the above scope of services for the fixed price-lump sum fee of \$4,000. BSK will complete the ESA for the Site and complete a report. BSK will provide one copy and an electronic copy of the final report as the final deliverables.

GENERAL CONDITIONS AND LIMITATIONS

BSK's services will be performed in a manner consistent with the level of care and skill ordinarily exercised by other professionals practicing in the same locale and under similar circumstances at the time the work is performed. No warranty, either express or implied, is included. The findings of the proposed ESA may have a potential for negative impact on the value or suitability of the Site for the purpose intended. BSK cannot assume liability for any such negative impact. BSK will conduct the ESA based on the guidelines of ASTM E 1527-13. Sampling and analytical testing of soil, groundwater, air, radon gas, biological agents, or construction/building materials are not included in the scope of services of this proposal. The proposed scope of services does not include sampling or testing of materials, materials suspected of being radioactive or containing asbestos, lead, mercury, urea-formaldehyde, pesticides, mold, or polychlorinated biphenyls (PCBs). Additionally, the proposed scope of services does not include vapor intrusion encroachment screening for structures on the Site.

AUTHORIZATION

If our scope of services, fee, and anticipated schedule are acceptable, please sign the attached Agreement for Environmental Consulting Services. BSK will proceed immediately with the ESA upon your returning a signed copy of the Agreement.

CLOSING

Thank you for the opportunity to submit this Scope of Services and estimate. We look forward to working with you on this project. Please call Erik Ringelberg at (916) 853-9293, Ext. 112, if you have questions or require additional information or services.

Respectfully submitted,
BSK Associates,



for

Erik Ringelberg
Natural Resources and Land Planning
Group Manager



Megan Cambridge
Senior Project Manager

Enclosure: Agreement for Environmental Consulting Services

Carol Scianna

From: Aimee Rutledge [bond13mac@gmail.com]
Sent: Monday, May 19, 2014 8:19 AM
To: Carol Scianna; Al Jahns; Lucie Adams
Subject: Winters Elderberry CE Amendment
Attachments: Agreement_for_Conveyance_of_Conservation_Easement_-_Winters_and_SVC_-_Execution_Form_dated_06-14-12_(AFJ22945).PDF; Agree_For_Conveyance-sigs.pdf.pdf; Title Insurance-City of Winters Elderberry.pdf

Categories: Red Category

Carol-
SVC is willing to amend the easement to add area, given that we can satisfy the below due diligence (Phase 1 and title review--need preliminary title report for the amended area and an updated Phase 1)--see below Section 6c (ii) of the Conveyance Agreement, which I have also attached for your reference. I'll look forward to getting the title report and updated Phase 1 from you.

I've copied Al Jahns, SVC's counsel who is reviewing the materials with me--please copy him/"reply all" when you send the title report and the Phase 1.

We'll need a new title policy covering the additional easement area at close--current policy attached for your reference.

Can you forward an updated map/exhibit showing the amended/added CE area with reference to the existing CE area?

We'll need to prepare a supplement to the conservation easement baseline to include the new area, so the map will get us started on that.

Please send a check for the due diligence costs, and we'll credit you any amount back that we do not use at close. The cap is \$7,500 in the Conveyance Agreement, but I believe you and I discussed \$5,000 to start last year--if you sent already, just let me know, but I just checked our 2013 transactions and I did not see a payment. We'll start on the baseline addition as soon as we get the map so that when the Phase 1 and title report are back we can move forward as quickly as possible.

Thanks.

Aimee Rutledge, Executive Director
www.sacramentovalleyconservancy.org
cell 916-425-5879

(ii) Expansion of the Easement Area. In the event that Grantor decides

at any time to grant a conservation easement over any portion of real property owned by Grantor

that is outside adjacent to the Easement Area, Grantor shall offer to Grantee the opportunity to

accept such grant of conservation easement by way of an amendment of the Conservation

Easement to expand the legal description of the Conservation Easement to include such

additional portion(s) of the Property (the "**Amended Conservation Easement**"). In connection

with such offer, Grantor shall agree to provide Grantee with funding to cover the reasonable

costs and expenses of Grantee's due diligence, including but not limited to undertaking such investigations of the then-current environmental and title conditions as are reasonable under then-applicable standards, in connection with Grantee's determination of whether Grantee will accept the offer; *provided*, that Grantor shall not hereby be obligated to agree to provide more than Seven Thousand Five Hundred Dollars (\$7,500) of such due diligence funding. In the event that Grantee, in Grantee's sole discretion, elects to accept Grantor's offer, Grantor shall convey the Amended Conservation Easement in accordance with a written conveyance agreement containing terms and conditions substantially the same as those in this Agreement, except that Grantor shall not be required to provide any additional amount of easement stewardship funding to Grantee in connection with such conveyance.

RESOLUTION 2015-03

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
AMENDING THE CITY OF WINTERS 2014-2015 ADOPTED OPERATING
BUDGET**

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, expenditures for items not included in the budget are required;

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 for fiscal year 2014-2015:

a. 101-54419-610 \$17,150.00

Section 2: Increase budgeted expenditures in the following funds and accounts for fiscal year 2015-2016;

a. 101-54419-610 \$ 4,900.00

PASSED AND ADOPTED by the City Council, City of Winters, this 3rd day of February 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Cecilia Aguiar-Curry, Mayor

ATTEST:

Nanci G. Mills, CITY CLERK