



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, January 5, 2016
6:30 p.m.
AGENDA

Members of the City Council

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

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

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

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, December 15, 2015 (pp. 5-9)
- B. Resolution 2016-01, a Resolution of the City Council of the City of Winters Accepting a Grant Deed for Utility Easements – AKM Railroad, LLC (Downtown Hotel), Parcel Map #5080 (pp. 10-25)
- C. Project Budget Sheet (Pre-Design/Design Only) and Consultant Services Agreement Amendment for the W. Main Sewer Pump Station, Project No. 16-02 (pp. 26-28)

PRESENTATIONS

None

DISCUSSION ITEMS

1. Appointment and Employment Agreement for Interim Police Chief (pp. 29-34)
2. Intergovernmental Agreement with Yolo County Housing (“YCH”) for Community Development Block Grant (“CDBG”) Technical Assistance (pp. 35-46)
3. Ordinance 2016-01, an Ordinance of the City Council of the City of Winters Regarding a Tobacco Retail Permit and Agreement with Yolo County for Administrative in Connection with Permit Services (pp. 47-69)

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

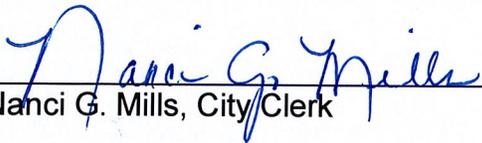
1. None
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CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the January 5, 2016 regular meeting of the Winters City Council was posted on the City of Winters website at www.cityofwinters.org and Councilmembers were notified via e-mail of its' availability. A copy of the foregoing agenda was also posted on the outside public bulletin board at City Hall, 318 First Street on December 17, 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.

How to obtain City Council Agendas:

*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 December 15, 2015

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

Present: Council Members Harold Anderson, Wade Cowan, Woody Fridae, Pierre Neu and Mayor Cecilia Aguiar-Curry
Absent: None
Staff: City Manager John Donlevy, City Attorney Ethan Walsh, City Clerk Nanci Mills, Fire Chief Aaron McAlister, Police Chief Sergio Gutierrez, Fire Captain Art Mendoza, Environmental Services Manager Carol Scianna, Economic Development/Housing Manager Dan Maguire, Associates Elliot Landes and Dave Fleming, and Management Analyst Tracy Jensen.

Sandy Vickrey led the Pledge of Allegiance.

Approval of Agenda: Motion by Council Member Fridae, second by Council Member Neu to approve the agenda with no changes. Motion carried with the following vote:

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

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, December 1, 2015
- B. Resolution 2015-54, A Resolution of the City Council of the City of Winters Amending the 2015-2016 Operating Budget
- C. Resolution 2015-53, A Resolution of the City Council of the City of Winters Authorizing the Director of Financial Management to Execute Agreement with the State Board of Equalization for Implementation of the Local Prepaid Mobile Telephony Services Collection Act
- D. Resolution 2015-55, A Resolution of the City Council of the City of Winters Approving the Purchase of Chevrolet Tahoe to Replace Damaged Police Unit
- E. Modification of Lease for Cell Tower Lease Agreement
- F. Resolution 2015-56, A Resolution of the City Council of the City of Winters Urging the State to Provide New Sustainable Funding for State and Local Transportation Infrastructure
- G. Ponticello Enterprises – Contract Addendum #2

City Manager Donlevy gave an overview. Mayor Aguiar-Curry requested Items B & F be moved to Discussion. Motion by Council Member Cowan, second by Council Member Fridae to approve items A – G, with the exception of B & F, which will be discussed separately. Motion carried with the following vote:

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

Mayor Aguiar-Curry asked for clarification on Item B, specifically \$90,000 of increased water bond expenditures. City Manager Donlevy said this amount listed under fiscal impact indicates where the money is coming from and is not new spending based on the 2-year budget that was adopted. These expenditures were budgeted as part of the 2-year budget, which actually operates on fiscal years.

Regarding Item F, Mayor Aguiar-Curry asked if infrastructure for broadband could be included within the transportation infrastructure sustainable funding. City Attorney Walsh said although this would be possible, sending a separate letter would get maximum attention. City Manager Donlevy said staff will create a formal request to include sustainable funding for broadband as part of the new sustainable funding for State and Local transportation infrastructure and will return to Council for approval at the January 19th City Council meeting.

Motion by Council Member Cowan, second by Council Member Fridae to approve Items B & F. Motion carried with the following vote:

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

PRESENTATIONS

RECOGNITION OF FIREFIGHTERS WHO REPRESENTED THE CITY OF WINTERS ON THE WASHINGTON OKANOGAN COMPLEX FIRES

Mayor Aguiar-Curry and each Council Member presented Certificates of Appreciation to Winters Volunteer Firefighter Jeff Winslow (Volunteer Firefighters Kyle Vaudrin and Steve Grisham were unable to attend), Fire Captain Art Mendoza and Fire Chief Aaron McAlister, who represented the City of Winters on the Washington Okanogan Complex Fires. Fire Captain Art Mendoza narrated a slide show of photos taken while fighting fires in Washington and said following the Wragg fire at home, they responded to the Lowell, Trinity Complex, Washington Okanogan Complex and Butte fires, all of which were major fires this season.

PARKING COMMITTEE PRESENTATION

Mayor Aguiar-Curry thanked the parking committee for bringing forth their presentation. Co-Chairman Gino Mediati thanked John for getting the parking committee started and said the goal of the committee is to mitigate the impact of development on parking demands. Co-Chairman Sandy Vickrey said the committee is a very diverse group and includes two City Council members, two Planning Commission members, several business owners and residents. Co-Chairman Chris Turkovich said they wanted to get the buy in with the local community, so they distributed a map with a letter and included a link to their survey. The presentation included short and long term solutions, with the committee focusing on the short term solutions, which are low cost, easily reversible and can occur within the next six months. Council Member and Committee Member Neu said the large committee worked well together and was impressed with its leadership. The committee recently heard from two speakers - Chief of Police Sergio Gutierrez to talk about parking enforcement and Frederik Venter, a principle engineer with Kimley-Horn, who is a traffic/parking consultant. Council Member and Committee Member Cowan said both presentations were very educational and said hiring a consultant is the next logical step by moving

forward and staying ahead of the demand. Council Member Fridae agreed and said the leadership and organization of the committee has been great and it's time for professional help for recommendations. Council Member Anderson asked about valet parking and Chris said it would be a viable option for a private business. A zoning ordinance amendment was also discussed but isn't considered a short-term option, but may fall under long term options. Sandy suggested that the trees be trimmed and the lumens increased to fully utilize the dark parking spaces. It was requested the City re-stripe the parking lanes to make them fully visible. Chris confirmed the Mariani's are not interested in leasing space for parking and plug-in parking spaces will be included in the long-term plan. Mayor Aguiar-Curry asked if SACOG might have money for this project and City Manager Donlevy said traffic counts will be conducted after the completion of the bridge and grants through organizations like the Local Government Commission and Smart Council might be an option. Mayor Aguiar-Curry said going forward, the City also needs to abide by in-lieu of fees. The Mayor and Council thanked the parking committee for their informative update and Devin Vickrey for putting together the power point presentation.

DISCUSSION ITEMS

1. Chromium 6 (Cr6) Compliance Update and Review

Environmental Services Manager Carol Scianna gave a brief overview and introduced Tim Williams from Kennedy/Jenks, who gave an overview of the Winters water system and preliminary Cr6 monitoring results. Four of the five wells tested exceeded the new Cr6 drinking water limit of 10 ppb, with Well #2 being the only well in compliance. Due to these results, Kennedy/Jenks provided a compliance strategy and a corrective action plan summary, which includes short-term actions for water use reduction. Council Member Fridae asked if adoption of the drinking water MCL of 10 ppb might be recalled, postponed or cancelled and said the State has over-reacted with the decrease of drinking water MCL from 50 to 10. Tim said he did not know of any efforts to revise it. Council Member Fridae asked if this item could be discussed in closed session and City Attorney Walsh said it would be possible if litigation was anticipated, but he would need to find out if it rises to that level.

Jacques DeBra of Kennedy/Jenks suggested completing the low cost items first and said there are many different funding sources available. City Manager Donlevy said the scope for the next phase will be brought back and staff will look at funding for the next budget period for the re-plumbing of the entire water system. Council Member Anderson asked if a factor for low-income families would be possible. City Manager Donlevy said staff will bring a recommendation before Council at the 1/19/16 City Council meeting for the scope of work for Kennedy/Jenks in order to be in compliance by 2020.

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

1. None
-

CITY MANAGER REPORT: Met with Yolo County Ag Dept. regarding an Ag Food Hub in Winters as someone is interested. Currently looking at locations and may utilize an existing building. Interim Police Chief Joseph Kreins will start on 12/28 prior to Sergio's departure; contract will be on the 1/5/2016 agenda. Proposals for Full-Time Police Chief are due 12/18. City Hall will be closed on December 24th and will reopen on January 4, 2016. 2016 is going to be a huge year for us with the PG&E, hotel, housing, senior housing projects. Council Member Anderson said he would like to get back on track and receive future agenda packets by Wednesday prior to the City Council meetings. Council Member Fridae inquired about the Street Naming list and the current procedure. City Manager Donlevy wants to get the history committee together and bring back the list as there are several streets that need to be named.

INFORMATION ONLY

1. July 2015 Investment Report
2. July 2015 Treasurer Report
3. August 2015 Investment Report
4. August 2015 Treasurer Report
5. September 2015 Investment Report
6. September 2015 Treasurer Report

ADJOURNMENT: Mayor Aguiar-Curry adjourned the meeting at 9:07 p.m.

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, City Clerk



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: January 5, 2016
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Alan Mitchell, City Engineer
SUBJECT: Adopt Resolution No. 2016-01, to approve a Grant Deed for Private Utility Easements and a Private Sidewalk Easement – Winters Hotel, LLC (Downtown Hotel) Parcel Map #5080

RECOMMENDATION: Staff recommends the City Council:

1. Adopt Resolution No. 2016-01, to approve a Grant Deed for two (2) private utility easements and a private sidewalk easement for the Winters Hotel, LLC (Downtown Hotel) Parcel Map #5080; and
2. Authorize the City Clerk to sign and record the Grant Deed on the City's behalf.

BACKGROUND: In May 2014 the City Council received the staff report on the proposals for development of a downtown hotel, and unanimously approved staff's recommendation to authorize the City to enter into an Agreement with Royal Guest.

In January 2015, the Planning Commission reviewed and approved the Design/Site Plan, Tentative Parcel Map, and Conditional Use Permit for construction of a three-story, approximately 70-unit Hotel with Hotel Lobby, courtyard, retail tenant space and all support functions.

A final Parcel Map was prepared and approved by the Planning Commission on December 16th, to create two parcels to accommodate the hotel and parking lot.

DISCUSSION: The plans are being prepared for the Hotel, and the Engineer has provided a utility plan showing locations of electrical, water, sewer, and storm drain to serve the facility. The Engineer has also identified a sidewalk along with west side of the Hotel, which will provide access to rooms. The utilities and sidewalk are off-site of the parcel the Hotel will reside on, and within city-controlled property. Easements granted from the City to the Hotel owner are necessary for installation, access, and maintenance of the various utilities and the sidewalk necessary for the operation of the hotel. The attached Grant Deed facilitates the conveyance of the three (3) easements.

ALTERNATIVES: None recommended by staff.

FISCAL IMPACT: No City funds impacted.

Attachments: Resolution No. 2016-01

Grant Deed and Exhibits:

Exhibit A-1: Varying width private utility easement

Exhibit A-2: Five feet (5') wide private utility easement for storm drain.

Exhibit A-3: Five feet (5') wide private sidewalk easement.

RESOLUTION NO. 2016-01

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
APPROVING THE GRANT DEED TO GRANT PRIVATE UTILITY EASEMENTS
AND A PRIVATE SIDEWALK EASEMENT TO WINTERS HOTEL, LLC
(DOWNTOWN HOTEL)**

WHEREAS, in December 2015, the City's Planning Commission approved Parcel Map No. 5080, creating two (2) parcels; and

WHEREAS, Winters Hotel, LLC will construct and operate the Hotel on Parcel 2; and

WHEREAS, the Hotel will be served by utilities that are off-site on city-controlled property Parcel 1 and the Alley); and

WHEREAS, the Hotel will be served by a sidewalk along the west side that is off-site on city-controlled property (Parcel 1); and

WHEREAS, easements from the City are required to allow the hotel owner to install, use, and maintain the utilities and sidewalk; and

WHEREAS, two (2) private utility easements and one (1) private sidewalk easement were prepared by a Licensed Land Surveyor for a Grant Deed; and

WHEREAS, adoption of this Resolution will approve the Grant Deed for conveyance of the Private Utility Easements and Private Sidewalk Easement from the City of Winters to Winters Hotel, LLC, and authorize the City Clerk to sign and record the Grant Deed on behalf of the City.

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

1. Approve the Grant Deed for conveyance of two (2) private utility easements and a private sidewalk easement for the Winters Hotel, LLC (Downtown Hotel) Parcel Map #5080; and
2. Authorize the City Clerk to sign and record the Grant Deed on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Winters, on this 5th day of January, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Cecilia Aguiar-Curry, MAYOR

ATTEST:

Nanci G. Mills, City Clerk

Approved as to form:

Ethan Walsh, City Attorney

RECORDING REQUESTED BY:

CITY OF WINTERS

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WHEN RECORDED MAIL TO:

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

DOCUMENT TRANSFER TAX \$ 0

City of Winters, by:
(Signature of declarant determining tax above this line)

Recorded for the benefit of: The City of Winters
Exempt from recording fees pursuant to Gov't Code 6103 and 27383

G R A N T D E E D

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF WINTERS, a Municipal Corporation (Grantor)

GRANT(S) TO WINTERS HOTEL, LLC (Grantee) all of that real property situate in the County of Yolo, State of California, described as follows:

Permanent Private Utility Easements and Permanent Private Sidewalk Easement in and to that portion of the real property situate, lying and being in the City of Winters, County of Yolo, State of California, such easement being more particularly described by the following Exhibits and attached hereto and made a part hereof:

FOR LEGAL DESCRIPTION SEE EXHIBITS "A-1", "A-2" AND "A-3" ATTACHED HERETO AND MADE A PART HEREOF

1. The purpose of the private utility easements (2) is for construction, installation, removal, repair, replacement, reconstruction, maintenance and operation, and use for private utilities such as, but not limited to, storm drainage, water distribution, sewer collection, electrical, and associated appurtenances, over, along, upon, under, and across said property.

Grantee will provide notice to the Grantor prior to any work commencing within the easements.

2. The purpose of the private sidewalk easement is for construction, installation, removal, repair, replacement, reconstruction, maintenance and operation of a 5' wide sidewalk, and use for private access to the Hotel.

Grantor agrees to not hinder access along the easement, without Grantees prior approval.

"This conveyance is approved by the undersigned on behalf of the City of Winters pursuant to City Council Resolution 2016-01, recorded (date: _____), in the Recorder's Offices of the aforesaid County and State."

Dated: _____

Signed: _____
Nanci Mills, City Clerk Winters

State of California

County of _____

On _____ before me, _____, personally appeared

_____, personally known to me, OR proved to me on the basis of satisfactory evident to be the person whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature of Notary

State of California

County of _____

On _____ before me, _____, personally appeared

_____, personally known to me, OR proved to me on the basis of satisfactory evident to be the person whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature of Notary

Exhibit A-1

Varying Width Private Utility Easement

LAND DESCRIPTION

PRIVATE UTILITY EASEMENT

THAT portion of real property situate in the City of Winters, County of Yolo, State of California, and being a portion of Rancho Rio de los Putos, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being portions of Lots 17, 18, 19, 20 and 21 of Block 10, as shown on that map titled "MAP OF THE TOWN OF WINTERS", recorded in Book S of Deeds at Page 154, said County Records, being more particularly described as follows:

BEGINNING at Southwest corner of said Lot 17; thence, from said POINT OF BEGINNING and along the South lines of said Lots 17 and 21, North 65°00'00" East 121.17 feet; thence, leaving the South line of said Lot 21, North 25°00'04" West 29.74 feet; thence South 64°59'56" West 27.92 feet; thence North 25°00'00" West 43.90 feet; thence North 64°59'56" East 27.92 feet; thence North 25°00'04" West 10.00 feet; thence South 64°59'56" West 27.92 feet; thence North 25°00'00" West 3.13 feet; thence North 19°59'56" East 32.84 feet; thence North 64°59'56" East 4.70 feet; thence North 25°00'04" West 10.00 feet to a point on the North line of said Lot 21; thence, along said North line, South 65°00'00" West 8.84 feet; thence, leaving said North line, South 19°59'56" West 41.12 feet; thence South 25°00'00" East 61.17 feet; thence South 64°59'56" West 8.80 feet; thence North 25°00'04" West 90.25 feet to a point on the North line of said Lot 20; thence, along said North line, South 65°00'00" West 10.00 feet; thence, leaving said North line, South 25°00'04" East 109.99 feet to a point on a line parallel with and distant 10.00 feet Northerly of as measured at right angles from the South line of said Lot 17; thence, along said parallel line, South 65°00'00" West 64.44 feet to a point on the West line of said Lot 17; thence, along said West line, South 25°00'00" East 10.00 feet to said POINT OF BEGINNING.

Containing 4,541.874 square feet (0.104 acres) of land, more or less.

The basis of bearings is the South line of said Lots 17 and 21, determined to be S65°W from said Deed.

End of description.



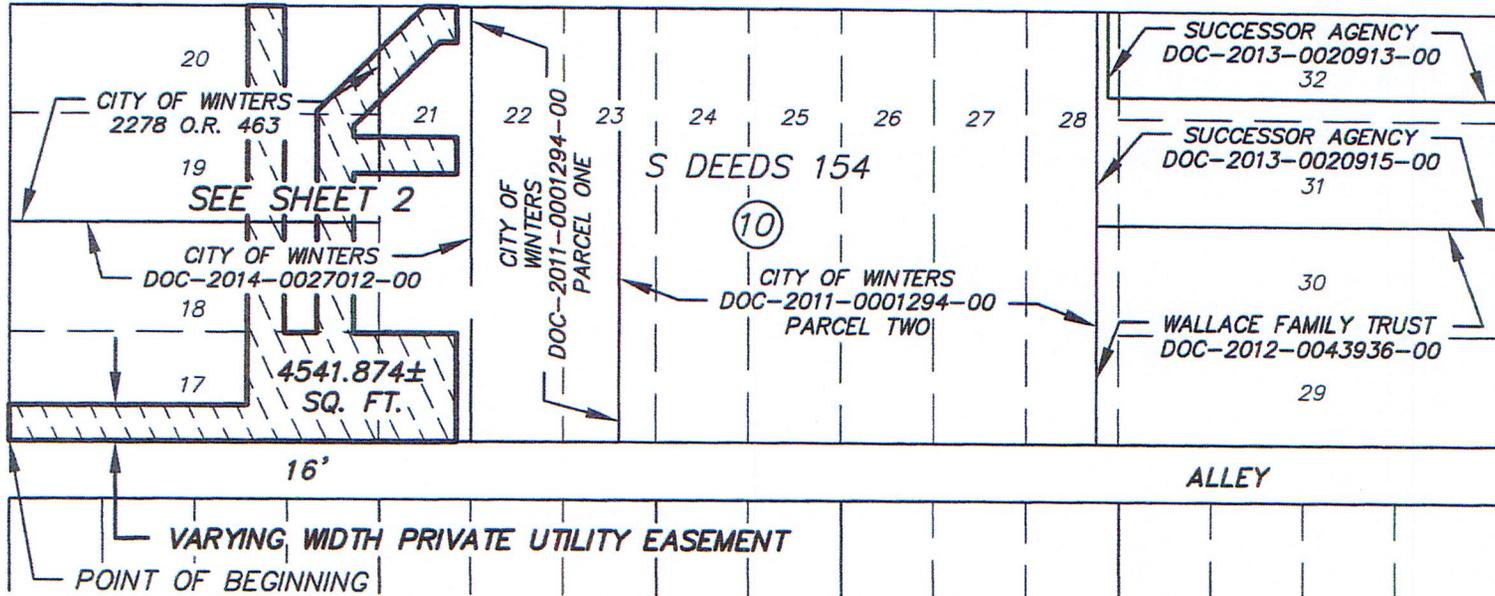

Steven B. Killmer, L.S.

12-15-15
Date

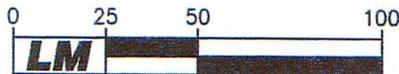
ABBAY STREET

FIRST STREET

RAILROAD AVENUE

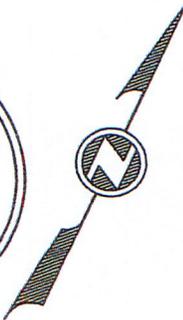


LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N65°00'00"E	116.17'	L4	S25°00'00"E	10.00'
L2	N25°00'04"W	20.00'	L5	S65°00'00"W	86.17'
L3	S65°00'00"W	30.00'	L6	S24°59'16"E	10.00'



SCALE: 1"=50'

Steven B. Killmer
STEVEN B. KILLMER



12-15-15

DATE

EXHIBIT

FOR

WINTERS HOTEL, LLC

BEING A PORTION OF THE RANCHO RIO DE LOS PUTOS, TOWNSHIP 8 NORTH, RANGE 1 WEST, MDM AND BEING PORTIONS OF LOTS 17 AND 21 OF BLOCK 10 AS SHOWN ON THAT MAP TITLED "MAP OF THE TOWN OF WINTERS", RECORDED IN BOOK S OF DEEDS AT PAGE 154, YOLO COUNTY RECORDS CITY OF WINTERS, YOLO COUNTY, CALIFORNIA

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING

608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

SHEET 1 OF 2

DECEMBER 15, 2015

#3999

LINE TABLE								
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N25°00'04"W	29.74'	L6	S64°59'56"W	27.92'	L11	S19°59'56"W	41.12'
L2	S64°59'56"W	27.92'	L7	N25°00'00"W	3.13'	L12	S25°00'00"E	61.17'
L3	N25°00'00"W	43.90'	L8	N19°59'56"E	32.84'	L13	S64°59'56"W	8.80'
L4	N64°59'56"E	27.92'	L9	N64°59'56"E	4.70'	L14	S65°00'00"W	10.00'
L5	N25°00'04"W	10.00'	L10	S65°00'00"W	8.84'	L15	S25°00'00"E	10.00'

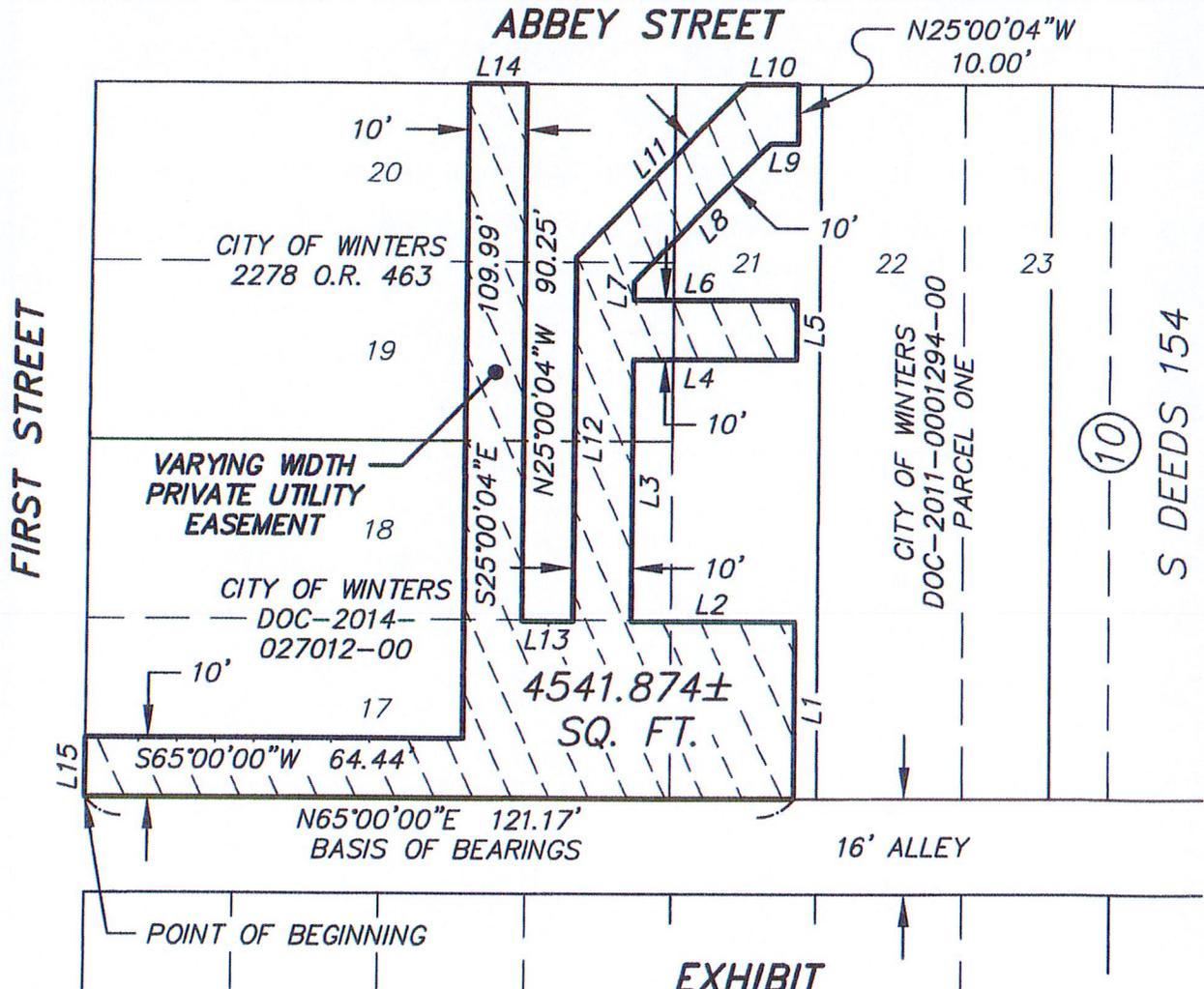
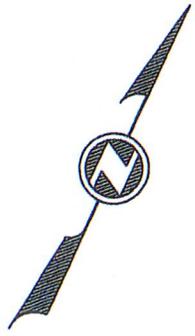


EXHIBIT
FOR
WINTERS HOTEL, LLC

BEING A PORTION OF THE RANCHO RIO DE LOS PUTOS,
TOWNSHIP 8 NORTH, RANGE 1 WEST, MDM
AND BEING PORTIONS OF LOTS 17 AND 21 OF BLOCK 10
AS SHOWN ON THAT MAP TITLED "MAP OF THE TOWN
OF WINTERS", RECORDED IN BOOK S OF DEEDS
AT PAGE 154, YOLO COUNTY RECORDS
CITY OF WINTERS, YOLO COUNTY, CALIFORNIA

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602
SHEET 2 OF 2 DECEMBER 15, 2015



#3999

Exhibit A-2

Five feet (5') Wide Private Utility Easement for Storm Drain

LAND DESCRIPTION
PRIVATE UTILITY EASEMENT

THAT portion of real property situate in the City of Winters, County of Yolo, State of California, and being a portion of Rancho Rio de los Puntos, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being portions of Lots 21 - 29 of Block 10, as shown on that map titled "MAP OF THE TOWN OF WINTERS", recorded in Book S of Deeds at Page 154, said County Records, being more particularly described as follows:

BEGINNING at the Southeast corner of said Lot 29; thence, from said POINT OF BEGINNING and along the South line of the North half of said Block 10, South 65°00'00" West 284.15 feet to a point that bears North 65°00'00" East 121.17 from the Southwest corner of said North half; thence, leaving said South line, North 25°00'04" West 5.00 feet to a point on a line parallel with and distant 5.00 feet Northerly of as measured at right angles from the South line of said North half; thence, along said parallel line, North 65°00'00" East 284.15 feet to the East line of said Lot 29; thence, along said East line, South 25°00'00" East 5.00 feet to said POINT OF BEGINNING.

Containing 1,420.765 square feet (0.032 acres) of land, more or less.

The basis of bearing is the South line of the North half of said Block 10, determined to be S65°W from said Deed.

End of description.




Steven B. Killmer, L.S.

12-15-15
Date

Exhibit A-3

Five feet (5') Wide Private Sidewalk Easement

LAND DESCRIPTION

PRIVATE SIDEWALK EASEMENT

THAT portion of real property situate in the City of Winters, County of Yolo, State of California, and being a portion of Rancho Rio de los Potos, Township 8 North, Range 1 West, Mount Diablo Base and Meridian, and also being a portion of Lot 21 of Block 10, as shown on that map titled "MAP OF THE TOWN OF WINTERS", recorded in Book S of Deeds at Page 154, said County Records, being more particularly described as follows:

BEGINNING at a point on the South line of said Lot 21; said point being distant North 65°00'00" East 116.17 feet from the Southwest corner of Lot 17 of said Block 10; thence, from said POINT OF BEGINNING and leaving said South line, North 25°00'04" West 199.99 feet to the North line of said Lot 21; thence, along said North line, North 65°00'00" East 5.00 feet; thence, leaving said North line, South 25°00'04" East 119.99 feet to the South line of said Lot 21; thence, along said South line, South 65°00'00" West 5.00 feet to said POINT OF BEGINNING.

Containing 599.969 square feet (0.013 acres) of land, more or less.

The basis of bearings is the South line of said Lots 17 and 21, determined to be S65°W from said Deed.

End of description.



A handwritten signature in blue ink, appearing to read "St. Killmer".

Steven B. Killmer, L.S.

12-15-15

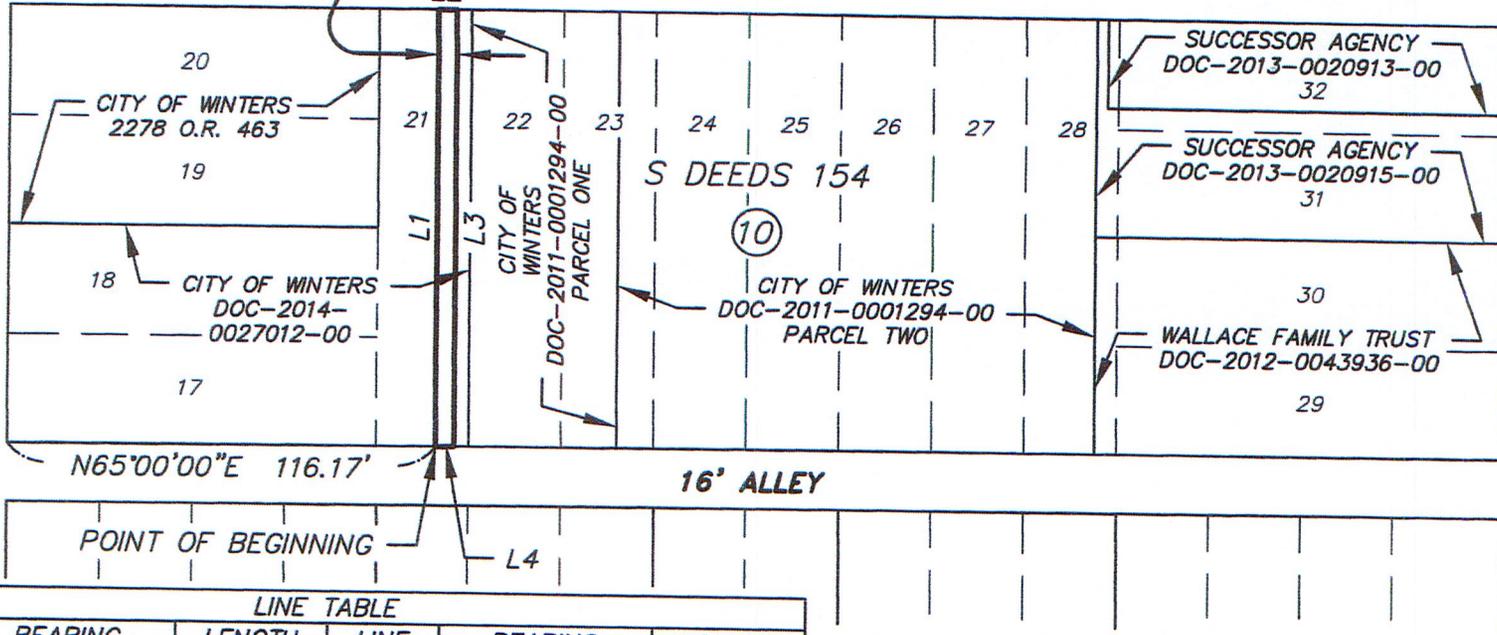
Date

5' WIDE PRIVATE
SIDEWALK EASEMENT
599.969± SQ. FT.

ABBEEY STREET

FIRST STREET

RAILROAD AVENUE



LINE TABLE

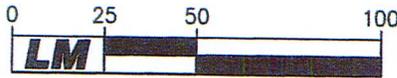
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N25°00'04"W	119.99'	L3	S25°00'04"E	119.99'
L2	N65°00'00"E	5.00'	L4	S65°00'00"W	5.00'

EXHIBIT

FOR

WINTERS HOTEL, LLC

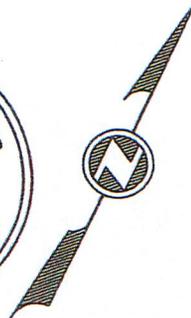
BEING A PORTION OF THE RANCHO RIO DE LOS PUTOS,
TOWNSHIP 8 NORTH, RANGE 1 WEST, MDM
AND BEING PORTIONS OF LOTS 17 AND 21 OF BLOCK 10
AS SHOWN ON THAT MAP TITLED "MAP OF THE TOWN
OF WINTERS", RECORDED IN BOOK S OF DEEDS
AT PAGE 154, YOLO COUNTY RECORDS
CITY OF WINTERS, YOLO COUNTY, CALIFORNIA



SCALE: 1"=50'

St. Killmer

STEVEN B. KILLMER



12-15-15

DATE

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING

608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

SHEET 1 OF 1

DECEMBER 15, 2015

#3999



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: January 5, 2016
FROM: John W. Donlevy, Jr., City Manager. *[Signature]*
Alan L. Mitchell, City Engineer
SUBJECT: Project Budget Sheet (Pre-Design/Design only) and Consultant Services Agreement Amendment- W. Main Sewer Pump Station, Project No. 16-02.

RECOMMENDATION: Staff recommends City Council approve the updated Project Budget Sheet (PBS) for W. Main Sewer Pump Station, Project No. 16-02, in the amount of \$269,000, and authorize the City Manager to execute an Amendment with V. W. Housen Associates for Design Services.

BACKGROUND: Sewer flows from new development to the north of Grant and W. Main, including Walnut Ranch, Carter Ranch, Callahan, and Winters Highlands, are master-planned to flow into a new sewer pump station and out to the WWTF through a new force main. In order to move forward with development, Winters Highlands and Callahan are conditioned to advance-fund the design and construction of the W. Main Sewer Pump Station and Force Mains projects, if not already completed.

The Developer for Winters Highlands requested the City move forward with the pump station project, and on October 20th, the City Council approved a Project Budget Sheet (PBS) for the W. Main Sewer Pump Station, Project No. 16-02, for pre-design only.

The W. Main Sewer Pump Station project was previously designed in 2007 by Dodson & Associates, and then the economy declined and development did not move forward. Dodsens & Associates are no longer in business but the Design Engineer, Dana Hunt, is now with V.W. Housen. On October 6th, Council authorized the City Manager to execute a Consultant Agreement with V. W. Housen Associates (VWH) for pre-design services.

DISCUSSION: VWH completed a Technical Memorandum (TM) in November, to update the design criteria for the W. Main SS PS. The updates addressed phasing alternatives, aesthetics,

code changes, new regulations, and new technology, as well as city operational preferences. This TM will be the basis for the subsequent design and construction documents.

The developer for Winters Highlands is interested in proceeding with the first phase of their project, in 2016, and has requested the design for the pump station proceed so that the first phase can be built. VWH has provided a scope, schedule, and fee estimate for their design services, which will be added to their current Consultant Agreement, with Amendment No. 1.

Staff recommends the City Council approve the attached PBS, which has been updated to include costs for design services, and authorize the City Manager to execute a contract amendment with VWH.

ALTERNATIVES: None recommended by staff.

FISCAL IMPACT: Regional conveyance facilities and the regional pump station (W. Main SS PS), to support the projects north of Grant and W Main St., are 100-percent funded by new development. The City Engineer will determine the pro-rata share for each benefitting development. The Winters Highlands Developer has fronted the funds to cover the pre-design costs, and will also provide the funds needed for the design phase. This funding is reflected in the updated PBS.

Attachment: Updated Project Budget Sheet

**W. MAIN SEWER PUMP STATION
Project Budget Sheet (Pre-Design/Design Only)**

CIP#: 16-02
Last Updated: Jan. 2016
Project Owner: Public Works
Project Manager: Alan Mitchell

MTIP #
Original Approval: Oct. 2015
Project Resource: Consultant

Description:

Technical analysis to update the previously prepared design criteria, including regulatory and functional use changes, and evaluate proposed phasing. Design services and preparation of construction documents, based on the VW Housen Tech Memo dated November 18, 2015.

Authority:

Sewer flows from new development to the north of Grant and W. Main are master-planned to flow into a new sewer pump station and out to the WWTF through a new force main. As part of the environmental review process and entitlement approval for the Winters Highlands and Callahan Estates, the projects were conditioned to fund the W Main SS Pump

Budget:						
Item		%	Amount	Item	%	Amount
Project Management			\$15,000	Design		\$160,000
Testing and Inspection				Permits		
Pre-Design			\$83,000	Construction		
Right of Way/Utility Relocation				Contingency		\$10,000
CEQA/NEPA			\$1,000	Project Total:		\$269,000

Financing Schedule:							
		Project Start:	2015	Project Completion:	2017		
Phases: Pre-Design, Design, Construction							
Fund Code:	Name:						FY Totals
Previous	WH Dev.		Blank	Blank	Blank	Blank	\$ -
FY 15/16:	\$ 269,000						\$ 269,000
FY 16/17:							\$ -
Fund Totals:	\$ 269,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 269,000

Recommended for Submittal

 Carol Scianna, Public Works (date)

Recommended for Approval

 Alan Mitchell, City Engineer (date)

Finance Department Approval

 Shelly Gunby, Director of Finance (date)

City Manager Approval

 John Donlevy, City Manager (date)



TO: Honorable Mayor and Council Members
DATE: January 5, 2016
THROUGH: John W. Donlevy, Jr., City Manager. *JD*
FROM: Nanci G. Mills, Director of Administrative Services/City Clerk *Nanci*
SUBJECT: Appointment and Employment Agreement for Interim Police Chief

RECOMMENDATION:

Approve the appointment of Joe Kreins as Interim Police Chief and authorize the City Manager to execute the employment agreement for the Interim Police Chief for the City of Winters.

BACKGROUND:

Police Chief Sergio Gutierrez retired December 30, 2015. Staff recommends bringing on Joe Kreins as Interim Police Chief until a search for a permanent replacement is completed. This will help maintain continuity in the Police Department and the Interim Police Chief can assist with the transition as well as the recruitment for a new police chief.

CalPERS annuitant rules (Government Code 21221) require appointment by the governing body when filling a vacant position during recruitment for a permanent appointment. Therefore, City Council approval of the appointment of Joe Kreins as Interim Police Chief is necessary in order to fulfill the requirements of State retirement law.

Upon the City Council's approval of the agreement for the Interim Police Chief, the City Manager will execute the agreement that sets forth the terms and conditions of employment. The agreement may be terminated by either party by giving written notice of termination to the other party.

FISCAL IMPACT:

Sufficient funds are available in the General Fund budget to implement the Employment Agreement. In addition, since the Interim Police chief would be classified as a part-time employee, this classification would not receive benefits which would provide savings.

**CITY OF WINTERS AGREEMENT
FOR INTERIM POLICE CHIEF SERVICES**

THIS AGREEMENT, is made and entered into as of the ___ day of January, 2016, by and between the CITY OF WINTERS, a municipal corporation and general law city, organized and existing under the laws of the State of California, hereinafter referred to as “the CITY”, and Joe Kreins, hereinafter referred to as “KREINS”.

WHEREAS, the CITY, desires to retain KREINS as an employee to perform the services of Interim Police Chief of the CITY; and

WHEREAS, KREINS desires to serve as the Interim Police Chief of the CITY,

NOW, THEREFORE, the CITY AND KREINS agree as follows:

1. DUTIES

The CITY hereby appoints and employs KREINS as the Interim Police Chief of the CITY on temporary basis, not to exceed 960 hours per fiscal year. KREINS shall perform the tasks and duties of the Winters Police Chief on an interim basis for the CITY in accordance with state and federal laws, the Winters Municipal Code, and as directed by the City Manager. KREINS shall at all times faithfully, and to the best of his ability, experience, and talent, perform the services described herein. Specific duties for KREINS are identified below:

- a. Manage the day-to-day activities of the Winters Police Department including all matters of operation and personnel.
- b. Provide continuity and assist with the subsequent police chief transition in the Winters Police Department.
- c. Meet with the City Manager and other staff as needed to discuss organizational issues.

2. TERM

To enable KREINS to continue receiving vested benefits pursuant to the California Public Employees Retirement System (“PERS”), the duties to be performed under this Agreement shall not equal an amount of hours greater than that allowed pursuant to California Government Code section 21221, which limits KREINS to working no more than 960 hours per fiscal year unless an extension is granted prior to the expiration of the 960-hour period. KREINS shall keep a log of his daily work hours to ensure compliance with California Government Code section 21221 for fiscal year 2015/2016, and each fiscal year thereafter, as applicable. KREINS represents and warrants that his execution of this Agreement with a commencement date of _____, 2016, will not cause a violation of the limitations of Government Code section 21221 for fiscal year 2015/2016.

The term of this agreement is unspecified but it is intended to be short-term while the recruitment process is undertaken for a permanent Chief of Police. There is no guarantee or promise of employment for any specified period of time.

3. RELATIONSHIP OF THE PARTIES

KREINS agrees and understands that the services performed under this Agreement are performed as a temporary hourly employee of the CITY and that KREINS acquires none of the rights, privileges, powers, benefits, or advantages of a regularly employed CITY employee. KREINS agrees and understands that his employment with the CITY under this appointment is "employment at will." "Employment at will" means that KREINS or the CITY may at any time, for any reason, terminate this Agreement by giving written notice of the decision to terminate employment. KREINS may terminate his employment by giving written notice to the City Manager specifying the specific date of such termination. As a courtesy, KREINS will provide notice of not less than 30 days from the date that he proposes to terminate his employment. The CITY reserves the right to terminate, and may terminate, KREINS's employment without cause and without notice.

In the event of termination, any CITY equipment will be promptly returned to the City. In addition, any and all finished and unfinished documents, data, reports, and materials obtained by KREINS through his employment with the CITY shall be deemed the property of the CITY. KREINS shall be deemed to be a "confidential employee" and shall keep all information acquired through his position in the strictest confidence during the term of this Agreement and after the termination of the Agreement, unless he receives written authority from the City allowing disclosure, or he is required to disclose information by a court of law.

4. EMPLOYMENT SCHEDULE, COMPENSATION AND REIMBURSEMENT

- a. KREINS will work days and hours typical of the position and further days and hours as may be necessitated by emergency situations that may arise, or as otherwise approved and/or desired by the City Manager.
- b. In consideration of the services rendered in accordance with all terms, conditions, and specifications set forth herein, the CITY shall pay KREINS a fee of \$61.80 per hour. Said sum is the Top Step hourly equivalent of the published compensation for the position of Police Chief for the CITY and complies with the requirements of California Government Code section 21221. Said sum is intended as the total hourly compensation to be paid to KREINS by the CITY as the Interim Police Chief. As KREINS is a temporary, hourly employee, the CITY shall not provide or be obligated to provide medical, dental, life, or similar insurance benefits, to make or contribute any additional sums for any retirement benefits, other than those required by law, or to be provided or accrue any personal time off, vacation, sick leave, paid holidays or similar leave benefits. As a retired CalPERS annuitant, KREINS shall not be entitled to participate in the CITY's CalPERS retirement plan.

- c. KREINS comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, KREINS shall keep CITY continually apprised of any hours worked by KREINS for other CalPERS Agencies during the term of this Agreement.
- d. CITY shall provide Worker's Compensation Insurance related to incidents occurring during the course and scope of KREINS's performance for the CITY.
- e. KREINS waives any rights he may have to unemployment benefits following the cessation of the services provided in this contract.
- f. CITY shall provide KREINS use of a CITY vehicle including gas and maintenance for official City business and for travel to and from his residence in Concord, CA. CITY shall also provide KREINS the use of a City issued cell phone for official City business.
- g. CITY shall provide reasonable local lodging accommodations of up to two (2) nights per week to KREINS to facilitate the completion of the full scope of services as set forth herein. Upon completion of the first month of this Agreement, the City Manager and KREINS shall meet and discuss the necessity for continuation and/or adjustment to the number of nights of local lodging.
- h. KREINS must obtain prior approval from the CITY before incurring reimbursable business expenses. Final approval is at the discretion of the City Manager. CITY agrees to reimburse KREINS for business expenses reasonably and necessarily incurred in the course and scope of performing his duties, and pursuant to existing City policies regarding such expenses.
- i. The City will require KREINS to wear a City of Winters Police uniform representing his status as the Interim Chief of Police. The City will provide three police uniforms, an inclement weather jacket and required police equipment, including duty-issued firearm. KREINS is required to present the CITY with receipts in support of any reimbursement requested. Any property provided will be returned by KREINS at the end of the contract term.
- j. CITY shall pay the reasonable travel and subsistence, registration and incidental expenses incurred for official travel, meetings, and events. The payment for such expenses shall be subject to prior written request and prior written approval of the City Manager.

5. CONDITIONS OF KREINS'S SERVICES

- a. Conflicts Prohibited. During the term of this Agreement, KREINS shall not engage in any business, enter into transactions or maintain a financial interest which conflicts, or reasonably might be perceived to conflict, with the proper discharge of KREINS's duties under this Agreement.

6. BONDS AND INDEMNIFICATION

- a. Indemnification. CITY shall defend, hold harmless and indemnify KREINS against any tort, civil rights, personnel, discrimination, professional liability claim or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of KREINS's duties in accordance with the provisions of California Government Code section 825, and following. This specific covenant shall survive the termination of this Agreement. This section shall not apply to any intentional tort or crime committed by KREINS, to any action outside the course and scope of the services provided by KREINS under this Agreement, or any other intentional or malicious conduct or gross negligence on the part of KREINS.

Except as provided in Government Code section 995.2, the CITY shall provide a defense including, but not limited to, legal counsel in: a) any civil action or proceeding described in Government Code section 995; b) any administrative action or proceeding described in Section 995.6; or any criminal action or proceeding described in situations where a claim or action is threatened, but not filed, if a reasonable, prudent person would consult or retain counsel in response to the possibility of actual civil, administrative, or criminal action. If CITY pays for a defense, but a court or tribunal issues a final ruling that would, under Section 995.2, preclude City payments for defense, KREINS shall immediately reimburse CITY, and if he fails to do so, CITY may offset any such amounts against compensation and settle any such claim or suit and pay the amount of any settlement or judgment therefrom. This covenant shall survive the termination of this Agreement.

- b. Bonds. City shall bear the full cost of any fidelity or other bonds which may be required in the performance of KREINS's services under this agreement.

7. NOTICE

Whenever it shall be necessary for either party to serve notice on the other, such notice shall be served by certified mail, postage prepaid, return receipt requested, addressed to the City of Winters at 318 First Street, Winters, CA 95694, Attention: City Clerk; and for KREINS at, 5502 Lynbrook Court, Concord, CA, 94521 unless and until different addresses may be furnished in writing by either party to the other. Notice shall be deemed to have been served seventy-two (72) hours after the same has been deposited in the United States Postal Services. This shall be valid and sufficient service of notice for all purposes.

8. ASSIGNMENT

KREINS shall not assign the performance of this Agreement, nor any part thereof, without the prior written consent of the CITY, by and through the City Manager.

9. ACCEPTANCE OF AGREEMENT

- a. KREINS has been provided the opportunity to consult legal counsel in regards to the terms and conditions of this Agreement. KREINS has read and understands the

terms and conditions of this Agreement and is fully aware of their legal effect, and hereby accepts the terms and conditions contained herein.

- b. This Agreement contains all of the terms and conditions of this Agreement and supersedes all other oral, implied, or written agreements, communications or representations. No subsequent alteration, amendment, change or addition to this agreement shall be binding upon the parties unless reduced to writing and signed by the City Manager.

10. SEVERABILITY

If any provision or any portion of this agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

APPROVED AND AUTHORIZED:

Date: _____

John W. Donlevy, Jr.
City Manager of the City of Winters
For the City of Winters – Employer

ACCEPTED AND AGREED TO:

Date: _____

Joe Kreins, Employee
Interim Police Chief

ATTEST:

Nanci G. Mills
City Clerk

APPROVED AS TO FORM

Ethan Walsh
City Attorney



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: January 5, 2016
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Dan Maguire, Economic Development and Housing Manager *DM*
SUBJECT: Intergovernmental Agreement with Yolo County Housing ("YCH") for CDBG Technical Assistance

RECOMMENDATIONS:

1) Receive the report from staff recommending the issuance of an Intergovernmental contract for Professional Services for Community Development Block Grant ("CDBG") Consulting Services, and 2) Authorize the City Manager to execute a contract with YCH for the Consultant Services.

BACKGROUND:

At the March 19, 2013 City Council meeting, Council authorized an Intergovernmental Agreement with YCH for CDBG Technical Assistance to assist staff with implementation of a grant award (Grant # 10-STBG-6745) for the construction of Phase One of Walnut Park. The City was recently notified of an award of CDBG grant funds from the State's CDBG General Allocation Program. Funding from this source will be utilized for the development of new Senior Center to be located on a portion of the approximately 1.5 acre parcel (APN # 003 370 029) being developed by Domus Development for the Blue Mountain Terrace Senior Apartments. The grant award also includes funding for senior services.

Normally, Federal Procurement Guidelines (associated with receiving Federal Funds such as CDBG) for contracting for Professional Services require the jurisdiction to utilize an RFP/RFQ process for the selection of the service provider. Intergovernmental Agreements are exempt from this requirement, as long as the HUD guidelines are adhered to in the contract language.

Staff recommends the City enter into contract with YCH to provide technical assistance and guidance in executing the CDBG General Allocation Grant contract (Grant # 15-

CDBG-10578) and in complying with the CDBG reporting requirements.

FISCAL IMPACTS:

Total contract cost is TBD. The issuance of the Intergovernmental Agreement Contract will have little to no impact on City's General Fund or other City funds as expenses incurred in providing the CDBG technical assistance will be funded primarily through the Activity Delivery and General Administrative budgets within the CDBG Grant.

ATTACHMENTS:

Intergovernmental Agreement with YCH
Federal Requirements (Subgrantee Certifications and Assurances)

CITY OF WINTERS

AGREEMENT NO. _____

**(Intergovernmental Agreement for Grants Management Services Between
the City of Winters and Yolo County Housing)**

This Agreement is made this _____ day of _____, 2016,
by and between the City of Winters and Yolo County Housing for the professional
services of general review and grants management.

A. Services To Be Provided By Yolo County Housing. During the term of this Agreement, Yolo County Housing will undertake all of the following services in a professional, responsible and competent manner: Serve as the grants management consultant to the City of Winters, serving to provide technical assistance and guidance in executing existing CDBG grant, technical assistance in meeting reporting requirements and similar grants management projects.

B. Compensation and Expenses to Be Paid By City of Winters. For the professional services provided during the term of this Agreement, services will be billed at the following hourly rates:

Grants Consultant (Lisa Baker) \$110.00
Labor Compliance Review (Fred Ichtertz) \$75.00
Senior Grants Analyst (Coleen Brock) \$55.00

All office-related (OMB Circular A-87) costs and expenses are included in this amount not including travel expenses for Labor Compliance Review Officer and Grants Analyst. Mileage for Grants Consultant is included. Mileage is reimbursable at the rate that conforms to the annual IRS approved rate per mile.

C. Payment for Services. Yolo County Housing will submit an invoice on a monthly basis, unless the parties mutually agree otherwise. Within fifteen (15) days at the end of each month, Yolo County Housing will submit an invoice to the City of Winters for services rendered under the Agreement to the following address:

City of Winters
Attention: City Manager
318 First Street
Winters, CA 95694

The invoice submitted pursuant to this Paragraph shall show the City of Winters Agreement number, if any, hours worked by each person who performed services during the billing period, the hourly rate of pay for each person who performed services,

the dates on which the services were performed, a description of the services performed, and such other information as the City of Winters may reasonably require.

Within thirty (30) calendar days of the City of Winters City Manager's authorization for payment of an invoice, the City's Finance Director shall either issue the payment or advise Yolo County Housing in writing of any concerns that the Finance Director has with the request and any need for further documentation.

The City of Winters reserves the right to withhold payments in the event of Yolo County Housing's performance being materially non-compliant with the Agreement. Yolo County Housing's final invoice shall be clearly marked "FINAL."

D. **Applicable Laws.** In the performance of the services set forth in Paragraph A above, Yolo County Housing shall comply with all applicable laws, including those set forth in Attachment "A".

E. **Indemnification/Hold Harmless.** Yolo County Housing shall indemnify, defend, and hold harmless the City of Winters, its city council, officials, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including reasonable attorney's fees, arising from Yolo County Housing's performance of this Agreement, with the exception of matters that are based upon the negligent or intentional acts or omissions of the City of Winters, its city council, officials and employees. The City of Winters shall indemnify, defend, and hold harmless Yolo County Housing, its board, commission, officials, and employees from and against any and all loss, damages, liability claims, suits, costs and expenses, including reasonable attorneys' fees arising from the City of Winters performance of this Agreement, with the exception of, and in proportion to, matters that are based on the negligent or intentional acts or omissions of Yolo County Housing, its board, commission, officials and employees.

F. **Insurance.** On or before the commencement of the term of this Agreement, Yolo County Housing shall furnish the City of Winters with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage. Such certificates, which do not limit Yolo County Housing's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Winters by certified mail." It is agreed that Yolo County Housing shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to the City of Winters and licensed to do insurance business in the State of California. Endorsements naming the City of Winters as additional insured shall be submitted with the insurance certificates.

1. Coverage: Yolo County Housing shall maintain the following insurance coverage:

(a) Workers' Compensation: Statutory coverage as required by the State of California.

(b) Liability: Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	each occurrence
	\$2,000,000	aggregate - all other
Property Damage:	\$1,000,000	each occurrence
	\$2,000,000	aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(c) Automotive: Comprehensive automotive liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	each occurrence
	\$2,000,000	aggregate - all other
Property Damage:	\$1,000,000	each occurrence
	\$2,000,000	aggregate – all other

or

Combined Single Limit:	\$1,000,000	each occurrence
------------------------	-------------	-----------------

2. Subrogation Waiver: Yolo County Housing agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Yolo County Housing shall look solely to its insurance for recovery. Yolo County Housing hereby grants to City of Winters, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Yolo County Housing or City of Winters with respect to the services of Yolo County Housing herein, a waiver of any right to subrogation, which any such insurer of said Yolo County Housing may acquire against City of Winters by virtue of the payment of any loss under such insurance.

3. Failure to Secure: If Yolo County Housing at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City of Winters shall be permitted to obtain such insurance in the Yolo County Housing's name or as an agent of the Yolo County Housing and shall be compensated by the Yolo County Housing for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

4. Additional Insured: the City of Winters, its city council, officers, and employees shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof.

of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a court of competent jurisdiction located in Woodland, California.

L. **Severability.** If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

M. **Amendment.** This Agreement may only be amended in writing signed by both parties, and any other purported amendment shall be of no force or effect. This Agreement may be amended to both extend the term and conditions, as well as to add tasks. Yolo County Housing will not begin new tasks without express written permission of the City of Winters.

N. **Entire Agreement.** This Agreement and its Attachments constitutes the entire agreement between the City of Winters and Yolo County Housing and supersedes all prior negotiations, representations, or agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have entered into this agreement on the day and year set forth above.

City of Winters:

By _____
John W. Donlevy, Jr., City Manager

Dated: _____

Yolo County Housing

By _____
Lisa A. Baker, CEO

Dated: _____

EXHIBIT A

SERVICE CONTRACT INSURANCE REQUIREMENTS

- A. During the term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.
1. Minimum Coverages (as applicable) - Insurance coverage shall be with limits not less than the following:
 - a. **Comprehensive General Liability** – \$1,000,000/occurrence and \$2,000,000/aggregate
 - b. **Automobile Liability** – \$1,000,000/occurrence (general) and \$500,000/occurrence (property) [include coverage for Hired and Non-owned vehicles.]
 - c. **Professional Liability/Malpractice/Errors and Omissions** – \$1,000,000/occurrence and \$2,000,000/aggregate (If any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under a contract, the contractor must provide this insurance. If not, then this requirement automatically does not apply.)
 - d. **Workers' Compensation** – Statutory Limits/**Employers' Liability** - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)
 2. The County, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages. . [NOTE: Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.] It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.
 - a. The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the County's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.
 - b. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or

excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self insurance shall be called upon to protect it as a named insured.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless the County Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.
4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.
6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).
7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.
8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.

10. The insurer shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.
- B.** Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- C.** During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.
- D.** Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor/**and or Contractor** shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and General Contractor/**and or Contractor** will provide proof of compliance to the County of Yolo.
- E.** Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

**Subgrantee and Contractor
Certifications and Assurances**

.....

Certification and Assurance: The subgrantee or contractor executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time, including adding appropriate provisions to all contracts between Grantee and Subgrantees or Contractors:

- (1) Compliance with Community Development Block Grant regulations found at 24 CFR 570.1 – 570.913 and Appendices
- (2) Compliance with applicable OMB Circulars, including A-133 and A-87 as required
- (3) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
- (4) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

- (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

The information contained in this certification is true and accurate, to the best of my knowledge.

Name of Subgrantee or Contractor	Name and Contract Number: Yolo County Housing	
Signature of Authorized Certifying Official:	Title:	Date:

WARNING: Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.



**CITY COUNCIL
STAFF REPORT**

TO: Honorable Mayor and Council Members
DATE: January 5, 2016
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Ethan Walsh, City Attorney
SUBJECT: Tobacco Retail Permit Ordinance; Agreement with Yolo County for Administration in Connection with Permit Services

RECOMMENDATION: Staff recommends the City Council (1) waive first reading and introduce Ordinance No. 2016-01, which will incorporate Yolo County's Tobacco Retail Licensing Ordinance into the Winters Municipal Code, and (2) authorize the City Manager to enter into an Agreement with the County for Tobacco Retail Permit Administration Services, in substantially the form attached to this staff report.

BACKGROUND: In February 2015, Yolo County Health Department staff made a presentation to the City Council regarding the County's Tobacco Retail Permit program and encouraged the City Council to consider adoption of a Tobacco Retail Permit ordinance to help ensure compliance with laws that regulate the sales and use of tobacco products within the City of Winters. As part of their presentation, County staff also encouraged the City Council to consider adopting an ordinance banning flavored tobacco in the City, because such flavored products are more appealing to young people who have not previously used tobacco products.

The County adopted a Tobacco Retailer Permit Ordinance in 2006, which established a program pursuant to which any retail business must obtain a tobacco retailer permit from Yolo County in order to sell tobacco products. The fee for the retail permits funds a compliance check program by the County that ensures tobacco retailers are complying with all tobacco related laws, including prohibitions on sales to minors. The City of Davis adopted the County's ordinance by reference in 2007, so that retailers within the City also have to obtain a tobacco retail permit from the County, and would be subject to compliance checks to ensure compliance with tobacco related laws. The City of Woodland adopted the County's ordinance by reference in June 2015.

DISCUSSION: The proposed Ordinance No. 2016-01 would adopt the County's ordinance by reference, so that the County can enforce its Tobacco Permitting program within the City of Winters. If the Ordinance is adopted, then retailers within the City would have to obtain a Tobacco Retail License from the County and renew that permit each year. It would be a violation of the Winters Municipal Code for retailers to sell tobacco products without a Tobacco Retail Permit.

Concurrently with adopting the Ordinance, City staff is recommending the City enter into an Agreement with the County for the Administration of the Tobacco Retail Permit Program. Under the Agreement, the County would take responsibility for administering the Permit program within the City, including retailer education, inspections, compliance checks and prosecution of violators. The City would not pay for these services directly, but the County would collect the Permit fees from retailers, and use those fees to pay for the administration of the program within the City. The Permit fees are set by the Board of Supervisors by resolution, and are currently set at \$344 per year. The City of Davis has an identical agreement with the County, and City of Davis staff indicates that the arrangement has worked well, with minimal impact to City resources.

Upon adoption of the ordinance, the County Health Department would work with the Police Chief to generate a letter and educational materials (ordinance overview, copy of the policy, tips for checking ID for clerks, etc.) that would go out from the City to all tobacco retailers. After this initial implementation/notification regarding the Ordinance, the County would take responsibility for the enforcement of the Ordinance.

As noted in the Background section, County Health Department staff encouraged the City to consider a ban of flavored tobacco. A small number of jurisdictions in California have adopted ordinance prohibiting the sale of flavored tobacco products, including the Cities of Berkeley, Hayward, El Cerrito and Manhattan Beach, the Town of Sonoma and Santa Clara County. None of the cities in Yolo County, nor the County itself have adopted an ordinance prohibiting sale of flavored tobacco at this point. While City staff understands that measures that will discourage tobacco use by minors are a benefit to public health in the City and the Region, staff also believes that the County is best equipped to take the lead on proceeding with a limitation on flavored tobacco sales, since their staff would have to take a primary role in the enforcement of any such ban.

The County Board of Supervisors discussed adopting a ban sale of on flavored tobacco at its December 15, 2015 meeting, with the County Health Department recommending that the Board direct County Counsel to amend the County's program to prohibit sales of flavored tobacco. If the County is going to institute a ban through its Tobacco Retail Ordinance, it will be more efficient for the City to wait until that ban is in place, so that any restrictions in Winters are consistent with the rest of the County. If the County does amend its ordinance, that amendment will be incorporated into the City's Municipal Code, and the County will be able to enforce its ban within the City, consistent with the rest of the County, Davis and Woodland. The Board of Supervisors hearing is being held after the deadline for submission of this Staff Report. Staff will provide an oral update regarding the Board's direction to County staff at the January 5 Council meeting.

ALTERNATIVES: The Council could decline to adopt the ordinance, or alternatively could direct staff to revise the ordinance to incorporate a ban on flavored tobacco, in advance of any County action.

FISCAL IMPACT: City Police Department staff will need to spend some time on the initial implementation of the ordinance, in cooperation with the County Health Department staff. After

initial implementation, the County Health Department would take responsibility for ongoing implementation and enforcement of the Ordinance, and the Ordinance should not have a significant fiscal or administrative impact on the City.

Attachments: Ordinance No. 2016-01
Agreement between the City and County for Administration of the Ordinance
Title 6, Chapter 15 of the Yolo County Code (the County's Tobacco Retailer
Permit Ordinance)

ORDINANCE NO. 2016-01

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
AMENDING TITLE 8 OF THE WINTERS MUNICIPAL CODE TO ADD
CHAPTER 8.32 AND TO ADOPT AND INCORPORATE BY REFERENCE
CHAPTER 15 OF TITLE 6 OF THE YOLO COUNTY CODE
CONCERNING TOBACCO RETAIL PERMITS**

WHEREAS, cigarette smoking and other tobacco use is a continuing public health problem; and

WHEREAS, to confront this issue the State of California has adopted numerous laws regulating the retail sale of tobacco; and

WHEREAS, the City has a substantial interest in promoting compliance with laws that regulate the sales and use of tobacco products; and

WHEREAS, in furtherance of this substantial interest, the City desires to adopt a tobacco retail licensing ordinance, which would require tobacco retailers to obtain a local permit to sell tobacco products or tobacco paraphernalia and would allow for the suspension or revocation of the permit for a violation of any tobacco control law; and

WHEREAS, Section 22971.3 of the Business & Professions Code explicitly permits local governments to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local permit for a violation of any State tobacco control law; and

WHEREAS, a permitting requirement for a tobacco retailer will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults but will permit the City to regulate the operation of lawful businesses to discourage violations of tobacco-related laws; and

WHEREAS, the County of Yolo ("County") has adopted a tobacco retail licensing ordinance, which requires tobacco retailers to obtain a local permit to sell tobacco products or tobacco paraphernalia and allows for the suspension or revocation of the permit for a violation of any tobacco control law ("County Ordinance"); and

WHEREAS, the City desires to incorporate by reference the County Ordinance and desires to have the County administer and enforce its provisions within the City limits as it currently does in the unincorporated areas of Yolo County under the County Ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 8.32 is hereby added to Title 8 of the Winters Municipal Code to read as follows:

**Chapter 8.32
Tobacco Retailer Permit**

8.32.010 Adoption of Yolo County Code Relating to Tobacco Retail Permits

Title 6, Chapter 15 of the Yolo County Code, except sections 6-15.10(b)(2) and 6-15.15(f)(1)(A)(ii), pertaining to tobacco retailer permits, is hereby incorporated, in its entirety, by reference into this code and shall be enforced within the limits of the City.

For purposes of this Chapter, all references to the term "unincorporated areas of the County of Yolo" in Title 6, Chapter 15 of the Yolo County Code shall be to the term "City limits." All references to the term "Chapter" in Title 6, Chapter 15 of the Yolo County Code shall be to this Chapter 8.32. All references to the term "Code" in Title 6, Chapter 15 of the Yolo County Code shall be to the Winters Municipal Code. The reference to the term "County" in Section 6-15.07(c) of the Yolo County Code shall be to the term "City." The reference to the term "County of Yolo" in Section 6-15.15(f) of the Yolo County Code shall be to the term "City." The reference to the term "Board of Supervisors of the County of Yolo" in Section 6-15.16 of the Yolo County Code shall be to the term "City Council."

INTRODUCED at a regular meeting on the 5th day of January, 2016 and **PASSED AND ADOPTED** at a regular meeting of the Winters City Council, County of Yolo, State of California, on the 19th day of November, 2016, by the following vote:

AYES:

NOES:

ABSENT:

Cecilia Aguiar-Curry, Mayor

ATTEST:

Nanci G. Mills, City Clerk

**AGREEMENT BETWEEN
CITY OF WINTERS AND COUNTY OF YOLO
FOR TOBACCO RETAIL PERMIT ADMINISTRATION SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2015 (“Effective Date”), by and between the City of Winters, a municipal corporation of the State of California (“City”), and the County of Yolo, a political subdivision of the State of California (“County”).

RECITALS

WHEREAS, the City, by Ordinance No. 2016-01 (“Ordinance”), has incorporated by reference Title 6, Chapter 15 of the Yolo County Code (“County Ordinance”), which provides for a tobacco retail permit system; and

WHEREAS, the City enacted its Ordinance in order to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, particularly those which prohibit or discourage the sale or distribution of tobacco products to minors; and

WHEREAS, the County agrees to assist the City in enforcing the Ordinance by providing such administrative and enforcement services as are specified under the Ordinance, on the terms and condition specified in this Agreement; and

WHEREAS, any costs borne by the County to administer and enforce the Ordinance within the City limits shall be recovered by the fees the County will receive from tobacco retailers within the City, pursuant to the Ordinance.

AGREEMENT

NOW, THEREFORE, the City and County agree as follows:

Section 1. Incorporation of Recitals

The above recitals, including the paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

Section 2. Responsibilities Under the Agreement

a. County Responsibilities. County shall do the following:

1. Subject to the terms of this Agreement, and provided that the terms of Section 2(b) below have been satisfied, the County shall provide all of the administrative and enforcement services specified under the Ordinance, including but not limited to: receiving, reviewing, and processing the tobacco retail application and the information contained therein, issuing the permit, administering the permit program, retailer education, retailer inspection and

compliance checks, documentation of violations, and sanction and prosecution of violators (“Services”).

2. Meet with the appropriate City personnel on a yearly basis, at a time and location to be chosen convenient for both parties, to assess the status of this Agreement and to discuss any modifications thereto.

b. City Responsibilities. City shall do the following:

1. Provide information regarding the Ordinance to any business applying for a business license under Chapter 5.04 of the Winters Municipal Code.

2. Communicate from time to time with Tobacco Retailers (as that term is defined in the Ordinance) regarding the Ordinance.

3. Not interfere with, or in any way hinder, County's, or any of County's employees, officers, agents, or designated representatives in the performance of their duties pursuant to this Agreement.

4. Assist the County so far as reasonably appropriate in carrying out the terms of this Agreement.

5. Meet with the appropriate County personnel on a yearly basis, at a time and location to be chosen convenient for both parties, to assess the status of this Agreement and to discuss any modifications thereto.

c. County and City Responsibilities. The responsibilities listed hereunder shall not be construed so as to preclude existing or future County or City rights and responsibilities.

Section 3. Compensation and Fees

The parties agree that the City will not directly compensate the County for providing the Services specified herein. The County shall be reimbursed for its costs through the fees it will charge pursuant to the Ordinance, including fees charged to obtain or renew a Tobacco Retailer's Permit (as that term is defined in the Ordinance). Such fees shall be established by resolution of the City Council, and collected by the County, and the City shall make no claim to any such fees charged by the County.

Section 4. Term

This Agreement shall commence on the Effective Date and shall remain in effect so long as not terminated by either party pursuant to Section 6.

Section 5. Indemnification

The City shall indemnify, defend (with counsel selected by the City and reasonably acceptable to the County) and hold harmless the County from all claims (including any and all actions, causes of action, claims, attorneys' fees, costs, demands, lawsuits, liens, and liabilities of any kind and nature) that challenge the City's Ordinance, the County's lawful administration or enforcement of the Ordinance as provided for in this Agreement, and the fee schedule as established by resolution of the City Council, pursuant to the Ordinance; except if such claim is a result of County's (including its officers, employees, agents, and volunteers) negligence, then County shall indemnify and defend the City (with counsel selected by the County and reasonably acceptable to the City) from any such claim. In the event that a claim against City is initiated or filed and concerns the City's Ordinance or the County's administration or enforcement of the Ordinance, County agrees to fully cooperate with City in its attempts to resolve or defend such challenge. Each party (the "Indemnifying Party") agrees to indemnify, defend (with counsel selected by the Indemnifying Party and reasonably acceptable to the other party) and hold harmless the other party (the "Indemnified Party") from all other claims (as defined above) arising in connection with this Agreement.

Section 6. Termination

This Agreement may be terminated for the following reasons:

- a. Upon the termination of the Ordinance or County Ordinance, or a substantial change in either one; or
- b. For any reason by either party at any time during the term of this Agreement, provided that written notice is given pursuant to Section 9 six (6) months prior to the effective date of termination.

Section 7. Conflict Between Agreement and Ordinance

Any conflict between the terms of this Agreement and the Ordinance shall be resolved in favor of the Ordinance.

Section 8. Applicable Laws/Venue

In the performance of the services required by this Agreement, both parties shall comply with all applicable Federal, State, County, and City statutes, ordinances, regulations, directives, and laws. The interpretation and performance of this Agreement shall be governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in the Superior Court of the County of Yolo.

Section 9. Notice

All notices, consents, demands, and other communications from one party to the other given pursuant to the terms of this Agreement or under the laws of the State of California, shall be

Section 14. Attorneys' Fees.

In the event that any legal action or proceeding is commenced to enforce or interpret the provisions of this Agreement or any rights arising out of this Agreement, each party in such legal action shall bear attorneys' fees, including expert fees and the costs of enforcing any judgment.

Section 15. Non-liability of Officials, Employees and Agents.

No governing board member, official, employee, agent, or volunteer of either party shall be personally liable for any damages related to any default or breach by the other party, or for any obligations under the terms of this Agreement.

Section 16. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the parties to any one of such counterpart signature pages; all of such counterpart signature pages shall read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Section 17. Authorization to Execute Agreements.

The County Administrator is authorized to execute this Agreement, pursuant to action taken by the Board of Supervisors of Yolo County on _____. The City Manager of the City of Winters is authorized to execute this Agreement, pursuant to action taken by the City of Winters City Council on _____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF WINTERS,
a municipal corporation
of the State of California

COUNTY OF YOLO,
a political subdivision
of the State of California

By: _____
John W. Donlevy, Jr.
City Manager

By: _____
Patrick S. Blacklock
County Administrator

Approved as to form

Approved as to form
Philip J. Pogledich, County Counsel

By: _____
Ethan Walsh
City Attorney

By: _____
Hope P. Welton
Senior Deputy County Counsel

Print

Yolo County, CA Code of Ordinances

Chapter 15 TOBACCO RETAILER PERMIT

Sections:

- 6-15.01 Purpose.
- 6-15.02 Definitions.
- 6-15.03 Tobacco Retailer Permit Required.
- 6-15.04 Limits on Tobacco Retailer Permits.
- 6-15.05 Application Procedure.
- 6-15.06 Fees.
- 6-15.07 Issuance; Denial; Effect.
- 6-15.08 Permit Nontransferable.
- 6-15.09 Permit Term, Renewal and Expiration.
- 6-15.10 Other Tobacco Retailing Requirements and Prohibitions.
- 6-15.11 Compliance Monitoring.
- 6-15.12 Revocation of Permit.
- 6-15.13 Appeal; Judicial Review.
- 6-15.14 Enforcement: Tobacco Retailing Without a Permit; Tobacco Retailing in Violation of Chapter.
- 6-15.15 Additional Enforcement.
- 6-15.16 Severability

Sec. 6-15.01. Purpose.

The purpose of this Chapter is to discourage violations of tobacco-related laws, particularly those which prohibit or discourage the sale or distribution of tobacco products to minors, by requiring a tobacco retailing permit in the unincorporated areas of the County of Yolo as set forth in this Chapter. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.02. Definitions.

As used herein:

- (a) "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter, is not an Arm's Length Transaction.
- (b) "Department" means the Yolo County Health Department.
- (c) "Director" shall mean the Director of the Yolo County Health Department or her/his written designee.
- (d) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (e) "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.
- (f) "Self-Service Display" means the open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A Vending Machine is a form of Self-Service Display.
- (g) "Significant Tobacco Retailer" means any Tobacco Retailer whose principal or core business is selling Tobacco Products, Tobacco Paraphernalia, or both, as evidenced by any of the following: (i) twenty percent (20%) or more of floor area and display area is devoted to the sale or exchange of Tobacco products, Tobacco Paraphernalia, or both; (ii) fifty percent (50%) or more of completed sales transactions include a Tobacco Product or Tobacco Paraphernalia; or (iii) Sixty-seven percent (67%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both.
- (h) "Smoking" means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), or the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).
- (i) "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed for the smoking, preparation, storing, consumption or ingestion of Tobacco Products.
- (j) "Tobacco Product" means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.
- (k) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia,

or who distributes free or low cost samples of Tobacco Products or Tobacco Paraphernalia, without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold or offered for sale, exchanged or offered for exchange, or distributed or offered for distribution. "Tobacco Retailing" means the doing of any of these things.

(l) "Tobacco Retailing Permit Hearing Authority" or "Hearing Authority" means one or more persons assigned by the County Administrative Officer the responsibility of conducting a hearing pursuant to this Chapter, and may hereafter be referred to as the Hearing Authority. The County Administrative Officer shall assign hearing responsibility to any of the following: (1) County management personnel whom the County Administrative Officer finds to be qualified by training and experience to conduct such hearings; (2) Any person(s) qualified by training or experience whom the County Administrative Officer may employ or who are retained by contract to conduct such hearings; or (3) Administrative Law Judges assigned by the State Office of Administrative Hearings. The County Administrative Officer is hereby authorized to contract in the name of the County for the retention of hearing services at rates that do not exceed the financial limitations established by the County's annual budget and contracting rules, regulations and policies.

(m) "Vending Machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.03. Tobacco Retailer Permit Required.

(a) It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer's Permit pursuant to this Chapter for each location at which that activity is to occur. A Tobacco Retailer Permit is invalid unless the appropriate fee has been paid in full and the term of the Permit has not expired.

(b) A Tobacco Retailer or Proprietor without a valid Tobacco Retailer Permit, including but not limited to a person whose Permit has been revoked:

(1) Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view.

(2) Shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.04. Limits on Tobacco Retailer Permits.

(a) No permit may issue to authorize Tobacco Retailing at other than a single, fixed location.

(b) No permit may issue to authorize Tobacco Retailing at any location that is permitted by State law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" permit issued by the California Department of Alcoholic Beverage Control).

(c) No permit may issue to authorize Tobacco Retailing by a Significant Tobacco Retailer; provided however that a Significant Tobacco Retailer operating legally on the date that the

ordinance enacting this Chapter was first introduced, and that would otherwise have been entitled to receive a permit pursuant to this Chapter, may receive a permit and may continue to operate so long as (1) the permit is renewed continually without lapse; (2) the Significant Tobacco Retailer is not closed for business for more than sixty (60) consecutive days; (3) the Significant Tobacco Retailer does not substantially change the business premises or business operation; and (4) the Significant Tobacco Retailer's maintains the right to operate under the terms of all other applicable laws. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.05. Application Procedure.

(a) An application for a Tobacco Retailer's Permit shall be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and shall be signed by each Proprietor or an authorized agent thereof. It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's Permit.

(b) All applications shall be submitted on a form supplied by the Department, shall be accompanied by the application and permit fee established pursuant to this Chapter, and shall contain the following information:

(1) The name, address, and telephone number of each Proprietor of the business that is seeking the Permit.

(2) The business name, address, and telephone number of the single fixed location for which the Permit is sought.

(3) The name and mailing address authorized by each Proprietor to receive all permit-related communications and notices (the Authorized Address). If an Authorized Address is not supplied, each Proprietor shall be understood and deemed to consent to the provision of notice at the business address specified in subparagraph (2) above.

(4) Proof that the location for which a Tobacco Retailer's Permit is sought has been issued a valid State tobacco retailer's license by the California Board of Equalization.

(5) Whether or not any Proprietor has admitted violating, or has been found to have violated, this Chapter, or whose proprietorship has admitted violating, or has been found to have violated, this Chapter, and, if so, the dates and locations of all such violations within the previous six years.

(6) Such other information as the Department deems necessary for the administration or enforcement of this Chapter.

(c) Each Tobacco Retailer who has been issued a Permit shall update with the Department all information required to be submitted in order to apply for the Permit whenever the information changes. A Tobacco Retailer shall provide the Department with all such updates within ten (10) business days of a change.

(d) The information specified in subparagraphs (b)(1), (2) and (3) shall be available to the public. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.06. Fees.

The fee to apply for and obtain or renew a Tobacco Retailer's Permit shall be established by resolution of the Board of Supervisors. The fee shall be calculated so as to recover no more than the total cost of permit administration and enforcement, including but not limited to receiving, reviewing and processing the application and the information contained therein, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and sanction and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees shall be used exclusively to fund the regulatory program authorized by this Chapter. Fees are nonrefundable except as may otherwise be required by law. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.07. Issuance; Denial; Effect.

(a) Upon the receipt of an application for a Tobacco Retailer's Permit and the application and permit fee, the Department shall issue a permit unless substantial evidence in the record demonstrates one or more of the following bases for denial:

- (1) The application is incomplete or inaccurate.
- (2) The application seeks authorization for Tobacco Retailing by a Proprietor or other Person to whom this Chapter prohibits a Permit to be issued.
- (3) The application seeks authorization for Tobacco Retailing at a location for which this Chapter prohibits a Permit to be issued.
- (4) The application seeks authorization for Tobacco Retailing by a Proprietor or other Person for whom, or at a location for which, a Permit revocation is in effect pursuant to this Chapter.
- (5) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter (e.g., mobile vending), that is unlawful pursuant to this Code (e.g., the zoning code), or that is unlawful pursuant to any other law.

(b) If the Department denies a Permit application, the Department shall notify the applicant in writing of the denial. A notice of denial shall be personally served on, or sent by certified mail to, the Permit holder. The notice shall state the basis of the Department's determination(s) and denial, and shall include an advisement of the right to appeal as set forth in Section 6-15.13.

(c) Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's Permit any status or right other than the right to act as a Tobacco Retailer at the location in the County identified on the face of the Permit. For example, nothing in this Chapter shall be construed to render inapplicable, supercede, or apply in lieu of, any other provision of applicable law, including but not limited to County zoning ordinances, building codes, and business Permit requirements, and any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code Section 6404.5 or any other law or regulation. Obtaining a Tobacco Retailer Permit also does not make the Retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.

(d) The issuance of a Permit does not constitute a determination by the County that the Tobacco Retailer or Proprietor has complied with all laws applicable to Tobacco Retailing.

Nothing in this Chapter shall be construed to vest in any Person obtaining and maintaining a Permit any status or right to act as a Tobacco Retailer in contravention of any provision of law.

(e) A Permit issued in error, contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor may be revoked pursuant to Section 6-15.12. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.08. Permit Nontransferable.

(a) A Tobacco Retailer's Permit may not be transferred from one Person to another or from one location to another. Whenever a Tobacco Retailing location has a change in Proprietors, a new Tobacco Retailer's Permit is required.

(b) Notwithstanding any other provision of this Chapter, prior violations at a location shall continue to be counted against a location and Permit ineligibility periods shall continue to apply to a location unless:

(1) The location has been fully transferred to a new Proprietor or entirely new Proprietors; and,

(2) The new Proprietor(s) provide the Department with clear and convincing evidence that the new Proprietor(s) have acquired or is acquiring the location in an Arm's Length Transaction. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.09. Permit Term, Renewal and Expiration.

(a) The term of a Tobacco Retailer Permit is one (1) year.

(b) Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's Permit and submit the Permit fee no later than thirty (30) days prior to expiration of the term.

(c) A Tobacco Retailer's Permit that is not timely renewed as set forth above shall expire at the end of its term.

(d) To reinstate a Permit that has expired, or to renew a Permit not timely renewed as set forth above, the Proprietor(s) must:

(1) Submit the Permit fee plus a reinstatement fee of ten percent (10%) of the Permit fee.

(2) Submit a signed affidavit affirming that the Proprietor:

(A) Has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the Permit expiration date and before the Permit is renewed; or

(B) Has waited the appropriate ineligibility period established for Tobacco Retailing without a Permit, as set forth in Section 6-15.14(a) of this Chapter, before seeking renewal of the Permit. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.10. Other Tobacco Retailing Requirements and Prohibitions.

- (a) Each Proprietor shall prominently display each Permit at the location where Tobacco-Retailing is permitted by the Permit.
- (b) In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a Permit issued, it shall be a violation of this Chapter for a Proprietor or Tobacco Retailer, or any of the Proprietor's or Tobacco Retailer's agents or employees, to:
- (1) Violate any Federal, State or local law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.
 - (2) Violate any Federal, State or local law regulating exterior, storefront, window, or door signage.
- (c) No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.
- (d) No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a Self-Service Display or engage in Tobacco Retailing by means of a Self-Service Display. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.11. Compliance Monitoring.

- (a) Compliance with this Chapter shall be monitored by the Yolo County District Attorney.
- (b) The District Attorney shall check the compliance of each Tobacco Retailer an average of at least three (3) times per twelve (12) month period. The District Attorney may check the compliance of Tobacco Retailers previously found to be in compliance with the laws regulating access to Tobacco and Tobacco Paraphernalia of persons under the age of eighteen (18) years of age a fewer number of times, so that they may check the compliance of Tobacco Retailers previously found in violation of this Chapter a greater number of times. Nothing in this subsection shall create a right of action in any Tobacco Retailer, Permittee or other Person against the County or its agents if the number of compliance checks varies from the foregoing.
- (c) Compliance checks shall determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with Federal, State and local laws regulating access to Tobacco and Tobacco Paraphernalia of persons under the age of eighteen (18) years of age. When deemed appropriate by the District Attorney, the compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.
- (d) The County shall not enforce any law establishing a minimum age for tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when either of the following conditions exist:
- (1) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the County; or
 - (2) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Yolo County Health Department or the California Department of Health Services. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.12. Revocation of Permit.

(a) In addition to any other penalty authorized by law, a Tobacco Retailer's Permit shall be revoked if any court of competent jurisdiction determines, or if the Director finds after the Tobacco Retailer or Permittee is afforded notice and an opportunity to be heard, that the Tobacco Retailer or Permittee, or any of the Tobacco Retailer's or Permittee's officers, agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter or, in a different legal proceeding, has pleaded guilty, "no contest" or its equivalent, or admitted to, a violation of any law designated in Section 6-15.10.

(b) A Tobacco Retailer's Permit shall be revoked if the Department finds, after the Permittee is afforded reasonable notice and an opportunity to be heard, that one or more of the bases for denial of a Permit under Section 6-15.07 existed at the time the Permit application was submitted or at any time thereafter and before the Permit issued. The revocation shall be without prejudice to the filing of a new Permit application.

(c) A decision to revoke a Permit is appealable to the Tobacco Retailing Permit Hearing Authority pursuant to Section 6-15.13. If such an appeal is made within the time provided in that Section, it shall stay enforcement of the appealed action.

(d) A notice of revocation shall be personally served on, or sent by certified mail to, the Permit holder. The notice shall state the basis of the Department's determination(s) and the revocation, and shall include an advisement of the right to appeal as set forth in Section 6-15.13.

(e) During the period that any permit is revoked, the Proprietor shall prominently display a notice advising the public of the revocation, in the form and in the manner designated by the Department.

(f) After revocation pursuant to subsection (a) above, a new permit may be issued only in accordance with the following:

(1) After revocation for a first violation of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than ten (10) days have passed from the date of revocation.

(2) After revocation for a second violation of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than ninety (90) days have passed from the date of revocation.

(3) After revocation for a third violation of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than one (1) year has passed from the date of revocation.

(4) After revocation for four or more violations of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than five (5) years have passed from the date of revocation. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.13. Appeal; Judicial Review.

(a) Except as otherwise provided by law, any decision made appealable to the Hearing Authority pursuant to this Chapter shall be subject to the following requirements and procedures.

(b) Any appeal must be in writing, shall state the specific reasons therefore and the grounds asserted for relief and the specific relief requested, and shall be filed with the County Administrative Officer within ten (10) calendar days of personal service of the notice of the action being appealed, or within fifteen (15) calendar days of mailing if the notice is only served by mail. If any Person to whom the notice of violation was given does not file a written appeal within the time and in the manner set forth above, the right to review of the Department's determination shall be deemed to have been waived, and the Department's decision shall be final.

If a written appeal is filed within the time and in the manner set forth above, the matter shall be heard by the Hearing Authority.

(c) Not later than fifteen (15) days after receipt of the appeal, the County Administrative Officer shall provide written notice to the parties of the date, time, and place of the hearing, in the manner specified above for a notice of revocation.

(d) The provisions of the Administration Procedure Act (commencing with Section 11500 of the Government Code of the State) shall not be applicable to such hearing, nor shall formal rules of evidence in civil or criminal judicial proceedings be so applicable.

A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made. Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

A decision of the Hearing Authority shall be supported by substantial evidence. The Hearing Authority shall sustain the Department's decision if the Hearing Authority finds that any lawful basis for the Department's action exists.

(e) Following the conclusion of the hearing, the Hearing Authority shall prepare a written decision that either grants or denies the appeal, contains findings of facts and conclusions of law, and includes notification that the time limit within which a judicial review shall be sought is governed by Code of Civil Procedure Section 1094.6. Notice of the written decision, including a copy thereof, shall be filed with the County Administrative Officer and served upon all parties not later than seven (7) days following the date on which the hearing is closed.

The Hearing Authority's written decision shall be the final decision of the County, and shall become final upon the date that notice thereof is mailed to the appellant by certified mail.

(f) Any determination of the Hearing Authority shall be subject to judicial review pursuant to Code of Civil Procedure Section 1094.5. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.14. Enforcement: Tobacco Retailing Without a Permit; Tobacco Retailing in Violation of Chapter.

(a) In addition to any other penalty authorized by law, if the Department finds or any court of competent jurisdiction determines, after notice and an opportunity to be heard, that any Person

has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for or be issued a Tobacco Retailing license for that location as follows:

(1) After a first violation of this Chapter at a location within any sixty- (60) month period, no license may issue for the Person at the location until not less than thirty (30) days have passed from the date of the violation.

(2) After a second violation of this Chapter at a location within any sixty- (60) month period, no license may issue for the Person at the location until not less than ninety (90) days have passed from the date of the violation.

(3) After of a third or subsequent violation of this Chapter at a location within any sixty- (60) month period, no license may issue for the Person at the location until not less than five (5) years have passed from the date of the violation.

(b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this Chapter are subject to seizure by the Department or any peace officer, and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice by the Department and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this Chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 6-15.13. Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed.

(c) Each day after the effective date of this Chapter on which Tobacco Products or Tobacco Paraphernalia are offered for sale in violation of this Chapter shall constitute a violation of this Chapter separate and apart from any other violation of this Chapter.

(d) For a first or second alleged violation of this Chapter within any sixty- (60) month period, the Director may engage in settlement negotiations and, with the County Counsel's concurrence, may enter into a settlement agreement with a Tobacco Retailer alleged to have violated this Chapter without approval from the Board of Supervisors. Notice of any settlement shall be provided to the Board, and no hearing shall be held. Settlements shall not be confidential and shall contain the following minimum terms:

(1) After a first alleged violation of this Chapter at a location within any sixty- (60) month period:

(A) An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations;

(B) An agreement to stop acting as a Tobacco Retailer for at least one (1) day; and;

(C) A settlement payment to the County of at least one thousand dollars (\$1,000).

(2) After a second alleged violation of this Chapter at a location within any sixty- (60) month period:

(A) An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations;

(B) An agreement to stop acting as a Tobacco Retailer for at least ten (10) days; and,

(C) A settlement payment to the County of at least five thousand dollars (\$5,000). (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.15. Additional Enforcement.

(a) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

(b) Violations of this Chapter may, in the discretion of the District Attorney, be prosecuted as criminal infractions or misdemeanors.

(c) Violations of this Chapter are subject to a civil action brought by the District Attorney, punishable as follows:

(1) A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty- (60) month period;

(2) A fine not less than one thousand dollars (\$1,000) and not exceeding two thousand five hundred dollars (\$2,500) for a second violation in any sixty- (60) month period; or

(3) A fine not less than two thousand five hundred dollars (\$2,500) and not exceeding five thousand dollars (\$5,000) for a third or subsequent violation in any sixty- (60) month period.

(d) Any violation of this Chapter is hereby declared to be a public nuisance as well as a private nuisance that is presumed to at least nominally damage each and every resident of the community in which the business operates.

(e) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the District Attorney, including but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(f) Any Person, including the County of Yolo , acting for the interests of itself, its members, or the general public (hereinafter "the Private Enforcer") may bring a civil action to enforce this Chapter.

(1) Upon proof of a violation, a court shall award to the Private Enforcer the following:

(A) Damages in the amount of either:

(i) Upon proof, actual damages; or,

(ii) With insufficient or no proof of the amount of actual damages, five hundred dollars (\$500) for each violation of this Chapter (hereinafter "Statutory Damages"). Unless otherwise specified in this Chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no Private Enforcer suing on behalf of the general public shall recover Statutory Damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Private Enforcer was a party to that adjudication.

(B) Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.

(C) Injunctive Relief.

(i) Notwithstanding any legal or equitable bar against a Private Enforcer seeking relief on his/her/its own behalf, a Private Enforcer may bring an action to enforce this Chapter solely on behalf of the general public. When a Private Enforcer brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the Private Enforcer from bringing a subsequent action based upon the same facts but seeking relief on the Private Enforcer's own behalf.

(ii) Nothing in this Chapter shall prohibit the Private Enforcer from bringing an action in small claims court to enforce this Chapter, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of small claims court as set forth in California Code of Civil Procedure section 116.220.

(g) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a Person under the age of eighteen (18) years old, such a Person shall not be required (but shall be permitted) to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(h) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

(i) Any peace officer may enforce the penal provisions of this Chapter. (§ 2, Ord. 1350, eff. June 15, 2006)

Sec. 6-15.16. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The Board of Supervisors of the County of Yolo hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. (§ 2, Ord. 1350, eff. June 15, 2006)