CITY OF WINTERS
california
Est. 1875

Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, July 18, 2017
6:30 p.m.
AGENDA

Members of the City Council

Wade Cowan, Mayor
Bill Biasi, Mayor Pro-Tempore
Harold Anderson
Jesse Loren
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

A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, June 20, 2017 (pp. 4-11)
B. On-Call Contracts with Blackburn Consulting and Geocon for Materials Sampling and Testing and Geotechnical Engineering Services Associated with Private Development and Public Works Construction Projects (pp. 12-38)
C. Wastewater Treatment Facility Bar Screen Design Project (pp. 39-51)
D. Wastewater Treatment Facility Monitoring Services with Luhdorff & Scalmanini (pp. 52-60)
E. City Park Futsal Court Project - Grading & Paving (pp. 61)

PRESENTATIONS

Winters Police Department Presentation

DISCUSSION ITEMS

1. Olive Grove Subdivision - Proposed Inclusionary Housing Plan (pp. 62-109)
   a. Resolution 2017-37, a Resolution of the City Council of the City of Winters Approving an Affordable Housing Plan for Olive Grove Subdivision
   b. Public Hearing and Resolution 2017-38, a Resolution of the City Council of the City of Winters for the Consideration and Approval of Revised Tentative Map (Olive Grove Subdivision - 21 lots) for Parcels APN 003-391-005 and 003-392-001 near Apricot Avenue and Hemenway Street
2. Public Hearing and Introduction of Ordinance 2017-03, an Ordinance of the City Council of the City of Winters for the Amended and Restated Development Agreement for the Property known as Creekside Estates (40-lot subdivision) Located Near the Intersection of Grant Avenue and Main Street, between the City of Winters and the Catholic Bishop of Sacramento a California Corporation Sole (pp. 110-200)
3. Economic Development (pp. 201-203)
4. Infrastructure Transition Plan (Under Separate Cover)

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

1. None

CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the July 18, 2017 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 July 13, 2017, and made available to the public during normal business hours.

Nanci G. Mills, City Clerk

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

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Winters Library – 708 Railroad Avenue
City Hall – Finance Office - 318 First Street
During Council meetings – Right side as you enter the Council Chambers

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Wednesday at 10:00 a.m.

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

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Minutes of the Regular Meeting of the Winters City Council
Held on June 20, 2017

Mayor Wade Cowan called the meeting to order at 6:30 p.m.

Present:	Council Members Harold Anderson, Bill Biasi, Jesse Loren, Pierre Neu, and Mayor Wade Cowan
Absent:	None
Staff:	City Manager John W. Donlevy, Jr., City Attorney Ethan Walsh, City Clerk Nanci Mills, Public Works Superintendent Eric Lucero, Building Official Gene Ashdown, Environmental Services Manager Carol Scianna, and Management Analysts Dago Fierros and Tracy Jensen

Gene Ashdown led the Pledge of Allegiance.

Approval of Agenda: Staff requested that Consent Item B, Funding Authorization and Amendment to Consultant Services Agreement with Wood Rodgers for Flood Hazard Evaluation in Northeast Area of City's General Plan be moved to Discussion Item #4. Motion by Council Member Neu, second by Council Member Loren to approve the agenda with the requested change. Motion carried with the following vote:

AYES:	Council Members Anderson, Biasi, Loren, Neu, and Mayor Cowan
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, June 6, 2017

B. Funding Authorization and Amendment to Consultant Agreement with Wood Rodgers for Flood Hazard Evaluation in Northeast Area of City's General Plan **(Item moved to Discussion Item #4)**

C. Updated Project Budget Sheet and Resolution 2017-31, a Resolution of the City Council of the City of Winters Authorizing the City Manager to Execute a Contract with Vintage Paving Company, Inc., for the Construction of the Walnut Avenue Roundabout on State Route 128 (Grant Avenue) Improvements, Project No. 12-04, Federal Aid Project No. CML-5110(030)

D. Amplified Sound Permit Friends of the Library July Gazebo Concerts

City Manager Donlevy gave an overview. Council Member Biasi requested the minutes from the June 6th City Council meeting be corrected to reflect that Consent Item C, Infrastructure Transition Plan was moved to Discussion Item 4, with the Futsal Project becoming Discussion Item 5. Council Member Anderson recused himself for Item D due to a possible conflict of interest.

Motion by Council Member Biasi, second by Council Member Neu to approve Consent Item A with the noted correction and Consent Item C. Motion carried with the following vote:

AYES: Council Members Anderson, Biasi, Loren, Neu, and Mayor Cowan
NOES: None
ABSENT: None
ABSTAIN: None

Motion by Council Member Biasi, second by Council Member Neu to approve Consent Item D. Motion carried with the following vote:

AYES: Council Members Biasi, Loren, Neu, and Mayor Cowan
NOES: None
ABSENT: Council Member Anderson
ABSTAIN: None

PRESENTATIONS: None

DISCUSSION ITEMS

1. Public Hearing to Receive Input from Specific Property Owners Regarding Implementation of Weed Abatement for 2017

City Manager Donlevy gave an overview. Mayor Cowan opened the public hearing at 6:46 p.m. and closed the public hearing at 6:46 with no comment.

2. Public Hearing to Receive Input Regarding Waste Management Proposed Rate Increase

Environmental Services Manager Carol Scianna gave an overview.

Mayor Cowan opened the public hearing at 6:48 p.m.

Carol read into record a letter submitted by Michael S. Ramsey, 314 Niemann Street, as a formal protest in opposition to the proposed rate increases on waste management in regards to containerizing of green waste and the undefined and poorly executed proposed exception of "leaf drop season" by Waste Management.

Jeff Tenpas, 24 Main St., implied the rate increase is partially based on a 15% franchise tax fee, or $140,000 per year, and will be divided based on the number of customers and be charged on top of the regular fees. City Manager Donlevy said there are numerous costs to the City, including dump fees, street repairs and maintenance, which are costs that are built into the fees. City Attorney Walsh said a franchise fee is common, allowing the City to charge Waste Management for the right to use the City's right of way and to provide this service to the City's residents. Cable TV providers charge the same type of fee. The franchise fee is paid to the City by Waste Management, it does go into the City's General Fund, and it has always been included in the Waste Management contract. City Manager Donlevy concluded by saying there are numerous cost factors built into the rates and that the franchise fee is not directly allocated to rate payers. Mayor Cowan closed the public hearing at 6:55 p.m.

Motion by Council Member Loren, second by Council Member Neu to adopt Resolution 2017-34 establishing the rates for Integrated Waste Management Services as set forth in the resolution. Motion carried with the following vote:

AYES:	Council Members Anderson, Biasi, Loren, Neu, and Mayor Cowan
NOES:	None
ABSENT:	None
ABSTAIN:	None

3. Planning Commission Appointments

City Clerk Nanci Mills said based on the Planning Commission terms, there are four terms ending and one term that had been vacated. Interviews were held by the Planning Commission Selection Committee, who have brought forth their

recommendation. Selection Committee Member Neu said this was a good group of applicants and that any of them could have served. Those not selected were asked to become active in City government. Selection Committee Member Biasi agreed with Council Member Neu and added that five vacancies was a lot to fill at one time and said the position does require a high level of involvement.

Motion by Council Member Neu, second by Council Member Biasi to approve the recommendation of the Planning Commission Selection Committee as follows: the reappointment of David Adams, Lisa Baker, and Paul Myer to new four-year terms, the new appointment of Daniel Schrupp to a four-year term, and the appointment of Ramon Altamirano to finish the term through July 1, 2019 due to Frank Neal's mid-term departure. Motion carried with the following vote:

AYES:	Council Members Anderson, Biasi, Loren, Neu, and Mayor Cowan
NOES:	None
ABSENT:	None
ABSTAIN:	None

4. Funding Authorization and Amendment to Consultant Agreement with Wood Rodgers for Flood Hazard Evaluation in Northeast Area of City's General Plan **(Moved from Consent Calendar, Item B)**

City Manager Donlevy gave an overview of the flood overlay in the northern area and provided copies of drainage reports, floodplain maps, and a Drainage Impact Fee Zones diagram. Since the City's Master Plans were written in 2005, the area has changed dramatically. Mayor Cowan asked if these maps were based on existing plans, not taking into account the agricultural activities that have happened in the last 3-5 years. City Manager Donlevy said the maps were based on existing plan and that the land has changed dramatically as follows: farming operations have gone into partnership with Yolo County Flood Control, Moody Slough has been improved, and the contouring of improved farm land includes retention areas. Moving forward, the City would execute an amendment to the agreement with Wood Rodgers for a new survey. Four main property owners have agreed to help pay for this study, with one owner owning most of the property up to the Chickahominy Slough. Facilities would have to be placed in such a way to be beneficial for all. The City paid for the first phase and for a plan to be developed. Now the property owners will pay an estimated $275,000 for Wood Rodgers to come in and complete an updated plan, which will be a good opportunity for the City to update their documents. Yolo County Flood Control will be a partner and the City is learning more about how to re-use water. All future plans will go through a public process and staff is recommending moving forward with an amendment to the Consultant Services Agreement with Wood Rodgers to complete an updated plan, an estimated 9-12 month process.

Council Member Neu said he has concerns about funding. Yes, the property owners are paying for a majority of the plan, but do we have litigation problems? City Manager Donlevy said there are no expectations that management will involve Wood Rodgers while going through with the scope of work. City Attorney Walsh confirmed that when the City enters into a process like this, the standard agreement requires the City to receive deposits to use for analysis and the consultants work directly for the City. There is no quid pro quo for payment. Every developer that comes through town, including PG&E, has to pay a deposit and there are no expectations. Council Member Loren asked staff when an outside agency has paid on an EIR. City Attorney Walsh said PG&E had, and City Manager Donlevy cited several others, including Greyhawk, Springfield Ranch, and Las Lomas who spent the money without the projects ever going forward. City Attorney Walsh said there are also entities that spend the money and whose projects may get denied. Impropriety can bring litigation, but it is at the City's discretion to approve any project and is under no obligation to do so.

Rebecca Fridae, 112 Liwai Village, said these types of payments make the City more beholden to developers and pressure exists. Rebecca then read aloud a letter submitted by Woody Fridae, where in it he said the flood master plan is not a good idea if it is to be funded by potential developers who are outside of the City. He requested slowing down the residential development process and to look for alternative ways of funding this study.

Sally Brown, 24 E. Main, said she is concerned about the City being approached by landowners regarding future development. It is implicit that we are encouraging development and taking money from developers to do this plan. Sally said she is completely against annexation in this area and requested that Council not pass this item.

Jeff Tenpas, 24 E. Main, said the property owner group agreed to pay the balance with an allocation based on acreage and asked how much of the fair share allocation is based on property outside of the City's boundary. City Manager Donlevy said although 200 acres will need to be annexed, 100% of the property remains within the City's general plan and is not outside of the City's sphere of influence.

Council Member Neu voiced his concern regarding credits given to developers. City Manager Donlevy said the City's fee program is based on the total cost of the project which represents the impact fees charged. If someone advances funds, the City would give them credit toward these impact fees. For example, Winters Ranch advanced funds toward Well #7 and received a credit of approximately $600,000 to be used toward impact fees. Council Member Neu asked who is paying for the new storm drain plan in the long run and asked whether we want to pay for it now. City Manager Donlevy said money will be paid by developers for development through the impact fee program, which is credit based on cost. Well #7 was a requirement in the Winters Ranch

Development Agreement and said development should pay its own way. There are no loans, and if the plan is adopted, the project will go forward and the developer will receive credit to go towards their impact fees.

Mayor Cowan said the City approved and paid to run water and sewer out to the freeway and PG&E paid impact fees to pay that money back. Council Member Anderson said a developer paid for the swimming pool but didn't get credit for it because the bottom fell out of the housing market and their project was not approved.

Council Member Loren asked what would happen if this wasn't addressed. City Manager Donlevy said in order to charge fees based on a fair basis, the master plan needs to be kept current. Council Member Neu asked if the property would be re-zoned before it's annexed. City Manager Donlevy said as per LAFCO, the City will need a plan process. A majority of the property (owned by Hostetler) is already inside City limits and will not require annexation. For any annexation proposals, LAFCO and Yolo County will require a master plan for that area. Yolo County will want to know what happens to this land and LAFCO will want to conduct a fiscal review to see what the value is. A master plan would have to happen, then LAFCO and the County would require an EIR. Mayor Cowan asked how long that would take to happen. City Attorney Walsh said it's hard to speculate when you don't know what they want. The landowners will have to initiate the process and there are many factors that will determine a time frame.

Council Member Biasi said it is important to update the flood study as there has been a lot of change to this area. There are things that can't be done based on environmental regulations. It is important to have an updated study done and we have the opportunity to do so. The landowners have a right to build on it tomorrow if they wanted to. The key goals are light industrial zones to be developed more to attract more job seekers. This study will help us to develop this light industrial plan. It needs to be updated so we know what we're looking at in the future. The City is not legally tied to anyone for any kind of payment, so it is a good opportunity to move forward. Council Member Loren said the tone she hears is that the City is beholden to the developer. Groundwater and storm water are upon us and to comply, we need data. We have the opportunity to get this information. Council Member Anderson asked if phasing had been discussed. City Manager Donlevy said we want them to put together a plan and project and there is no reason to phase the project and break it up. He added that nobody wants to see light industrial on the property. Council Member Neu said he is uncomfortable with this. He knows it needs to be done but he's not sure about the funding.

Motion by Council Member Biasi, second by Council Member Anderson to approve the funding authorization and amendment to the Consultant Agreement with Wood Rodgers for flood hazard evaluation in the northeast area of the City's General Plan. Motion carried with the following vote:

AYES: Council Members Anderson, Biasi, and Mayor Cowan
NOES: Council Members Loren and Neu
ABSENT: None
ABSTAIN: None

5. City Park Futsal Project/ Skate Park Project Update

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

Management Analyst Dago Fierros gave an overview of the futsal project (soccer on a hard surface), including dimensions and placement of the court, surface colors, fencing material and height, with the addition of two gates to gain entry on both sides of the court. In 2016, the City received funds from PG&E to build the futsal court, with the remaining funds to be used to install skate park amenities at Valley Oak Park. The project should be completed in 3-4 weeks by contractors, with the public works staff installing lights and fencing to save money.

Council Member Loren said the paint seems expensive and Public Works Superintendent Eric Lucero said this was the lowest of the three bids received. Council Member Anderson asked about the lights interfering with the Little League field. Eric said based on the positioning of the lights, they shouldn't have an impact on the Little League field or on nearby homes. Mayor Cowan said the futsal court was originally pulled from the park plans by the City Park Rehab Committee, thinking they were overdoing it at City Park and thought it was better suited at Blue Oak Park. This was a big point of contention and the committee was lost a few years ago based on the futsal court moving forward. It would cost the same wherever you put it, except for the lighting. Council Member Loren said she understands the loss of space at the park and not wanting to interfere with Little League, but the City needs more for teens to do. The futsal court will add to the community as City Park is the center of town, but will also promote diversity and let our youth know that "you're welcome here." She said the positives outweigh the inconvenience of lost space in the park. She also asked if the new playground footprint would be smaller, but Eric said it will basically be the same.

Motion by Council Member Loren, second by Council Member Neu to approve the design concept, location and budget, and authorize bids for construction of the futsal court. Council Member Anderson said he was worried about building a skate park due to the liability, but City Attorney Walsh said there is logic behind it as a skate park provides structure, which is actually found to be safer. Motion carried with the following vote:

AYES: Council Members Anderson, Loren, and Neu
NOES: Mayor Cowan
ABSENT: Council Member Biasi

ABSTAIN: None

Council Member Biasi returned to the dais at this time.

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

1. None

CITY MANAGER REPORT: There is no City Council meeting on July 4th due to the holiday, so the next City Council meeting will be held on July 18 and it will be a busy meeting. It will include the fee study and economic development sub-committee discussion regarding structure. It will also include succession planning, where staff will bring the Council the broad look at the City's organization to prepare the City for the transition. The fireworks display will be held on Monday, July 3rd on the WHS football field.

ADJOURNMENT: Mayor Cowan adjourned the meeting at 8:53 p.m.

Wade Cowan, MAYOR

ATTEST:

Nanci G. Mills, City Clerk

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CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: July 18, 2017

THROUGH: John Donlevy, City Manager

FROM: Alan Mitchell, City Engineer

SUBJECT: On-call Contracts with Blackburn Consulting and Geocon for Materials Sampling and Testing and Geotechnical Engineering Services associated with Private Development and Public Works Construction Projects

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RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute on-call contracts with Blackburn Consulting and Geocon, for materials sampling and testing, and geotechnical engineering services associated with private development and public works construction projects.

BACKGROUND: Materials sampling and testing services are typically required for construction of both private and public improvements. Services include, but are not limited to, field and lab testing of aggregate, asphalt and concrete materials, analysis of soil conditions, testing of trench and roadway compaction, and quality control of contractor operations. The city has maintained an on-call list of geotechnical consultants over the years, and the last set of agreements expired in 2016.

In May 2017, staff issued a request for qualifications for these services and received seven responses (Apex Testing Labs, Blackburn Consulting, Engeo Inc., Geocon, Holdrege & Kull, Pavement Engineering, and Terracon). The qualifications were reviewed and scored against the following criteria: understanding of the work to be done, pertinent experience, quality of staff, and demonstrated technical ability. Of the seven firms, Blackburn Consulting and Geocon ranked the highest based on their submittals. Both firms have worked in Yolo County and the City of Winters, and are familiar and experienced with local soil conditions.

Staff recommends the City execute on-call contracts with both Blackburn Consulting and Geocon, for a period of three years from execution. By having two firms available as a resource, staff will have the flexibility to work with the firm best qualified for a specific type of project and/or from whom the best price was obtained. Project-specific proposals will be requested from each firm, for each project, and Work Orders issues with specific scope and budget.

ALTERNATIVES: No alternatives recommended.

FISCAL IMPACT: The costs associated with the Contracts will be funded with project-specific funds. For private development, the developer's fees cover the cost of materials testing. For public works projects, local funds will cover the cost.

Attachments: RFQ
Contracts

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Public Notice

TO: Qualified Geotechnical Engineering Firms

DATE: May 1, 2017

SUBJECT: Request for Qualifications - On-Call Materials Sampling/Testing and Geotechnical Engineering Services

I. GENERAL INFORMATION

A. The City of Winters is soliciting Statements of Qualifications (SOQs) from qualified firms that may lead to the award of a contract for On-Call Materials Sampling/Testing and Geotechnical Engineering Services associated with City Capital Projects and Private Development Projects, at various locations within the City of Winters in Yolo County, CA. In submitting your Statement of Qualification (SOQ), you shall comply with the instructions found herein.

B. The Request for Qualification (RFQ) packet can be obtained at no cost on the City's website, at www.cityofwinters.org, under the "Public Works" section under "RFQs". It is the respondent's responsibility to print the documents.

C. Submit all questions concerning this RFQ in writing via email to Nellie Sperka by 5:00 p.m. May 10, 2017 (nellie.sperka@ponticelloinc.com). Answers to submitted questions will be posted on the City's website by 5:00 p.m. on May 12, 2017, under the "Public Works" section under "RFQs". Consultants contacting the City directly seeking information about this RFQ may jeopardize the integrity of the selection process and risk possible disqualification. Any oral communication between the City and Consultant submitting an SOQ is not binding and will not modify the RFQ in any way.

D. The estimated contract term is 3 years, beginning approximately July 18, 2017.

E. The estimated contract amount shall not exceed $50,000. State prevailing wage rates apply to portions of the work. This requirement will be included in the contract.

F. This RFQ is not an offer to contract, and does not commit City of Winters to pay any costs incurred in the preparation and presentation of submittals and interviews, or to select any interested firm, which responds. The City does not guarantee, either expressly or by implication that any work or services will be required under any contract issued as a result of this RFQ.

G. The City reserves the right to reject any and all submittals and to waive any informality, technical defect or clerical error. The SOQ will become part of the contract for furnishing the services. Proposers are bound by the responses contained in their SOQ. SOQs shall be submitted at each firm's own risk. If any errors exist in a submittal and the firm fails to notify the City prior to the

deadline for submission, the firm shall not be entitled to additional compensation as a result of any errors or later corrections.

II. SCHEDULE FOR CONSULTANT SELECTION

April 24, 2017	Issue Notice to list of Consultants
May 10, 2017	RFI deadline
May 19, 2017	SOQs due to City
May 31, 2017	Complete review of SOQs
June 1, 2017	Develop final ranking and notify Consultants
June 23, 2017	Deadline to negotiate contract
July 18, 2017	Council Contract award

III. SCOPE OF WORK/DELIVERABLES

The work to be performed for this RFQ is described in the Scope of Services incorporated as Attachment 1, although additional work may be requested.

IV. SUBMISSION OF STATEMENTS OF QUALIFICATIONS (SOQs)

A. SOQs must be prepared in accordance with Attachment 3 "SOQ CONTENT AND FORMAT."

B. SOQ package submittal instructions:

1. Four (4) copies of the SOQ containing all the indicated information plus one original copy of the fee schedule in a **separate sealed envelope** shall be submitted. Faxed or electronic copies will not be accepted. Submissions will be accepted until **3:00 p.m. on May 19, 2017** and must be directed to:

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

2. The SOQs must be submitted in a sealed package labeled as follows:
   - "SOQ for On-Call Materials Sampling/Testing and Geotechnical Engineering Services"
   - "Submittal deadline May 19, 2017"
   - "DO NOT OPEN"

3. SOQ submittals will be considered non-responsive if all copies are not received in the specified location by the date and time specified in this RFQ.

List of Attachments:

Attachment 1- Sample Scope of Services
Attachment 2- SOQ Content and Format
Attachment 3- Selection Criteria
Attachment 4- Sample Consultant Agreement (separate)
Attachment 5- Quality Assurance Plan (separate)

ATTACHMENT 1

SAMPLE SCOPE OF SERVICES

A. PURPOSE OF WORK

The City undertakes a limited number of private development and/or capital road improvement projects each year, using a variety of private, local, state and federal funding sources. Because the City does not have the in-house facilities or staff to complete the following services, the successful firm will have the capability to perform professional and technical services required to support the City in the development and construction of projects, on an "as-needed" basis.

The on-call quality assurance material testing work consists, in general, of performing Caltrans standard field and laboratory testing to evaluate the construction contractor's compliance with the project specifications.

The on-call road structure evaluation and design work consists, in general, of performing field and laboratory testing necessary to evaluate the remaining service life of an existing road's structural section. The results of this work may be used by City staff in pavement design work. If specialized geotechnical analysis is requested by the City, this work may also include the preparation of a design report by a licensed geotechnical or civil engineer, with recommendations for rehabilitation alternatives.

Other geotechnical, design, and construction assistance services related to the tasks described above may also be required, as agreed to in writing by the City Engineer.

B. LOCATION OF WORK

Field work will performed at various construction sites in the City, or material supply sites throughout the region. Laboratory testing will be performed at the consultant's facilities.

C. REQUIRED SERVICES

All work under this task shall be performed in accordance with the directives given by the City Contract Administrator, or designee.

For each project where services under this contract are required, the City will issue a Work Order (WO) and shall request that the consultant prepare a Proposal. The Contract Administrator shall confer with the consultant to identify and refine the scope of services required. The Proposal shall detail the tasks required for a particular project, the schedule, and projected costs. The costs will be based on the specified rates of compensation in the contract. The City Contract Administrator shall confer with the consultant to establish the maximum fee, including expenses, for the specific project, and to establish the completion date. Consultant will only perform work that is assigned in an authorized WO, and award of a contract does not guarantee that any WO will be issued. Work shall not begin until a WOF has been approved by the City Contract Administrator and/or City Engineer.

TASK 1 – ON-CALL QUALITY ASSURANCE TESTING SERVICES

a. Quality assurance materials sampling and testing work consists of performing Caltrans or ASTM test methods to evaluate a construction contractor's compliance with the project specifications.

b. The range of tests that may be required for City's projects, typically include one or more of the following:

Direct Shear Test (at Natural Moisture--One Point)

Direct Shear Test (Saturated and Consolidated--One Point)

Direct Shear Test (Remolded, Saturated and Consolidated--Three Points)

Consolidation Test (Without Rate Data)

Consolidation Test-Rate Data on Single Load Increment

Unconfined Compression Test (Tube Samples)

Unit Dry Weight-Moisture Content (Undisturbed Samples)

Moisture Content

Specific Gravity - Fine Grain (ASTM D854)

Specific Gravity - Bulk Soils (ASTM C97)

Maximum Dry Density-Optimum Moisture (AASHO T-99, ASTM D698)

Maximum Dry Density-Optimum Moisture (AASHO T-180, ASTM D1557)

Maximum Dry Density-Optimum Moisture (CTM 216)

Grain Size Analysis (ASTM C136)

Grain Size Analysis-Wet Sieve (Coarse or Fine Series - CTM 202)

Wash-Minus 200 Sieve (ASTM D1140)

Hydrometer Grain Size Analysis (ASTM D422)

Sand Equivalent (CTM 217)

Plasticity Index (Includes Liquid & Plastic Limits - ASTM D4318)
Shrinkage Limit

Expansion Test (Undisturbed Samples)

Expansion Index Test (Remolded - UBC 29-2)

Corrosivity Test (pH/Minimum Resistivity - CTM 643)

Corrosivity Test (CTM 532)

Resistance Value (CTM 301)

Los Angeles Abrasion Test

Durability Index (Coarse and Fine - CTM 229F)

Triaxial Compression (Unconsolidated, Undrained)

Triaxial Compression (Consolidated, Undrained)

Permeability (Fixed Wall)

Permeability (Flexible Wall)

Concrete Cylinder Compression (Break or Hold)

Compressive Strength, Cast Cylinders (C39)

Compressive Strength, Cores (C42)

Sodium/Magnesium Sulfate Soundness (ASTM D5240)

Stabilometer Value (CTM366)

Bitumen Content, Ignition Furnace (CTM310, CTM382)

Bitumen Content (ASTM D2172)

Unit Weight of Compacted Asphalt (ASTM D2726)

Marshall Compaction, set of 3 (ASTM D1559)

Marshall Flow and Stability, per point (ASTM D1559)

Maximum Theoretical Specific Gravity (ASTM D2041)

Moisture Content of Soil and Rock by Mass (ASTM D2216)

Percentage of Crushed Particles (CT 205)

L.A. Rattler (CT 211)

Bulk Specific Gravity and Density (CT 308)

Theoretical Maximum Specific Gravity and Density (CT 309)

Field Compaction Testing (CT 375)

Method of Tests for Mechanical and Welded Reinforcing Steel Splices (CT 670)

Full Depth Recycling Strength Testing

AWS Certified Welding Inspector (CWI)

Nondestructive Testing (NDT) Technician certified in conformance with the requirements of the American Society for Nondestructive Testing (ASNT) Recommended Practice No. SNT-TC-1A

Deliverables:

As agreed upon by City and consultant in a WO for each project.

Schedule:

As agreed upon by City and consultant in a WO for each project.

Method of Payment:

Since material sampling and testing is an item of work, which is similar, repetitious and measurable, the Consultant will be paid based on specific item of work performed (cost per unit of work) in accordance with the Rate Schedule in the Contract.

TASK 2 - OTHER ON-CALL GEOTECHNICAL SERVICES

Geotechnical engineering and technical services required to support the City in the development and construction of City projects, on an "as-needed" basis. A couple of examples are: 1) roadway structural analysis and design recommendations; and 2) peer review of city or developer roadway design; and 3) environmental site assessments (Ph I and II).

Deliverables:

As agreed upon by City and consultant in a WO for each project.

Schedule:

As agreed upon by City and consultant in a WO for each project.

Method of Payment:

The Consultant will be paid at an agreed not to exceed fee based on a breakdown by line-item tasks.

ATTACHMENT 2

SOQ CONTENT AND FORMAT

SOQs submitted for the requested services described in the RFQ must meet the following criteria to be considered for this project:

1. **Transmittal Letter:** The letter shall state the names of the Project Manager and subconsultants, if any, that will perform the work including responsibilities of each. The letter shall include a statement regarding any conflicts of interest, and shall be signed by a Principal of the firm.
2. **Approach to Work:** Using the Scope of Services as a guide, describe firm's experience with similar on-call work with a public agency, and the firm's typical managerial approach to this type of work. Describe the firm's operations in sufficient detail to present the proposed method of approach to meet the objectives of the work. Discuss any unique ideas/concerns relating to the services.
3. **Specialized Experience and Qualifications:** Indicate experience gained from recent work similar to the proposed on-call services. A list of current and past work on similar projects, staff who worked on these projects and corresponding client's names, titles, email addresses, and phone numbers are to be included. Describe the qualifications and availability of staff and other professional, technical, and administrative resources that will be used to perform the work. Provide a list of all laboratory and field testing and Caltrans certification, segregating tests to be performed by any subconsultant.
4. **Project Team:** List of personnel available to the City along with their roles and responsibilities for the on-call services. Resumes shall be limited to one page per person, and shall include dates of degrees, professional certifications, and laboratory certifications, dates, titles and location of relevant employment, and specific accomplishments relevant to the scope of work. Include an organizational chart of personnel. The City of Winters reserves the right to approve consultant's project manager and any requested personnel and subconsultant changes during the course of the project.
5. **References:** Provide at least three, but no more than five, references (public agencies preferred) who can comment on the past performance of the firm and key staff, on providing services comparable to the proposed work that was completed within the last five years.

The SOQ shall be no longer than the following page lengths:

- Letter of transmittal: 1 page
- Sections 2-6 Descriptions: 10 pages (double sided)
- Figures and illustrations: 2pages

ATTACHMENT 3

SELECTION CRITERIA

The selection committee shall review the SOQs and select the most qualified consultants for further evaluation. The selection of the most qualified consultants shall be based solely on the information provided in the SOQ.

Evaluation Criteria:

1. **Understanding of the work to be done** (25 pts)

The consultant's understanding of the work described in the RFQ and their role in construction quality assurance on agency projects.

2. **Experience with similar kinds of work** (20 pts)

The consultant's experience directly relating to the services described in the RFQ and evidence of ability to complete the work to a high standard, within schedule, and on budget.

3. **Quality of staff for work to be done** (15 pts)

The education, training, and commitment of personnel (Project Manager, Project Engineer(s), Lead Discipline Engineers, Field and lab testing staff, and sub-consultants) and their experience in the areas assigned.

4. **Demonstrated Technical Ability** (10pts)

The consultant's ability to utilize geotechnical principles to solve technical problems that arise on projects.

CITY OF WINTERS
california
Est. 1875

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and Blackburn Consulting, "(CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY with on-call Materials Sampling and Testing, and Geotechnical Support Services for various City projects. Exhibit "A" includes typical Tasks, which may be required. CONSULTANT shall provide said Services for a period of two-years from the date of execution of this Agreement, with an option to re-new the Agreement, upon mutual consent of both parties, for additional years up to a total of two years.

CONSULTANT shall provide a Scope of Work and Fee Proposal on a project-by-project basis, for review by the CITY. The negotiated Scope and Fee will be the basis for a Work Order for each specific project. CONSULTANT shall provide said services at the time, place, and in the manner specified by the City Engineer.

2. PAYMENT. The CONSULTANT shall be paid at the rates indicated in Exhibit "B" – Fee Schedule. The Fee Schedule will remain in affect for the two years Contract period. The CITY shall pay consultant for the actual time and materials expended, in accordance with the Fee Schedule and the negotiated Scope and Fee for each specific project. Services shall be rendered pursuant to the Agreement and the negotiated project-specific Work Order.

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

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

CONSULTANT

By: _____
Robert Lokteff, Principal in Charge

ATTEST: By: _____(Nanci G. Mills, CITY CLERK)

Exhibit "A"

TYPICAL TASKS

1. Earthwork Testing and Observation
2. Bulk Sampling and Coring of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
3. Field Density Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
4. Laboratory Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
5. Reporting of materials sampling and testing
6. Field Quality Assurance (QA) Testing
7. Geotechnical Engineering Consultation

Exhibit "B"

FEE SCHEDULE (Provided by Consultant)

Auburn Main Office:
11521 Blocker Drive, Suite 110
Auburn, CA 95603
(530) 887-1494 Fax (530) 887-1495

West Sacramento Office:
2491 Boatman Avenue
West Sacramento, CA 95691
(916) 375-8706 Fax (916) 375-8709

blackburn consulting

www.blackburnconsulting.com

Fresno Office:
4186 W. Swift Ave, Suite 107
Fresno, CA 93722
(559) 438-8411

2017 SCHEDULE OF FEES & SERVICES

Geotechnical ▪ Geo-Environmental ▪ Construction Services ▪ Forensics

PROFESSIONAL HOURLY RATES:

Project Engineer/Geologist I	$136	CAD/GIS	$128
Project Engineer/Geologist II	$146	Lab Aide	$79
Senior Engineer/Geologist	$163	Lab Manager	$136
Project Manager	$183	Technician Manager	$136
Senior Project Manager	$206	Clerical	$75
Principal	$233	Project Assistant	$99
Senior Principal	$260	Senior Administrative	$136
Expert Testimony & Deposition	$430		

SPECIAL INSPECTION PERSONNEL HOURLY RATES:

	Non-Prevailing Wage	Prevailing Wage
Group 1	$133	$162
ASNT Level II-III, DSA Shotcrete, Lead Inspector, NICET Level IV		
Group 2	$133	$156
AWS-CWI, ICC Certified Structural Inspector, NICET Level III, Shear Wall/Floor System Inspector, Building/Construction Inspector		
Group 3	$111	$134
Soils/Asphalt, Earthwork Grading, Excavation and Backfill, NICET Level II		
Group 4	$111	$134
ACI, ICC Fireproofing, NICET Level I, Proofload Testing, Torque Testing		

MINIMUM BASIC CHARGES:

Outside Equipment & Services	Cost plus 20%
Vehicle Charge	$8.00 per hour or $0.85 per mile
Per Diem	Location specific, minimum $125 per night
Technician Services	Charge includes time from office and return to office, minimum charge - 2 hours
Overtime	Over 8 hours: 1.5 x Hourly Rate Before 7:00am or after 4:00pm: 1.5 x Hourly Rate Rush Charge (less than 24 hours notice): 1.5 x Hourly Rate Saturday: 1.5 x Hourly Rate (minimum: 4 hr. increments) Sunday & Holiday: 2.0 x Hourly Rate (minimum: 4 hr increments)
Report Copies	4 Report copies provided
Additional Report Copies	$100 for binding up to 50 pages, plus postage

EQUIPMENT: *(personnel not included)*

Hand Sampling Equipment	$244 / Day	Double Ring Infiltrometer Equipment	$286 / Day
Nuclear Moisture/Density Testing	$15 / Test	Liquid Level Equipment	$239 / Day
6" Sand Cone Testing	$37 / Test	Pachometer	$122 / Day
12" Sand Cone Testing	$185 / Test	Rock Point Load Test Equipment	$122 / Day
Coring Bit Charge	$37 / Core	Roto Hammer	$116 / Day
Coring Machine	$234 / Day	Schmidt Hammer	$96 / Day
Dynamic Cone Penetrometer	$266 / Day	Torque Wrench	$59 / Day
Electrical Resistivity Equipment	$234 / Day	Seismic Refraction:12 Channel	$456 / Day
Generator	$59 / Day	Traffic Control/Safety	$286 / Day
Groundwater Level Indicator	$59 / Day	Concrete Vapor Emission Test Kit	$25 / Ea
Inclinometer Survey Equipment	$584 / Day	pH Test Strip Package	$47 / Ea

Revised 10-28-16

Auburn Main Office:
11521 Blocker Drive, Suite 110
Auburn, CA 95603
(530) 887-1494 Fax (530) 887-1495

West Sacramento Office:
2491 Boatman Avenue
West Sacramento, CA 95691
(916) 375-8706 Fax (916) 375-8709

Fresno Office:
360 W. Bedford Avenue, Suite 101
Fresno, CA 93711
(559) 438-8411

www.blackburnconsulting.com

2017 LABORATORY FEE SCHEDULE

Geotechnical ▪ Geo-Environmental ▪ Construction Services ▪ Forensics

SOIL CLASSIFICATION		
#200 Sieve Wash	ASTM D1140	$116
Sieve Analysis to #200	ASTM D6913, CAL 202	$180
Standard Hydrometer with Sieve Analysis	ASTM D422	$355
Plasticity Index	ASTM D4318	$260
Specific Gravity - Soils	AASHTO T100	$111
MOISTURE / DENSITY		
Moisture Content	ASTM D2216, CAL 226	$42
Moisture/Density		$79
SOIL COMPACTION		
Standard Proctor (*4" or 6" mold*)	ASTM D698	$323
Modified Proctor (*4" or 6" mold*)	ASTM D1557	$323
California Impact	CAL 216	$323
Check Point (*Standard or Modified*)		$148
VOLUME CHANGE		
One-Dimensional Consolidation *(6 load increments, includes 2 time rate curves and 2 rebound decrements)*	ASTM D2435	$509
Additional Load or Rebound Decrement		$34/ea
Additional Time Rate Curves		$111/ea
Expansion Index	ASTM D4829	$260
Settlement Swell	ASTM D4546	$160
STRENGTH		
Unconfined Compression	ASTM D2166	$148
Compression, Rock *Prep & Photos included*	ASTM D7012	$281
Rock Point Load (up to six points)	ASTM D5731	$69
Compression Test of Cored Concrete Spec.		$79
California Bearing Ratio (CBR), with curve	ASTM D1883	$806
California Bearing Ratio (CBR), without curve	ASTM D1883	$483
Resistance Value	CAL 301, ASTM D2844	$350
Direct Shear: *(per point)*		
Undisturbed	ASTM D3080	$202
Remolded	ASTM D3080	$260
Triaxial Compression: *(per point) Photos of failure upon request*		
Undrained, Unconsolidated w/out Pore Pressure	ASTM D2850	$180
Consolidated, Undrained w/ Pore Pressure Measurements	ASTM D4767	$530
Consolidated, Drained		$764
Consolidated, Undrained, no Pore Pressure Measurements		$297
Specimen Remolding		$116

CORROSIVITY ANALYSIS		
Corrosion Analysis Package	CAL 643, 417, 422	$329
Includes Soil Resistivity, Soil pH, Sulfates / Chlorides. Minimum size is 1,000 grams		
pH	CTM643	$42
Resistivity	CTM643	$138
PERMEABILITY		
Flex-wall Permeability	ASTM D5084	
Either Constant head or Falling Head / rising Tail Water. Method depends on soil type		$467
Each Additional Effective Stress		$116
Specimen Remodeling		$116
TREATED SOIL TESTS		
% Lime for Stabilization - per point (%)	ASTM D6276	$128
pH of Soil	CTM643	$42
Modified Proctor	ASTM D1557	$387
Unconfined Compression Test	ASTM D5102	$217
One Dimensional Swell	ASTM D4546	$217
AGGREGATES		
Bulk Specific Gravity - Course & Fine Aggregate	ASTM C127 & 128, CAL 206, 207	$111
Coarse Durability	CAL 229	$191
Fine Durability	CAL 229	$191
Sand Equivalent	CAL 217, ASTM D2419	$133
Cleanness Value	CAL 227	$180
Moisture Content	CAL 226/370	$101
Percent of Crushed Particles (per size fraction)	CAL 205	$170
Fine Aggregate Angularity	AASHTO T304, Method A	$170
Flat and Elongated Particles (per size)	AASHTO D 4791	$170
Combined Grading 1" through no. 200	CAL 201/202	$180
Bin Grading (First 2 Bins)	CAL 201/202	$180
Each Bin Thereafter		$69
LP-9 (RAP) Burn	LP-9, CT382	$111
ASPHALT		
Bulk Specific Gravity - Compacted Hot Mix Asphalt	CAL 308	$54
Theoretical Max Specific Gravity (Rice)	CAL 309	$197
LTMD (Set of 5)	CAL 375	$392
Binder Content		
Ignition Oven Correction Factor	CAL 382	$334
Ignition Oven	CAL 382	$197
Solvent	AASHTO T164	$249
Stability (Set of 3)	CAL 366	$350
Void Content		
With Stability and Rice	CAL 367	$37
CONCRETE & MASONRY		
Concrete Compression Test 6" x 12" or 4" x 8"	ASTM C39	$37
Masonry or Grout Compression		$54

Other Tests Quoted Upon Request

CITY OF WINTERS california Est. 1875

EXHIBIT "C"

GENERAL PROVISIONS

(1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of the CITY. The CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, the CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC.. CONSULTANT represents and warrants to the CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to the CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

(4) INSURANCE.

(a) WORKER'S COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation.

(b) GENERAL LIABILITY AND AUTOMOBILE INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement broad form property damage, personal injury, automobile, employer, and comprehensive form liability insurance in the amount of $2,000,000 per occurrence; provided (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured under the policy; and (2) that the policy shall stipulate that this insurance will operate as primary insurance; and that (3) no other insurance effected by the CITY or other names insured will be called upon to cover a loss covered there under; and (4) insurance shall be provided by an, at least, A-7 rated company. The form of said endorsements(s) shall be supplied by the CITY.

(c) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, CONSULTANT shall maintain an Errors and Omissions Insurance policy in the amount of not less than $1,000,000.

(d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with the City Clerk

upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the City Clerk prior to the effective date of such cancellation, or change in coverage.

CONSULTANT shall file with the City Clerk concurrent with the execution of this Agreement, the City's standard endorsement form (attached hereto) providing for each of the above requirements.

(5) CONSULTANT NOT AGENT. Except as the CITY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of the CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement, to bind the CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

(7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that the CITY, at its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from the CITY of the desire of the CITY for the removal of such person or persons.

(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. CONSULTANT pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. The CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of the CITY.

(10) PRODUCTS OF CONSULTING. All products of the CONSULTANT resulting from this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, hold harmless the CITY, its officers, agents and employees from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property to the extent caused by the negligent acts, errors or omissions, or negligent defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents or employees.

With regard to any claim alleging CONSULTANT'S negligent performance of professional services, CONSULTANT'S obligations regarding CITY'S defense under this paragraph include only the reimbursement of CITY'S reasonable defense costs incurred to the extent of CONSULTANT'S actual indemnity obligations hereunder.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

(13) LOCAL EMPLOYMENT POLICY. The City of Winters desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Yolo County.

The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require subcontractors, contractors, consultants, and developers, the CITY will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

CITY OF WINTERS
california
Est. 1875

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and Geocon, "(CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY with on-call Materials Sampling and Testing, and Geotechnical Support Services for various City projects. Exhibit "A" includes typical Tasks, which may be required. CONSULTANT shall provide said Services for a period of two-years from the date of execution of this Agreement, with an option to re-new the Agreement, upon mutual consent of both parties, for additional years up to a total of two years.

CONSULTANT shall provide a Scope of Work and Fee Proposal on a project-by-project basis, for review by the CITY. The negotiated Scope and Fee will be the basis for a Work Order for each specific project. CONSULTANT shall provide said services at the time, place, and in the manner specified by the City Engineer.

2. PAYMENT. The CONSULTANT shall be paid at the rates indicated in Exhibit "B" – Fee Schedule. The Fee Schedule will remain in affect for the two years Contract period. The CITY shall pay consultant for the actual time and materials expended, in accordance with the Fee Schedule and the negotiated Scope and Fee for each specific project. Services shall be rendered pursuant to the Agreement and the negotiated project-specific Work Order.

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

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

CONSULTANT

Digitally signed by Jeremy Zorne
DN: cn=Jeremy Zorne, o=Geocon Consultants, Inc., ou, email=zorne@geoconinc.com, c=US
Date: 2017.07.10 12:07:38 -07'00'

By: _____
Jeremy Zorne, Vice President/Senior Engineer

ATTEST: By: _____(Nanci G. Mills, CITY CLERK)

Exhibit "A"

TYPICAL TASKS

1. Earthwork Testing and Observation
2. Bulk Sampling and Coring of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
3. Field Density Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
4. Laboratory Testing of materials, such as Native Soil, Aggregate Base Rock, Concrete, and Asphalt
5. Reporting of materials sampling and testing
6. Field Quality Assurance (QA) Testing
7. Geotechnical Engineering Consultation

Exhibit "B"

FEE SCHEDULE (Provided by Consultant)

GEOCON
CONSULTANTS, INC.
GEOTECHNICAL ■ ENVIRONMENTAL ■ MATERIALS

2017 SCHEDULE OF FEES

PROFESSIONAL SERVICES

Engineering Assistant/Laboratory Technician	$80//hr.
Engineering Field Technician/Special Inspector I	75/$100(PW)*/hr.
Engineering Field Technician/Special Inspector II	85/110(PW)*/hr.
Engineering Field Technician/Special Inspector III	95/120 (PW)*/hr.
Word Processor/Technical Editor	75/hr.
Engineering/Research Assistant/Technical Illustrator.	90/hr.
Project Coordinator/GIS Specialist	95/hr.
Staff Engineer/Geologist	110/hr.
Senior Staff Engineer/Geologist	120/hr.
Project Engineer/Geologist	130/hr.
Senior Project Engineer/Geologist	140/hr.
Senior Engineer/Geologist/Geophysicist	160/hr.
Associate Engineer/Geologist	185/hr.
Principal Engineer/Geologist/Litigation Support	225/hr.
Deposition or Court Appearance	400/hr.
Overtime and Saturday Rate	1.5 X Regular Hourly Rate
Sunday and Holiday Rate	2 X Regular Hourly Rate
Minimum Professional Fee	$500/Project
Minimum Field Services Fee (per day or call-out)	2 Hours

*Prevailing Wage (PW) per requirements of California Labor Code §720, et. Seq.

TRAVEL

Personnel	Regular Hourly Rate
Subsistence (Per Diem)	$150/day
Vehicle Mileage	0.75/mile

EQUIPMENT & ANALYTICAL TESTS

Nuclear Gauge	Included in Technician hourly Rate	Level D PPE/Decon Rinse Equipment	$50/day
Pick-up Truck	$125/day	pH/Conductivity/Temperature Meter	50/day
Equipment Truck	200/day	55-gallon drum	55/ea.
Direct-Push Rig/Operator	165/190(PW)*/hr	TPHg/BTEX (EPA 8015M/8021B)	70/ea.
Direct-Push Sample Liner	10/ea.	TPHg/BTEX/MTBE (EPA 8015M/8260B)	100/ea.
Equipment Trailer	100/day	TPHd/TPHmo (EPA 8015M)	75/ea.
Wenner 4-Pin Earth Resistivity Meter	150/day	Fuel Oxygenate Compounds (EPA 8260B)	110/ea.
Coring Machine (concrete, asphalt, masonry)	175/day	Volatile Organic Compounds (EPA 8260B)	150/ea.
Dynamic Cone Penetrometer	200/day	Semi-Volatile Organic Compounds (EPA 8270)	300/ea.
Dilatometer (DMT) Test Equipment	800/day	CAM 17 Metals (EPA 6010B)	170/ea.
Generator or Air Compressor	100/day	Single Metal (EPA 6010B)	20/ea.
GPS Unit	160/day	Pesticides (EPA 8081)	125/ea.
Drive-Tube Sampler or Hand-Auger	40/day	Soil pH (EPA 9045C)	20/ea.
Soil Sample Tube (Brass or Stainless)	10/ea.	WET or TCLP Extraction	75/ea.
Water Level Indicator	40/day	Sample Compositing	20/composite.
Battery-Powered Pump	75/day	48-hour Turnaround Time	60% surcharge
Photo-Ionization Meter	125/day	24-hour Turnaround Time	100% surcharge

LABORATORY TESTS

COMPACTION CURVES		SOIL AND AGGREGATE STABILITY	
4-inch mold (D1557/D698)	$175/ea.	Resistance Value, R-Value (D2844/CAL301)	$275/ea.
6-inch mold (D1557/D698)	190/ea.	R-Value, Treated (CAL301)	300/ea.
California Impact (CAL216)	200/ea.	California Bearing Ratio (D1883)	175/pt.
Check Point	85/ea.	Stabilization Ability of Lime (C977)	180/ea.

3160 Gold Valley Drive, Suite 800 ■ Rancho Cordova, CA 95742-7515 ■ Telephone 916.852.9118 ■ Fax 916.852.9132

SOIL AND AGGREGATE PROPERTIES

#200 Wash (D1140/C117)	$60/ea.
Wet Sieve Analysis to #200 (D422/CAL202)	100/ea.
Hydrometer Analysis (D422)	150/ea.
Sieve Analysis with Hydrometer (D422)	180/ea.
Specific Gravity, Soil (D854)	70/ea.
Specific Gravity Coarse Aggregate (C127)	50/ea.
Specific Gravity Fine Aggregate (C128)	68/ea.
Cut/Extract Shelby Tube	50/ea.
Moisture Determination, tube sample (D2216)	$20/ea.
Moisture Determination and Unit Weight (D2937)	40/ea.
Atterberg Limits: Plasticity Index (D4318)	175/ea.
Sand Equivalent (D2419/CAL217)	90/ea.
pH and Resistivity (CAL643)	120/ea.
Sulfate Content (CAL417)	90/ea.
Chloride Content (CAL422)	50/ea.
Organic Content (D2974)	50/ea.

SHEAR STRENGTH

Unconfined Compression (D2166)	$100/ea.
Direct Shear (D3080) (3pt)	300/ea.
Unconsolidated-Undrained Triaxial Shear (D2850)	125/pt.
Unconsolidated-Undrained Triaxial Staged (D2850)	175/ea.
Consolidated-Undrained Triaxial Shear (D4767)	300/pt.
Consolidated-Undrained Triaxial Staged (D4767)	375/ea.
Consolidated-Drained Triaxial Shear (EM1110)	400/pt.
Consolidated-Drained Triaxial Staged (EM1110)	500/ea.

PERMEABILITY, CONSOLIDATION AND EXPANSION

Permeability, Flexible Wall (D5084)	$265/ea.
Permeability, Rigid Wall (D5856)	255/ea.
Consolidation (D2435)	50/pt.
Expansion Index (D4829/UBC 29-2)	175/ea.

AGGREGATE QUALITY

Sieve Analysis to #200 (C136)	$100/ea.
L.A. Rattler Test (500 rev.) (C131)	185/ea.
Durability Index (D3744/CAL229)	165/ea.
Fine Aggregate Angularity (CAL 234)	125/ea.
Flat and Elongated Particles (D4791/CAL 235)	150/ea.
Percent Crushed Particles (CAL205)	150/ea.

CONCRETE / MASONRY / REINFORCING STEEL

Compressive Strength, Cast Cylinders (C39)	$25/ea.
Compressive Strength, Cores (C42)	40/ea.
Flexural Strength Beam (C78/C293)	80/ea.
Splitting Tensile Test (C496)	69/ea.
Mix Design Review	200/ea.
Trial Batch	475/ea.
Rebar Tensile / Bend (up to #11/#11 and Larger)	175/200/ea.
CMU Compressive Strength (C140)	$60/ea.
Compressive Strength, Grout (C1019/UBC 21-19)	25/ea.
Compressive Strength, Mortar (C109/UBC 21-15,16)	25/ea.
CMU Unit Wt., Dimen., Absorption (C140)	60/ea.
Compressive Strength, Masonry Prism (C1314)	115/ea.

HOT MIX ASPHALT

Density, Hveem (D2726/CAL308)	$100/pt.
Stabilometer Value (D1560/CAL366)	175/ea.
Theoretical Max. Specific Gravity (D2041/CAL309)	175/ea.
Extraction/Sieve Analysis (C136/CAL202)	150/ea.
HMA Core Unit Weight (D1188/CAL308)	60/ea.
% Asphalt, Ignition Method (D6307/CAL382)	100/ea.
% Asphalt, Ignition Calibration (D6307/CAL382)	200/ea.
% Voids (CAL 367)	275/ea.

***2X surcharge on rush turnaround for laboratory testing**

TERMS AND CONDITIONS

1. Listed are typical charges for the services most frequently performed by Geocon. Prices for unlisted services as well as special quotations for programs involving volume work will be provided upon request. Laboratory test prices shown are for laboratory work only, and include reporting of routine results not calling for comments, recommendations or conclusions.
2. Sampling and testing is conducted in substantial conformance with the latest applicable or designated specifications of the American Society for Testing and Materials, Caltrans, American Association of State Highway and Transportation Officials, or other pertinent agencies.
3. Saturday, night work, and overtime hours are charged at time and one-half; Sundays and holidays at double time. Per diem may apply when location of work dictates.
4. Equipment and materials will be billed at cost plus 15%. Outside services including subcontractors and rental of special equipment are billed at cost plus 15%. Hourly services are billed portal to portal from closest office in accordance with the stated hourly rates herein, with a minimum two-hour charge.
5. Invoices will be submitted at four-week intervals. Terms of payment are met upon presentation of invoice. Invoices become delinquent thirty (30) days from invoice date and subject to one and one-half percent (1-1/2%) service charge per month, or the maximum rate allowed by law, whichever is lower. If Client objects to all or any portion of any invoice, Client will so notify Geocon in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. Payment on delinquent invoices will first be applied to accrued interest and then to the principal amount. All time spent and expenses incurred (including any attorney's fees and costs) in connection with collection of any delinquent amount will be paid by Client to Geocon per Geocon's current fee schedule.
6. Client and Geocon shall allocate certain of the risks so that, to the fullest extent permitted by law, Geocon's (the term "Geocon" includes Geocon's partners, officers, directors, employees, agents, affiliates, subcontractors and subconsultants) total aggregate liability to Client *is limited to the greater of **$25,000** or the total compensation received from Client by Geocon for services rendered on this project, for any and all of Client's injuries, damages, claims, losses, expenses, or claim expenses arising out of this Agreement from any cause or causes, including attorneys' fees and costs which may be awarded to the prevailing party, and Client agrees to indemnify and hold harmless Geocon from and against all liabilities in excess of the monetary limit established above.*

   Client and Geocon shall allocate certain of the other risks so that, to the fullest extent permitted by law, Client shall limit Geocon's total aggregate liability to all third parties, including contractors, subcontractors of all tiers, materialmen, and others involved in Client's project, as well as persons and other entities not involved in the project, to *the greater of **$50,000** or the total compensation received from Client by Geocon for services rendered on this project, for any and all injuries, damages, cause or causes, including attorneys' fees and costs which may be awarded to the prevailing party, and Client agrees to indemnify and hold harmless Geocon from and against all liabilities in excess of the monetary limit established above, including all liability incurred by Geocon for acts, errors, or omissions, pursuant to entering into agreements with third parties on behalf of Client in order to obtain access or entry onto property not owned by Client. Client agrees to notify all contractors and subcontractors of any limitation of Geocon's liability to them, and require them to abide by such limitation for damages suffered by any contractor or subcontractor arising from Geocon's actions or inactions. Neither the contractor nor any subcontractor assumes any liability for damages to others which may arise on account of Geocon's actions or inactions.*

EXHIBIT "C"

GENERAL PROVISIONS

(1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of the CITY. The CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, the CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC.. CONSULTANT represents and warrants to the CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to the CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

(4) INSURANCE.

(a) WORKER'S COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation.

(b) GENERAL LIABILITY AND AUTOMOBILE INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement broad form property damage, personal injury, automobile, employer, and comprehensive form liability insurance in the amount of $2,000,000 per occurrence; provided (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured under the policy; and (2) that the policy shall stipulate that this insurance will operate as primary insurance; and that (3) no other insurance effected by the CITY or other names insured will be called upon to cover a loss covered there under; and (4) insurance shall be provided by an, at least, A-7 rated company. The form of said endorsements(s) shall be supplied by the CITY.

(c) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, CONSULTANT shall maintain an Errors and Omissions Insurance policy in the amount of not less than $1,000,000.

(d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with the City Clerk upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the City Clerk prior to the effective date of such cancellation, or change in coverage.

CONSULTANT shall file with the City Clerk concurrent with the execution of this Agreement, the City's standard endorsement form (attached hereto) providing for each of the above requirements.

(5) CONSULTANT NOT AGENT. Except as the CITY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of the CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement, to bind the CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

(7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that the CITY, at its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from the CITY of the desire of the CITY for the removal of such person or persons.

(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. CONSULTANT pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. The CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of the CITY.

(10) PRODUCTS OF CONSULTING. All products of the CONSULTANT resulting from this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, hold harmless the CITY, its officers, and employees from claims, suits, or actions brought forth on account of injuries to or death of any person or damage to property to the extent cause by or resulting from the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by CONSULTANT in the performance of this Agreement, except to the extent cause by the negligence of the City, its officers, agents or employees.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been

determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

(13) LOCAL EMPLOYMENT POLICY. The City of Winters desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Yolo County.

The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require subcontractors, contractors, consultants, and developers, the CITY will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advise, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

CITY OF WINTERS
california
Est. 1875

STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: July 18, 2017

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

FROM: Carol Scianna, Environmental Services Manager CS

SUBJECT: Wastewater Treatment Facility Bar Screen Design Project

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RECOMMENDATION: Staff recommends that City Council authorize City Manager to execute consultant services agreement with West Yost Associates to design a new headworks screening system at the Wastewater Treatment Facility(WWTF) in the amount not to exceed $80,640, as per proposal dated June 6, 2017. Services to include design services during construction.

BACKGROUND: The West Main sewer pump station is required as part of the Highlands Development (aka Stones Throw). A contractor has been selected by the developer for this project, construction is expected to begin August 2017 and completion of pump station April 2018. This new pump station will be directing influent directly to the WWTF rather than the East Street Pump Station (ESPS), which is how all wastewater is currently processed. This redirection will significantly increase capacity at ESPS. With effluent sent directly to the WWTF the influent screening that currently takes place at ESPS will also be bypassed. In order to continue the removal of rags and other debris from the ponds staff is recommending the installation of an influent screening system. These additions will help staff maintain an efficient and reliable WWTF system.

Council previously authorized preliminary design for the screen system and the staff is ready for the next step of completing the design process.
Staff received two proposal for the influent design work and is recommending West Yost Associates to complete the design, the quote was $35,000 less than the alternate proposal. Initial estimates for the construction of the influent screen are $455,000, funds have been set aside from Sewer capital projects and impact fees will be available to pay for remaining expenses.

FISCAL IMPACT: NOT TO EXCEED $80,640

Attachments:

West Yost Proposal

Project Budget Sheet

CITY OF WINTERS
california
Est. 1875

CONSULTANT SERVICES AGREEMENT
AGREEMENT No. _____

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and West Yost Associates (CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANTS shall provide to the City the Services described in Exhibit "A", which is the CONSULTANT'S Proposal dated June 6, 2017. Consultant shall provide said services at the time, place, and in the manner specified by the City of Winters and Exhibit "A".

2. PAYMENT. The Consultant shall be paid for the actual costs, for all time and materials expended, in accordance with the Schedule of Fees included in Exhibit "B", but in no event shall total compensation exceed Eighty Thousand, Six Hundred and Forty Dollars ($80,640) without the City's prior written approval. City shall pay consultant for services rendered pursuant to the Agreement and described in Exhibit "A".

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

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

CONSULTANT

By: _____

ATTEST:

By: _____
Nanci G. Mills, CITY CLERK

EXHIBIT A

WEST YOST ASSOCIATES
Consulting Engineers

June 6, 2017

SENT VIA: EMAIL

Mr. Alan Mitchell
Ponticello Enterprises
1216 Fortna Avenue
Woodland CA 95776

SUBJECT: Proposal to Design Headworks Screening System at the City of Winters Wastewater Treatment Facility

Dear Alan:

West Yost Associates (West Yost) is pleased provide this proposal to perform design and design services during construction services associated with a new headworks screening system at the City of Winters Wastewater Treatment Facility (WWTF). Our project understanding and proposed work scope, budget, and schedule are described below.

PROJECT UNDERSTANDING

Wastewater from homes and businesses in the City of Winters is conveyed by gravity to the East Street pumping station from which it is pumped through a 14-inch diameter force main to the WWTF. In the future wastewater from the Winter's Highlands 1 development will be pumped through a new 12-inch diameter force to the WWTF. The new headworks screening system will screen wastewater from both force mains.

Larry Walker and Associates (LWA) prepared a Technical Memorandum (TM) (dated August 12, 2016) that presented recommendations for the preliminary design of a new influent channel and screening facility. Recommendations included:

- The new headworks screening system should include a 6 million gallon per day (mgd) capacity grinder and spiral-lift screen manufactured by Franklin Miller, Inc.
- The new concrete headworks structure should be designed to accommodate a future screening system capable of treating a maximum flow of 9.7 mgd, and both the structure and associated piping should have a hydraulic capacity of 9.7 mgd.
- In addition to the 14-inch and 12-inch force mains described above, the new screening system should include a connection for a future 18-inch diameter force main.
- To accommodate the near-term expansion design flow of 4.3 mgd, new 24-inch diameter transfer pipes should be installed between aeration basins 1A and 2A and between aeration basins 1B and 2B.

In addition to the improvements described in LWA's TM, road improvements will be required to access the screenings dumpster and provide an adequate road surface.

SCOPE OF WORK

Assumptions

This Scope of Work is based on the following assumptions:

- Improvements to be designed are generally described in LWA's TM, with the addition of road improvements required to access the screenings dumpster and provide an adequate road surface from Road 32A to the screenings facility.
- West Yost will prepare Construction Drawings, Technical Specification Divisions 1 through 16, and a Bid Schedule for inclusion in Division 0 of the Specifications. Division 0 "Front-End" specification will be prepared by others.
- West Yost will provide design engineering services during construction. Construction management/inspection services will be provided by others.
- A geotechnical engineering consultant retained by the City will provide the following information to West Yost:
  - The log of a boring at the site of the new headworks screening system. The boring should be to a depth of at least 20 feet below existing ground surface;
  - Recommendations from the geotechnical engineering consultant regarding:
    - Depth of over-excavation in areas where fill will be placed
    - Gradation and plasticity requirements for fill materials
    - The suitability of onsite soils for us as fill material
    - Placement and compaction of fill material
    - Allowable soil bearing pressure for use in the design of the headworks screening system foundation
    - Recommended gravel access road surfaces based on a Traffic Indexes of 4, 4.5 and 5.
- Documents will be distributed to prospective bidders by others.

Task 1. Topographic Survey and Mapping

The topographic survey and mapping will be based on horizontal and vertical control data used for West Main Street Sewer Force Main Project, prepared by Laugenour and Meikle. This work will involve:

- Topographic survey of the new headworks area, including setting project control and benchmarks;
- Determine additional utility inverts for design (based on being able to physically determine inverts without potholing) for utilities not already located for previous work by Laugenour and Meikle;
- Create a topographic base map showing property lines and easements created from the record data and the topographic survey.

This topographic survey and mapping information will be the basis for site, grading and yard piping design drawings, with the following exceptions. Existing aerial photography will be the basis for access road and general electrical site plan design drawings.

Task 2. Prepare Design Drawings

The design team will prepare design drawings for review at the 50% and 90% stages of completion. We anticipate that the following design drawings will be required.

DWG NO.	SHEET NAME
G001	TITLE SHEET, LOCATION MAP AND VICINITY MAP
G002	INDEX OF DRAWINGS, GENERAL LEGEND, NOTES & ABBREVIATIONS
C001	SITE PLAN, CONTROL POINTS, STAGING AREA
C002	GRADING AND DRAINAGE PLAN
C003	YARD PIPING PLAN
C005	CIVIL DETAILS 1
C006	CIVIL DETAILS 2
S001	HEADWORKS STRUCTURAL PLAN AND SECTIONS
S002	HEADWORKS STRUCTURAL DETAILS 1
S003	HEADWORKS STRUCTURAL DETAILS 2
M001	HEADWORKS MECHANICAL PLAN. SECTIONS AND DETAILS
M002	HEADWORKS MECHANICAL DETAILS 1
M003	HEADWORKS MECHANICAL DETAILS 2
E001	ELECTRICAL SYMBOLS AND ABBREVIATIONS
E002	REVISED MCC ONE LINE DIAGRAM
E003	REVISED MCC ELEVATION
E004	TYPICAL ELECTRICAL DETAILS
E005	GENERAL ELECTRICAL SITE PLAN
E006	HEADWORKS ELECTRICAL SITE PLAN

Task 2 Deliverables: Four ½-size hard copies of the 50% and 90% Complete Design Drawings, and an electronic (PDF) copy of the final drawings.

Task 3. Prepare Technical Specifications

The design team will prepare technical specifications for this project. An outline of the technical specifications will be submitted to the City for review at the 50% stage of completion, and complete technical specifications will be submitted at the 90% stage of completion.

Task 3 Deliverables: Four hard copies of an outline of the technical specification at the 50 % submittal stage, complete technical specifications at the 90% submittal stage, and an electronic (PDF) copy of the final technical specifications.

Task 4. Prepare Construction Cost Estimate

West Yost will prepare an estimate of the probable construction cost of this project following the submission of the 90% complete design the documents.

Task 3 Deliverables: Four hard copies and an electronic (PDF) copy of an estimate of probable construction cost.

Task 5. Engineering Services During Bidding and Construction

Subtask 5.1: Engineering Service During Bidding

The design team will perform the following bidding phase services:

- Attend Pre-Bid Meeting: West Yost will attend an on-site pre-bid conference. It is assumed that the City will organize and lead the pre-bid meeting.
- Respond to Bidder Inquiries: West Yost will provide written responses to design-related questions received during the bidding period. It is assumed that the City will be responsible for receiving questions, and will forward any design-related questions to West Yost. It is also assumed that City will be responsible for distributing responses prepared by West Yost to prospective bidders.
- Prepare Addenda: West Yost will prepare up to two addenda to the contract documents.

Subtask 5.2: Construction Phase Services

The design team will perform the following construction phase services:

- Submittal Review: West Yost will review Contractor submittals for compliance with the design concepts and specifications. West Yost will not review incomplete submissions by the contractor.
- Interpretation and Clarification of Contract Documents: West Yost will prepare written interpretation and clarifications of the Contract Documents in response to written requests from the Contractor.
- Construction Phase Meetings: At the City's request a member of the design team will attend up to four meetings during the construction period. It is assumed that the construction management team would lead these meetings and be responsible for preparing agenda and meeting minutes.

Task 6. Review Meetings/Workshops, Project Management and Quality Control

Subtask 6.1: Review Meetings/Workshops

The design team will meet with City staff roughly two-weeks after the submission of 50% and 90% design submittals to review and discuss comments and suggestions. Following these meetings, the design documents will be updated to reflect comments from City staff.

Subtask 6.2: Project Management and Quality Control

West Yost will manage this project to keep the project on schedule and within budget, and conduct quality assurance reviews of all work products to insure they are of a high quality.

SCHEDULE

We understand that these improvements will be constructed in 2018, and have structured our proposed scope of services to meet the following schedule. This schedule assumes that West Yost is authorized to begin design services no later than July 1, 2017.

Table 1. Anticipated Schedule

Task or Activity	Anticipated Completion
50% Complete Design Submittal	Mid-August 2017
Meeting/Workshop to Discuss 50% Complete Design Submittal	Late August 2017
90% Complete Design Submittal	Early October 2017
Meeting/Workshop to Discuss 90% Complete Design Submittal	Mid-October 2017
Final Design Submittal	Mid November 2017
Bidding and Award	Early February 2018
Construction	End of September 2018

BUDGET

The estimated cost to complete the scope of work described above is summarized in the table below. We will perform all work on an hourly basis at standard company charge rates, and will not exceed the estimated cost summarized herein without written authorization.

Table 2. Proposed Budget

Task or Activity	Budget, dollars
Task 1 – Topographic Survey and Mapping	2,930
Task 2 – Prepare Design Drawings	35,860
Task 3 – Prepare Technical Specifications	15,730
Task 4 – Prepare Construction Cost Estimate	5,310
Task 5 – Engineering Services During Bidding & Construction	13,850
Task 6 – Meetings, PM and QA/QC	6,960
Total	80,640

Sincerely,

WEST YOST ASSOCIATES

Dave Anderson, PE
Engineering Manager
RCE #C27659

DA:ap

EXHIBIT "C"

GENERAL PROVISIONS

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(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

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(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of the CITY.

(10) PRODUCTS OF CONSULTING. All products of the CONSULTANT resulting from this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, hold harmless the CITY, its officers, agents and employees from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property to the extent arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the City, its officers, agents or employees.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

(13) LOCAL EMPLOYMENT POLICY. The City of Winters desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Yolo County.

The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advise, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

WWTF Influent Screening Improvements
Project Budget Sheet (Pre-Design Only)

CIP#: 16-03
Last Updated:
Project Owner: Public Works
Project Manager: Alan Mitchell

MTIP #
Original Approval: Jan. 2016

Project Resource: Consultant

Description:
Design for WWTF Influent Screening System

Authority:
The City needs to ensure that rags and other debris is screened prior to entering the WWTF ponds

Budget:						
Item		**%**	**Amount**	**Item**	**%**	**Amount**
Project Management				Design		$81,000
Testing and Inspection				Permits		
	Pre Design		$9,000	Construction		
Right of Way/Utility Relocation				Contingency		
	CEQA/NEPA			**Project Total:**		**$90,000**

Financing Schedule:	Project Start: 2016			Project Completion: 2018			
Phases: Design, Construction							
Fund Code:	621	418					
Name:	WWTF Inf Screen		Blank	Blank	Blank	Blank	**FY Totals**
Previous	$ 9,000						$ 9,000
FY 16/17:							$ -
FY 17/18:	$ 81,000						$ 81,000
Fund Totals:	$ 90,000	$ -	$ -	$ -	$ -	$ -	$ 90,000

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)

CITY OF
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CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers

DATE: July 18, 2017

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

FROM: Carol Scianna, Environmental Services Manager

SUBJECT: Wastewater Treatment Facility Monitoring Services with Luhdorff & Scalmanini

RECOMMENDATION: Staff recommends Council authorize City Manager to execute Consultant Services Agreement No. 026-17 with Luhdorff & Scalmanini (L&S) for continued Wastewater Treatment Facility Monitoring Services in the amount not to exceed $29,909.50

BACKGROUND: The City initiated a contract with L&S in October 2006 to provide the required groundwater monitoring at the Wastewater Treatment Facility. They have continued to provide reliable and efficient results and have stayed under budget for their services. In 2008 the City was required to add additional monitoring wells, which L & S assisted the City in completing the installation of the new wells and the subsequent necessary reporting. Two years later L&S petitioned the Regional Water Quality Board to install Hydrosleeves this technique enabled us to streamline the monitoring procedure, L & S were also successful in their request on behalf of the City for reduced monitoring from quarterly to semi-annual in 2012, which has further reduced costs to the City. The last few years L & S has expended only half of what was budgeted in their contract.

FISCAL IMPACT: Not to exceed $29,909.50

CITY OF WINTERS
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Est. 1875

CONSULTANT SERVICES AGREEMENT
AGREEMENT No. 026-17

THIS AGREEMENT is made at Winters, California, as of _____, by and between the City of Winters ("the CITY") and Luhdorff & Scalmanini (CONSULTANT)", who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANTS shall provide to the City the Services described in Exhibit "A", which is the CONSULTANT'S Proposal dated July 5, 2017. Consultant shall provide said services at the time, place, and in the manner specified by the City of Winters and Exhibit "A".

2. PAYMENT. The Consultant shall be paid for the actual costs, for all time and materials expended, in accordance with the Schedule of Fees included in Exhibit "B", but in no event shall total compensation exceed Twenty Nine thousand, Nine Hundred and Nine dollars and Fifty cents ($29,909.50) without the City's prior written approval. City shall pay consultant for services rendered pursuant to the Agreement and described in Exhibit "A".

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control only insofar as it is inconsistent with general Provisions.

5. EXHIBITS. All exhibits referred to therein are attached hereto and are by this reference incorporated herein.

EXECUTED as of day first above-stated.

CITY OF WINTERS
a municipal corporation

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

CONSULTANT

By: _____

ATTEST:

By: _____
Nanci G. Mills, CITY CLERK

EXHIBIT A

LUHDORFF & SCALMANINI
CONSULTING ENGINEERS

GROUNDWATER RESOURCES
HYDROLOGY · DEVELOPMENT · MANAGEMENT

July 5, 2017
File No. 16-1-088

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

SUBJECT: SCOPE OF WORK AND BUDGET FOR HYDROGEOLOGIC SERVICES (FISCAL YEAR 2017/18) CITY OF WINTERS WASTEWATER TREATMENT FACILITY YOLO COUNTY, CA

Dear Ms. Scianna:

Per your request, Luhdorff and Scalmanini, Consulting Engineers (LSCE) has prepared this scope of work and budget for hydrogeologic services related to the City's Wastewater Treatment Facility (WWTF) for the fiscal year 2017/18 (July 1, 2017 to June 30, 2018).

The City presently operates the WWTF under the California Regional Water Quality Control Board's (RWQCB) *Waste Discharge Requirements* (WDRs) Order No. R5-2002-0136, adopted July 19, 2002, the revised *Monitoring and Reporting Program* (MRP REV 2) Order No. R5-2002-0136, adopted July 8, 2011 and effective July 1, 2011, and *Cease and Desist Order* No. R5-2007-0002 (CDO), adopted January 25, 2007.

The following scope of work is comprised of four tasks:

1. Project Administration
2. Groundwater Sampling
3. Semi-Annual Reporting
4. Contingency Fund

Task 2 includes four groundwater monitoring events in compliance with the WDRs and the revised MRP (REV 2). Quarterly monitoring events are planned for August and November 2017, and February and May 2018. Quarterly monitoring is planned for water level monitoring (in August, November, February, and May) and semi-annual monitoring is planned for groundwater quality monitoring (August and February).

Task 3 includes the preparation of two semi-annual monitoring reports (due August 1, 2017 and February 1, 2018) to be prepared in compliance with the WDRs and the revised MRP (REV 2).

Task 4 includes staff time to provide support services, on an as-needed basis, such as to avoid cumbersome budget amendment requests.

500 First Street · Woodland, CA 95695-4026 · 530.661.0109 · Fax 530.661.6806

We propose to complete the work as scoped on a time and materials basis in accordance with LSCE's *Schedule of Fees for Engineering and Field Services (2017)*, a copy of which is attached. The tasks are detailed in the attached Project Cost Estimate.

Should the cost of services exceed our estimate, we will report the status of completed and completable work and further estimate additional requirements, including explanation of the need for further work, before proceeding.

We appreciate the opportunity to prepare this scope and budget to respond to your request.

Sincerely,

LUHDORFF AND SCALMANINI,
CONSULTING ENGINEERS

Vicki Kretsinger Gravert

Vicki Kretsinger
Senior Principal Hydrologist

Till Angermann, P.G., C.Hg.
Principal Hydrogeologist

Barbara Dalgish, P.G.
Senior Hydrogeologist

BD/tea/vk

Subtask 1. Enclosures:
Project Cost Estimate
LSCE 2017 Schedule of Fees - Engineering and Field Services

PROJECT COST ESTIMATE

Client: City of Winters; Attn.: Ms. Carol Scianna
Project: City of Winters WWTF WDRs/MRP Compliance - Fiscal Year 2017/18 (July 1, 2017 - June 30, 2018)
File No: 16-1-088
Estimate: BD/TEA/VK
Date: July 5, 2017

Task	Billing Level / Billing Rate ($/hr)	Estimated Labor Hours: Senior Principal $202	Principal $200	Senior $178	Staff $130	Clerical $70	Labor Cost	Direct Cost[1]
1. Project Administration		2	2	10	0	0	$2,184.00	$100.00
2. Groundwater Sampling (Four Events)[2]		0	1	6	50	0	$7,568.00	$300.00
3. Semi-Annual Reporting (Two Reports)[3]		4	4	30	8	4	$7,468.00	$250.00
4. Contingency Fund		0	0	0	0	0	$0.00	$2,000.00
							Total LSCE Cost	**$19,870.00**

Outside Services		Admin. @ 15%
Laboratory Analysis[4]	$8,730.00	$10,039.50
	Total Project Estimate	**$29,909.50**

1. Direct costs account for mileage, copies, postage, miscellaneous supplies, and incidentals.
2. Quarterly groundwater level monitoring and semi-annual groundwater quality sampling of nine wells per requirements set forth in the Revised MRP (July 8, 2011 REV 2); groundwater quality sampling planned to occur in Aug-2017 and Feb-2018.
3. Semi-annual reports due August 1, 2017 and February 1, 2018.
4. Analyses per requirements set forth in the Revised MRP (9 annual samples @ $ 610.00 each; 9 semi-annual samples at $360.00 each). The estimated laboratory analytical cost is based on recent experience and not on an actual bid.

EXHIBIT B

LUHDORFF & SCALMANINI
CONSULTING ENGINEERS
500 FIRST STREET WOODLAND, CALIFORNIA 95695

SCHEDULE OF FEES - ENGINEERING AND FIELD SERVICES
2017

Professional:*	
Senior Principal	*$202/hr.*
Principal Professional	*$200/hr.*
Project Manager	*$190/hr.*
Senior Professional	*$178/hr.*
Project Professional	*$135 to 170/hr.*
Staff Professional	*$115 to 130/hr.*
Technical:	
Engineering Inspector	*$115 to 130/hr.*
ACAD Drafting/GIS	*$120 to 130/hr.*
Engineering/Scientist Assistant	*$100/hr.*
Technician	*$100/hr.*
Clerical Support:	
Word Processing, Clerical	*$70/hr.*
**********	
Vehicle Use	*$0.55/mi.*
Subsistence	*Cost Plus 15%*
Groundwater Sampling Equipment (Includes Operator)	*$170.00/hr.*
Copies	*.20 ea.*
**********	
Professional or Technical Testimony	*200% of Regular Rates*
Requested Technical Overtime	*150% of Regular Rates*
Outside Services/Rentals	*Cost Plus 15%*
Services by Associate Firms	*Cost Plus 15%*

* *Engineer, Geologist, Hydrogeologist, and Hydrologist*

EXHIBIT "C"

GENERAL PROVISIONS

(1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC.. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement.

(4) INSURANCE.

(a) WORKER'S COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation.

(b) GENERAL LIABILITY AND AUTOMOBILE INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement broad form property damage, personal injury, automobile, employer, and comprehensive form liability insurance in the amount of $2,000,000 per occurrence; provided (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured under the policy; and (2) that the policy shall stipulate that this insurance will operate as primary insurance; and that (3) no other insurance effected by the CITY or other names insured will be called upon to cover a loss covered there under; and (4) insurance shall be provided by an, at least, A-7 rated company.

(c) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, CONSULTANT shall maintain an Errors and Omissions Insurance policy in the amount of not less than $1,000,000.

(d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with CITY'S _____ upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the City Clerk prior to the effective date of such cancellation, or change in coverage.

(5) CONSULTANT NOT AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

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It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

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The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's residence, and ethnic origin.

(14) CONSULTANT NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advise, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

CITY OF
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CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: July 18, 2017

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

FROM: Dagoberto Fierros, Management Analyst

SUBJECT: City Park Futsal Court Project/Grading & Paving

RECOMMENDATION:
To execute contract for grading and paving the futsal court with Vintage Paving

BACKGROUND: On June 20, the council voted in favor of city staff building a futsal court at City Park with funds donated by PG&E. Staff gave an estimated cost for grading and paving of $47,690.00. After advertising in the paper and contacting other companies Vintage Paving was the only company to put in a bid. Vintage stayed with the estimate they gave us of $47,690.00. Staff is asking council to give the city manager authorization to execute a contract with Vintage Paving in the sum of $47,690.00 to do the job.

FISCAL IMPACT: Estimated costs to bid out project is $47,690.00

CITY OF WINTERS
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CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: July 18, 2017

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

FROM: Dan Maguire, Economic Development and Housing Manager DM

SUBJECT: Olive Grove – Proposed Inclusionary Housing Plan

RECOMMENDATION:
That the City Council:

1. Receive a Staff Report on a proposed Inclusionary Housing Plan for the Olive Grove Subdivision;
2. Adopt Resolution 2017-37 which memorializes the Winters City Council approval and acceptance of the proposed Inclusionary Housing Plan for development of the property commonly known as the Olive Grove Property (aka Valadez Property) between the City of Winters and SLO Rentals, LLC, in order to amend the fulfillment of the affordable housing requirements.

BACKGROUND:

In 2007, the real estate market essentially "crashed" and none of the proposed projects proceeded until the recent construction activity at Winters Ranch (formerly referred to as Hudson Ogando). Additionally, the City lost its primary source of affordable housing funding with the dissolution of Redevelopment Agencies statewide.

In August, 2013, the City Council approved amendments to the Hudson Ogando & Creekside Estates Subdivision Development Agreements. These amendments included a revision to the affordable housing obligation, essentially "modernizing" the agreements to acknowledge the new fiscal realities of residential development. The modification included the payment of in lieu fees, in lieu of constructing the very low- and low income housing required of the project under the existing Development Agreement. The Hudson Ogando & Callahan projects are obligated to

pay $360,000 in in-lieu fees, with the City taking on the production responsibility for 12 very low-income units, and 10 low income units.

Subsequent to that action, Staff worked with the developers for the Winters Highlands subdivision for similar modifications to encourage construction of their entitled project. The City Council approved the Inclusionary Housing Plan proposed by the Winters Highlands developer, which included the payment of $2,000,000 in in lieu fees, with the City taking on production responsibility for 24 very low-income units and 18 low-income units. The approved Affordable Housing Plan also include the developer dedicating to the City a 2 acre parcel within the project zoned R-4.

DISCUSSION:

Staff began discussions with SLO Rentals, LLC after their recent purchase of the Valadez property (aka Olive Grove – 720 Hemenway). Based on their tentative map of 21 lots, under the City of Winters Inclusionary Housing Ordinance, the project would be required to provide 1 very low-income dwelling unit, 1 low-income dwelling unit, and 1 moderate-income unit. In the Olive Grove Inclusionary Housing Plan ("IHP") proposal discussions, Staff focused on a number of key elements, which included the following:

1. Acknowledgement of the development of affordable housing consistent with the obligations of the project, pursuant to the existing Inclusionary Housing Ordinance.
2. Allowed for flexibility in proposed project layout and in lieu fee payments.
3. Maintained consistency with the City's adopted Housing Element Update (2013-2021) and Inclusionary Housing Ordinance (Ord. 2009-18).

The IHP proposal is based on a very pragmatic approach to creating a balance between a project which will bring a quality project to the City and one which is financially viable to build for the developer.

The IHP was brought before the Affordable Housing Steering Committee ("AHSC") on May 22, 2017, for their review and possible amendments to the current Inclusionary Housing Plan. The AHSC discussion resulted in their recommendation to the Planning Commission and City Council that the Olive Grove IHP be approved. That discussion acknowledged the desirability of smaller in-fill projects like Olive Grove, and also recognized the financial challenges of small in-fill projects.

The IHP was presented to the Planning Commission at the June 13th meeting. The Planning Commission voted unanimously (5-0 with one Planning Commissioner absent) to recommend the City Council approve/accept the proposed Inclusionary Housing Plan for Olive Grove.

ATTACHMENTS:

1. Olive Grove Inclusionary Housing Plan
2. Ordinance 2009-18 (Inclusionary Housing Ordinance)
3. Resolution 2017-37

Date: May 2, 2017

To: Dan Maguire, Housing Manger

From: Chris Williams, SLO RENTALS LLC

Re: Proposed Affordable Housing Plan – Olive Grove

SLOR RENTALS LLC recently acquired the property commonly known as 720 Hemenway St, Winters, CA 95694. The property is an approximately 4.21 acre R-2 infill site located adjacent to the Winters High School baseball field. Per our recent conversation, please review the following proposed Affordable Housing Plan pursuant to Chapter 17.200 of the City of Winters' Municipal Code.

Background

The approved Tentative Map for Olive Grove is for 18 lots, however it has been determined that the number of dwelling units needs to be increased to 21 in order to meet the unit/acre requirement of the R-2 zoning. An application for a tentative map modification was submitted by SLO RENTALS LLC to Dave Dowswell and the City of Winters on April 27, 2017. The modified map has been attached for reference.

Proposed Affordable Housing Plan

Inclusionary Housing Requirement-Chapter 17.200.030 of the City's Municipal Code requires that 15 percent of a project's total number of residential units must be dedicated to affordable housing, with 6 percent meeting the VLI requirement and 9 percent meeting the Low Income or Moderate Income Requirement. These units can be rental, for-sale, or a combination of the two.

SLO RENTALS LLC will be requesting that the City approve the modifications made to the existing tentative map. This change would result in a total of 21 lots constructed in two phases. With a baseline of 21 lots and pursuant to the City of Winters' Inclusionary Housing requirement there will be a need to satisfy one Very-Low, one Low and one Moderate rate income units. To satisfy the 3 required income restricted units SLO RENTALS LLC proposes the following:

> Payment of an affordable housing fee of $75,000.00, which is to be amortized over the phase 2 (lots 6-21) market-rate lots on a per unit basis. The fee of $5,000.00 will be paid upon certificate of occupancy for dwellings built on lots 6-10, 12-21.
>
> Construct a for-sale, inclusionary Moderate Income unit of no less than 3 bedrooms on lot 11 of the attached tentative map and offer it for sale to qualified homebuyers.

Thank you in advance for your consideration. I look forward to further discussing our AHP with you and the AHSC.

Chris Williams
SLO RENTALS LLC, Managing Member

ORDINANCE NO. 2009-18

AN ORDINANCE OF THE CITY OF WINTERS REPEALING SECTION 17.60.030(B) OF THE ZONING CODE AND ADDING CHAPTER 17.200 TO THE ZONING CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS

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

SECTION 1. Recitals.

A. The City of Winters undertook a comprehensive study and analysis of its affordable housing program, which prompted certain revisions to the affordable housing program for the City.

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

C. The City of Winters Planning Commission conducted a noticed public hearing regarding this Ordinance, which amends the Zoning Code to repeal Section 17.60.030(B) and add Chapter 17.200 pertaining to affordable housing requirements within the City, and has recommended approval of the Ordinance.

D. The City Council of the City of Winters has provided public notice of its intention to amend the Zoning Code to adopt Chapter 17.200, and conducted a public hearing thereon on December 15, 2009.

E. The proposed amendment of the Zoning Code to add Chapter 17.200 is consistent with the goals, policies, and objectives of the City of Winters General Plan, and in particular, the Housing Element, as adopted on September 1, 2009.

F. The proposed amendment of the Zoning Code to add Chapter 17.200 has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 2. Chapter 17.200 "Affordable Housing Requirements" is hereby added to the Winters Municipal Code to read as follows:

Section 17.200.010 Purpose and Intent

The public welfare requires the City to take action to ensure that affordable housing is constructed and maintained within the City. This Chapter is intended to provide that new development projects in the City contain or assist in the production of a defined percentage of housing affordable to low income and very low income households, to provide for a program of incentives, and to implement the affordable housing policies contained in the Housing Element of the City's General Plan.

Section 17.200.020 Definitions

"Affordable Housing Steering Committee" means an advisory committee appointed by the City Council for the purpose of advising the City Council, Planning Commission, Community Development Agency and City staff on affordable housing policies and programs, use of redevelopment housing funds, proposed affordable housing projects, and other housing matters, at the request of the City Council.

"Community Development Director" means the director of the Community Development Department of the City, or his or her designee.

"Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks the City's approval of discretionary land use entitlements for all or part of a development project. "Developer" includes "owner"

"Development project" means any development project that contains residential units, including single family and multifamily units.

"Inclusionary housing agreement" means an agreement between the developer and the City setting forth the manner in which the inclusionary housing requirements will be met in the development project.

"Inclusionary housing plan" means the plan setting forth the manner in which the developer proposes to satisfy the inclusionary housing requirements of this Chapter within the development project.

"Inclusionary housing requirement" means the inclusionary housing requirements as specified in this Chapter.

"Inclusionary housing unit or inclusionary unit" means an ownership or rental unit developed or provided in satisfaction of the inclusionary housing requirements of a development project, as provided for in this Chapter, and which is affordable to very low, low income or moderate income households.

"Low income household" means a household whose income does not exceed eighty percent (80%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

"Moderate income household" means a household whose income does not exceed one hundred twenty percent (120%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

"Very low income household" means a household whose income does not exceed fifty percent (50%) of the median income, adjusted for household size, applicable to Yolo County, as published and periodically updated by the United States Department of Housing and Urban Development.

Section 17.200.030 Inclusionary Housing Requirements

(A) Number and Affordability of Units. Except as otherwise provided for in this Chapter, all development projects consisting of five (5) or more residential units within the City of Winters shall include inclusionary housing units equal to fifteen percent (15%) of the total number of residential units in the development project, excluding density bonus units. The fifteen percent (15%) inclusionary housing requirement shall consist of six percent (6%) very low income units and nine percent (9%) low income or moderate income units in proportion to the unmet needs for each identified in the current housing element.

(B) Exception. The following development projects are exempt from the provisions of this Chapter:

1. Redevelopment Project Area. The fifteen percent (15%) inclusionary housing requirement provided in Subsection A above shall not apply to development projects within the Winters Community Development Agency Redevelopment Project Area that contain fifteen (15) or fewer residential units. This exception shall expire on December 31, 2013, unless extended by the City Council. Any development project that has not acquired a vested right to develop in accordance with existing laws and regulations by such expiration date shall be required to comply with the provisions of this chapter.

2. Project with prior approval. A development project that has obtained discretionary approval (e.g., a Development Permit, Use Permit, Design Review, Planned Development Permit, or Variance approval) before the effective date of this Chapter; or a building permit before the effective date of this Chapter; or a Certificate of Occupancy before the effective date of this Chapter.

3. Exempt by State law. A development project that is exempt from this Chapter by State law.

4. Project with vested rights. A development project for which the City has entered into a development agreement before the effective date of this Chapter, or which otherwise demonstrates a vested right to proceed without complying with this Chapter.

(C) Implementation. The developer shall propose an inclusionary housing plan to community development director as provided for in this Chapter. A condition requiring compliance with all of the terms of the inclusionary housing plan, as approved by the Planning Commission, shall be imposed on the development project. Further, the developer and the City shall enter into an inclusionary housing agreement that requires compliance with the inclusionary housing plan, and that will be recorded upon the property as provided in this Chapter.

(D) Density Ranges. Development projects which are proposed in areas of the City zoned for medium high and high density residential use, shall only be approved if density of the development project is in the upper one-half of the density ranges specified in the Zoning Code for developments in such zones, unless site constraints effectively prohibit such intensity of development.

(E) Unit Size. The inclusionary housing requirement shall accommodate diverse family sizes by including a mix of studio, one, two and/or three bedroom units where feasible.

(F) Exterior Appearance. The inclusionary units shall be visually compatible with and shall have similar external building materials and finishes as the market rate units in the immediate neighborhood.

(G) Access to Common Amenities. Tenants and residents of inclusionary units shall be provided the same rights and access to common amenities within the development project as tenants and residents occupying market rate units.

(H) Small Parts of Larger Projects. The City shall not approve development projects which reasonably appear to be smaller parts of a greater project and have the effect of circumventing the requirements of this Chapter.

Section 17.200.040 Inclusionary Housing Plan

(A) Submittal Requirements. At the time of and as part of the application for a discretionary land use entitlement for a development project, the inclusionary housing plan shall be submitted to the Community Development Director by the project developer, and shall include:

1. A detailed description of the method by which the developer will comply with the requirements of this Chapter.
2. The location of the inclusionary units within the development project, if applicable, the size of the inclusionary units, and any incentives requested by the developer in accordance with Section 17.200.060 of this Chapter.
3. Where an alternative to constructing inclusionary units on-site is intended, the developer shall provide detailed information regarding the alternative selected for meeting the inclusionary housing requirement, including a written statement that the proposed parcel(s), site, or existing market rate units, if applicable,

are available and capable of being dedicated to the City by the developer and that the affordable units shall be restricted as affordable housing, by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

4. A phasing plan that provides a schedule for the timely development of the inclusionary units as the development project is built out.
5. Any other information deemed necessary by the Community Development Director.

(B) Affordable Housing Steering Committee Meeting. Prior to the submittal of the inclusionary housing plan, the Affordable Housing Steering Committee shall meet with and provide recommendations to the project developer regarding compliance with this Chapter.

(C) Community Development Director Preliminary Review. Upon receipt of the proposed inclusionary housing plan, the Community Development Director shall review the plan, and thereafter shall meet with the project developer to discuss the proposed plan.

(D) Plan Approval. After the preliminary review by the Community Development Director, the inclusionary housing plan shall be subject to the same review and approval as the discretionary land use entitlements.

Section 17.200.050 Alternative Methods to Meeting Inclusionary Housing Requirements

The City strongly prefers and shall encourage on-site construction of inclusionary units, however alternatives to the on-site construction of the inclusionary housing units may be proposed by the developer, consistent with the requirements set forth below in this section. The alternative methods are subject to review and approval of the City, as part of the inclusionary housing plan review process. The developer shall have the burden of demonstrating that the alternative selected is equivalent to the on-site construction of inclusionary housing units. Alternatives may include:

(A) Land Dedication. A developer may propose to dedicate land within the City sufficient to construct at least the same number of units and infrastructure to support the number of units as the developer would have been required to construct on-site subject to the inclusionary housing requirement. Land may be dedicated pursuant to this alternative provided the site will support the same number of units the developer is required to construct, has zoning of a minimum density necessary to accommodate the inclusionary housing requirement, that the site is physically and legally acceptable to the City, and that the site is restricted to affordable housing. The developer shall dedicate the land to the City at no cost the City.

(B) On-Site or Off-Site Construction. A developer may propose to develop housing to satisfy the inclusionary housing requirement at an on-site or off-site location within the City.

(C) Acquisition, Rehabilitation, and Conversion of Market Rate Units. A developer may propose to acquire and rehabilitate existing market rate units in the City which are at or above existing affordable rents, which require repair, rehabilitation, modernization or other work and convert those units to affordable housing units.

(D) Conversion of Market Rate Units. A developer may propose to convert existing market rate units in the City which do not require rehabilitation and are at or above existing affordable rents to affordable housing units by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(E) Accessory Units. A developer may propose to construct accessory dwelling units (e.g. granny flats) on site of the development project to meet the inclusionary housing requirement. The lots upon which the accessory dwelling units are constructed shall be restricted to provide that the units remain affordable housing units by way of contract, recorded covenants or other legal mechanisms.

(F) Inclusionary Housing Credits. A developer may propose to use inclusionary housing credits, as defined in this Chapter, to meet the inclusionary housing requirement.

(G) Payment of In-Lieu Fees. A developer may propose to pay an in-lieu fee to the City instead of constructing affordable units to meet the inclusionary housing requirement.

(H) Cooperative Ventures. A developer may propose a cooperative venture with a non-profit housing corporation, mutual housing association, limited equity housing cooperative, or other entity.

(I) Sweat Equity Project. A developer may propose a self-help or "sweat equity" project with a non-profit corporation or other entity.

(J) Combination. A developer may propose to utilize a combination of the above alternatives to meet the inclusionary housing requirement.

(K) Other Alternatives. A developer may propose, and the City may accept, other alternatives that meet the requirements and intent of this Chapter.

Section 17.200.060 Incentives and Assistance

(A) Request for Incentives and Assistance. The developer of a development project subject to the inclusionary housing requirements of this Chapter, may request, and the City, in its discretion, may grant or deny the request for incentives as set forth in this section.

(B) Fee Waivers or Deferrals. The City may grant to a developer a program of waivers, reduction or deferrals of development fees or administrative fees for the inclusionary units.

(C) Inclusionary Housing Credits. A developer may submit as part of the inclusionary housing plan a proposal to provide affordable housing units or a donation of land in connection with a development project beyond the requirements of this Chapter. The developer may credit the additional affordable units or land against future development projects proposed by the developer within the City, subject to the provisions of this chapter. Inclusionary housing credits may also be transferred or sold to any other person or entity subject to the following conditions:

(1) Inclusionary housing credits must be applied to another development project within five (5) years of issuance of a certificate of occupancy for the inclusionary units(s) or implementation of an alternative method of meeting the inclusionary method of meeting the inclusionary housing requirement which gives rise to the credits, such as land dedication. A developer who has not used, transferred or sold credits within the time specified in this section may apply to the City for a one (1) year extension on the life of the credits. A request for extension of the inclusionary housing credit shall be reviewed by City Council who shall grant or deny the request for extension. The City Council shall consider progress and efforts the developer has made to utilize the credits during the previous five (5) years, the impact on affordable housing in the City if the extension is granted, any proposals for use of the credits should the extension be granted and other relevant factors.

(2) Inclusionary units receiving monetary subsidies through the City shall not receive credits unless the City has been reimbursed for its financial assistance.

(D) Local Public Funding. A developer may apply to the community development agency for local public funding to assist in the financing and development of affordable housing to meet the inclusionary housing requirement.

(E) Modification of Development Standards. To the extent feasible in light of the uses, design and infrastructure needs of the development project, modifications to existing City planning standards may be made for the development project. Such modifications shall be requested through a development permit, or other such permit that allows the modification of planning standards, and shall be considered in conjunction with the other discretionary land use entitlements for the development project.

(F) Mixed Use Projects. Mixed use projects containing affordable units may be proposed and approved in areas of the City where the Zoning Code and the General Plan allow such development to help off-set the cost of developing affordable units pursuant to the requirements of this chapter.

Section 17.200.070 Density Bonus

Inclusionary units required by this Chapter or otherwise proposed to be constructed as part of a development project shall not be counted towards the number of units necessary to qualify for a density bonus under applicable state or local laws.

Section 17.200.080 Restrictions on Inclusionary Units

Each inclusionary unit created as a result of this Chapter shall have limitations governing its rental, sale, and/or resale and its occupancy, unless such limitations would be in conflict with federal or state law. The purpose of these limitations is to preserve the long-term affordability and to ensure its continued availability for income eligible households.

(A) Duration of Affordability for Rental and Resale of Inclusionary Units. All rental and for-sale inclusionary housing units developed within the City shall remain affordable for a period of not less than that required by Section 33334.3(f)(1) of the California Health and Safety Code (fifty-five years for rental units, forty-five years for owner-occupied units and fifteen years for mutual self-help housing units), and shall be regulated by regulatory agreement, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(B) Occupancy Requirements.

(1) Rental Units. Any person(s) who occupies a rental inclusionary unit shall occupy that unit as his or her principal residence and shall annually certify that he or she qualifies for the applicable affordable rent level. The Community Development Director shall annually initiate this certification process. If and when any person(s) who rents an inclusionary unit no longer qualifies at the applicable affordable rent and income levels, the person(s) shall be required to vacate the unit or pay the market rate for the unit provided another rental unit is made available at the income level of the inclusionary unit.

(2) For-Sale Units. (i) Except as provided in this section, an initial owner who purchases a for-sale inclusionary unit shall occupy that unit as his or her principal residence. The inclusionary housing agreement shall provide that a for-sale inclusionary unit may only be rented or leased with the written permission of the City, and then, only to an income eligible person and the inclusionary unit shall be rented at no greater a rental rate than the affordable rent level as defined in Health and Safety Code Section 50053. The inclusionary unit shall be rented or leased at the same income level of the original for-sale affordable housing price. For example, if the initial owner bought the unit at the very low income housing price the unit shall be rented at the very low income rent level currently in effect. Any person intending to offer a for-sale inclusionary unit for rent or lease shall first notify the City housing coordinator in writing, prior to the renting of the unit. (ii) An initial owner shall be required to execute a promissory note, secured by a deed of trust, payable to the City, for the difference between the fair market value of the unit and the actual purchase price ("Silent Second Note"). The Silent Second

Note shall accrue interest at the Local Agency Investment Fund ("LAIF") rate, and shall be due and payable upon the sale, transfer or refinancing of the unit, unless the sale is to another low income eligible buyer, as determined by the City. The proceeds of any Silent Second Notes shall be deposited in an account designated for uses related to the provision of affordable housing in the City.

(C) Resale of For-Sale Units. The initial owner or any subsequent owner may sell a for-sale unit pursuant to the following requirements. Inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to the resale restricted term provided for in subsection (A) above, and in accordance with the affordable housing costs set forth in Health and Safety Code Section 50052.5. The inclusionary for-sale unit shall be sold at the same affordable housing price income level as it was originally sold, and the new income eligible buyer shall be required to execute a new inclusionary housing agreement and Silent Second Note, secured by a deed of trust.

(1) Option to Sell to City. If the owner is unable to sell the inclusionary unit within one hundred and eighty (180) days of offering and advertising the unit for sale, the owner may offer to sell the unit to the City at the affordable housing price at the time offer. The Community Development Director may reduce the one hundred and eighty (180) day requirement specified above if the owner demonstrates, to the satisfaction of the Director, that such limit would create a hardship for the owner. If the City or its assignee does not complete the purchase of the unit within ninety (90) days of the owner's offer of sale to the City, the resale obligation of this section shall terminate; however, the provisions of this section relating to recapture upon sale shall continue to apply and remain in full force and effect.

(2) Recapture Upon Sale. If the inclusionary unit does not sell within one hundred and eighty (180) days of offering and advertising the unit for sale, or such lessor time as established by the Community Development Director upon a finding that a hardship exists, and if the City does not acquire the inclusionary unit as specified in this section, the inclusionary unit may be sold at the current market price. Upon the sale of a unit at market price, the seller shall pay to the City housing trust fund the full amount of the Silent Second Note, described above in this section. The owner shall be entitled to any appreciation in the fair market value of the unit from the time of initial sale to the present sale.

Section 17.200.090 Administration of Inclusionary Housing Requirements

(A) Inclusionary Housing Agreement. Upon approval of the inclusionary housing plan pursuant to Section 17.200.030, the Community Development Director shall prepare an inclusionary housing agreement for the development project that is consistent with inclusionary housing plan, and shall indicate ownership information, type of inclusionary unit (for-sale or rental), the number and size of the inclusionary units, the developer of the inclusionary units, the phasing and construction scheduling of the inclusionary units, commitments for inclusionary incentives and any other information required by the City

relative to the inclusionary housing requirement. In the case of alternatives to the inclusionary housing requirement, the agreement shall also contain the information required in this chapter pertaining to the alternative. Upon completion, the inclusionary housing agreement shall be recommended for approval by the City Council at the next regular City Council meeting. The inclusionary housing agreement shall provide a direct financial contribution by the City in the amount of not less than one hundred dollars ($100) per inclusionary unit.

No final map shall be approved and no grading permit or building permit shall be issued by the City prior to the full execution and recordation of the inclusionary housing agreement against the property.

(B) Action on Inclusionary Housing Agreement. The City Council shall approve the inclusionary housing agreement upon a finding that the agreement meets all the requirements of this chapter and shall direct that the agreement be recorded upon the subject property.

(C) Affordable Rental and Affordable Housing Agreements. Prior to obtaining a certificate of occupancy for a development project which includes inclusionary units, the developer shall cause an affordable rental agreement to be executed between the owner of the property and the City which shall be recorded with the county recorder's office against the parcels identified in the inclusionary housing agreement as being inclusionary units, in a form reviewed and approved by the City Attorney. Where the inclusionary unit is a for-sale unit within a development project, prior to obtaining a certificate of occupancy for that unit the developer shall cause an affordable sale agreement to be executed between the initial owner of the inclusionary unit and the City, which shall be recorded with the county recorder's office against the parcel, in a form reviewed and approved by the City Attorney.

(D) Administrative of Affordability for Rental Inclusionary Housing. The owner of rental inclusionary units or for-sale inclusionary units offered for rent shall be responsible for certifying the income of the tenant or owner to the City at the time of initial rental and annually thereafter. The owner of a for-sale inclusionary unit shall certify to the City the income of the initial purchaser.

(E) Accessory Dwellings. Prior to obtaining a certificate of occupancy for an accessory dwelling which is designated as an inclusionary units pursuant to an inclusionary housing agreement, the developer shall cause an affordable sale agreement to be executed between the initial owner of the accessory dwelling unit and the City, which shall be recorded with the county recorder's office against the accessory dwelling unit, in a form reviewed and approved by the City Attorney.

(F) Guidelines. The Community Development Director may develop additional guidelines as necessary for implementation of this chapter.

(G) Appeal. Where the provisions of this Chapter vest the Planning Commission with final decision making authority, any applicant aggrieved by the decision of the Planning Commission may appeal the decision to the City Council, within ten (10) days of the final decision of the Planning Commission. Any appeal of a decision of the Planning Commission must be filed with the City Clerk. The City Clerk shall set the appeal before the City Council within forty (40) days of receipt of the appeal.

Section 17.200.100 Monitoring of Inclusionary Housing

(A) Developers. Developers that have entered into an inclusionary housing agreement requiring the provision of inclusionary housing units will be monitored by the City annually to assure compliance with the inclusionary housing agreement.

(B) Inclusionary Units. Inclusionary housing units developed within the City will be monitored by the City annually to verify that the units remain affordable in accordance with Section 17.200.080(B) of this chapter.

(C) Reporting. An annual reporting mechanism shall be created by the City to identify the number of inclusionary housing units that have been required for development within the City by inclusionary housing agreements during the annual reporting period and shall include the number of inclusionary housing units that have actually been developed during the annual reporting period. The report shall also include the results of the monitoring of developers and inclusionary units already in existence.

Section 17.200.110 Administrative and In-Lieu Fees

The City Council may, by resolution, establish an in-lieu fee and reasonable fees and deposits to defray costs of processing applications, proposals pursuant to this Chapter.

Section 17.200.120 Enforcement and Penalties

It is unlawful to offer for sale or to rent or lease any inclusionary unit without compliance with this Chapter. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor. Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day which any person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

SECTION 3.
Section 17.60.030(B) of Chapter 17.60 of the Winters Zoning Code pertaining to affordable housing requirements for individualized projects is hereby repealed in its entirety.

SECTION 4. Effective Date.

This Ordinance shall be in full force and effective 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall

cause this Ordinance to be published and posted in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on December 15, 2009, and was passed and adopted at a regular meeting of the City Council held on January 5, 2010 by the following vote:

AYES: Council Members Aguiar-Curry, Fridae, Stone and Mayor Martin

NOES: None

ABSENT: Council Member Anderson

ABSTAIN: None

Michael Martin

Michael Martin, MAYOR

ATTEST:

Nanci G. Mills

Nanci G. Mills, City Clerk

1160228.15

RESOLUTION NO. 2017-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS APPROVING AN AFFORDABLE HOUSING PLAN FOR THE OLIVE GROVE SUBDIVISION

WHEREAS, on March 17, 2015, the City Council of the City of Winters adopted Resolution No. 2015-11 approving a Tentative Subdivision Map for the Winters Olive Grove Subdivision (the "Tentative Map"); and

WHEREAS, on July 18, 2017, SLO Rentals, LLC (the "Developer") filed an application to make certain revisions to the Tentative Map to change the number of lots on the Tentative Map, which would increase the total number of lots from 18 to 21 (the "Amended Tentative Map"); and

WHEREAS, under the City's Inclusionary Housing Ordinance (Ordinance 2009-18), Developers are required to provide that 15% of any new housing developed in the City of Winters must be affordable to very-low, low, and moderate-income households; and

WHEREAS, at the time of and as part of the application for a discretionary land use entitlement for a development project, an Inclusionary Housing Plan shall be submitted to the City by the project developer; and

WHEREAS, under Section 17.200.050 of the City of Winters Zoning Code pertaining to Affordable Housing Requirements, the Developer may propose Alternative Methods to Meeting the Inclusionary Housing Requirements, including Payment of In Lieu Fees; and

WHEREAS, on May 22, 2017, the Affordable Housing Steering Committee reviewed and discussed the Inclusionary Housing Plan submitted for Olive Grove by SLO Rentals, LLC and unanimously recommended approval of the plan to the Winters Planning Commission; and

WHEREAS, on June 13, 2017, the Planning Commission of the City of Winters ("Planning Commission") conducted a duly noticed public hearing on the Inclusionary Housing Plan at which time all persons wishing to testify in connection with the Inclusionary Housing Plan were heard and the Inclusionary Housing Plan was comprehensively reviewed; and

WHEREAS, following said public hearing, the Planning Commission recommended on a 5-0-0 (1 Planning Commissioner absent) vote that the City Council approve the Inclusionary Housing Plan; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS RESOLVES AS FOLLOWS:

1) The Inclusionary Housing Plan as submitted for the Olive Grove Subdivision is hereby accepted/approved by the City Council, City of Winters, and
2) This Resolution shall become effective upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the City Council of the City of Winters at a regular meeting held on the 18th day of July, 2017, by the following vote:

AYES:

NOES:

ABSENT:

_____
Wade Cowan, Mayor
City of Winters

ATTEST:

_____
Nanci G. Mills, City Clerk

CITY OF WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers

DATE: July 18, 2017

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

FROM: David Dowswell, Community Development Director through

SUBJECT: Public Hearing and Consideration of a revised Tentative Subdivision Map (Olive Grove) for 21 lots for two parcels (APN 003-391-005 & 003-392-001), totaling 4.21 acres, located off Apricot Avenue and Hemenway Street. The lots range in size from 4,186 to 15,533 square feet.

RECOMMENDATION:

Staff recommends the City Council take the following actions:

1. Receive the staff report on a proposed revised Tentative Map for the Olive Grove Subdivision; and

2. Conduct a public hearing to consider comments on the revised Tentative Map for the Olive Grove Subdivision; and

3. A Mitigated Negative Declaration and Mitigation Monitoring Plan were adopted by the Winters City Council on 09/02/08 as part of the General Plan Amendment (Resolution 2008-37) amending the land use designation for 1.42 acres from Recreation & Parks (RP) to Medium Density Residential (MR) and Rezoning (Ordinance 2008-10) amending the zoning from Parks and Recreation (P-R) to Single-Family Residential (R-2).

4. Adopt Resolution 2017-38, approving the revised Tentative Map (Olive Grove Subdivision) for twenty-one (21 parcels/lots) for Assessor's Parcels 003-391-005 & 003-392-001 located off Apricot Avenue and Hemenway Street.

GENERAL PLAN DESIGNATION AND ZONING:

The General Plan land use designation for the property is Medium Density Residential (MR). The project parcels are zoned R-2 (Single Family Residential), minimum parcel size 6,000 square feet, with an absolute minimum of 5,000 square feet. Attached duplex lots with affordable housing may be a minimum of 3,500 square feet.

SURROUNDING LAND USES, ZONING AND SETTING:

Surrounding land uses are as follows:

North:	Single-Family Housing – Zoned R-2 (Single Family Residential)
East:	Cemetery – Zoned PQP (Public Quasi Public)
South:	Single-Family Housing – Zoned R-2 (Single Family Residential)
West:	Winters High School Campus – Zoned PQP (Public Quasi Public)

Historically, the site was farmed (walnut orchard). There are a few large olive trees and a single-family residence with outbuildings (all vacant). The property is flat.

BACKGROUND:

In July 2008 the Planning Commission recommended to the City Council approval of a general plan amendment and zoning change for the western portion (1.42 acres) of the subject property amending the land use designation from Recreation and Parks (PR) to Medium Density Residential (MR) and rezoning it from Parks and Recreation (P-R) to Single-Family Residential with the conditions that:

1. A development plan for the entire 4.14 acres (currently indicated as 4.21 acres), which includes the 1.42 acre portion, must be presented to the City for consideration at one time; and
2. At the time of development of the 4.21 acres the property owner will be required to dedicate land and/or pay fees for park or recreational purposes, in accordance with then-existing City ordinances.

In October 2008 the Winters City Council adopted a Mitigated Negative Declaration and Mitigation Monitoring Program, Resolution 2008-37 (Attachment A) approving a General Plan Amendment amending the land use designation for 1.42 acres from Recreation & Parks (RP) to Medium Density Residential (MR) and Ordinance 2008-10 (Attachment B) approving a rezoning from Parks and Recreation (P-R) to Single-Family Residential (R-2).

On January 27, 2015 the Planning Commission recommended the City Council approve the Tentative Subdivision Map application by Joe and Karen Ogando to subdivide two parcels near Apricot Avenue and Hemenway Street, totaling 4.21 acres, into eighteen (18) lots ranging in size from 6,000 to 10,000 square feet.

On March 17, 2015 the City Council approved the Tentative Subdivision Map. After approving the map the applicant chose not to proceed with preparing a Final Map. After the Council's action on March 17 staff discovered that the density of the approved Tentative Map was based on the original Medium Density (4.1 to 6 units per acre) land use category included in the 1992 General Plan. In 2003 the City Council amended the Medium Density land use category by increasing the allowable density to 5.4 to 8.8 units per acre. The effect of this change increased the minimum allowable density for the two parcels to twenty-one (21) lots. The maximum allowable density is thirty-seven (37) lots.

On April 25, 2017 Chris Williams (applicant) submitted a revised/amended Tentative Map for a twenty-one (21) lot subdivision for the property known as Olive Grove Subdivision.

On May 22, 2017 the Affordable Housing Steering Committee ("AHSC") reviewed the Affordable/Inclusionary Housing Plan (AHP/IHP) for the Olive Grove Subdivision. The AHSC discussion resulted in their recommendation to the Planning Commission and City Council that the Olive Grove AHP be approved. That discussion acknowledged the desirability of smaller in-fill projects like Olive Grove, and also recognized the financial challenges of small in-fill projects.

On May 23, 2017 the Planning Commission considered the revised Tentative Map. At the conclusion of the hearing the Planning Commission recommended the City Council approve the revised Tentative Map application (Attachment C).

On June 13, 2017 the Planning Commission considered the IHP. The Planning Commission voted unanimously (5-0, with one Planning Commissioner absent) to recommend the City Council approve/accept the proposed Inclusionary Housing Plan for the Olive Grove Subdivision.

PROJECT DESCRIPTION:

Project applicant, Chris Williams, is seeking approval of a revised tentative subdivision map dividing the existing two parcels (003-391-005 & 003-392-001 near Apricot Avenue and Hemenway Street, totaling 4.21 acres, into twenty-one (21) residential lots with ranging in size from 4,186 to 15,533 square feet (Attachment D).

ANALYSIS:

The configuration of the proposed lots as shown on Attachment C is consistent with the City's General Plan and standards of the subdivision and zoning ordinances; meeting minimum lot size requirements. Per the Table 3B in 17.56.010 of the Zoning Ordinance, the minimum lot size for an affordable unit is 3,500 square feet. The applicant is proposing to place an affordable unit on Lot 11. The AHP supported the applicant's proposal to put an affordable unit on Lot 11. The proposed density of development is consistent with the Medium Density Residential (MR) land use, which allows a range of

21 to 37 lots, and Single Family Residential (R-2, 6000 square foot) zoning.
The project site is surrounded by residential uses, the Winters High School Campus, and the Winters Cemetery. Division of the property as proposed would allow for the construction of one single-family residence on each lot. No conflict with easements acquired by the public at large, for access through or use of, property within the proposed project have been identified.

Access to proposed lots (6 through 21) is from the existing Apricot Avenue, which will be completed, and the newly created street "Olive Court". Five lots (1 through 5) will be accessed from Hemenway Street. Review by Public Safety was performed during map-check and the configuration of the roadway was determined to be acceptable with the comment that the driveway for the flag lot (10) adjacent to the Cemetery be built to accommodate fire apparatus. Dedication of road right-of-ways and the public utility easements (PUE) will be handled by grant deed that must be approved by the City Council before the Final Map is recorded.

Sidewalks are to be constructed within the PUE along existing Apricot Avenue, and the newly created "Olive Court". Staff and the applicant concurred that continuation of the existing monolithic sidewalk configuration is acceptable and will continue the same layout and aesthetic along this stretch of Apricot Avenue.

The applicant will attempt to relocate the existing very large olive trees located on the site to specific visual points in the subdivision and any existing usable orchard trees that can be saved will be preserved on site.

Water and sewer services would be provided by the City of Winters. Other services, such as gas and electricity, will be provided by PG&E.

AFFORDABLE HOUSING:

The applicant has the responsibility to satisfy the requirements of the Affordable Housing/Inclusionary Program (AHP/IHP) for the City of Winters. The affordable housing requirements seek to promote a balance between encouraging the development of market-rate housing and mixed-use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of individuals of very low, low, and moderate income within the City. Section 17.200.030 of the City's Municipal Code regarding Inclusionary Housing Requirements states:

(A) Number and Affordability of Units, except as otherwise provided for in this Chapter, all development projects consisting of five (5) or more residential units within the City of Winters shall include inclusionary housing units equal to fifteen percent (15%) of the total number of residential units in the development project excluding density bonus units. The fifteen percent (15%) inclusionary housing requirement shall consist of six percent (6%) very low income units and nine percent (9%) low income or moderate income units in

proportion to the unmet needs for each identified in the current housing element.

The obligation for Olive Grove Subdivision is one (1) very-low income unit, one (1) low-income unit, and one (1) moderate income unit.

See discussion regarding AHP/IHP in the staff report dated July 18, 2017.

PARK IN-LIEU FEE: Discussion occurred between City staff and the applicant on ways to address the park requirement. There is no park or recreational facility designated in the City's General Plan to be located in whole or in part within the proposed project. Also in part due to the small size of the subject property, and the small amount of land to be dedicated to park use, staff and the applicant concurred that the use of park in-lieu fees is appropriate and could be put to the best use.

The formula used to calculate the park in-lieu fee is based on the value of raw residential land in Winters. Fees will be based on actual appraised land values. The fee is calculated by multiplying the land value per acre by 0.015 (per Resolution 93-47). If raw residential land is valued at $250,000.00 (example only) per acre, multiplied by 0.015, the result is a fee of $3,750 per residential unit.

PROJECT NOTIFICATION: Two methods of public notice were used in compliance with State law and the Winters Municipal Code: a legal notice was published in the Winters Express on 6/29/17 and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to the hearing (Attachment E). Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since 07/13/17.

ENVIRONMENTAL ASSESSMENT: A Mitigated Negative Declaration and Mitigation Monitoring Plan were adopted by the Winters City Council on 09/02/08 as part of the General Plan Amendment and Rezone approved by the City Council for the 1.42 acre parcel adjacent to the cemetery. The revised tentative map is consistent with the 2008 approval, therefore, no additional environmental review is necessary.

RECOMMENDED FINDINGS FOR THE REVISED TENTATIVE SUBDIVISION MAP (21 LOTS) FOR PARCELS 003-391-005 & 003-392-001 NEAR APRICOT AVENUE AND HEMENWAY STREET

CEQA Findings:

1. A Mitigated Negative Declaration and Mitigation Monitoring Plan were adopted by the Winters City Council on 09/02/08

General Plan and Zoning Consistency Findings:

1. The project is consistent with the goals and policies of the General Plan. The General Plan designates the project site as Medium Density Residential (MR) and this designation provides for residential uses such as single-family dwellings, and two-family or duplex dwellings. The applicant anticipates developing the newly created parcels for residential use.

2. The project is consistent with the provisions of the Zoning Ordinance. The property is zoned Single-Family Residential (R-2) and this zone provides for residential use. The applicant anticipates developing the newly created parcels for residential use.

RECOMMENDATION: Staff recommends that the City Council make an affirmative motion as follows:

MOVE CITY COUNCIL APPROVAL RESOLUTION 2017-38 FOR THE "OLIVE GROVE" REVISED TENTATIVE SUBDIVISION MAP (21 LOTS) FOR PARCELS 003-391-005 & 003-392-001 NEAR APRICOT AVENUE AND HEMENWAY STREET, SUBJECT TO THE CONDTIONS OF APPROVAL.

ALTERNATIVES: The City Council can elect to modify any aspect of the approval or recommend denial of the application. If the Council chooses to deny the application, the Council would need to submit findings for the official record that would illustrate the reasoning behind the decision to deny the project.

DENIAL: The tentative map may be denied by the council on any of the grounds provided by the Subdivision Map Act or this code. The council shall deny the tentative map if it makes any of the following findings:

1. That the proposed map or the design or improvement of the proposed subdivision is inconsistent with the general plan, any applicable specific plan, and the provisions of this code; and

2. That the site is not physically suitable for the type of development; and

3. That the site is not physically suitable for the proposed density of development; and

4. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. Notwithstanding the foregoing, the planning commission may recommend approval of such a tentative map if an EIR was prepared with respect to the project and a finding was made pursuant to paragraph (3), subdivision (a) of Section 21081 of CEQA that specific economic,

social or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR; and

5. That the design of the subdivision or the type of improvements are likely to cause serious public health or safety problems; and

6. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. The planning commission may recommend for approval or approval a map if it finds that alternate easements, for access or for use, will be provided and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is granted to the planning commission to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision; and

7. Subject to Section 66474.4 of the Subdivision Map Act, that the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (commencing with Section51200 of the Government Code) and that the resulting parcels following a subdivision of the land would be too small to sustain their agriculture use.

ATTACHMENTS:

A. City Council Resolution 2008-37
B. City Council Ordinance 2008-10
C. Planning Commission minutes dated May 23, 2017
D. Revised Tentative Subdivision Map Exhibits
E. Public Hearing Notice
F. City Council Resolution 2017-38
G. Conditions of Approval

RESOLUTION 2008-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING THE GENERAL PLAN TO CHANGE THE GENERAL PLAN DESIGNATION FROM RECREATION AND PARKS (RP) TO MEDIUM DENSITY RESIDENTIAL (MR) FOR THE PROPERTY LOCATED AT ASSESOR'S PARCEL NUMBER 003-39105

WHEREAS, Section Government Code 65358 authorizes the City Council of City of Winters, upon receipt of a recommendation from the Planning Commission, upon holding a public hearing and hearing all testimony, upon examination and review of the investigative and staff reports and upon ascertaining all other pertinent facts relative thereto, and upon conclusion of public hearing to make determinations and findings of fact as deemed necessary and to approve proposed General Plan amendment and adoption of a Resolution changing General Plan designation; and

WHEREAS, California Government Code section 65350 *et seq.* authorizes the City Council of City of Winters, upon hearing all testimony, upon examination and review of the investigative and staff reports and upon ascertaining all other pertinent facts relative thereto, and upon conclusion of public hearing to make determinations and findings of fact as deemed necessary and to approve proposed General Plan amendment and adoption of a Resolution changing General Plan designation; and

WHEREAS, the Planning Commission of the City of Winters held a duly noticed public hearing and recommended that the City Council approve a General Plan Amendment to change the General Plan designation from Parks and Recreation to Medium Density Residential for the real property abutting Hemenway Street, APN 003-391-05 shown in Attachment "A"; and

WHEREAS, the City Council of the City of Winters held a public hearing on September 2, 2008, for this General Plan Amendment following notice duly and regularly given as required by law and interested parties were heard; and

WHEREAS, the City Council has carefully considered all pertinent testimony, staff report and Planning Commission recommendations in the case as presented at the public hearing of September 2, 2008; and

WHEREAS, the proposed General Plan Amendment is necessary to carry out general purpose and provisions of General Plan; and

WHEREAS, the proposed General Plan Amendment is required by public necessity and convenience, and will promote general welfare.

ATTACHMENT A

NOW THEREFORE, the City Council of the City of Winters does hereby resolve as follows:

SECTION 1. Pursuant to the State California Environmental Quality Act (CEQA) Guidelines, the City Council finds that:

9. The City Council has considered the proposed Mitigated Negative Declaration before making a decision on the project.

10. The City Council has considered comments received on the Mitigated Negative Declaration during the public review process.

11. The City Council finds that the environmental checklist/initial study identified potentially significant effects, but: a) mitigation measures agreed to by the applicant before the mitigated negative declaration and initial study were released for public review would avoid the effects or mitigate the effects to a point where clearly no significant impact would occur; and b) there is no substantial evidence, in light of the whole record before the City, that the project as revised to include the mitigation measures may have a significant effect on the environment.

12. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City of Winters.

13. The Mitigated Negative Declaration has been prepared in compliance with CEQA and the State CEQA Guidelines, and is determined to be complete and final.

14. The custodian of the documents, and other materials, which constitute the record of proceedings is the Community Development Director. The location of these items is the office of the Community Development Department at City Hall, 318 First Street, Winters, California 95694.

15. The Mitigation Monitoring and Reporting Plan is hereby adopted to ensure implementation of mitigation measures identified in the Mitigated Negative Declaration. The City Council finds that these mitigation measures are fully enforceable as conditions of approval of the project, and shall be binding on the applicant, future property owners, and affected parties.

16. The City Council hereby adopts the Valadez General Plan Amendment and Rezone Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

SECTION 2. Pursuant to Section 65358 of the California Government Code, the City Council of the City of Winters does hereby approves the adoption of a General Plan Amendment to change the General Plan designation from Parks and Recreation to Medium Density Residential for the property, APN 003-391-05, designated herein as Attachment "A", attached hereto and made part of this Resolution.

SECTION 3. The City Council of the City of Winters finds that this General Plan Amendment should adopted for the following reasons and findings:

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Exhibit C

CITY OF WINTERS
ORDINANCE NO. 2008-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING THE ZONING MAP TO CHANGE THE ZONING CLASSIFICATION OF CERTAIN PROPERTY KNOWN AS ASSESOR'S PARCEL NO. 003-391-05

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

SECTION 1: The Zoning Map of the City of Winters is amended to change the zoning classification of the property described in Exhibit "A" and depicted in Exhibit "B", which are attached hereto and incorporated herein as though set forth in full ("Subject Property"), and which is also commonly referred to and known as Assessor Parcel No. 003-391-05 and is approximately 1.42 acres, from the P-R Zone to the R-2 Zone, as depicted on Exhibit "B".

SECTION 2: The change in the zoning classification for the Subject Property provided for in Section 1 hereof shall be subject to, and conditioned upon, compliance with all of the conditions set forth in Exhibit "C", which is attached hereto and incorporated herein as though set forth in full.

SECTION 3: The conditions set forth in Exhibit "C" and incorporated herein shall run with the land and shall be directly enforceable by the City of Winters against the owner(s), successors and assigns of the Subject Property.

SECTION 4: The City Council finds in connection with its adoption of this Ordinance, and the imposition of the conditions enumerated in Exhibit "C" hereof and incorporated herein, that the owners of the Subject Property, or authorized representative of the owners, have consented to the imposition of the conditions enumerated in Exhibit "C" hereof. This consent is memorialized in Exhibit "D" which is attached hereto and incorporated herein as though set forth in full.

SECTION 5: This Ordinance shall be in full force and effect 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this Ordinance to be posted in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was **INTRODUCED** at a regular meeting of the City Council of the City of Winters, California, held on September 16, 2008, and was **PASSED AND ADOPTED** at a regular meeting of the City Council held on October 7, 2008, by the following vote:

EXHIBIT A

All that real property situated in the City of Winters, County of Yolo, State of California, described as follows:

A portion of Block 13 of Hills Subdivision of the Northeast Quarter of Section 21, Township 8 North, Range 1 West, M. D. B. & M., according to the official plat thereof, filed for record in the office of the Recorder of Yolo County, California, on August 31, 1885, in Book 39 of Deeds, at page 63, described as follows:

That portion of said block which lies South of a line which commences on the East boundary of said block, distant thereon 322.85 feet South of the Northeast corner thereof, and extends thence West, at right angles, 690.36 feet to the West line of said block.

Excepting therefrom the following described real property situated in the City of Winters, County of Yolo, State of California:

A portion of Block 13 of Hills Subdivision of the N.E. one-quarter of Section 21, Township 8 North, Range 1 West, M.D.B.& M., as said subdivision is shown on that map filed in Book 39 of Deeds, at page 63 of Official Records of Yolo County, California, and being more particularly described as follows: BEGINNING at the northerly terminus of the center-line of Apricot Avenue that is distant South 89 Deg. 42'24" West 140.91 feet from the Northeast Corner of Subdivision No. 2110, also known as Kaiser-Aetna, Winters, as said subdivision is shown on that map filed in Book 8 of Maps at pages 32 and 33 of Official Records of Yolo County; thence, from said point of beginning along the northerly boundary of said Subdivision No. 2110, South 89 Deg. 42'24" West 26.54 feet; thence, leaving said northerly boundary, North 19 deg. 55' 12" West approximately 324.48 feet plus or minus to the southerly boundary of that parcel of land conveyed to the Dearborn Development Co. by Stanley N. Davis and Ruth Wood Davis by deed November 19, 1965, in Book 830 of Official Records of Yolo County, at pages 84 and 85; thence, along said southerly boundary, North 89 deg. 47' 37" East 53.11 feet; thence, leaving said southerly boundary, South 19 deg. 55' 12" East approximately 324.39 feet plus or minus to the northerly boundary of said Subdivision No. 2110; thence, along said northerly boundary, South 89 deg. 42' 24" West 26.55 feet to the point of beginning.

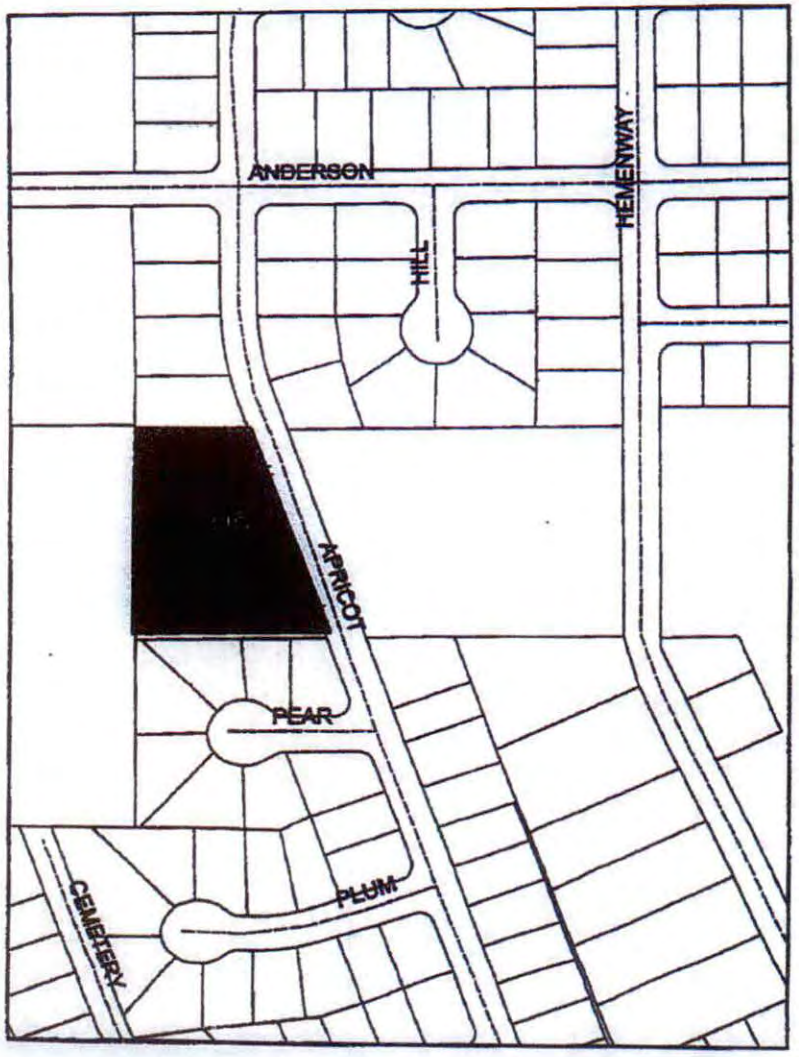
Yolo County A.P.N. 3-392-01

Yolo County A.P.N. 3-391-05

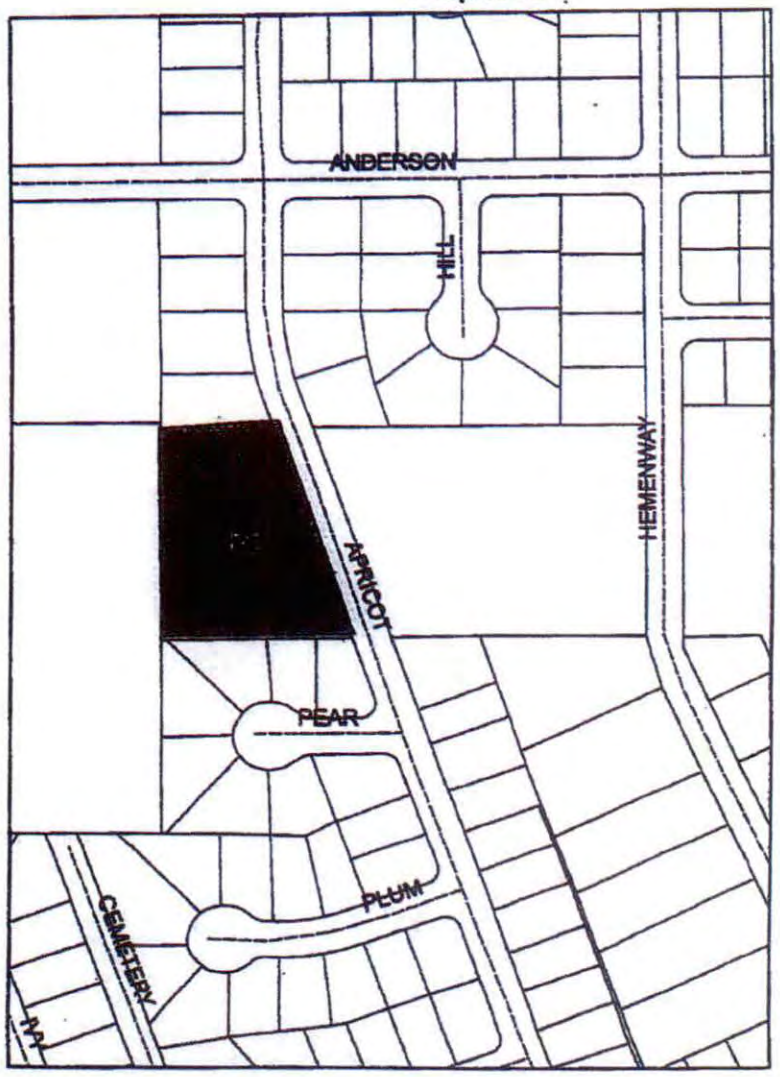
EXHIBIT A
Felix Valadez Family Trust
Petition for Reissuance of Order Nunc Pro Tunc

Rezone Exhibit

Existing



Proposed



Prepared by Jon Mitchell, Winona Community Development Department – June 16, 2005

EXHIBIT "C"

REZONE CONDITIONS

1. In order to promote the compatibility of the development with the surrounding neighborhood, a development plan for the entire 4.14 acre parcel, which includes APN # 003-391-05 (1.421 acres) and APN #003-0392-01 (2.719 acres) shall be presented to the City of Winters for consideration at one time, as opposed to submitting separate and independent plans for either the eastern or western portion of the site.

2. The property owner understands and acknowledges that at the time of development of the 4.14 acre parcel, which includes the Subject Property, there will be a requirement to dedicate land and/or pay fees for park or recreational purposes, in accordance with then-existing City ordinances, and the property owner agrees to comply with such ordinances.

3. The property owner agrees to provide any successor-in-interest to the 4.14 acre parcel, which includes the Subject Property, or any portion thereof, with a complete copy of this Ordinance.

MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD MAY 23, 2017

DISCUSSION ITEM:

C. Public Hearing and Consideration of the following entitlements for two parcels (003-391-005 & 003-392-001) near Apricot Avenue and Hemenway Street:
   a. Finding the project to be consistent with Mitigated Negative Declaration approved by the City Council on September 2, 2008.
   b. An application for a revised Tentative Subdivision Map to subdivide 4.21 acres into 21 lots.

COMMISSIONER/STAFF COMMENTS:

Contract Planner Dave Dowswell shared background information about the proposed project near Apricot Avenue and Hemenway Street.

PUBLIC COMMENTS:

Joe Bristow, 405 Pear Place, asked if the homes proposed are going to be two stories. Bristow also stated his concerns about the traffic now that Apricot Avenue will be a through street.

Dave Dowswell stated that a determination will be made at later date in regards to single or two story homes on the site. Property owners who received notices for this meeting will be noticed when the house plans come forward.

Don Jordan, 718 Hemenway Street expressed his concern about having smaller lots along Hemenway Street in comparison to the preexisting larger lots to the south.

COMMISSIONER/STAFF COMMENTS:

Commissioner Myer asked why larger lots were not as favorable as smaller lots when discussions began on what to do with this property.

Dave Dowswell commented the plan is for the minimum number of lots allowed. The applicant can apply for a General Plan Amendment and Rezoning, but other problems would arise such as affordable housing requirements. The applicant would have to pay for a General Plan Amendment and Rezoning.

Commissioner Baker stated the city/developers should not run afoul of the affordable housing requirements.

Commission Myer and Dowswell discussed Subdivision Improvement Plan requirements. John Donlevy also commented on the requirements. Discussion ensued.

Commissioner Contreras asked if the homes on Hemenway Street are smaller than the surrounding homes. Dowswell stated that the lots are smaller, but the sizes of the homes have not yet been determined.

Chairperson Frazier commented the lot sizes are not consistent to the specific area.

Don Jordan stated his displeasure with the City's emphasis on affordable housing. Jordan continued by saying that larger lots should be made more available.

Applicant stated that applying and paying for a General Plan Amendment and Rezone is not realistic to do because of the State's affordable housing requirements.

ATTACHMENT C

Commissioner Adams commented that the lot sizes on Mermod Road are very modest and similar in size to the lot sizes in the proposed development.

Commissioner Baker moved with changes.

Commissioner Baker seconded.

AYES: Commissioners Adams, Baker, Contreras, Vice Chairperson Myer

NOES: Chairperson Frazier

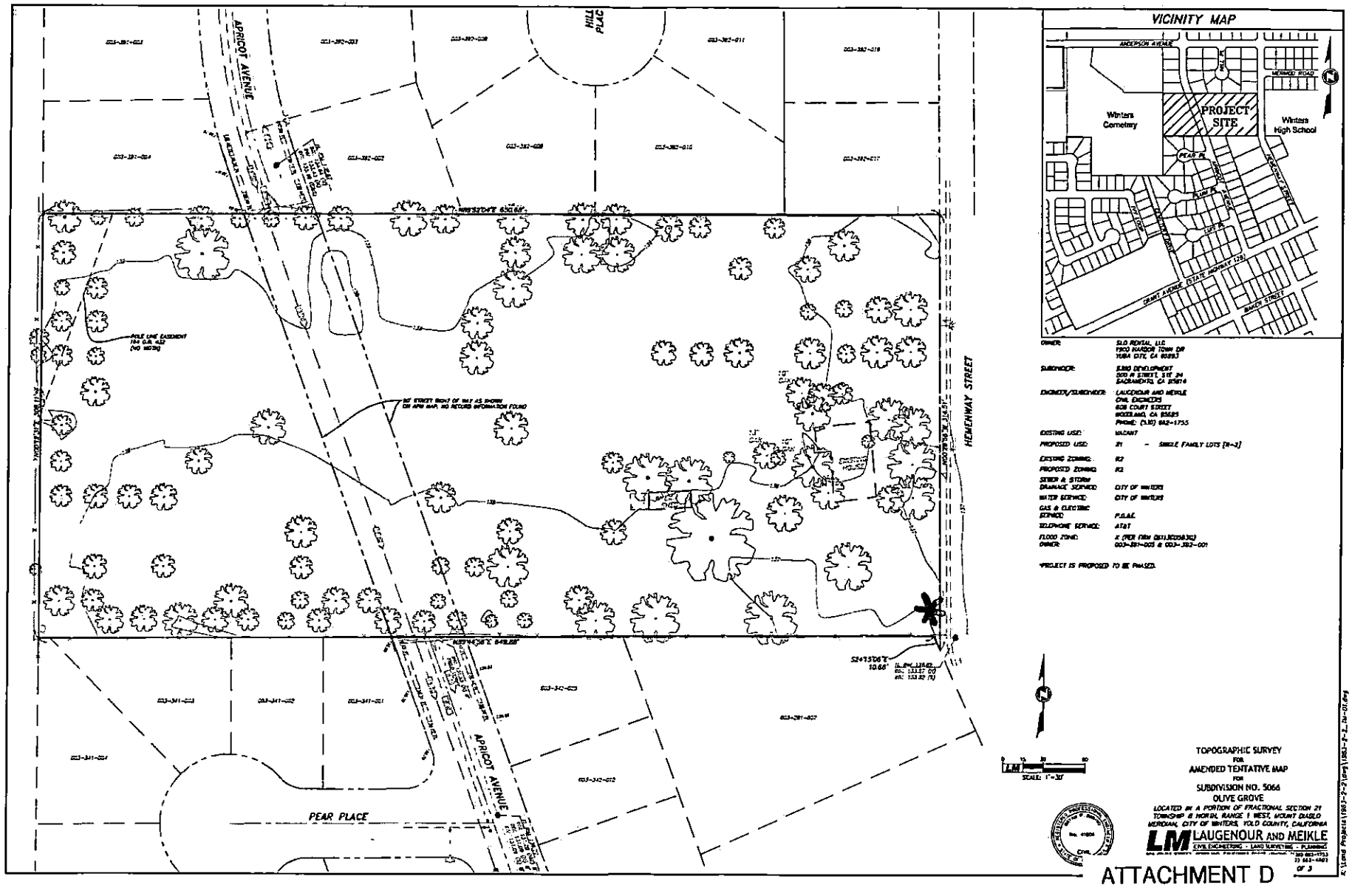
ABSTAIN: None

ABSENT: Riley

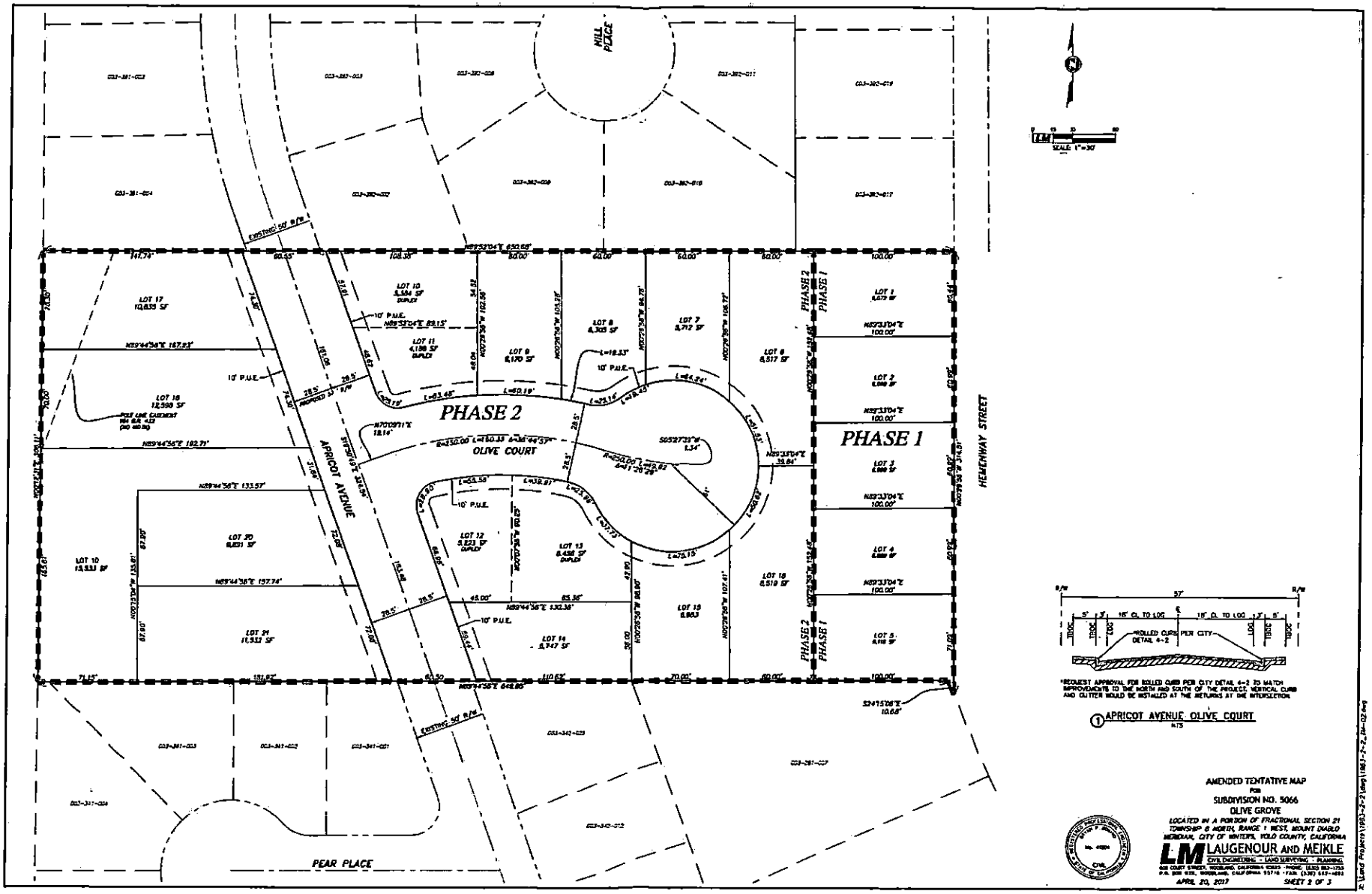
ADJOURNMENT: Chairperson Frazier adjourned the meeting at 7:38pm.

ATTEST:_____ _____

Dagoberto Fierros, Management Analyst Kate Frazier, Chairperson



ATTACHMENT D


PHASE 2
PHASE 1
OLIVE COURT
APRICOT AVENUE
HEMENWAY STREET
HILL PLACE
PEAR PLACE
LOT 17 10,835 SF
LOT 16 12,590 SF
LOT 10 13,933 SF
LOT 20 8,831 SF
LOT 21 11,933 SF
LOT 10 8,384 SF DUPLEX
LOT 11 4,196 SF DUPLEX
LOT 9 8,170 SF
LOT 8 8,325 SF
LOT 7 8,712 SF
LOT 6 8,517 SF
LOT 12 8,823 SF DUPLEX
LOT 13 8,436 SF DUPLEX
LOT 14 8,747 SF
LOT 15 8,863
LOT 16 8,519 SF
LOT 1 8,679 SF
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LOT 3
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LOT 5 8,118 SF
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10' P.U.E.
SCALE: 1"=30'
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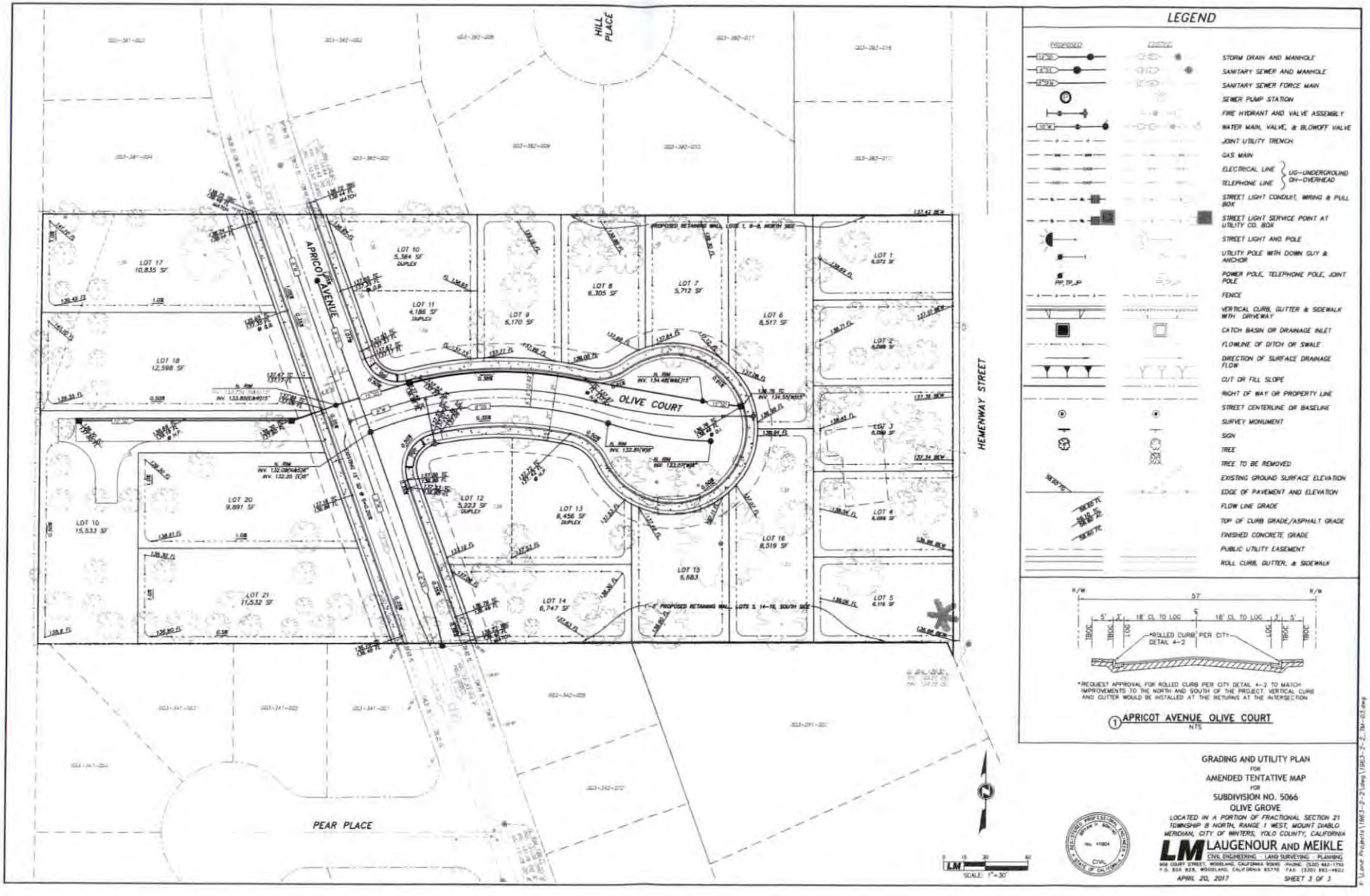
5' 3' 15' CL TO LOC 15' CL TO LOC 3' 5'
ROLLED CURB PER CITY DETAIL 4-2
*REQUEST APPROVAL FOR ROLLED CURB PER CITY DETAIL 4-2 TO MATCH IMPROVEMENTS TO THE NORTH AND SOUTH OF THE PROJECT. VERTICAL CURB AND GUTTER WOULD BE INSTALLED AT THE RETURNS AT THE INTERSECTION.
1 APRICOT AVENUE OLIVE COURT
NTS
AMENDED TENTATIVE MAP
FOR
SUBDIVISION NO. 5066
OLIVE GROVE
LOCATED IN A PORTION OF FRACTIONAL SECTION 21
TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT DIABLO
MERIDIAN, CITY OF WINTERS, YOLO COUNTY, CALIFORNIA
LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING - LAND SURVEYING - PLANNING
APRIL 20, 2017
SHEET 2 OF 3


HILL PLACE
APRICOT AVENUE
OLIVE COURT
HEMENWAY STREET
PEAR PLACE
LOT 17 10,835 SF
LOT 18 12,598 SF
LOT 10 15,533 SF
LOT 20 9,891 SF
LOT 21 11,532 SF
LOT 10 5,384 SF DUPLEX
LOT 11 4,186 SF DUPLEX
LOT 12 5,223 SF DUPLEX
LOT 9 6,170 SF
LOT 8 6,305 SF
LOT 7 5,712 SF
LOT 6 8,517 SF
LOT 13 8,456 SF DUPLEX
LOT 14 6,747 SF
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LOT 3 6,099 SF
LOT 4 6,099 SF
LOT 5 6,119 SF
LEGEND
PROPOSED
EXISTING
STORM DRAIN AND MANHOLE
SANITARY SEWER AND MANHOLE
SANITARY SEWER FORCE MAIN
SEWER PUMP STATION
FIRE HYDRANT AND VALVE ASSEMBLY
WATER MAIN, VALVE, & BLOWOFF VALVE
JOINT UTILITY TRENCH
GAS MAIN
ELECTRICAL LINE
TELEPHONE LINE
UG-UNDERGROUND
OH-OVERHEAD
STREET LIGHT CONDUIT, WIRING & PULL BOX
STREET LIGHT SERVICE POINT AT UTILITY CO. BOX
STREET LIGHT AND POLE
UTILITY POLE WITH DOWN GUY & ANCHOR
POWER POLE, TELEPHONE POLE, JOINT POLE
FENCE
VERTICAL CURB, GUTTER & SIDEWALK WITH DRIVEWAY
CATCH BASIN OR DRAINAGE INLET
FLOWLINE OF DITCH OR SWALE
DIRECTION OF SURFACE DRAINAGE FLOW
CUT OR FILL SLOPE
RIGHT OF WAY OR PROPERTY LINE
STREET CENTERLINE OR BASELINE
SURVEY MONUMENT
SIGN
TREE
TREE TO BE REMOVED
EXISTING GROUND SURFACE ELEVATION
EDGE OF PAVEMENT AND ELEVATION
FLOW LINE GRADE
TOP OF CURB GRADE/ASPHALT GRADE
FINISHED CONCRETE GRADE
PUBLIC UTILITY EASEMENT
ROLL CURB, GUTTER, & SIDEWALK
R/W
57'
5' 3' 18' CL TO LOG 18' CL TO LOG 3' 5'
ROLLED CURB PER CITY DETAIL 4-2
*REQUEST APPROVAL FOR ROLLED CURB PER CITY DETAIL 4-2 TO MATCH IMPROVEMENTS TO THE NORTH AND SOUTH OF THE PROJECT. VERTICAL CURB AND GUTTER WOULD BE INSTALLED AT THE RETURNS AT THE INTERSECTION
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SCALE: 1"=30'
GRADING AND UTILITY PLAN
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OLIVE GROVE
LOCATED IN A PORTION OF FRACTIONAL SECTION 21
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MERIDIAN, CITY OF WINTERS, YOLO COUNTY, CALIFORNIA
LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
808 COURT STREET, WOODLAND, CALIFORNIA 95695 PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 FAX: (530) 662-4822
APRIL 20, 2017
SHEET 3 OF 3

NOTICE OF PUBLIC HEARING BEFORE THE CITY COUNCIL OF THE CITY OF WINTERS

NOTICE IS HEREBY GIVEN that the City of Winters will conduct a Public Hearing by the City Council on Tuesday, July 18, 2017 at 6:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California to consider an application from Chris Williams for a revised Tentative Map (21 lots) for parcels APN 003-391-005 and 003-392-001 near Apricot Avenue and Hemenway Street. Lots will vary in size from 4,186 square feet to 15,333 square feet. The applicant is also seeking approval of his affordable housing plan (AHP). On May 23, 2017 the Tentative Map was reviewed by the Planning Commission at a noticed public hearing. Following the public hearing the Planning Commission recommended the City Council approved the Tentative Map. On June 13, 2017 the AHP was reviewed by the Planning Commission at a noticed public hearing. Following the hearing the Planning Commission recommended the City Council approve the AHP.

Any person having an interest in any property affected by the proposed Tentative Map and AHP (project) may appear at the above hearing either in person or by counsel or both and may be heard in support of his/her position. If you challenge the decision of this project in court, pursuant to Government Code 65059, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City or Winters at or prior to the public hearing.

The purpose of the public hearing is to give citizens an opportunity to make comments known. If you are unable to attend the public hearing you may direct written comments to the City of Winters, City Clerk, 318 First Street, Winters, CA 95694 or may telephone (530) 795-4910, ext. 101, before the hearing. Prior to the scheduled City Council hearing copies of the staff report and the Amended and Restated Development Agreement will be available to review at City Hall, at the above address, between the hours of 8:00 am and 5 pm Monday through Friday. Copies of staff report will also be available on the City's website www.cityofwinters.org.

If you plan on attending the hearing and need special accommodation because sensory or mobility impairment, please contact Nanci Mills, City Clerk, (530) 795-4910, extension 101, to arrange those accommodations.

ATTACHMENT E

RESOLUTION NO. 2017-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS APPROVING A TENTATIVE SUBDIVISION MAP FOR THE OLIVE GROVE SUBDVISION

WHEREAS, on May 23, 2017 the Planning Commission of the City of Winters recommended to the City Council approval of Revised Tentative Subdivision Map No. 5066 for the Olive Grove Subdivision (the "Tentative Map"); and

WHEREAS, the Revised Tentative Map is in the form attached hereto as **Exhibit A,**

WHEREAS, the Tentative Map was reviewed, studied, and found to comply with the California Environmental Quality Act ("CEQA") as more fully described below;

WHEREAS, in July 2008 the Planning Commission of the City of Winters ("Planning Commission") conducted a duly noticed public hearing to consider a General Plan Amendment for the western portion of this property to amend it from Parks & Recreation to Single Family Residential in both Zone and Land Use. Planning Commission recommended approval and in October 2008 the application was approved by City Council. As part of this action a Mitigated Negative Declaration and Mitigation Monitoring Program were adopted;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINTERS RESOLVES AS FOLLOWS:

SECTION 1. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, the City Council hereby approves Revised Tentative Map as depicted in **Exhibit A.**

SECTION 2. Except as specifically amended herein, the Revised Tentative Map, all Findings of Fact and Conditions of Approval approved by the City Council therewith, and all other approvals and conditions approved by the City pursuant to Resolution No 2017-38 remain in full force and effect.

SECTION 3. This Resolution shall become effective upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the City Council of the City of Winters at a regular meeting held on the 18th day of July, 2017, by the following vote:

AYES:

NOES:

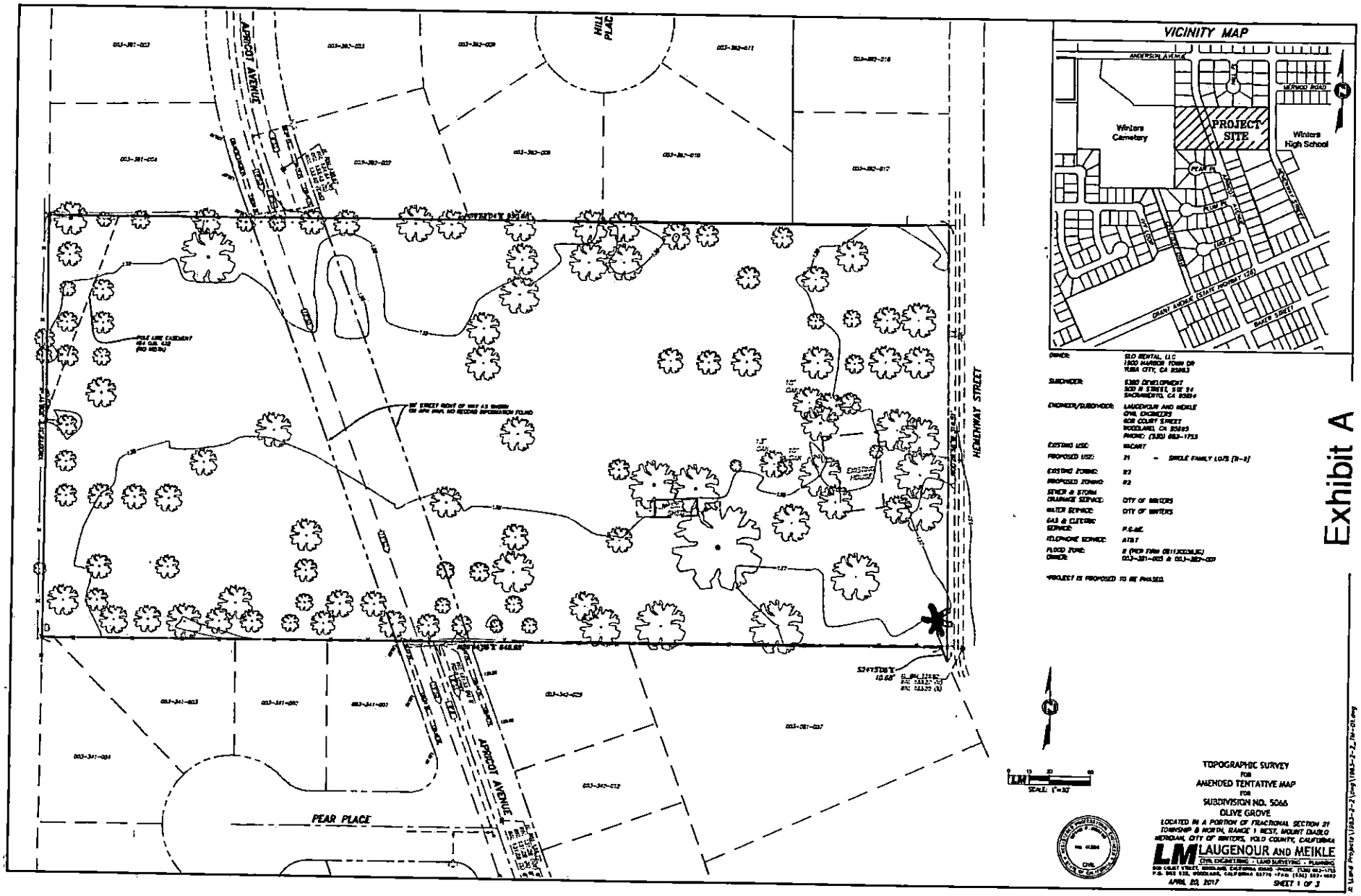
ABSENT:

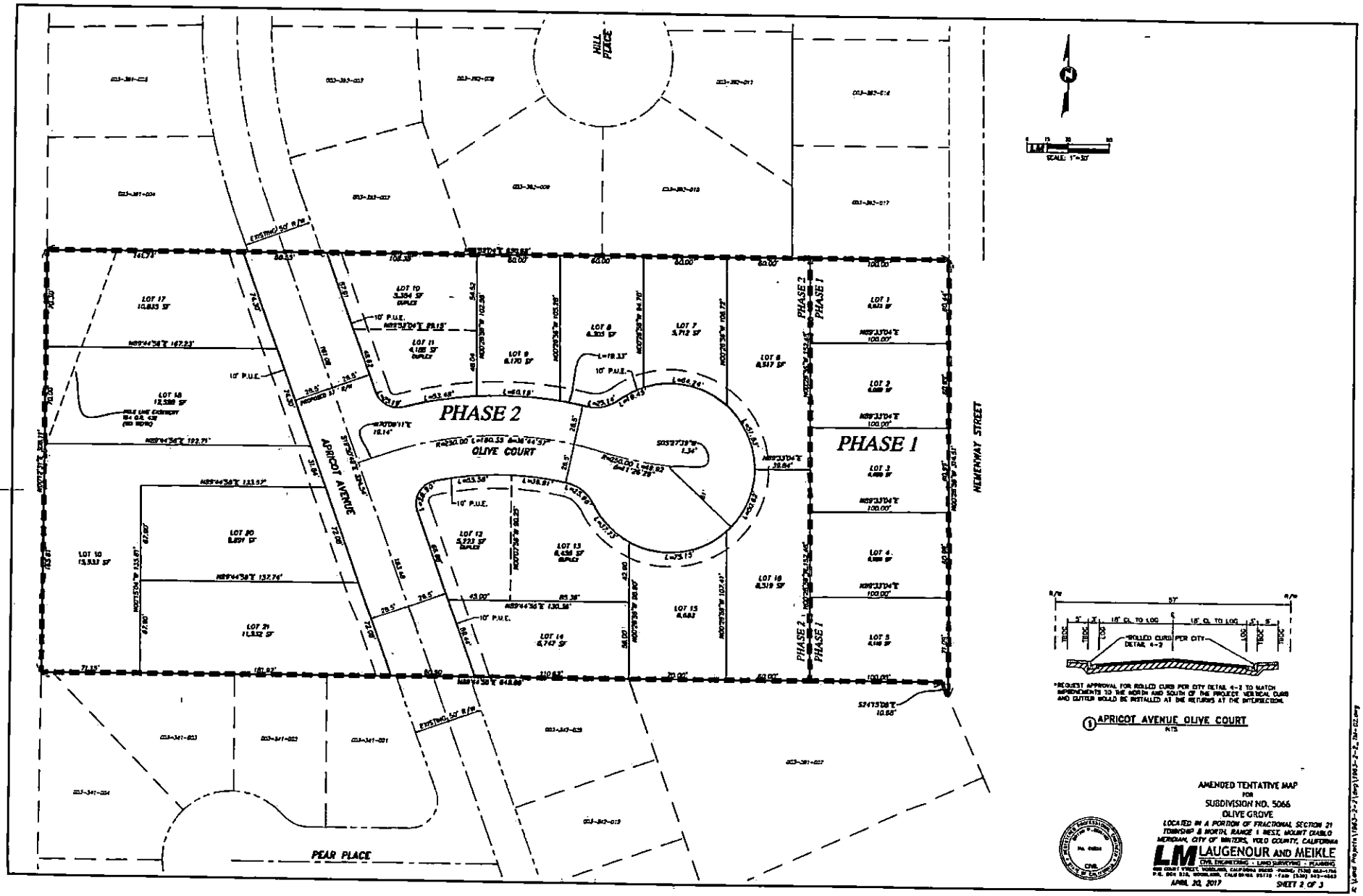
Wade Cowan, Mayor
City of Winters

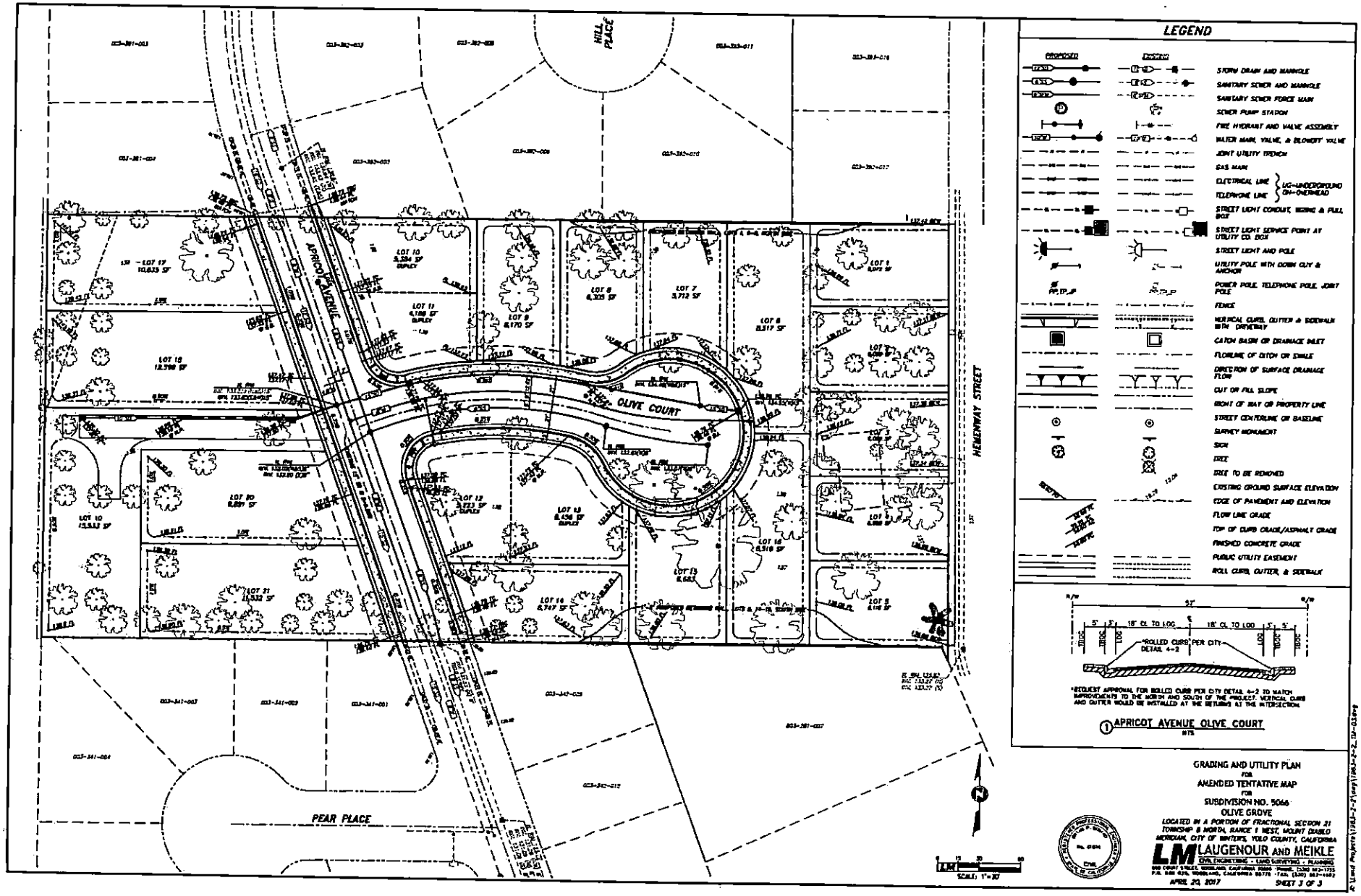
Nanci G. Mills, City Clerk
City of Winters

ATTACHMENT F

Exhibit A


VICINITY MAP
ANDERSON AVENUE
MERWOOD ROAD
Winters Cemetery
PROJECT SITE
Winters High School
PEAR PL
PLUM PL
GRANT AVENUE (STATE HIGHWAY 128)
BAKER STREET
HILL PLACE
APRICOT AVENUE
HOMEWAY STREET
PEAR PLACE
EXISTING HOUSE
OWNER: SLO RENTAL, LLC 1900 HARBOR TOWN DR YUBA CITY, CA 95993
SUBDIVIDER: SUBD DEVELOPMENT 300 N STREET, STE 51 SACRAMENTO, CA 95814
ENGINEER/SURVEYOR: LAUGENOUR AND MEIKLE CIVIL ENGINEERS 808 COLUSA STREET WOODLAND, CA 95695 PHONE: (530) 662-1753
EXISTING USE: VACANT
PROPOSED USE: 21 - SINGLE FAMILY LOTS (R-1)
EXISTING ZONING: R2
PROPOSED ZONING: R2
SEWER & STORM DRAINAGE SERVICE: CITY OF WINTERS
WATER SERVICE: CITY OF WINTERS
GAS & ELECTRIC SERVICE: P.G.&E.
TELEPHONE SERVICE: AT&T
FLOOD ZONE: X (PER FIRM 06113C0336J)
OWNER: 003-381-025 & 003-382-007
*PROJECT IS PROPOSED TO BE PHASED.
SCALE: 1"=30'
TOPOGRAPHIC SURVEY
FOR
AMENDED TENTATIVE MAP
FOR
SUBDIVISION NO. 5066
OLIVE GROVE
LOCATED IN A PORTION OF FRACTIONAL SECTION 21 TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT DIABLO MERIDIAN, CITY OF WINTERS, YOLO COUNTY, CALIFORNIA
LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING • LAND SURVEYING • PLANNING
808 COLUSA STREET, WOODLAND, CALIFORNIA 95695 PHONE: (530) 662-1753
P.O. BOX 1128, WOODLAND, CALIFORNIA 95776 FAX: (530) 662-4832
APRIL 20, 2017
SHEET 1 OF 3


HILL PLACE
PHASE 2
OLIVE COURT
PHASE 1
APRICOT AVENUE
HENENWAY STREET
PEAR PLACE
LOT 17 10,835 SF
LOT 18 12,580 SF
LOT 10 13,933 SF
LOT 20 8,891 SF
LOT 21 11,832 SF
LOT 10 5,384 SF DUPLEX
LOT 11 4,185 SF DUPLEX
LOT 9 6,170 SF
LOT 8 6,303 SF
LOT 7 5,712 SF
LOT 6 6,517 SF
LOT 12 5,721 SF DUPLEX
LOT 13 6,456 SF DUPLEX
LOT 14 6,747 SF
LOT 15 6,683
LOT 16 6,519 SF
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
10' P.U.E.
EXISTING 50' R/W
PROPOSED 57' R/W
SCALE: 1"=50'
*REQUEST APPROVAL FOR ROLLED CURB PER CITY DETAIL 4-2 TO MATCH IMPROVEMENTS TO THE NORTH AND SOUTH OF THE PROJECT. VERTICAL CURB AND GUTTER WOULD BE INSTALLED AT THE RETURNS AT THE INTERSECTIONS.
ROLLED CURB PER CITY DETAIL 4-2
1 APRICOT AVENUE OLIVE COURT
NTS
AMENDED TENTATIVE MAP
FOR
SUBDIVISION NO. 5066
OLIVE GROVE
LOCATED IN A PORTION OF FRACTIONAL SECTION 21
TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT DIABLO
MERIDIAN, CITY OF WINTERS, YOLO COUNTY, CALIFORNIA
LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
APRIL 20, 2017
SHEET 2 OF 3


HILL PLACE
APRICOT AVENUE
OLIVE COURT
HEMENWAY STREET
PEAR PLACE
LOT 17 10,619 SF
LOT 10 5,384 SF DUPLEX
LOT 11 4,186 SF DUPLEX
LOT 9 4,170 SF
LOT 8 6,205 SF
LOT 7 3,712 SF
LOT 6 5,517 SF
LOT 1 8,072 SF
LOT 18 12,398 SF
LOT 20 8,891 SF
LOT 12 3,723 SF DUPLEX
LOT 13 4,436 SF DUPLEX
LOT 14 5,310 SF
LOT 15 6,643
LOT 16 5,707 SF
LOT 5 6,116 SF
LOT 10 13,513 SF
LOT 21 11,533 SF
LEGEND
PROPOSED
EXISTING
STORM DRAIN AND MANHOLE
SANITARY SEWER AND MANHOLE
SANITARY SEWER FORCE MAIN
SEWER PUMP STATION
FIRE HYDRANT AND VALVE ASSEMBLY
WATER MAIN, VALVE, & BLOWOFF VALVE
JOINT UTILITY TRENCH
GAS MAIN
ELECTRICAL LINE
TELEPHONE LINE
UG-UNDERGROUND OH-OVERHEAD
STREET LIGHT CONDUIT, WIRING & PULL BOX
STREET LIGHT SERVICE POINT AT UTILITY CO. BOX
STREET LIGHT AND POLE
UTILITY POLE WITH DOWN GUY & ANCHOR
POWER POLE, TELEPHONE POLE, JOINT POLE
FENCE
VERTICAL CURB, GUTTER & SIDEWALK WITH DRIVEWAY
CATCH BASIN OR DRAINAGE INLET
FLOWLINE OF DITCH OR SWALE
DIRECTION OF SURFACE DRAINAGE FLOW
CUT OR FILL SLOPE
RIGHT OF WAY OR PROPERTY LINE
STREET CENTERLINE OR BASELINE
SURVEY MONUMENT
SIGN
TREE
TREE TO BE REMOVED
EXISTING GROUND SURFACE ELEVATION
EDGE OF PAVEMENT AND ELEVATION
FLOW LINE GRADE
TOP OF CURB GRADE/ASPHALT GRADE
FINISHED CONCRETE GRADE
PUBLIC UTILITY EASEMENT
ROLL CURB, GUTTER, & SIDEWALK
R/W
52'
5' 5' 18' CL TO LOC 18' CL TO LOC 5' 5'
CONC. SIDEWALK
CONC. CURB
CONC. GUTTER
*ROLLED CURB PER CITY DETAIL 4-2
*REQUEST APPROVAL FOR ROLLED CURB PER CITY DETAIL 4-2 TO MATCH IMPROVEMENTS TO THE NORTH AND SOUTH OF THE PROJECT. VERTICAL CURB AND GUTTER WOULD BE INSTALLED AT THE RETURNS AT THE INTERSECTION.
1 APRICOT AVENUE OLIVE COURT
NTS
SCALE: 1"=30'
GRADING AND UTILITY PLAN
FOR
AMENDED TENTATIVE MAP
FOR
SUBDIVISION NO. 5066
OLIVE GROVE
LOCATED IN A PORTION OF FRACTIONAL SECTION 21
TOWNSHIP 8 NORTH, RANGE 1 WEST, MOUNT DIABLO
MERIDIAN, CITY OF WINTERS, YOLO COUNTY, CALIFORNIA
LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING - LAND SURVEYING - PLANNING
APRIL 24, 2017
SHEET 3 OF 3

Olive Grove Subdivision
FINAL CONDITIONS OF APPROVAL – CITY COUNCIL ACTION 07/18/17

PLANNING CONDITIONS OF APPROVAL

1. The project is described in the July 18, 2017 City Council staff report. The project shall be constructed as depicted on the exhibits dated April 2017, included in the July 18, 2017 City Council staff report, except as modified by these conditions of approval. Substantive modifications require public hearing(s) and Planning Commission action.
2. Approval of the applicant's project shall be null and void if the applicant fails to submit a final map for the project within 36 months of the City Council's approval of the Tentative Map.
3. The applicant shall report to the City building materials diverted from landfilling during the course of their project, pursuant to the provisions of the City of Winters Ordinance 2002-03.
4. The project shall install as part of public improvement conduit for broadband as approved by the City Engineer.

PUBLIC WORKS CONDITIONS OF APPROVAL

5. The conditions as set forth in this document are not all inclusive. Applicant shall thoroughly review all City, state, and federal planning documents associated with this tentative map and comply with all regulations, mitigations and conditions set forth.

6. The applicant agrees to adhere to the terms of the of the ordinance (Ordinance No. 96-02) adopted by the City Council to address impact fees to be paid for development of property within the Rancho Arroyo Drainage District, to offset costs associated with drainage improvements.

7. Closure calculations shall be provided at the time of initial map check submittal. All calculated points within the map shall be based upon one common set of coordinates. All information shown on the map shall be directly verifiable by information shown on the closure calculation print out. The point(s) of beginning shall be clearly defined and all lot acreage shall be shown and verifiable from information shown on the closure calculation print out. Additionally, the square footage of each lot shall be shown on the subdivision map. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

8. A tentative map (Final or Parcel) shall be processed and shall be recorded prior to issuance of a Building Permit. The Developer shall provide, to the City Engineer, one recorded Mylar copy and four print copies of the final map from the County, prior to issuance of the first building permit.

ATTACHMENT G

9. U.S. Post Office mailbox locations shall be shown on the improvement plans subject to approval by the City Engineer and Postmaster.

10. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project applicant shall defend, indemnify, and hold harmless the City or its agents, officers, and employees, from liability, damages, penalties, costs, or expenses in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense, which include court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the applicant in good faith approves the settlement, and the settlement imposes not direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning Commission, any advisory agency to the City, local district, and the City Council.

11. The applicant shall submit a current title report to the City prior to approval of public improvement plans.

12. The City of Winters Plan Review Fee applies and is due upon submittal of plans for review.

13. All street and other required public improvements shall be constructed concurrently, in a single phase operation.

14. A soils/geotechnical report shall be prepared by a qualified engineer to confirm onsite soil capabilities and geological conditions and make recommendations to be followed for development. Grading of the site, design of foundations for proposed structures and construction of other related facilities on the property shall follow the criteria identified in the report. The applicant shall submit the report with the initial improvement plans package. The improvement plans shall be approved and signed by the soils engineer prior to approval by the City.

15. Applicant shall construct public roadway improvements, to include curb, gutter, and sidewalk per the City of Winters Public Improvements Standards and Construction Standards. The City approves Apricot as a 50-foot right of way with monolithic sidewalks, consistent with the existing Apricot to the south.

16. A drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The

drainage plan shall address water-quality, and demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to the existing SD System. The applicant shall pay the cost associated with all improvements required by the plan.

17. An erosion and sedimentation control plan shall be included as part of the improvement plan package. The plan shall be prepared by the applicant's civil engineer and approved by the City Engineer. The plan shall include but not be limited to interim protection measures such as benching, sedimentation basins, storm water retention basins, energy dissipation structures, and check dams. The erosion control plan shall also include all necessary permanent erosion control measures, and shall include scheduling of work to coordinate closely with grading operations. Replanting of graded areas and cut and fill slopes is required and shall be indicated accordingly on plans, for approval by City Engineer.

18. A topographic survey of the entire site and a comprehensive grading plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

19. Construction materials for storm drain pipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).

20. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls.

21. All projects shall include implementation of post-construction best management practices (BMPs). Post construction BMPs shall be identified on improvement plans and approved by the City Engineer. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit, or a WPCP.

22. Landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.

23. A Tentative Map Sewer comprehensive Collection System Master Plan shall be submitted by a registered civil engineer, for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. The plan

shall include final sizing and location of conveyance facilities, structures, and engineering calculations. The applicant shall pay the cost associated with all improvements required by the plan. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

24. The Tentative Map Sewer Plan showing sewer routing, pipe slopes and sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Sewer Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval.

25. A Tentative Map Water comprehensive Distribution System Master Plan shall be submitted by a registered civil engineer, for approval by the City Engineer prior to submittal of the final map and/or construction drawings for checking. The plan shall include final sizing and location of conveyance facilities, structures, and engineering calculations. The applicant shall pay the costs associated with all improvements required by the plan. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

26. At the time the Building Permit is issued, the applicant will be required to pay the appropriate City connection fees. All domestic water services will be metered. water meters shall be installed on all water services to the satisfaction of the Public Works Department.

27. If required, per the Subdivision Map Act, project applicant shall obtain a Water Verification (WV) prior to approval of final map that addresses the following:

28. Actual water service to the subdivision will be predicated upon satisfaction of terms and conditions set by the water supplier

29. The WV is non-transferable, and can only be used for the specific tentative map for which it was issued.

30. The WV shall expire along with the tentative map subdivision map if a final map is not recorded within time allowed under law

31. Until such time as actual service connections are approved for the subdivision, the water agency may withhold water service due to a water shortage declared by the water agency.

32. The Tentative Map Water Plan showing water routing, sizing and locations, are preliminary only and do not constitute approval in any way. Final approval for the Water Plan shall occur with the final improvements based on the requirements set forth in these conditions of approval. Applicant shall comply with making changes to water system distribution pipe sizes and alignments based on the results of the specific water modeling performed for the development. Applicant shall pay for all required water modeling for identifying water infrastructure needs

to serve its development and shall construct offsite water improvements to connect to the City water distribution system.

33. Applicant shall construct water service lateral for irrigation of any landscaping to parcel A and install a meter for the service.

34. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the Public Works Department.

35. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.

36. Landscaping and irrigation plans shall be prepared by a registered landscape architect, and included as part of the improvement plans and/or site plans. These plans shall be per City Standards and the Water Conservation in Landscaping Act of 2006 (AB 1881) and shall be subject to review and approval by the City. The improvement plans shall include landscaping and automatic irrigation for the public right-of-way. Drip irrigation systems shall be used. No substantial change to an approved landscaping or irrigation plan may be made without written approval by the original approving person or body.

37. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers. The landscape water meter shall be installed to the satisfaction of the Public Works Department.

38. Occupancy shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.

39. If relocation of existing infrastructure is deemed necessary, the applicant shall perform the relocation, at the applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.

40. A Subdivision Improvement and Maintenance Agreement shall be entered into and recorded prior to construction of improvements and/or issuance of any building permits.

41. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.

42. The applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the Public Works Department.

43. Applicant shall make every attempt to submit joint trench/utility/composite plans for review, prior to approval of the final map and improvement plans. Construction will not be allowed to proceed prior to submittal of the joint trench/utility/composite plans for City review.

44. All existing and proposed utilities (electric, phone/data, and cable) within 100 feet of the project boundary shall be installed underground per the subdivision ordinance and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers. A common-trench for installation of broadband conduit shall be installed to City Standard and approved by the City Engineer.

45. A ten (10) foot public utility easement back of sidewalk, adjacent to all public streets within the development shall be dedicated to the City and may be required elsewhere as requested by the utility companies and approved by the City.

46. Project proponents shall enter into the Citywide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of street lighting and landscaping, and other related aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to issuance of a building permit.

47. Prepare improvement plans for any work within the public right-of-way and submit them to the City Engineer for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Applicant shall provide, to the City Engineer, two sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer. Final Record Drawings shall be provided on Mylar and electronic media.

48. Street lighting location plan shall be submitted and approved by the Department of Engineering, prior to approval of improvement plans and final recordation of Map.

49. Roads must be constructed and paved prior to issuance of any building permit. Under specific circumstances, temporary roads may be allowed, but must be approved by the City of Winters City Engineer and Fire Department

50. Conform to County Health regulations and requirements for the abandonment of any septic tanks and water wells.

51. Existing public and private facilities damaged during the course of construction shall be repaired by the Applicant at his/her sole expense, to the satisfaction of the City Engineer.

52. All conditions identified herein shall be fully satisfied prior to occupancy, unless otherwise stated.

53. The project shall operate within all applicable requirements of the City Code at all times

54. Landscape material may not be located such that, at maturity it interferes with safe distances for vehicular, bicycle or pedestrian traffic; conflicts with overhead utility lines, overhead lights, or walkway light; or blocks pedestrian or bicycle ways.

55. Street lighting location plan shall be submitted and approved by the City Engineer prior to approval of improvement plans.

56. For the proposed flag-lot: on-site drainage system shall be private and water quality requirements addressed for discharge into the public system. The driveway access to the flag-lot home shall be built to accommodate fire apparatus.

57. A licensed Arborist shall be consulted for the proposed planting of a tree within the cul-de-sac. Also, the civil engineer shall provide a plan to address long-term degradation of the pavement section due to irrigation of the tree.

58. The Fire Department shall review and approve the proposed cul-de-sac design.

59. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.

60. Grading shall not occur when wind speeds exceeds 20 MPH over a one hour period.

61. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.

62. Construction equipment and engines shall be properly maintained.

63. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.

64. Construction practices will minimize vehicle idling.

65. Potentially windblown materials will be watered or covered.

66. Construction areas and streets will be wet swept.

67. At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform to the standards described in Section 8771 of the Business and Professions Code. All monuments necessary to establish the exterior boundaries of the subdivision shall be set or referenced prior to recordation of the final map.

68. The area of each lot, in square feet, shall be calculated and shown on the Final Map.

69. Prior to recording of the Final Map, if required, provide evidence of payment for the Habitat Mitigation Fee. This fee is paid to the Yolo County Planning Department.

CITY OF
WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers

DATE: July 18, 2017

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

FROM: David Dowswell, Community Development Director through

SUBJECT: Creekside Estates Subdivision – Public Hearing and consideration of the proposed Amended and Restated Development Agreement

---

RECOMMENDATION:

Staff recommends the City Council take the following actions:

1. Receive a Staff Report on a proposed Creekside Estates Amended and Restated Development Agreement; and

2. Conduct a Public Hearing to consider comments on the Amended and Restated Development Agreement; and

3. Consider the previously certified and approved CEQA clearance for the Creekside Estates Development Agreement in the form of a Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-16) adopted on May 17, 2005. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement; and

4. Introduce Ordinance No. 2017-03, an ordinance of the City of Winters approving the Amended and Restated Development Agreement, commonly known as the

Creekside Estates Subdivision, between the City of Winters and Catholic Bishop of Sacramento, a California corporation sole.

BACKGROUND:

Beginning in 2005, the City entered into five (5) development agreements with various developers for the subdivision and development of residential projects. In 2007, when the real estate market essentially "crashed" none of the proposed projects proceeded. Because of this, amendments have been initiated and adopted over the past eight years to keep the agreements current and viable for when the real estate market returned. Starting in 2014 a number of the owners of the various approved subdivisions have come forward to commence development. Winters Ranch is nearing completion and grading is due to commence for Winters Highlands and Callahan Estates.

In April 2005, the City approved the Creekside Estates Subdivision (Attachment A) and Development Agreement (DA). In December 2012 a First Amendment (Attachment B) approved a number of changes including extending the term of the agreement until December 20, 2019, amending the language regarding the approval of an agreement with the Winters Unified School District and how the cost of infrastructure improvements needed to develop the required park would be determined.

In 2015 the City met with representatives of Watt Communities, who is looking to buy Creekside Estates from the Roman Catholic Church, to discuss possible amendments to the DA. The amendments to the Creekside Estates DA are essentially to "modernize" it to recognize capital improvements made during the interim, needs of the City and the Developer, and also to acknowledge the new fiscal realities of residential development. The amendments are discussed below.

The Planning Commission considered the Creekside Estates Amended and Restated Development Agreement (Attachment E) on June 13, 2017 at a public hearing. At the conclusion of the hearing the Commission adopted a resolution (Attachment C) recommending the City Council adopt an ordinance (Attachment D) approving the Amended and Restated DA between the City and Catholic Bishop of Sacramento, a California corporation sole.

DISCUSSION:

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

1. Term: Establishes a new term for the DA by extending it to 2022, or (5) years effective from the date of recording.

2. Annuity: Revises the original DA by deleting Section 4.4 regarding the provision requiring a fiscal neutrality annuity payment of $6,500 per unit. This is being

deleted after the same requirement for the Hudson-Ogando, Callahan Estates and Winters Highlands subdivisions was deleted from their DAs based on a revised fiscal analysis indicating these projects will be fiscally neutral.

3. Urban Water Management Plan: Revises language to allow pro-rata share of cost, sharing with Winters Highlands, Hudson-Ogando, and Creekside. The payment shall be due and payable no later than the issuance of the 50th market-rate building permit.

4. Broadband Infrastructure: Revise the Agreement to require the installation of and dedication to the City of broadband conduit infrastructure for all units within the subdivision.

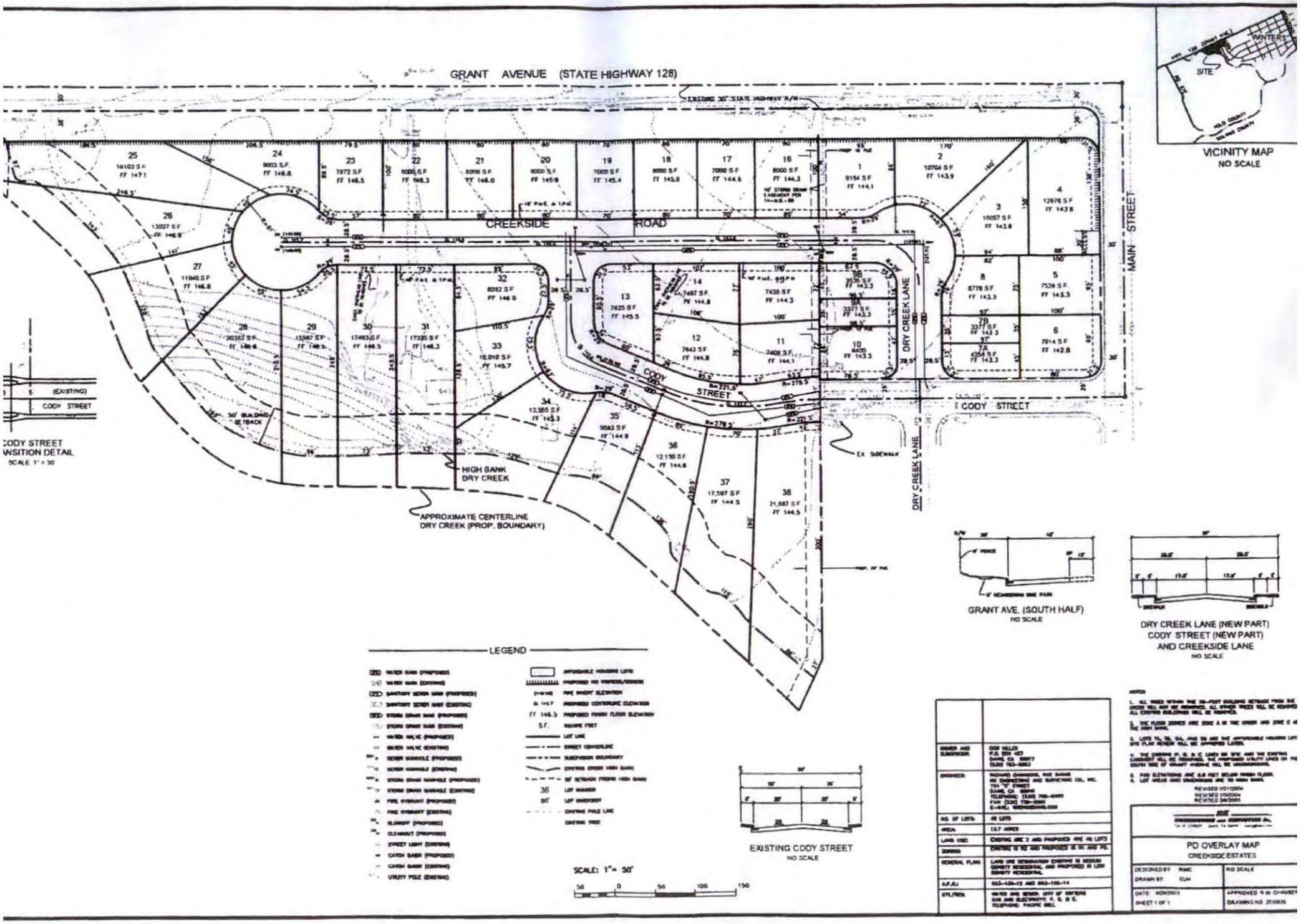
The draft DA (Attachment E) was prepared by the City Attorney. After reviewing the draft DA the applicant requested, which are highlighted in red, a number of changes to the draft DA. The City Attorney reviewed the requested changes and found them to be acceptable except for the deletion of the last sentence in Section 3.6(a). The City Attorney recommends this section remain because "economic conditions" is too subjective to use for extending a final map. The City Attorney supported, as an alternative, extending the time to file the Final Map for the Creekside Estates Subdivision from 150 to 180 days. Staff has highlighted in yellow this possible change.

ENVIRONMENTAL ASSESSMENT

Consider the previously certified and approved CEQA clearance for the Creekside Estates Development Agreement in the form of a Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-16) adopted on May 17, 2005. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amended and Restated Development Agreement

ATTACHMENTS:

A. Subdivision Map
B. Original Development Agreement with First Amendment
C. Planning Commission Resolution 2017-01
D. Ordinance 2017-03
E. Exhibit "A" (Amended and Restated Development Agreement)



ATTACHMENT A

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
City of Winters
318 First Street
Winters, CA 95694
Attn: Community Development Department

YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2005-0063213-00
Acct 118-Winters - NC
Thursday, DEC 22, 2005 08:52:00
Ttl Pd $0.00 Nbr-0000514366
FRT/R5/1-99

CONFORMED COPY
NOT COMPARED
WITH ORIGINAL

AN AGREEMENT

BETWEEN

THE CITY OF WINTERS AND

DONALD MILLER

RELATING

TO THE DEVELOPMENT OF THE PROPERTY

COMMONLY KNOWN AS THE

CREEKSIDE PROPERTY

ATTACHMENT B

AN AGREEMENT
BETWEEN
THE CITY OF WINTERS AND
DONALD MILLER
RELATING
TO THE DEVELOPMENT OF THE PROPERTY
COMMONLY KNOWN AS THE
CREEKSIDE PROPERTY

THIS AGREEMENT is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and DONALD MILLER, (the "Developer"), under the authority of section 65864 *et seq.* of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County.

FACTS AND CIRCUMSTANCES

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

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.

2. The Developer is in the business of developing residential communities in northern California, including the development of property in the manner which promotes the goals envisioned by the City for its residents.

3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the property owned by the Developer, commonly known as the Creekside Property, is through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5 (commencing with Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. It is the intent of the Parties in entering into this Agreement to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain vested rights to develop the Creekside Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

THE PARTIES AGREE AS FOLLOWS:

TABLE OF CONTENTS

This Agreement is divided into articles, sections, and subsections as set forth below. The title of an article, section, or subsection is for the convenience of the Parties only and a title is not intended to alter the content or meaning of any article, section or sub-section.

Article 1. Definitions

Article 2. General Provisions

Article 3. Development of the Property
Article 4. Special Development Obligations
Article 5. Default, Remedies, and Dispute Resolution
Article 6. Hold Harmless and Indemnification

ARTICLE 1
DEFINITIONS

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

Section 1.1 "Agreement" means this agreement.

Section 1.2 "Application fees" means the amount paid by the Developer for the processing of any land use entitlement or for an amendment to this Agreement.

Section 1.3 "Building Permit" means the ministerial permit issued for the construction of a residential housing unit upon the payment of all applicable fees.

Section 1.4 "Creekside Property" or "The Property" means the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcel Nos. 003-430-12 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres). A map showing its location is attached as Exhibit A.

Section 1.5 "Creekside Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, adopted for The Property concurrently with the approval of this Agreement in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Creekside Estates Tentative Subdivision Map is attached as Exhibit C.

Section 1.6 "Creekside Estates" means the single family residential development created by the Creekside Estates Tentative Subdivision Map.

Section 1.7 "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (E.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

Section 1.8 "City of Winters" means the physical boundaries of the City of Winters.

Section 1.9 "Condition of approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

Section 1.10 "Conditions of Approval" means the conditions placed on the approval of the Creekside Estates Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

Section 1.11 "Developer" means Donald Miller and/or his successors in interest.

Section 1.12 "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

Section 1.13 "Final subdivision map" or "final map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

Section 1.14 "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of The Property for such things as traffic circulation, sewer and water conveyance facilities, and similar matters.

Section 1.15 "Land Use Entitlement" means either a Discretionary or Ministerial Approval issued to The Property by the City under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or federal law, which permits development on The Property. Examples: zoning; a conditional use permit; a tentative or final subdivision map; a building permit; a sewer or water connection.

Section 1.16 "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

Section 1.17 "Mitigation Measures" means the requirements placed on the development of The Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for The Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

Section 1.18 "Off-site improvement" means a public improvement constructed outside the physical boundaries of The Property.

Section 1.19 "On-site improvement" means a public improvement constructed within the physical boundaries of The Property.

Section 1.20 "Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

Section 1.21 "Public Improvements" or "Infrastructure" means facilities constructed for use in accommodating residential use on The Property. Examples: roads; sewer and water lines; traffic signals.

Section 1.22 "Vesting law" means any State or federal law which gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated by Reference.

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

Section 2.2 Property to be Developed.

The property to be developed under this Agreement is the property commonly known in the City of Winters as the Creekside Property, Yolo County Assessor's Parcel Nos. 003-430-12 and 003-120-04. In this Agreement the Creekside Property will, in most instances, be referred to simply as "The Property."

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

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5.

b. The term of this Agreement is six (6) years, commencing on the date it is recorded. The term may be extended by mutual consent of the Parties. It may be terminated as provided in Article 5.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

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

Section 2.5 Right to Assign; Non-Severable Obligations.

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

b. No assignment shall be effective until the City, by action of its City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

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

2. The proposed assignee has adequate experience with residential developments of comparable scope and complexity to Creekside Estates and has successfully completed such developments.

c. The provisions of subsection b. do not apply to the sale of five (5) or fewer finished residential lots to individual buyers or builders.

d. The special development conditions set forth in Article 4 are not severable, and any sale of The Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

Section 2.6. Amendment of the Agreement.

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

Section 2.7 Whole Agreement; Conflict with City Code

a. This Agreement, together with any subsequent addenda, amendment or modification, shall constitute the entire agreement of the

Parties as to the development of The Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. The provisions of Title 11, Chapter 2 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venue; Attorney Fees; Alternative Dispute Resolution.

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

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

Section 2.9 Notices.

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

1. Via certified U.S. Mail, return receipt requested.

2. Via an overnight mail service of the type normally used by the business community, such as Federal Express, UPS Overnight, and California Overnight.

3. By facsimile, provide a "hard" copy is sent at the same time by regular U.S. Mail.

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

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

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

d. Notices to the Developer shall be given as follows

Donald Miller
P.O. Box 457
Davis, California 95617
Telephone (530) 753-2596
FAX (530) 753-5693

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements; One or more Final Subdivision Maps.

a. The Property will be developed under the following land use entitlements, all of which are approved contemporaneously with the recording of this Agreement:

1. A rezoning of The Property from Single Family Residential, 6,000 Square Foot Average Minimum (R-2) to Single Family Residential,

7,000 Square Foot Average Minimum (R-1). The rezoning is approved contemporaneously with this Agreement.

2. The Creekside Estates Tentative Subdivision Map consisting of approximately forty (40) single family residential lots on 13.7 acres. Of the forty (40) residential lots four (4) must be made available to local builders as defined by the City's land use regulations.

The Creekside Estates Tentative Subdivision Map is approved contemporaneously with the approval of this Agreement.

3. This Agreement as adopted on May 17, 2005 by Ordinance No. 2005-03 is effective as of upon recording 2005.

4. Subsequent discretionary approvals (such as design review) pursuant to the City's generally applicable land use regulations.

b. The Developer may apply for and receive one final subdivision map for Creekside Estates, or the Developer may chose to file separate final maps for various phases of Creekside Estates. If the Developer chooses to file final maps by phase, the number of phases and the size of each shall be at the discretion of the Developer, subject to the requirement for adequate infrastructure as provided in section 3.8.

c. Under the provisions of Government Code section 66452.6(a), the life of the Creekside Estates Tentative Subdivision Map is co-terminus with the life of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the development of The Property according to the terms of this Agreement conforms with the General Plan of the City of Winters.

Section 3.3 Vested Rights of Developer.

a. The Developer shall, solely with respect to The Property, have the right to the following land use entitlements regardless of subsequent amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or other ordinance, resolution, rule, or regulation adopted by the City.

1. The right to the number of single family residential building lots, and the density of development (dwelling units per acre) of those units, as shown on the Creekside Estates Tentative Subdivision Map.

2. Exclusion from any subsequently enacted building moratoria.

3. The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established as a condition to the Creekside Estates Tentative Subdivision Map.

5. The mitigation measures set forth in Exhibit D.

b. Subdivision a. does not apply to changes effecting development of The Property as mandated by State and/or federal laws effective after the

date this Agreement is recorded. In the event of such changes, the City will permit the development of The Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained By the City.

a. Except as specifically provided in section 3.2, all regulations of the City as expressly provided by State law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of The Property. Such regulations include, but are not limited to:

1. Discretionary approvals.

2. Subdivision standards in effect when a final subdivision map is approved.

3. The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to The Property under its general police

power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 Other Vesting Laws Inapplicable.

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

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

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

Section 3.6 Commencement of Development.

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred fifty (150) days after this Agreement is recorded, submit for approval by the City the final map for Creekside Estates (or the first phase, as the case may be) and accompanying

subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, inclement weather, acts of God, natural disasters, acts of the State and/or federal government, a referendum of the ordinance adopting this Agreement, or third party litigation challenging the validity of this Agreement. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.

d. Any time limit prescribed for any action required by this Agreement shall be extended by the number of days during which circumstances beyond the control of the Developer preclude the action from being taken.

Section 3.7 Maximum Number of Building Permits Per Year.

a. The Developer may apply for and receive as many single family building permits as there are lots remaining in Creekside Estates.

b. No building permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement.

Section 3.8 Installation of Public Improvements.

a. Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Creekside Estates. When the final map for all of Creekside Estates (or a phase, as the case may be), is approved, the Developer shall enter into a

separate written agreement with the City by which it contracts to build and dedicate the public improvements required either in all of Creekside Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by law.

b. If the Developer proceeds by filing final maps for various phases of Creekside Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase (both on-site and off-site of the entirety of Creekside Estates) must be constructed before the next phase to insure the orderly development of infrastructure within the City of Winters. In such an instance, the additional infrastructure required outside a particular phase will be built by the Developer during the construction of the phase for which a final map is approved, and the agreement to construct the public improvements for that phase shall include an obligation to build the additional infrastructure outside the boundaries of that phase.

Section 3.9 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Creekside Estates Tentative Subdivision Map, acquire the property rights necessary to construct or otherwise provide the public improvements contemplated by this Agreement.

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such

public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the final subdivision map for Creekside Estates (or the first phase as the case may be) is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire the property interests. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, and for purposes of eminent domain, the City's attorney fees, expert witness fess, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

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

a. In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Creekside Estates. These improvements will benefit other

properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

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

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property to reimburse the Developer its *pro rata* share of the cost of the oversizing. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of the payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. In any instance in which oversizing is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the prorata share to be borne by The Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing

properties or from mitigation fees as described in subsection b.

1. When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

2. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

3. If benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

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

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as

determined by the City Engineer. (Example: If a fee of $1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of $5,000, then the Developer will be credited with having paid that fee for 5 building permits.)

Section 3.11 Subsequent Discretionary Approvals.

To the extent any discretionary approvals are required to develop The Property after this Agreement is recorded, the Developer shall apply for those approvals in the same manner as any other person applying for land use entitlements from the City. All application fees then applicable for the type of land use entitlement(s) sought shall apply.

Section 3.12 Review of Agreement.

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

Section 3.13 Compliance with Government Code Section 66006.

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

ARTICLE 4

SPECIFIC DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

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

b. As a condition to the approval of this Agreement by the City, the Developer shall present to the City Council, at the time of the first reading of the ordinance approving this Agreement by the City Council, a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement shall provide, in addition to such other matters as the parties to it may agree, that the Developer will pay to the School District, at the time of the issuance of a building permit:

1. For each of the forty (40) residential units in Creekside Estates, fees designated as "Level 2" fees as that term is commonly used in the K-12 education community; and

2. For all units in Creekside Estates, except any very low income and low income affordable units, "Level 3" fees as that term is commonly used in the K-12 education community.

c. The Developer acknowledges receipt of the document dated October 2004 adopted by the School District entitled "School Facility Needs Analysis" prepared by Government Financial Strategies, Inc. This document will be used by the Developer and the School District in reaching the agreement referred to in subsection b.

Section 4.2 <u>0.9 +/- Acre Park.</u>

a. Developer shall provide a 0.9 <u>+/-</u> acre neighborhood park ("the Park Obligation"). The Park Obligation consists of three components:

1. Providing land.
2. Providing infrastructure.
3. Planning, developing, and equipping the park.

b. The Parties acknowledge that it is in the best interests of the community that the City accept a sum of money which represents the monetary value of the Park Obligation rather than have the Developer include a fully operational 0.9 +/- acre park within Creekside Estates. The payment of the Park Obligation by the Developer is in lieu of payment of any park impact fees as provided by City ordinance.

c. Developer agrees to satisfy the Park Obligation as follows.

1. At the time of filing the final map for Creekside Estates (or the first phase thereof, as the case may be) a payment of one hundred percent (100%) of the amount calculated by the City Engineer as set forth in e. below.

2. An additional fifty percent (50%) of the amount calculated under 1. above, payable as follows:

a) The additional fifty percent (50%) shall be divided by the number of market rate units in Creekside Estates (36 units). The resulting amount shall be paid each time a building permit is issued for one of the thirty-six (36) market rate units.

b) If at the end of thirty (30) months from the recording of the final map for Creekside Estates (or the first phase thereof, as the case may be), the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining amount owing within ten (10) business days of being notified of the City to do so. (Example: If at the end of 30 months, the Developer has obtained twenty (20) building permits for market rate units and has paid fees under this subsection, then the Developer, upon notice from the City, shall pay the fees owed under this subsection for the remaining 16 market rate units.)

d. Once all amounts owed under c., above, have been paid, the Developer will have satisfied the Park Obligation.

e. The Park Obligation shall be computed by the City Engineer as follows:

1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to The Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City within ninety (90) days thereafter, unless the Parties agree to a different date. The appraisal shall determine the fair market value of 0.9 +/- acres of The

Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this Agreement.

2. The estimated cost of the infrastructure improvements will be calculated by the City Engineer using the per acre cost of Sixty Thousand Dollars ($60,000).

3. The estimated cost of the development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer using the per acre cost of Two Hundred Twenty-Nine Thousand Five Hundred Dollars ($229,500).

4. To the total determined by adding the costs determined under 1., 2., and 3., above, shall be added five percent (5%) for administration, including, but not limited to, the use of eminent domain by the City as necessary to acquire park land.

Section 4.3 <u>Advance Funding of Fees For Construction of Police/Fire/Corporation Yard Facility.</u>

a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel shown on Exhibit F. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for Creekside Estates (or the first phase, as the case may be), pay to the City development fees as follows:

1. A police facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

2. A fire facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

3. A general municipal facilities fee at its then current rate for all forty (40) residential units in Creekside Estates.

b. Each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit.

c. If, at the time of the actual issuance of a building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.

Section 4.4 Annuity in Lieu of Mello-Roos District.

a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of Creekside Estates per the document entitled EPS Fiscal Impact Analysis for Creekside Estates, dated February 21, 2005. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.

b. The funding of the annuity will be created and funded as follows:

1. From the escrow for the sale of each residential lot to a third party the Developer will pay to the City the sum of Sixty Five Hundred Dollars ($6,500.00).

2. The City will invest the amounts received under this section in an annuity, or other similar investment, which will create a stream of income to be paid into the City's General Fund to pay for the increase in the cost of municipal services resulting from the development of Creekside Estates.

Section 4.4 Payment to Library Fund.

Prior to recording of the final map for Creekside Estates (or the first phase, as the case may be) the Developer shall pay to the City the sum of Twenty-Five Thousand Dollars ($25,000.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.

Section 4.5 Affordable Housing.

Lot numbers 7 and 9 as shown on the Creekside Estates Tentative Subdivision Map will be divided in two to create four (4) affordable housing units (one (1) moderate income, two (2) low income, and one (1) very low income unit).

In addition, Developer is required to create two (2) affordable units off-site. In lieu of constructing two (2) off-site affordable housing units , the Developer shall, at the time of filing of the final map for Creekside Estates (or the first phase thereof, as the case may be) pay to the City Two Hundred Thousand Dollars ($200,000.00).

Section 4.7 Urban Water Management Plan.

a. The Developer shall pay the cost of the preparation of a City Urban Water Management Plan. Payment shall be due and payable no later than the date upon which the final map for Creekside Estates (or the first phase, as the case may be) is recorded. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the Management Plan, as provided by section 3.10, to be paid by other developments benefiting from the Management

Plan, but only those commonly identified as Creekside, Winters Highlands and Hudson-Ogando.

b. The amount and timing of reimbursement under this section shall be the subject to a separate reimbursement agreement between the City and the Developer.

Section 4.8 Water Well.

At the time of filing the final map for Creekside Estates (or the first phase thereof, as the case may be) the Developer shall pay its pro-rata share of the construction of a water well at a location designated on the Creekside Estates Tentative Subdivision Map, or such other location on that map as selected by the City Engineer, in an amount finally determined by the City Engineer. The pro-rata share is currently estimated to be Twenty-Six Hundred Dollars ($2,600.00) per lot.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

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

Section 5.2 City's Remedies

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

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

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

3. Specific performance as provided in subsection c.

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

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

b. Default by the Developer.

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

2. Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the Council in accordance with the notice and hearing

requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

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

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

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

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

3. To complete, demolish or make safe and secure any uncompleted private improvements located on The Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by The Developer in its sole discretion.

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

5.3 Developer's Remedies.

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

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

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

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

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

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For

the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorney fees for actions under a. above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorney fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

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

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

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

Section 6.2 No Liability for Acts of the Developer.

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

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

agents, and employees from any claim of injury to person or property arising out of the operations of the Developer in the development of Creekside Estates under the terms of this Agreement or otherwise.

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

Section 6.3. Duty to Defend Challenges to this Agreement.

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

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

c. In the event of any such challenge, each Party shall bear its own attorney fees and other litigation expenses.

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorney fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. Notwithstanding subsection b, the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. However, nothing herein obligates the Developer,

should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.

DEVELOPER

DONALD MILLER

Donald M Miller

Dated: May 13, 2005

CITY OF WINTERS

By: _____

Mayor

Dated: July 29, 2005

Attest:

Nancy G. Miller

City Clerk

Approved as to form:

_____

John Wallace, City Attorney

6-15-05

Tim Taylor of Somach, Simmons & Dunn, Attorneys for Developer

.....

This Agreement was adopted by Ordinance No. 2005-03 of the City Council of the City of Winters. Ordinance No. 2005-03 was adopted on May 17, 2005 and is effective on the date it is recorded with the Yolo County Recorder.

LIST OF EXHIBITS:

EXHIBIT A	Location Map of Creekside Property
EXHIBIT B	Legal Description of Creekside Property
EXHIBIT C	Creekside Estates Tentative Subdivision Map
EXHIBIT D	Conditions of Approval, including Mitigation Measures
EXHIBIT E	School Agreement
EXHIBIT F	Map of 3.45+/- Parcel

EXHIBITS NOT INCLUDED

RECORDED AT REQUEST OF AND
WHEN RECORDED MAIL TO:

CITY OF WINTERS
318 First Street
Winters, CA 95695
Attention: City Clerk

YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2012-0011280-00
Acct 118-Winters - NC
Wednesday, APR 11, 2012 08:07:00
Ttl Pd $0.00 Nbr-0000977073
FRT/R6/1-5

(Space Above this Line for Recorder's Use Only)

FIRST AMENDMENT TO

DEVELOPMENT AGREEMENT BY AND BETWEEN

THE CITY OF WINTERS AND

THE CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "First Amendment") is entered into as of December 20th, 2011, by and between the CITY OF WINTERS, a municipal corporation (the "City") and the CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE, a California nonprofit corporation, (the "Developer").

Recitals

A. The City previously entered into a Development Agreement* with Donald Miller, who owned certain real property commonly known as the Creekside Estates Property, with Yolo County Assessor's Parcel Numbers 003-430-120 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres) (the "Property" or "Creekside Estates Property"). The Development Agreement provides for the residential development of the Property. Any capitalized terms used but not defined in this First Amendment shall have the meanings given in the Development Agreement.

* Doc 2005-0063213 12/22/2005

B. Donald Miller's successors subsequently transferred the Property to the Developer, who was assigned all rights and obligations under the Development Agreement as Donald Miller had.

C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain changes to, and extend the term of, the Development Agreement.

D. City has given the required notice of its intention to adopt this First Amendment and has conducted public hearings thereon pursuant to Government Code section 65857. As

required by Government Code section 65867.5, City has found that the provisions of this First Amendment and its purposes are consistent with the goals, policies, standards, and land use designations specified in the City's General Plan.

E. On December 14, 2011, the City of Winters Planning Commission, the initial hearing body for purposes of Development Agreement review, recommended approval of this First Amendment. On December 20, 2011, the City of Winters City Council adopted Ordinance No. 2012-01 approving this First Amendment and authorizing its execution.

Agreement

Section 1. Section 2.3(b) of the Development Agreement is amended to provide that the term of the Development Agreement shall be extended for an additional eight (8) years, commencing on the date written above in the introductory paragraph ("Effective Date").

Section 2. Section 2.9(d) of the Development Agreement is amended to delete the address to which notice shall be given to Developer and to replace it, as follows:

Catholic Bishop of Sacramento, a California corporation sole
Pastoral Center
2110 Broadway
Sacramento, CA 95818
Telephone: (916) 733-0100
FAX (916) 733-0295

Section 3. Section 4.1(b) of the Development Agreement is amended to read as follows:

> As a condition to the approval of this Agreement by the City, Developer's predecessor presented to the City Council a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement provides, in addition to other matters as the parties agreed, that the Developer will pay to the School District, at the time of the issuance of a building permit, certain "Level 2" fees and will voluntarily pay certain "Level 3" fees, as those terms are commonly used in the K-12 education community. Should Developer and School District amend their agreement to change the amount or payment of the "Level 2" and/or "Level 3" fees, Developer shall provide a copy of such amendment to the City.

Section 4.Section 4.1(b)(1) and (2) and Section 4.1(c) are deleted from the Development Agreement.

Section 5. Section 4.2(e)(2) of the Development Agreement related to the estimated cost of park infrastructure improvements is amended to read as follows:

> 2. The estimated costs of the infrastructure improvements and development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer based on an estimated cost index of park improvements of

municipal park projects developed within the previous 24 month period.

Section 6. Section 4.2(e)(3) is deleted from the Development Agreement.

Section 7. Section 4.3 of the Development Agreement, entitled "Advance Funding of Fees for Construction of Police/Fire/Corporation Yard Facility" is deleted as the facility has been constructed.

Section 8. Section 4.4 of the Development Agreement, entitled "Payment to Library Fund" is deleted, but the Section 4.4 entitled "'Annuity in Lieu of Mello-Roos District" shall not change.

Section 9. Section 4.7 of the Development Agreement ,entitled "Urban Water Management Plan," is renumbered to be section 4.6.

Section 10. Section 4.8 of the Development Agreement, entitled "Water Well," is deleted as a well has already been constructed.

Section 11. The effective date of this First Amendment shall be the date as written above in the introductory paragraph. Except as modified and amended by this First Amendment, all other provisions of the Development Agreement shall remain unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the date first above written.

CITY:	**DEVELOPER:**
CITY OF WINTERS Mayor , Woody Fridae	CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE, a _ By: Rev. Msgr. James T. Murphy Its: Vicar General
ATTEST: City Clerk , Nanci G. Mills	

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3

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California
County of Sacramento

On 4/3/2012 (Date) before me, Xaviera J. Isler, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Msgr. James T. Murphy (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

XAVIERA J. ISLER
Commission # 1911731
Notary Public - California
Sacramento County
My Comm Expires Nov 2, 2014

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: Xaviera J. Isler (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: First Amendment to Development Agreement

Document Date: December 30, 2011 Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer is Representing: _____	Signer is Representing: _____
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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4

ACKNOWLEDGMENT

State of California
County of Yolo)

On April 4, 2012 before me, Mary Jo Rodolfa, Notary Public
(insert name and title of the officer)

personally appeared Nanci G. Mills and Woody Fridae ,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

MGC1 MARY JO RODOLFA MGC1
COMM. # 1818286
NOTARY PUBLIC - CALIFORNIA
YOLO COUNTY
COMM. EXPIRES OCT. 19, 2012

Signature _____ (Seal)

END OF DOCUMENT

5

RESOLUTION NO. 17-01

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WINTERS RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE CREEKSIDE ESTATES SUBDIVISION MAP

WHEREAS, the Winters Planning Commission held a duly noticed public hearing on June 13, 2017 to review and consider recommending to the City Council approval of the proposed Amended and Restated Development Agreement and amended Tentative Map Subdivision Map for the Callahan Estates Subdivision; and

WHEREAS, the Planning Commission reviewed and considered a proposal to amend various provisions of the existing Development Agreement, which includes the First Amendment, for the Creekside Estates Subdivision, including extending the existing term from 2019 to 2022, amendments regarding the provisions of certain infrastructure improvements and financial contributions for related purposes; and

WHEREAS, the Planning Commission found the amendments in the Amended and Restated Development Agreement were not significant enough to require any additional environmental review; and

WHEREAS, proper notice of this public hearing was given in all respects required by law; and

WHEREAS, the Planning Commission has reviewed all written evidence and all oral testimony presented to date.

NOW, THEREFORE, BE IS RESOLVED, that the Planning Commission of the City of Winters, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, recommends the City Council approve the Amended and Restated Development Agreement for Creekside Estates Subdivision, attached hereto as Exhibit 1.

BE IT FURTHER RESOLVED, that the Planning Commission recommends that the City Council find that based on substantial evidence in the administrative record of the proceedings the Amended and Restated Development Agreement does not require any environmental review.

ATTACHMENT C

PASSED AND ADOPTED, by the Planning Commission of the City of Winters at a special meeting on the 13th day of June 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____

Chairperson

ATTEST:

_____

Planning Commission Secretary

ORDINANCE NO. 2017-03_

AN ORDINANCE OF THE CITY OF WINTERS APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE CREEKSIDE ESTATES DEVELOPMENT DATED DECEMBER 22, 2005, BETWEEN THE CITY OF WINTERS AND CATHOLIC BISHOP OF SACRAMENTO, A CALIFORNIA CORPORATION SOLE TO EXTEND THE TERM OF THE DEVELOPMENT AGREEMENT FOR AN ADDITIONAL THREE YEARS, DELETE THE REQUIREMENT FOR AN ANNUITY, AND REQUIRE CONDUIT BE INSTALLED FOR A FUTURE BROADBAND NETWORK

WHEREAS, the City of Winters ("City") and Donald Miller ("Miller") entered into that certain Development Agreement dated December 22, 2005 ("Development Agreement"); and

WHEREAS, the Development Agreement provides for the residential development of 41 single-family units ("Project") on 13.7 acres of certain real property in the City ("Property"); and

WHEREAS, after Miller passed away in 2007, his heirs subsequently sold the Property to the Catholic Bishop of Sacramento, a California corporation sole ("Developer"); and

WHEREAS, on December 14, 2011, the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the first amendment to the Development Agreement were heard and at which the first amendment to the Development Agreement was comprehensively reviewed; and

WHEREAS, on December 20, 2011, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed first amendment to the Development Agreement were heard and at which the first amendment to the Development Agreement was comprehensively reviewed; and

WHEREAS, the Property has not been developed, and the parties now desire to extend the term of the Development Agreement for an additional three years, delete the requirement for an annuity, and to make other changes to it; and

WHEREAS, on June 13, 2017, the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

WHEREAS, on July 18, 2017, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with

the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

WHEREAS, the City Council reviewed and studied the Amended and Restated Development Agreement and found it complies with the California Environmental Quality Act ("CEQA").

NOW THEREFORE BE IT RESOLVED:

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

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

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

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

SECTION 3. CEQA. The City Council finds and determines that it can be seen with certainty that adoption of this Ordinance will not have a significant effect on the environment. Thus, the adoption of this Ordinance is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

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

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

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

The foregoing ordinance was introduced on July 18, 2017, and passed and adopted during a regular meeting of the City Council of the City of Winters on _____, 2017, by the following vote to wit:

AYES: Council Member(s):

NOES: Council Member(s):

ABSENT: Council Member(s):

ABSTAIN: Council Member(s):

_____
Wade Cowan, MAYOR

ATTEST:

_____
Nanci G. Mills, CITY CLERK

EXHIBIT "A"
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

ATTACHMENT E

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

No fee for recording pursuant
to Government Code Section 27383

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

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

THE CATHOLIC BISHOP OF SACRAMENTO,

A CALIFORNIA CORPORATION SOLE

[CREEKSIDE PROPERTY]

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DRAFT

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A Map of Creekside Property

B Legal Description of Creekside Property

C Creekside Estates Tentative Subdivision Map

D Conditions of Approval, Including Mitigation Measures

DRAFT

AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WINTERS AND THE CATHOLIC BISHOP OF SACRAMENTO RELATING TO THE DEVELOPMENT OF THE PROPERTY COMMONLY KNOWN AS THE CREEKSIDE PROPERTY

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

FACTS AND CIRCUMSTANCES

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

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.

2. The Developer desires to develop certain residential property in a manner which promotes the goals envisioned by the City for its residents.

3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Creekside Property and further depicted in Exhibit A and described in Exhibit B to this Agreement, is through the use of a Development Agreement as authorized by the Planning and Zoning Law,

Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 15, Chapter 15.72 of the Winters Municipal Code [entitled "Development Agreements"].

4. In order to meet these needs, the City and Developer's predecessor in interest Donald Miller entered into a Development Agreement that was recorded in the Official Records of Yolo County as Document No. 2005-0063213-00, which Development Agreement has been amended by a First Amendment to Development Agreement entered into by and between the City and Developer dated December 20, 2011 and recorded in the Official Records of Yolo County as Document No. 2012-0011280 (collectively, the "Original Development Agreement").

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

6. It is the intent of the Parties in entering into this Agreement supersede and replace the Original Development Agreement in its entirety, and further to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain rights to develop the Creekside Estates Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

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ARTICLE 1
DEFINITIONS

Section 1.1 Definitions.

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

1. "Agreement" means this Development Agreement.

2. "Application fees" means the amount paid by the Developer for the processing of any Land Use Entitlement or for an amendment to this Agreement.

3. "Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.

4. "Creekside Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for the Property in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Creekside Estates Tentative Subdivision Map is attached as Exhibit C.

5. "Creekside Estates" means the single family residential development created by the Creekside Estates Tentative Subdivision Map.

6. "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also

includes each person duly appointed to carry out a specific function as required in this Agreement. (e.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

7. "City of Winters" means the physical boundaries of the City of Winters.

8. "City Public Works Improvement Standards and Construction Specifications" means the City of Winters Public Works Improvement Standards and Construction Specifications, dated April, 2016, and as amended from time to time.

9. "Condition of Approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

10. "Conditions of Approval" means the conditions placed on the approval of the Creekside Estates Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

11. "Developer" means the CATHOLIC BISHOP OF SACRAMENTO, a California corporation sole, and/or its successor(s) or assigns in interest.

12. "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

13. "Final Subdivision Map" or "Final Map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

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

15. "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval issued by the City for the development of the Property under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or federal law.

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

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

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

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

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

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

22. "Property" means the property commonly known as the Creekside Property, Yolo County Assessor's Parcel No. 003-430-12 (consisting of approximately 11.0 acres) and 003-120-04 (consisting of approximately 2.75 acres), and is more specifically shown and described in Exhibits A and B.

23. "Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property, including but not limited to roads, sewer and water lines and traffic signals.

24. "Vesting law" means any State or federal law that gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated By Reference.

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

Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Creekside Property, Yolo County Assessor's Parcel Nos. 003-430-12 and 003-120-04. A map showing the location and boundaries of the Property is attached as Exhibit A and a legal description describing the Property is attached as Exhibit B. In this Agreement the Creekside Property will, in most instances, be referred to simply as the "Property."

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

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

b. The term of this Agreement shall expire on December 20, 2022, unless otherwise extended in accordance with State law and City ordinances.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest

during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In no event shall an owner or tenant of an individually completed residential unit within the Creekside Estates Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

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

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

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

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

c. The provisions of subsection b do not apply to the sale of five (5) or fewer finished lots to individual buyers or builders.

d. Notwithstanding subsection b above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable

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

e. The special development conditions set forth in Article 4 are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Section 15.72.210 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal Application fees.

Section 2.7 Whole Agreement; Conflict with Municipal Code.

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

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

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

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

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

Section 2.9 Notices.

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

1. Via certified U.S. Mail, return receipt requested.

2. Via an overnight mail service of the type normally used by the business community, such as Federal Express or UPS Overnight.

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

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

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

Catholic Bishop of Sacramento, a California corporation sole
Pastoral Center
2110 Broadway
Sacramento, CA 95818
Attn: _____
Telephone (916) 733-0100

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

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

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

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

Section 2.14 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise. Provided, however, notwithstanding anything to the contrary above, the holder of a mortgage or deed of trust, or the successors or

assigns of such holder or owner through foreclosure, shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless the holder or owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the holder shall assume the obligations of Developer hereunder in a form acceptable to the City.

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

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

1. This Amended and Restated Development Agreement (Ordinance No. 2017-3 adopted _____, 2017 and effective on _____, (the "Enacting Ordinance")).

2. A rezoning of the Property from Single Family Residential, 6,000 square foot average minimum (R-2) to Single Family Residential, 7,000 square foot average minimum (R-1).

3. The Creekside Estates Tentative Subdivision Map consisting of approximately forty (40) single family residential lots on 13.7 acres. Of the forty (40) residential lots, four (4) must be made available via offer to sell to local builders as defined by the City's land use regulations.

4. Subsequent discretionary approvals (such as design review) pursuant to the City's generally applicable land use regulations.

b. The Developer may apply for an receive one final subdivision map for Creekside Estates, or the Developer may choose to file separate final maps for various phases of Creekside Estates. If the Developer chooses to file final maps by phase, the number of phases and the size of each shall be at the discretion of the Developer, subject to the requirement for adequate infrastructure as provided in Section 3.8.

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

Section 3.2 Consistency with General Plan.

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

Section 3.3 Vested Rights of Developer.

a. The Developer shall, solely with respect to the Property, have the right to the following land use entitlements regardless of subsequent amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or any other ordinance, rule, or regulation adopted by the City.

1. The right to the number of single family residential lots, dwelling units, and the density of development (dwelling units per acre) of those units, as shown on the Creekside Estates Tentative Subdivision Map.

2. Exclusion from subsequently enacted building moratoria.

3. The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established in the Conditions of Approval for the Creekside Estates Tentative Subdivision Map.

5. The Mitigation Measures.

b. Subdivision a. does not apply to changes effecting development of the Property as mandated by State and/or federal laws effective after the date this Agreement is recorded. In the event of such changes, the City will permit the development of the Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained by the City.

a. Except as specifically provided in section 3.3, all regulations of the City as expressly provided by State law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of The Property. Such regulations include, but are not limited to:

1. Discretionary approvals.

2. Subdivision standards in effect when a final subdivision map is approved.

3. The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to the Property under its general police power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 Other Vesting Laws Inapplicable.

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

b. Notwithstanding subsection a., however, to the extent that a State and/or federal law becomes effective after this Agreement is recorded and it is

specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

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

Section 3.6 Commencement and Phasing of Development.

a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred eighty ~~fifty~~ (1~~5~~80) days after this Agreement is recorded, submit for approval by the City the final map for Creekside Estates (or the first phase, as the case may be) and accompanying subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, inclement weather, acts of God, natural disasters, acts of the State and/or federal government, a referendum of the ordinance adopting this Agreement, or third party litigation challenging the validity of this Agreement. ~~However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.~~

b. Any time limit prescribed for any action required by this Agreement shall be extended by the number of days during which circumstances beyond the control of the Developer preclude the action from being taken.

Section 3.7 Maximum Number of Building Permits Per Year.

a. The Developer may apply for and receive as many single family building permits as there are lots in Creekside Estates.

b. No building permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement as set forth in Section 2.3.

~~b.~~c. Any building permit applied for but not issued prior to a forthcoming building code change (update) shall be allowed to be built under the ~~then current~~ building code in effect at the time of application. Building for which a permit was applied for must be obtained within six (6) months and must be commenced within one (1) year.

Section 3.8 Installation of Public Improvements.

a. Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Creekside Estates. Prior to the approval of a final subdivision map for Creekside Estates (or a phase, as the case may be), the Developer shall enter into a separate written agreement ("Subdivision Improvement Agreement") with the City by which it commits to build and dedicate to the City or applicable public agency, the public improvements required either in all of Creekside Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by State law and City law, including but not limited to the Subdivision Map Act (Gov't Code §§66410 *et seq.*) and the City's Subdivision Ordinance (Winters Municipal Code Title 16).

b. It the Developer proceeds by filing final maps for various phases of Creekside Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase (both on-site and off-site of the entirety of Creekside Estates) must be constructed before the next phase to insure the orderly development of infrastructure within the City of Winters. In such an instance, the additional infrastructure required outside a particular phase will be built by the Developer during the construction of the phase for which a final map is approved, and the agreement to construct the public improvements for that phase shall include an obligation to build the additional infrastructure outside the boundaries of that phase.

Section 3.9 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Creekside Estates Tentative Subdivision Map, acquire the property rights necessary to construct or otherwise provide the public improvements required by this Agreement.

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

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

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

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

a. In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Creekside Estates. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

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

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

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

2. By way of payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. In any instance in which oversizing of improvements is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the *pro rata* share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing properties or from mitigation fees as described in subsection b.

1. When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only

those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

2. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

3. If a benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

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

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as determined by the City Engineer. (Example: If a fee of $1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of $5,000, then the Developer will be credited with having paid that fee for 5 building permits.).

Section 3.11 Subsequent Discretionary Approvals.

To the extent any Discretionary Approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those Discretionary Approvals in the same manner as any other person applying for such Discretionary Approvals from the City. All Application fees then applicable for the type of Discretionary Approvals shall apply.

Section 3.12 Review of Agreement.

Review by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Section 15.72.230 (Periodic Review) of the Winters Municipal Code.

Section 3.13 Compliance with Government Code Section 66006.

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

Section 3.14 Subdivision Maps.

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

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ARTICLE 4
DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

The Developer acknowledges and agrees that the mitigation of the impact of Creekside Estates on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that it has entered into an agreement to mitigate the impact on schools with the Winters Joint Unified School District, which agreement was recorded _____, 20__ as Instrument No. 20__-_____ of Official Records County of Yolo.

Comment [DD1]: An agreement has not been reached with the school district. An agreement will need to be reached before the City signs the document.

Section 4.2 Park Fees.

Developer shall satisfy its 0.9 acre neighborhood park obligation as follows: Developer shall pay a park fee, in the aggregate totaling Two Hundred Twenty-Nine Thousand Five Hundred Dollars ($229,500.00) as follows: Developer shall pay the sum of _____ Dollars ($_____) at the time of issuance of a building permit for each residential structure.

Comment [DD2]: Impact fees are in the process of being revised. Developer will pay the fee in effect at the time of signing of the DA.

Section 4.3 Public Safety Facility.

Developer shall pay the City's Public Safety Facility fee.

Section 4.4 Intentionally Omitted.

Section 4.5 Affordable Housing.

Lot numbers 7 and 9 as shown on the Creekside Estates Tentative Subdivision Map will be divided in two to create four (4) affordable housing units

(one (1) moderate income, two (2) low income, and one (1) very low income unit). In addition, Developer is required to create two (2) affordable units off-site. In lieu of constructing two (2) off-site affordable housing units, the Developer, at the time of filing of the final map for Creekside Estates (or the first phase thereof, as the case may be) pay to the City Two Hundred Thousand Dollars ($200,000). This constitutes the remaining amount owed by Developer, from its original obligation to pay the City Two Hundred Thousand Dollars ($200,000.00) in lieu of constructing the two (2) off-site affordable units. The Developer previously paid the City Two Hundred Thousand Dollars ($200,000) in affordable housing in-lieu fees pursuant to the Original Agreement.

Section 4.6 Urban Water Management Plan.

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

b. The City anticipates that the update to the January 2007 Wastewater Treatment Plant Master Plan and the financing plan shall be used to develop updated Impact Fees to fund the cost of improvements to the WWTP that

may be needed in order to treat the wastewater from the Creekside Estates Subdivision and other developing properties within the City. Such updated Impact Fees will also take into account the cost of funding the update to the January 2007 Wastewater Treatment Plant Master Plan and the financing plan. Developer shall pay such Impact Fees as are in effect at the time the payment is made.

Section 4.7 Installation of Conduit. Developer shall provide design and construction for conduit and boxes suitable for broadband internet service to each residential unit, within the joint trench for the Creekside Estates Subdivision. The conduit shall be coordinated with all other utilities and shown on the joint trench composite plans. The conduit and boxes are to be constructed with the joint trench and completed before certificate of occupancy is issued. The utility company providing broadband internet service will install the wire necessary to provide the service; the timing of which will not delay the issuance of a certificate of occupancy.

ARTICLE 5
DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

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

Section 5.2 City's Remedies.

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

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

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

3. Specific performance as provided in subsection c.

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

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

b. Default by the Developer.

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

2. Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing

requirements of Government Code section 65868 and Section 15.72.270 of the Winters Municipal Code.

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

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

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

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

3. To complete, demolish or make safe and secure any uncompleted private improvements located on The Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by the Developer in its sole discretion.

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

Section 5.3 Developer's Remedies.

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

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

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

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

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

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential,

punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

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ARTICLE 6
HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

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

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

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

Section 6.2 No Liability for Acts of the Developer.

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

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers, agents, and employees from any claim of injury to person or property arising out of or

relating to this Agreement or the operations of the Developer in the development of Creekside Estates under the terms of this Agreement.

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

Section 6.3 Duty to Defend Challenges to this Agreement.

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

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

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

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. However, nothing herein obligates the Developer, should the City tender its defense

to the Developer, to defend the action if it determines that it is in its best interests not to do so.

SIGNATURE PAGE TO FOLLOW

DRAFT

"DEVELOPER"
CATHOLIC BISHOP OF SACRAMENTO, a California corporation sole

By:_____

Its:_____

Dated:_____

"CITY"

CITY OF WINTERS, a municipal corporation

By:_____
Mayor

Dated:_____

Attest:_____
City Clerk

Approved as to form:

_____
Ethan Walsh, City Attorney

. . . . . .

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LIST OF EXHIBITS

A	Location Map of Creekside Property
B	Legal Description of Creekside Property
C	Creekside Estates Tentative Subdivision Map
D	Conditions of Approval, Including Mitigation Measures
E	School Agreement

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CITY OF
WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

DATE: March 1, 2016

TO: Mayor and City Council

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

SUBJECT: Economic Development Programs

RECOMMENDATION:

That the City Council provide input and direction regarding recommendations from the Economic Development Subcommittee.

BACKGROUND:

The City Council held a special economic development workshop prior to the May 2, 2017 City Council Meeting to discuss various economic development concepts and ideas. The subcommittee, consisting of representatives from the Chamber of Commerce, City Council and City Staff, have met to develop a preliminary set of recommendations regarding advancing the economic goals of the City.

This agenda item is to provide the City Council with an opportunity to review some of the preliminary recommendations from the Sub-Committee.

DISCUSSION:

The Subcommittee is recommending the following:

1. Re-establishment of an Economic Advisory Committee.
2. City/Collaboration through an Economic Development Office
3. City Membership and Affiliation with Regional Organizations.

The following are outlines of these recommendations:

Economic Development Advisory Committee:

1. Re-establishment of an Economic Development Advisory Committee. The recommended make up of the Committee would be as follows:
   - 2 City Council Members
   - 2 Planning Commission Members
   - 2 Chamber Representatives (Carrie and Chris C)
   - 1 Freeway Business Representative
   - 2 Ag Business Community (Chris Turkovich and Mariani Rep)
   - 1 Hospitality (Frank- Buckhorn Group)
   - 1 Real Estate (Commercial Broker- Curtis Stocking)

The key roles of the EDAC would be as follows:

- SWOT Analysis (Strengths, Weaknesses, Opportunities and Threats) for sectors of the City
  - Establish a Red Team for business attraction.
  - Evaluate and cultivate affiliations with outside organizations
    1. Yolo Visitors Bureau
    2. Solano Economic Development Corporation
    3. UC Davis
  - Business Attraction
  - Commercial
  - Industrial
  - Evaluate the City's General Plan land uses and zoning to determine needs in planning for Jobs and Industry. Consider the potential request for annexation and land uses to benefit economic development.
  - Explore drivers to achieve a greater ratio of jobs/housing balance.

Economic Development Center- City/Chamber Collaboration:

Winters Economic Development Center/Collaboration with Winters Chamber of Commerce:

a. Market Winters for business attraction with a one-stop shop for information related to available real estate, City zoning and approval guidelines, demographics and key analytics for attracting desirable businesses.
b. Works collaboratively with key businesses to constantly monitor and update data relative to business happening within the community. This would include monitoring confidential "Experian" business data reports, performing analytics to mine information related to peak business periods and customers. The office should constantly be on top of business activity with regular reports and analysis to key businesses.

c. Serve as the "mall manager", getting Downtown businesses on the same page related to events and key business periods.
d. The office will work with developers to bring development to Winters. Light Industrial to Industrial properties will develop and be attracted. We will make the AG innovation hub and broadband a reality!
e. Creating and keeping current a "Winters App" for visitors to access information about the community.
f. Work with hotels, event centers and UC Davis to keep the business community aware of upcoming peak occupancy and meetings which will bring visitors to Winters.
g. Coordinate marketing for and with Discoverwinters.com and Visit128.com

Economic Relationships:

Work to structure key relationships and develop partnerships to advance Winters economic goals. This will include exploration of relationships with the following:

- Solano Economic Development Corporation
- Solano Small Business Development Corp
- Yolo Visitors Bureau
- Visit 128
- College of Agriculture- UC Davis
- Yolo County Ag Department
- SACOG

Staff is recommending that the City Council review these concepts and provide input for future action on each item.

FISCAL IMPACT:

None by this action.