



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, September 4, 2018  
6:30 p.m.  
**AGENDA**

*Members of the City Council*

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

*John W. Donlevy, Jr., City Manager  
Ethan Walsh, City Attorney  
Tracy Jensen, City Clerk*

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

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

PUBLIC COMMENTS

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

### CONSENT CALENDAR

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

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, August 21, 2018 (pp. 4-11)
- B. Fairfield Inn Hotel - Development Impact Fee Payment Agreement (pp. 12-40)
- C. Public Improvement Agreement for Fairfield Inn Hotel Project (pp. 41-63)
- D. Street Closure Request for the Festival de la Comunidad (pp. 64-66)
- E. Request for Proposal (RFP) for Administrative Subcontractor for HOME Program Funding in the Blue Mountain Terrace Senior Apartments Project (pp. 67-78)

### PRESENTATIONS

Public Safety / YEMSA Presentation.

Recognition of City Treasurer Mike Sebastian

### DISCUSSION ITEMS

- 1. Public Hearing and City Council Consideration of Return of State CDBG Grant Funds and Re-Application for Proposed Senior Center and Senior Services (pp. 79-83)
- 2. Building Permitting System - Same Day Permitting (pp. 84-88)

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

- 1. None

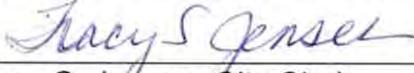
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### CITY MANAGER REPORT

## INFORMATION ONLY

### ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the September 4, 2018 regular meeting of the Winters City Council was posted on the City of Winters website at [www.cityofwinters.org](http://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 August 30, 2018, and made available to the public during normal business hours.



Tracy S. Jensen, City Clerk

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

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

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

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

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*View on the internet: [www.cityofwinters.org/administrative/admin\\_council.htm](http://www.cityofwinters.org/administrative/admin_council.htm)  
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*City Council agenda packets are available for review or copying at the following locations:*

*Winters Library – 708 Railroad Avenue*

*City Hall – Finance Office - 318 First Street*

*During Council meetings – Right side as you enter the Council Chambers*

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Wednesday at 10:00 a.m.

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



Minutes of the Joint Meeting of the Winters City Council and the Board of  
Directors of the Winters Public Finance Authority  
Held on August 21, 2018

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Mayor Bill Biasi called to order the meeting of the City Council at 6:30 p.m.

Present: Council Members Harold Anderson, Wade Cowan, Jesse Loren, Pierre Neu, and Mayor Bill Biasi  
Absent: None  
Staff: City Manager John W. Donlevy, Jr., City Attorney Ethan Walsh, Director of Financial Management Shelly Gunby, Police Chief John Miller, Fire Chief Matt Schechla, Environmental Services Manager Carol Scianna, and City Clerk Tracy Jensen.

Mayor Pro Tem Wade Cowan called to order the meeting of the Board of Directors of the Winters Public Finance Authority Board at 6:30 p.m.

Present: Board Members Harold Anderson, Bill Biasi, Jesse Loren, Pierre Neu, and Board Chairman Wade Cowan  
Absent: None  
Staff: City Manager John W. Donlevy, Jr., City Attorney Ethan Walsh, Director of Financial Management Shelly Gunby, Police Chief John Miller, Fire Chief Matt Schechla, Environmental Services Manager Carol Scianna, and City Clerk Tracy Jensen.

City Manager John W. Donlevy Jr. led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy requested that Consent Items C & J be removed from the agenda. Motion by Council Member Neu, second by Council Member Loren to approve the agenda with the noted changes. Motion carried with the following vote:

AYES: Council Members Anderson, Cowan, Loren, Neu, Mayor Biasi  
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, August 7, 2018
- B. Sacramento Yolo Mosquito Vector Control District Appointment
- C. American Tower Lease Extension **(Item Removed from Agenda)**
- D. Volunteer Fire Assistance (VFA) 50/50 Grant
- E. Wastewater Treatment Facility Monitoring Services with Luhdorff & Scalmanini
- F. Carter Ranch Pump Station- Control Panel Upgrades
- G. Approval of Amplified Sound Permit Application for the Carnitas Festival de la Comunidad
- H. Waste Water Treatment Facility (WWTF) South Spray Field Repairs
- I. Resolution 2018-47, a Resolution of the City Council of the City of Winters Approving Agreement Extensions with HBT of Winters Highlands LLC for the Winters Highlands Phase 1 Subdivision
- J. Street Closure Request and Amplified Sound Permit for the Porchfest Winters Music Stroll **(Item Removed from Agenda)**

City Manager Donlevy gave an overview and reiterated that Items C and J were being removed from the agenda. Council Member Anderson recused himself from Item G due to a possible conflict of interest due to the location of his property in relation to the location of this event. Council Member Loren also recused herself from Item G, as she is currently a Festival de la Comunidad committee member. Mayor Biasi said if a resident within the Winters City limits is interested in serving on the board of the Sacramento Yolo Mosquito Vector Control District, please contact City staff.

Motion by Council Member Neu, second by Council Member Cowan to approve Consent Items A, B, D, E, F, H and I. Motion carried with the following vote:

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

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

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

## PRESENTATIONS

Police Chief John Miller gave a sobering presentation entitled "Police Use of Force", which remains the most controversial subject in all of police work. Police force shocks the public's conscience and the public has unreasonable expectations and often lacks understanding in this area. Chief Miller shared video clips that showed how a different camera angle could alter your decision about whether reasonable force was justified. Chief Miller also spoke of the extensive training that is required of police officers, the civil liability that police officers are faced with, and the ramifications of the passage of AB-931, which is currently on the Senate floor, which would "require peace officers to attempt to control an incident by using time, distance, communications, and available resources in an effort to deescalate a situation whenever it is safe and reasonable to do so." Police officers have to make life and death decisions in the time it takes you to finish reading this sentence. Council thanked Chief Miller for the presentation.

## DISCUSSION ITEMS

1. Public Hearing and Consideration of the Amended Tentative Subdivision Map for the 40-Lot Creekside Estates Subdivision

Contract Planner Dave Dowswell gave a brief power point presentation and said some residents were concerned with the lot configurations, adding that setbacks are set by ordinance and encroachments may be permitted. The Planning Commission heard this item at their July 24<sup>th</sup> meeting and recommended approval.

Regarding future change in the setback, Council Member Anderson asked if the creek bank was protected. Dave said it would be evaluated on a case-by-case basis. The depth and slope of the creek differs and the set back from the top of the bank varies. The City Engineer could determine if the creek would be impacted. Dave also confirmed that the maps and the text contained in the conditions of approval will be corrected to the City of Winters before becoming final.

Mayor Biasi opened the public hearing at 7:16 p.m. Rex Alvera, 405 Dry Creek Lane, inquired about the two small lots (7a & 7b) and asked what they were. Dave said they were duets, which meets the affordable housing obligation for very low, low and moderate housing. An in-lieu may be done on this project. Mr. Alvera voiced his concerns regarding parking, the number of vehicles and the egress from the area. He requested these duets not be located at the main entry to the subdivision but distributed throughout the project. Mayor Biasi closed the public hearing at 7:18 p.m.

Council Member Neu said he was glad to see duplex lots in the plan and the inclusionary guidelines say we should include them. He added it's important to have inclusionary housing in these new subdivisions and put them all in one location. Council Member Cowan asked if there has been any discussion about reducing the number of

lots. Dave said the possibility exists, but not until we have a builder. Council will have the final say regarding any deviations from the map provided. Mayor Biasi said with the 50 foot setback along the creek, the buildable square footage is lower than the actual square footage. He would like staff to pursue moving the duplexes away from the entrance; Dave suggested they be placed back to back and these changes can be made at the administrative level. Dave confirmed there is no pass through or pedestrian access to Grant Avenue. Council Member Loren reiterated that inclusionary housing is important and stressed that it needs to be kept in the project.

Motion by Council Member Loren, second by Council Member Cowan to find per Section 15061(b)(3) of the CEQA Guidelines that the proposed amendment to the Tentative Map 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 the tentative map and approve Resolution 2018-41, approving the amended tentative subdivision map for the Creekside Estates Subdivision. Motion carried with the following vote:

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

2. Public Hearing and Adoption of Resolution 2018-50, a Resolution of the City Council of the City of Winters Adopting Water & Sewer Rates

Director of Financial Management Shelly Gunby gave an overview and said notices of the proposed rate increase were mailed to residents on June 29<sup>th</sup> and a public hearing notice was published in the Winters Express on August 9<sup>th</sup>. Staff is proposing changing the fixed rate portion of the bill, so increased or decreased usage would have less of an impact on the City's income. Shelly confirmed Exhibits A and B of Resolution 2018-50 will be amended to include the dates of implementation. Residents could see a \$9 or \$10 increase the first year and \$1 or \$2 increase the second year. Bond refunding will then follow and less debt service coverage will be needed.

Mayor Biasi opened the public hearing at 7:36 p.m.

Michael Derkacz, a Real Estate Portfolio Manager with Sterling Asset Management Company, an Affiliate of CHOC, said based on the average units of water used for the 78 units on Railroad and the 80 units on Baker, this would increase the bill by \$12,000 annually. Many of these residents have highly restricted rent control, so the increase can't be passed onto the residents. He asked Council to consider the effect on the large apartment community and the large amount of water used and the effect this might have on the residents.

Mayor Biasi entered into record three protest letters received from Winters residents Greg Castenada, Cassie Carter, and Claudia Horvath. Mayor Biasi then closed the public hearing at 7:40 p.m.

Shelly said all residents must be treated on an equal basis and should include the same increase for all units. Maintenance, service, and debt service are costs to the City. City Attorney Walsh clarified that the City does not have the option to subsidize any rate increases. Council Member Loren asked if the rate increase implementation dates were properly noticed and Shelly replied yes.

Mayor Biasi said he was not in favor of raising the rates, but the City must charge the amount needed to provide water and sewer services to all residents. He asked about moving money from other accounts to make up the difference and Shelly said there are no other accounts available. City Attorney Walsh said funds could only be taken out of the general fund and Shelly said transferring funds from the General Fund would not count as revenue, but would be considered a subsidy. There has been a water reduction as residents have cut back on watering their lawns and have installed drought resistant landscape. On the sewer side, staff has made many repairs.

City Manager Donlevy said there are four items on tonight's agenda that are affiliated with waste water and the breakdown of these costs total \$65/customer. It's been five years since the last rate increase and residents have cut their water use by over 30% based on conservation. On the sewer side, costs must be spread out over a pretty small base of approximately 2,000 customers. Shelly said as part of the bond refunding, staff will be doing a water and sewer rate study. Mayor Biasi said state regulated costs can't be avoided and the City must stay in compliance or pay fines.

Motion by Mayor Biasi, second by Council Member Neu to approve Resolution 2018-50 amending Resolution 2013-24 establishing fees, rates, and charges for maintenance, replacement and repair of the City's Water and Sewer system. The motion includes amendments to Exhibits A and B of Resolution 2018-50 to include the dates of implementation.

3. Resolution 2018-49, a Resolution of the City Council of the City of Winters Approving a Monitoring and Reporting Contract with Wallace Kuhl & Associates (WKA) in the Amount not to Exceed \$82,300, and a Budget Adjustment for FY 2018-2019

Environmental Services Manager Carol Scianna gave an overview and said \$60,000 was budgeted for these monitoring and reporting services as required by the Central Valley Water Quality Control Board (CVRWQCB), but based on new waste discharge requirements, a waste discharge report is required and a budget adjustment in the amount of \$22,300 is needed for FY 2018/2019. Following the monitoring of the closed landfill through December, 2019, staff is hopeful that the report will show the wastewater

is not being impacted and the cap can be left as is. Wallace Kuhl & Associates has been very helpful in pleading our case before the Board.

Council Member Anderson asked if the reporting requirement is generated by the proposed use of the land. Carol said the Board has been looking at all closed landfills throughout California and Winters is at the bottom of the list, so they finally got around to Winters. Council Member Cowan asked how long it has been since it's been an active landfill? Carol said it was closed around 1980 and the monitoring began in 2000. The monitoring could go on for many years as it was never fully closed with the Board. But with the years of data, staff hopes to get it closed. Carol said the City will monitor for another 10 or 15 years and will depend on the results of the monitoring. Mayor Biasi said the cost could actually be less than \$82,300 based on the monitoring results.

Motion by Council Member Neu, second by Council Member Loren to authorize the City Manager to execute a contract with Wallace-Kuhl & Associates not to exceed \$82,300 for monitoring and reporting services as required by the CVWQCB new Waste Discharge Requirements, and the approval of Resolution 2018-49 for a budget adjustment in the amount of \$22,300 for the 2018-2019 budget cycle in fund/account 422-54419-650. Motion carried with the following vote:

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

4. Resolution 2018-51 A Resolution of the City Council of the City of Winters Authorizing the issuance, Sale and Delivery of Water Revenue Refunding Bonds and Sewer Revenue Refunding Bonds, the Execution and Delivery of Indentures and Other Documents in Connection with Such Bonds and Authorizing Related Actions; and

Director of Financial Management Shelly Gunby gave an overview and said due to the successful conservation efforts of City residents and slower-than-expected population growth, the water and sewer systems are having some revenue issues.

Eric Scriven, the City's financial advisor and Bill Strauss, the City's bond counsel from Richards, Watson & Gershon, as well as Ralph Holmes from Piper Jaffrey, were present to answer any questions the Council might have.

Chairman Cowan said at the last City Council meeting on August 7<sup>th</sup>, Council chose to take this path to minimize the increase of the water and sewer rates to lessen the impact of the monthly bill. Of the three options provided, this was the option that Council directed staff to take. Board Member Biasi agreed that this option was chosen following a lengthy discussion and would cost the City more money if it were done over a longer period of time.

Chairman Cowan asked if there were any public comments pertaining to this item and there were none.

Motion by Council Member Anderson, second by Mayor Biasi to adopt Resolution 2018-51 authorizing the issuance, sale and delivery of water revenue refunding bonds and sewer revenue refunding bonds, the execution and delivery of indentures and other documents in connection with such bonds and authorizing related actions. Motion carried with the following vote:

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

5. Resolution 2018-52 A Resolution of the Board of Directors of the Winters Public Finance Authority Approving the Refunding of 2007 Water Revenue Bonds and 2007 Sewer Revenue Bonds and Authorizing Related Actions

Motion by Public Finance Authority Board member Loren, second by Public Finance Authority Board member Biasi to adopt Resolution 2018-52, approving the refunding of the 2007 Water Revenue Bonds and 2007 Sewer Revenue Bonds and authorizing related actions. Motion carried with the following vote:

AYES: Winters Public Finance Authority Board Members Anderson, Biasi, Loren, Neu and Board Chairman Cowan  
NOES: None  
ABSENT: None  
ABSTAIN: None

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

1. None
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CITY MANAGER REPORT: Putting together an exceptional finance team is the goal of the City and the finance team we have has been exceptional for several years. Working throughout the entire State of California brings tremendous value. Shelly has worked exceptionally well with our team and in looking after our financial interests. The Council's consideration of these items is appreciated.

**ADJOURNMENT:** Mayor Biasi reminded everyone to attend the Earthquake celebration on Friday night, August 24<sup>th</sup>, in the downtown area, and adjourned the meeting at 8:18 p.m.

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Bill Biasi, MAYOR

ATTEST:

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Tracy S. Jensen, City Clerk



**CITY COUNCIL  
STAFF REPORT**

**DATE:** September 4, 2018  
**TO:** Mayor and City Council  
**FROM:** John W. Donlevy, Jr., City Manager   
**SUBJECT:** Fairfield Inn Hotel- Development Impact Fee Payment Agreement

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**RECOMMENDATION:**

That the City Council approve and authorize the City Manager to execute a Development Impact Fee Payment Agreement (Exhibit A) between the City of Winters and Samir Ali for the Fairfield Inn Hotel development.

**BACKGROUND:**

The City of Winters has from time to time worked with residential and commercial developers to structure payment of development impact fees over a period of time in instances where the impact fees are not immediately required for current projects and the developer has agreed to pay interest on the fees. With these past developments, the City has included in the development agreements the option of utilizing a short term payment agreement for impact fees.

**Discussion:**

The attached Development Impact Fee Payment Agreement is an arrangement for Samir Ali to pay \$533,292.46 in impact fees owed to the City by the project over a five year period starting January 10, 2019. The developer requested this arrangement so that it could pay the fees out of the cash flow from the operating hotel, and benefits the City because it will receive interest at a greater rate than it would if the City were to hold the impact fees itself until such time those fees were needed for capital improvement projects.

The terms of the agreement include as follows:

1. Five year term;
2. Quarterly payments at a 3% interest rate (Quarterly payment amount is \$28,841.13).
3. Recordation of the agreement with the issuance of the Certificate of Occupancy.

**Succession Planning**  
**Agenda Report- August 15, 2017**  
**Page 2**

The interest rate is approximately 2% higher than current City investment returns through the Local Agency Investment Fund (LAIF).

**FISCAL IMPACT:** City will earn a 3% return on \$533,292.46 over a 5 year period.

Exhibit A  
 Resolution 2010-23  
 City of Winters Development Impact Fees  
 Effective July 1, 2010

Facility	Residential Fee per Unit					Non-Residential Fee per Building Square Foot								
	Rural	Low Density	Medium Density	Medium High Density	High Density	NC	Highway Commercial	CBD	Office	Other Commercial	Business Park	Light Industrial	Heavy Industrial	Public/Quasi Public
Water System	5,590	4,346	2,904	1,975	1,423	1.40	1.40	0.50	-	1.03	1.17	0.82	0.91	0.92
Waste Water System	7,574	5,902	5,246	3,935	2,754	2.78	2.78	0.97	-	1.99	1.99	1.39	1.85	2.14
General Storm Drain	81	63	42	25	22	0.03	0.03	0.01	-	0.02	0.02	0.02	0.02	
Streets	3,061	3,067	3,070	2,492	1,917	3.74	3.74	2.72	-	2.80	1.12	0.65	0.48	
Parks and Rec	2,131	2,131	2,131	1,732	1,332	-	-	-	-	-	-	-	-	
Public Safety	396	394	394	395	933	0.50	0.50	0.50	-	0.50	0.10	0.10	0.10	
Fire Protection	1,382	1,382	1,382	1,123	864	0.79	0.79	1.02	-	1.03	0.65	0.55	0.51	
General Capital	2,012	2,012	2,012	1,635	1,257	1.15	1.15	1.80	-	1.86	0.74	0.43	0.32	
Storm Drain-Non-Flood	582	454	303	182	161	0.23	0.23	0.06	-	0.16	0.16	-	-	
Monitoring Fee	1,221	1,221	1,211	1,166	1,156	0.64	0.64	0.64	0.64	0.64	0.11	0.11	0.11	

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

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

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SPACE ABOVE THIS LINE FOR RECORDER'S USE  
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE § 6103

**DEVELOPMENT IMPACT FEE PAYMENT AGREEMENT**

**between**

**THE CITY OF WINTERS  
a California municipal corporation**

**and**

**Samir Ali**

**Dated as of \_\_\_\_\_, 2018**

## DEVELOPMENT IMPACT FEE PAYMENT AGREEMENT

This Development Impact Fee Payment Agreement (“**Agreement**”) is entered into on this 4th day of September, 2018, by and between the City of Winters, a California municipal corporation (“**City**”), and Samir Ali (“**Owner**”). City and Owner are sometimes individually referred to herein as “**Party**” and together as “**Parties**.” This Agreement shall become effective (“**Effective Date**”) on the date following both approval by the Winters City Council and execution of the Agreement by the appropriate authorities or officers of the City and Owner.

### RECITALS

A. City imposes certain fees on development projects to offset the cost of providing services, which are commonly referred to as development impact fees, and are due at the time of building permit issuance.

B. The City has identified and designated certain projects throughout the City that are paid for with development impact fees and are referenced in the City’s Major Projects Financing Plan, which is updated from time to time, and is explained in more detail in the Major Projects Financing Plan Nexus Study.

C. Owner owns certain real property in the City of Winters, California, with an address of 702 Matsumoto Lane, Winters, CA.95694 and Yolo County Assessor Parcel’s Numbers 038-050-060 (“**Property**”). The Property is legally described in **Exhibit “A”** attached hereto and incorporated herein by reference. The Property is currently planned to be developed as a 72 room hotel (“**Project**”).

D. Owner has received all approvals for the Project, including site plan and design review, and Owner is obligated to pay to City certain development impact fees, which include those impact fees listed in **Exhibit “B”**, attached hereto and incorporate herein (“**DIF**”) in connection with the Project.

E. Owner has requested to pay the required DIF in installments over a five (5) year period, at three percent (3%) interest, which City has determined based on its own independent investigation and review to constitute a market rate interest rate, and is greater than the interest the City would receive if it were to invest the DIF due from the Project in accordance with the City’s investment policy. To secure payment of the outstanding DIF owed to City, as further described in this Agreement, Owner agrees to provide the security as required herein.

G. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow Owner to pay its DIF obligation in quarterly installments over a five year period, subject to accrual of interest as set forth herein.

H. The Parties understand and agree that the obligations created under this Agreement will run with the land and be binding upon all successors and assigns to the Property, or any part thereof.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**AGREEMENT**

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement by reference as though fully set forth herein.

2. DIF Fee Obligation. The total DIF (as shown in detail in **Exhibit "B,"** attached hereto and incorporated herein), for the Project is FIVE HUNDRED THIRTY-THREE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS AND FORTY-SIX CENTS (\$533,292.46) ("**DIF Obligation**"). The Parties hereby agree that Owner shall pay the DIF Obligation in quarterly installments, over a five (5) year period, with interest accruing at an interest rate of three percent (3%) charged on the principal balance of the DIF Obligation.

3. Payment Schedule. Owner shall pay the DIF Obligation in quarterly installments in the amounts shown in the amortization schedule, attached hereto and incorporated herein as **Exhibit C, ("Quarterly Installments")**. The first Quarterly Installment of Twenty-Eight Thousand Eight Hundred Forty-One and 13/100 Dollars (\$28,841.13) shall be due January 10, 2019. Subsequent Quarterly Installments shall be remitted to City on or before the 10th day of each month immediately after the end of each quarter (April 10<sup>th</sup>, July 10<sup>th</sup>, October 10<sup>th</sup> and January 10<sup>th</sup> of each year thereafter until the DIF Obligation and all accrued interest has been paid in full. The last Quarterly Installment shall be increased or decreased, as necessary, to effect payment in full of all outstanding amounts owing to City pursuant to this Agreement. A late fee of up to ten percent (10%) may be charged on any Quarterly Installment not received by the due date.

4. No Pre-Payment Penalty. Owner may make an early payment to City without a pre-payment penalty as an alternative to making quarterly payments. The payment must be in a lump sum amount equal to the then remaining balance, including any accrued interest up to the date of payment, under this Agreement.

5. Personal Obligation; Obligation Runs with the Land. The Parties acknowledge and agree that payment of the DIF Obligation benefits the Property, and the obligation to pay the DIF Obligation in full shall run with the land and be binding on the Property and all successors and assigns thereto. Owner hereby further acknowledges and agrees that the obligation to pay the DIF Obligation shall continue and remain an obligation of Owner as well as (jointly and severally) any successors in interest of Owner, including, without limitation, any successor in interest to the Property or any portion of the Property.

6. Security. From and after the Effective Date, this Agreement shall contractually bind Owner to pay the Total DIF Obligation and shall constitute a 3<sup>rd</sup> lien (subordinate to primary lender) against the Property in the amount of the Total DIF Obligation. Owner shall additionally execute that certain Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing ("**Deed of Trust**") and Promissory Note Secured by Deed of Trust ("**Promissory Note**"), together set forth in **Exhibit D,** attached hereto and incorporated herein by this

reference, which shall be recorded in the Official Records of the County of Yolo, California concurrently with the recordation of this Agreement. Upon payment of the last Quarterly Installment Payment to City, City shall execute and record in the Official Records of the County of Yolo, California a release of the security instrument and any lien(s) from the Property in a form approved by the City Attorney. At Owner's request, City will deliver a copy of the executed release form to Owner.

7. City's Remedies For Owner's Default. Failure of Owner to pay the Quarterly Installment as required and/or Owner's failure to satisfy, in full, the DIF Obligation by the fifth anniversary of the Effective Date of this Agreement shall be deemed an event of default hereunder, and City shall have the right, in addition to any other right or remedy in this Agreement, and in its sole discretion, to: (a) demand immediate payment in full by Owner or successors in interest of Owner of all outstanding amounts owed; (b) charge a late fee on all late and outstanding payments; (c) treat and collect all outstanding amounts as a lien against the Property; or (d) enforce any combination of the foregoing rights, in addition to any other right City may have in law or in equity.

8. Indemnification. Owner shall defend (with counsel of City's choice), indemnify and hold City, its officials, officers, employees, and agents free and harmless from any and all claims, liabilities, losses, costs, expenses, damages, or injuries to property or persons, including wrongful death, in any manner caused by any acts, omissions, or willful misconduct of Owner, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with this Agreement ("Claims"), including without limitation, the payment of all consequential damages, attorneys' fees, and other related costs and expenses. The indemnity provided herein shall include coverage of City under any warranty or guarantee implied by law or fact, or otherwise given to Owner. This indemnification provision shall not apply to any Claims arising out of or incident to the sole negligence or willful misconduct of City, its officials, officers, employees, or agents. In addition, this indemnity provision and any warranties or guarantees shall not limit any liability under law of any consultants or contractors of Owner. Without limiting the foregoing, this indemnity shall extend to any claims arising because Owner has failed to properly secure any necessary easements, land rights, contracts or approvals, or to comply with the Prevailing Wage Laws.

9. Notice to Subsequent Owners. The original of this Agreement will be recorded in the Official Records of the County of Yolo, California, and will provide notice to subsequent owners/occupants of the Property that the Property is subject to this Agreement and the conditions and obligations herein. Recordation of this Agreement shall provide constructive notice to all buyers and lessees of the existence of this Agreement and the obligations hereunder to pay the DIF Obligation when and as due.

10. Cumulative Remedies. The rights or remedies of City, as provided in this Agreement, or pursuant to any applicable laws, rules, or regulations, may be pursued singly successively, together, or otherwise against the Property, Owner, or its transferees, successor(s), or assign(s) at the City's sole discretion. City's failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights or remedies, or of the right to exercise them at a later time.

11. No Waiver. City or Owner's failure to insist on performance of any of the terms or conditions of this Agreement or to excuse any right, remedy, or privilege of City's or Owner's waiver of any breach hereunder shall not thereafter be deemed a subsequent waiver of any of the terms, conditions, or rights, remedies, or privileges, whether of the same or similar type. No party will be deemed to have waived any rights under this Agreement unless the waiver is made in writing and signed by the waiving party or that party's duly authorized representative. All rights and remedies provided for under this Agreement are cumulative.

12. Cooperation. The Parties agree to cooperate with each other in good faith and in furtherance of the purposes of this Agreement. The Parties hereby agree to take such other reasonable actions and execute such other documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require City to take any legislative act or exercise its discretion in any particular manner.

13. Entire Agreement. This Agreement contains the final and complete agreement between the Parties with respect to the matters herein discussed and supersedes all previous communications and agreements between them, either oral or written, to the extent such prior communications and agreements are inconsistent with this Agreement.

14. Assignment. This Agreement is not assignable by Owner without the prior written consent of City, and any attempt to make such assignment shall be void and shall constitute an incurable material default under this Agreement. Upon such unpermitted assignment, City shall be entitled, in addition to any other remedy provided in this Agreement, to immediately make demand upon the Promissory Note. Should a permitted assignment occur, the terms, conditions, and obligations created under this Agreement shall run with the Property in perpetuity from the Effective Date and shall be binding upon all successors and assigns to the Property.

15. Attorneys' Fees. If any action or proceeding is commenced between City and Owner to enforce or interpret any term of this Agreement, the prevailing party in such action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the other party the prevailing party's cost of suit and reasonable attorneys' fees. The attorneys' fees and costs shall include, without limitation, attorneys' costs and fees incurred on appeal and those incurred in enforcing any judgment rendered in any such action or proceeding. Such attorneys' costs and fees may be recovered as an element of costs in the underlying action or proceeding or in a separate recovery action.

16. Prevailing Wages. Owner is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or

more, It is Owner's sole and exclusive responsibility to determine whether Prevailing Wage Laws apply to the Project. Owner shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. In the event that Prevailing Wage Law are determined to apply to the Project, it shall be mandatory upon the Owner and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1), and debarment of contractors and subcontractors (Labor Code Section 1777.1).

17. Notices. All notices shall be in writing and shall be considered given: (i) when delivered in person to the receipt named below; or (ii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below. All notices shall be addressed as follows:

**If to City:**

City Manager  
City of Winters  
318 First Street  
Winters, California 95694

**With Copies to:**

Best Best & Krieger LLP  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Attn: Ethan Walsh

**If to Owner:**

Samir Ali  
5000 E. Second Street, Ste. G  
Benicia, CA 94510

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Governing Law. This Agreement and its provisions shall in all respects be interpreted, construed, enforced, and governed by and under the laws of the State of California, without regard to conflict of laws principles.

19. Consent to Jurisdiction, Venue. Any action or proceeding brought with regard to this Agreement shall be instituted and maintained in the Superior Court for the County of Yolo, California. Owner hereby forgoes and waives any provision of law providing for a change of venue from such court on the grounds that City is or may be a party to any such action of proceeding.

20. Modification. This Agreement may be modified only by another written instrument duly authorized and executed by both City and Owner.

21. Severability. The provisions of this Agreement are specifically made severable. If any clause, provision, rights, and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right, and/or remedy were not contained herein.

22. Headings. Section headings contained in this Agreement are for convenience only and shall not impact the construction or interpretation of any provision.

23. Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either City or Owner. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement.

24. No Third Party Beneficiaries. This Agreement and the performance of the City's and Owner's obligations hereunder are for the sole and exclusive benefit of the City and Owner. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either the City or Owner hereunder as a result of the City's or Owner's performance or nonperformance of their respective obligations under this Agreement.

25. Execution. This Agreement may be executed in one or more counterparts, each of which shall be an original and together shall constitute the entire agreement of the parties.

*[Agreement continued on following page]*

Fairfield Inn Development Impact Fee Payment Agreement

26. Authorization. Each person executing this Agreement represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**CITY**

**CITY OF WINTERS,  
a California Municipal Corporation**

**OWNER**

**SAMIR ALI**

By: \_\_\_\_\_  
John W. Donlevy, Jr.  
City Manager

By: \_\_\_\_\_  
Samir Ali

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

Exhibit A

**EXHIBIT B**

**DEVELOPMENT IMPACT FEES SUBJECT TO THIS AGREEMENT**

Impact Fee	Per SF	43623
Water	\$ 1.40	\$ 61,072.20
Sewer	\$ 2.78	121,271.94
Storm Drain	\$ 0.03	1,308.69
Fire	\$ 0.79	34,462.17
General	\$ 1.15	50,166.45
Storm Non Flood	\$ 0.23	10,033.29
Streets	\$ 3.74	163,150.02
Police	\$ 0.50	21,811.50
		\$ 463,276.26
Pro rata share of Sewer const already constructed		-
Matsumoto Ln pro rata share already constructed		-
Flood Fee	1.7 acres	
	zone 5	70,016.20
		\$ 533,292.46

**EXHIBIT "C"**

**QUARTERLY PAYMENT SCHEDULE**

City of Winters						
Fairfield Inn Loan Amortization Schedule						
Payment Number	Payment Date	Beginning Balance	Payment Amt	Principal	Interest	Ending Balance
1	1/10/2019	\$ 533,292.46	\$ 28,814.13	\$ 24,814.44	\$ 3,999.69	\$ 508,478.02
2	4/10/2019	\$ 508,478.02	\$ 28,814.13	\$ 25,000.54	\$ 3,813.59	\$ 483,477.48
3	7/10/2019	\$ 483,477.48	\$ 28,814.13	\$ 25,188.05	\$ 3,626.08	\$ 458,289.43
4	10/10/2019	\$ 458,289.43	\$ 28,814.13	\$ 25,376.96	\$ 3,437.17	\$ 432,912.47
5	1/10/2020	\$ 432,912.47	\$ 28,814.13	\$ 25,567.29	\$ 3,246.84	\$ 407,345.18
6	4/10/2020	\$ 407,345.18	\$ 28,814.13	\$ 25,759.04	\$ 3,055.09	\$ 381,586.14
7	7/10/2020	\$ 381,586.14	\$ 28,814.13	\$ 25,952.23	\$ 2,861.90	\$ 355,633.91
8	10/10/2020	\$ 355,633.91	\$ 28,814.13	\$ 26,146.87	\$ 2,667.26	\$ 329,487.04
9	1/10/2021	\$ 329,487.04	\$ 28,814.13	\$ 26,342.98	\$ 2,471.15	\$ 303,144.06
10	4/10/2021	\$ 303,144.06	\$ 28,814.13	\$ 26,540.55	\$ 2,273.58	\$ 276,603.51
11	7/10/2021	\$ 276,603.51	\$ 28,814.13	\$ 26,739.60	\$ 2,074.53	\$ 249,863.91
12	10/10/2021	\$ 249,863.91	\$ 28,814.13	\$ 26,940.15	\$ 1,873.98	\$ 222,923.76
13	1/10/2022	\$ 222,923.76	\$ 28,814.13	\$ 27,142.20	\$ 1,671.93	\$ 195,781.56
14	4/10/2022	\$ 195,781.56	\$ 28,814.13	\$ 27,345.77	\$ 1,468.36	\$ 168,435.79
15	7/10/2022	\$ 168,435.79	\$ 28,814.13	\$ 27,550.86	\$ 1,263.27	\$ 140,884.93
16	10/10/2022	\$ 140,884.93	\$ 28,814.13	\$ 27,757.49	\$ 1,056.64	\$ 113,127.44
17	1/10/2023	\$ 113,127.44	\$ 28,814.13	\$ 27,965.67	\$ 848.46	\$ 85,161.77
18	4/10/2023	\$ 85,161.77	\$ 28,814.13	\$ 28,175.42	\$ 638.71	\$ 56,986.35
19	7/10/2023	\$ 56,986.35	\$ 28,814.13	\$ 28,386.73	\$ 427.40	\$ 28,599.62
20	10/10/2023	\$ 28,599.62	\$ 28,814.13	\$ 28,599.62	\$ 214.50	\$ 0.00

Exhibit D

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

Space above line for Recorder's use only  
Exempt from Recording Fees pursuant to Govt. Code § 27383

CITY OF WINTERS

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING  
(Samir Ali)**

This Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing ("Deed of Trust") is dated \_\_\_\_\_, 2018, and recorded in the Official Records of Yolo County, executed by Samir Ali, in favor of the City of Winters.

This Deed of Trust is made as of \_\_\_\_\_, 2018, among Samir Ali ("TRUSTOR"); \_\_\_\_\_ Title Company, whose address is \_\_\_\_\_ ("TRUSTEE"); and the CITY OF WINTERS ("BENEFICIARY"), whose address is 318 First Street, Winters, CA 95694.

Trustor irrevocably grants, conveys, transfers, and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's estate, right, title, and interest in, to and under the following property (collectively, the "Property"): (a) the real property in Winters, California, described on Exhibit 1 attached hereto and incorporated herein by this reference, together with all existing and future easements and rights affording access to it (the "Land"); (b) together with all buildings, structures, and improvements now existing or hereafter constructed thereon (the "Improvements"); (c) together with all articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a "fixture" under applicable law (each a "Fixture," collectively "Fixtures"); (d) together with all other property and interests of any kind or character that may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements.

1. **Secured Obligations.** Trustor makes the grant, conveyance, transfer, and assignment herein for the purpose of securing the following obligation (the "Secured Obligation"): payment of the sum of FIVE HUNDRED THIRTY-THREE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS AND FORTY-SIX CENTS (\$533,292.46) with interest

thereon according to the terms of a promissory note (the "Note") of even date herewith, executed by Trustor in favor of Beneficiary, or order and any extension or renewals thereof.

2. **Maintenance and Repair.** Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building; (b) complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed; (c) pay when due all claims for labor performed and materials furnished; (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (e) not commit or permit waste; and (f) cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which from the character or use of the Property may be reasonably necessary.

3. **Insurance.** Trustor shall maintain hazard insurance against loss by fire, hazards included with the term "extended coverage," and any other hazards for which Beneficiary requires insurance, and liability insurance. The insurance carrier and the insurance policies and amounts of coverage shall be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, and the policies shall include Beneficiary as an additional insured, as applicable.

4. **Defense of Security.** Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. **Payment of Taxes and Liens.** Trustor shall pay (a) at least 10 days before delinquency, all non-abated taxes and assessments affecting the Property; (b) when due, all encumbrances, charges, and liens, with interest, on the Property, that are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all reasonable and documented costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust after written notice of such failure by Beneficiary and a reasonable opportunity to cure, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, or settle any encumbrance, charge, or lien, which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. **Reimbursement of Costs.** Trustor shall pay upon demand all reasonable and documented sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Fee Deferral Agreement and Note.

7. **No Waiver.** By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a

default for failure to pay.

8. **Reconveyance.** That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

9. **Assignment of Rents.** Subject to the rights of senior lenders, Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income, and other benefits (collectively, the “Rents”) derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power, and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor’s right, title, and interest in the Rents. So long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use, and enjoy the same. Upon the occurrence of such a default beyond any applicable notice and cure periods, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary’s interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default, beyond any applicable notice and cure periods, and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend, and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. **Default and Foreclosure.** Upon default by Trustor in payment or performance of any Secured Obligation, subject to any applicable notice and cure period, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice

Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note or notes, and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3455.

11. **Substitution of Trustee.** Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties. Said instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page where this Deed of Trust is recorded, and the name and address of the new Trustee.

12. **Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall mean the owner and holder, including pledgees, of the secured note or notes, whether or not named as Beneficiary herein.

13. **Trustee Acceptance.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

14. **Further Assurances.** Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time reasonably require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

**15. Condemnation and Insurance Proceeds.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in, and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Notwithstanding the above, the Beneficiary shall release all insurance and condemnation proceeds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that such restoration, repair or rebuilding is economically feasible. If such insurance proceeds shall be insufficient for such purposes, Trustor shall make up the deficiency. If the Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Project taken, provided the Beneficiary determines that such restoration is economically feasible and no default exists under the Loan Documents following the expiration of all applicable cure periods. If the Project is subject to a total condemnation, or if Beneficiary determines that restoration of the Project is not feasible following a partial condemnation, or if a default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay all sums under the Amended and Restated Note, then the Additional Funds Note, with the excess, if any, paid to Trustor, subject to the rights of the senior lender.

**16. Severability.** If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

Exhibit D

17. **Estoppel Certificate.** Trustor shall, within thirty (30) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

18. **California Uniform Commercial Code Security Agreement; Fixture Filing.** Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions, and proceeds (including insurance proceeds) of all of the foregoing (collectively, the “**Personal Property**”). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary’s request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Upon Trustor’s breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary’s option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary’s remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

19. **Due-On-Sale or Encumbrance.** If all or any part of the Property, or any interest therein, or any beneficial interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily, or by operational law, Beneficiary may, at Beneficiary’s option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor’s address hereinbefore set forth at its address set forth in the Development Impact Fee Payment Agreement entered into by and between Trustor and Beneficiary referenced in Section 1, above.

Exhibit D

**TRUSTOR:**

Samir Ali

By: \_\_\_\_\_  
Name: Samir Ali

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

Exhibit D

Fairfield Inn Development Impact Fee Payment Agreement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF YOLO )

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

Signature: \_\_\_\_\_ (seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF YOLO )

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

Signature: \_\_\_\_\_ (seal)

**PROMISSORY NOTE**  
**SECURED BY DEED OF TRUST**

Winters, California \_\_\_\_\_, 2018

For value received, the undersigned (herein "Borrower", whether one or more), promises to pay to the CITY OF WINTERS, a California municipal corporation ("Lender"), at 318 First Street, Winters, California 95694, or at any other place that may be designated in writing by Lender, the principal sum of FIVE HUNDRED THIRTY-THREE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS AND FORTY-SIX CENTS (\$533,292.46) with interest from the date hereof on unpaid principal at the per annum rate of three percent (3%). In no event shall this interest rate exceed the rate allowed under the usury law then in effect in the State of California. Any delinquent payment shall bear interest at the same rate. All sums due are payable in lawful money of the United States of America.

The Promissory Note ("Promissory Note") is secured by a Deed of Trust of the same date as this Note, executed by Borrower, as Trustor, in favor of Lender, as Beneficiary ("Deed of Trust"), and encumbering the real property described in the Deed of Trust ("Property"). The holder of this note will be entitled to the benefits of the security provided by the Deed of Trust and will have the right to enforce the covenants and agreements of Borrower contained in the Deed of Trust.

Borrower shall pay to Lender the principal amount of this Promissory Note in quarterly payments of principal and interest, as shown in the Quarterly Payment Schedule (Exhibit C) of the Development Impact Fee Payment Agreement. The quarterly payments shall be made on or before the 10th day of each quarter of the calendar following the Effective Date of this Note until the debt is paid in full, at which time the entire outstanding principal balance of this Promissory Note, together with all accrued and unpaid interest, shall be due and payable.

If Borrower fails to make any required payment on or before ten (10) days following the date upon which it becomes due, Borrower shall pay a late charge equal to ten percent (10%) of the amount of the unpaid payment. All payments on this Promissory Note will be applied first to the payment of any costs, fees, late charges, or other charges incurred in connection with the indebtedness evidenced by this Promissory Note; next, to the payment of accrued interest, then to the reduction of the principal balance.

If:

- (a) Borrower fails to pay when due any sum payable under this Promissory Note; or,
- (b) Borrower fails to pay any indebtedness secured by, or fails to perform any covenant or agreement under, the Deed of Trust; or,
- (c) Borrower agrees to or actually sells, conveys, transfers, disposes of, or further encumbers the Property, or any part thereof, of any interest therein, without first obtaining the written consent of the holder of this Promissory Note,

Exhibit D

Then Borrower shall pay to Lender all sums owing under this Promissory Note without deduction, offset, or counterclaim of any kind. The relationship of Borrower and Lender under this Promissory Note is solely that of borrower and lender, and the loan evidenced by this Promissory Note and secured by the Deed of Trust will in no manner make Lender the partner or joint venturer of Borrower.

In the event of a dispute arising under this Promissory Note, the prevailing party shall be entitled to reasonable attorneys' fees and costs in accordance with California Civil Code Section 1717. For purposes of this Promissory Note, a dispute shall be construed as arising under the Promissory Note if its subject matter pertains to one or more terms of the Promissory Note, the Deed of Trust, or any other document(s) pertaining to the indebtedness that is evidenced by this Promissory Note. Should either party be entitled to attorneys' fees as the result of a dispute arising under this Promissory Note or the Deed of Trust, that party shall also be entitled to interest at a rate of ten percent (10%) per annum, which shall begin to accrue as of the date of the demand and shall continue until paid.

No previous waiver, failure, or delay by Lender in acting with respect to the terms of this Promissory Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Promissory Note or the Deed of Trust. A waiver of any term of this Promissory Note or the Deed of Trust must be made in writing and will be limited to the express written terms of the waiver. All notices required or permitted in connection with this Promissory Note will be in writing and will be given at the place provided in the Deed of Trust for the giving of notices.

Borrower may make principal prepayments on any installment due date in addition to the regularly scheduled payment mentioned above with no penalty for such prepayment.

If any term or provision of this Promissory Note is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Promissory Note and such provision shall not affect the legality, enforceability, or validity of the remainder of this Promissory Note. If any provision or part of this Promissory Note is stricken in accordance with the provisions of this paragraph, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

Fairfield Inn Development Impact Fee Payment Agreement

Time is of the essence with respect to every provision of this Promissory Note. This Promissory Note will be construed and enforced in accordance with California law, except to the extent that Federal laws preempt State law, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any Federal or State Court within California having proper venue and also consent to service of process by any means authorized by California or Federal law.

Date: \_\_\_\_\_, 2018

SAMIR ALI

\_\_\_\_\_  
By: Samir Ali

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF YOLO )

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

Signature: \_\_\_\_\_ (seal)

Fairfield Inn Development Impact Fee Payment Agreement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF YOLO )

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

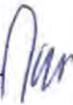
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** September 4, 2018  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Alan Mitchell, City Engineer  
**SUBJECT:** Public Improvement Agreement for Fairfield Inn Hotel Project

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**RECOMMENDATION:** That City Council approve the Public Improvement Agreement and authorize the Mayor to execute the Public Improvement Agreement for the Fairfield Inn Hotel Project.

**BACKGROUND:** The attached Public Improvement Agreement has been prepared for the Fairfield Inn and Suites Hotel. Approval will allow the public improvements associated with the project to be constructed.

The Tentative Map and Design Review application and Conditions of Approval were approved by Planning Commission on June 28, 2016. As a condition of the development, the Applicant is required to enter into a Public Improvement Agreement in order to construct the required public improvements.

The project includes improvements along the frontage of Matsumoto Lane, extending north of the improvements that were constructed with the Starbucks project. The improvements consist of commercial driveways, curb, gutter, and sidewalk, road widening, utility services, and signing and striping.

The Public Improvement Agreement requires bonds to assure construction of the public improvements, a deposit for city inspection, and stipulates the work shall be completed within one year of notice to proceed.

**FISCAL IMPACT:** None associated with this action

Attachment: Public Improvement Agreement

Recording Requested by  
and when Recorded, return to:

**City of Winters**  
318 First Street  
Winters, CA 95694  
Attn: City Manager

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

## **PUBLIC IMPROVEMENT AND MAINTENANCE AGREEMENT**

This Public Improvement and Maintenance Agreement (“AGREEMENT”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“EFFECTIVE DATE”) by and between the CITY OF WINTERS, a municipal corporation, hereinafter called (“CITY”) and ASHRAF ALLI, hereinafter called (“DEVELOPER”). CITY and DEVELOPER are hereinafter sometimes collectively referred to as the “PARTIES” and singularly as “PARTY.”

### **RECITALS**

WHEREAS, DEVELOPER is the owner of certain property located within the CITY, commonly known in the City of Winters as the Fairfield Inn Property, located at 702 Matsumoto Lane (the “Property”) and is currently developing the property with a Fairfield Inn and Suites Hotel (“PROJECT”); and

WHEREAS, the PROJECT has been conditionally approved by the CITY Planning Commission subject to, among other requirements, the development of and dedication to the City of certain public improvements; and

WHEREAS, the public improvements for the PROJECT include, but are not limited to the following: streets, highways, sidewalks, sewer, water, curbs, gutters, storm

drainage facilities, and other public utility facilities. The foregoing public improvements are more particularly described in paragraph 3 of this AGREEMENT, and are hereinafter referred to as “the required public improvements;” and

WHEREAS, the improvement plans for the required public improvements have been prepared in accordance with plans and documents submitted to and approved by the CITY, the conditions of approval required by the Planning Commission, and in satisfaction of applicable state and local environmental compliance requirements; and

WHEREAS, the CITY and the DEVELOPER desire to enter into this AGREEMENT to provide for the construction and dedication to the City of the required public improvements, as more particularly set forth below.

### **AGREEMENT**

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Payment of Fees:** Subsequent to execution of this AGREEMENT by CITY, or at such times as are legally required, DEVELOPER shall pay to CITY all those planning, plan check approval, and administrative fees required by CITY ordinances, as more specifically set forth in paragraph 32 of this AGREEMENT. Those fees to be paid shall include actual staff time and expenses incurred in the processing and checking improvement plans. All other fees (e.g. development impact fees) shall be paid in accordance with existing ordinances or resolutions and this AGREEMENT.

2. **Inspection Fees:** The DEVELOPER shall pay to the CITY fees for plan check and inspection of the construction of the required on-site and off-site civil improvements in an amount equal to a deposit of Twenty-Five-Thousand Dollars (\$25,000). Said fees in the amount

of \$25,000 shall be paid prior to start of construction.

The fees referred to in this paragraph are not necessarily the only City inspection fees, charges, or other costs that may be imposed on the PROJECT, and this AGREEMENT shall in no way exonerate or relieve the DEVELOPER from paying such other applicable fees, charges, and/or other costs. Fees associated with over-time inspections and other special inspections related to the required public improvements may be drawn down from the initial deposit, or any subsequent deposit as required by the CITY.

**3. Construction of Improvements:**

a. Except as otherwise provided below, DEVELOPER agrees to furnish, construct and install at DEVELOPER's sole cost and expense all the required public improvements as shown and approved on the improvement plans prepared by Laugenour and Meikle, dated August 29, 2018 ("IMPROVEMENT PLANS"), a copy of which are on file in the office of the City Engineer, and is incorporated herein by reference, along with any changes or modifications as may be required by the City Engineer, or by the Developer (which are approved by City.) The IMPROVEMENT PLANS may be modified by the DEVELOPER as construction progresses, provided that any modification is approved in writing by the City Engineer. The total estimated cost of the required public improvements is One-Hundred Thirty-Seven-Thousand Sixty-Four Dollars (\$137,064).

b. DEVELOPER agrees to install street light pursuant to P.G. & E. and City requirements.

c. DEVELOPER agrees that gas, electric, telephone or cable television utilities shall be provided via underground transmission facilities to Developer's property at no cost to CITY.

4. **Conformance with Improvements Plans:**

a. All construction of the required public improvements shall conform with the IMPROVEMENT PLANS approved by CITY.

b. DEVELOPER shall provide the City Engineer with a geotechnical study showing condition of the soil/earth for infrastructure, and building pads.

5. **Fulfillment of Conditions:** DEVELOPER shall fulfill all conditions of approval imposed by CITY's Planning Commission on June 28, 2016 and incorporated herein by this reference, in accordance with CITY ordinances, and state law.

6. **Schedule For Construction:** Construction of all required public improvements shall be commenced by the DEVELOPER within one-hundred eighty (180) days of the Effective Date and shall be completed within three hundred-sixty five (365) calendar days thereafter. At least fifteen (15) calendar days prior to the commencement of construction, the DEVELOPER shall notify the City Engineer, in writing of the date DEVELOPER shall commence construction, and shall provide the City Engineer with a construction schedule, in a form specified by the City Engineer, before beginning any work.

7. **Inspection and Access to Work**

a. Except as otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the City Engineer. The City Engineer may observe the progress and quality of the work and determine, in general, if construction of the required public improvements is proceeding in accordance with the intent of the IMPROVEMENT PLANS. The City Engineer is not required to make comprehensive or continuous inspections to check the quality of the work, and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work.

Visits and observations made by the City Engineer shall not relieve the DEVELOPER of its obligation to conduct comprehensive inspections of the work and to furnish proper materials, labor, equipment and tools, construct acceptable work, and to provide adequate safety precautions, in conformance with this AGREEMENT.

b. Whenever the DEVELOPER varies the period during which work is carried out on each day, DEVELOPER shall give due notice to the City Engineer so that proper inspection may be provided. Any work done in the absence of proper inspection by the City Engineer shall be subject to rejection. Safe access to all parts of the work shall at all times be maintained for the necessary use of the City Engineer, other agents of the CITY, and agents of the Federal, State, or local governments, as applicable, during reasonable hours for inspection of the work to ascertain compliance with applicable laws and regulations.

c. One or more inspectors may be assigned by the City Engineer to observe the work and compliance with this AGREEMENT. It is understood that such inspectors shall have the power to issue instructions, reject work, and make decisions regarding compliance with this AGREEMENT, subject to review by the City Engineer within the limitations of the authority of the City Engineer, but shall not have the right to reject work previously approved by a different inspector. Such inspection shall not relieve the DEVELOPER of its obligation to conduct comprehensive inspections of the work, to furnish proper materials, labor, equipment and tools, construct acceptable work, and to provide adequate safety precautions in conformance with this AGREEMENT.

d. The City Engineer and its representatives shall at all times have access to the work wherever it is in preparation or progress, and the DEVELOPER shall provide safe and convenient facilities for such access and for inspection. If this AGREEMENT, the CITY's improvement standards, the City Engineer's instructions, or the laws, ordinances, of any applicable public authority require any material, equipment or work to be specifically tested or approved, the DEVELOPER shall give the City Engineer timely notice of its readiness for such inspection, and if the inspection is by an authority other than the CITY, notice shall be given of the time fixed for such inspection. Inspections by the City Engineer will be made promptly and, where practicable, at the source of supply.

e. Work performed without inspection may be required to be removed and replaced under proper inspection. In such instances, the entire cost of removal and replacing such work, including the cost of City furnished materials used in the work, shall be borne by the DEVELOPER, regardless of whether or not the work exposed is found to be defective.

f. The DEVELOPER shall furnish promptly without additional charge all facilities, labor and materials reasonably needed by the City Engineer for performing all inspection and tests. DEVELOPER shall be charged with any additional cost of inspection when material and workmanship are not ready at the time of its inspection.

g. Where any part of the work is being done under an encroachment permit  
or  
building permit, or is subject to Federal, State, County or City codes, laws, ordinances, rules or regulations, representatives of the applicable government agency shall have full access to the

work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the work for inspection is required by the governing agency, the DEVELOPER shall furnish such notice to the appropriate agency.

**8. Timeliness and Extension:**

a. Time is of the essence of this AGREEMENT. The dates for commencement and completion of the required public improvements may be extended as provided in this paragraph. The City Engineer may extend the dates due to delays in the work actually caused by inclement weather, riots, strikes, lockouts, fires, earthquake, floods and conditions resulting therefrom, or for other reasons beyond the control of the DEVELOPER. Extension of the dates for any other cause shall be made only by the City Council. Extension shall be granted only upon a showing of good cause by the DEVELOPER. The City Council shall be the sole and final judge as to whether sufficient good cause has been shown to warrant granting the DEVELOPER an extension.

b. Request for extension of the commencement and/or completion date shall be in writing and delivered to the CITY in the manner hereinafter specified for service of notices in paragraph 27 of this AGREEMENT. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on the CITY.

c. In the event the CITY extends the time of commencement and/or completion of the work to be done under this AGREEMENT, such extension shall in no way release any guarantee or security given by the DEVELOPER pursuant to this AGREEMENT, or relieve or release those providing an improvement security pursuant to this AGREEMENT. Those individuals or entities providing improvement security for the PROJECT as specified in

Paragraph 9 below shall be deemed to have expressly agreed to any such extension of time. Any such extension may be granted without notice to those entities or individuals providing improvement security to the DEVELOPER.

d. The granting of any extension of time may be conditioned by the CITY by requiring new or amended improvement security in amounts reasonably increased to reflect increases in the costs of constructing the required improvements or by other reasonable conditions imposed by the CITY to protect its interests and ensure the timely completion of the required public improvements.

9. **Improvements Security:** Concurrently with the execution of this AGREEMENT, the DEVELOPER or the DEVELOPER's designated General Contractor(s) shall furnish the CITY:

a. Improvement securities in the sum of One-Hundred Thirty-Seven-Thousand Sixty-Four Dollars (\$137,064) for Performance, which is equal to 100% of the estimated cost to construct the public improvements within the CITY rights of way; and

b. Improvement securities in the sum of Sixty-Eight-Thousand Five-Hundred Thirty-Two Dollars (\$68,532) for Payment/Materials, which is equal to 50% of the estimated cost to construct the public improvements within the CITY rights of way

c. The type and form of the improvements security shall be in conformance with Chapter 5 of the Subdivision Map Act (Government Code section 66499.10) and shall be subject to the approval of the City Manager and City Attorney. No change, alteration, or addition to the terms of this Agreement or the improvement plans accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement, except as otherwise provided by the Subdivision Map Act. Security may be an

instrument of credit or similar security from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, and said security document shall be subject to approval of the City.

10. **Release of Security:** The security furnished by the DEVELOPER may be released in whole or in part in the following manner:

a. Security given for faithful performance of any act or agreement will be released upon the performance of the act and final completion and acceptance by the City Council of the required work, which shall not be unreasonably withheld. Partial release of said security upon partial performance of the act or the acceptance of the work as it progresses may be made upon written authorization of the City Engineer following his inspection and approval of the required public improvements or work related thereto, and the approval of the City Council once each month. In any event, however, sufficient security in an amount equal to ten percent (10%) of the estimated cost of the required public improvements to be constructed, shall be retained for the guarantee and warranty of the constructed improvements and related work against any defective work or labor done, or defective materials furnished, and for the purpose of guaranteeing payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment, and the same shall be retained for one (1) year after completion and acceptance by the CITY of all required public improvements and work related thereto. CITY is further not obligated to release any amount of security deemed reasonably necessary by CITY to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

b. Security securing the payment to contractor, his subcontractors and to persons furnishing labor, materials or equipment may, six (6) months after performance of the

act and the completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which the action has been filed and notice thereof given in writing to the City Council, and if no such actions have been filed the security may be released in full.

11. **Risk of Loss Prior To Acceptance:** Neither the CITY, nor any of its officers/elected officials or employees, shall be liable or responsible to DEVELOPER or anyone else, for any accident, loss, or damage, happening or occurring to the improvements specified in this AGREEMENT prior to the completion and acceptance of the required public improvements by CITY, unless and only to the extent that any of the above arises by the negligence of the City. The entire risk of loss relative to said improvements shall be with the DEVELOPER during the period of construction thereof and prior to completion and acceptance thereof by CITY.

12. **As Built Drawings:** DEVELOPER shall provide City with a copy of scanned as-built drawings within sixty (60) days of the completion of the project; Certificate of Occupancy.

13. **Utility Arrangements:** DEVELOPER shall file with the City Engineer, prior to commencement of any work to be performed pursuant to this AGREEMENT, a written statement or a will service letter signed by DEVELOPER and each Applicable public utility serving the project, providing that DEVELOPER has made all arrangements required and necessary to provide the public utility service to the project. Said agreement will provide for the undergrounding of all Applicable utility lines on the property as approved by the City Engineer. For purposes of this paragraph, the term "public utility" shall include, but is not limited to, a company providing natural gas, water, sewer, electricity, telephone, and/or cable television service. Said provision shall be without expense to the CITY.

14. **Insurance:** DEVELOPER shall not commence construction or work under this AGREEMENT until all insurance required under this paragraph is obtained and until such

insurance has been approved by the City Attorney as to form and sufficiency, nor shall the DEVELOPER allow any contractor or subcontractor to commence work until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved.

a. WORKERS' COMPENSATION INSURANCE shall be provided, during the life of this AGREEMENT, for all employees employed for construction or work required under this AGREEMENT regardless of whether said employees are employed by Owner or Owner's contractors, subcontractors, or agents. DEVELOPER shall indemnify and hold harmless CITY for any damage resulting from failure of either DEVELOPER or any contractor or subcontractor to take out or maintain such insurance.

b. DEVELOPER shall obtain the following insurance coverages naming DEVELOPER's contractors, subcontractors, and their agents as insured, and the coverage and certificate(s) thereof shall have been approved by the City Attorney:

1) COMPREHENSIVE GENERAL LIABILITY INSURANCE for liability assumed by DEVELOPER pursuant to this AGREEMENT with CITY. The minimum limits of liability for the insurance of this PROJECT for the CITY shall be One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollars (\$2,000,000) aggregate for bodily injury liability and property damage liability.

2) AUTOMOBILE LIABILITY INSURANCE coverage in minimum limits of not less than One Million Dollars (\$1,000,000) shall be required by DEVELOPER and/or DEVELOPER's contractors and sub-contractors hired to perform work on the PROJECT for owned, hired, leased, and non-owned autos.

An additional insured endorsement to the DEVELOPER's liability insurance policies shall name

the CITY, its elective and appointive boards, commissions, officers, agents, and employees, as additional insured, and provide that such insurance is primary insurance with respect to the interest of the CITY and that of any other insurance maintained by the CITY.

**15. Certificates of Insurance:** Promptly upon execution of this AGREEMENT, and prior to commencement of any work, the DEVELOPER shall provide the CITY with certificates of insurance evidencing that the above-required insurance has been obtained and is in full force and effect. The terms of the above-required insurance policy/policies shall require each carrier to give CITY at least thirty (30) calendar days prior written notice of cancellation or reduction in coverage of each of the above-required insurance policies during the effective period of this AGREEMENT Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve DEVELOPER for liability in excess of such coverage, nor shall it preclude CITY from taking such other actions as are available to it under any other provisions of this AGREEMENT or otherwise in law.

**16. Indemnification and Hold Harmless:** DEVELOPER will indemnify, hold harmless and assume the defense of, in any actions of law or in equity, the CITY, its officers/elected officials, employees, agents, and elective and appointive boards from any and all claims, losses, damage, including property damage, personal injury, including death, and liability of every kind, nature, and description, directly or indirectly arising out of or in any way connected with performance under this AGREEMENT and/or construction of the required public improvements by the DEVELOPER, his contractor or any subcontractor, or of any person directly or indirectly employed by, or acting as agent for the DEVELOPER, his contractor or any subcontractor. This indemnification and hold harmless provision shall extend to claims, losses, damage, injury, and liability for injuries occurring after completion of the construction.

Acceptance of insurance certificates required under this AGREEMENT does not relieve DEVELOPER from liability under this indemnification and hold harmless provision.

17. **Developer Is Not An Agent of the City:** Neither DEVELOPER, nor any of DEVELOPER's contractors, subcontractors, or agents are or shall be considered agents of CITY when performing DEVELOPER's obligations under this AGREEMENT.

18. **Repair of Reconstruction of Defective Work:** For a period of one (1) year after acceptance by the City Council of the completed construction and work done under this AGREEMENT, DEVELOPER shall remain fully and completely responsible for the repair, replacement, and reconstruction of any defective or otherwise unsatisfactory work or labor done, or defective materials furnished, in the performance of this AGREEMENT by DEVELOPER. Should DEVELOPER fail or refuse to act promptly after receiving written notification by CITY of the necessity to act pursuant to the aforementioned requirement, or should the exigencies of the case require repairs or replacements to be made before DEVELOPER can be notified, CITY may, in its sole discretion, make the necessary repairs or replacements and perform the reconstruction work and DEVELOPER shall pay to CITY the actual cost therefore plus fifteen percent (15%) thereof, which additional fifteen percent (15%) shall be paid to CITY as and for an administrative fee. The PARTIES further understand and agree that the improvement security furnished pursuant to paragraph 9 of this AGREEMENT shall guarantee and secure the faithful performance of the provisions of this paragraph during the one-year warranty period.

19. **Acceptance and Dedication to City of Requirement Public Improvements:** Title to and ownership of the required public improvements constructed pursuant to this AGREEMENT by DEVELOPER shall vest absolutely to the CITY upon completion and acceptance in writing of such improvements by CITY. The CITY may elect not to accept the

required public improvements, unless they are constructed in conformity with the approved IMPROVEMENT PLANS, approved modifications, if any, City's improvement standards, and to the satisfaction of the City Engineer.

**20. Notice of Breach and Default:** If DEVELOPER refuses or fails to obtain prosecution of the work, or any severable part thereof with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the DEVELOPER should be adjudged a bankrupt, or DEVELOPER should make a general assignment for the benefit of DEVELOPER's creditors, or if a receiver should be appointed in the event of DEVELOPER's insolvency, or if DEVELOPER, or any of the DEVELOPER's contractors, subcontractors, agents, or employee, should violate any of the provisions of this AGREEMENT, CITY may serve written notice of breach of this AGREEMENT upon DEVELOPER and any holder of security provided by DEVELOPER pursuant to paragraph 9 of this AGREEMENT.

**21. Breach of Agreement: Performance by Improvement Security Provider or City:**

a. In the event of any such notice of breach and default, those entities or individuals providing improvement security to the DEVELOPER under Paragraph 9 shall have the duty to take over and complete the required public improvements herein specified. However, if within fifteen (15) days after the servicing upon it of such notice of breach, the security improvement providers do not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within twenty (20) days after notice to such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and

at the expense of DEVELOPER and those providing improvement security to the DEVELOPER shall be liable to CITY for any excess cost or damages occasioned CITY thereby.

b. In the event DEVELOPER has provided security for DEVELOPER's performance under this AGREEMENT in either the form of a deposit or an instrument of credit, CITY, at its option, shall have full and conditional recourse to such security in accomplishing the performance incumbent upon DEVELOPER.

c. In the event the CITY takes action under Subsection 21(a) or 21(b) above, CITY without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary therefor. The rights of CITY provided in this Section are in addition to and cumulative to any and all other rights. Paragraphs 20 and 21 hereof shall not be construed as being in lieu of any other such rights provided by law.

**22. Prevailing Wages:**

a. DEVELOPER acknowledges that CITY has made no representation, express or implied, to DEVELOPER or any person associated with DEVELOPER regarding whether or not laborers employed relative to the construction of the improvements to be constructed pursuant to this Agreement must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Section 1720, *et seq.* ("Prevailing Wage Laws"). DEVELOPER agrees with CITY that DEVELOPER shall assume any and all responsibility and be solely responsible for determining whether or not laborers employed relative to the construction undertaken pursuant to this Agreement must be paid the prevailing per diem wage rate pursuant to the Prevailing Wage Laws or other applicable law.

b. DEVELOPER, on behalf of itself, its successors, and assigns, waives and releases CITY from any right of action that may be available to any of them pursuant to Labor Code Section 1781 or any similar law. Relative to the waiver and release set forth in this Section, DEVELOPER acknowledges the protections of Civil Code Section 1542, which reads as follows:

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

By initialing below, DEVELOPER knowingly and voluntarily waives the provisions of Section 1542 or any similar law solely in connection with the waivers and releases contained in this Section. \_\_\_\_\_(Initials of Authorized Developer Representative)

c. DEVELOPER shall indemnify, hold harmless and defend CITY against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including DEVELOPER, its contractor(s) and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction and installation of the improvements required pursuant to this AGREEMENT. DEVELOPER's defense of the CITY shall be provided by counsel reasonably acceptable to the CITY. The foregoing indemnity shall survive any termination of this AGREEMENT.

23. **Assessment District:** DEVELOPER expressly consents to the annexation to the

City-Wide Maintenance Assessment District.

a. Purpose of said district is to provide and pay for the maintenance, servicing, and incidental expenses of the property's street lights, landscaping (where applicable), creek bank protection (where applicable), and open space areas along Putah Creek (where applicable), etc, as provided in the Streets & Highways Code, Section 22500 et seq., arising from the impacts brought by DEVELOPER and improvements constructed by the DEVELOPER.

b. DEVELOPER agrees that current assessment levels are appropriate, as are the assessment formulas.

24. **Effect of Waiver:** CITY's waiver of a breach of any one (1) term, covenant, or other provision of this AGREEMENT, is not a waiver of a breach of any other term, nor is a subsequent breach of the term or provision thereby waived.

25. **Attorney's Fees:** In the event that DEVELOPER fails to perform any obligation hereunder and should CITY prevail in any legal action to compel performance of this AGREEMENT, DEVELOPER agrees to pay reasonable attorney's fees, all costs of suit and all other expenses of litigation incurred by CITY in connection therewith. "Venue for any litigation shall be Yolo County Superior Court, State of California."

26. **Binding on Heirs, Successors, and Assigns:** The covenants and conditions contained in this AGREEMENT shall be binding on DEVELOPER'S heirs, successors, and assigns until such time as said covenants and conditions completely have been fulfilled.

27. **Notices and Payments:** Notices shall be in writing. Payments shall be made by cash, check, or money order. Notices or payments may be made by personal delivery to or mailed to:

CITY: City of Winters

DEVELOPER: Ashraf Ali

318 First Street  
Winters, CA 95694  
Attn: City Manager  
Telephone: (530) 795-4910

5000 East 2nd Street  
Benicia, CA 94510  
Telephone: (707) 747-2955

Mailed notices or payments shall be deemed delivered three days after deposit in the U.S. Mail, properly addressed and with certified postage prepaid. A change of person or place to send or receive notices or payments shall be made in accordance with provision set forth hereinabove. Any PARTY or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

28. **Definition of CITY:** "CITY" shall include the City Manager, the City Engineer, and other authorized representatives designated by the Winters City Council.

29. **Covenants and Conditions:** Each covenant and each condition shall be deemed both a covenant and a condition.

30. **Effective Period of This Agreement:** This AGREEMENT shall remain in full force and effect for a period of one (1) year after acceptance by the City Council of the completed construction and the work done under this AGREEMENT or from DEVELOPER's completion of the most recent repair or reconstruction work under paragraph 18 of this AGREEMENT, whichever is later.

31. **Recordation:** The PARTIES agree that this AGREEMENT shall be recorded at the Office of the Yolo County Recorder.

32. **Time For Payment of Fees:**

a. If DEVELOPER owes CITY money as reimbursement of costs related to processing application to date, said reimbursement shall be paid prior to the EFFECTIVE DATE of this AGREEMENT.

b. Fish and Game CEQA Mitigation: The DEVELOPER shall comply with provisions of Fish and Game Code Section 711.4 by, prior to any construction or grading of the PROJECT site, submitting written evidence of having paid applicable Fish and Game mitigation fees.

c. Building Permits Fees: Appropriate building permit fees shall be paid prior to issuance of building permits.

d. City Development Impact Fees: City of Winters Development Impact Fees in effect at the time of issuance of building permits shall be paid prior to issuance of certificates of occupancy unless otherwise stated in this requirement. Currently those fees are Water, Streets, Police, Fire, Sewer, Local Drainage, Flood Area Storm Drainage Development Impact Fees, General Capital, and Monitoring (General Plan).

e. The Flood Area Storm Drainage Development Impact Fees referred to in paragraph 32(d) for this Property and shall be paid in full prior to issuance of the certificates of occupancy for the development.

f. Development Impact fees are subject to an annual increase each July based upon the Engineering News Record Construction Cost Index.

g. Yolo County Facilities Fees: County fees must be paid prior to issuance of certificates of occupancy.

h. Public Improvement Plan Check Fees: Appropriate plan check fees shall be paid prior to plan check of IMPROVEMENT PLANS.

i. Business License: Prior to conducting business in the City of Winters, all contractors, subcontractors, or any other agents shall pay for and obtain a Business License.

33. **Disclaimer Of Liability:** In the event any claim, action or proceeding is

commenced naming the CITY or its agents, officers/elected officials, and employees as defendant, respondent or cross defendant arising or alleged to arise from the CITY's approval of this PROJECT, the DEVELOPER shall defend, indemnify, and hold harmless the CITY or its agents, officers/elected officials and employees, from liability, damages, penalties, costs or expense in any such claim, action, or proceeding to attach, set aside, void, or annul any 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 DEVELOPER shall defend such action at DEVELOPER's sole cost and expense which includes court costs and attorney fees. The CITY shall promptly notify the DEVELOPER 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 from participating in the defense of any claim, action, or proceeding, if the CITY bears its own attorney fees and cost, and defends the action in good faith. DEVELOPER shall not be required to pay or perform any settlement unless the settlement is approved by the DEVELOPER in good faith, and the settlement not direct or indirect cost on the CITY, or its agents, officers/elected officials, and employees, the Winters Planning Commission, any advisory agency to the CITY, local district and the Winters City Council. Notwithstanding anything in this AGREEMENT to the contrary, the foregoing shall not apply to any bona fide purchaser(s) from DEVELOPER following their acquisition of any parcel in the development project if the required improvements (for such purchasers' parcels) have been completed and accepted by the CITY.

**34. Certificates of Occupancy:** Except as otherwise provided in this AGREEMENT, permanent certificates of occupancy for the "PROJECT" shall not be issued until after completion, and acceptance by the City, of the required public improvements pursuant to the approved public IMPROVEMENT PLANS, or the City Engineer and Fire Chief have provided

their written approval.

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

**CITY OF WINTERS:**

**DEVELOPER:**

**BY:** \_\_\_\_\_  
**BILL BIASI, MAYOR**

**BY:** \_\_\_\_\_  
**ASHRAF ALI**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Tracy Jensen, CITY CLERK**

\_\_\_\_\_  
**Ethan Walsh, ATTORNEY**



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** September 4, 2018  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Dagoberto Fierros, Management Analyst  
**SUBJECT:** Approval of Request for Street Closure for the Carnitas Festival de la Comunidad

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**RECOMMENDATION:**

Approve the Request for Street Closure for the Carnitas Festival de la Comunidad for Saturday, September 29, 2018.

**BACKGROUND:**

September 29, 2018 marks the 11<sup>th</sup> Anniversary of the Carnitas Festival de la Comunidad. This is a family event with lots of great entertainment, activities for the public, great food, crafts and information.

The City of Winters and the Hispanic Advisory Committee work to foster communication, outreach and understanding between the Latino Community and the entire Community of Winters. Events like the Carnitas Festival de la Comunidad are important because a sense of unity and celebration is created between the entire community.

The Hispanic Advisory Committee of Winters is requesting the approval the attached Request for Street Closure, closing a portion of E. Main Street between Steady Eddy's and Main St. Cellars, leaving open the entrances to the public parking lot and the Community Center.

**FISCAL IMPACT:**

None

**ATTACHMENTS:**

City of Winters Request for Street Closure



**City of Winters Request for Street Closure**

This application is for citizens or groups that have occasion to request that streets be temporarily closed for such things as bicycle races, running contests, block parties and other such events requiring the re-routing of traffic. For a parade or amplified sound an additional permit is required.

A request to close streets shall be filed with the Police and Public Works Departments at least ten (10) business days prior to the date the street would be closed.

There shall be no closure of the following streets without Council approval:

1. Main Street
2. Railroad Street
3. Grant Avenue
4. Valley Oak Drive
5. Abbey Street

Request to close these streets shall be processed in much the same manner except that the request shall be submitted to the City Council by the Police Department. Requests to close the streets herein listed shall be submitted at least thirty (30) business days prior to the street closure.

Requests for street closures that are not submitted by the minimum time lines may be granted only by the Winters City Council.

Name: <u>Leticia Quarte</u>	Organization: <u>Hispanic Advisory Committee</u>
Address: _____	Mailing Address: _____
Telephone: _____	Today's Date: <u>8/29/18</u>
Streets Requested: <u>Steady Eddy's to Main St. Cellars; East Main</u>	
Date of Street Closure: <u>9-29-2018</u>	Time of Street Closure: <u>3:00 - 11:00 p</u>
Description of Activity: <u>Festival de la Comunidad Vendors and booths will be located within Street closure.</u>	
Services Requested of City: <u>Barracades, lights</u>	
APPROVED: _____ <b>Police Department</b> _____ <b>Public Works Department</b>	

not accessible

St. Eddy set

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10

### City of Winters Request for Street Closure

Please provide a listing of the names and signatures of people living on the street (s) to be closed and acknowledging that they know why the closure is requested and that they agree to the closure. Attach additional sheets if necessary.

11 E. Main

Stefan Hooper

James A. Hooper STEADY EDGES

Greenfield, Red Side

Stocking Realty

Clayground

~~XXXXXXXXXX~~



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Council Members  
**DATE:** September 4, 2018  
**THROUGH:** John W. Donlevy, Jr., City Manager *JWD*  
**FROM:** Dan Maguire, Economic Development and Housing Manager *DM*  
**SUBJECT:** Request for Proposal (“RFP”) for Administrative Subcontractor for HOME Program Funding in the Blue Mountain Terrace Senior Apartments Project

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**RECOMMENDATIONS:**

1) Receive the report from staff recommending the issuance of an Request for Proposal for Administrative Subcontractor for HOME Program Funding in the Blue Mountain Terrace Senior Apartments project, and 2) Authorize staff to work with Yolo County Housing (“YCH”), technical consultant to the City under an Intergovernmental Agreement, to release the RFP to a list of administrative subcontractors maintained by YCH.

**BACKGROUND:**

At the July 7, 2015 City Council meeting, Council authorized an HOME Investment Partnerships Program (“HOME”) Grant Application with the adoption of Resolution 2015-32. The HOME application was for funding assistance in support of the proposed multi-family senior rental project, Blue Mountain Terrace.

In February of 2016, the City received notification from the State of California Department of Housing and Community Development (“HCD”) that the application was successful and resulted in a HOME award of \$2,515,080 (Standard Agreement Number 16-HOME-10803) for the construction of the Blue Mountain Terrace apartments.

In the Special Conditions section of the Standard Agreement, the City is required to “complete a competitive Request for Proposal (RFP) procurement process to select an Administrative Subcontractor to oversee the HOME requirements for Project Set-up through permanent loan conversion”. YCH has implemented similar requirements in projects they have implemented for Yolo County and will assist the City in this process.

Staff anticipates bringing a recommendation for a contract for an Administrative Subcontractor to City Council at the October 16, 2018 City Council meeting.

**FISCAL IMPACTS:**

Total contract cost is TBD; however, the issuance of a contract will not impact the City's General Fund. The HOME funding includes funding (\$50,000) for General Administration, with a portion of those funds to be used to pay for the cost of utilizing an Administrative Subcontractor.

**ATTACHMENTS:**

Request for Proposal



DATE: September 5, 2018  
TO: Housing and Community Development Consultants  
FROM: Dan Maguire, Economic Development and Housing Manager

**REQUEST FOR PROPOSAL  
IMPLEMENTATION OF AFFORDABLE SENIOR RESIDENTIAL HOUSING  
CONSTRUCTION PROJECT**

Deadline for Submission: September 26, 2018 at 4:00 P.M.  
UNDER NO CIRCUMSTANCES WILL LATE PROPOSALS BE ACCEPTED

The City of Winters is soliciting proposals from qualified housing program consulting firms to provide services generally described below and more fully described in the Scope of Work section of the RFP.

The City has received 2015 State HOME Program funds for the construction of a 63 unit, new rental multi-family affordable housing development, located within the City limits. An Administrative Subcontractor is being sought to oversee the documentation, compliance and cash disbursements related to this project. *It should be noted that the NEPA process has been completed and the project has been provided with an authority to use grant funds by HOME.*

**I. Project Description**

The Blue Mountain Terrace project is a 63-unit multi-family affordable housing development. The affordable housing is for low and very low-income senior households. Domus Development, LLC proposes to construct the Blue Mountain Terrace project, consisting of senior housing, on the southernmost 1.59 acres of the 2.81-acre parcel. The Blue Mountain Terrace project would be located between Grant Avenue and Baker Street between Morgan Street and East Street. The project would consist of a three-story residential building that provides 62 units of senior housing and one manager's unit. The project would include parking for 43 vehicles. Community amenities would include a manager's office, passenger loading areas along Baker Street, a public plaza with seating, and drought-tolerant landscaping.

## II. Proposed Scope of Services

1. Prepare and submit to the City (or its agent) a binder with files containing all of the necessary materials to meet the Set-Up and Payment Provisions as outlined in the HOME Standard Agreement, Exhibit B, Sections 2-4 (included below). Completion and submission of this binder with files must be made in a timely manner.
  - A. Prepare HUD-required Project Set-Up form
  - B. Compile required back up and federal procurement documentation
  - C. Prepare State Recipient Certification Statement regarding Relocation Plan
  - D. Compile documents as required for completed NEPA environmental review process and clearance into binder
  - E. Compile required back up and federal labor standards provisions including Davis-Bacon and related Acts and prepare certification forms
  - F. Compile the Affirmative Marketing Procedures and Affirmative Fair Housing Marketing Plan, Section 3 MBE/WBE from City of Winters and Architect Certification of Compliance with Section 504 of the Rehabilitation Act of 1973 and the Federal Fair Housing Act.
  - G. Compile the Subsidy Layering and Financial Analysis check sheet, certification form with back up materials and prepare summary explanations of the Recipients activities to comply with the "Key Evaluation Points" and UMR Matrix
  - H. Update Current Financial Projections for project and update required information in Universal Application in pages 8-28. Compile back up.
  - I. Confirm Permanent and Construction financing commitments from all City of Winters funding sources by compiling commitment letters
  - J. Confirm evidence of site control by compiling agreements and title reports
  - K. Obtain and compile census data, market study data and statistical documentation to report housing compatibility and minority percentages for the community, similar projects and new project site, as is required by neighborhood standards guidelines.
  - L. Compile Marketing Plan and Tenant Selection Plan from City of Winters
  - M. Coordinate submittal of progress reports on meeting occupancy standards through the rent-up
  - N. Prepare State Recipient Statement of Assurances letter
  - O. Preparation and submittal of other documents deemed necessary by HCD prior to project setup completion, including identification of HOME units and their initial rents; submittal of any draft security documents and lien agreements, draft HOME loan documents and any Limited Partnership Agreements if applicable
2. Comply with Federal Fair Housing and Equal Opportunity requirements.
3. Compliance with all applicable state and federal Labor Standards provisions.
4. Comply with Federal Procurement Requirements.
5. Comply with the Federal and Site Neighborhood Standards.
6. Establish and maintain administrative back up files and reports in accordance with the system preferred by the City and HCD, outlined in the HOME contract management manual. This includes maintaining the required Public Information Binder.

7. Participate in any monitoring by the state or other agencies and provide the necessary documents and files for such monitoring visits. Serve as support to the City's (or its agent), to the maximum extent appropriate, and respond to and correct any monitoring findings.
8. Keep the City (or its agent) and State updated as to project status on a bi-monthly basis.
9. Monitor program milestones and recommend amendments as necessary.
10. Facilitate communications between the Developer, the owner entity and the City (or its agent).
11. Apprise City (or its agent) of all applicable federal and state requirements, if necessary, related to the HOME funds and facilitate the meeting of such requirements.
12. Administer and monitor all Federal Labor Standard Requirements related to construction project to ensure compliance. Maintain Labor Standards binder and all records of certified payrolls of contractors and subcontracts. Submit binders to City at end of project as part of close-out package.
13. Prepare and submit to City (or its agent) Project Monthly Status Reports, no later than the 10<sup>th</sup> day of following month.
14. Prepare and submit to City (or its agent) Project Completion Report, Final Wage Compliance Report, Final Cost Certification, HUD 1, no later than 60 days after any final project drawdown request.
15. Prepare a close out and monitoring checklist to guide the City after the project has been completed. Such checklist will outline the City's ongoing program responsibilities. The City has agreed that this can be structured to contain pertinent sections of HOME information previously developed by HCD/ HOME.
16. Consultant shall provide all facilities, equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this Agreement.
17. Note that the requirements for assuming the scope of work will begin as soon as a contract can be negotiated with the successful applicant due to the nature and status of this program with urgent deadlines.

## Budget

Administration – The City will budget up to a certain amount available for administration as permitted by funding sources and Consultant shall set a cap on proposed costs with the City to ensure that sufficient monies exist to fund the costs of Consultant and City or its Agents. The timeframe for the process is estimated to be approximately 24 months to complete, once the contract is in place and through project completion and close out.

## Accessibility

1. The City expects Consultant to be accessible to meet on project without incurring additional costs outside of those provided for above. Meetings will be held as needed to review project timeline and performance issues at the City's designated location.
2. Consultant is to be available and prepared to make presentations before the governing body and others as needed to meet public hearing and general information needs of City.

## III. Proposal Requirements

1. Provide a summary of firm's qualifications in providing services for a city and/or county by listing in the order shown below, the following. Note that the responses shall reflect the experience that the applicant has had based on the work of the individuals who are proposed to service the County's account and not of the firm in general:
  - A. Brief history and the purpose(s) for which your firm was formed.
  - B. State firm's policy regarding affirmative action.
  - C. Indicate if firm is a small business and/or minority or woman-owned business. (Provide a copy of such certification if claimed.)
  - D. Describe experience managing CDBG, HOME, and/or CalHOME grants.
  - E. State overall qualifications and duties, and availability, of project staff to be assigned to this contract.
  - F. List any instances in which a program your firm administered was ever found to be non-compliant in one or more areas. Provide a recap of the situation including the timeframe that the act(s) of non-compliance occurred and the manner in which it was resolved. If none exist, then affirmatively state this in the application.
  - G. If a sub-contractor will be used to provide services, this fact must be called out in the proposal document and the information requested above must be provided for each staff member of the sub-contractor and the subcontractor itself.
2. Grant implementation and administration experience as it relates to a city and/or county client:
  - A. Describe past performance that demonstrates ability to complete a project in a timely and cost efficient manner.
  - B. Describe how the firm will implement and operate the program(s), responding to the various work tasks identified above.
  - C. Describe proposed project management and firm's record keeping systems. Include samples of reports.

- D. Attach list of jurisdictions where Consultant has contracted to implement and/or administer Federal, State and/or Local housing programs and/or managing a loan portfolio.

(For item A, list the Cities/County's for which your firm provided these services, the timeframe in which these services were provided, the amount of funding allocated to the program and the contact information including name, email address and phone number of the individual who can provide a reference for you)

3. State the amount to be charged for general administration and activity delivery for each service and a grand total. If services are proposed to be offered for some but not all administrative requirements, pricing will need to reflect the applicable amount for each area to be serviced.

4. Statement that firm will provide a Certificate of Insurance for coverage equal to or better than that described in Attachment A.

5. Identify the staff that will provide the services called for and include a resume for each. Each resume must identify the types of grants and programs that the individual has been involved with throughout their career and those with which they have experience after joining your firm; list the specific tasks that they were responsible for. Identify the lead manager who will be responsible for service delivery to the City for this engagement. Positions/functions not identified by the Applicant but deemed necessary by City will be viewed as a deficient response. Include a rate sheet stating hourly rates for each personnel category.

6. The response shall be signed by an individual authorized to represent the firm in such matters and the signature line shall include the signer's title and the date on which the document was signed.

#### **IV. Selection Process**

The relevant experience of each applicant will be evaluated as it relates to the Scope of Services. The City or its Agents will review the responses to the Request for Proposals and reference checks and will make a recommendation to the City. Proposals will be ranked based on an assessment of the applicant's integrity, accessibility, resources, experience and past performance with regard to their ability in administering, implementing and operating California CDBG, HOME, and/or Cal HOME grants and programs. The selection criteria will include pricing but will not be a material criteria.

Each proposal will be ranked separately to ensure fair competition since bidders are not required to respond to all service needs.

#### **V. Award of Contract**

The City will make the final decision and award the contract. The City reserves the right to reject any and all proposals submitted, to request clarification or additional information from applicants and to waive any irregularity in the proposal as long as City procedures remain consistent with the required procurement procedures.

The City also reserves the right to award a contract to the firm(s) that present(s) the proposal which, in the sole judgment of the City, best demonstrates the expertise desired by the City. This Request for Proposal does not represent a commitment on the part of the City to award a contract, nor does it

commit the City to reimburse an applicant for the costs associated with the preparation of their response to the RFP.

Formal interviews may be conducted.

The State Department of Housing and Community Development must approve the selected Administrative Subcontractor prior to contract award or execution.

## **VI. Submission of Proposal**

Responses should be submitted via email no later than 4:00 p.m. on September 26, 2018. Email proposal to [cbrock@veh.ca.gov](mailto:cbrock@veh.ca.gov). Request a confirming receipt response in your e-mail. The proposal (with original signature) must be emailed with the Subject Line titled "Winters Construction Project". The City will not be responsible for undeliverable proposals or accept proposals that fail to be delivered timely.

## **VII. Proposal Format and Copies**

All proposals must be produced on standard 8 ½" x 11" paper with portrait orientation and PDF format. Proposals are limited to 30 (thirty) pages not including covers or Letter of Transmittal. Offerors shall email one (1) copy of their proposal (signature in blue ink) to the email address specified above on or before the closing date and time, for receipt of proposal.

Questions regarding this Request for Proposal may be directed to:

City of Winters  
C/O  
Colleen Brock, Senior Management Analyst  
Yolo City Housing  
147 W. Main St.  
Woodland, CA 95695  
Phone No. 530-669-2228  
Fax No. 530-662-5429  
Email: [cbrock@veh.ca.gov](mailto:cbrock@veh.ca.gov)

**Small, minority and female-owned businesses are encouraged to apply.  
The City of Winters is an Equal Opportunity employer.**

**EXHIBIT A  
INSURANCE REQUIREMENTS**

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

basis unless the City Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Consultant changes insurance carriers Consultant shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Consultant changes to a new carrier prior to receipt of any payments due.

4. The Consultant shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the City's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
  5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the City Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or City of Winters.
  6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).
  7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the City Risk Manager.
  8. The policies shall cover all activities of Consultant, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
  9. For any claims relating to this Agreement, the Consultant's insurance coverage shall be primary, including as respects the City, its officers, agents, employees and volunteers. Any insurance maintained by the City shall apply in excess of, and not contribute with, insurance provided by Consultant's liability insurance policy.
  10. The insurer shall waive all rights of subrogation against the City, its officers, employees, agents and volunteers.
- B. Prior to commencing services pursuant to this Agreement, Consultant shall furnish the City with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the City Risk Manager before work commences. Upon City's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- C. During the term of this Agreement, Consultant shall furnish the City with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this

Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon City's request, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. City of Winters reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

- D. Consultant agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Consultant agree to be bound to Consultant and the City of Winters in the same manner and to the same extent as Consultant is bound to the City of Winters under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor/**and or Consultant** shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and General Contractor/**and or Consultant** will provide proof of compliance to the City of Winters.
- E. Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Consultant fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

## EXHIBIT B

### HOME STANDARD REQUIREMENTS LABOR STANDARDS - - FEDERAL LABOR STANDARDS PROVISIONS

The Grantee, Sub-Consultant, and the Consultant shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of :

Davis-Bacon Act (40 USC 3141-3148) requires that workers receive no less than the Prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.00.

Copeland "Anti Kickback" Act (Title 18 USC Section 874 and Title 40 USC Section 3145) requires that workers be paid at least once a week without any deductions or rebates except permissible deductions.

Contract Work Hours and Safety Standards Act – CWHSSA (40 USC Chapter 3701-3708) requires that workers receive "overtime" compensation at a rate of 1.5 times their regular hourly wage after they have worked 40 hours in one week.

Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3, and 5 are the regulations and Procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

### CONTRACTORS AND SUBCONTRACTORS

1. The Grantee and the Consultant shall not enter into any agreement, written or oral, with any contractor without prior determination by the State of the contractor's eligibility. A Contractor or subcontractor is not eligible to receive grant funds if the contractor is not licensed in good standing in California. A contractor or subcontractor is not eligible to receive grant funds if the contractor is listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors.
2. This agreement, and any future agreements between the Grantee and the Consultant, or any contractor or subcontractor shall require the Consultant, the contractor, and its subcontractors if any, to:

Maintain, if so required by law, unemployment insurance, disability insurance, and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity or any part of it.



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** September 4, 2018  
**THROUGH:** John W. Donlevy, Jr., City Manager   
**FROM:** Dan Maguire, Economic Development and Housing Manager   
Colleen Brock, Senior Management Analyst, Yolo County Housing  
**SUBJECT:** Public Hearing to Consider Changes to CDBG Grant Agreement for Senior Center/Senior Services

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**RECOMMENDATION:** Staff recommends that City Council:

- 1) Receive the Staff Report on the 15-CDBG-10578 Agreement for a Senior Center and Senior Services; and
- 2) Conduct the Public Hearing to hear comments on 1) the disencumbrance of the existing 2015 grant; and 2) use of Program Income for expanding/starting senior services; and 3) discuss what activities should be applied for under future CDBG 2018 NOFA; and
- 3) Approve the disencumbrance of the 15-CDBG-10578 Agreement with the State Housing and Community Development Department (HCD); and
- 4) Adopt a Resolution approving an application for up to \$5,000,000 in funding from the State Community Development Block Grant (CDBG) Program for the construction of a 6,000 square foot senior center; and 2) provide senior services and if awarded, authorize the execution of the grant agreement and any amendments for the project.

**BACKGROUND:**

In 2015, the Economic Development & Housing Department, on behalf of the City of Winters applied, and was approved for, a grant (Agreement #15-CDBG-10578) for \$2,000,000 through the State of California's State Community Development Block Grant (CDBG) Program. Funds were approved to 1) provide assistance for the construction of a 6,000 square foot senior center; and 2) provide senior services. The City also applied for a Housing Investments Partnerships Program (HOME) and was approved for a HOME grant to build new senior apartments.

In partnership with Domus Development Corp., the City of Winters combined both projects and named them "Blue Mountain Terrace". Unfortunately, funding received by Domus Development and by the City were insufficient to build both the senior center and the senior apartments; therefore the large project had to be split into two projects. Based on funding reservations, the housing development is potentially able to move forward, but the senior center is not. Therefore, staff is recommending that State CDBG funds be disencumbered and the Standard Agreement ended at this time and returned to the State so as not to penalize the City for non-expenditure and to open the City to the opportunity to re-apply for funding in an amount that will meet funding needs. This recommendation is in line with guidance received from the State's Department of Housing and Community Development (HCD). With the impending CDBG grant deadline for completing expenditures coming on September 30, 2018, Staff were advised that it would be better to disencumber the grant agreement/funds and notify the State of the City's desire to end the agreement; then re-apply for increased funds for the senior center in the expected 2018/2019 State Community Development Block Grant (CDBG) funding round. At this time, it is unknown when the State will release this Notice of Funding Availability (NOFA), but it is expected later in 2018 to early 2019.

In order to meet the design phase public hearing requirements in anticipation of the submittal of a new application for a proposed Senior Center and Senior Services in response to the expected State Community Development Block Grant (CDBG) Notice of Funding Availability (NOFA), a public notice was published in the Winters Express on August 23, 2018 to publicize this public hearing to solicit citizen input on eligible CDBG activities anticipated in the NOFA.

The City of Winters has approximately \$656,000 in CDBG Program Income that must be expended prior to expending awarded grant funds. These funds will be required to be spent on the construction of the senior center and the senior services. A waiver/supplemental activity will be requested from the State for expansion of current Senior Services and/or new Senior Services under the approved CDBG PI Reuse Agreement until such time as the grant application is approved.

**FISCAL IMPACT:** None at this time. Failure to disencumber the existing CDBG grant would result in a penalty to the City that would impact its ability to receive future funding.

**CONCLUSION:** Staff recommends that the City Council conduct a public hearing, take testimony and, after any changes, approve the disencumbrance of the existing CDBG award, authorize the City Manager to advise the State of the City's desire to end the Standard Agreement, and approve a grant application for new CDBG funds for a Senior Center and Senior Services.

**ATTACHMENTS:**

Resolution 2018-54

Winters Express Public Hearing Notice

**RESOLUTION NO. 2018-54**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS  
APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT  
AGREEMENT AND ANY AMENDMENTS THERETO FROM THE COMMUNITY  
DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM TO PROVIDE FUNDING FOR  
CONSTRUCTION OF A SENIOR CENTER AND SENIOR SERVICES**

HEREBY AUTHORIZES: Submittal of an application to the California State Department of Housing and Community Development for funding under the Community Development Block Grant Program (CDBG); and if selected, the execution of a standard agreement, any amendments thereto, and of any related documents necessary to participate in the CDBG Program.

WHEREAS, the California Department of Housing and Community Development ("Department") is authorized to allocate Community Development Block Grant ("CDBG") funds made available from the U.S. Department of Housing and Urban Development ("HUD"). CDBG funds are to be used for the purposes of partnering with rural cities and counties to improve the lives of their low- and moderate-income residents through the creation and expansion of community and economic development opportunities in support of livable communities; and

WHEREAS, the Department issues a Notice of Funding Availability announcing the availability of funds under the CDBG program ("NOFA") annually and the 2018 NOFA is anticipated to be issued by the end of 2018; and

Whereas, in response to the anticipated 2018/2019 CDBG NOFA, the City of Winters ("Applicant"), a political subdivision of the State of California, wishes to apply to the Department for, and receive an allocation of, CDBG funds; and

Whereas, the City of Winters City Council, as the Governing Board for the Applicant, has determined that, based on the above and in consideration of the intent of the CDBG Program, submitting an application is in the best interests of Applicant;

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

1. Applicant shall submit an application to the Department to participate in the CDBG program in response to the anticipated 2018 CDBG NOFA for an allocation of funds not to exceed Five Million dollars (\$5,000,000) for the following project/program:

*Construction of a 6,000 square foot senior center and new/expanded senior services.*

2. If the application for funding is approved, Applicant hereby agrees to use CDBG funds received for eligible project/program activities in the manner presented in its application and as

approved by the Department in accordance with the statutes and regulations cited above. Applicant may also execute a standard agreement, any amendments thereto, and any and all other documents or instruments necessary or required by the Department or HUD for participation in the CDBG program (collectively, the required documents).

3. The Applicant authorizes the City Manager or his/her designee(s) to execute, in the name of Applicant, all necessary documents for participation in the CDBG program.

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 4th day of September, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Bill Biasi, Mayor  
City of Winters

Attest:

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Tracy Jensen, City Clerk  
City of Winters

## Fictitious Business Name

FILED YOLO COUNTY CLERK/RECORDER

August 13, 2018

FBN Number 2018-746

Jesse Salinas, Clerk;  
Lupe Ramirez, Deputy

Business is located in Yolo County

Fictitious Business Name: Remnant Apostolic Church

Physical Address: 435 Second St. Woodland, CA 95695

Mailing Address: N/A

Names of Registrants: Kelly Evelyn 422 Pendegast St. Woodland, CA 95695; Lester Evelyn 422 Pendegast St. Woodland, CA 95695

Business Classification: Individual

Starting Date of Business: Aug. 13, 2018

s/Lester A. Evelyn

s/Kelly Evelyn

Official Title: N/A

Corporation Name: N/A

I hereby certify that this is a true copy of the original document on file in this office. This certification is true as long as there are no alterations to the document, AND as long as the document is sealed with a red seal.

Jesse Salinas, County Clerk/Recorder,  
Lupe Ramirez, Deputy Clerk  
State of California, County of Yolo

Published August 23, 30, September 6, 13, 2018

## Fictitious Business Name

FILED YOLO COUNTY CLERK/RECORDER

August 10, 2018

FBN Number 2018-745

Jesse Salinas, Clerk;  
Kim Weisenburg, Deputy

Business is located in Yolo County

Fictitious Business Name: ER Construction

Physical Address: 404 Luis Pl. Winters, CA 95694

Mailing Address: N/A

Names of Registrants: ER Construction 404 Luis Pl. Winters, CA 95694

Business Classification: Individual

Starting Date of Business: N/A

s/Edwardo Reyes

Official Title: N/A

Corporation Name: N/A

I hereby certify that this is a true copy of the original document on file in this office. This certification is true as long as there are no alterations to the document, AND as long as the document is sealed with a red seal.

Jesse Salinas, County Clerk/Recorder,  
Kim Weisenburg, Deputy Clerk  
State of California, County of Yolo

Published August 23, 30, September 6, 13, 2018

## Fictitious Business Name

FILED YOLO COUNTY CLERK/RECORDER

July 24, 2018

FBN Number 2018-680

Jesse Salinas, Clerk;  
Lupe Ramirez, Deputy

Business is located in Yolo County

Fictitious Business Name: Piche Mobile Animal rehabilitation

Physical Address: 883 Metal Ln. W. Sacramento, CA 95691

Mailing Address: N/A

Name(s) of Registrants: Cathy Piche 883 Metal Ln. W. Sacramento, CA 95691

Business Classification: Individual

Starting Date of Business: 7/24/2018

s/Cathy Piche

Official Title: N/A

Corporation Name: N/A

I hereby certify that this is a true copy of the original document on file in this office. This certification is true as long as there are no alterations to the document, AND as long as the document is sealed with a red seal.

Jesse Salinas, County Clerk/Recorder,  
Lupe Ramirez, Deputy Clerk  
State of California, County of Yolo

Published August 16, 23, 30, September 6, 2018

## Notice of Public Hearing

### Notice of Public Hearing for Return of State CDBG Grant Funds and Re-Application for Proposed Senior Center and Senior Services

NOTICE IS HEREBY GIVEN that the City of Winters will conduct a public hearing and solicit citizen input on Tuesday, September 4, 2018 at 6:30 p.m., at City Council Chambers, 318 First St. in order to discuss and approve the disencumbrance of State Community Development Block Grant (CDBG) 15-CDBG-10578 and to meet the design phase public hearing requirements in anticipation of the submittal of a new application for a proposed Senior Center and Senior Services with increased funds, in response to the expected 2018 State Community Development Block Grant (CDBG) Notice of Funding Availability (NOFA). In addition, State approval is being sought to approve a Program Income (PI) Reuse Agreement which will allow the City to expand current senior services and starting new senior services utilizing current CDBG PI funds under the Waiver process and further under the Supplemental Activities process included in the grant application.

The Economic Development & Housing Department, on behalf of the City of Winters applied and was approved for a grant for \$2,000,000 to 1) provide assistance for the construction of a 6,000 square foot senior center; and 2) provide senior services.

The Community Development and Economic Development Allocations of the State CDBG program is expected to publish a combined "Notice of Funding Availability" (NOFA) each program year. Eligible cities and counties may submit applications for CDBG funds under the NOFA. The estimated total amount available is yet to be determined by the State. The Economic Development "Over-the-Counter" (OTC) Allocation requires a separate application.

ELIGIBLE ACTIVITIES ANTICIPATED IN THE NOFA CONSIST OF: HOMEOWNERSHIP ASSISTANCE AND HOUSING REHABILITATION PROGRAMS; PUBLIC FACILITY AND PUBLIC IMPROVEMENTS PROJECTS (INCLUDING PUBLIC IMPROVEMENTS IN SUPPORT OF NEW HOUSING CONSTRUCTION); PUBLIC SERVICE PROGRAMS, PLANNING STUDIES, ECONOMIC DEVELOPMENT BUSINESS ASSISTANCE AND MICROENTERPRISE ACTIVITIES. ELIGIBLE ACTIVITIES PAID FOR WITH STATE CDBG FUNDS MUST MEET ONE OR MORE OF THE THREE NATIONAL OBJECTIVES LISTED IN CDBG FEDERAL STATUTES AS FOLLOWS: BENEFIT TO LOW INCOME HOUSEHOLDS OR PERSONS; ELIMINATION OF SLUMS AND BLIGHT; OR MEETING URGENT COMMUNITY DEVELOPMENT NEED.

The City of Winters anticipates submitting an application under the NOFA published during the next program year. The City of Winters has approximately \$656,000 in CDBG Program Income that must be expended prior to expending awarded grant funds. These funds will be required to be spent on the construction of the senior center and the senior services. A waiver/supplemental activity will be requested for expansion of current Senior Services and/or new Senior Services under the approved CDBG PI Reuse Agreement until such time that the grant application is approved.

The purpose of the public hearing is to give citizens an opportunity to make their comments known on 1) the disencumbrance of the existing 2015 grant; and 2) use PI for expanding/starting senior services; and 3) discuss what activities should be applied for under future CDBG 2018 NOFA. If you require special accommodations to participate in the public hearing, please contact City Clerk, Tracy Jensen at (530) 795-4910.

If you are unable to attend the public hearing, you may direct written comments to the City of Winters Economic Development Dept., at 318 First St., or you may telephone Dan Maguire at (530) 794-6718. In addition, information is available for review at the above address between the hours of 9:00 am to 5:00 pm on Monday -Friday.

The City of Winters promotes fair housing and makes all its programs available to low and moderate income families regardless of age, race, color, religion, sex, gender, national origin, sexual preference, marital status, familial status or handicap.

Published August 23, 2018

**Thank you for reading the legals!**



CITY COUNCIL  
STAFF REPORT

**DATE:** September 4, 2018  
**TO:** Mayor and City Council  
**FROM:** John W. Donlevy, Jr., City Manager   
**SUBJECT:** Building Permitting System- Same Day Permitting

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**RECOMMENDATION:**

That the City Council:

1. Receive an overview of a proposed same day building permitting system; and
2. Provide input and receive public comment regarding said system.

**BACKGROUND:**

A key goal of the City Council has been improved customer service within the City organization. The proposed program is within the City's Building Division and includes the establishment of a same day permitting process for certain residential and commercial projects.

**Discussion:**

Beginning October 9, 2018 the City of Winters will introduce a new process to allow those in need of permits for smaller projects to obtain their permits in a shorter period of time as well as over the counter.

The goal of this program is to provide the opportunity of any **Eligible Use applicant** to obtain a building permit for a tenant improvement, alteration, or residential alteration over the counter during a single visit to the Building Division counter.

**Eligible Uses** are defined as:

- Interior Alterations of new or existing businesses for office, including nail and hair salons (B Occupancy) and retail (M Occupancy) that only involve installing new materials or only involve removing less than 160 square feet of existing material (flooring {except carpet}, wall board systems, plaster, ceilings including suspended ceilings, roofing, exterior walls, or similar) and where the area of alteration is less than 10,000 square feet.
- Interior alterations of food service related uses that have approval from Yolo County Health Department where the interior eating area is less than 750 square feet.
- Single Family Residential (R3 Occupancies) alterations, additions and accessory structures that are not part of a home day care center, elderly care facility, or other residential facility regulated by a State Agency.

Alterations to uses (other than Eligible Uses already defined) that involve new storage or the new storage or use of hazardous materials, medical gases, or carbon dioxide gas (Occupancy types S, F, H,) as well as hotels, motels (R Occupancies), assembly uses (A Occupancies of any type), educational uses (E Occupancy), Institutional uses (I Occupancy) or Laboratory uses (L Occupancy) are not eligible to participate in this program unless permission to participate in the program is granted by both the Fire Department and Building Division plan review staff. Nonresidential additions and new nonresidential buildings or accessory structures, or nonresidential exterior alterations to a site or building, are not eligible to participate in this program. Nonresidential alterations where 160 square feet or more of existing material (flooring, wallboard, plaster, ceilings including suspended ceilings, roofing, exterior walls etc.) are not eligible to participate in this program.

An Eligible Use applicant may submit for review an over the counter building permit issuance during any Tuesday from 10 a.m. to Noon and 2-3:30 p.m. on a first-come first-served basis.

The permit documents and application shall be reviewed at the time of submittal by the City's Planning & Building Divisions and Fire Department staff for compliance with applicable ordinances, laws and regulations. If the application is found to be consistent with relevant sections of the Municipal Code, State Statute and there are no Title 24 violations shown on the plans, the associated City fees charged by the Building Division shall be calculated and the permit shall be issued over the counter.

City Divisions and Departments are responsible for providing plan review staff for that part of the City's Municipal Code, California State Statute or Regulation for which they have administrative authority to enforce. If plan review personnel from other departments are not available during program plan review time, the Building Division plan review staff shall have authority in determining permit issuance.

**Procedure:**

1. The Eligible Use applicant shall complete a Building Permit Application.
2. Nonresidential and Residential: The Eligible Use applicant shall provide Three (3) sets of signed Tenant Improvement or Alteration plans prepared by a licensed Architect, Civil Engineer, B Contractor or Certified Designer. One set to be 11" X 17".
3. Any changes to the interior lighting and or installation of Air Conditioning Equipment (furnace or cooler) requires that the Eligible Use applicant submit LTGC forms for lighting and MECH C forms for HVAC unit installation. The Eligible Use applicant should coordinate obtaining these forms from the person who prepared the plans or a licensed contractor performing the work.
4. Planning Division staff shall review the project for compliance with the City of Winters Municipal Code and any other associated entitlement requirements and provide the results of their review to the Building Division Plan Review staff.
5. Any construction alterations that include elements of the space that are regulated under the California Fire Code ( Title 24 Part 9 ) ( e.g. changes to the Fire Alarm or Fire suppression system) shall require the Eligible Use applicant to apply for additional Fire related permits as required by the Fire Department staff.
6. At the time of application submittal Building Division plan review staff shall perform the following:
  - o Enter the project into a current building permit processing system.
  - o Verify the receipt of an approved Yolo-Solano Survey form from the Yolo-Solano Air Quality Management District if applicable.
  - o Review the application and permit documents for violations of Title 24 and determine if any work would require an encroachment permit from the Public Works Department.
  - o Verify that the project has been approved by the Planning Division staff.
  - o Verify that the project has been reviewed by the Fire Department staff. Permits required by the Fire Department may be documented on the Building Division permit drawings as deferred submittals.
  - o Complete information in the electronic or paper file that provides adequate information to calculate fees.
  - o Determine and provide to the Building Division administrative staff the exact type of inspections required for the permit.
  - o Determine if a Certificate of Occupancy is required and ensure adequate information is documented for the Building Division administrative staff to complete a Certificate of Occupancy after all other departments have provided final inspection approval of the project.
  - o Ensure that the permit is issued by the administrative staff during a single visit or provide written documentation citing each violation of Title 24 or the municipal code section that documents the reason for not issuing the permit

and provide enough written guidance that allows the applicant to obtain a permit during a future visit.

7. At the request of the Building Division plan review staff the Building Division administrative staff shall verify Workers' Compensation requirements of the building permit applicant, calculate fees, and document on the permit that a final inspection is required by the Building and Fire inspection staff. Subject meeting Workers' Compensation requirements and the payment of Building fees, the permit shall be issued, during a same day visit, to the Eligible Use applicant or their representative.

Examples of the most common permits that will be issued over-the-counter on Tuesdays are:

Kitchen Remodels  
Bathroom Remodels  
Laundry Room Remodels  
Residential Roof Mount Photovoltaic  
Non-structural room additions under 500 square feet  
Trellis & Patio Covers  
Fence over 6 feet  
Block walls up to 6 feet

Everyday over-the-counter permits:

Plumbing – Water, sewer & gas lines, water heater/softener change-out  
Electrical – Temp. electric, main & subpanel change-out  
Roofing  
Window change-out  
HVAC – Furnace, AC, split system, ducting  
Insulation  
Residential Demolition or Commercial with approved Yolo-Solano Asbestos Survey

Preparation is the Key!

A key component of this program is the reality that code compliance will mostly switch from an extensive review of submitted plans to field compliance by the contractor or the owner/builder. Additionally, plans submitted by parties will require the completion of critical forms (Air Quality and Title 24) in order to have the expedited permits issued. In discussion with neighboring jurisdictions, they indicated that there is a short ramp up period for contractors and a slightly longer period for owner builders.

As part of the process, the Building Division will have handouts and checklists in the office and online for builders to know what is required in the construction project. Compliance for codes

**City of Winters- Same Day Permitting Program**

**Agenda Report- September 4, 2018**

*Page 5*

will be picked up in the field versus the plan check which puts the burden on the homeowner to make sure they know what they are doing.

**Examples:** *In a kitchen remodel, GFCI outlets are required in all kitchen projects. In bathroom remodels, the building code requires low flow devices. These requirements may not be specifically shown on a plan, but will be included in the checklist and as part of the inspection.*

Generally, Staff is excited to launch this program in the coming months. An evening workshop will be held the week of September 24, 2018 for contractors and the community to release the program and introduce how it will be administered.

**FISCAL IMPACT:** Approximately \$1,500 for updates to the City website and the printing of necessary forms.