



Yolo County Housing

Lisa A. Baker, Executive Director

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BOARD OF COMMISSIONERS

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DATE: October 1, 2009
TO: YCH Board of Commissioners
FROM: Lisa Baker, Executive Director
PREPARED BY: Fred Ichtertz, Facilities Administrator
SUBJECT: Authorize Executive Director to execute Memorandum of Understanding between the City of Winters and the Housing Authority of the County of Yolo for Sewer Services for the El Rio Villa housing complex.

RECOMMENDED ACTIONS

That the Board of Commissioners:

1. Authorize the Executive Director to execute Memorandum of Understanding between the City of Winters and the Housing Authority of the County of Yolo for Sewer Services for the El Rio Villa housing complex.

BACKGROUND / DISCUSSION

Because of its rural setting, the El Rio Villa housing complex, located east of the City of Winters (COW), had until 1978 its own on-site sewage collection system. During 1979, COW received a grant from the California State Water Resources Control Board (CSWRCB) to expand and make improvements to their sewage treatment facilities located within the city limits. CSWRCB worked with COW and YCH to include within that grant the elimination of the YCH sewage holding tank and evaporation ponds that were located adjacent to Putah Creek. In order to do this, a sewage pumping lift station was constructed on YCH property and a force main was run from El Rio Villa along an easement on Road 31 and under Interstate 505 into the COW sewage treatment facilities.

Due to the complexity of the lift station and its components, mandated certifications and reporting requirements, an agreement between COW and YCH was drafted and executed on June 1, 1978. COW provided experienced waste water treatment operators for the day to day operations, future planned improvements and service to the YCH lift station and force main. YCH compensated COW monthly for their services. The term of that agreement was for twenty (20) years with an automatic year to year renewal until further notice.

COW and YCH have been working on a new MOU for the past several years. The MOU that is before the Board incorporates three (3) set of charges into one agreement:

- Per unit sewage charge (similar to residential structures within COW city limits)
- Charges for lift station / sewage operation that belong to YCH and are not part of the per unit sewage charge

Working together to provide quality affordable housing and community development services for all

- Charges for maintenance, updates and replacement to YCH lift station sewage system components.

The new MOU is for ten (10) years and further clarifies the terms, conditions and responsibilities between the City of Winters and Yolo County Housing.

FISCAL IMPACT

There is no fiscal impact. This is part of ongoing operation costs for the El Rio Villa housing complex.

CONCLUSION

Staff recommends that the Board authorize the Executive Director to execute the Memorandum of Understanding between the City of Winters and the Housing Authority of the County of Yolo for Sewer Services for the El Rio Villa housing complex.

Attachment: Memorandum of Understanding between YCH and the City of Winters

Agreement No. _____

**(Memorandum of Understanding Between the City of Winters
and the Housing Authority of the County of Yolo
for Sewer Services)**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is executed between the CITY OF WINTERS, a municipal corporation herein called "CITY", and the HOUSING AUTHORITY OF THE COUNTY OF YOLO , informally known as YOLO COUNTY HOUSING, a public body corporate and politic organized and existing under the laws of the State of California, hereinafter called "YCH."

WITNESSETH:

WHEREAS, YCH is currently using sewer services provided by CITY for its EL RIO VILLA HOUSING DEVELOPMENT, located at 62 Shams Way, Winters, California, hereinafter called "EL RIO VILLA"; and

WHEREAS, the parties wish to enter into this MOU to replace the existing agreement for purposes more specifically defining the obligations of CITY and YCH.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between CITY and YCH as follows:

SECTION 1. SERVICE

1. CITY agrees to continue to provide YCH's EL RIO VILLA, with domestic sewer services subject to maximum daily flow restrictions as hereinafter set forth. As part of said service:

- a. YCH confirms its grant to CITY of full rights of ingress and egress to YCH's pump station and YCH's lines and connections, at any time. The sewer service provided by CITY shall be restricted solely to domestic waste and shall not be sewage from commercial, industrial or any other type of waste discharges.
- b. YCH shall comply with all ordinances, rules and regulations of CITY related to control and discharge of sewage.
- c. YCH specifically agrees that it will not allow any discharges prohibited by the State Water Resources Control Board, hereinafter called "SWRCB".
- d. YCH acknowledges that CITY currently contracts with a third party vendor for its sewer services, and that contract sets forth the level of service provided to CITY. YCH specifically accepts the level of service set forth in said contract.
- e. For the parties' convenience, the CITY will collect fees as outlined in Section 5 of this MOU.

2. While CITY through its contracted sewer service shall provide for the operation of sewer services at EL RIO VILLA, YCH agrees, at its sole cost and at all times, to be financially responsible for the maintenance, repair and replacement of all sewer lines, sewer line force mains, lift station, and pumps necessary to transport wastewater from EL RIO VILLA to the MAIN PUMP

STATION to be located at the site of the existing Winters Wastewater Treatment Plant.

SECTION 2. INDEMNIFICATION

1. YCH shall defend, indemnify and hold the CITY harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from YCH's the performance of this MOU, including liability arising from overflows or violations of CITY's SWRCB permit because of line blockages, with the exception of, and in proportion to, matters that are based upon the negligent or intentional acts or omissions of the CITY, its officers, agents, employees, subcontractors or volunteers.

2. CITY shall defend, indemnify and hold YCH harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from CITY'S operations or the performance of this MOU, with the exception of, and in proportion to, matters that are based upon the negligent or intentional acts or omissions of YCH, its officers, agents, employees, subcontractors, or volunteers.

SECTION 3. SEWER LINES/LIFT PUMP STATION

1. YCH, as owner, shall be fully financially responsible for the security of the sewer lines, connections, clean-outs, and pump station, outside the city limits of the City of Winters, and for all electricity charges thereto.

2. At its own expense, YCH shall comply with any and all security requirements of the SWRCB, or the State, Federal, or Local government. CITY

shall be responsible for maintenance, repair and replacement of sewer lines within the city limits of the City of Winters.

3. YCH shall establish a schedule for line inspection, and provide to CITY information on the replacement of its sewer lines and connections when necessary. YCH shall provide to CITY funds for such replacement in a timely manner, to avoid any violation of SWRCB rules and regulations.

SECTION 4. FLOW CAPACITY

Notwithstanding anything to the contrary contained herein regarding delivery of sewer services, it is mutually agreed that the maximum sewer services to be provided to EL RIO VILLA by CITY shall be limited to a dry weather flow of 12,000 gallons per day. No sewer service above said quantities shall be guaranteed, but CITY upon its sole determination and election may provide EL RIO VILLA with additional flow capacity upon request, dependent upon available sewer facility capacities and limitations of the system, future anticipated requirements of CITY and any other factors that CITY may wish to consider. In such event, the sewer service charge shall be adjusted to reflect the increased cost of operation and maintenance.

SECTION 5. RATES AND FEES

1. Upon execution of this MOU, CITY agrees that YCH shall pay the CITY the standard CITY rate for residential service paid by the residents within the City of Winters. The current rate of \$43.11 per unit sewer service fee per month (\$5,345.64/month) will be adjusted annually, in the same manner as other residential units served by the CITY. In addition, CITY will adopt a schedule of

fees in excess of its base contract with its sewer service provider, for emergency call-outs or extra work caused by the line blockages and overflows of YCH's own lines or pump failure. Such fees shall be at CITY's actual cost paid to its private sewer service provider.

2. In addition, sewer charges may be adjusted by CITY from time to time on an annual basis, including retroactive adjustment to reflect annual costs, based upon the: (1) increase in level of service caused by new regulations of SWRCB, or the State, Federal or Local government; or (2) increased flows causing a change in CITY operation. Said charges shall not include a charge for capitalization or depreciation of existing or of CITY'S allocated portion of CITY sewer facilities, including collection and interceptor lines, and ponds, but shall include all other prorata costs of operation, maintenance and any subsequent capital improvements that may be added to the system which are used for YCH's sewage collection disposal and treatment.

3. YCH may request and CITY shall provide the cost figures used in computing YCH charges, but such request shall not be made more often than annually or upon a change of rate. Any cost incurred by CITY above normal costs incurred in establishing the annual rate shall be borne solely by YCH. All payments shall be made by YCH in accordance with YCH's standard payables policies and practices..

4. YCH shall pay annual operations costs of \$35,050 at the rate of \$2,921.00 per month. In addition, annual operating costs may be adjusted by CITY from time to time on an annual basis, including retroactive adjustment to

reflect annual costs, based upon the: (1) increase in level of service caused by the new regulations of SWRCB, or the State, Federal or Local government; (2) increased flows causing a change in CITY operation, or (3) increased costs to CITY arising from its contractual obligations to the private contractor providing sewer services to YCH YCH.

5. CITY and YCH agree that, in addition to the fees set forth in Paragraphs 1 through 4 of this section, pump station maintenance costs shall be paid by YCH at the rate of \$2,615.00 per month. Any future capital costs incurred solely to provide sewer services to EL RIO VILLA shall be paid by YCH, upon such other terms and conditions as the parties may hereafter agree; provided, however, that any funds held from time to time by CITY in its EL RIO VILLA capital reserve fund shall first be applied and credited to the costs of such future capital improvements to maintain current sewer facilities including replacement of current sewer facility components. In addition, pump station maintenance charges may be adjusted by CITY from time to time on an annual basis, including retroactive adjustment to reflect annual costs, based upon the: (1) increase in level of service caused by the new regulations of SWRCB, or the State, Federal or Local government; (2) increased flows causing a change in CITY operation, or (3) increased costs to CITY arising from its contractual obligations to the private contractor providing services to YCH.

SECTION 6. TERM AND TERMINATION

1. YCH may terminate this MOU at any time on ten (10) days' written notice to CITY. Notwithstanding the termination notice, the CITY shall retain the

right to continue the sewer service until relieved of its obligation as “operator” by SWRCB. Upon receipt of YCH’s termination notice, CITY shall undertake all reasonable efforts to be relieved by SWRCB in as expeditious a manner as possible. YCH shall be obligated to continue compensation to CITY until such relief is granted by SWRCB.

2. The term of this MOU is ten (10) years, beginning on July 1, 2009 and ending on June 30, 2019, subject to YCH’s right of prior termination under Paragraph 1 of this section, and thereafter shall be automatically renewed from year to year without further notice. However, after the initial 10-year term, CITY and YCH shall have the right to terminate this MOU by giving written notice of termination at least one (1) year in advance.

3. In addition, this MOU shall terminate at any time that performance of terms, covenants and conditions would be contrary to applicable Federal, State or local statutes, ordinance, rules and regulations.

SECTION 7. INSURANCE

1. During the term of this MOU, each party, at its sole cost and expense, shall obtain and maintain throughout the entire term of this MOU the following insurance policies: (A) General public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage and Two Million Dollars (\$2,000,000) per aggregate, or equivalent self-insurance subject to approval by each party; (B) Automobile insurance in an amount of not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, including

coverage for hired and non-owned vehicles; and (C) Worker's compensation insurance to the established California limits.

2. CITY, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured or as additional covered party for self-insurance, on all liability insurance or self-insurance maintained by YCH other than workers' compensation insurance. Any insurance maintained by CITY shall apply in excess of, and not contribute with, insurance provided by YCH's self-insurance or liability insurance policy. YCH, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured or as additional covered party for self-insurance, on all liability insurance or self-insurance maintained by CITY other than workers' compensation insurance. Any insurance maintained by YCH shall apply in excess of, and not contribute with, insurance provided by CITY's self-insurance or liability insurance policy. 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 has been given to the other party. Upon request, each party shall provide the other party proof of such insurance coverage.

SECTION 8. INDEPENDENT CONTRACTOR

1. Neither YCH nor any of its officers or employees shall have any control over the conduct of CITY or any of CITY's employees. YCH shall have no voice in the selection, discharge, supervision or control of CITY's employees, representatives or agents, or in fixing their compensation or hours of service.

CITY expressly warrants not to, at any time or in any manner, represent that it or any of its agents, representatives or employees, are in any manner agents, representatives or employees of YCH. CITY is, and shall at all times remain, a wholly independent contractor, and CITY's obligations to the YCH are solely such as are prescribed by this MOU.

2. Neither CITY nor any of its officers or employees shall have any control over the conduct of YCH or any of YCH's employees. CITY shall have no voice in the selection, discharge, supervision or control of YCH's employees, representatives or agents, or in fixing their compensation or hours of service. YCH expressly warrants not to, at any time or in any manner, represent that it or any of its agents, representatives or employees, are in any manner agents, representatives or employees of CITY. YCH is, and shall at all times remain, a wholly independent contractor, and YCH's obligations to the CITY are solely such as are prescribed by this MOU.

SECTION 9. NOTICES

Except as otherwise specified in this MOU, all notices to be sent pursuant to this MOU shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered in accordance with this Section. All such notices shall be sent by: (i) personal delivery; in which case notice shall be deemed delivered upon receipt; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; (iii) nationally recognized overnight

courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or (iv) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received as of the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day. The addresses of the parties are as follows:

CITY: City of Winters
Attn: City Manager
318 First Street
Winters, CA 95694
Tel: (530) 795-4910
Fax: (530) 795-4935

YCH: Yolo County Housing
Attn: Executive Director
147 W. Main Street
Woodland, CA 95695
Tel: (530) 662-5428
Fax: (530) 662-5429

SECTION 10. WAIVER.

The failure of any party to insist on strict compliance with any of the terms, covenants, or conditions of this MOU by another party hereto shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

SECTION 11. AUTHORITY

Each person executing this agreement on behalf of a party represents that s/he has full power and authority to so execute this document and to bind the party to the terms, covenants and conditions of this MOU.

SECTION 12. ASSIGNMENT

This MOU may be assigned by YCH to any successor public agency but shall not otherwise be assigned in whole or in part without the prior written consent of CITY.

SECTION 13. SUCCESSORS AND ASSIGNS

Subject to any provision under this MOU restricting assignment, the provisions of this MOU shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this MOU.

SECTION 14. LEGAL FEES

Each party will bear its own defense costs, including but not limited to attorney's fees and costs, in the event a controversy or litigation occurs in connection with the performance by YCH or CITY of the terms, covenants and conditions of this MOU.

SECTION 15. GOVERNING LAW

This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed

and resolved in a court of competent jurisdiction located in Yolo County, California.

SECTION 16. TIME IS OF THE ESSENCE

Time is of the essence in the performance of every term, covenant, condition, and provision of this MOU.

SECTION 17. SEVERABILITY

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

SECTION 18. AMENDMENT

This MOU may be amended only by a written instrument executed by all parties hereto, and any other purported amendment shall be of no force or effect.

SECTION 19. COUNTERPARTS

This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same one document.

SECTION 20. ENTIRE AGREEMENT

This MOU constitutes the entire agreement between the parties and supersedes all prior agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof and no party shall be bound by any representations, statements, promises or understandings not specifically set forth in this MOU. In the event of a dispute between the parties as to the language of this MOU or the construction

or meaning of any term hereof, this MOU shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this MOU.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of _____, 2009.

YCH:

HOUSING AUTHORITY OF THE COUNTY OF YOLO

By: Lisa A. Baker, Executive Director

Approved as to Form:

By: Sonia Cortés, Agency Counsel

CITY:

CITY OF WINTERS

By: Michael Martin, Mayor

ATTEST:

Nanci G. Mills, City Clerk

APPROVED AS TO FORM:

John C. Wallace, City Attorney