

CITY COUNCIL

Gary Hansen, Mayor  
Vincent Holvik, Vice Mayor  
Jeff Cobb, Council Member  
Jim Yoder, Council Member  
Vacant, Council Member

CITY MANAGER  
Steve Holsinger

CITY CLERK  
Natalie Butler



201 North Lassen Street  
Willows, CA 95988  
(530) 934-7041  
[www.cityofwillows.org](http://www.cityofwillows.org)

**CITY COUNCIL REGULAR MEETING AGENDA**

**Tuesday, October 11, 2011**

**7:00 p.m.**

1. Call to Order Willows City Council Regular Meeting 7:00 p.m.
2. Pledge of Allegiance
3. Roll Call
4. Agenda Review: (Requested Changes by Council or Staff)
  - a) Consider acceptance, by motion, of City Council October 11, 2011, Agenda.
5. Presentations & Proclamations: None
6. Public Comment / Written Communications: Persons wishing to speak on a matter not on the agenda may be heard at this time; however, no action will be taken unless placed on a future agenda. *(Public Comment is generally restricted to three minutes).*
7. Consent Agenda: Consent items are considered to be routine by the City Council and will be enacted in one motion. There will be no separate discussion on these items unless a Councilperson or citizen requests, in which event the item will be removed from the consent agenda.
  - a) Consider approval of General Check Register.
  - b) Consider approval of Payroll & Direct Deposit Check Registers.
  - c) Consider adoption of a Resolution respecting the retirement of Trudy M. DeVoss.
  - d) Consider accepting as complete all projects funded by State of California Park Bond Act Funds and authorize the City Manager to sign the Notice of Completion.
8. Public Hearings: *(Persons wishing to speak on a Public Hearing item are asked to approach the microphone to address the Council and limit comments to three minutes. It is also requested that you please state your name for the record).* None
9. Ordinances: None
10. Items introduced by City Council or Administrative Staff for discussion purposes only:

11. New Business:

- a) By motion, consider adoption of a Resolution granting a designated period for retirement with two years additional service credit under Public Employee Retirement Law Section 20903.
- b) By motion, consider approval of a three year renewal of the Professional Services Agreement for Operation of the Waste Water Treatment Plant between the City of Willows and Southwest Water Company, Inc.
- c) City Council review and discuss the options regarding filling a City Council vacancy and select the desired method for filling the vacancy and direct staff accordingly.

12. Council Member Reports:

13. Executive Session: None

14. Adjournment:

**CERTIFICATION:** Pursuant to Government Code §54954.2 (a), the agenda for this meeting was properly posted on or before October 6, 2011.

A complete agenda packet, including staff reports and back-up information, is available for public inspection during normal work hours at City Hall or the Willows Public Library at 201 North Lassen Street in Willows or on the City's website at [www.cityofwillows.org](http://www.cityofwillows.org).

In compliance with the Americans with Disabilities Act, the City of Willows will make available to members of the public any special assistance necessary to participate in this meeting. The public should contact the City Clerk's office at 934-7041 to make such a request. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

The City of Willows is an Equal Opportunity Provider

**AGENDA ITEM**

**TO:** Steve Holsinger, City Manager  
**FROM:** Tim Sailsbery, Finance Director  
**SUBJECT:** Industrial Disability Retirement-Trudy DeVoss

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**RECOMMENDATION**

Adopt the Resolution Respecting the Retirement of Trudy M. DeVoss

**SITUATION (or BACKGROUND):**

Trudy DeVoss sustained an industrial injury in 2009 prior to her separation from the City of Willows. The nature of the procedures and the prognosis is such that it is doubtful that Ms. DeVoss will be able to return to work in the capacity of a Police Officer. As such Ms. DeVoss has applied for industrial disability retirement through the California Public Employees Retirement System.

The attached resolution affirms that there is no objection on behalf of the City regarding said application.

**FINANCIAL CONSIDERATIONS:**

The retirement is part of the City's overall actuarial cost for current and future retirees. A share of health insurance cost, if health coverage is elected, will be covered in accordance with the City's requirement under CalPERS to cover a minimum portion of health cost for current and retired employees.

**NOTIFICATION**

California Public Employees Retirement System (Upon Approval)

**ALTERNATE ACTIONS**

1. Approve by Resolution
2. Request additional information from staff
3. Reject staff recommendation and/or direct item to be returned at later date.

**RECOMMENDATION**

Adopt the Resolution Respecting the Retirement of Trudy M. DeVoss

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Respectfully submitted,



Tim Salsbery  
Finance Director

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Attachment:

- Resolution

**RESOLUTION NO. \_\_\_\_-2011**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLOWS**  
**RESPECTING THE RETIREMENT OF TRUDY M DEVOSS**

WHEREAS, The City of Willows (hereinafter referred to as "Agency") is a contracting agency of the California Public Employees Retirement System; and

WHEREAS, Public Employee Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which she is classified as a local safety member is disabled for purposes of the Public Employee's Retirement Law and whether such disability is "industrial" within the meaning of such Law; and

WHEREAS, an application for industrial disability retirement for Trudy M. DeVoss employed by the Agency in the position of Police Officer has been filed with the California Public Employees' Retirement System; and

WHEREAS, the City of Willows has reviewed the medical and other evidence relevant to such alleged disability

NOW, THEREFORE, BE IT RESOLVED that the City of Willows finds and determines and it does hereby find and determine that Trudy M. DeVoss is incapacitated within the meaning of the Public Employees Retirement Law for the performance of her duties in the position of Police Officer; and hereby find and determine that Trudy M. DeVoss is incapacitated for performance of the usual duties of the position for other California public agencies in CalPERS; and

BE IT FURTHER RESOLVED that the City of Willows finds and determines and it does hereby find and determine that such disability is the result of injury or disease arising out of and in the course of employment. Neither Trudy M. DeVoss nor the Agency has applied to the Workers' Compensation Appeals Board pursuant to Section 21166 whether such disability is industrial; and

BE IT FURTHER RESOLVED that the member was separated from her employment in the position of Police Officer with respect to leave rights under Section 21164 of the Government Code on or about July 1, 2011 and no dispute regarding such

leave rights are pending. Her last day on pay status was July 1, 2011. The primary disabling condition is orthopedic.

PASSED AND ADOPTED by the City Council of the City of Willows  
this 11th day of October, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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Gary Hansen, Mayor

ATTEST:

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Natalie Butler, City Clerk

**AGENDA ITEM**

**TO:** Willows City Council

**FROM:** Public Works Director

**SUBJECT:** Notice of Completion for all Park Bond related projects.

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**RECOMMENDATION**

Adopt by motion to accept as complete all projects funded by State of California Park Bond Money and authorize the City Manager to sign the Notice of Completion

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**SITUATION (or BACKGROUND)**

The City of Willows received funding for projects to enhance the usefulness of Parks within the City.

A list of priorities was established by the City Council which included new playgrounds, ball field lights, new bathroom facilities, exercise equipment replacement and new sprinkler system installation.

The final projects have been completed thus effectively using all of the allocated funding, in total amounting to \$ 440,000 dollars.

The State of California therefore requires that to receive final payment that a notice for completion be filed, and that the Willows City Council accepts all projects as complete at a regularly scheduled meeting and authorize the City Manager to sign the Notice of Completion.

**RECOMMENDATION**

Adopt by motion to accept as complete all projects funded by State of California Park Bond Money and authorize the City Manager to sign the Notice of Completion.

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Respectfully submitted,



Greg Tyhurst  
Public Works Director

Approved by,



Steve Hoisinger  
City Manager

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RECORDING REQUESTED BY:  
City of Willows  
WHEN RECORDED MAIL TO:  
City of Willows, Public Works Director  
201 N. Lassen Street  
Willows, California 95988

No Recording Fees Payable Pursuant to Government Code Section 27383

## NOTICE OF COMPLETION

OWNER: City of Willows, 201 N. Lassen Street, Willows, CA 95988

PROJECT TITLE: City of Willows – Central & Sycamore Park Projects associated with Park Bond Funding.

**PROJECT LOCATION & DESCRIPTION:**

The project locations are as follows; Central Park located at the Southeast Corner of S. Villa Ave. & West Laurel Streets. Sycamore Park located at the Southeast Corner of S. Culver Ave and West Sycamore Streets.

Work for this project consisted of installation a new sprinkler system in Central Park, the installation of new exercise stations to replace the old dilapidated system around the walking path.

CONTRACTOR: City of Willows Public Works Department.

COMPLETION/ACCEPTANCE DATE: July, 5, 2011

NATURE OF OWNER'S INTEREST IS: Owner of real property and improvements thereon at the time of commencement of work of improvement.

Authorized representatives of the City and the Contractor have inspected the work performed under this contract and the Project is hereby declared to be completed/accepted on the above date.

On the above date, construction of improvements on the project has been sufficiently completed, in accordance with the contract documents and change orders if any, so that the City can occupy or utilize the project for the use for which it was intended.

The Contractor's one year warranty period begins as of the above-referenced completion date.

The City accepts the project as complete.

I declare under penalty of perjury of laws of the State of California that the foregoing is true and correct.

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Steve Holsinger  
City Manager

October 11, 2011  
Date

**AGENDA ITEM**

**TO:** Steve Holsinger, City Manager  
**FROM:** Tim Sailsbery, Finance Director  
**SUBJECT:** Two Years Additional Service Credit-Retirement-Resolution to Designate Period of Eligibility

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**RECOMMENDATION**

Adopt The Resolution Of The City Council Of The City Of Willows Granting a Designated Period For Retirement With Two Years Additional Service Credit Under Public Employee Retirement Law Section 20903.

**SITUATION (or BACKGROUND):**

The City entered into a contract amendment with CalPERS effective July 29, 2011, whereby the City may offer, during periods of significant financial hardship, two years additional service credit to employees who are eligible to retire. Said offering may apply to specific positions or to an organizational unit (eligible City employees as a whole in this case as directed by Council). The offering of the retirement incentive is to occur, at Council discretion, when mandatory layoffs, transfers, and/or demotions to at least one percent of the organizational unit become eminent. Such is the case with the passage of the 2011-12 Budget. Further, Council will need to confirm its intent not to fill at least one of the positions vacated by these retirements.

Granting the designated period, or "opening the window", is a two step process. Staff provided financial information pertaining to the Two Year Service Credit option at the meeting of September 27 meeting. At this time, Staff is seeking adoption of the resolution to establish the open period for allowing the additional service credit for eligible employees within the organizational unit who choose to retire

**FINANCIAL CONSIDERATIONS:**

(Also noted at September 27 meeting) At the June 14 Council meeting, it was noted that the additional cost for all eligible employees, amortized over 20 years, of providing the retirement incentive is approximately \$477,937. It is anticipated that a minimum of 3, with a possibility of up to 6 employees may actually elect to retire utilizing the incentive. The 20 year amortized cost of these employees is \$71,005 to \$153,826,

depending upon the actual number of retirees. PERS will start charging the City two years from the opening date of the retirement window (October, 2013). Based upon the 3 committed retirements at this time, with replacement of positions not planned, the anticipated cost savings is \$103,000 in 2011-12 and approximately \$182,000 per year for 2012-13 and beyond.

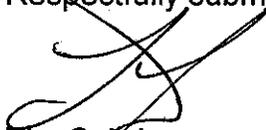
**NOTIFICATION**

CalPERS (upon adoption)

**RECOMMENDATION**

Adopt The Resolution Of The City Council Of The City Of Willows Granting a Designated Period For Retirement With Two Years Additional Service Credit Under Public Employee Retirement Law Section 20903.

Respectfully submitted,



Tim Saffsbery  
Finance Director

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Attachment:

Resolution

RESOLUTION NO. \_\_\_\_-2011

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLOWS  
GRANTING A DESIGNATED PERIOD FOR RETIREMENT WITH TWO  
YEARS ADDITIONAL SERVICE CREDIT UNDER PUBLIC EMPLOYEE  
RETIREMENT LAW SECTION 20903**

WHEREAS, The City of Willows is a contracting agency of the California Public Employees Retirement System; and

WHEREAS, The City of Willows desires to provide a designated period for eligible employees to receive two year' additional service credit upon retirement under Code Section 20903 and that the City, via contract amendment, has included and provided for Section 20903 provision in the City's contract with the California Public Employees Retirement System; and

WHEREAS, The City of Willows desires to provide said designated period to the organizational unit of the City of Willows consisting of all eligible City of Willows' employees who are CalPERS members

NOW, THEREFORE, BE IT RESOLVED that the City of Willows does hereby authorize a designated period from October 12, 2011 to March 9, 2012 to provide two years additional service credit to eligible members of the organizational unit

BE IT FURTHER RESOLVED that it is the intention of the City of Willows at this time to maintain a minimum of one vacant position within the organizational unit following retirement or retirements that occur as a result of providing this designated period

PASSED AND ADOPTED by the City Council of the City of Willows this 11th day of October, 2011, by the following vote:

AYES:

NOES:

ABSENT:

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Gary Hansen, Mayor

ATTEST:

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Natalie Butler, City Clerk

## AGENDA ITEM

October 11, 2011

**TO:** Mayor Hansen and Members of City Council

**FROM:** Steve Holsinger, City Manager

**SUBJECT:** Renewal of the Current Professional Services Agreement for Operation of the Waste Water Treatment Plant between City of Willows and Southwest Water Company, Inc.

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## RECOMMENDATION

By Motion, approve a three year renewal of the Professional Services Agreement for Operation of the Waste Water Treatment Plant between City of Willows and Southwest Water Company, Inc.

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## SITUATION

In August 2003 the City Council directed staff to solicit proposals for the contractual operation of the city waste water treatment facility, located on South Tehama Street. Following the advertisement of the *Request for Proposals* Process, a single proposal was received by the City of Willows from Eco Resources. During subsequent negotiations with Eco Resources and city staff, a recommendation was made in November of 2003, to the City Council, to enter into a Professional Services Agreement for total operations at the Waste Water Treatment Plant (WWTP). Eco Resources, now known and doing business as Southwest Water Company, has been the contract operator of the city's waste water treatment plant since January 1, 2004.

The original agreement was approved for a period of five years, however was subsequently amended in August 2005, and again in November 2006; including a renewal for an additional five year period, expiring November 1, 2011. There was one subsequent amendment in January 2008; concluding a "re-assignment" of the contract from Eco Resources to Southwest Water Company, the current contract operator. Although a number of amendments and adjustments have occurred over the past seven years, the staffing compliment at the treatment facility has remained consistent and their performance has been nothing less than extraordinary; evidenced by the award of the Northern CA Waste Water Treatment Plan of the year award for the past two consecutive years.

However, several other changing dynamics associated with the Waste Water Treatment Facility, has forced both city staff and Southwest Water to seek specific modifications to the current contract agreement for operations. Therefore staff is recommending a modification of three sections of the original lease agreement. First the term of the lease is proposed to run for a period of three years, with an option for renewal. This change will allow the city to evaluate two very significant and recent changes associated with the treatment plant operation. One change is the switch from PG&E as the primary power provider, to Solar Power Partners via the newly installed solar array; currently providing the majority of power consumed by the WWTP. The second significant change, is legislative in nature and involves the Permitting Process associated with the State Water Resources Control Board. The current operating permit for the WWTP is under review by the Board. Indications at this time suggest the WWTP may have to undergo some significant modifications in the not too distant future, to ensure compliance with newly upgraded Waste Water Treatment regulations. Thus the term of three years should provide an adequate window to assess any necessary changes in operational status or future need to further modify the terms of the current contract.

In addition to those changes noted above, the original agreement required the "Operator", Southwest Water to pay all utility expenses; including the cost of electricity to operate the plant. This cost was currently at approximately,

\$130K per year. Since the installation of the Solar array and our (City of Willows) agreement with Solar Power Partners, it was necessary to modify the contract to eliminate the requirement for Southwest Water to provide this utility payment. In addition to these changes, some significant revisions were made to the language concerning the annual CPI assessment in conjunction with compensation adjustments due the "operator" each year.

As a result of these necessary changes and the amendments made in conjunction with this agreement over the past eight years, staff thought it best to rewrite or re-state the entire agreement in this renewal format. Legal reviews were completed by both the City Attorney and Southwest Water and the final draft is now presented for council approval. Staff is recommending approval of the proposed changes in this renewal agreement.

### **FINANCIAL CONSIDERATIONS**

NAT – Please have Tim fill in the \$\$\$ amounts and include the both the increase in Maintenance Fund and the Decrease associated with reduction in Electric charges.....please include the overall anticipated annual expense with this contract and please make a notation that the renewal is not seeking any additional compensation for Southwest Water in the current year. Thanks!!!!

### **NOTIFICATION**

Kathy Stone, California District Operations Manager, Southwest Water Company

### **RECOMMENDATION**

By Motion, approve a three year renewal of the Professional Services Agreement for Operation of the Waste Water Treatment Plant between City of Willows and Southwest Water Company, Inc.

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Respectfully submitted,

Stephen A Holsinger  
City Manager

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Attachments:

Exhibit 'A' – Restated Professional Services Agreement for Operation of the Waste Water Treatment Plant between City of Willows and Southwest Water Company, Inc.

# EXHIBIT A

## PROFESSIONAL SERVICE CONTRACT

This Professional Service Contract ("CONTRACT") is entered into as of this 1<sup>st</sup> day of November 2011 by and between the City of Willows ("CITY") and SWWC Services, Inc., a Delaware corporation ("SWWC").

### I. RECITALS

WHEREAS, the CITY owns and has an National Pollution Discharge Elimination System (NPDES) Permit No. CA0078034 for a wastewater treatment system ("FACILITY") located at 1600 South Tehama Street Willows, California, consisting of a new Conventional Tertiary Treatment plant which includes; influent screening, extended aeration activated sludge, two secondary clarifiers, and continuous backwash filters. Disinfection is with sodium hypochlorite and dechlorination is with sodium bisulfite. There is one equalization pond and one emergency pond, and two sludge retention lagoons. Discharge of treated effluent is into Glenn-Colusa Irrigation District or Agriculture Drain C a tributary to Logan Creek

WHEREAS, the CITY and ECO Resources, Inc. (an affiliate of SWWC) previously entered into that certain Professional Service Contract dated January 1, 2004, as amended, which agreement is hereby replaced and superseded in its entirety by this CONTRACT..

### II. STATEMENT OF PURPOSE

This CONTRACT provides for SWWC to furnish to CITY certain services for the operation and maintenance (as defined herein) of FACILITY; and to receive compensation from CITY for those services rendered in accordance with the below-presented terms and conditions.

### III. TERM OF CONTRACT

The term of this CONTRACT will commence on November 1, 2011, and expire on November 1, 2014, unless the CONTRACT term is amended or the Agreement is terminated in accordance with its terms.

The Parties may by mutual agreement, prior to November 2014, agree to extend the term of the CONTRACT for up to an additional three years or until November 1, 2017.

### IV. TERMINATION

A. Breach. For the duration of this CONTRACT, in the event of material breach by either party, providing that such dissatisfied party first provides written notice of such breach to the other party and such breach is not corrected within ninety (90) calendar days from the date of said notice, the dissatisfied party may terminate the CONTRACT. The ninety (90) calendar day correction period may be extended by mutual agreement of both parties.

B. Payment In the event of termination, CITY shall pay SWWC compensation pursuant to this CONTRACT up to the date of termination (pro rated for less than a full month, if necessary) and any unpaid expenses incurred by SWWC pursuant to this CONTRACT.

## V. SCOPE OF SERVICES

Unless otherwise specifically stated, all costs for the below listed services are to SWWC's account and included as part of the base CONTRACT price.

A. Certified Personnel. SWWC affirms that FACILITY shall be operated under the supervision of personnel who possess valid wastewater operator certification as and if required by the State of California.

B. Scope. SWWC will pay all necessary expenses required for the normal operation, as defined herein; electric utility excepted, of FACILITY, and will pay for maintenance as set forth below.

### C. Maintenance.

1. Definitions. For purposes of this CONTRACT the following definitions shall apply:

"Preventive Maintenance" shall mean periodic scheduled maintenance in accordance with wastewater industry standards and/or manufacturers' recommendations.

"Corrective Maintenance or Repairs" shall mean any non-preventive, maintenance or repair which costs less than Two Thousand Dollars ( (\$2000) other than repair of damages cause by Force Majeure. .

"Capital Maintenance, Repairs or Replacements" shall mean any non-preventive maintenance, repair, or replacement that costs two Thousand Dollars ( \$2000) or more, or which is caused by Force Majeure.

2. FACILITY maintenance . To the limit of \$45,000 per year, SWWC will provide Preventative Maintenance and Corrective Maintenance or Repairs for the Facility consistent with good preventive maintenance practice or manufacturers specifications. SWWC employees on site labor costs shall not be included when calculating such annual Facility maintenance amounts. CITY will be responsible for all Capital Maintenance, Repairs and Replacement costs as defined above. If any annual contract period, the above \$45,000.00 limit is not exceeded, SWWC will rebate to CITY, within sixty (60) days of the end of the said period, the difference between said annual limit and the amount expended by SWWC, or the CITY can roll over the unused portion to the next contract period. CITY shall be responsible for the costs of all Preventive and Corrective Maintenance work exceeding the annual limit set forth above.

SWWC shall annually submit to CITY a recommended list of Capital Maintenance expenditures for FACILITY. Emergency items needed for the safety of personnel will be given first priority. SWWC will submit, upon request, documentation of the cost effectiveness of "repair vs. replace" recommendations.

SWWC shall be additionally responsible to ensure general up-keep and house-keeping maintenance (i.e., general buildings & grounds appearance) is maintained to a reasonable "public facility" standard.

D. Operational Testing. All sample collection and analyses required for reporting in CITY's Water Quality Control Board permit shall be performed by SWWC, which shall be included in the price of this CONTRACT. Priority Pollutant sampling/analysis and any new analysis required by the new NPDES Permit will be paid for by the CITY. All regulatory reports will be approved and signed by the SWWC operator of record. Copies of all regulatory reports and communications (if such are required) will be sent to CITY each month. SWWC will, at its cost, sample and perform any additional laboratory tests it deems necessary for the successful operation of FACILITY.

E. Chemical and Materials Inventory. SWWC will purchase and maintain an inventory of chemicals routinely used in the operation of FACILITY. Chemical inventories will be stored at the site in compliance with OSHA and in quantities sufficient to assure continuous operation of FACILITY.

F. Client Interaction. Representatives of SWWC shall attend scheduled meetings by CITY, if requested. SWWC shall respond to all correspondence and/or inquiries from CITY in a prompt and professional manner.

G. Emergency Response. SWWC shall respond to emergency calls regarding FACILITY within one (1) hour from the time of notification, or when reasonably able to do so, whichever is earlier. SWWC will respond to such calls twenty-four (24) hours per day, seven (7) days per week.

H. Sludge Disposal. SWWC's price herein does not include the cost of treating or disposing of FACILITY sludge and byproducts. CITY shall retain ownership of, payment and responsibility for, all FACILITY sludge and byproducts.

I. Reports. SWWC shall submit to CITY a monthly operations report including, but not limited to, the following information: total wastewater treated, maintenance and repair work requested by SWWC and/or conducted by CITY (including, time and date of request, time and date repair started and completed), SWWC maintenance costs year-to-date, and effluent quality reports and compliance summary. SWWC will prepare a summary report of operations at the close of each contract year. SWWC shall promptly prepare and submit all operational and compliance reports as may be required by the California Water Quality Control Board, the U.S. EPA, or any other local, state, or federal agency having jurisdiction over FACILITY.

J. Stormwater – SWWC will collect stormwater discharge samples, arrange for outside laboratory testing and report the results from such testing in accordance with the existing permit. SWWC sampling and report preparation costs are included in the scope of work. Laboratory analysis are not included herein, and will be passed onto the CITY.

## VI. THE CITY'S RESPONSIBILITIES

A. Payment. CITY shall pay to SWWC as compensation for the services, the sum **\$39,704.00 per month**, due on the first day of the month of service to be rendered. Late payments will be subject to a service charge of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater. Interest shall accrue from the 31st day following the date of invoice until the payment is received by SWWC. Price adjustments shall be made in accordance with Attachment A.

B. Licenses. CITY will maintain existing or necessary easements, access, licenses, and warranties for the mutual benefit of both parties.

C. Insurance. CITY shall purchase and ensure that standard fire insurance policies are maintained including extended coverage for the replacement cost of FACILITY. Such policies shall name SWWC as an additional insured according to its insurable interest under these policies during the term of the CONTRACT.

D. Discharge Permits. CITY shall remain the named permittee on any and all discharge permits that may be required, and shall meet all regulatory requirements not specifically assumed herein by SWWC as its responsibility.

E. CITY Maintenance. CITY shall perform all capital maintenance, repairs, and replacements at FACILITY. Because of the importance of timely maintenance in the FACILITY'S ability to comply with regulatory requirements, CITY shall perform all reasonable requests by SWWC for maintenance within 24 hours of request, or within a time mutually agreed by SWWC and CITY. In the event CITY does not complete such maintenance in the time set forth, SWWC shall maintain the right to make such repairs and invoice the CITY for those costs (including SWWC labor), per Article V.C.2 of CONTRACT. SWWC shall have the right to make emergency repairs (up to a limit of \$5,000.00) **IF**: (a) CITY is not available for prior approval of such action **AND** (b) such expenditures are necessary to continue operation of FACILITY in order to provide for public safety and environmental protection **AND** (c) SWWC shall notify CITY as soon as reasonably possible of its actions. Costs for all repairs performed by SWWC shall be billed in the next regular monthly invoice following the period during which the work was performed.

## VII. INSURANCE

Following execution of this CONTRACT, SWWC will have its insurance carrier(s) issue direct to CITY certificates of insurance for the following coverage:

- A. Workers' Compensation as prescribed by law;
- B. Comprehensive General Liability, including umbrella coverage of \$5,000,000;
- C. Vehicle Liability Coverage (for bodily injury and property damage, combined single limit) of not less than \$1,000,000;
- D. Employer's Liability (covers criminal or fraudulent acts of employees) of \$2,000,000.

SWWC affirms that the above referenced insurance will be maintained in force throughout the term of this CONTRACT.

## VIII. GUARANTEES, INDEMNITY, CONDITION OF FACILITY AND LIMITATIONS

Guarantees. SWWC shall use generally accepted business practices to procure materials and replacement equipment. SWWC shall not be responsible to CITY for any guaranty in connection with such materials or replacement equipment. SWWC shall assert reasonable efforts to obtain the normal guaranties applicable in the particular industry manufacturing such materials or replacement equipment, and shall assign same to CITY.

B. Damage to the FACILITY. SWWC shall not be required to repair any portion of FACILITY damaged due to flood, fire, explosion, riot, revolution, civil disturbance, war, or other acts of God or any other cause whatsoever beyond the control of SWWC or due to the acts or omissions of any other entity or person(s) other than SWWC, its employees, agents, representatives,

or sub-contractors. SWWC agrees to notify CITY of such damage, both orally and in writing, as soon as possible after the occurrence of the above crises or acts.

C. Indemnity. Except as otherwise set forth in this agreement, SWWC hereby agrees to hold harmless CITY, its officers, employees, agents, and representatives against any and all liabilities, claims, damages, losses, and costs of whatsoever kind (except those which directly arise from the negligent operations, acts or errors of the CITY, its employees, subcontractors, or agents) which directly arise from the negligent operations, acts, or errors of SWWC, its employees, subcontractors, or agents in the performance of services under this CONTRACT. Except as otherwise set forth in this agreement, CITY hereby agrees to hold harmless SWWC, its officers, employees, agents, and representatives against any and all liabilities, claims, damages, losses, and costs of whatsoever kind except those which directly arise from the negligent operations, acts or errors of SWWC, its employees, subcontractors, or agents in the performance of services under this CONTRACT.

D. Condition of FACILITY. CITY affirms that all such facilities are built in accordance with all applicable local, state, and federal regulations and that the facilities will be in good working order, do not contain any known defective equipment, and are suitable and adequate for the reasonable needs of its expected operations.

E. Abnormal Conditions. Notwithstanding any other provision of this CONTRACT, in the event the wastewater influent to the treatment plant exceeds the treatment plant design parameters, or in the event influent contains abnormal, toxic, or other substances which cannot be removed or treated by FACILITY, SWWC will use its best efforts to maximize plant performance, but shall not be responsible for associated effluent characteristics or damages, fines, penalties, or claims resulting therefrom. SWWC shall advise CITY of the abnormal situation and planned course of corrective action within twenty-four (24) hours of occurrence.

F. Force Majeure. SWWC shall not be deemed to be in default if performance of the obligations required by this CONTRACT is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties ("Force Majeure"). Upon occurrence of any such event, SWWC shall operate FACILITY on a "best reasonable effort" basis and shall not be responsible for damages, fines, penalties, or claims resulting therefrom. If any additional expense is incurred by SWWC in such operation, those expenses shall be reimbursed to SWWC by CITY.

H. Fines and Penalties. While this CONTRACT is in force, SWWC will pay any and all fines or penalties against CITY as a result of actions taken by the California Water Quality Control Board or U.S. EPA arising from SWWC's negligent operation of FACILITY, so long as: [a] FACILITY meets applicable regulatory or customary design criteria for wastewater treatment; [b] CITY has not rejected SWWC's recommendations which would have prevented or corrected any violation of regulations resulting in action, and [c] CITY has completed all maintenance as and when requested by SWWC.

## IX MISCELLANEOUS

A. Record Drawings. CITY shall provide SWWC with a complete set of record drawings of FACILITY upon request. SWWC shall maintain these drawings in a manner that allows their

efficient and effective use in solving system problems.

B. Integration and Modifications. This CONTRACT represents the entire and integrated agreement between CITY and SWWC and supersedes all prior negotiations, representations or agreements, whether written or oral. Modification of this CONTRACT shall be made only by a written document signed by SWWC and CITY.

C. Assignability. This CONTRACT shall not be assigned by either party without the prior written consent of the other unless such assignment shall be to an affiliate or successor of either party.

D. Notice. Such notice as required under this CONTRACT shall be in writing and shall be sent by registered or certified mail to the intended party's address of record. Notice shall be deemed to have been given when the notice was thus mailed to the following addresses of record:

**SWWC SERVICES, INC.**

Chris Malinowski  
11302 Tanner Road  
Houston, TX 77041

With a copy to:

SWWC Services, Inc.  
c/o SouthWest Water Company  
Attn: General Counsel  
1211 E. Center Court Drive  
Covina, CA 91724

**CITY OF WILLOWS**

City Manager  
City of Willows  
201 N. Lassen  
Willows, CA 95988

E. Independent Contractor. SWWC serves CITY as an independent contractor.

In witness whereof, SWWC and CITY have caused this CONTRACT to be executed by their duly authorized officers.

for the CITY OF WILLOWS

for SWWC SERVICES, INC.

BY:

BY:

\_\_\_\_\_  
Steve Hlsinger, City Manager

\_\_\_\_\_  
, President

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

By:

\_\_\_\_\_ DATE: \_\_\_\_\_

## ATTACHMENT A

1 • Annual Adjustment This CONTRACT price and total Maintenance Limit will be reviewed annually for compensation increase or decrease, based on the San Francisco-Oakland-San Jose CPI Index as published by the Bureau of Labor Statistics. The annual average increase reported will be utilized to increase the compensation of the year following the reported year. The CPI Index published for the period February to February of each subsequent year shall be utilized to establish the new compensation rate. Rate increase or decrease shall become effective in accordance with the CITY fiscal year period commencing on July 1<sup>st</sup> of each subsequent CONTRACT year. The first adjustment shall take place July 1, 2012.

Extraordinary Costs. If at any time during the term of this CONTRACT, storms, earthquakes, tornados, floods, or other natural disaster shall occur which adversely affect FACILITY causing extraordinary expenditures by SWWC, SWWC shall submit a detailed invoice of such expenditures to CITY. CITY shall pay to SWWC such invoiced amount within thirty (30) days of the date such invoice was submitted.

2. General Provision for Adjustments. If any changes in the scope of operations under this CONTRACT should occur, including, but not limited to, changes in governmental regulations, reporting requirements and wastewater treatment conditions or standards that change the cost of contract operations, SWWC may request a CONTRACT compensation adjustment. Such adjustment will be negotiated in good faith by CITY and SWWC within thirty (30) days of receiving such request from SWWC.

3. Plant Flow Rate. Both parties agree that this CONTRACT is based on FACILITY treating an annual average of 2.0 MGD and 2400 lbs/day BOD<sub>5</sub> and 3400 lbs/day of TSS. . Should the actual annual flows or loadings treated change from either of these levels by more than ten percent (10%), the price differential for such treatment shall be agreed to by the parties per paragraph (2.) above of this Attachment, and the difference billed or credited to CITY on the subsequent monthly invoice by SWWC.

4. Additional Services. At the request of CITY and at the option of SWWC, SWWC shall provide additional services for CITY. Compensation for such services shall be negotiated on a case-by-case basis.

**AGENDA ITEM**

**City Council  
October 11, 2011**

**TO:** Honorable Mayor Hansen and Members of City Council  
**FROM:** Natalie Butler, City Clerk  
**SUBJECT:** CITY COUNCIL VACANCY

**RECOMMENDATION**

It is recommended the City Council review and discuss the options regarding filling the City Council vacancy, and select the desired method for filling the vacancy and direct staff accordingly.

**BACKGROUND**

On August 9, 2011, the City received notice of Councilmember Sandie Hobbs' early resignation from her term on the City Council. Her resignation became effective September 30, 2011. California State law establishes a 60-day time frame for the City Council to take action to fill a vacancy on the City Council. This report sets forth the options contained in the California Government Code governing the filling of a midterm vacancy on the City Council and discusses alternative procedures the Council may want to consider.

**FINDINGS**

Government Code Section 36512 addresses the filling of vacancies in municipal offices. The code mandates that, within 60 days from the commencement of the vacancy, the City Council shall either fill the vacancy by appointment or call a special election to fill the vacancy. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent, which in this case would be November 2014.

If the City Council chooses to hold a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

There are two potential disadvantages to the election option. They involve the increased cost of conducting an election, and the delay in restoring the City Council to its full membership.

If the City Council wishes to fill the vacancy by appointment, it must appoint a City resident and registered voter by November 29, 2011, by a majority vote of the City Council. This could be done at a regularly scheduled meeting or special meeting between now and November 29, 2011.

State law does not prescribe any procedure for the selection of an appointee. Therefore, the City Council may choose any selection method it desires.

Should the City Council decide to fill the vacancy via appointment, one method of doing so would be the following:

1. Direct the City Clerk to use the City's communication methods to inform residents about the vacancy and the appointment process. Applications could be made available for residents interested in being appointed to the vacant City Council seat. Eligible applicants must be registered voters, 18 years of age or older, a U.S. citizen and a resident of the City of Willows.
2. Direct that applications and/or statements of qualifications must be submitted to the City Clerk's Office by 5 p.m. on November 10, 2011.
3. Schedule interviews of selected applicants.
4. After the interviews of selected applicants, the City Council may then make an appointment to fill the vacant City Council position at the November 22, 2011, City Council meeting and direct the City Clerk to administer the Oath of Office or defer making an appointment until the City Councilmembers have had additional time to consider the applicants. If Council Members defer making an appointment at the November 22, 2011, meeting, a special meeting must be called between November 23 and November 28, 2011, in order to make the appointment. **Please note that City Offices will be closed between November 24 and November 27, so this limits a special meeting to be held on either November 23 or November 28.**

### RECOMMENDATION

It is recommended the City Council review and discuss the options regarding filling the City Council vacancy, and select the desired method for filling the vacancy and direct staff accordingly.

Respectfully submitted,

  
Natalie Butler  
City Clerk