



Willows City Council Regular Meeting

August 11, 2020
Willows City Hall
7:00 p.m.

City Council
Kerri Warren, Mayor
Larry Domenighini, Vice Mayor
Gary Hansen, Council Member
Lawrence Mello, Council Member
Joe Flesher, Council Member

Interim City Manager
Wayne Peabody

City Clerk
Tara Rustenhoven

201 North Lassen Street
Willows, CA 95988
(530) 934-7041

Agenda

NOTICE:

This City Council meeting will be OPEN to the public. Pursuant to a range of executive orders issued by Governor Gavin Newsom, members of the public will be admitted to council chambers in a limited manner, one at a time, and only for the amount of time needed for them to provide their own public comment or comments on a specific agenda item. Members of the public must wear a mask and are expected to observe social distancing at all times while on City Hall property and inside City Hall. Council chambers is otherwise CLOSED to the public to prevent the transmission of the COVID-19 virus. As an alternative, members of the public may attend the meeting telephonically by following the instructions below. Members of the public wishing to address the Council on any item(s) not on the agenda may do so by stating their name and address. Then please wait until you are recognized by the Mayor or Vice Mayor. No formal action may be taken on public comments unless the matter is placed on a future agenda. Each caller will be limited to three (3) minutes.

Dial in Number: (605) 313-5611

Access Number: 404150

1. **CALL TO ORDER-** 7:00 p.m.
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PUBLIC COMMENT/WRITTEN COMMUNICATIONS**
 - a. Public Comments: Members of the public wishing to address the Council on any item(s) not on the agenda may do so at this time by stating your name and address. Then please wait until you are recognized by the Mayor or Vice Mayor. No formal action will be taken unless the matter is placed on a future agenda. Each member of the public attending in person or caller will be limited to three (3) minutes. If you are attending in person please wait to be called in one at a time from the lobby. If you are calling in to provide public comment, use the call-in information below:
Dial in Number: (605) 313-5611
Access Number: 404150
5. **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 Council Member requests, in which event the item will be removed from the consent agenda. It is recommended that the Council:

 - a. Approval of general checking, payroll & direct deposit check registers 50408 – 50425, Z10862 – Z10912, 38678 – 38707.

Comments from the public are welcome. The Mayor will allow an opportunity for comments related to Public Hearings or any item on the agenda. Please limit comments to three minutes per topic, and one comment per person per topic. Once comments conclude, please allow the Council the opportunity to continue its consideration of the item without interruption.

6. PUBLIC HEARING

- a. Conduct a public hearing, consider reading by title only and passage of the first reading of the attached ordinance entitled; **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLOWS AMENDING WILLOWS MUNICIPAL CODE CHAPTER 18.110.090(8) (NON-CONFORMING USES) WITH OTHER TEXT TO REMAIN UNCHANGED**

7. REGULAR BUSINESS AGENDA/ITEMS REQUIRING COUNCIL ACTION

- a. Select two members of the City Council to serve as a Library Board of Trustees subcommittee, accept the Letter of Resignation of Sunshine Kelly.
- b. Adopt a resolution entitled: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLOWS AUTHORIZING THE INTERIM CITY MANAGER TO SIGN AND ACT ON THE CITY'S BEHALF IN ALL MATTERS PERTAINING TO THE COMMUNITY DEVELOPMENT BLOCK GRANT LOAN AGREEMENTS, PROMISSORY NOTES, SECURITY AGREEMENTS AND ANY OTHER DOCUMENTS RELATED TO THE EQUIPMENT LOAN BETWEEN THE CITY OF WILLOWS AND THE RUMIANO CHEESE COMPANY.**
- c. Staff recommends the Council, by Motion, authorize the Interim City Manager to negotiate and execute an agreement with Inframark Water & Infrastructure Services to provide contract operations and maintenance services for the operation of the Willows Wastewater Treatment Plant.

8. COUNCIL/ STAFF REPORTS/COMMENTS

- a. Staff Reports/Comments:
- b. Council Reports/Comments:

9. ADJOURNMENT

This agenda was posted on August 6, 2020

Tara Rustenhoven, City Clerk

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.

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. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132). 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



CONSENT AGENDA



Period

7/22/2020 TO 8/7/2020

General Checking 50408 TO 50425

Payroll Direct Deposit Z10862 TO Z10912

Payroll Checks 38678 TO 38707

APPROVAL DATE 8/11/2020

APPROVED _____

REPORT.: Jul 23 20 Thursday
RUN....: Jul 23 20 Time: 10:52
Run By.: JANE COLLINS

CITY OF WILLOWS
Cash Disbursement Detail Report
Check Listing for 07-20 Bank Account.: 1045

PAGE: 001
ID #: PY-DP
CTL.: WIL

Check Number	Check Date	Vendor Number	Name	Gross Amount	Discount Amount	Net Amount	-----Payment Information----- Invoice # Description
050408	07/23/20	AME02	AMERIPRIDE UNIFORM SVCS.	279.50	.00	279.50	C00714 JUNE STMT PER ATTACHED
050409	07/23/20	CAL18	CALIFORNIA BUILDING STAND	171.90	.00	171.90	C00714 BSF 4/1-6/30/20
050410	07/23/20	CAL61	CAL FIRE	2083.56	.00	2083.56	1299784 COOPERATIVE AGREEMENT 4/1
050411	07/23/20	COL07	JANE COLLINS	44.75	.00	44.75	C00714 MILEAGE JAN-JUNE 2020
050412	07/23/20	COR10	CORNING LUMBER CO., INC.	142.59	.00	142.59	2003-690 YARD CART
050413	07/23/20	DEP01	DEPT. OF CONSERVATION	805.34	.00	805.34	C00714 SMIP 4/1-6/30/20
050414	07/23/20	GLE54	GLENN COUNTY BUILDING DEP	4018.30	.00	4018.30	20-5171 INSPECTION SERVICES 4/1-6
050415	07/23/20	ILL00	ILLINOIS LIBRARY ASSOCIAT	232.06	.00	232.06	174628 IREAD PURCHASE
050416	07/23/20	ITF01	INDUSTRIAL TRUCK & FARM	285.38	.00	285.38	C00714 JUNE STMT PER ATTACHED
050417	07/23/20	MJB01	MJB WELDING SUPPLY, INC.	38.00	.00	38.00	1301635 CYLINDER RENTAL
050418	07/23/20	PGE01	PG & E	23.82	.00	23.82	C00714 1600 S TEHAMA 6/4-7/2/20
050419	07/23/20	SAC08	SACRAMENTO VALLEY MIRROR	106.60	.00	106.60	16550 LEGAL AD-ORD MUNI CODE
050420	07/23/20	VER02	VERIZON WIRELESS	194.34	.00	194.34	C00714 TELEPHONE EXP.5/27-6/26/2
050421	07/23/20	WILHI	WILLOWS ACE HARDWARE	81.84	.00	81.84	C00714 JUNE STMT PER ATTACHED
Cash Account Total.....				8507.98	.00	8507.98	
Total Disbursements.....				8507.98	.00	8507.98	
				=====	=====	=====	
Cash Account Total.....				.00	.00	.00	

REPORT.: Jul 23 20 Thursday
RUN....: Jul 23 20 Time: 14:38
Run By.: JANE COLLINS

CITY OF WILLOWS
Cash Disbursement Detail Report
Check Listing for 07-20 Bank Account.: 1045

PAGE: 001
ID #: PY-DP
CTL.: WIL

Check Number	Check Date	Vendor Number	Name	Gross Amount	Discount Amount	Net Amount	-----Payment Information----- Invoice # Description
050422	07/23/20	ABO00	STEVE ABOLD	200.00	.00	200.00	C00723 PUB. WKS. TOOL PARKS/PUB.
050423	07/23/20	PEA00	WAYNE PEABODY	200.00	.00	200.00	C00723 TECHNOLOGY ALLOWANCE JULY
050424	07/23/20	SAI02	TIMOTHY L. SAILSBERY	200.00	.00	200.00	C00723 VEHICLE ALLOW. FINANCE JU
050425	07/23/20	STO01	STONY CREEK UNIFIED SCHOO	100.00	.00	100.00	C00723 RENT EC LIBRARY JULY 2020
Cash Account Total.....:				700.00	.00	700.00	
Total Disbursements.....:				700.00	.00	700.00	



PUBLIC HEARING

August 11, 2020

AGENDA ITEM

TO: Honorable Mayor Warren and City Council Members

FROM: Karen Mantele, Principal Planner

SUBJECT: Consideration and Adoption of Ordinance Amending Chapter 18.110.090(8) of the Willows Municipal Code Regarding Residential Use within the Central Commercial & General Commercial Zoning Districts (File# ZTA-20-02)

SUMMARY

The proposed Ordinance modifies an existing code section under non-conforming uses, which modification will allow a broader exemption for single-family residential use within the Central Commercial and General Commercial zones.

BACKGROUND/ANALYSIS:

In June of 2000 several zoning code amendments were made resulting in zoning district changes, to include two districts, the Central Commercial and the General Commercial. These two districts combined total 207 parcels (105 parcels in the CC District and 102 in the GC District). Prior to the re-designation of these two districts, zoning was a mix of R-4, Office Professional, and General Commercial. The uses for these two districts mirror one another regarding residential uses either permitted or conditionally permitted.

In September of 2017, Staff brought before the Commission a text amendment to allow for single-family residential use of existing single-story structures within the CC and CG zoning districts. This text amendment was a result of a joint CC/PC meeting held in 2017 where discussion of housing was the topic. This text amendment resulted in implementation of the exception. Prior to this code amendment, Staff had been approached regarding use of existing structures built as single-family residences, however changed to a commercial use, and now want to revert the structure back to the residential use.

Staff brought forth the proposed draft text amendment to the Planning Commission at their July 15, 2020 regular meeting for review. No additions or changes were suggested by the Commission and the consensus was to bring forth a resolution to the City Council for consideration.

In accordance with Section 18.20.030(1), notice of this public hearing was published in the local newspaper ten (10) days prior to the public hearing.

FINANCIAL CONSIDERATIONS

None known at this time

NOTIFICATION

Notice of the August 11, 2020 City Council public hearing was published in the Sacramento Valley Mirror on August 1, 2020.

CITY COUNCIL OPTIONS

1. Adopt the Ordinance as written and proposed
2. Direct staff to revise the proposed Ordinance to include and/or delete language
3. Take no action

RECOMMENDATION:

- (1) Introduce and waive the first reading of Ordinance 2020-_____, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLOWS AMENDING WILLOWS MUNICIPAL CODE CHAPTER 18.50.030 (USES PERMITTED WITH A CONDITIONAL USE PERMIT) with other text remaining unchanged.

ATTACHMENTS:

- (1) Planning Commission Resolution
- (2) Ordinance amending Chapter 18.110.090(8)
- (3) Legal Notice

Respectfully submitted,



Karen Mantele
Principal Planner

Approved by:

Wayne Peabody
Interim City Manager

PC RESOLUTION NO. 07-2020

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILLOWS
RECOMMENDING THE CITY COUNCIL APPROVE A ZONING TEXT
AMENDMENT TO THE MUNICIPAL CODE/ZONING ORDINANCE AS LISTED ON
EXHIBIT A WITH OTHER TEXT REMAINING UNCHANGED**

WHEREAS, the City of Willows has initiated a zoning text amendment to the City's Municipal Code to Section 18.110.090(8); and,

WHEREAS, notices of the Planning Commission meeting held on July 15, 2020, were published in a newspaper of general circulation in the City in accordance with law, and,

WHEREAS, the Planning Commission did, on July 15, 2020, hold a public hearing review and consider all public oral and written comments, letters and documents, staff reports, and all other supporting documents, City codes and regulations which are a part of the Record; and,

WHEREAS, the Planning Commission finds that the Amendment to the Municipal Code/Zoning Ordinance, as proposed in attached **Exhibit A** is consistent with the General Plan; and

WHEREAS, the Planning Commission finds that the text amendment proposal is considered exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3).

**NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF WILLOWS
RESOLVES AS FOLLOWS:**

1. The above recitals are true and correct and constitute a part of the findings made by the Planning Commission in approving this Resolution.
2. The project (amendment to the Municipal Code/Zoning Ordinance) will not have a significant effect on the environment.
3. The Planning Commission finds that the project is exempt from the California Environmental Quality Act per Section 15061(b)(3).

IT IS HEREBY CERTIFIED that the foregoing Resolution was duly adopted at a regular meeting of the Planning Commission of the City of Willows on Wednesday, the 15th day of July 2020, by the following vote, to wit:

AYES _____
NOES _____
ABSTAIN _____
ABSENT _____

APPROVED: _____
Robert Griffith, Chairperson

ATTEST: _____
Maria Ehorn, Recording Secretary

EXHIBIT A

Proposed draft Zoning Text Amendment in **RED** :

* **18.110.090(8) Nonconforming uses** = Residential Use Exemption for Existing Structure(s). Existing ~~single-story~~ structure(s) located within the CC (central commercial) or CG (general commercial) zoning districts **originally constructed as a single-family dwelling**, may be allowed for use as a **single-family** residential unit(s) by way of a conditional use permit **from the Planning Commission**. No enlargement, extension, reconstruction, or structural alteration may be permitted to the structure. The planning commission is authorized to approve, conditionally approve or deny a request subject to appeal provisions of WMC [18.135.060](#)

ORDINANCE NO. 2020-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLOWS AMENDING
WILLOWS MUNICIPAL CODE CHAPTER 18.110.090(8) (NON-CONFORMING USES) WITH
OTHER TEXT TO REMAIN UNCHANGED**

Adopted by the City Council of the

City of Willows

On Date of _____, 2020

WHEREAS, the City Council of the City of Willows adopted Ordinance 664-00 on June 27, 2000, regulating the uses allowed within the Central Commercial and General Commercial districts; and

WHEREAS, the City Council desires to modify the current non-conforming uses code section expanding residential use within the Central Commercial and General Commercial zones.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WILLOWS DOES
ORDAIN** as follows:

Section 1. The above recitals are true and correct, and incorporated herein.

Section 2. The City Council does hereby amend Chapter 18.110-090(8) (Non-Conforming Uses) of the Willows Municipal Code, allowing for existing structures built as residential use to continue as such with a conditional use permit by modifying (8) to read:

“(8) **18.110.090(8) Nonconforming uses** = Residential Use Exemption for Existing Structure(s). Existing structure(s) located within the CC (central commercial) or CG (general commercial) zoning districts originally constructed as a single-family dwelling, may be allowed for use as a single-family residential unit(s) by way of a conditional use permit from the Planning Commission. No enlargement, extension, reconstruction, or structural alteration may be permitted to the structure. The planning commission is authorized to approve, conditionally approve or deny a request subject to appeal provisions of WMC 18.135.060

Section 3: The City Council of the City of Willows finds that the foregoing amendment and adoption of Ordinance No. ____ is consistent with the General Plan, all applicable specific plans and the City of Willows Zoning Ordinance.

Section 4: The City Council of the City of Willows further finds that the project is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3). and Planning Commission Resolution No.04-2020 passed prior to the adoption of this amendment.

Section 5. Severability. Should any provision of this ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision

of this ordinance or the application of this ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 6. *Judicial Review.* The time within which judicial review must be sought is governed by California Code of Civil Procedure Section 1094.6.

Section 7. *Effective Date.* This ordinance shall take effect and be in force thirty (30) days after its adoption as provided by Government Code Section 36937.

Section 8. *Posting.* The City Clerk shall cause this Ordinance to be published and/or posted within fifteen days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Willows, held on the 11th of August, 2020, and adopted at a regular meeting of the City of Willows, held on the ____ of August, 2020, by the following vote, to wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMEBERS _____

ABSENT, COUNCILMEMBERS _____

KERRI WARREN, MAYOR

APPROVED AS TO FORM:

DAVID RITCHIE, CITY ATTORNEY

ATTEST:

TARA RUSTENHOVEN, CITY CLERK

LEGAL NOTICE

**NOTICE OF PUBLIC HEARING
CITY OF WILLOWS**

NOTICE IS HEREBY GIVEN that the Willows City Council will be conducting a public hearing on Tuesday August 11, 2020 at 7:00 p.m. or soon thereafter at the Willows City Hall, 201 North Lassen Street, for consideration of the first reading of the Ordinance Titled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLOWS AMENDING WILLOWS MUNICIPAL CODE CHAPTER 18.110.090(8) (“Nonconforming uses”)

The public is invited to attend and be heard and/or submit written comments to the City Clerk. Documentation pertaining to the above item is available for review at the City Clerk’s office of the City Hall during normal business hours.

Please publish on the 1st day of August 2020. Please send affidavit of publication and bill to City of Willow, 201 North Lassen Street, Willows. For Questions call City Clerk, Tara Rustenhoven at 934-7041.



REGULAR BUSINESS

AGENDA ITEM

TO: Mayor Warren and Members of the City Council

FROM: Tara Rustenhoven, City Clerk

SUBJECT: Library Board of Trustees Vacancy

RECOMMENDATION

Select two members of the City Council to serve as a Library Board of Trustees subcommittee, to accept the Letter of Resignation of Sunshine Kelly, review applications and/or conduct interviews and appoint one individual for the remaining term to June 30, 2023 to the Library Board of Trustees at the September 8, 2020 City Council Meeting.

SITUATION (or BACKGROUND):

As outlined in Section 2.70 of the City's Code of Ordinances, the Library Board of Trustees consists of five members, who are appointed by the City Council. Members are appointed for three year overlapping terms and serve at the pleasure of the City Council. The terms of the vacant seat will expire on June 30, 2023.

It has been the City's practice to advertise these positions in order to give citizens an opportunity to participate on the Library Board. Staff will advertise these vacancies and will accept applications and letters of interest through August 31, 2020.

Staff recommends that two members of the Council volunteer to serve on a committee in order to conduct interviews of the applications September 1st, 2nd, and 3rd, 2020 and the committee will make their recommendations to the Council of one candidate to appoint to the Library Board at the City Council Meeting to be held on September 8, 2020.

STAFF RECOMMENDATION

Select two members of the City Council to serve as a Library Board of Trustees subcommittee, to review applications and/or conduct interviews and recommend appointments to the Library Board of Trustees at the September 8, 2020 City Council Meeting.

FINANCIAL CONSIDERATIONS:

Cost of advertising the vacancies in the local newspaper.

ALTERNATE ACTIONS

None

NOTIFICATIONS

None

RECOMMENDATION

Select two members of the City Council to serve as a Library Board of Trustees subcommittee, to review applications and/or conduct interviews and recommend appointments to the Library Board of Trustees at the September 8, 2020 City Council Meeting.

Respectfully submitted,

/s/ Tara Rustenhoven

Tara Rustenhoven
City Clerk

August 11, 2020

AGENDA ITEM

TO: Honorable Mayor Warren and Members of the City Council

FROM: Wayne Peabody, Interim City Manager

SUBJECT: Resolution authorizing the Interim City Manager to sign on behalf of the City of Willows in all matters pertaining to CDBG grant 17-CDBG-12031

RECOMMENDATION: Staff recommends that the City Council adopt, by Resolution, A Resolution of the City Council of the City of Willows Authorizing the Interim City Manager to Sign and act on the City's behalf in all matters pertaining to the Community Development Block Grant Loan Agreements, Promissory Notes, Security Agreements and any other documents related to the equipment loan between the City of Willows and the Rumiano Cheese Company.

SITUATION (or BACKGROUND):

The City applied for a Community Development Block Grant (CDBG) Over the counter grant in August 2017. The city was awarded grant 17-CDBG-12031 in October 2018. Since that time, the City's team along with Rumiano Cheese have been working to clear special conditions placed on the grant. On June 28th, 2020, all special conditions of the grant were deemed to have been met. The final step is to prepare the Loan agreements and documents needed for the program. Attached is a resolution necessary to allow the Interim City Manager to be able to sign on behalf of the City of Willows

All Loan Documentation and agreements are being developed by 3 Core and Community Development Services.

FINACIAL CONSIDERATIONS:

The Cost of the agreement and administration of the grant are covered under an agreement with 3 Core as part of this grant.

NOTIFICATION:

3 Core- Marc Nemanic
Rumiano Cheese-Tony Rumiano
Community Development Services- Jeff Lucas

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ALTERNATE ACTIONS:

- 1: Request additional information from Staff
- 2: Reject Staff recommendation and/or direct item to be returned.

RECOMMENDATION:

Staff recommends that the City Council adopt, by Resolution, A Resolution of the City Council of the City of Willows Authorizing the Interim City Manager to Sign and act on the City's behalf in all matters pertaining to the Community Development Block Grant Loan Agreements, Promissory Notes, Security Agreements and any other documents related to the equipment loan between the City of Willows and the Rumiano Cheese Company.

Respectfully submitted,

Wayne Peabody
Interim City Manager

Attachments:

- A. Resolution authorizing the Interim City Manager to sign on behalf of the City of Willows in all matters pertaining to CDBG grant 17-CDBG-12031

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RESOLUTION NO. - 2020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WILLOWS AUTHORIZING THE INTERIM CITY MANAGER TO
SIGN AND ACT ON THE CITY'S BEHALF IN ALL MATTERS
PERTAINING TO THE COMMUNITY DEVELOPMENT BLOCK
GRANT LOAN AGREEMENTS, PROMISSORY NOTES,
SECURITY AGREEMENTS AND ANY OTHER DOCUMENTS
RELATED TO THE EQUIPMENT LOAN BETWEEN THE CITY OF
WILLOWS AND THE RUMIANO CHEESE COMPANY**

WHEREAS the City of Willows received approval for funds under the 2017 State Community Development Block Grant (CDBG) Over the Counter Program; and,

WHEREAS the proposed project qualifies as an eligible CDBG economic development activity: HUD Activity Code 18A, Direct Financial to a For-Profit Business; and,

WHEREAS HUD Activity Code 18A Direct Financial to a For-Profit Business requires the City to enter into a loan agreement with Rumiano Cheese Company for \$1,857,000.

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

1. Wayne Peabody Interim City Manager, is hereby authorized and appointed to execute any and all documents related to the loan between Rumiano Cheese Company and act on the City's behalf in all matters pertaining to this loan agreement and all other related documents.

PASSED, APPROVED AND ADOPTED by the Willows City Council, this ____ day of August 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTESTED:

Kerri Warren, Mayor

Tara Rustenhoven

AGENDA ITEM

TO: Wayne Peabody, Interim City Manager

FROM: Royce Cunningham, Contract Community Services Director

SUBJECT: Agreement for Wastewater Treatment Plant Contract
Operations Services

RECOMMENDATION:

By Motion authorize the Interim City Manager to negotiate and execute an agreement with Inframark Water & Infrastructure Services to provide contract operations and maintenance services for the operation of the Willows Wastewater Treatment Plant.

SITUATION (or BACKGROUND):

The City of Willows has operated its wastewater treatment plant (WWTP) through contract operations since converting to advanced treatment in 2007. The contract operations model has been successful. By having a highly trained, specialized private sector firm operating the WWTP, the operation has been efficient, cost effective, and resulted in no costly regulatory violations during the term of the current contract. The current operations contract for the WWTP will expire on October 31, 2020.

The City has been pleased with the performance of the current WWTP operator, Inframark Water & Infrastructure Services. However, with the cost of wastewater services increasing annually, the community's sensitivity to sewer rates, and with the current contract expiring at the end of October 2020, the City solicited proposals from qualified firms to provide contract operations and maintenance services for the WWTP. A Request for Proposals (RFP) was issued on June 24, 2020 with a proposal submittal deadline of July 23, 2020.

The City received five proposals (Broadbent, H₂O Urban Solutions, Inframark, Jacobs, and Percwater). All five proposals met the minimum qualifications, which included submitting a staffing plan, a workplan, experience at similar WWTPs, a cost proposal, references, and attendance at a mandatory site visit held in July. The proposals were independently ranked by a panel consisting of Public Works staff and contract engineering consultants familiar with the Willows WWTP. Criteria used for ranking included the proposal material submitted for staffing, workplan approach, experience operating similar WWTPs, overall satisfaction of references for

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operation of similar WWTPs, history of regulatory compliance, ability to successfully resolve regulatory compliance issues, and proposed costs.

The panel was unanimous in identifying the highest ranked firm, Inframark Water & Infrastructure Services. Inframark had the highest score, or was tied for the highest score, for every ranking criterion on every panel member's ranking sheet. Inframark also had the lowest proposed cost.

The City's RFP required the proposing firm to submit a cost proposal with a Base Fee for providing operations and preventative maintenance services for the first contract year. The Base Fee budget for each successive year would be adjusted by the annual CPI. The RFP also required the proposing firm to submit two cost proposal options. Option 1 was for a 5-year contract term, with one optional 5-year extension, for a total potential contract length of ten years. Option 2 was for a 10-year contract term, with two optional 5-year extensions, for a maximum potential contract length of twenty years.

Inframark submitted a proposed Base Fee for the first contract year under Option 1 of \$530,109. Their proposed Base Fee for the first contract year under Option 2 was \$520,638. This is a cost savings of \$9,471 in the first year. If Option 2 were selected, and if the annual CPI were 3% per year, a savings of approximately \$108,574 would be realized over a ten-year period.

The City also establishes a separately tracked budget item as part of the contract, called the Repair and Replacement Limit (R&R Limit), for the Contract Operator to perform non-routine repair and/or replacement of major equipment, or to perform specialized services, such as removal and disposal of biosolids. Staff is recommending a R&R Limit of \$57,050 for the first contract year. The R&R Limit is adjusted annually using the same CPI method used for the Base Fee. At the end of each contract year, any unused portion of the R&R Limit is returned to the City.

The agreement to provide contract operation and maintenance services will be substantially in the form of the attached sample agreement.

FINANCIAL CONSIDERATIONS:

If Council accepts Staff's recommendation, and the 10-year agreement is executed with the first-year Base Fee cost of \$520,638, this is a cost savings of \$73,846 from last year's contract. The total contract price for the first contract year, Base Fee plus Repair and Replacement Limit, will be \$577,688.

All costs associated with the operation and maintenance of the WWTP are funded through the Sewer Enterprise Fund.

NOTIFICATION:

The successful firm. All unsuccessful proposing firms.

ALTERNATE ACTIONS:

- 1: Request additional information from Staff
- 2: Reject Staff recommendation and provide alternative direction
- 3: Reject Staff recommendation and/or direct item to return.

RECOMMENDATION:

Staff recommends the Council, by Motion, authorize the Interim City Manager to negotiate and execute an agreement with Inframark Water & Infrastructure Services to provide contract operations and maintenance services for the operation of the Willows Wastewater Treatment Plant.

Respectfully Submitted,

Royce W. Cunningham
Contract Community Services Director

ATTACHMENT:

Sample Agreement

DRAFT PROFESSIONAL SERVICES CONTRACT

THIS WASTEWATER OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") is made this _____ day of _____, between:

THE CITY OF WILLOWS, the "Municipality"; and

_____, (hereinafter the "Operator").

BACKGROUND

The Municipality desires to retain the Operator to operate and maintain the Municipality's wastewater treatment plant and all associated facilities as described in Schedule 2 of this Agreement ("Facility or Facilities") and the Operator desires to provide said operations and maintenance services to the Municipality.

AGREEMENT

In consideration of the mutual promises in this Agreement, the parties agree as follows:

1) TERM

1.1 This Agreement shall commence on _____ ("Commencement Date") and shall remain in full force and effect for ten (10) years from the Commencement Date ("Initial Term") unless terminated earlier under Section 6 below. After the Initial Term, the Agreement may be extended for successive five (5) year periods at the mutual consent of the parties with written agreement of at least one hundred and twenty (120) days prior to the expiration of the then current term.

2) SERVICES

2.1 The services to be provided by the Operator as more fully set out in Schedule I (the "Services").

2.2 The Operator shall:

2.2.1 Perform the Services in accordance with the provisions of this Agreement, Applicable Law, and all permits, licenses, and specifications applicable to the operation and maintenance of the Facilities; exercising the degree of skill and care ordinarily exercised by members of Operator's profession in the geographic region of the Facilities;

2.2.2 Use qualified (and where required, certified) personnel to operate and maintain the Facilities and all its equipment and processes in accordance with relevant operation and, if available, maintenance manuals for the Facilities, Applicable Law, and the Discharge Permits;

2.2.3 Perform (or contract with a laboratory certified by the appropriate regulatory body to perform) all sampling, and laboratory analysis required by the Municipality's Discharge Permits. laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater, or shall be in accordance with testing requirements of the Municipality's Discharge Permits;

2.2.4 Purchase and maintain an inventory of chemicals routinely used in the operation of the Facility. Chemical inventories will be stored at the Facility in compliance with all state and federal standards and in quantities sufficient to ensure continuous operation of the Facility;

2.2.5 Subject to the limitations in Sections 3 and 5, below, perform the routine preventative maintenance tasks or corrective maintenance and/or repairs identified in Schedule 1 as part of the annual "Base Fee";

2.2.6 Maintain necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to the Municipality a monthly report, delivered to the Municipality the following month, including a narrative and summary of operations, maintenance, repair and replacement activities (including the draw-down against the Annual Repair and Replacement Limit) and data required for monthly reporting to local, state and federal agencies;

2.2.7 Prepare a summary report of operations, if requested by the Municipality, at the conclusion of each agreement year and present to Municipality within thirty (30) days after the conclusion thereof;

2.2.8 Prepare and submit all operations and compliance reports as may be required by state and federal regulatory agencies;

2.2.9 Attend scheduled meetings with Municipality as required and promptly respond to all correspondence and/or inquiries from Municipality in a professional manner;

2.2.10 Collect stormwater discharge samples and arrange for laboratory testing and report the results from such testing in accordance with the current NPDES permit;

2.2.11 Ensure that general housekeeping and building and grounds appearance is maintained to acceptable standards;

2.2.12 Provide emergency response and respond to such emergency calls within one (1) hour from the time of receiving notification or as reasonable under the circumstances of the Emergency. Emergency services are to be provided 'twenty-four (24) hours per day; seven (7) days per week.

2.3 For the duration of this Agreement, the Municipality hereby grants the Operator, free of charge, a license to use the Facilities, including all equipment, structures, and ancillary items under Municipality's ownership and which have been assigned by Municipality to the Facilities.

2.4 At the City's request and at the option of Operator, Operator shall provide additional

services for Municipality. Compensation for such services shall be negotiated on a case-by-case basis.

3) REPAIRS, REPLACEMENT, AND NON-SCHEDULED SERVICES

3.1 The Operator shall be responsible for all major equipment capital repair and/or replacement, and non-scheduled services (Repair & Replacement Services) necessary to maintain full operability of the Facility. Repair & Replacement Services expenditures up to the aggregate Annual Repair and Maintenance Limit shall be the responsibility of the Operator. Any and all costs in excess of the Annual Repair & Replacement Services Limit shall be the responsibility of the Municipality.

3.2 Except in the case of an Emergency Event, the Operator shall obtain the prior written approval of the Municipality for any single Corrective Maintenance Repair or Capital Maintenance Repair-related expense which shall cost more than two thousand dollars (\$2,000). When the Operator determines that an Emergency Event exists, it may begin immediately taking any necessary action, without the Municipality's prior approval. However, in the event of an Emergency Event, Operator shall notify Municipality as soon as possible and provide information on the nature of the Emergency Event and an estimate of the maximum anticipated expense to remedy the Emergency Event". Any costs incurred during the Emergency shall be considered Repair & Replacement Services, subject to the Municipality's subsequent review and approval.

3.3 Operator shall maintain up-to-date financial and accounting records as they apply to the Repair & Replacement Services expenditures. The records must be kept in accordance with the Operator's standard accounting practices and made available to the Municipality within thirty (30) working days of Municipality's written request.

3.4 The Operator will annually track Repair & Replacement Services expenditures incurred against the Annual Repair & Replacement Services Limit. Any portion of the Annual Repair & Replacement Services Limit that has not been spent at the end of the Agreement Year will either be credited, based on direction from the Municipality, against the following year's Base Fee or reimbursed to the Municipality within thirty (30) days of the end of the Agreement Year.

3.5 Operator will provide annually, based on a schedule and time frame provided by the Municipality, a recommended list of capital improvements for the Facility.

3.6 Extraordinary Costs. If at any time during the course of this Agreement, storms, earthquakes, tornados, unusual floods, or other uncommon natural disasters occur which adversely affect the Facilities, and which cause extraordinary expenditures to be incurred by Operator to ensure, to the best of its ability, the continued operation of the Facilities in compliance with the Discharge Permit, Operator shall submit a detailed invoice of any such Extraordinary Costs to Municipality. Municipality shall pay to Operator such invoiced amount within thirty (30) days of receipt and approval of such invoice.

4) MUNICIPALITY OBLIGATIONS

4.1 The Municipality shall:

- a) Obtain and maintain all state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, the Municipality's Discharge Permits;
- b) Arrange for and pay: i) all costs related to delivery to and consumption of utilities to the Facility, including electricity, water, gas usage at the Facilities; ii) all property, value-related, franchise, sales, use, excise, gross receipts, transaction privilege or other taxes associated with the Services and the ownership, operation and maintenance of the Facilities, other than taxes imposed on Operator's net income or payroll; iii) expenses resulting from hydraulic or organic loads exceeding the Baseline Conditions; iv) all costs attributable to the transportation and disposal of Process Residue if any; and, v) all Capital Improvements;
- c) Comply with Applicable Law relating to the management, ownership, operation, maintenance, repair and replacement of the Facilities (to the extent that the responsibility of complying with those laws is not specifically assumed by the Operator under this Agreement). The Operator shall not be responsible for Municipality's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by the Operator hereunder;
- d) During visits to the Facilities, comply and shall require its agents, licensees or invitees to comply with all reasonable safety rules and regulations adopted by the Operator;
- e) Maintain all sewer lines, pipes, force mains, and all other wastewater transportation lines ("Municipality Lines"), that are not part of the Facilities under Operator's control, in a manner that will prevent, to the extent practicable, any damage to the operation of the Facilities due to leakage of wastewater or infiltration or inflow of storm water from such Municipality Lines;
- f) Perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by the Operator pursuant to the terms of this Agreement.

5) FEES AND PAYMENT

5.1 For the period beginning on the Commencement Date, the Municipality shall pay the Operator an annual fee (the "Base Fee") as set out in Schedule 5. The amount of the Base Fee shall be increased on each Adjustment Date in accordance with the formula set forth in Schedule 5. In no event shall the Base Fee be reduced.

5.2 Any and all late payments due to either party from the other party shall accrue interest at the rate of one and one-half percent (1 ½ %) per month or the maximum rate permitted by Applicable Law, whichever is less, from the original due date and until payment is received.

5.3 In the event of a change in the Services or Applicable law or other factor beyond the reasonable control of the Operator which causes an increase in the Operator's cost of providing the Services, the Operator may provide notice to the Municipality and the parties shall negotiate in

good faith to adjust the Base Fee to account for such change in Operator's costs. If the parties are unable to reach a negotiated agreement within thirty (30) days of the date of notice, then the contract may be terminated by the Operator with one hundred twenty (120) days prior written notice to Municipality. The Parties agree that this Agreement is based on the Facility being rated at a maximum daily annual average flow 2.0 MGD and its ability to treat 2,400 lbs./day BOD and 3,400 lbs./day of TSS. Should the actual annual dry-weather 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 pursuant to this section

5.4 Reduction of the overall scope of Services performed by the Operator under this Agreement may not, over the entire term of this Agreement, reduce the Base Fee by an amount greater than twenty five percent (25%) of the Base Fee as of the Commencement Date.

6) TERMINATION

6.1 Either party may terminate this Agreement by written notice if the other has failed to comply with a material term, provided that the non-defaulting party has first given the defaulting party written notice to cure their default within forty five (45) days ("Cure Period") and the defaulting party has not done so. If the default cannot be cured within the Cure Period days, the parties may agree to an extension if the defaulting party provides evidence within the Cure Period that it has commenced a cure and is pursuing it diligently. If the default has not been cured within the Cure Period or mutually agreed extension, either party may serve upon the other written Notice of Termination. The termination date shall be included in the Notice of Termination, but in no case shall the termination date be less than one hundred and twenty (120) days from the issuance of the Notice of Termination.

6.2 In the event of the termination of this Agreement under 6.1 above, the Municipality shall pay the Operator for the Services provided and invoiced by Operator up to the effective date of termination plus the unamortized balance of any Capital Improvements financed or paid for by the Operator as reflected on Operator's financial statements. Payment shall be made within thirty (30) days of the date of termination.

6.3 In the event that the facility is issued an enforcement order or fined for violation of the Municipality's Discharge Permit or other applicable law and such order and/or fines include provisions that require capital improvements be made to the Facilities as a result of said order and/or fines, Municipality shall have the right to terminate this Agreement upon issuance of one hundred and twenty (120) days written notice to Operator.

7) FINES, INDEMNIFICATION AND LIMITATION

7.1 In the event that water quality violations occur following the Commencement Date, subject to Sections 2.3 and 13.6, the Operator shall, in respect of violations that may be imposed by Applicable Law, be responsible for payment without cost to Municipality all fines, penalties, and/or damages. Prior to settlement or payment of any such fines, penalties or damages, the Operator reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise.

7.2 If the Facilities loadings exceed its design parameters or if influent contains: i) abnormal substances which cannot be removed or treated by the existing Facilities; or ii) discharges which violate applicable sewage ordinances, the Operator will use its best efforts to maximize performance of the Facilities but shall not be responsible for associated effluent characteristics or damages, fines or penalties which result.

7.3 To the maximum extent permitted by law, during the term of this Agreement, Operator shall defend, indemnify and hold Municipality harmless against any and all liability for damages, costs, losses, and expenses, including reasonable attorney's fees, resulting from any claim asserted by a third party against the Municipality for wrongful death, bodily injury and/or property damage, but only to the extent caused by the willful or negligent acts or omissions of the Indemnifying Party.

7.4 Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable, either directly or indirectly, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if such party has been advised of the possibility of such damages.

7.5 Unless prohibited by law, the Contractor's liability shall be limited as set out in this section. Except for indemnified claims, the Contractor's maximum liability under this Agreement shall not exceed an amount equal to the annual Base Fee for the year in which the claim arises. In respect of indemnified claims, the Contractor's maximum liability shall be \$3 million. This limitation of liability shall not apply to third party claims asserted directly against Operator or claims arising from Operator's Gross Negligence or willful misconduct.

8) INSURANCE

8.1 The Operator shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Operator, his agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability, coverage shall be maintained for a minimum of five (5) years after Agreement completion.

8.2 Operator shall provide and maintain insurance provided by California admitted surety insurers with a current A.M. Best rating of no less than A:VII. Insurance coverages and levels shall be as follows:

8.2.1 Commercial General Liability (CGL) Insurance on an "occurrence" basis, including products and completed operations, contractual liability. property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit; and

8.2.2 Workers Compensation Insurance as required by the State that has jurisdiction over Operator's employees engaged in the performance of Services hereunder, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease; and

8.2.3 Automobile Liability Insurance Services Office Form Number CA 0001 covering any auto (Code 1), hired (Code 8) and non-owned (Code 9) autos, with limit no less than **\$1,000,000** per accident for bodily injury and property damage; and

8.2.4 Contractor's pollution liability insurance with a minimum limit of four million dollars (\$4,000,000) per claim and aggregate.

8.3 If the Operator maintains broader coverage and/or higher limits than the minimums shown above, the Municipality requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Municipality.

8.4 Self-insured retentions must be declared to and approved by the Municipality. At the option of the Municipality, the Operator shall provide coverage to reduce or eliminate such self-insured retentions as respects the Municipality, its officers, officials, employees, and volunteers; or the Operator shall provide evidence satisfactory to the Municipality guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Municipality.

8.5 Other insurance provisions shall include the following:

8.5.1 The General Liability, Automobile Liability, Contractors Pollution Liability, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

8.5.1.1 The Municipality, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Operator including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

8.5.1.2 For any claims related to this project, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Municipality, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Municipality, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

8.5.1.3 Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Municipality.

8.5.2 The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Operator pursuant to the contract. This coverage may also be provided on the Contractors Pollution Liability policy.

8.5.3 If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

8.5.3.1 The retroactive date must be shown and must be before the date of the Agreement.

8.5.3.2 Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of work.

8.5.3.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Operator must purchase an extended period coverage for a minimum of five (5) years after completion of Agreement work.

8.5.3.4 A copy of the claims reporting requirements must be submitted to the Municipality for review.

8.6 The Operator shall name the Municipality, its officers, agents, and employees as an additional insured on the general liability policy and automobile liability policy with respect to the Services during the term of this Agreement, except for any claim against or loss suffered by the Municipality arising as a result of Municipality's negligence or fault and, in circumstances of joint fault or negligence, except to the extent of the loss attributable to the Municipality's proportionate degree of negligence or fault.

8.7 Operator agrees to provide the Municipality with thirty (30) days' notice prior to cancellation of any policy hereunder. The Operator will provide the Municipality with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this section) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Municipality before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Operator's obligation to provide them. The Municipality reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8.8 Operator hereby grants to Municipality a waiver of subrogation which any insurer may acquire against Entity, its officers, officials, employees, and volunteers, from Operator by virtue of the payment of any loss. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Municipality has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Municipality for all work performed by the Operator, its employees, agents, and subcontractors.

8.9 Operator shall require and verify that all subcontractors maintain insurance meeting all the

requirements stated herein, and Operator shall ensure that Municipality is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

8.10 Municipality reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8.11 The Municipality warrants that it maintains and will continue to maintain, during the term of this Agreement, appropriate property insurance in relation to the Facilities.

9) DISPUTES

9.1 In the event of any disputes, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties shall mediate their dispute before a mediator acceptable to both parties, if the parties cannot agree on a mediator, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation, but the parties shall share equally the costs of the mediator and the mediation facilities.

10) NON_DISCRIMINATION

10.1 The operator agrees that it shall ensure compliance with the City's policies strictly prohibiting discrimination, sexual harassment and harassment because of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition including pregnancy, childbirth or any related medical condition, marital status, veteran's status, sexual orientation or preference, gender, gender identity, age or any other basis made unlawful by Federal, state or local law, ordinance, or regulation.

11) MISCELLANEOUS

11.1 The relationship of the Operator to the Municipality is that of independent contractor for all purposes under this Agreement. This Agreement is not intended to create, and shall not be construed as creating, between Operator and Municipality, the relationship of principal and agent, joint ventures, co-partners or any other similar relationship, the existence of which is hereby expressly denied.

11.2 This Agreement contains the entire agreement between the Municipality and the Operator and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may be modified only by a written amendment signed by both parties.

11.3 The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

11.4 Neither party may actively solicit, for hire, the employees of the other party during the term

of this agreement.

11.5 Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

11.6 A party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or because that excused performance hereunder.

11.7 The Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that the venue of any action arising from this Agreement shall be in the appropriate State court having competent jurisdiction located in Glenn County, the judicial district in which the Municipality is located.

11.8 In the event that the Municipality receives notice of or undertakes the defense or prosecution of any legal or administrative action or proceeding in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, the Municipality shall give the Operator prompt notice of such proceedings and shall inform the Operator in advance of all hearings. In the event the Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, the Operator shall give Municipality prompt notice of such proceedings.

11.9 All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to the parties by each other will be addressed to:

Operator

Municipality

11.10 Defined terms in this Agreement are set out in Schedule 3 or within the main body of this Agreement, within quotation marks.

11.11 Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

11.12 This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

11.13 Both parties warrant and represent to the other that they have full power and authority to enter into and perform this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date at the top of this Agreement.

For the Contractor:

Operator

For the City:

KERRI WARREN, Mayor

Approved as to Form:

DAVID G. RITCHIE, City Attorney

Schedule 1: The Services

The Services include:

- (a) Treatment of wastewater influent delivered to the Facilities;
- (b) Routine preventive and corrective maintenance of the Facilities;
- (c) Repair and replacement of the Facilities' equipment;
- (d) Laboratory testing and analysis; and
- (e) Preparation and prompt delivery of all applicable and required filings, including discharge reports, to Municipality and to regulatory agencies as prescribed by Applicable Law.

Unless otherwise agreed in writing, the Operator shall provide labor, tools, utilities and materials, including an on-site routine stock of chemicals necessary for the operation and maintenance of the Facilities.

Routine Preventive and Corrective Maintenance: Routine preventative and corrective maintenance, including but not limited to the following, are included as part of the Base Fee.

- (i) routine preventive and corrective maintenance in accordance with the operator's experience, acceptable industry practice and approved operating and maintenance procedures developed for equipment and processes of the Facilities;
- (ii) routine preventive maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities;
- (iii) clean and lubricate equipment;
- (iv) make equipment inspections and needed adjustments;
- (v) perform building and grounds janitorial services for the Facilities and cleaning of all equipment and vehicles;
- (vi) perform plumbing maintenance;
- (vii) maintain vehicles and light duty service trucks necessary for daily operations;
- (viii) maintain all the Facilities' instrumentation, including instrumentation provided to the Operator by the Municipality under this Agreement;
- (ix) schedule and track all preventive and corrective maintenance; and, perform spare parts inventory control in accordance with standard industry practice.

Repair and replacement - Repair and replacement of major facility equipment and other non-scheduled services, such as biosolids removal and disposal, is to be performed and funded as outlined in Section 3, "Repairs, Replacement and Non-Scheduled Services" of the Contract.

Schedule 2: The Facilities

The Municipality owns and has a National Pollution Discharge Elimination System (NPDES) Permit No. CA 0078034 for a wastewater treatment plant ("Facility") located at 1600 South Tehama Street, Willows, California.

The Facility is a conventional biological tertiary treatment system which includes the following unit processes:

- i) Influent Screening
- ii) Extended aeration activated sludge
- iii) Secondary clarification
- iv) Tertiary filters
- v) Sodium hypochlorite disinfection Sodium bisulfite de-chlorination
- vi) One equalization pond
- vii) One emergency pond
- viii) Two sludge retention lagoons

Effluent from the facility is discharged into the Glenn-Colusa Irrigation District canal or Agriculture Drain C, a tributary to Logan Creek.

Schedule 3: Definitions

"Adjustment Date" means each anniversary of the Commencement Date.

"Agreement Year" means any consecutive twelve (12) month period during the term of the Agreement (including the renewal options) that begins on the Commencement Date and subsequently ends on each anniversary of that date.

"Repair & Replacement Expenditures" means the total of all expenses incurred annually by the Operator in connection with the performance of non-routine maintenance responsibilities under this Agreement. The Annual Maintenance Expenditures shall: i) exclude Operator's direct labor expenses and related benefits for its personnel assigned exclusively to the operations and maintenance of the Facilities and whose cost is included in the Base Fee; ii) include, but not be limited to, all materials, supplies, parts, tools, outside subcontractors, specialized services, rental equipment and all of the Operator's overtime costs and related benefits, as well as the cost of Operator's personnel not exclusively assigned to the operation and maintenance of the Facilities at an agreed hourly billing rate for the repair and/or replacement of major equipment or other non-scheduled services.

"Annual Repair & Replacement Limit" means the annual total of all Repair & Replacement expenditures in an amount up to a maximum of the amount in Schedule 5 for the first Agreement Year. For each Agreement Year thereafter, the Annual Repair and Replacement Limit shall be increased on each Adjustment Date by the Price Index Increase.

"Applicable Law" means laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the above, in each case that relate to the (a) parties' respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery, treatment and disposal of the Municipality's Process Residue and/or related wastes.

"Baseline Conditions" means the hydraulic influent flow of wastewater received and/or processed at the Facilities and the maximum wastewater influent loading limits contained in such influent wastewater, as outlined in Schedule 6. The Baseline Conditions shall be reset and adjusted on each and every Adjustment Date to reflect the actual influent hydraulic flows and loadings processed at the Facilities during the Agreement Year just ended.

"Capital Improvements" means any modifications, additions or upgrades to the Facilities made by or on behalf of the Municipality or with its prior approval.

"Capital Repair and/or Replacement" shall mean any non-routine, non-preventive maintenance, repair or replacement that costs two thousand dollars (\$2,000) or more, or which is caused by a Force Majeure event.

"*Corrective Maintenance and/or Repair*" shall mean any routine or preventive maintenance, repair or replacement that costs more than two thousand (\$2,000) dollars.

"*Emergency Event*" means an event which threatens the immediate shutdown of (or the substantial reduction in the operational capacity of, any of the Facilities, or the life, health or property of the Municipality and/or the Operator, their employees and/or agents or others.

"*Force Majeure*" means an event which is beyond the reasonable control of a party, including without limitation: (a) acts of God; (b) flood, fire, earthquake, hurricane or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees; (i) shortage of adequate power or transportation facilities.

"*Municipality's Discharge Permit(s)*" and/or "*Discharge Permit(s)*" means all permits and licenses issued to Municipality and required for the discharge of wastewater from the Facilities. Copies of all Discharge Permits are attached as Schedule 4 of this Agreement.

"*Preventative Maintenance*" means the routine daily/weekly/monthly/semi-annually/annually scheduled maintenance, adjustment, and minor repair of equipment to maintain efficient operation of the Facility.

"*Price Index*" means the Consumer Price Index for all Urban Consumers (CPI-U) for the San Francisco- Oakland- San Jose Local Area for all Items, 1982-84=100 as published monthly by the U.S. Department of Commerce, Bureau of Labor Statistics, or any replacement to that index from time to time.

"*Price Index Increase*" means the percentage increase between the Price Index in effect as of the month of each and every Adjustment Date over the Price Index in effect as of the month of the Commencement Date. The Price Index Increase shall be calculated as of each and every Adjustment Date for the purpose of adjusting the Base Compensation and the Annual Repair and Maintenance Limit.

Schedule 4: Municipality's Discharge Permits

Schedule 5: Annual Base Fee and Compensation Formula

1) Annual Base Fee:

The Annual Base Fee in the first year of this agreement shall be: Five hundred twenty thousand six hundred thirty-eight dollars (\$520,638).

The Base Fee shall be payable in twelve (12) equal monthly installments of Forty-three thousand three hundred eighty-six dollars and fifty cents_ (\$43,386.50), due and payable upon receipt of invoice, as adjusted under Section 5 of this Agreement.

2) Annual Repair & Replacement Limit:

Annual Repair and Replacement Limit (for first Agreement Year): Fifty-seven thousand and fifty dollars (\$57,050).

An amount equal to the Annual Repair & Replacement Limit shall be payable in twelve (12) equal monthly installments of Four thousand seven hundred and fifty-four dollars and seventeen cents (\$4,754.17), due and payable upon receipt of invoice, as adjusted under Section 5 of this Agreement.

3) Annual Adjustment:

The Annual Base Fee and the Repair and Maintenance Limit shall be reviewed annually for compensation increase 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 shall become effective in accordance with the CITY fiscal year period commencing on July 1st of each subsequent Agreement Year. The first adjustment shall take place on July 1, 2021. There shall be no decrease in the Annual Base Compensation.

Schedule 6: Baseline Conditions

2,400 lbs. per day- *BODs* (5 Day Biochemical Oxygen Demand)

3,.400 lbs. per day- TSS (Total Suspended Solids)