



GRASS VALLEY

City Council Regular Meeting, Capital Improvements Authority and Redevelopment "Successor Agency"

Tuesday, February 25, 2025 at 6:00 PM

Council Chambers, Grass Valley City Hall | 125 East Main Street, Grass Valley, California

Telephone: (530) 274-4310 - Fax: (530) 274-4399

E-Mail: info@cityofgrassvalley.com

Web Site: www.cityofgrassvalley.com

AGENDA

Any person with a disability who requires accommodations to participate in this meeting should telephone the City Clerk's office at (530)274-4390, at least 48 hours prior to the meeting to make a request for a disability related modification or accommodation.

**Mayor Hilary Hodge, Vice Mayor Haven Caravelli, Councilmember Jan Arbuckle,
Councilmember Joe Bonomolo, Councilmember Tom Ivy**

MEETING NOTICE

City Council welcomes you to attend the meetings electronically or in person at the City Hall Council Chambers, located at 125 E. Main St., Grass Valley, CA 95945. Regular Meetings are scheduled at 6:00 p.m. on the 2nd and 4th Tuesday of each month. Your interest is encouraged and appreciated.

This meeting is being broadcast "live" on Comcast Channel 17 & 18 by Nevada County Media, on the internet at www.cityofgrassvalley.com, or on the City of Grass Valley YouTube channel at <https://www.youtube.com/@cityofgrassvalley.com>

Members of the public are encouraged to submit public comments via voicemail at (530) 274-4390 and email to public@cityofgrassvalley.com. Comments will be reviewed and distributed before the meeting if received by 5pm. Comments received after that will be addressed during the item and/or at the end of the meeting. Council will have the option to modify their action on items based on comments received. Action may be taken on any agenda item.

Agenda materials, staff reports, and background information related to regular agenda items are available on the City's website: www.cityofgrassvalley.com. Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet will be made available on the City of Grass Valley website at www.cityofgrassvalley.com, subject to City staff's ability to post the documents before the meeting.

Please note, individuals who disrupt, disturb, impede, or render infeasible the orderly conduct of a meeting will receive one warning that, if they do not cease such behavior, they may be removed from the meeting. The chair has authority to order individuals removed if they do not cease their disruptive behavior following this warning. No warning is required before an individual is removed if that individual engages in a use of force or makes a true threat of force. (Gov. Code, § 54957.95.)

Council Chambers are wheelchair accessible and listening devices are available. Other special accommodations may be requested to the City Clerk 72 hours in advance of the meeting by calling (530) 274-4390, we are happy to accommodate.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

AGENDA APPROVAL - *The City Council reserves the right to hear items in a different order to accomplish business in the most efficient manner.*

REPORT OUT OF CLOSED SESSION

INTRODUCTIONS AND PRESENTATIONS

PUBLIC COMMENT - *Members of the public are encouraged to submit public comments via voicemail at (530) 274-4390 and email to public@cityofgrassvalley.com. Comments will be reviewed and distributed before the meeting if received by 5pm. Comments received after 5pm will be addressed during the item and/or at the end of the meeting. Council will have the option to modify their action on items based on comments received. Action may be taken on any agenda item. There is a time limitation of three minutes per person for all emailed, voicemail, or in person comments, and only one type of public comment per person. Speaker cards are assigned for public comments that are on any items not on the agenda, and within the jurisdiction or interest of the City. Speaker Cards can be pulled until the opening of public comment at which time sign ups will no longer be allowed. These cards can be found at the City Clerks desk. If you wish to speak regarding a scheduled agenda item, please come to the podium when the item is announced. When recognized, please begin by providing your name and address for the record (optional). Thirty minutes of public comment will be heard under this item in order of the speaker card assigned and the remaining general public comments will be heard at the end of the meeting. We will begin with number one.*

CONSENT ITEMS -*All matters listed under the Consent Calendar are to be considered routine by the City Council and/or Grass Valley Redevelopment Agency and will be enacted by one motion in the form listed. There will be no separate discussion of these items unless, before the City Council and/or Grass Valley Redevelopment Agency votes on the motion to adopt, members of the Council and/or Agency, staff or the public request specific items to be removed from the Consent Calendar for separate discussion and action but Council action is required to do so (roll call vote). Unless the Council removes an item from the Consent Calendar for separate discussion, public comments are invited as to the consent calendar as a whole and limited to three minutes per person.*

1. Approval of the Regular Meeting Minutes of February 11, 2025

Recommendation: Council approve minutes as submitted.

2. Downtown Street Rehabilitation Project - Authorization to Bid

CEQA: Categorically Exempt - Section 15301 "Existing Facilities"

Recommendation: That Council 1) approve the findings that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA); and 2) authorize the advertisement for bids.

3. Magenta Drain Restoration Project - Professional Services Agreement

CEQA: Exempt - Not a Project

Recommendation Motion: That Council 1) authorize the City Engineer to execute a contract with Dudek, pending legal review, for design and environmental support services, in an amount not to exceed \$119, 708.30, for the Memorial Park Magenta Drain Restoration Project.

4. Loma Rica Open Space Fuels Reduction Project

CEQA: Exempt under CEQA Guideline §15304, Categorical Exemption Class 4 (“Minor Alterations to Land”)

Recommendation: That Council 1) find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and 2) authorize the advertisement for bids for the fuel treatment prescription for the Loma Rica Open Space parcels acquired by the City of Grass Valley and other City owned properties adjacent to the Loma Rica Open Space Parcels.

5. Tablet Command Mobile Incident Command and Response Solution Purchase

CEQA: Not a project

Recommendation: That the Council 1) Approve the Fire Chief to enter into an agreement, subject to legal review, for purchase and integration of Tablet Command for the Fire Services in Nevada County; and 2) authorize the Fire Chief to enter into agreement, subject to legal review, with Peraton for integration into Computer Aided Dispatch System (CAD) and 3) Authorize the Finance Director to execute any necessary budget adjustments or fund transfers to facilitate this process.

ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION OR SEPARATE ACTION AND / OR ANY ADDED AGENDA ITEMS

REORGANIZATION RELATED ITEMS

PUBLIC HEARING

6. Second reading of an ordinance amending Chapter 5.56 of Title 5 of the Grass Valley Municipal Code regulating Tobacco Retailers and adoption of a resolution to set fees related to tobacco retailers.

CEQA: Not a project

Recommendation: That the Council: 1) Hold a second reading by Title Only and adopt Ordinance #833; and, 2) approve Resolution #2025-04 setting fees related to Tobacco Retailers.

7. Introduction of an ordinance of the City Council of the City of Grass Valley amending subsection (C) and adding subsection (D)(7) to Section 17.44.140 of Chapter 17.44 of Title 17 of the Grass Valley Municipal Code to allow eligible mixed-use projects to include up to 10 dwelling units in the Town Core zone pursuant to Government Code Section 65913.5

CEQA: Not a project pursuant to Government Code section 65913.5(a)(3)

Recommendation: That City Council find the Ordinance is not a project for the purposes of the California Environmental Quality Act (CEQA) pursuant to California Government Code section 65913.5(a)(3), and introduce the attached Ordinance No. 834, waive full reading, and read by Title Only, to amend subsection (c) and add subsection (d)(7) to section 17.44.140 of chapter 17.44 of title 17 of the Grass Valley Municipal Code to allow eligible mixed-use projects to include up to 10 dwelling units in the Town Core zone pursuant to Government Code Section 65913.5

ADMINISTRATIVE

- 8.** A Resolution of the City Council Calling for a Ceasefire and an End to Violence Between Palestine and Israel

CEQA: Not a project as defined by the Public Resources Code section 21065 and CEQA Guidelines section 15378.

Recommendation: That Council discuss and consider the adoption of Resolution 2025-03 Council calling for a ceasefire and an end to violence between Palestine and Israel.

- 9.** Engineering Services - Authorization to Award Contract

CEQA: N/A - Consultant selection is a procedural action. CEQA review will be completed as part of the project work

Recommendation: That Council 1) authorize the City Engineer to execute a contract with GHD pending legal review, for Civil Engineering Design, Project Management and Environmental Services, in an amount not to exceed \$1,449,871.25 for the Downtown Grass Valley Roundabout Project

- 10.** Potential Hazard Trees adjacent to Police Department and City Hall Parking Lot

CEQA: Not a Project

Recommendation: That the City Council approve the removal of three redwood trees near the Police Department and three deciduous trees adjacent to City Hall and the City Hall parking lot to mitigate structural and safety risks, ensure compliance with the City's vegetation ordinance, and support best fire safety practices.

BRIEF REPORTS BY COUNCIL MEMBERS

CONTINUATION OF PUBLIC COMMENT

ADJOURN

POSTING NOTICE

This is to certify that the above notice of a meeting of The City Council, scheduled for Tuesday, February 25, 2025, at 6:00 p.m., was posted at city hall, easily accessible to the public, as of 5:00 p.m. Friday, February 21, 2025.

Taylor Whittingslow, City Clerk



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MINUTES

**Mayor Hilary Hodge, Vice Mayor Haven Caravelli, Councilmember Jan Arbuckle,
Councilmember Joe Bonomolo, Councilmember Tom Ivy**

CALL TO ORDER

Meeting called to order at 6PM.

PLEDGE OF ALLEGIANCE

Pledge of allegiance led by Mayor Hodge.

ROLL CALL

PRESENT

- Councilmember Jan Arbuckle
- Councilmember Joe Bonomolo
- Councilmember Tom Ivy
- Vice Mayor Haven Caravelli
- Mayor Hilary Hodge

AGENDA APPROVAL

Motion made to approve the agenda as submitted by Councilmember Arbuckle, Seconded by Vice Mayor Caravelli.

Voting Yea: Councilmember Arbuckle, Councilmember Bonomolo, Councilmember Ivy, Vice Mayor Caravelli, Mayor Hodge

REPORT OUT OF CLOSED SESSION

INTRODUCTIONS AND PRESENTATIONS

1. Emily Rary, Community Engagement Chief for Beale Air Force Base, to give presentation on the upcoming Beale Airshow on June 7 & 8 2025.
2. Christine Newsom, presenting as a representative from the Nevada City Rotary Club, in regard to their plastic film collection project and their challenges to continued functioning.
3. Nevada County OES Representatives will provide overview of the Nevada County Community Wildfire Protection Plan.

4. Duane Strawser, the City of Grass Valley Community Risk Reduction Manager, to give brief presentation to Council.

PUBLIC COMMENT

Public Comments #1-9 & 11

CONSENT ITEMS

Motion made to approve the consent items by Councilmember Ivy, Seconded by Vice Mayor Caravelli.

Voting Yea: Councilmember Arbuckle, Councilmember Bonomolo, Councilmember Ivy, Vice Mayor Caravelli, Mayor Hodge

5. Approval of the Regular Meeting Minutes of January 28, 2025.

Recommendation: Council approve minutes as submitted.

6. Tablet Command Mobile Incident Command and Response Solution Purchase

CEQA: Not a project

Recommendation: That the Council 1) Approve the Fire Chief to enter into an agreement, subject to legal review, with the County of Nevada for the reimbursement of funds related to the purchase and integration of Tablet Command for the Fire Services in Nevada County; and 2) Authorize the Finance Director to execute any necessary budget adjustments or fund transfers to facilitate this process.

7. Nevada County Multi-Jurisdictional Hazard Mitigation Plan

CEQA: Not a project as defined by the Public Resources Code section 21065 and CEQA Guidelines sections 15060 and 15378.

Recommendation: That Council adopt Resolution 2025-01 to adopt and approve the draft Nevada County Multi-Jurisdictional Hazard Mitigation Plan and authorize staff to make necessary changes if required by FEMA

8. Adopt Resolution No. 2025-02 Declaring Equipment Surplus and Authorizing Disposition of Equipment.

Recommendation: It is recommended that the City Council adopt Resolution No. 2025-02, declaring the listed vehicles as surplus and authorizing their disposition.

ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION OR SEPARATE ACTION AND / OR ANY ADDED AGENDA ITEMS

REORGANIZATION RELATED ITEMS

PUBLIC HEARING

ADMINISTRATIVE

9. Introduction of an ordinance amending Chapter 5.56 of Title 5 of the Grass Valley Municipal Code regulating Tobacco Retailers.

Recommendation: Introduce the attached ordinance, waive full reading, and read by title only

Alex Gammelgard introduced Officer LaFerriere with GVPD who presented to Council.

Tyler Hill, Chief Medical Officer for SNMH spoke to the medical implications of tobacco and nitrous oxide we see in our local community.

Public comment: Sean Johnson, Bill Lawrence, Graham, Brandon Gates, Kristy Cates, Robin Galvin-Davies, & Don Frazer.

Motion made to introduce the attached ordinance, waive full reading, and read by title only by Councilmember Arbuckle, Seconded by Vice Mayor Caravelli.

Voting Yea: Councilmember Arbuckle, Councilmember Bonomolo, Vice Mayor Caravelli, Mayor Hodge

10. Building Resilient Infrastructure and Communities (BRIC) Grant

CEQA: Not a Project

Recommendation: That Council approve the submission of a Building Resilient Infrastructure and Communities (BRIC) Grant in collaboration with the Fire Safe Council. The grant will support efforts to strengthen critical infrastructure, implement hazard fuels reduction using nature-based solutions, assist with hazard tree removal, expand the home hardening retrofit program, enhance the green waste program, and provide community education initiatives for the Grass Valley area.

Tim Kiser, City Manager, presented to Council.

Public Comment: Sean Johnson, Patrick Johnson & Robin Galvin-Davies.

Motion made to approve the submission of a Building Resilient Infrastructure and Communities (BRIC) Grant in collaboration with the Fire Safe Council by Councilmember Ivy, Seconded by Councilmember Arbuckle.

Voting Yea: Councilmember Arbuckle, Councilmember Bonomolo, Councilmember Ivy, Vice Mayor Caravelli, Mayor Hodge

11. Historical Commission Quarterly Update

CEQA: Not a project

Recommendation: That Council receives quarterly update from Historical Commission.

Terry McAteer, Chair of the Historical Commission, gave quarterly update to the Council. Theresa Poston, Historical Commissioner, spoke to the Heritage Home brochure sales.

Motion made to form a subcommittee comprised of Vice Mayor Caravelli and Councilmember Arbuckle to meet with two members of the Historical Commission that will sunset before this items comes before Council again by Councilmember Arbuckle, Seconded by Vice Mayor Caravelli.

Voting Yea: Councilmember Arbuckle, Councilmember Bonomolo, Councilmember Ivy, Vice Mayor Caravelli, Mayor Hodge

BRIEF REPORTS BY COUNCIL MEMBERS

Councilmember Arbuckle attended a a meeting with Maria's regarding improvements, a Sac Valley Division League of CA Cities Board Meeting, Small Cities, spoke about WIFI for this region, met with the Hospital Foundation, and spoke about the master plan on aging.

Councilmember Bonomolo met with Joy Porter with the Grass Valley Chamber of Commerce and attended an ERC meeting. Councilmember Ivy announced that Pioneer Community Energy will be working with the County of Nevada, attended the NCTC meeting and a Biomass demo on La Barr Meadows and introduced a motion to agendize a a ceasefire resolution on the February 25th City Council meeting. Vice Mayor Caravelli spoke with the City of Santa Rosa about street closures. Mayor Hodge thanked the Nevada County Arts Council for their ongoing offerings to the community.

Motion made to agendize a ceasefire resolution on the February 25th City Council meeting by Councilmember Ivy, Seconded by Councilmember Bonomolo.

Voting Yea: Councilmember Bonomolo, Councilmember Ivy, Vice Mayor Caravelli, Mayor Hodge

Voting Nay: Councilmember Arbuckle

CONTINUATION OF PUBLIC COMMENT

Public Comment # 13 & 14

ADJOURN

Meeting adjourned at 9:03PM.

Hilary Hodge, Mayor

Taylor Whittingslow, City Clerk

Adopted on: _____

Miranda Bacon

From: [REDACTED] - Voicemail box 8880 <noreply@voicemail.goto.com>
Sent: Tuesday, February 11, 2025 2:10 PM
To: Public Comments
Subject: Voicemail from [REDACTED] on Feb 11 2025 2:05 PM
Attachments: 1739311557-00001f6d.mp3



You received a new voicemail message

New voicemail message

Time: Tuesday, February 11 2025 2:05 PM

From: (530) [REDACTED]

Duration: 2 minutes 48 seconds

Voicemail box: 8880

Transcript:

Hello, my name is Rob Katzenstein. I live on North Auburn Street in beautiful Grass Valley. And I wanted to comment about the plastics presentation that's going to occur this evening. And wanted to thank the city for hosting these good folks who are trying to do a really great thing by collecting and turning shrink wrap plastic into a usable building material by the trucks company. I collected plastic from a number of businesses in Grass Valley for over a year, from the Nevada County Food Bank, Hills Flat Lumber, Platte Electrical Supply, CED electrical supply and occasionally B and C and a couple other places. So I'm very experienced in this mode. I collected over 750 pounds of plastic and brought it to the Safeway store on Brunswick where they trucked it back to their distribution center and then it was trucked in bulk to the trucks company located outside of Reno, Nevada. I was doing this for the Nevada County Food Bank mostly, and under a program for nonprofits, the food bank received a nice trucks bench, which is outside their headquarters up there on Railroad Avenue. Anyway, I wanted to encourage the city to help collect shrink wrap

plastic and turn into something useful. I'm hoping that maybe they could supply a collection area that was centrally located and have some sort of covered facility for it in one of their city-owned locations. And as I said, centrally located so that businesses and the general public could drop their plastic off easily. And so I look forward to hearing about what tonight. I'm sorry I couldn't make the meeting. I'm out of town but wanted to say that I think the city really should support this effort to do something useful with this product that otherwise would go to the landfill. All right well thank you again and thank you again and look forward to hearing about it.

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Mailbox Capacity: 97/99 available

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Miranda Bacon

From: Williams Stationery <orders@williamsallvalue.com>
Sent: Thursday, February 6, 2025 9:06 AM
To: Public Comments
Subject: Housing

You don't often get email from orders@williamsallvalue.com. [Learn why this is important](#)

I love this idea-seems that it is centered on Mill Street- this should also be available to all the downtown buildings as appropriate. We certainly need housing.

Thank you!

Sue Williams

--



Williams Stationery
112 W Main Street
Grass Valley CA 95945
530-273-7365 fax 530-273-8253

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<https://www.facebook.com/WilliamsAllValue>

Visit www.williamsallvalue.com

Miranda Bacon

From: [REDACTED]
[REDACTED] Tuesday, February 11, 2025 4:31 PM
To: Public Comments
Subject: Support to add a ceasefire resolution to the city council agenda

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

> Dear Grass Valley City Council Members,
>
> As a Grass Valley resident, I adamantly urge all of you to support adding a cease fire resolution on your agenda.
>
> This is long overdue.
>
> Thank you,
>
> Sharon Blume
> Grass Valley, C

Miranda Bacon

From: WIRELESS CALLER - Voicemail box 8880 <noreply@voicemail.goto.com>
Sent: Tuesday, February 11, 2025 4:20 PM
To: Public Comments
Subject: Voicemail from [REDACTED] on Feb 11 2025 4:15 PM
Attachments: 1739319356-00002193.mp3



You received a new voicemail message



New voicemail message

Time: Tuesday, February 11 2025 4:15 PM

From: [REDACTED]

Duration: 2 minutes 34 seconds

Voicemail box: 8880

Transcript: Hello, my name is Jamie Tyner. My address is 109 King Court in Grass Valley, California. Hi, everyone. I'm calling in to share my unique perspective regarding nitrous oxide use. I should begin by saying that I'm a lifelong resident of Grass Valley. I'm college educated. I participate in the community, and I work in mental health. I'm also addicted to nitrous oxide. This drug was introduced to me around eight years ago, and I've struggled with the addiction ever since. I was told nitrous was a harmless drug, so I didn't know the symptoms of use before they were far advanced. I would buy nitrous and use it home, and I always woke up fine the next day. But around five years ago, I awoke at Sierra Nevada Memorial Hospital with severe cognitive and physical defects. I couldn't form coherent speech, I was unable to move my legs, control my bladder, or even wiggle my toes. My blood pressure was 49 over 37, and now I have permanent nerve damage. This was all due to the effects of nitrous use, and it still wasn't enough to make me stop using. According to the National Institutes of Health, nitrous oxide meets the DSM criteria of an addictive

substance. It causes damage by stripping the body of vitamin B12, which is a crucial element in the protectum of our nervous system. So we see that nitrous is both addictive and harmful and underrepresented professionally. In Grass Valley right now you can drive 5 minutes in any direction and find a vape shop selling nitrous. A couple shops knew me so well that they would take my order over the phone and deliver it to my car. Early on shop owners would notice my mobility issues and they would recommend that I take vitamin B12, thus implying that they were aware of the serious side effects while they were selling it to me. Today, nitrous is sold in larger quantities, from more stores, and at lower prices. It isn't a harmless recreation. It is a dangerous and toxic substance that our residents are purchasing for consumption. Thank you for listening to what I had to say.

[Rate this transcript's accuracy](#)



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CITY OF GRASS VALLEY CITY COUNCIL MEETING

Item # 1.

GENERAL PUBLIC COMMENT SIGN IN SHEET

2/11/2025

WELCOME to the City of Grass Valley City Council meeting! Public Comments provide an opportunity for the public to address the City Council on any subject which is not on the agenda but in the jurisdiction of the council. If you wish to speak, please indicate in the appropriate box when you sign in and take the number corresponding to your name. Each individual can have up to 3 minutes of public comment. At the beginning of the meeting, there will be an allotted 30 minutes of general public comments and the remainder of comments will be heard at the end of the agenda. Speakers will be called in order of the numbers given.

When you are recognized by the mayor:

1. Please stand before the podium and give your name and address. (optional)
2. Please limit your comments to three minutes per speaker.
3. If previous speakers have made the same point, you may simply indicate your support or disagreement, unless you have new information.

Thank you for your participation.

#'s	Print Name or N/A	Address (optional)	Self/Business (optional)
1	Raul Coddington	—	Grass Valley Museum
2	Jeffrey Gottesman		NC
3	Sean Johnson		
4	Patrick Johnson		
5	Liz	GV	
6	Joe Frazer		
7	Shirley	GV	
8	Steve ELIAS	GV	
9	Zach	GV	
X10	Catherine Bramkamp	NC	Redwood Writers Conference
11	Shirley Fredericks	GV	NC - CAN
12	Jim Bair	GV	Rotary
13	Ann Johnson	Grass Valley	
14	Noga Wizenberg		Artist



City of Grass Valley City Council Agenda Action Sheet

Title: Downtown Street Rehabilitation Project - Authorization to Bid

CEQA: Categorically Exempt - Section 15301 “Existing Facilities”

Recommendation: That Council 1) approve the findings that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA); and 2) authorize the advertisement for bids.

Prepared by: Bjorn P. Jones, PE, City Engineer

Council Meeting Date: 02/25/2025

Date Prepared: 02/20/2025

Agenda: Consent

Background Information: The Downtown Street Rehabilitation Project primarily involves pavement resurfacing (full depth replacement and micro surfacing treatments) of South Auburn St between Main St and Neal St and East Main St between Richardson St and Church St. Other work includes concrete curb, gutter and sidewalk improvements, drainage improvements, pavement marking and striping, and signage.

The street improvements associated with this project are exempt from environmental review pursuant to Section 15301 “Existing Facilities” of the CEQA Guidelines.

Copies of the plans and specifications for the Downtown Street Rehabilitation Project are available for review in the Engineering Division office at City Hall. The total project cost is estimated at \$2,100,000.

The award of a construction contract is anticipated to occur in Spring 2025, with construction to follow shortly after. Staff requests that Council authorize the bidding process for construction of this project.

Council Goals/Objectives: The Downtown Street Rehabilitation Project executes portions of work tasks towards achieving/maintaining Strategic Plan Goal - City Infrastructure Investment.

Fiscal Impact: The Downtown Street Rehabilitation Project combines two projects funded in the FY 24/25 CIP Budget through a combination of RMRA and Measure E funds; the S Auburn St Restoration Project, \$1,800,000 and the Main Street Sealing and Striping Project, \$300,000.

Funds Available: Yes

Account #: 300-406-63850

Reviewed by: ____ City Manager

Attachments: N/A



City of Grass Valley City Council Agenda Action Sheet

Title: Magenta Drain Restoration Project - Professional Services Agreement

CEQA: Exempt - Not a Project

Recommendation Motion: That Council 1) authorize the City Engineer to execute a contract with Dudek, pending legal review, for design and environmental support services, in an amount not to exceed \$119, 708.30, for the Memorial Park Magenta Drain Restoration Project.

Prepared by: Zac Quentmeyer, Deputy Public Works Director

Council Meeting Date: 02/25/2025

Date Prepared: 02/19/2025

Agenda: Consent

Background Information: In 2023, the City was awarded \$319,847.94 in Proposition 1, Round 2 IRWM Implementation grant funds to restore a portion of the Magenta Drain running through Memorial Park. In November of 2024, a Request for Proposals (RFP) was released to solicit consultant support for design and environmental services for the Memorial Park Magenta Drain Restoration Project.

Four firms submitted proposals, and a review committee evaluated and ranked the proposals. Staff recommends entering into Professional Service Agreements with the top ranking firm, Dudek. A copy of the draft Professional Services Agreement is attached for review. The contract term will be a two-year agreement.

Staff recommends that Council authorize the City Engineer to execute a contract with Dudek, pending legal review, in an amount not to exceed \$119, 708.30, for design and environmental support services of Memorial Park Magenta Drain Restoration Project.

Council Goals/Objectives: The Magenta Drain Restoration Project executes portions of work tasks towards achieving/maintaining Strategic Plan Goal - Recreation and Parks.

Fiscal Impact: The contract amount is \$119,708.30 and will be fully funded by Prop 1 grant funds.

Funds Available: Yes

Account #: 300-406-66653

Reviewed by: City Manager

Attachment: Draft Contract

**PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS**

(City of Grass Valley / Dudek)

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Grass Valley, a California municipal corporation (“City”), and Dudek, a California Corporation (“Consultant”).

2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: **environmental and engineering support services for the Memorial Park Magenta Drain Restoration Design Project.**
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1. “Design Professional”: A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and Professions Code 5500 *et seq.*, (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 *et seq.*, (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 *et seq.*, or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 *et seq.*
- 3.2. “Scope of Services”: Such professional services as are set forth in Consultant’s **January 21, 2025** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.3. “Agreement Administrator”: The Agreement Administrator for this project is Zac Quentmeyer. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant
- 3.4. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.

- 3.5. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is One Hundred Nineteen Thousand Seven Hundred Eight Dollars and Thirty Cents (\$119,708.30).
- 3.6. “Commencement Date”: 2/25/2025.
- 3.7. “Termination Date”: 2/25/2027.

4. CAMPAIGN CONTRIBUTIONS

This Agreement is subject to Government Code section 84308. Consultant shall disclose any contribution to an elected or appointed City official’s campaign or committee of more than five hundred dollars (\$500) made within 12 months preceding the Commencement Date or such other date required by that statute, by Consultant, its, her, or his agent, or another party affiliated with Consultant. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form to City before, or concurrently with, Consultant’s execution of this Agreement and no later than the Commencement Date.

5. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 17 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

6. CONSULTANT’S DUTIES

- 6.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 6.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 6.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.
- 6.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 6.5. **Professional Standards.** Consultant shall perform all work with the level of skill and care ordinarily exercised by members of the same profession operating under similar circumstances and in the same or similar locality at the time of performance and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws,

rules, and regulations in any manner affecting the performance of this Agreement, including Cal/OSHA requirements, the conflict-of-interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).

- 6.6. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 6.7. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Nick Deyo shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 6.8. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 6.9. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and professional licenses needed to operate its business during Consultant's performance of this Agreement. Fees for regulatory permits associated with the performance of the scope of work will be paid by the City.
- 6.10. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 6.11. **Records.** Consultant shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

7. SUBCONTRACTING

- 7.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 7.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.

- 7.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.

8. COMPENSATION

- 8.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. City will pay Consultant's invoices within 30 days of invoice receipt. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 8.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification or position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 8.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 8.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 8.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 8.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 8.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 12, City shall have the right to withhold payments under this Agreement to offset that amount.

9. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects including the design and preconstruction phases of a covered public works project. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

10. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant. Notwithstanding the foregoing any reuse of the written products by City or third person or entity authorized by City without written verification or adaptation by Consultant for the specific application will be at the City’s sole risk and without liability or legal exposure to Consultant.

11. RELATIONSHIP OF PARTIES

- 11.1. **General.** Consultant is, and shall be a wholly independent contractor as to the City under this Agreement.
- 11.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.
- 11.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation, and other applicable federal and state taxes.
- 11.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

12. INDEMNIFICATION

- 12.1. **Definitions.** For purposes of this Section, “Consultant” shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. “City” shall include City, its officials, officers, agents, employees and volunteers.
- 12.2. **Consultant to Indemnify City.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this contract, but this indemnity does not apply to liability

for damages for bodily injury, property damage or other loss, arising from the sole negligence, negligence or willful misconduct by the City, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the City, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.

- 12.3. **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 12.4. **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 12.5. **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 12.6. **Waiver of Statutory Immunity.** The obligations of Consultant under this Section are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 12.7. **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 12.8. **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

specified in this Agreement, or (2) the broader coverage and maximum limits of coverage insurance policy or proceeds available to the named insured

- 13.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- 13.5. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 13.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 13.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$250,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- 13.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 13.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of the City of Grass Valley must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 13.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this Section, shall constitute a material breach of this Agreement.

- 13.11. **Notices.** Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Grass Valley, Attn: Zac Quentmeyer, 125 E. Main Street, Grass Valley, CA 95945.
- 13.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements (except Professional Liability), shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 13.13. **Waiver of Subrogation.** Except for Professional Liability, Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy (except for Professional Liability) or provide proof of such waiver in the policy itself.
- 13.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 13.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.
- City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.
- 13.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

14. MUTUAL COOPERATION

- 14.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 14.2. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

Zac Quentmeyer
City of Grass Valley
Public Works Department
125 E. Main Street
Grass Valley, CA 95945
Telephone: (530) 274-4713

If to Consultant

Nick Deyo
Dudek
853 Lincoln Way, Suite 105
Auburn, Ca 95603
Telephone: (530) 887-8500

With courtesy copy to:

Michael G. Colantuono, Esq.
Grass Valley City Attorney
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 6.11 (Records), paragraph 11.4 (Indemnification of CalPERS Determination), Section 12 (Indemnity), paragraph 13.8 (Claims-Made Policies), paragraph 14.2 (Consultant Cooperation in Defense of Claims), and paragraph 19.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

17. TERMINATION

- 17.1. **City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 17.3. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.

- 17.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

18. INTERPRETATION OF AGREEMENT

- 18.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 18.3. **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.
- 18.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

19. GENERAL PROVISIONS

- 19.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 19.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission,

percentage, brokerage fee, gift or other consideration contingent upon or resulting from the making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 19.3. **Multiple Phased Projects.** Pursuant to Government Code section 1097.6, Consultant's duties and services under this Agreement shall not include preparing or assisting City with any portion of City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with City. City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications, if any, shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant, if any, pursuant to this Agreement.
- 19.4. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.5. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 19.6. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 19.7. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 19.8. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 19.9. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

- 19.10. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.11. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 19.12. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, each party shall pay its own costs, including any accountants' and attorneys' fees expended in the action.
- 19.13. **Venue.** The venue for any litigation shall be Nevada County, California and Consultant hereby consents to jurisdiction in Nevada County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.14. **Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

[Signature Page Follows]

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

Two signatures are required to bind a corporation

“City”
City of Grass Valley

“Consultant”
Dudek

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____
Signature

Printed: _____

Title: _____

Date: _____

Attest:

By: _____

Taylor Day, City Clerk

Date: _____

Approved as to form:

By: _____

Michael G. Colantuono, City Attorney

Date: _____

Technical Approach

EXHIBIT A

Work Plan

Received 1/21/2025

Task 1: Data Collection, Survey, and Mapping **REDUCED LEVEL OF EFFORT**

Our science-based approach to design involves a thorough site assessment. The Dudek team will review existing information available on the project site, including the City’s base map, site surveys, right-of-way maps, FEMA maps, as-built plans, previous planning documents, and other current and historical information available that is pertinent to project design, permitting, and environmental clearance. After site data has been collected, Dudek’s team of experts will provide assessments to develop a thorough understanding of the site’s opportunities and constraints.

Task 1.1 Kickoff Meeting and Site Visit

Dudek will organize an in-person kickoff meeting to introduce the project team, visit the site, and discuss the project goals and objectives. During the kickoff meeting, we will make initial site observations and confirm project-specific goals and objectives, as well as our understanding of the needed scope of work, budget, and schedule. Following the site visit, Dudek will develop program notes that summarize our understanding of the desired site design components (amenities and habitat) and confirm needed steps and milestones. This document will also describe Dudek’s preliminary understanding of existing conditions and identify initial opportunities and constraints.

Deliverables:

- Program notes summarizing initial site observation, project goals, objectives, design components, steps, and milestones (PDF and Microsoft Word formats)

Assumptions:

- The site visit will be 4 hours or less in duration.
- Up to three Dudek staff will attend the kickoff meeting and site visit.
- Additional site visits will be required to conduct the site assessment tasks listed below.

Task 1.2 Research and Mapping

The Dudek team will research existing data and publications pertinent to the project design, permitting, and environmental compliance. The Dudek team will review literature, related permitting, and planning documents as well as existing GIS/CAD data to develop a thorough understanding of the site. This information and data will be organized to efficiently inform later site assessments and design tasks.

Deliverables:

- As-needed CAD/GIS data and research documents

Assumptions:

- The City will provide existing data and documents available for the site, including, but not limited to, the City base map, site surveys, right-of-way maps, FEMA maps, as-built plans, and other relevant planning documents and data.
- The City will provide topographic and site surveys stamped by a profession land surveyor that meet the base map requirements needed to create final engineering plans. Optional Task 1.3, Site Survey and Digital Surface Creation, may be required if existing survey information is not sufficient to support final engineering plans.

- The City will provide a tree survey for the site that is prepared by a professional arborist and meets the needs of permitting agencies. Optional Task 1.4.5, Arborist Survey, may be required if existing survey information is not sufficient to support project permitting.

~~Optional Task 1.3 Site Survey and Digital Surface Creation~~ **NOT INCLUDED IN SCOPE OF WORK**

If existing survey and base data are not sufficient to support the creation of final engineering plans, Dudek will perform a topographic survey utilizing conventional methods, including GPS, GNSS, and total station equipment along the approximately 1,000 linear foot project area. The topographic survey will include cross-sections approximately every 50 feet within the project area and will include site infrastructure, including the type and dimensions of any bridges and culverts.

A private utility locate will be performed that will include markings of any located utilities prior to beginning the topographic survey. These markings and surface utilities will be collected as part of the topographic survey.

Deliverables:

- ~~Topographic Survey (PDF)~~
- ~~Signed and stamped by a California Professional Licensed Surveyor~~
- ~~1-foot and 5-foot minor and major contours with labels~~
 - ~~50-foot cross-sections~~
 - ~~Site infrastructure~~
 - ~~Type/dimensions of any bridges/culverts~~
- ~~Surface (LandXML)~~

Assumptions:

- ~~Dudek will not perform a boundary survey. The City will provide boundary information that will be incorporated into the survey.~~
- ~~All electronic files shall be in the State Plane Coordinate System unless otherwise specified to be on a Municipal Control Scheme. The State Plane Coordinate System will be based on the North American Vertical Datum of 1988 (NAVD88) and the North American Datum of 1983 (NAD83).~~
- ~~Dudek will perform a private utility locate for all detectable utilities in the project area. Dudek will attempt to trace any utilities for which surface features are visible within the work area. The utility locate service will be performed utilizing a combination of underground scanning GPR antenna, electromagnetic pipe locator, and traceable rod. Utilities will be marked on the surface using spray paint, flags, or other appropriate means. Dudek will survey any marked-out utilities and will collect invert depths of storm and sanitary sewer infrastructure where appropriate with the project area. Pipe size, material, and direction of flow will be noted if observable.~~

Task 1.4 Comprehensive Site Assessment

Dudek's team of experts will perform the detailed site assessments listed in the subtasks below following the site visit, research, and review of existing data. Dudek will tailor site assessments to collect and analyze essential data needed to create informed restoration designs and defensible engineering plans, and to fulfill requirements for permitting and environmental compliance documents. ~~Dudek will summarize key findings from site assessment reports in an Opportunities and Constraints Memo.~~

Task 1.4.1 Geomorphic and Hydrologic Assessment Report **REDUCED LEVEL OF EFFORT**

Dudek will prepare a **qualitative** Geomorphic and Hydrologic Assessment Report to identify restoration design metrics for **engineering designing** a naturalistic stream design. Through historic, geomorphic, and hydrologic analysis, Dudek's geomorphologists will estimate self-sustaining channel morphology metrics (channel width,

depth, and pattern) that would function naturally, be consistent with base and flood flows, and sustain native riparian vegetation and habitats.

Dudek personnel will conduct a **qualitative** site and watershed reconnaissance survey to collect field data related to hydrologic and geomorphic conditions and processes. Sites of interest will be documented by location, and in photographs, sketches, and field notes. The fieldwork will help define the unique watershed area and runoff characteristics of Magenta Drain. ~~A flood frequency analysis will be developed for use in geomorphic and channel design. The hydrologic data, analysis, and methods will be compiled for use in the Assessment Report.~~

Dudek will evaluate field data and hydrologic and hydraulic data to refine estimates of channel morphology that can be applied to design. The geomorphology team will interact with the biology team for plant palette input and the **engineering design** team to ~~hydraulically test and~~ refine the stream restoration design metrics. This will include an examination of opportunities to transform the existing channel vegetation cover with a diverse native species, widen the stream corridor, and perhaps create floodplain benches. These options will be compared with existing conditions. The geomorphology team will also address channel stability issues and, if needed, identify treatments that function well as ecological elements.

Finally, Dudek's geomorphologists and landscape architects will examine incorporation of naturalistic features and recreational opportunities, such as rock and boulder placements, that can act as recreational features (e.g. provide access to the streambed from the channel bank). **STREAM ACCESS FEATURES WILL NOT PLACE FILL BELOW THE OHWM.**

Deliverables:

- Draft and Final Geomorphic and Hydrologic Report (PDF and Microsoft Word formats)

Assumptions:

- California State Parks will provide flow data from the Magenta Drain remediation project to represent baseflow.
- The City of Grass Valley will provide available as-built record drawings, GIS files, and hydrologic assessment for tributary and immediately downstream infrastructure (storm drain, open channels, etc.)
- Flood flow design peak flow rate selections will be provided by the City and based on previous design hydrologic assessments used for the existing upstream and downstream infrastructure.

Task 1.4.2 Biological Resources Assessment

Dudek will complete a biological resources assessment to support permitting (refer to Task 5.1). The assessment will include the results of a desktop evaluation and field survey, both of which are described below.

Dudek will conduct a desktop evaluation of the project site. The evaluation will include queries of available databases, background information for information on soils, aerial photographs, topographic maps, and other natural resource documentation and available data for the project site. Dudek staff will conduct a query of the California Natural Diversity Database, USFWS IPaC Trust Resources database, the California Native Plant Society Inventory of Rare and Endangered Plants, and research grade/verifiable iNaturalist records to identify any occurrences of listed or special-status species and rare and endangered plants found within a 5-mile radius of the site. The results of the database queries will be included as part of permit submittals.

This task comprises a reconnaissance-level biological resources survey to document biological resources in the project area. For the purposes of this scope, the survey area for the field investigation will include the approximately 800-foot-long stretch of Magenta Drain as shown on Attachment B of the RFP and an appropriate

survey buffer depending on access and visual survey restrictions. During this field survey, the biologist will compile a general inventory of plant and animal species detected by sight, calls, tracks, scat, or other signs. Vegetation communities and other biological resources, including any habitat that could potentially support special-status species or sensitive biological communities, will also be recorded.

The results of the biological resources assessment will be incorporated into the submittals under Tasks 5.1.2 and 5.1.3, which will include a discussion of survey methods, an assessment of existing vegetation communities, sensitive biological resources, potential jurisdictional waters, and special-status species present or likely to occur, and recommended mitigation measures for such resources. Figures will be prepared to illustrate the location of the site, the existing biological conditions, and any sensitive biological resources. Proposed avoidance, minimization, and mitigation measures for potential impacts to sensitive resources will be discussed in terms of regional planning, state, and federal laws and guidelines.

Deliverables:

- Boundaries/locations of delineated sensitive resources in GIS format

Assumptions:

- The fieldwork for this assessment will be conducted by the same biologist on the same day as the kickoff site visit under Task 1.1.
- Findings will be incorporated directly into permitting documents.

Optional Task 1.4.3. Aquatic Resources Delineation Report **NOT INCLUDED IN SCOPE OF WORK**

If the City does not have a current Aquatic Resources Delineation Report for the site, a Dudek aquatic resources specialist will conduct a formal delineation of federal and state aquatic resources on the project site in accordance with the following agencies and regulations: the USACE, pursuant to Section 404 of the federal CWA; the RWQCB, pursuant to Section 401 of the federal CWA and the Porter Cologne Act; and CDFW, pursuant to Section 1602. The purpose of this task is to collect field data that will be incorporated into the USACE, RWQCB, and CDFW applications described under Task 5.1 below.

Jurisdictional waters of the United States, including wetlands, will be delineated according to the USACE 1987 Wetlands Delineation Manual (TR Y-81-1) and current published USACE guidance at the time of the delineation report. Non wetland waters will be mapped at the ordinary high water mark (OHWM) based on the procedures defined in USACE's 2008 A Field Guide to Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States.

Waters of the state will be mapped in accordance with the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) adopted on April 2, 2019, and revised on April 6, 2021. Areas under the jurisdiction of the RWQCB generally coincide with waters of the United States; however, isolated waters may be under the jurisdiction of the RWQCB as waters of the state as provided by the state Porter Cologne Act. Additionally, riparian habitat associated with stream channels may be subject to CDFW jurisdiction under Section 1602 of the CDFW.

Vegetation, hydrology, and soils will be examined at each aquatic feature potentially under federal/state jurisdiction. If needed, wetland sampling points will be conducted to determine the extent of the jurisdictional areas. Where the extent of these jurisdictional areas is questionable or unclear, additional data stations will be completed. The 2022 USACE National Wetland Plant List will be used to determine the indicator status of plant species. Drift lines and drainage patterns will be noted, where present. Munsell soil color charts will be used to determine soil chroma and value. Soil pits will be dug to depths ranging from 10 to 16 inches. Excavated soils will

be examined for evidence of hydric conditions. Data stations will be documented using wetland sampling forms, which will be scanned and appended to the associated report.

Once the data collection at various sampling stations has been completed, the boundaries of the jurisdictional features will be delineated in the field using a field mapping application (i.e., ArcGIS Field Maps on a digital tablet) with sub-meter accuracy. All delineated features will be depicted on figures that meet reporting requirements for the respective agency (e.g., USACE Map and Drawing Standards for the South Pacific Division Reporting Program). To support the regulatory agencies (USACE, RWQCB, and CDFW) in concurring with the delineation for the site, Dudek will prepare an Aquatic Resources Delineation Report for submittal with permit applications.

Deliverables:

- Boundaries of delineated aquatic resources in GIS format
- Draft and Final Aquatic Resources Delineation Report (PDF and Microsoft Word formats)
- Request for a preliminary jurisdictional determination from USACE

Assumptions:

- The fieldwork for the aquatic resources delineation will be conducted by one biologist concurrently with the kickoff site visit under Task 1.1.

Task 1.4.4 Opportunities and Constraints Memo NOT INCLUDED IN SCOPE OF WORK

The Dudek team will summarize key findings from the site assessments described above to identify opportunities and constraints and understand how the project can achieve its goals. Opportunities and constraints will be evaluated against the project's program requirements and goals and objectives identified in Task 1.1. This document will be written to be understood by a broad audience and will be used to guide outreach and preliminary design.

Deliverables:

- Opportunities and Constraints Memo (PDF and Microsoft Word formats)

Assumptions:

- Opportunities and constraints will be developed from geomorphic, hydrologic, and biological site assessments. Archeological and historic resources will not be assessed within this scope of work, but can be provided through a contract addendum if needed for permitting and environmental compliance.
- Only a preliminary, qualitative assessment of existing bridges and culverts will be included. A structural and hydraulic engineering analysis to determine safety and longevity is not included in this scope of work.

Optional Task 1.4.5 Arborist Survey NOT INCLUDED IN SCOPE OF WORK

A Dudek International Society of Arboriculture (ISA) Certified Arborist will conduct an evaluation of the site, document location, size (DBH, height, canopy width), species, and condition information for trees that occur within and adjacent to the proposed project area. Trees to be included in the survey are those regulated under the City's Tree Preservation and Protection Ordinance (Chapter 12.36). Trees will be tagged with an aluminum tree tag bearing a unique tree identification number and Dudek's survey team will map their locations, documenting the tree identification number. Representative site photographs will also be taken. Following field evaluations and tree location mapping, we will process all raw mapping data and export the results into GIS and CAD formats for use in tree impact evaluations and report preparation.

Dudek will prepare an arborist report summarizing our methods and observations, providing a discussion of the site and its trees, discussing expected tree impacts from proposed site development, and containing a tree information matrix outlining individual tree attributes and impact status. The arborist report will also address tree preservation and maintenance guidelines for trees that are to be protected on-site and will identify mitigation requirements for trees to be removed.

Deliverables:

- ~~Tree survey data table (Excel format)~~
- ~~One draft and one final Arborist Report in PDF format, inclusive of maps and data tables (PDF and Microsoft Word formats)~~

Assumptions:

- ~~Based on an evaluation of site aerial photographs, Dudek anticipates that no more than 60 trees will be included in the field survey and that no more than 1 day of fieldwork would be required to complete this task.~~
- ~~This task includes time for pre-field preparation, coordination, and data and plan review.~~
- ~~Geolocated survey points will be collected during Optional Task 1.3.~~
- ~~The costs associated with this scope assume that impacts will be assessed based on one project alternative. This task also assumes one edit/review cycle of the arborist report.~~

Optional Task 1.4.6 Geotechnical Report NOT INCLUDED IN SCOPE OF WORK

If the City requires geotechnical evaluation for the project, Dudek's subconsultant, Blackburn Consulting, will provide a geotechnical report stamped by a professional soil engineer to support project design and permitting. Geotechnical support will include initial subsurface exploration, laboratory testing, analysis, and recommendations.

Deliverables:

- ~~Final geotechnical report (PDF and Microsoft Word format)~~

Assumptions:

- ~~No boring permit will be needed and the City will provide access to the site.~~
- ~~Subsurface exploration can be conducted during normal daytime, weekday hours (Monday-Friday, 7 a.m. to 5 p.m.).~~
- ~~Special permits (e.g., USFWS) are not required.~~
- ~~Site soil and water are not contaminated and do not require treatment or special handling and disposal.~~
- ~~Proposed improvement locations will not change substantially after Blackburn performs the supplementary subsurface explorations.~~
- ~~A site specific geological field survey is not required for the project.~~
- ~~No structural or geotechnical engineering is required for bridge or culvert design.~~

Task 2: Preliminary Design REDUCED LEVEL OF EFFORT

Dudek will develop conceptual designs by synthesizing information from the kickoff meeting, site assessments, and early engagement with project partners. The designs will identify the physical relationships of proposed site components (public access elements, habitat, and floodplain expansion) for review and discussion with the City, project partners, and presentation at the public workshop described under Task 3.1. ~~Based upon feedback,~~ a preferred design will be prepared and provided to the City for distribution to the public and project partners.

Task 2.1 Initial Project Partner Engagement Support **NOT INCLUDED IN SCOPE OF WORK**

We understand the importance of community engagement to help guide the project's design. The Dudek team will help the City develop a list of project partners and organize a meeting to discuss the project goals, objectives, and programming, and review opportunities and constraints for the site. Project partners may include individuals from the South Yuba River Citizens League, Wolf Creek Community Alliance, City staff, and other federal, state, and local organizations that are invested in the project. State and federal agencies involved with project permitting will be engaged under Task 5.1 for a permit-specific meeting. Dudek will host this meeting on our Zoom platform, document the outcomes of the meeting, and adjust the project's goals and objectives prior to developing conceptual designs.

Deliverables:

- Meeting notes and revised project program notes with goals and objectives (PDF and Microsoft Word formats)

Assumptions:

- Dudek will use our Zoom platform to host the meeting.
- One 1.5 hour long virtual meeting will be held with project partners.
- The City will identify project partners and facilitate the meeting.
- Translation services are not included in this scope of work. These services can be provided at an added cost.

Task 2.2 Conceptual Design **REDUCTION IN LEVEL OF EFFORT**

Dudek will develop ~~two~~ **one** draft conceptual designs that identify program elements and articulate project goals and objectives. Graphically rich, annotated plans will effectively convey the design intent and be easily understood by a broad audience. Based on feedback, a final, preferred concept will be prepared. Dudek's design team will provide additional detail within the preferred alternative concept, including supporting graphics, representative cross sections, and a preliminary grading plan.

Deliverables:

- ~~Two~~ **One** draft concept plans (PDF format)
- One, final, preferred alternative concept plan with supporting graphics and a preliminary grading plan (PDF format)

Assumptions:

- Each concept will be presented on a single 22 x 34 sized sheet.
- No hydraulic modeling will occur at the preliminary design phase.
- ~~Preliminary grading will only be provided for the preferred alternative concept.~~
- Supporting graphics will include example photos and either a illustrative cross section or perspective drawing.
- Following approval of the concept design, there will be no significant design changes.

Task 3: Outreach and Coordination

At Dudek, we emphasize the importance of public outreach and engagement to foster community involvement and support. We will help facilitate ~~one~~ in person public workshop, providing an opportunity for residents to learn about the project, share their insights, and ask questions. Additionally, we will continue engaging with project partners by conducting ~~two~~ virtual project update meetings to keep the project partners informed and gather ongoing feedback. This approach ensures that community voices are heard and integrated into the design process, promoting transparency and collaboration throughout the project.

Task 3.1 Public Workshop Support **REDUCED LEVEL OF EFFORT**

Dudek's project manager will attend one public comment session as part of a regularly scheduled City Council meeting. Dudek will help the City present the preferred conceptual design using existing materials provided in other tasks.

Dudek will help the City facilitate a public workshop to inform the community about the project, build local excitement around the effort, and obtain feedback on the conceptual design. The workshop will include a brief presentation describing the project background. Following the presentation, Dudek will help facilitate breakout groups where participants will view the project concept and provide feedback. Each breakout group will be hosted by a City or Dudek staff person who is familiar with the project, can answer questions, and collect feedback. Dudek will compile the feedback received following the workshop.

Deliverables:

- ~~Sign in sheets documenting public attendance and collecting contact information (PDF format)~~
- ~~Compiled public comments (PDF and Microsoft Word formats)~~

Assumptions:

- The ~~workshop meeting~~ will be a 2-hour-long, in-person event hosted and led by the City.
- The City will provide the venue for the public workshop and facilitate the workshop.
- Dudek will provide one ~~up to two~~ staff ~~person~~ to help facilitate the ~~workshop meeting~~.
- The City will advertise the workshop using their website and marketing materials.
- The City will compile a brief presentation using the concept design and other figures developed during Tasks 1 and 2.
- The City will provide mounted posters of the conceptual design(s).
- Translation services are not included in this scope of work. These services can be provided at an added cost.

Task 3.2 Continued Project Partner Engagement Support **NOT INCLUDED IN THIS SCOPE OF WORK**

~~Dudek will continue to help the City engage with project partners by organizing a follow-up meeting at the conclusion of the 60% design phase. Dudek will help the City facilitate that meeting with the same participants as in Task 2.1. to update project partners on the progress of the design and receive feedback. Dudek will host this meeting on our Zoom platform.~~

Deliverables:

- ~~Meeting notes and revised project program notes with goals and objectives (PDF and Microsoft Word formats)~~

Assumptions:

- ~~One 1.5 hour long virtual meeting will be held with project partners.~~
- ~~The City will identify project partners and facilitate the meeting.~~
- ~~Translation services are not included in this scope of work. These services can be provided at an added cost.~~

Task 4: Final **Engineering Landscape Plans** **REDUCED LEVEL OF EFFORT**

Dudek will synthesize feedback from the preliminary design phase and outreach efforts to refine the project design and translate it into a complete set of **landscape** construction documents that will be used for project bidding and construction. Dudek will streamline this process to reduce costs and provide scheduling efficiencies while ensuring quality controlled plans, special provisions, and cost estimates are produced. Dudek will

coordinate closely with the City throughout the process. **NOTE THAT DUDEK CAN SUPPORT THE CITY'S ENGINEERS WITHIN THIS SCOPE OF WORK BY PROVIDING PRELIMINARY GRADING PLANS TO BE FINALIZED BY OTHERS. PLACEMENT OF FILL BELOW THE OHWM WOULD REQUIRE A USACE 404 NATIONWIDE PERMIT AND A RWQCB 401 SHRP CERTIFICATION, WHICH HAVE BEEN REMOVED FROM THIS SCOPE OF WORK.**

Task 4.1 Hydraulic Modeling NOT INCLUDED IN THIS SCOPE OF WORK

IF CHANNEL GRADING IS REQUIRED FOR THE PROJECT HYDRAULIC MODELING MAY BE NEEDED.

Dudek will perform hydraulic modeling that is consistent with the City's standards to inform the design and for use in permitting and environmental compliance (if required). Initial modeling will evaluate the baseline hydraulic conditions and assess impacts of the proposed grading created during preliminary design and the results of Task 1.4.1. Model outputs will be used to refine the desired channel morphology, understand changes to flood capacity, size stream bed material, design in-stream structures, and meet permitting requirements and environmental compliance requirements. The model will be updated at the 60% design phase to confirm design decisions and meet permitting requirements.

Dudek will model the existing and proposed conditions using USACE HEC RAS computational software. Existing conditions will reference survey data obtained in Task 1. Upstream boundary conditions (flow inputs) will use design flow rates determined in Task 1.4.1. We anticipate a one dimensional (1D) HEC RAS model. The analysis area will extend sufficiently upstream and downstream such that boundary conditions do not impact the analyses, and project impacts can be adequately assessed. Sensitivity analysis during model development will assist in selecting model extents. The 1D model cross sections would be placed at appropriate lengths to capture geometry changes.

Dudek will summarize its assumptions, analysis methodology, and findings in a technical memorandum to serve as a basis of design.

Deliverables:

- Hydraulic modeling technical memorandum (PDF and Microsoft Word formats)

Assumptions:

- The hydraulic model will conform to the City's standards.
- Two model runs will be completed during the conceptual design and 60% design phases.
- The City will provide as-built record drawings of hydraulic structures within the project footprint (culverts, storm drain, pedestrian bridges, etc.)
- The hydraulic modeling technical memorandum will serve as a basis of design.
- The site is within a Zone X, Non-Special Flood Hazard Area, 500-year floodplain. Therefore, no FEMA or floodplain-related coordination or permitting will be required.

Task 4.2 60% Construction Documents REDUCED LEVEL OF EFFORT

Dudek will perform detailed design at the 60% design phase to develop solutions and identify specific materials and construction techniques to fit each design component to site-specific conditions. The detailed design efforts will build from the preferred conceptual plan and will include all essential plan components and essential details to fully define project construction and impacts. An initial cost estimate will be developed to provide a rough order of magnitude cost for project construction and an outline of the special provision sections will be included in the submittal. The 60% plans will be submitted to the City for distribution, review, and comment. Dudek will use the 60% plans for permit applications.

Deliverables:

- 60% construction documents (PDF and .dwg formats), including:
 - Cover sheet with location map, table of contents, and acronyms (1 sheet)
 - General notes (1 sheet)
 - Key map/ survey (1 sheet)
 - Site preparation (including a demolition) and temporary erosion control plan (3 sheets)
 - Preliminary grading/layout plans, profiles, and notes (2 sheets)
 - Preliminary channel cross sections (2 sheets)
 - Planting plan, plant lists, and notes (4 sheets)
 - Temporary irrigation plan, notes, and legend (4 sheets)
 - Construction details (4-6 sheets)
- 60% cost estimate (Excel format)
- Project special provisions outline (Microsoft Word format)

Assumptions:

- No channel or floodplain grading will be possible upstream of Race Street due to infrastructure constraints. The grading/plan and profile sheets will extend from Memorial Lane to Race Street for an approximate length of 700 linear feet.
- Channel sections will be cut approximately every 100 feet.
- Existing structural elements, such as culverts and pedestrian bridges, will remain in place and will not require improvements.
- Utilities will not require relocation within the project footprint.
- Interpretive panel designs and site artwork are not included within this scope of work, but can be provided at additional cost.
- Plans will use Dudek's title blocks and CAD standards.
- The City will provide a template for their special provisions as well as prior project specifications. Unless otherwise directed by the City, Dudek will use Construction Specification Institute (CSI) standards for specifications. Upfront (Division 1 and 0) specifications will be prepared by the City.
- A single round of review will be provided at the 60% design phase. The City will consolidate their comments and those of the project partners for review.

Task 4.3 100% Construction Documents REDUCED LEVEL OF EFFORT

Dudek will refine the construction documents based on comments received on the 60% plans to develop the 100% construction document package to communicate the level of quality required during construction. Technical specifications will be prepared using the City's special provisions format. The 100% CD package will be submitted for any final backcheck comments. An updated cost estimate will be developed to provide a more accurate cost for project construction. The final, biddable construction documents will address backcheck comments, meet local, state, and federal regulations, and be signed/stamped by a California-licensed engineer and landscape architect. **NOTE THAT DUDEK WILL ONLY PROVIDE PLANTING AND IRRIGATION PLANS STAMPED BY A LANDSCAPE ARCHITECT. IF PLAN ELEMENTS REQUIRE ENGINEERING WORK STAMPED BY A PROFESSIONAL ENGINEER, THE CITY'S ENGINEERS WILL STAMP THOSE SHEETS.**

Deliverables:

- 100% construction documents (PDF and .dwg formats), including:
 - Cover sheet with location map, table of contents, and acronyms (1 sheet)

- General notes (1 sheet)
- Key map/ survey (1 sheet)
- Site preparation (including demolition) and temporary erosion control plan (3 sheets)
- ~~— Grading/layout plans, profiles, and notes (2 sheets)~~
- ~~— Channel cross sections (2 sheets)~~
- Planting plan, plant lists, and notes (4 sheets)
- Temporary irrigation plan, notes, and legend (4 sheets)
- Construction details (8–10 sheets)
- 100% cost estimate (Excel format)
- Project special provisions (Microsoft Word format)

Assumptions:

- No channel or floodplain grading will be possible upstream of Race Street due to infrastructure constraints. The grading/plan and profile sheets will extend from Memorial Lane to Race Street for an approximate length of 700 linear feet.
- ~~▪ Channel sections will be cut approximately every 100 feet.~~
- Existing structural elements, such as culverts and pedestrian bridges, will remain in place and will not require improvements.
- No additional structural elements, including culverts, bridges, overlooks, or boardwalks, will be included in the designs.
- Interpretive panel designs and site artwork are not included within this scope of work, but can be provided at additional cost.
- Utilities will not require relocation within the project footprint.
- Plans will use Dudek’s title blocks and CAD standards.
- The City will provide a template for their special provisions as well as prior project specifications. Unless otherwise directed by the City, Dudek will use CSI standards for specifications. Upfront (Division 1 and 0) specifications will be prepared by the City.
- A single round of backcheck comments will be provided at the 100% design phase. The City will consolidate their comments and those of the project partners for review.
- The City will authorize a grading permit for the project using the 100% plans. Additional plans will not be developed for the grading permit.
- **Dudek will only provide stamped construction document sheets, costs estimates, and special provisions for planting, irrigation, and public access features.**
- **Designs will not require placing fill below the OHWM.**

Task 5: Permitting and Environmental Clearance **REDUCED LEVEL OF EFFORT**

Task 5.1 Project Permitting **REDUCED LEVEL OF EFFORT**

Dudek will support the regulatory permitting efforts for the project. We will work closely with the City to respond to agency requests for additional information and to confirm that agency staff are reviewing applications within the mandated time frames. The below tasks include time for the following: (1) as-needed technical guidance to the project team regarding permitting requirements; (2) responding to as-needed requests for information from the regulatory agencies; (3) participation in conference calls/meetings; and (4) follow-up coordination with the agencies to facilitate processing of the applications/permits. The cost estimate for Task 5.1 assumes that all meetings will be done virtually and no site visit with the regulatory agencies will be necessary.

5.1.1 USACE 404 Nationwide Permit **NOT INCLUDED IN THIS SCOPE OF WORK**

NOTE THAT IF PLANS INCLUDE THE PLACEMENT OF FILL BELOW THE OHWM A USACE 404 NATIONWIDE PERMIT IS REQUIRED.

Dudek will prepare a Preconstruction Notification (PCN) package for the Sacramento District of USACE requesting project authorization under Nationwide Permit (NWP) 27—Aquatic Habitat Restoration, Enhancement, and Establishment Activities, pursuant to CWA Section 404. The PCN will contain necessary project information, including the following items:-

- A completed Nationwide Permit Pre-Construction Notification form-
- A detailed project description-
- A description and quantification of project impacts (area and linear feet of impacts) to aquatic resources
- An aquatic resources delineation report and request for a preliminary jurisdictional determination
- Project maps and drawings of the impact areas prepared in accordance with the current map and drawing standards issued by the USACE South Pacific Division
- Copies of the grading plans-
- Approvals and certifications being obtained from other federal, state, and local agencies
- A discussion of avoidance and minimization measures
- A copy of the cultural resources report and Section 106 documentation (from USACE Section 106 consultation)

Deliverables:

- Draft version of the Nationwide Permit PCN package (PDF and Microsoft Word formats)-
- Compiled final PDF version of the PCN package (PDF format)-
- Meeting materials and summary notes as needed
- Draft responses to agency comments and requests for information

Assumptions:

- We assume that the USACE will take jurisdiction over Magenta Drain in the project area, which flows through an underground pipe and into Wolf Creek (tributary to Bear River).
- We assume that Section 106 consultation will be required for historical resources. If required, cultural resources will be evaluated under Optional Task 5.2.3.
- The City will review the application once and provide one round of comments.
- This cost estimate assumes a need to respond to up to one round of USACE comments only.
- We have assumed up to 8 hours to coordinate with USACE. Should additional time be required, a contract augment will be provided to the City.
- We assume that the project will not result in a loss of aquatic resources acreage or linear feet and will therefore not require a compensatory mitigation plan for aquatic resources. In the event that a mitigation plan is required, we would anticipate an additional level of effort, and an amended scope of work and cost estimate can be provided.
- We assume that the project would not trigger the need for an Incidental Take Permit/Biological Opinion from USFWS pursuant to the federal Endangered Species Act.

5.1.2 RWQCB 401 SHRP Certification **NOT INCLUDED IN THIS SCOPE OF WORK**

NOTE THAT IF PLANS INCLUDE THE PLACEMENT OF FILL BELOW THE OHWM A RWQCB 401 SHRP CERTIFICATION IS REQUIRED.

The project is expected to qualify for the State Water Resources Control Board's Statewide Order for Small Habitat Restoration Projects (SHRP), a simple and expedited certification process for restoration projects less than 5 acres in size that are eligible for a CEQA categorical exemption (CCR title 14, section 15333). Therefore, Dudek will prepare a Notice of Intent (NOI) for coverage under this order, pursuant to Section 401 of the CWA.

As part of the application process, it is highly recommended to request a pre-application meeting with the Central Valley RWQCB. Therefore, Dudek will facilitate a pre-filing meeting with the RWQCB and review the following information during the meeting: (1) overview of the project and project purpose and need; (2) jurisdictional delineation information and hydrologic regime of the on-site resources; (3) impacts to aquatic resources; (4) avoidance and minimization measures, if known; and (5) contents of the NOI application, if requested. After at least 30 days have passed since the pre-filing meeting request date, Dudek will submit the NOI to the RWQCB for coverage under the SHRP Order. The NOI typically includes the following information:-

- A completed Attachment B Notice of Intent form
- A detailed project description
- A description and quantification of project impacts (area and linear feet) to aquatic resources
- An aquatic resources delineation report
- Results of the biological resources assessment
- Project maps and drawings of the impact area(s)
- Cross section and plan view sections of proposed impacts to waters of the United States and state
- A copy of the construction plans
- A discussion of the approvals currently being obtained from other federal, state, and local agencies
- A discussion of avoidance and minimization measures
- Completed CEQA documentation (NOE)

The RWQCB is anticipated to issue a Notice of Applicability (NOA) to authorize project activities under the SHRP Order. If no NOA is issued within 30 days of receiving the NOI, the applicant may proceed with the discharge.

Deliverables:

- Draft version of the NOI application (PDF and Microsoft Word formats)
- Compiled final PDF version of the NOI application (PDF format)
- Meeting materials and summary notes as needed
- Draft responses to agency comments and requests for information

Assumptions:

- The City will review the application once and provide one round of comments.
- This cost estimate assumes a need to respond to up to one round of RWQCB comments only.
- We have assumed up to 8 hours to coordinate with the RWQCB. Should additional time be required, a contract augment will be provided to the City.
- We assume that the project will not result in a loss of aquatic resources acreage or linear feet and will therefore not require a compensatory mitigation plan for aquatic resources. In the event that a

~~mitigation plan is required, we would anticipate an additional level of effort, and an amended scope of work and cost estimate can be provided.~~

- ~~▪ We assume that the project will be authorized under the SHRP Order.~~
- ~~▪ The City will be responsible for the required application filing/processing fee.~~
- ~~▪ If required, a SWPPP will be prepared by the construction contractor.~~

5.1.3 CDFW 1653 Habit Restoration and Enhancement Act Approval

A single approval from CDFW pursuant to the Habitat Restoration and Enhancement Act (HREA) in lieu of a Section 1600 Lake and Streambed Alteration Agreement is expected to be the most expedited and cost-effective permitting pathway for the project. Therefore, Dudek will complete a Section 1653 Checklist and submit through CDFW's Environmental Permit Information Management System (EPIMS) online document repository. This very brief checklist option is available for projects that have received coverage under the SHRP Order. As such, the checklist will be submitted after the NOA is received from the RWQCB. The following items are typically included with the checklist, much of which will be completed during preparation of the NOI under Task 5.1.2:

- Applicant information
- Contact information
- Property owners
- Fees (to be provided by City)
- Results of biological field surveys
- Measures to protect fish, wildlife, and plant resources
- NOI application/submittal, NOA, and monitoring plan
- Completed CEQA documentation (NOE)

Since eligibility is assumed through the SHRP Certification process (see Task 5.1.2), CDFW must respond to a 1653 request within 30 days. To ensure approval within the 30-day period, this task includes up to 1 hour for the Dudek biologist/permitting specialist to facilitate a pre-submittal meeting with CDFW to review the draft checklist submittal for completeness; the meeting would be virtual and not involve any site visits.

Deliverables:

- Draft version of the HREA Request (PDF and Microsoft Word formats)
- Compiled final version of the HREA Request (via EPIMS)
- Meeting materials and summary notes as needed
- Draft responses to agency comments and requests for information

Assumptions:

- The City will review the application once and provide one round of comments.
- We have assumed up to 6 hours to coordinate with CDFW. Should additional time be required, a contract augment will be provided to the City.
- The City will be responsible for the required application filing/processing fee.
- We assume that the project will be eligible for coverage under the HREA.
- We assume that the project would not trigger the need for an Incidental Take Permit from CDFW or USFWS pursuant to the federal and state Endangered Species Act.
- **PLANS WILL NOT REQUIRE THE PLACEMENT OF FILL BELOW THE OHWM.**

Task 5.2 CEQA Support

5.2.1 CEQA Process Initiation and Project Description

Dudek CEQA Task Lead Manager Katherine Waugh will participate in a virtual CEQA process initiation meeting with City staff and key members of our restoration team to review the project design, project implementation activities, potential CEQA categorical and/or statutory exemptions, and our CEQA process work plan. Based on the project concept, Dudek anticipates that the project would qualify for use of the Class 33 Categorical Exemption and/or the Statutory Exemption for Restoration Projects (SERP) established under Public Resources Code Section 21080.56.

Dudek will prepare a brief project description that defines project implementation and operation, including the restoration design and expected construction and maintenance activities. The focus of the project description will be demonstrating how the project meets the criteria for the categorical and/or statutory exemptions expected to be applicable to the project.

Task 5.2.2 NOE Support

Dudek will support City staff in preparing an NOE that demonstrates how the project meets the standards for the applicable categorical and/or statutory exemption(s) and that none of the exceptions that preclude reliance on a categorical exemption would occur. Dudek will participate in a virtual meeting with City staff to review the criteria and exceptions for each applicable categorical and/or statutory exemption, to support City staff in preparing the NOE and any accompanying documentation. If the SERP is pursued, Dudek will also provide City staff with recommendations for completing the SERP process, i.e., requesting SERP consultation, making its own independent determination that the statutory exemption applies, submitting the CDFW concurrence request, and continuing to consult with CDFW to ensure the SERP process is completed. Dudek will also provide recommendations to City staff to ensure the NOE is appropriately filed with the County Clerk and California Governor's Office of Land Use and Climate Innovation.

Optional Task 5.2.3 Cultural Resources Evaluation **NOT INCLUDED IN THIS SCOPE OF WORK**

NOTE THAT CEQA CATEGORICAL EXEMPTIONS REQUIRE THAT THE CITY DEMONSTRATE THAT NO HISTORIC RESOURCES ARE ADVERSELY IMPACTED BY THE PROJECT. NOTE THAT IF PERMITTING THROUGH THE USACE IS REQUIRED FOR THE PROJECT THEN SECTION 106 OF THE NHPA AND NEPA WOULD BE REQUIRED.

One of the exceptions to the use of a categorical exemption is that the project must not result in an adverse impact to a historical resource. If the Class 33 Exemption is pursued, Dudek recommends that the segment of the Magenta Drain that would be affected by this project be evaluated for potential historic significance and whether the proposed restoration design could adversely affect such significance. In addition, if the project requires permitting through USACE, regulatory compliance with Section 106 of the NHPA and NEPA would be required.

Archaeological Resource Inventory

Dudek will conduct a records search for the full project boundary and a half-mile radius at the North Central Information Center (NCIC) to obtain information on previously recorded cultural resources and investigations. We anticipate direct costs for the records search to be no more than \$1,500. It is anticipated that this search may require up to 6-8 weeks to return results.

We will also initiate correspondence with the Native American Heritage Commission (NAHC) to request a search of the Sacred Lands File for any known Native American resources identified within the project site. As part of the

results of this search, the NAHC will provide a Contact List of tribal individuals and organizations that may have additional information concerning resources in the vicinity. Dudek assumes that Native American coordination and/or consultation pursuant to Assembly Bill (AB) 52 will be completed by the City.

Following archival research, Dudek will complete an intensive pedestrian survey of the project site. This is anticipated to take 2 archaeologists a single 8-hour day of fieldwork, including travel from Sacramento. It is assumed that the project survey area will not exceed 1.5 acres and that access will be arranged by the City prior to survey. For the purposes of this scope, Dudek assumes that no more than two new or previously recorded archaeological resources of low to moderate complexity will be identified. These resources will be recorded and documented to survey level standards. We assume that if any tribes request for a Native American monitor to be present during our field survey, any associated costs will be the responsibility of the City. It is our understanding that the City will be responsible for all communication and consultation with Native American tribes pursuant to the requirements of AB 52.

Built Environment Evaluation

Dudek built environment cultural resources staff will review the California Historical Resources Information System (CHRIS) records search that will be completed at the NCIC as part of the Archaeological Resource Inventory task. The purpose of the records search is to identify any previously recorded historic built environment resources that may be located within the study area. As part of this task, Dudek will conduct background research to develop an appropriate historic context to evaluate the significance of historic resources identified within the study area. Dudek assumes that the City will share information about the history of the park and the built resources within it. Dudek will also coordinate with local historical societies, advocacy groups/interested parties who may have information on the historic resources within the study area. This coordination will include limited outreach via emails and phone calls concerning resources in the area. No follow up phone calls or in-person meetings are included in this task.

Upon completion of the records search review, Dudek will delineate an area of potential effects (APE) map in accordance with Section 106 regulations and USACE federal permitting requirements. The map will consider project related potential direct and indirect effects on any historic properties within the APE. Dudek will prepare up to three versions of the APE map for review and approval by the USACE. Following approval of the APE map, Dudek qualified staff will conduct an intensive level field survey to record historic era, built resources (45 years of age or older) in the APE. Dudek assumes the following resources and parcels (APNs) will be included in the APE:

- Memorial Park (resource group or potential historic district in southwest corner of park). APNs 009 280 011 (441 Central Avenue), 009 300 001 (350 Race Street), 008 520 002 (441 Memorial Lane), 009 300 002 (355 Race Street).
 - Memorial Drain (potential contributing element) (APNs 009 280 011, 009 300 001, 009 300 003, 009 610 038)
 - Stone bridge (potential contributing element)
 - Grass Valley Scout Lodge
 - Trees and landscaping (potential contributing elements)
 - Tennis courts on south side of Race Street (009 300 002; 355 Race Street); built prior to 1947.
- 009 340 004 (607 State Highway 174). Residence. Year built 1935.
- 009 300 005 (327 Race Street). Residence. Year built 1940.
- Aerial transmission lines and utility poles transecting the APE
- Race Street roadway and culverts over the Magenta Drain

- Memorial Lane (crosses over the Magenta Drain)
- Ophir Street (SR 174)

Dudek assumes that there are 11 resources that will require inventory and evaluation on DPR 523 forms. The field survey will be conducted by 2 qualified cultural resources specialists working no more than 1 field day. Hours under this task include survey coordination, travel time, and photo processing. The built environment intensive survey will entail taking detailed notes and photographs. We assume that the resources can be documented from the public right of way.

Optional Properties

The following properties listed in this section are considered optional for this scope. Should USACE request that any of these properties be included in the APE for consideration of project related proximity impacts, Dudek will request a budget augment to inventory and evaluate these additional properties under NRHP, CRHR, and local criteria:

- 008-520-003 (300 Race Street). Residence. Year built 1918.
- 008-520-004 (435 Henderson Street). Residence. Year built 1978.
- 008-520-005 (433 Henderson Street). Residence. Year built 1900.
- 008-520-001 (429 Henderson Street). Residence. Year built 1900.
- 009-300-006 (323 Race Street). Residence. Year built 1950.
- 009-300-004 (329 Race Street). Need to include in APE and confirm if any resources on parcel.
- 009-340-016 (333 Race Street). Residence. Year built 1935.
- 009-340-017 (333 1/2 Race Street). Residence. Year built 1962.
- 009-340-018 (N/A). Need to include in APE and confirm if any resources on parcel.

Cultural Resources Inventory and Evaluation Report

Dudek will prepare a Cultural Resources Inventory and Evaluation Report that will summarize the results of the survey, research, and property significance evaluations for both archaeology and built environment using the USACE Section 106 report template. Dudek assumes that the cultural resources technical report prepared for the USACE will be sufficient to support the findings in the CEQA document. The report will include a project description, regulatory framework, all sources consulted, research and field methodology, and recommendations for appropriate management. Dudek assumes that the client will provide a description of the project prior to the commencement of this task. We assume no more than two drafts and one final version of the report will be required. A schedule for project deliverables will be determined upon notice to proceed. Should any additional resources be identified as a result of the survey, requiring recordation and evaluation, a budget augment may be required to address the resources.

Should the technical report find that there are historic properties in the APE, Dudek can prepare a Section 106 Finding of Effect report in accordance with 36 CFR § 800.5(a). A revised scope of work and budget augment will be submitted at that time.

Deliverables:

- Draft and final CEQA project description
- Virtual meeting participation and email communications regarding exemption criteria and procedures

- ~~Optional draft and final Cultural Resources Inventory and Evaluation Report~~

Assumptions:

- ~~The project would meet all the requirements of the Class 33 Categorical Exemption and/or the SERP established under Public Resources Code Section 21080.56.~~
- ~~No residual hazardous materials are present within the project site that would be disturbed or require removal.~~
- ~~No adverse effects to historic resources would result from project implementation.~~
- ~~If the project relies on the SERP, the City will be responsible for completing the SERP process with CDFW.~~
- ~~The City will share information about the history of the park and the built resources within it. Native American coordination and/or consultation pursuant to Assembly Bill (AB) 52 will be completed by the City.~~
- ~~CEQA filing fees will be paid by the City.~~

Cost Proposal

EXHIBIT B

The following table presents our revised proposed project costs, including direct and indirect costs. A more detailed cost proposal with staff rates and hours will be provided upon request.

Table 4. Cost Proposal Summary

Base Services		TOTAL FEE
Task 1	Data Collection, Survey, and Mapping	
1.1	Kickoff Meeting and Site Visit (Reduced)	\$4,564.00
1.2	Research and Mapping (Reduced)	\$4,260.00
1.4	Comprehensive Site Assessment	
1.4.1	Geomorphic and Hydrologic Assessment Report (Reduced)	\$9,260.30
1.4.2	Biological Resources Assessment	\$3,660.00
1.4.4	Opportunities and Constraints Memo	
Subtotal Task 1		\$21,744.30
Task 2	Preliminary Design	
2.1	Initial Project Partner Engagement Support	
2.2	Conceptual Design (Reduced)	\$12,920.00
Subtotal Task 2		\$12,920.00
Task 3	Outreach and Coordination	
3.1	Public Workshop Meeting Support (Reduced)	\$2,174.00
3.2	Continued Project Partner Engagement Support	
Subtotal Task 3		\$2,174.00
Task 4	Final Engineering Landscape Plans	
4.1	Hydraulic Modeling	
4.2	60% Construction Documents (Reduced)	\$38,580.00
4.3	100% Construction Documents (Reduced)	\$30,480.00
Subtotal Task 4		\$69,060.00
Task 5	Permitting and Environmental Clearance	
5.1	Project Permitting	
5.1.1	Corps 404 Nationwide Permit	
5.1.2	RWQCB SHRP Certification	
5.1.3	CDFW 1653 HREA Approval (Reduced)	\$7,380.00
5.2	CEQA Support	
5.2.1	CEQA Process Initiation and Project Description	\$3,100.00
5.2.2	NOE Support	\$3,330.00
Subtotal Task 5		\$13,810.00
Base Services Total		\$119,708.30
Optional Services		
Task 1.3	Site Survey and Digital Surface Creation (Optional Task)	\$17,795.06
Task 1.4.3	Aquatic Resources Delineation Report (Optional Task)	\$8,145.00
Task 1.4.5	Arborist Survey (Optional Task)	\$6,205.96
Task 1.4.6	Geotechnical Report (Optional Task)	\$13,300.00
Task 5.2.3	Cultural Resources Evaluation (Optional Task)	\$52,670.90
Optional Services Total		\$98,116.92

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the City with your application.

1. No City councilmember or commissioner shall accept, solicit, or direct a contribution of more than \$500 from any party,¹ financially interested participant,² or agent³ while a proceeding is pending or for 12 months after the City makes a final decision . This prohibition commences when your application has been filed, or the proceeding is otherwise initiated.

2. A party to a City proceeding shall disclose on the record of the proceeding any contribution of more than \$500 made to any councilmember or commissioner by the party, or agent, during the preceding 12 months. No party to or participant in a City proceeding shall make a contribution of more than \$500 to a councilmember or commissioner during the proceeding and for 12 months after the City makes a final decision. No agent to a party or participant shall make a contribution in any amount to a councilmember or commissioner during the proceeding and for 12 months after the City makes a final decision.

3. Before the City makes a decision as to a City proceeding, any councilmember or commissioner who received contributions of more than \$500 in the preceding 12 months from any party to a proceeding, or agent, shall disclose that fact on the record of the proceeding, and shall be disqualified from participating in the proceeding. However, if any councilmember or commissioner receives a contribution that otherwise would require disqualification, and returns the contribution within 30 days of: (a) making the decision, or (b) knowing about the contribution and the relevant proceeding, whichever comes last, that councilmember or commissioner may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.² "Participant" is defined as any person who actively supports or opposes a particular decision in a proceeding including by submitting written or oral comment at a commission or council meeting.

³ "Agent" is defined as a person who represents a party in connection with a proceeding for compensation who appears before or otherwise communicates with the City for the purpose of influencing the proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closely held corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$500 to a councilmember or commissioner in the past 12 months, all contributions by you or your agent in that period must be aggregated.

Names of current City councilmembers and commissioners are available on the City's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the City Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, participant, or agent who has contributed more than \$500 to any councilmember or commissioner within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution(s):

Date _____ Amount \$ _____

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of councilmember(s) or commissioner(s) to whom contribution(s) was(were) made:

1. _____
2. _____
3. _____

(d) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____

To be completed by City:

Document No: _____



City of Grass Valley City Council Agenda Action Sheet

Title: Loma Rica Open Space Fuels Reduction Project

CEQA: Exempt under CEQA Guideline §15304, Categorical Exemption Class 4 (“Minor Alterations to Land”)

Recommendation: That Council 1) find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) and 2) authorize the advertisement for bids for the fuel treatment prescription for the Loma Rica Open Space parcels acquired by the City of Grass Valley and other City owned properties adjacent to the Loma Rica Open Space Parcels.

Prepared by: Amy Wolfson, City Planner

Council Meeting Date: February 25, 2025

Date Prepared: February 18, 2025

Agenda: Consent

Background Information: At the City Council meeting held November 12, 2024, Council authorized staff to accept the Open Space Land across the Loma Rica Ranch property. The open space land dedication is anticipated to better serve the community by giving the City greater ability to enforce the protection of the natural, scenic, historical, and conservation values of the Open Space area and to enact future trail and land improvements.

The City-owned Open Space area is heavily forested with dense underbrush. The hazardous fuel reduction project will consist of reducing brush/shrubs, live trees less than 10-inches diameter at breast height, and surface fuels to reduce wildfire ignition and spread risks. Operations will consist primarily of mechanical mastication, cutting by hand crews, chipping, and mulching. The intent of the fuel reduction project is to eliminate the vertical and horizontal continuity of understory fuels, surface fuels, and crown fuels to improve ingress and egress, minimize fire behavior in the event of a wildfire, and to improve forest health. The project areas are approximately 200 acres in size. The project areas range in elevation from approximately 2,620 to 2,800 feet above sea level. Vegetation at the site would best be described as mixed conifer with a manzanita understory. Hand work for chipping will be conducted by hand crews using chainsaws, Mcleods, brush grubbers and other appropriate hand tools. Residual trees will be pruned to a height of approximately 8 to 10-feet above ground level. Dead trees of any size may be felled and chipped, masticated, or mulched. Masticated, mulched, or chipped material may be left on site and scattered in zones compatible with pre-existing habitat zones. Wood, chips, and brush may be burned with an air curtain burner or similar device with appropriate permits or hauled offsite for processing. Any known archeological or cultural resources will be avoided. If suspected archeological or cultural resources are discovered during fuel management activities, the area will be secured and avoided until a cultural resource specialist can assess the potentially sensitive resource and provide recommendations on appropriate treatment. All vegetative fuel treatment will avoid watershed areas within 50-feet of Whitewater Creek, Wolf Creek, its tributaries, or any

other blue line waterway, including irrigation ditches, shown on a current United States Geological Survey (USGS) 7.5-minute topographic quadrangle map. Areas located within any mapped flood zone as depicted on a FEMA Fire Insurance Rate Map will be treated with hand tools only. The reduction in vegetation will create an open and parklike shaded fuel break condition that will minimize fire behavior and create a stand structure that is resistant to fast-spreading fire.

Council Goals/Objectives: The Loma Rica Hazardous Fuels Reduction Project works towards achieving/maintaining 2022 Strategic Plan Update: Community Safety and City Infrastructure Investment.

Fiscal Impact: Measure B Funds are anticipated to be used to hire a contractor to prepare a hazardous fuel treatment prescription, and carry out treatment of the City-owned Loma Rica Open Space parcels. This will be subject to Measure B oversight committee and City Council approval prior to award of this project.

Funds Available: Yes **Account #:** Measure B **Reviewed by:** City Manager

Attachments:

Notice of Exemption - Loma Rica Open Space Fuel Management Project

Notice of Exemption

Appendix E

Item # 4.

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Nevada

950 Maidu Avenue

Grass Valley, CA 95959

From: (Public Agency): City of Grass Valley
125 East Main Street
Grass Valley, CA 95945

(Address)

Project Title: Loma Rica Open Space Fuel Management Project

Project Applicant: City of Grass Valley

Project Location - Specific:

See attached Exhibit A, legal description, and Exhibit B location map

Project Location - City: Grass Valley Project Location - County: Nevada

Description of Nature, Purpose and Beneficiaries of Project:

Prepare a fuel treatment prescription for the Loma Rica Open Space parcels to create a shaded fuel break condition that will minimize fire behavior and create a stand structure that is resistant to fast-spreading fire.

Name of Public Agency Approving Project: City of Grass Valley

Name of Person or Agency Carrying Out Project: City of Grass Valley

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: 15304
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

This project is consistent with Section 15304-Minor Alterations to Land, CEQA Guidelines. The project will consist of removing surface and ladder fuels to create a shaded fuel break condition. The project will create an open and park like condition. The project will not involve the removal of mature or scenic trees and will not disturb blue-line water features. Stand health will be improved by removing dead, dying, and suppressed trees and brush, and increasing growing space for mature, healthy dominant and co-dominant trees. Sensitive species will not be impacted by the proposed project. The project is designed to avoid adverse impacts to watercourses. The project is also designed to avoid adverse impacts to archaeological and cultural resources. The

Lead Agency

Contact Person: Amy Wolfson, City Planner Area Code/Telephone/Extension: 530-274-4711

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature:  Date: 2/20/25 Title: City Planner

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

EXHIBIT "A"
LEGAL DESCRIPTION

Lot "A"
Open Space Land Dedication

All that real property situated in the incorporated City of Grass Valley, County of Nevada, State of California being a portion of Resultant Parcel 3, Resultant Parcel 4 and Resultant Parcel 5 as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045279, Official Records of Nevada County; said property being a portion of Sections 24 and 25, Township 16 North, Range 8 East, and Sections 19 and 30, Township 16, Range 9 East, Mount Diablo Base and Meridian, and being more particularly described as follows:

Beginning at a point on the easterly right of way line of Brunswick Road, being the northwesterly corner of Resultant Parcel 3 as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045279, Official Records of Nevada County. Thence from said point of beginning along the boundary of said Resultant Parcel 3 the following four (4) courses:

- 1) Thence North 70°10'50" East, 137.48 feet;
- 2) Thence North 61°42'00" East, 182.98 feet;
- 3) Thence North 55°32'00" East, 173.63 feet;
- 4) Thence North 63°54'00" East, 200.00 feet to the northeasterly corner of said Resultant Parcel 3 and the northwesterly corner of Resultant Parcel 4 as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045280, Official Records of Nevada County;

Thence along the boundary of said Resultant Parcel 4 the following twelve (12) courses:

- 1) Thence North 63°54'00" East, 87.84 feet;
- 2) Thence North 40°02'00" East, 148.07 feet;
- 3) Thence North 53°16'00" East, 80.63 feet;
- 4) Thence North 64°17'00" East, 25.65 feet;
- 5) Thence North 01°21'00" West, 371.13 feet;
- 6) thence North 88°55'19" East, 1,347.22 feet;
- 7) Thence North 86°44'23" East, 36.24 feet;
- 8) Thence North 07°32'39" West, 45.64 feet;
- 9) Thence North 82°27'21" East, 600.00 feet;
- 10) Thence South 07°32'39" East, 90.56 feet;
- 11) Thence North 86°44'16" East, 1,989.75 feet to the northeasterly corner of said Resultant Parcel 4;
- 12) Thence South 01°18'43" East, 350.00 feet to the southeasterly corner of said Resultant Parcel 4 and the northeasterly corner of Resultant Parcel 5 as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045281, Official



LEGAL DESCRIPTION(continued)

Records of Nevada County;

Thence along the boundary of said Resultant Parcel 5 the following thirty-two (32) courses:

- 1) Thence South $01^{\circ}18'43''$ East, 966.97 feet;
- 2) Thence South $01^{\circ}20'13''$ East, 385.73 feet to the southeasterly corner of Said Resultant Parcel 5;
- 3) Thence South $71^{\circ}37'00''$ West, 47.28 feet;
- 4) Thence along the arc of a curve to the left having a radius of 485.00 feet, a delta angle of $19^{\circ}17'00''$ and an arc length of 163.23 feet;
- 5) Thence South $52^{\circ}20'00''$ West, 117.98 feet;
- 6) Thence along the arc of a curve to the right having a radius of 315.00 feet, a delta angle of $56^{\circ}19'00''$ and an arc length of 309.62 feet;
- 7) Thence North $71^{\circ}21'00''$ West, 123.19 feet;
- 8) Thence along the arc of a curve to the left having a radius of 385.00 feet, a delta angle of $13^{\circ}35'00''$ and an arc length of 91.27 feet;
- 9) Thence North $84^{\circ}56'00''$ West, 83.48 feet;
- 10) Thence along the arc of a curve to the right having a radius of 715.00 feet, a delta angle of $04^{\circ}30'00''$ and an arc length of 56.16 feet;
- 11) Thence North $80^{\circ}26'00''$ West, 149.84 feet;
- 12) Thence along the arc of a curve to the right having a radius of 615.00 feet, a delta angle of $18^{\circ}50'00''$ and an arc length of 202.15 feet;
- 13) Thence North $61^{\circ}36'00''$ West, 118.77 feet;
- 14) Thence North $29^{\circ}41'18''$ East, 66.34 feet;
- 15) Thence North $60^{\circ}18'42''$ West, 150.00 feet;
- 16) Thence North $29^{\circ}41'18''$ East, 10.00 feet;
- 17) Thence South $60^{\circ}18'42''$ East, 71.21 feet;
- 18) Thence along the arc of a curve to the left having a radius of 490.00 feet, a delta angle of $37^{\circ}49'58''$ and an arc length of 323.55 feet;
- 19) Thence South $12^{\circ}10'28''$ East, 10.00 feet;
- 20) Thence from a tangent bearing of South $77^{\circ}49'32''$ West along the arc of a curve to the left having a radius of 480.00 feet, a delta angle of $12^{\circ}43'55''$ and an arc length of 106.66 feet;
- 21) Thence North $24^{\circ}54'23''$ West, 20.00 feet;
- 22) Thence from a tangent bearing of South $65^{\circ}05'37''$ West along the arc of a curve to the left having a radius of 500.00 feet, a delta angle of $12^{\circ}43'57''$ and an arc length of 111.11 feet;
- 23) Thence South $37^{\circ}38'20''$ East, 20.00 feet;
- 24) Thence from a tangent bearing of South $52^{\circ}21'40''$ West along the arc of a curve to the left having a radius of 480.00 feet, a delta angle of $10^{\circ}23'00''$ and an arc length of 86.99 feet;

LEGAL DESCRIPTION(continued)

- 25) Thence South 41°58'40" West, 18.45 feet;
- 26) Thence North 48°01'20" West, 20.00 feet;
- 27) Thence South 41°58'40" West, 82.03 feet;
- 28) Thence along the arc of a curve to the right having a radius of 550.00 feet, a delta angle of 14°20'52" and an arc length of 137.73 feet;
- 29) Thence South 56°19'32" West, 67.72 feet;
- 30) Thence South 33°40'28" East, 20.00 feet;
- 31) Thence South 56°19'32" West, 480.69 feet;
- 32) Thence along the arc of a curve to the right having a radius of 870.00, a delta angle of 01°16'30" and an arc length of 19.36 feet;

Thence leaving the boundary of said Resultant Parcel 5 the following forty-nine (49) courses:

- 1) Thence South 78°03'53" West, 189.11 feet;
- 2) Thence North 39°41'11" West, 185.20 feet;
- 3) Thence South 84°51'25" West, 122.21 feet;
- 4) Thence South 89°33'34" West, 178.43 feet;
- 5) Thence South 69°17'53" West, 632.93 feet;
- 6) Thence North 81°20'19" West, 45.70 feet;
- 7) Thence South 64°24'04" West, 222.99 feet;
- 8) Thence South 81°06'45" West, 248.66 feet;
- 9) Thence South 31°04'14" West, 265.73 feet;
- 10) Thence South 63°31'07" West, 256.48 feet to an angle point on the easterly right of way line of Brunswick Road;
- 11) Thence South 83°50'49" West, 30.00 feet along the easterly right of way line of Brunswick Road;
- 12) Thence North 06°09'11" West, 508.17 feet along the easterly right of way line of Brunswick Road;
- 13) Thence leaving said easterly Brunswick Road right of way South 64°28'57" East, 17.62 feet;
- 14) Thence South 06°09'11" East, 405.29 feet;
- 15) Thence North 75°51'20" East, 235.91 feet;
- 16) Thence North 31°04'14" East, 319.51 feet;
- 17) Thence North 63°00'15" East, 34.16 feet;
- 18) Thence South 76°30'02" East, 139.03 feet;
- 19) Thence North 57°45'35" East, 322.29 feet;
- 20) Thence South 76°02'54" East, 107.21 feet;
- 21) Thence North 68°40'43" East, 406.28 feet;
- 22) Thence North 75°14'23" East, 210.84 feet;
- 23) Thence North 45°19'45" East, 141.74 feet;
- 24) Thence North 75°47'41" East, 169.35 feet;

LEGAL DESCRIPTION(continued)

- 25) Thence South 45°18'41" East, 86.89 feet;
- 26) Thence North 82°57'38" East, 328.52 feet;
- 27) Thence North 50°15'26" East, 493.93 feet;
- 28) Thence North 67°52'01" East, 84.12 feet;
- 29) Thence North 31°22'39" East, 89.25 feet;
- 30) Thence North 82°03'57" East, 129.06 feet;
- 31) Thence North 48°39'45" East, 183.10 feet;
- 32) Thence North 73°35'32" East, 138.00 feet;
- 33) Thence North 50°41'27" East, 154.11 feet;
- 34) Thence along the arc of a curve to the right having a radius of 450.00 feet, a delta angle of 28°04'41" and an arc length of 220.53 feet;
- 35) Thence North 78°46'08" East, 95.67 feet;
- 36) Thence North 11°13'52" West, 625.63 feet;
- 37) Thence North 89°31'02" West, 401.37 feet;
- 38) Thence North 72°16'00" West, 515.82 feet;
- 39) Thence South 71°05'00" West, 621.23 feet;
- 40) Thence North 84°44'27" West, 136.14 feet;
- 41) Thence North 46°12'36" West, 146.50 feet;
- 42) Thence South 83°36'26" West, 471.41 feet;
- 43) Thence South 58°45'38" West, 406.52 feet;
- 44) Thence South 41°22'21" West, 187.22 feet;
- 45) Thence South 63°54'00" West, 294.75 feet;
- 46) Thence South 55°32'00" West, 172.67 feet;
- 47) Thence South 61°51'44" West, 193.05 feet;
- 48) Thence South 70°10'50" West, 159.75 feet to the westerly boundary of said Resultant Parcel 3;
- 49) Thence along the easterly right of way line of Brunswick North 04°11'28" East, 54.74 feet to the **Point of Beginning**.

Containing 88.612 acres more, or less.

Basis of Bearings: The basis of bearings is identical and based upon that Record of Survey for F. Knoop, recorded in Book 8 of Surveys, Page 37, Official Records of Nevada County.

LEGAL DESCRIPTION (continued)**Lot "B"
Open Space Land Dedication**

All that real property situated in the incorporated City of Grass Valley, County of Nevada, State of California, being a portion of Resultant Parcel 6 and Resultant Parcel 7 as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045279, Official Records of Nevada County; said property being a portion of Section 25, Township 16 North, Range 8 East, and Section 30, Township 16 North, Range 9 East, Mount Diablo Base and Meridian, and being more particularly described as follows:

Beginning at a point on the southerly right of way line of Idaho Maryland road, being the northeasterly corner of Resultant Parcel 6 as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045282, Official Records of Nevada County. Thence from said point of beginning along the boundary of said Resultant Parcel 6, as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045282 and Resultant Parcel 7, as described in that Lot Line Adjustment LA01-035 Grant Deed, recorded as Document No. 2001-0045283 the following three (3) courses:

- 1) Thence South 07°32'39" East, 1,198.20 feet;
- 2) Thence North 86°58'31" East, 169.59 feet;
- 3) Thence South 00°18'09" East, 355.78 feet;

Thence leaving the boundary of said Resultant Parcel 7 the following eighteen (18) Courses:

- 1) Thence from a tangent bearing of North 07°16'33" West along the arc of a curve to the left having a radius of 51.98 feet, a delta angle of 151°28'27" and an arc length of 137.43 feet;
- 2) Thence South 29°32'38" West, 15.30 feet;
- 3) Thence along the arc of a curve to the right having a radius of 200.00 feet, a delta angle of 43°10'49" and an arc length of 150.73 feet;
- 4) Thence South 72°43'27" West, 146.48 feet;
- 5) Thence South 82°46'30" West, 567.91 feet;
- 6) Thence South 45°29'02" West, 122.73 feet;
- 7) Thence along the arc of a curve to the left having a radius of 300.00 feet, a delta angle of 11°22'32" and an arc length of 59.56 feet;
- 8) Thence South 34°06'31" West, 157.59 feet;
- 9) Thence South 50°26'08" West, 111.76 feet;
- 10) Thence South 44°49'36" West, 131.76 feet;
- 11) Thence along the arc of a curve to the left having a radius of 200.00 feet, a delta angle of 65°56'05" and an arc length of 230.16 feet;
- 12) Thence along the arc of a curve to the right having a radius of 200.00 feet, a delta angle of 41°28'53" and an arc length of 144.80 feet;

LEGAL DESCRIPTION(continued)

- 13) Thence South 19°24'22" West, 211.64 feet;
- 14) Thence South 04°41'28" West, 390.43 feet;
- 15) Thence South 01°57'13" East, 113.72 feet;
- 16) Thence along a curve to the left having a radius of 300.00 feet, a delta angle of 33°40'50" and an arc length of 176.35 feet;
- 17) Thence along the arc of a curve to the left having a radius of 70.00 feet, a delta angle of 59°56'11" and an arc length of 73.23 feet;
- 18) Thence North 84°25'46" East, 59.81 feet to the northerly right of way line of Loma Rica Drive

Thence along the northerly right of way line of Loma Rica Drive and the southerly boundary of said Resultant Parcels 6 and 7 the following ten (10) courses:

- 1) Thence from a tangent bearing of South 53°42'31" West along the arc of a curve to the right having a radius of 380.00 feet, a delta angle of 24°06'01" and an arc length of 159.84 feet;
- 2) Thence South 77°48'32" West, 218.23 feet;
- 3) Thence along the arc of a curve to the right with a radius of 300.00 feet, a delta angle of 55°09'58" and an arc length of 288.85 feet;
- 4) Thence North 47°01'30" West, 57.72 feet;
- 5) Thence North 42°58'30" East, 35.00 feet;
- 6) Thence North 47°01'30" West, 513.56 feet;
- 7) Thence North 42°58'30" East, 15.00 feet;
- 8) Thence from a tangent bearing of North North 47°01'30" West along the arc of a curve to the left having a radius of 120.00 feet, a delta angle of 100°06'27" and an arc length of 209.66 feet;
- 9) Thence South 32°52'03" West, 23.92 feet;
- 10) Thence North 56°50'00" West, 106.33 feet;

Thence leaving the northerly right of way line of Loma Rica Drive and the southerly boundary line of said Resultant Parcel 6 the following twenty-two (22) courses:

- 1) Thence from a tangent bearing of North 77°47'01" East along the arc of a curve to the left having a radius of 592.51 feet, a delta angle of 23°59'05" and an arc length of 248.03 feet;
- 2) Thence along the arc of a curve to the left having a radius of 50.00 feet, a delta angle of 135°17'41" and an arc length of 118.07 feet;
- 3) Thence North 81°29'46" West, 47.25 feet;
- 4) Thence along the arc of a curve to the right having a radius of 100.00 feet, a delta angle of 53°15'46" and an arc length of 92.96 feet;
- 5) Thence North 28°14'00" West, 55.97 feet;

LEGAL DESCRIPTION(continued)

- 6) Thence along the arc of a curve to the right having a radius of 40.00 feet, a delta angle of $166^{\circ}36'04''$ and an arc length of 116.31 feet;
- 7) Thence along the arc of a curve to the left having a radius of 34.22 feet, a delta angle of $107^{\circ}16'20''$ and an arc length of 64.07 feet;
- 8) Thence along the arc of a curve to the left having a radius of 272.47 feet, a delta angle of $27^{\circ}06'07''$ and an arc length of 128.89 feet;
- 9) Thence along the arc of a curve to the left having a radius of 46.49 feet, a delta angle of $46^{\circ}45'35''$ and an arc length of 37.94 feet;
- 10) Thence along the arc of a curve to the right having a radius of 40.00 feet, a delta angle of $65^{\circ}47'32''$ and an arc length of 45.93 feet;
- 11) Thence North $23^{\circ}01'34''$ East, 59.35 feet;
- 12) Thence along the arc of a curve to the right having a radius of 40.00 feet, a delta angle of $95^{\circ}00'23''$ and an arc length of 66.33 feet;
- 13) Thence along the arc of a curve to the left having a radius of 75.00 feet, a delta angle of $103^{\circ}28'37''$ and an arc length of 135.45 feet;
- 14) Thence North $14^{\circ}33'20''$ East, 29.81 feet;
- 15) Thence along the arc of a curve to the left having a radius of 75.00 feet, a delta angle of $77^{\circ}22'04''$ and an arc length of 101.27 feet;
- 16) Thence along the arc of a curve to the right having a radius of 65.00 feet, a delta angle of $84^{\circ}53'37''$ and an arc length of 96.31 feet;
- 17) Thence along the arc of a curve to the left having a radius of 100.00 feet, a delta angle of $91^{\circ}23'46''$ and an arc length of 159.52 feet;
- 18) Thence along the arc of a curve to the right having a radius of 80.00 feet, a delta angle of $104^{\circ}59'34''$ and an arc length of 146.60 feet;
- 19) Thence along the arc of a curve to the left having a radius of 328.99 feet, a delta angle of $41^{\circ}37'36''$ and an arc length of 239.02 feet;
- 20) Thence along the arc of a curve to the right having a radius of 100.00 feet, a delta angle of $45^{\circ}57'09''$ and an arc length of 80.20 feet;
- 21) Thence North $40^{\circ}00'14''$ East, 598.29 feet;
- 22) Thence North $52^{\circ}44'59''$ East, 826.10 feet to the southerly right of way line of Idaho Maryland Road and the northerly boundary of Resultant Parcel 6;

Thence along the southerly right of way line of Idaho Maryland Road and the southerly boundary of said Resultant Parcel 6 the following eighteen (18) courses:

- 1) Thence from a tangent bearing of North $57^{\circ}36'02''$ East along the arc of a curve to the left having a radius of 940.00 feet, a delta angle of $01^{\circ}16'30''$ and an arc length of 20.92 feet;
- 2) Thence North $56^{\circ}19'32''$ East, 180.69 feet;
- 3) Thence North $33^{\circ}40'28''$ West, 10.00 feet;
- 4) Thence North $56^{\circ}19'32''$ East, 150.00 feet;

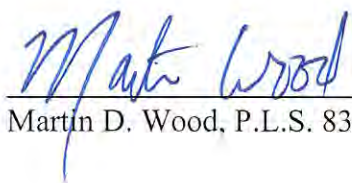
LEGAL DESCRIPTION(continued)

- 5) Thence South 33°40'28" East, 10.00 feet;
- 6) Thence North 56°19'32" East, 50.00 feet;
- 7) Thence South 33°40'28" East, 10.00 feet;
- 8) Thence North 56°19'32" East, 100.00 feet;
- 9) Thence North 33°40'28" West, 10.00 feet;
- 10) Thence North 56°19'32" East, 67.72 feet;
- 11) Thence along the arc of a curve to the left having a radius of 640.00 feet, a delta angle of 12°37'54" and an arc length of 141.10 feet;
- 12) Thence South 46°18'22" East, 10.00 feet;
- 13) Thence North 41°58'40" East, 100.48 feet;
- 14) Thence along the arc of a curve to the right having a radius of 400.00 feet, a delta angle of 10°23'00" and an arc length of 72.49 feet;
- 15) Thence North 37°38'20" West, 10.00 feet;
- 16) Thence from a tangent bearing of North 53°03'44" East along the arc of a curve to the right having a radius of 410.00 feet, a delta angle of 05°39'54" and an arc length of 40.54 feet;
- 17) Thence North 31°16'22" West, 10.00 feet;
- 18) Thence from a tangent bearing of North 58°43'38" East along the arc of a curve to the right having a radius of 420.00 feet, a delta angle of 22°08'34" and an arc length of 162.32 feet to the **Point of Beginning**.

Containing 87.98 acres more, or less.

Basis of Bearings: The basis of bearings is identical and based upon that Record of Survey for F. Knoop, recorded in Book 8 of Surveys, Page 37, Official Records of Nevada County.

End of Description


 Martin D. Wood, P.L.S. 8321

10-28-24
 Date



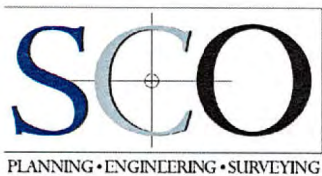
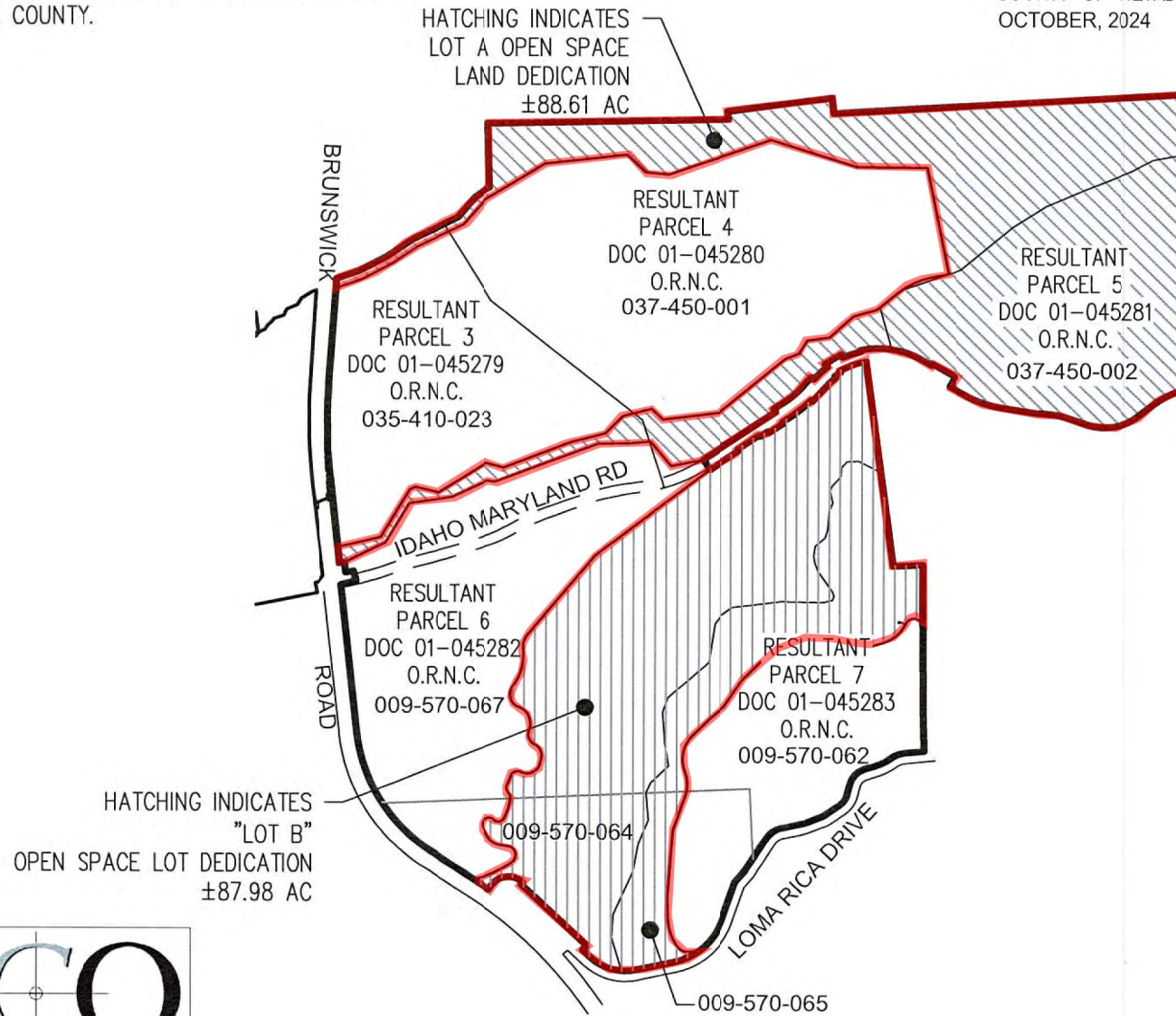
BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS MAP IS BASED UPON FOUND MONUMENTS AND IS IDENTICAL TO THAT RECORD OF SURVEY AS SHOWN IN BOOK 8 OF SURVEYS AT PAGE 37 OFFICIAL RECORDS OF NEVADA COUNTY.

EXHIBIT "B"

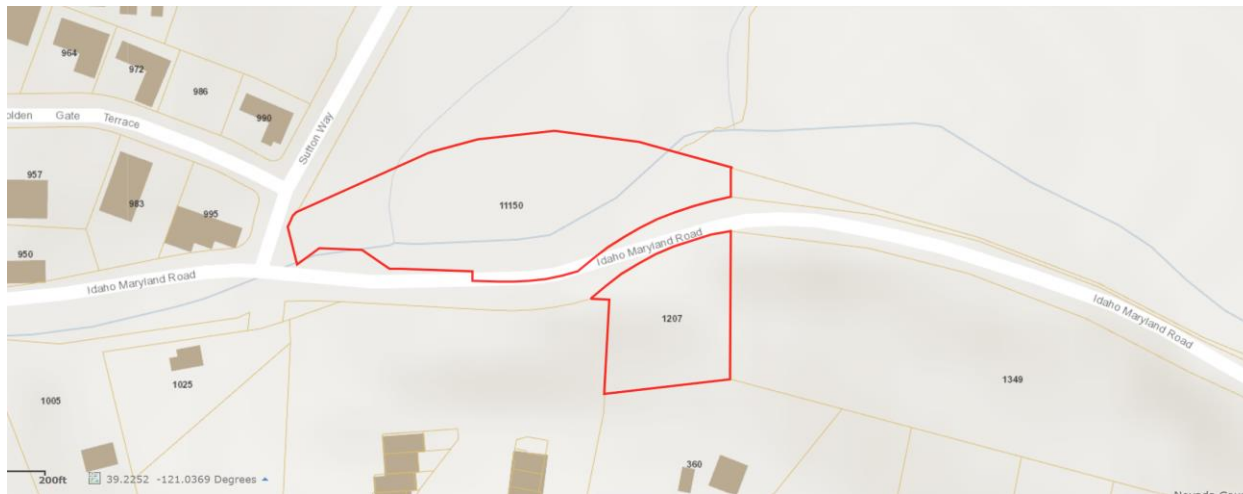
OPEN SPACE LAND DEDICATION

BEING A PORTION OF SECTION 19, 24, 25, 30, T.16N., R8E. MDB& M. WITHIN THE INCORPORATED CITY OF GRASS VALLEY, COUNTY OF NEVADA, STATE OF CALIFORNIA
OCTOBER, 2024 SCALE: 1"=1000'



10-28-24 SHEET 1

APN	Site Address	Mailing Address	Assessed Acreage
009-680-023	1207 IDAHO MARYLAND ROAD	GRASS VALLEY, CA 95945	1.19
035-412-024	11150 IDAHO MARYLAND ROAD	GRASS VALLEY, CA 95945	3.15





**City of Grass Valley
City Council
Agenda Action Sheet**

Title: Tablet Command Mobile Incident Command and Response Solution Purchase

CEQA: Not a project

Recommendation: That the Council 1) Approve the Fire Chief to enter into an agreement, subject to legal review, for purchase and integration of Tablet Command for the Fire Services in Nevada County; and 2) authorize the Fire Chief to enter into agreement, subject to legal review, with Peraton for integration into Computer Aided Dispatch System (CAD) and 3) Authorize the Finance Director to execute any necessary budget adjustments or fund transfers to facilitate this process.

Prepared by: Mark Buttron- Fire Chief

Council Meeting Date: 02/25/2025

Date Prepared: 02/21/2025

Agenda: Consent

Background Information: The City has been engaged in discussions with the County of Nevada to secure fiscal assistance for the startup costs and integration of Tablet Command. Under the terms of the agreement, the City will cover the initial expenses, with the County of Nevada reimbursing these costs. The County has expressed overwhelming support for the purchase and implementation of Tablet Command, recognizing its value in strengthening emergency response capabilities through this collaborative partnership.

In March 2025, the current software platform, Incident View, utilized by the majority of county fire agencies, will be shut down and no longer supported. Incident View has served as a critical tool for incident information, routing, limited Automatic Vehicle Location (AVL), hydrant locations, and other fire-related informational needs for many years. It has been funded through Homeland Security Grant Funds provided by the Nevada County Office of Emergency Services.

Tablet Command has been identified as the optimal replacement for Incident View. This two-way software offers significant enhancements, including real-time dispatch capabilities, full-function AVL, Mobile Data Terminal (MDT) functionality for push-button responses to reduce radio traffic, and incident origination. Tablet Command provides global situational awareness and a shared operating picture for all responders in Nevada County, achieved through integration with the Computer-Aided

Dispatch (CAD) system operated by CAL FIRE's Grass Valley Emergency Command Center (ECC).

Key Highlights of Tablet Command:

- **Automatic Vehicle Location (AVL):**
 - Dispatchers can monitor all emergency equipment in real-time.
 - CAD automatically assigns the closest resource to an incident, improving response times.
- **Real-Time Situational Awareness:**
 - Incident Commanders can view responding resources in real time, enhancing situational awareness and firefighter safety.
- **Incident Routing:**
 - Provides precise and efficient routing to incident locations.
- **Mobile Data Terminal (MDT) Functionality:**
 - Firefighters can update their status (e.g., responding, on scene) via a status button on the iPad, reducing radio transmissions.
 - Responses are timestamped immediately in CAD, ensuring accurate data tracking.
- **Incident Command and Control:**
 - Incident Commanders can manage resources directly through Tablet Command, even while en route to an incident.
 - Enables tracking of resources at incidents, down to individual firefighters assigned to fire engines.
 - Improves accountability and enhances situational awareness for all incidents.

Benefits of Implementing Tablet Command:

The adoption of Tablet Command will:

- Significantly improve interoperability among all fire agencies within Nevada County including Truckee.
- Interoperability with Emergency Medical Services providers
- Enhance regional response capabilities.
- Increase situational awareness for all responders.
- Improve safety for both firefighters and the communities they serve.

The purchase of Tablet Command will enable a seamless transition from Incident View, ensuring uninterrupted service and operational improvements. We believe this investment aligns with the recent MSR recommendation to utilize AVL for dispatching.

The urgency of this purchase and implementation cannot be overstated. All fire agencies and our EMS partners rely heavily on the information these software programs provide. These tools are essential for:

- Dispatch information and operational notes
- Fire hydrant locations
- AVL (Automatic Vehicle Location) of responding resources
- Resource coverage and incident routing

As previously highlighted, all fire agencies are committed to adopting Tablet Command, fostering a truly regional approach to information sharing and integration.

Associated Costs for Implementation:

- **Peraton integration with Grass Valley Emergency Command Center CAD:**
\$23,142.00
- **Tablet Command integration with Grass Valley Emergency Command Center:**
\$30,000.00
- **Total Estimated Cost: \$54,000.00 (+/-)**

Council Goals/Objectives: Exceptional Public Safety consistent with the City of Grass Valley Strategic Plan

Fiscal Impact: \$54,000

Funds Available: Yes

Account #: Fire Reserve Fund

Reviewed by:

Attachments: Tablet Command Agreement
Tablet Command Sole Source Letter
Peraton Agreement

This Agreement (“**Agreement**”) is entered into as of _____ (“**Effective Date**”) by and between **Tablet Command, Inc.**, (the “**Company**”), and _____ (or “**Customer**”). Company and Customer shall be individually referred to as a “**Party**” and collectively referred to as the “**Parties**”.

Whereas, an important value of the Customer is to operate a strong, sustainable, reliable, shared notification, response, and incident management system.

Whereas, the Customer believes that a common or shared notification, response, and incident management will produce a more reliable and standardized operational picture and benefit response personnel as a whole.

Whereas, the Customer recognizes that the following will improve safety on the emergency scene:

- Timely and accurate incident notification
- Comprehensive and accurate mapping and routing
- Access to agency map data through Esri ARC GIS Online
- Shared incident view by all users
- Transfer of command
- Standardized command and control
- Agency specified incident templates and checklists
- Time stamped record of all actions on the emergency scene
- Improved after-action analysis with time-stamped documentation
- Improved accountability.

Whereas, both Parties recognize that a relationship described herein may be mutually beneficial.

Now therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **Services.** During the Term Company will provide the following “**Services**”: Services account activation, including CAD integration and testing, account configuration, mobile device authentication, integration to third party solutions (staffing, pre-planning, etc.) as outlined in the quote(s) provided, initial training and orientation, access to the Tablet Command services and applications for Authorized Users, and ongoing customer support.

2. **Customer Obligations, Representations and Warranties.**

- a. Customer users (“**Authorized Users**”) will be required to agree via a click-through agreement to the terms of the Apple Standard End User License Agreement (“**EULA**”), the content of which is available at <https://www.apple.com/legal/internet-services/itunes/dev/stdeula>. The terms of this Agreement and the EULA are binding on the Customer and each Authorized User. In the event of a conflict between the terms of this Agreement and the EULA, the terms of this Agreement shall control.

- b. In connection with the provision of the Services to Customer, Customer agrees to direct incident data to <https://api.tabletcommand.com>.
- c. Customer will not use the Services, or any of the content obtained from the Services, for any purpose that is unlawful or prohibited by this Agreement.

3. **License Grants and Restrictions.**

- a. **License Right.** Company grants Customer a revocable, non-exclusive, non-transferrable, non-assignable limited right to install and use the Services on a computer or device controlled by an Authorized User (each a “**Device**”), and to access and use the Services on such Device strictly in accordance with the terms and conditions of this Agreement for the purpose of assisting users in managing their human resources and apparatus during an emergency.
- b. **Restrictions.** Customer shall not: (i) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the Services; (ii) make any modification, adaptation, improvement, enhancement, translation or derivative work from the Services; (iii) violate any applicable laws, rules or regulations in connection with your access or use of the Services; or (iv) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Company or its affiliates, partners, suppliers or the licensors of the Services or otherwise obscure or modify the manner in which the material is displayed by means of the Services.
- c. **License to Company.** Customer grants Company an irrevocable, royalty-free, fully paid-up right to view, record and analyze your use of the Services, including but not limited to technical information about the Devices (including Device UUID), computer, physical location, system and application software, and peripherals.
- d. **Restricted Use of the Services.** The Services are not a substitute for sound fire management techniques and practices in emergency situations. Customer agrees not to use, access, sell, resell, or offer for any commercial purposes, any portion of the Services.
- e. **General Practices Regarding Use and Storage.**
 - i. The Company may establish general practices and limits concerning use of the Services. Customer and its Authorized Users will use the Services in compliance with all applicable international, state, federal and local laws and in accordance with the terms of this Agreement. No Authorized User may access or use the Services for any purpose other than that for which the Company makes it available. Without limiting any other remedies, the Company may suspend or terminate any Authorized User account if the Company suspects that an Authorized User has engaged in unlawful or prohibited activity in connection with the Services. The Company acknowledges and understands that certain portions of the Services may require and utilize phone service, data access or text messaging capability.
 - ii. The Company may terminate an Authorized User’s account in its absolute discretion and for any reason. The Company is especially likely to terminate for reasons that include, but are not limited to, the following: (1) violation of this Agreement; (2) use of the Services in a manner inconsistent with the license right set forth above; (3) an Authorized User’s request for such termination; or (4) as required by law, regulation, court or governing agency order. The Company’s termination of any Authorized User’s access to the Services may be affected without notice and, on such termination, the

Company may immediately deactivate or delete such Authorized User's account and/or prohibit any further access to files or data from such account. The Company shall not be liable to the Customer, any Authorized User or any other third party for any termination of an Authorized User's access or account hereunder. In addition, an Authorized User's request for termination will result in deactivation but not necessarily deletion of the account.

- f. The Services and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
4. **Fees.** Company shall provide the Services and the Services in consideration for the fees set forth in the quote(s) provided to and approved by the Customer. Each such quote shall be attached hereto as an Exhibit A. Company will issue periodic invoices and Customer agrees to pay such amounts within thirty (30) days of receipt. Any invoices that remain unpaid more than thirty (30) days past their due date shall incur interest at the rate equal to the lower of 15% per year or the maximum rate allowed by applicable law.
 5. **Term.** The term of this Agreement will begin on the Effective Date and will continue until one year from the Effective Date. This Agreement shall renew automatically for additional one-year terms upon each anniversary of the Effective Date unless either party provides notice for non-renewal at least ninety (90) days prior to the end of the then-current term.
 6. **Confidentiality and Data Security.**
 - a. **"Confidential Information"** means any non-public information that relates to Company or Customer, as applicable, including without limitation, the terms and conditions of this Agreement, technical data, know-how, trade secrets, product plans, markets, services offerings, customer lists and customers, software, research and developments, inventions, processes, formulas, designs, drawings, hardware configurations or finances. Confidential Information does not include information that (i) is known to either Party at the time of disclosure as evidenced by written records, (ii) has become publicly known and made generally available through no wrongful act of the receiving Party or (iii) has been rightfully received by a Party from a third party who is authorized to make such disclosure.
 - b. **Nonuse and Nondisclosure.** Neither Party will during or subsequent to the term of this Agreement, (i) use the Confidential Information for any purpose other than the performance of this Agreement or (ii) disclose Confidential Information to any third party. Confidential Information will remain the sole property of the disclosing Party. Each Party agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of such Confidential Information.
 - c. **Permitted Disclosure.** Notwithstanding the restrictions on use and disclosure of Confidential Information in 6.b, a Party may disclose Confidential Information as necessary to comply with a legal demand or obligation (e.g., subpoena, civil

investigative demand) so long as such Party provides at least five (5) business days prior written notice of such disclosure to the other Party (to the extent legally permitted) and any assistance reasonably requested by the other Party to contest or limit the disclosure. Company acknowledges and understands that the Customer is a public agency subject to the disclosure requirements of the California Public Records Act, Government Code section 7920.000 et seq. (“CPRA”). If the Customer receives a request for information or records that Company may consider Confidential (e.g., proprietary information), the Customer will provide notice to Company pursuant to this section prior to disclosure. If Company contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it may obtain a protective order, injunctive relief or other appropriate remedy from a court of law in the appropriate jurisdiction before the Customer is required to respond to the CPRA request.

- d. **Remedies.** In addition to the procedures for a CPRA request specified in Section 6.c above, if a Party discloses or uses (or threatens to disclose or use) Confidential Information, the Party whose Confidential Information is or may be disclosed or used will have the right, in addition to any other remedies under this Agreement, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that other available legal remedies are inadequate.

7. **Ownership.** The Parties agree that all copyrights, moral rights, notes, records, drawings, designs, inventions, improvements, developments, discoveries, computer programs (e.g. source code, object code, listings), work-in-progress, deliverables, drawings, designs, logos, images, trademarks, and trade secrets conceived, discovered, developed or reduced to practice by Company (collectively, “**Inventions**”), solely or in collaboration with others, are the sole property of Company, except the extent of any Customer Confidential Information.

8. **Indemnity; Disclaimer; Limitations of Liability.**

- a. **Indemnification by Customer.** The Customer shall indemnify, defend and hold harmless the Company, and its affiliates and their respective officers, employees and agents, from any and all claims, demands, damages, costs, and liabilities including reasonable attorneys’ fees, due to or arising out of Customer’s or any Authorized User’s acts or omissions arising out of the use of the Services; or any breach of this Agreement.
- b. **Indemnification by Company.** The Company agrees to indemnify, defend, and hold Customer harmless from and against any and all third-party claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Customer, arising out of a claim that the Services infringe or misappropriate any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right (an “**Infringement Claim**”). In the event that the Company is enjoined from delivering either preliminary or permanently, or continuing to license to Customer, the Services and such injunction is not dissolved within thirty (30) days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the use of the Services, then the Company may, at its expense and option: (a) obtain for Customer the right to continue using the Services; (b) replace or modify the Services so that it does not infringe upon or misappropriate such proprietary right

and is free to be delivered to and used by Customer; or, (c) in the event that the Company is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, the Company shall reimburse to Customer the unused portion of the fees paid for the Services.

- c. **Indemnification Procedures.** Promptly after receipt by Customer of a threat of any Infringement Claim, or a notice of the commencement, or filing of any Infringement Claim against Customer, Customer shall give notice thereof to the Company, provided that failure to give or delay in giving such notice to the Company shall not relieve the Company of any liability it may have to Customer except to the extent that the Company demonstrates that the defense of such action is prejudiced thereby. Customer shall not independently defend or respond to any such claim; provided, however, that Customer shall have the right, at its own expense, to monitor the Company's defense of any such claim. The Company shall have sole control of the defense and of all negotiations for settlement of such action. At the Company's request, Customer shall cooperate with the Company in defending or settling any such action; provided, however, that the Company shall reimburse Customer for all reasonable out-of-pocket costs incurred by Customer (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.
- d. **DISCLAIMER.** EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES AND INDEMNITIES, EXPRESS OR IMPLIED, IN THE PROVISION OF SERVICES HEREUNDER, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. THE CUSTOMER'S AND EACH AUTHORIZED USER'S USE OF THE SERVICES IS AT THEIR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND THE COMPANY ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY OR FAILURE TO STORE ANY USER COMMUNICATIONS OR PERSONALIZATION SETTINGS. THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SPECIFICALLY, THE COMPANY MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS AND (ii) ANY AUTHORIZED USER ACCESS WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. EXCLUDING ONLY DAMAGES ARISING OUT OF THE COMPANY'S WILLFUL MISCONDUCT, THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES RESULTING FROM THE CUSTOMER'S OR ANY AUTHORIZED USER'S USE OR INABILITY TO USE ANY SERVICES OR SERVICES THEREON. SCHEDULED AND PREVENTIVE MAINTENANCE AS WELL AS REQUIRED AND EMERGENCY MAINTENANCE WORK MAY TEMPORARILY INTERRUPT SERVICES OR ACCESS TO THE SERVICES. THE COMPANY IS NOT RESPONSIBLE FOR CUSTOMER'S OR ANY AUTHORIZED USER'S USE OF THE SERVICES OR THE DECISIONS AND INCIDENT MANAGEMENT OF THE CUSTOMER OR ANY OF ITS AUTHORIZED USERS.
- e. **LIMITATION OF LIABILITY.** In no event shall the company's total cumulative liability to the customer, any authorized user or any other party under this agreement, arising out of the use of the Services or otherwise exceed \$50.00. Some jurisdictions do not allow the exclusion of certain warranties or the limitation

or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations may not apply to the Company. The disclaimers of warranty and limitations of liability apply, without limitation, to any damages or injury caused by the failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction or unauthorized access to, alteration of or use of any asset, whether arising out of breach of contract, tortious behavior, negligence or any other course of action by the company. Any claim or cause of action arising out of or related to use of the Services or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

9. **Privacy Compliance.**

- a. **Personal Information Defined.** “**Personal Information**” for purposes of this section means information that the Company processes on Customer’s behalf that identifies, relates to, describes, or is reasonably capable of being associated with or linked to a particular identifiable person or household and includes, without limitation, “personal information” as defined by the California Consumer Privacy Act of 2018, as amended, and as defined by the Personal Information Protection and Electronic Documents Act (Canada). For avoidance of doubt and not limitation, de-identified or aggregated information that is no longer reasonably capable of being associated with or linked to a particular identifiable person or household (“**Anonymized Information**”), will not be deemed Personal Information even if such information was derived from Personal Information. The Company may use and disclose Anonymized Information without limitation or restriction.
- b. **Restrictions on Use.** Unless specifically directed or authorized by Customer, the Company will not (i) sell or share (for cross-context behavioral advertising purposes) Personal Information; (ii) retain, use, or disclose Personal Information for any purpose other than the specific purpose of performing the services contemplated by this Agreement, including retaining, using, or disclosing Personal Information for a commercial purpose other than providing the services contemplated by this Agreement; (iii) retain, use, or disclose Personal Information outside of the direct business relationship between the parties; or (iv) combine the Customer’s Personal Information with Personal Information the Company processes on behalf of third parties or itself to the extent prohibited by applicable privacy and data security laws. Notwithstanding the foregoing, the Company may retain, use, or disclose Personal Information as reasonably necessary to fulfill or demonstrate compliance with its legal obligations.
- c. **Consent for Use.** The Customer will provide all notices and obtain all consents required by applicable laws and regulations for the Company to process Personal Information in connection with the Services and services contemplated by this Agreement including, without limitation, the Company’s transfer to and processing of Personal Information in the United States of America, Canada, and Australia. The Customer and each Authorized User will use the Services in compliance with all applicable laws and regulations.
- d. **Data Security.** The Company will implement reasonable administrative, technical, and physical safeguards to protect Personal Information in its control from unauthorized or unlawful access, disclosure, or use. Without limiting the generality of the foregoing, the Company will (i) encrypt all Personal Information while in transit from/to the Customer or a third party designated by the Customer to/from

the Company via SSL 256 bit AES encryption or equivalent; (ii) store Personal Information on server(s) located in SSAE 16 certified data center(s); and (iii) not disclose Personal Information to third-party subcontractors unless such subcontractors have entered into a written agreement with the Company imposing privacy, data security, and confidentiality obligations on such subcontractors no less stringent than those imposed on the Company in this Agreement. The Customer gives consent to the Company's use of subcontractors to process Personal Information on the Customer's behalf so long as the foregoing criteria are satisfied, and the Customer waives any right it may have under applicable privacy and data security laws to receive notice of the Company's appointment or removal of any subcontractor. The Customer will not knowingly introduce, or negligently permit to be introduced, into the Company's computer systems, databases, hardware, or software, any virus, malware, ransomware, or other contaminants (including, but not limited to, codes, commands, instructions, devices, techniques, bugs, or flaw) that may be used to access, alter, delete, threaten, infect, damage, disable, or inhibit our full use of the Company's computer systems, databases, hardware, or software.

- e. **Cooperation.** The Company will reasonably cooperate with Customer, at the Customer's cost, (i) in response to data subject requests for access, correction, deletion, or to exercise any other right provided by applicable laws and regulations to the use of such data subject's Personal Information and (ii) in response to the Customer's requests for assistance in connection with a data protection impact assessment, risk assessment, or similar analysis required by applicable privacy and data security laws. In the event the Company receives a data subject request relating to Personal Information, the Company will notify such data subject that it is unable to respond to the request without authorization from the Customer and will direct such data subject to contact the Customer directly to make the request.
- f. **User IDs.** The Customer will use best efforts to protect the confidentiality of user IDs, passwords, and other access credentials used by the Customer, or Customer's employees, agents, representatives, and Authorized Users' to access any of the services provided by the Company. The Customer will provide prompt notice to the Company of any actual or suspected compromised user IDs, passwords, or other access credentials.
- g. **Notice of Noncompliance.** The Company will provide notice to the Customer if the Company determines it can no longer process your Personal Information in compliance with this Agreement or applicable privacy and data security laws. The Customer may, at Customer's cost and upon at least thirty (30) days prior written notice to the Company, take reasonable and appropriate steps to mitigate the Company's processing of Personal Information that is not in compliance with this Agreement or applicable privacy and data security laws.
- h. **Audit.** No more than once per twelve-month period, at the Customer's cost, the Customer or its designee may audit the Company's data security and privacy practices related to Personal Information. The Customer will provide at least thirty (30) days' prior written notice of its intent to conduct such audit and will reasonably cooperate with the Company to minimize disruption to the Company's day-to-day business operations as a result of such audit.
- i. **Personal Information Retention.** Upon termination of the Customer's account, the Company will return or destroy, at the Customer's option, the Personal Information the Company processes on the Customer's behalf. Notwithstanding the foregoing, if return of such Personal Information is impractical, the Company

may destroy such Personal Information. Further notwithstanding the foregoing, the Company may retain such Personal Information (i) stored in an archive or backup system until such Personal Information is deleted from such system in the normal course of the Company's business and (ii) as reasonably necessary to fulfill or demonstrate compliance with its legal obligations or to defend or pursue a legal claim.

- j. **Opt-In Data Disclosures.** From time-to-time the Company may make available features or integrations that permit Customer to make certain data, which may include Personal Information, available to other Company customers or to third parties. If Customer opts-in to the use of such features or integrations, Customer authorizes Company to make Customer's data available as explained during the opt-in process. Customer agrees that company will have no liability to Customer related to data disclosed to other Company customers or third parties in connection with such features or integrations. Customer may withdraw its consent at any time by providing written notice to Company at the address for notice listed below, or via an email message sent to support@tabletcommand.com.
 - k. **AVL Data.** The Company is hereby authorized to share Automatic Vehicle Location ("AVL") data with other Company customers. Customer acknowledges and agrees that Company will have no liability to Customer related to AVL data shared with other Company customers. Company acknowledges and agrees that Customer retains the ability to opt out of participation in this AVL data sharing agreement at any time by providing written notice to Company at the address for notice listed below, or via an email message sent to support@tabletcommand.com.
10. **Insurance.** The Company will maintain in force during the term the insurance coverages as set forth on Exhibit B.
11. **Records.** The Company will maintain complete and accurate records in accordance with its then-current policies.
12. **Miscellaneous.**
- a. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of California without regard to California's conflicts of law rules. The Parties agree that the exclusive venue for any dispute arising hereunder shall be the federal or state located in the City and County of San Francisco, California and the parties waive any objection to personal jurisdiction or venue in any forum located in that county.
 - b. **Assignability.** This Agreement may not be assigned by Customer, including by operation of law, without the prior written consent of the Company. The rights and liabilities of the parties hereto shall bind and inure to the benefit of their respective successors, executors and administrators.
 - c. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous written and oral agreements between the Parties regarding the subject matter of this Agreement. Any waiver, modification, or amendment of any provision of this Agreement shall be effective only if in writing and signed by the Parties hereto.

- d. **Publicity.** Each party may issue press releases or otherwise publicly reference the other in advertising and marketing (such as Internet, TV, radio and print) including the use of quotations from key staff, pictures, and videos.
- e. **Attorney's Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.
- f. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. The parties agree that they will accept signature by electronic transmission in portable document format (PDF) in lieu of original signatures and that the Agreement and any amendments hereto or quotes entered pursuant to this Agreement will have the same binding and enforceable effect with electronic PDF signatures as they would have with original signatures.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above. The authorized representatives of the parties have signed this Agreement as of the Effective Date.

Customer	Tablet Command, Inc.
By:	By:
Name:	Name:
Title:	Title:
Address for Notice:	Address for Notice: Tablet Command, Inc. 1212 Broadway Plaza, Ste 2100 Walnut Creek, California 9459

EXHIBIT A
FORM QUOTE

**EXHIBIT B
INSURANCE REQUIREMENTS**

During the term of the Agreement, the Company will maintain in force no less than the insurance coverages set forth as follows:

General Liability

General Aggregate:	\$4,000,000
Each Occurrence:	\$2,000,000
Products/Completed Operations Aggregate:	\$4,000,000
Personal & Advertising Injury:	\$4,000,000
Damage to Rented Premises:	\$250,000
Medical Expenses (Any one person):	\$10,000

Automobile Liability

Hired/Non-Owned:	\$4,000,000
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Errors & Omissions

General Aggregate:	\$4,000,000
Per Claim:	\$2,000,000
Per Occurrence:	\$2,000,000

Cyber Liability

General Aggregate:	\$4,000,000
Each Occurrence:	\$2,000,000

DESCRIPTION	QUANTITY	UNIT PRICE	DISCOUNT	AMOUNT
CAD Interface License (2-Way)	1	\$8,000.00 / year		\$8,000.00 / year for 1 year
Agency License (2-Way)	1	\$2,750.00 / year		\$2,750.00 / year
TC Mobile Users 51-1000 (Phone)	1	\$3,750.00 / year		\$3,750.00 / year for 1 year
SUMMARY				
Annual subtotal				\$14,500.00
One-time subtotal				\$15,500.00

	Total	\$30,000.00
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Comments

Purchase terms

Net 30

RE: Tablet Command Sole Source Status

February 20, 2024

To Whom It May Concern:

Tablet Command, Inc. is the sole source provider for all Tablet Command software and services.

We are the sole provider in the market space providing an iOS application used as a notification, incident command, resource management, and accountability solution that integrates through a direct interface with customer computer-aided dispatch (CAD) systems.

Our product is unique in the following additional ways:

- Simple, intuitive drag-and-drop user interface
- Supports iOS and Android
- Integrates with customized Esri ArcGIS Online Web Maps
- Integrates with multiple vehicle location (AVL) sources
- Integrates with multiple staffing solutions
- Able to view interagency shared AVL across jurisdictional boundaries
- Incident management functions in a disconnected state
- Viewing incident management changes in real-time with Real Time Sync (RTS)
- Ability to integrate with FireMapper
- Supports In-App Audio Streams

Tablet Command is sold only as a direct transaction between Tablet Command, Inc. and its customers.

Sincerely,



William Pigeon
CEO



12975 Worldgate Drive, Suite 7322
Herndon, Virginia 20170

February 11, 2025

Mr. Mark Buttron, Fire Chief
Grass Valley Fire Department
125 E Main Street
Grass Valley, CA 95945

CR-199660

Reference: CAL FIRE Nevada-Yuba-Placer Unit (NEU) Implementation and Maintenance for Two-way Interface to Tablet Command

Cheif Buttron,

Peraton Inc. ("Peraton") is pleased to provide a revised Firm Fixed Price (FFP) quote for the implementation of a two-way interface from the CAL FIRE Nevada-Yuba-Placer Unit (NEU) Altaris™ CAD to Tablet Command.

Only the Tablet Command two-way capabilities included in the CAL FIRE Tablet Command Altaris™ Interface Development project will be implemented. No additional capabilities or changes will be included. Please refer to Exhibit A Statement of Work for details of implementation.

This quote below includes the price for implementation, software license fee and two years of maintenance for the Tablet Command two-way interface.

The Price and Payment for this Tablet Command interface implementation are as follows:

Price

Total Price for Tablet Command implementation of the two-way interface is **\$22,246.00**.

Payments

At Issuance of Purchase Order

License Fee (100%)	\$ 5,250.00
Interface Implementation (50%)	<u>\$ 7,421.50</u>
Total Due	\$12,671.50

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Go Live & Acceptance	
Interface Implementation (50%)	\$ 7,421.50
Year 1 Maintenance (100%)	<u>\$ 1,050.00</u>
Total Due	\$ 8,471.50
Year Two Maintenance	\$1,103.00

Customer may elect to pay Year 2 maintenance in advance at Go-Live and Acceptance or prior to the start of Year 2 maintenance

Actual start date will be determined based on availability of Peraton resources at receipt of purchase order.

Estimated Period of Performance:

Implementation: February 1, 2025 to March 31, 2025

Year 1: April 1, 2025 to March 31, 2026

Year 2: April 1, 2026 to March 31, 2027

Payment shall be made by the Customer within 30 days of the receipt of an invoice from Peraton.

Terms and Conditions

The attached Peraton FRS General Provisions apply to this quote and any purchase orders issued unless noted otherwise herein. Purchase orders must reference CR-199660 and the FRS General Provisions.

We sincerely appreciate the opportunity to respond to the needs of your agency. If you need any additional information, please call me at the number below or Teresa Richardson at (813) 220-9348.

Sincerely,

[Sent Via E-Mail – Cynthia Williams](#)

Cynthia Williams
Contract Administrator

CC: Teresa Richardson
Marin Browning
Brittain Silver

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Upon acceptance of this proposal and the FRS General Provisions, Grass Valley Fire Department will issue a purchase order and execute this proposal.

Peraton Inc.:

Cynthia Williams
Signature of Authorized Representative

Cynthia Williams
Name

Contract Administrator
Title

2/11/2024
Date

Grass Valley Fire Department:

Signature of Authorized Representative

Name

Title

Date

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Exhibit A – Statement of Work

Peraton will implement the Tablet Command Altaris™ CAD interface that has been implemented at other CAL FIRE ECC's. This interface will provide two-way interfaces to transfer event data, resource data, and AVL data from the Altaris™ CAD to Tablet Command in support of Tablet Command's incident management features.

The provided Services consist of the following:

1. Conduct a remote project kick-off meeting to review the project schedule, dependencies, planned activities, and CAL FIRE NEU responsibilities throughout the project.
2. Remotely deploy the interface into the CAL FIRE NEU Altaris™ CAD environment and conduct CAL FIRE NEU environment testing to ensure that information is transferred properly to the Tablet Command System.
3. The following items will be included in the interface:
 - a. Posting a cad-status message on interface first launch.
 - b. Posting incidents to Tablet Command on entry, main status change, included information change, and closure.
 - c. Posting comments to incidents when added to the incident in CAD.
 - d. Posting of prior incidents at the event location from the location history – Maximum of 10 per Tablet Command's recommendation.
 - e. Posting status changes for units on incidents from dispatch to clear.
 - i. Altaris™ CAD will include Personnel data at the time of dispatch.
 - f. Posting status changes for all resources active in CAD and not assigned to incidents.
 - g. When it changes, CAD will send its best known location data to Tablet Command even if there is no active incident. This will be the resource's AVL position when valid and current, or the last known location when AVL data is invalid, old, or not present.
 - h. Posting a heartbeat in order indicate to Tablet Command when CAD is operational.
 - i. Filtering the data feed from CAD to Tablet Command via CAD administrator data setup by type and agency, primarily to prevent ROS/Irwin/IROC incidents and resources from being included.

Customer Responsibilities

NEU will be responsible for the following prior to the start of the project (except as otherwise noted):

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1. Provide a dedicated project manager/single point-of-contact to work with and coordinate all interface activities and communication with the Peraton project manager, including (but not limited to) requesting and coordinating with Tablet Command, CAL FIRE (including IT, enterprise architecture and fire protection) and any other department and 3rd-party vendors.
2. Provide all network configuration changes and any other interface setup items identified in the project kick-off meeting in advance of any interface installation, configuration, and testing work by Peraton.
3. Ensure qualified CAL FIRE NEU personnel are available for interface testing, acceptance criteria review, final acceptance testing. Ensure proper technical and dispatch staff are available throughout the project to assist Peraton staff when needed.
4. No training from Peraton is included in this project. Customer will contract directly with Tablet Command for any Tablet Command related products and services.

Failure to satisfy the requirements as identified above per the mutually agreed to schedule will entitle Peraton to request equitable adjustment if cost or schedule impacts are incurred as a result.

Project Completion Acceptance Criteria

Acceptance of the Tablet Command interface shall occur once SOW service items 1 through 3 above have been delivered to the CAL FIRE NEU Emergency Communications Center with the Tablet Command interface installed on the live CAD system. Acceptance will not be dependent upon the operational readiness of the remote Tablet Command system, therefore any SOW items that cannot be completed due to lack of availability of the remote Tablet Command system shall not hold up interface acceptance once Peraton has completed the interface integration.

Assumptions

- No hardware or third-party software, hardware or training is included.
- All work including installation, integration and testing will be performed remotely.
- Remote access to the necessary CAL FIRE NEU environments is available through the existing CAL FIRE domain VPN access.
- Peraton is not procuring or managing any Tablet Command or third-party licenses or installations in support of this effort.
- Maintenance is limited to issues with the transfer of information from the Altaris™ System and does not include any support for the Tablet Command-provided equipment, applications, or products.

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Maintenance

Maintenance will begin at project acceptance. Customer will report any Altaris™ CAD issues directly to Peraton by calling 800-421-7773 or by email FRS-Support@peraton.com. Customer will report all Tablet Command issues directly to Tablet Command.

Peraton will provide break-fix maintenance services related to the Altaris™ CAD system. If during issue investigation Peraton determines the issue is Tablet Command and not with the CAD system, Peraton will advise the customer to contact Tablet Command directly.

Third party interfaces, including Tablet Command, are considered a Priority Three which are defined as a minor problem that does not prevent the users from performing their job. Peraton will provide a response time within one business day for Priority Three issues.

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FIRST RESPONDER SOLUTIONS ("FRS") GENERAL PROVISIONS

Article 1: Definitions

The following terms shall have the meanings set forth below:

- (a) "Agreement" means the instrument of contracting, such as "Purchase Order," "PO," "Subcontract," or other such type designation, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master or other overarching agreement that provides for releases (in the form of a Task Order or other such document) the term "Agreement" shall also mean the release document for Work to be performed.
- (b) "Peraton" means the entity identified on the face of the Agreement.
- (c) "Peraton Contract Administrator" means a person authorized by Peraton to administer and/or execute the Agreement.
- (d) "Customer" means the party that receives and accepts a proposal from Peraton.
- (e) "Work" means all required labor, articles, materials, supplies, goods, and services required to be performed this Agreement.

Article 2: Term of Agreement

The term of this Agreement shall begin upon receipt of Customer's written acceptance of Peraton's Quote and shall continue through the completion of the Work and any maintenance period unless terminated sooner or extended as hereinafter provided.

Article 3: Acceptance of Agreement/Terms and Conditions

- (a) This Agreement entered into between Peraton and Customer integrates, merges, and supersedes all prior or contemporaneous understandings, agreements, negotiations, or representations, oral or otherwise concerning the subject matter hereof and constitutes the entire agreement between the Parties. No supplement, modification or amendment of the Agreement will be binding unless in writing which states that it is a modification of the Agreement, and which is signed by an authorized representative of each Party who is authorized to amend the Agreement.
- (b) Peraton will not commence services or incur any related expenses unless it has received an executed Agreement or other authorization from Customer expressly authorizing the Work.
- (c) The Parties agree that if this Agreement is transmitted electronically neither party shall contest the validity of this Agreement, or any acknowledgement thereof, on the basis that this Agreement or acknowledgement contains an electronic signature.
- (e) The headings and subheadings used in this Agreement are inserted for the convenience of the Parties and ease of reference. The headings and subheadings shall not define, limit, or describe the scope or the intent of the provisions of this Agreement.

Article 4: Order of Precedence

Any inconsistencies in this Agreement shall be resolved in accordance with the following descending order of precedence:

- (1) The terms and conditions set forth in this document.
- (2) The Statement of Work and other specifications incorporated into the Agreement.

Article 5: Payments, Taxes, and Duties

(a) *Payment Terms.* Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) Customer’s receipt of the Peraton’s proper invoice; (2) scheduled completion of performance date of the Work; or (3) actual completion of performance of the Work. Payment shall be deemed to have been made as of the date of mailing Customer’s payment or electronic funds transfer.

(b) *Taxes.* Unless otherwise specified, Customer is responsible for any applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government.

(c) *Hardware and Third-Party Software and Services.* 100% of the purchase price for the hardware shall be paid upon delivery to the Customer’s site. Partial deliveries, invoicing, and payment based online item pricing provide by Peraton shall be permitted.

(d) Peraton license fees shall be paid upon acceptance of Peraton quotation or issuance of Purchase Order.

(e) For late payments

Article 6: Changes

Customer may request changes to the scope of work, services and/or equipment to be performed or provided by Peraton hereunder. All such changes (which are mutually agreed upon by and between all the parties) shall be incorporated in written amendments to this Agreement. All such amendments shall state any increase or decrease in the amount of the compensation due Peraton for the change in scope and/or schedule, if any. Peraton shall have no obligation to proceed with any change until such time as Peraton and the Customer have agreed upon the impact on price and schedule and have executed a bilateral written amendment memorializing the change and the price and schedule impacts.

Any delays caused by Customer, including but not limited to any failure to a) timely approve documents as provided herein, b) comply with responsibilities set forth in the implementation plan, c) provide access to facilities or information required by Peraton to perform the Work, or Failure or d) delay in providing Customer furnished equipment

shall be regarded as constructive changes and shall entitle PERATON to an equitable adjustment in price and schedule from the Customer. Should PERATON and Customer be unable to agree on the price impact to PERATON of such delay, such price shall be computed using PERATON’s then current time and materials rates.

Article 7: Assignment/Change of Control

The rights and obligations hereunder, may not be transferred or assigned by one Party without the prior written approval of the other Party hereto. The foregoing shall not apply to assignment to a successor corporation as a result of a merger or a sale of all or substantially all of the assets or stock of that party, provided such merger or sale is not with or to a competitor of any to this Agreement.

Article 8: Acceptance

Unless otherwise specified, the Work subject to this Agreement shall be accepted upon completion of the Work set forth, or upon commencement of beneficial use by Customer whichever occurs first.

Article 9: Packaging and Shipping

(a) Delivery shall be to the location agreed upon by Peraton and the Customer. Unless otherwise specified, Peraton shall deliver all applicable deliverables and hardware in Customer-furnished containers using best commercial practices to the specified Customer's facility (or other facility as may be directed) in accordance with this Agreement.

(b) A complete packing list shall be enclosed with all shipments. Peraton shall mark containers or packages with necessary lifting, loading, and shipping information, including the Peraton Agreement number, item number(s), dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Agreement number. Peraton shall not insure any shipments nor declare any value on any shipments.

Article 10: New Materials

(a) *Definitions.* "Material," as used in this clause, includes, but is not limited to raw material, parts, items, components and end goods. "New," as used in this clause, means previously unused or composed of previously unused materials allowing for typical in-factory or site use including, but not limited to integration, installation, assembly, test, burn-in, training, troubleshooting, and rework as required. In addition, New Material is not reconditioned, remanufactured, or of such age or so deteriorated as to impair its usefulness or safety.

(b) Unless Customer specifies in writing otherwise, Peraton shall deliver New Material under this Agreement that is fully warranted and does not contain any counterfeit material.

Article 11: Entry on Customer's Facility

Peraton's personnel, including Peraton's subcontractors, shall comply with Customer's applicable security, safety, rules of conduct, badging and related requirements. Prior to entry on Customer's premises, Peraton shall coordinate with Customer for access. Peraton shall provide information reasonably required by Customer to ensure proper identification of personnel, including but not limited to verification of citizenship, lawful permanent resident status, protected individual or other status.

Article 12: Commercial Software Licenses

(a) *Acknowledgment of Ownership.* Peraton owns all right, title and interest to the Peraton Software and related documentation (the "Peraton Software"), including all custom modifications, derivative works and all technical and functional designs relating thereto. None of the services hereunder shall be considered "work for hire" within the meaning of Federal copyright law (17 U.S.C. Section 101 et seq). Customer shall not disassemble, decompile or reverse engineer the Peraton Software and any information obtained in violation of this provision shall be deemed confidential information owned exclusively by Peraton.

(b) *Operating License.* Subsequent to Acceptance and payment of all amounts due to Peraton by Customer, Customer shall upon Acceptance be granted a paid-up, perpetual, non-exclusive, not transferable operating license in object code form to install, store, load, execute and display (collectively, "Use") the Peraton Software on the Equipment located at the Customer's Operations Center in support of Customer's local area emergency dispatch service. Customer may make one (1) archival copy for back-up purposes. Peraton reserves all rights not expressly granted. This license is for Customer's internal use on the configuration of Equipment specified in the contract under which the software was installed by Peraton. Use by or for the benefit of any third party or on any other configuration of equipment (including upgrades to Equipment or

components thereof, such as upgrading to a higher performance processor) shall require written authorization and payment of additional license fees. This license is for operations use only and does not authorize Customer to make any alterations, adaptations, translations or derivative works. Customer shall execute any standard licensing agreement(s) necessary for any third-party software subject to the above Peraton Quote.

(c) Confidentiality. Customer shall not allow any person, company, governmental agency, consulting firm or any other entity to have access to the software provided hereunder, other than employees of Customer who have a need to have access to such software in order for Customer to utilize such software for the purposes set forth herein. Should Customer allow such access without the express written consent of Peraton then Peraton may terminate Customer’s license granted under this Agreement. Disclosure of such proprietary information will cause irreparable injury for which monetary damages will not be a sufficient remedy. Accordingly, in addition to other remedies available at law or in equity, Peraton shall be entitled to temporary or permanent injunctive relief, without the necessity of proving actual damages, to enforce the provisions of this Agreement.

Article 13: Call Priority Definitions:

Peraton has the sole discretion to determine the call priority level of any problem or defect consistent with the priority descriptions set forth in this Article 13. Peraton shall prioritize the problem reported based on the information reported by the Customer and a determination of the severity of the problem, consistent with the framework set forth below.

Priority	Definition
1 – Critical	<ul style="list-style-type: none"> • Major functions non-operational. • Prevents or adversely affects the accomplishment of an essential Production capability or critical requirement with no known acceptable (practical, realistic, sensible) workaround solution.
2 – High	<ul style="list-style-type: none"> • Adversely affects the accomplishment of an essential Production capability with a known acceptable (practical, realistic, sensible) workaround solution. • Adversely affects the accomplishment of a non-essential Production capability with no known acceptable (practical, realistic, sensible) workaround solution. • System wide Outage/performance <ul style="list-style-type: none"> ○ Software anomaly requires a CAD client restart.
3 – Medium	<ul style="list-style-type: none"> • Adversely affects the accomplishment of a non-essential Production capability with a known acceptable (practical, realistic, sensible) workaround solution. • Results in user/operator inconvenience without affecting an essential Production capability.
4 – Low	<ul style="list-style-type: none"> • Minor Issue which does not adversely affect the accomplishment of any Production capability. • Documentation. • Request for Information. • Any other issues.

Article 14: Response and Resolution Time for Call Priorities

Peraton shall provide reasonable problem resolution or other technical support through a toll-free telephone support line to the Customer Support Group staffed with technical personnel from 5:30 a.m. through 5:30 p.m. (Pacific Time), Monday through Friday, excluding Peraton holidays; 800.421.7773. The Customer Support Group can also be contacted by email at FRS-Support@ngc.com.

In addition to the normal Customer Support Group hours, the Customer can report emergencies twenty-four hours a day, seven days a week to 800.421.7773. Once reported, problems are logged into Peraton's problem tracking system and the Customer is given a tracking number.

Priority 1 - Critical

Response time of 60 minutes; worked continuously until resolved (Defects and non-Defects). Prevents or adversely affects the accomplishment of an essential Production capability or critical requirement with no known acceptable (practical, realistic, sensible) workaround solution.

Priority 2 - High

Response time of 4 hours.

Adversely affects the accomplishment of an essential Production capability with a known acceptable (practical, realistic, sensible) workaround solution.

Priority 3 - Medium

One business day response, no guaranteed resolution (Defects only).

Adversely affects the accomplishment of a nonessential Production capability with a known acceptable (practical, realistic, sensible) workaround solution.

Priority 4 - Low

Five business days response, no guaranteed resolution (Defects only).

Minor Issue which does not adversely affect the accomplishment of any Production capability.

Peraton reserves all rights to update and provide corrected documentation. Peraton is under no obligation to correct all software defects.

Article 15: Data Security and Privacy

(a) If granted access to Customer's network, Peraton's personnel, including Peraton's subcontractors, shall comply with applicable Customer policies regarding network access. Prior to receiving any such access, Peraton, and any applicable subcontractors, shall be required to sign and abide by Customer's acceptable use policy. Peraton's employees will identify themselves as employees of Peraton. Under no circumstances will Peraton's employees represent themselves as employees of Customer and under no circumstances will Peraton represent that its personnel are employees of Customer.

(b) Peraton will implement and maintain privacy and security measures and data protection processes and systems sufficient to adequately protect Customer-provided information, data, services, and products consistent with best industry practices and in accordance with the terms of this Agreement.

(c) Peraton shall only collect, store, transfer, share, view, access or otherwise process data and access Customer information systems to the extent and manner necessary to provide the services, software, or products, in accordance with this Agreement. Any access to or use of Customer's information systems or processing of Customer's data by or on behalf of Peraton for any other purpose shall be deemed a breach of this Agreement by Peraton. Peraton shall not sell, rent, transfer, distribute, disclose, copy, alter, or remove Customer data, information system, or product unless authorized in writing by Customer. Peraton shall ensure all processing of data and provisioning of services and products complies with all applicable laws and regulations. If Peraton cannot process the data or provide services or products in accordance with such applicable laws and this Agreement, then Peraton shall immediately notify Customer in writing.

(d) Peraton will implement and maintain a comprehensive information security program with information security industry standard safeguards, such as ISO 27001/27002, in place to define roles and responsibilities, protect Customer data against a security breach, and to provide services or products which comply with the contractual obligations set out in this Agreement.

(e) As used in this Section, "Compromise" means that any information provided by Customer has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform this Agreement. If Peraton becomes aware of any Compromise of information provided by Customer to Peraton, its officers, employees, agents, suppliers, or subcontractors, including but not limited to a security breach, inquiry, product security vulnerability, or non-compliance (an

“Incident”), Peraton will take appropriate immediate actions to investigate and contain the Incident and any associated risks, and promptly notify the Customer. Notification shall be made to the Peraton Cybersecurity via (a) email at Cybersecurity cybersecurity@peraton.com and (b) telephonically to 1-855-675-2265. Peraton shall use commercially reasonable efforts to provide Customer with notification within 12 hours after Peraton becomes aware of a security breach.

(f) Customer shall cooperate with Peraton in any investigation it may conduct regarding the nature and scope of any Incident.

(g) All data transmitted by Peraton over any unsecure network or wirelessly (including but not limited to email, instant messaging and web traffic), stored on portable devices, removable media and in transit between Customer’s facilities must be encrypted. All Peraton data stored on Information Systems must be encrypted at rest.

(h) Customer shall maintain a disaster recovery plan for restoring its current and offsite data files processed pursuant to this Agreement. Supplier will be responsible for weekly backups and preservation of any data processed on behalf of Peraton. All backup copies of data shall be treated as confidential.

Article 16: Independent Contractor Relationship

Peraton’s relationship to Customer shall be that of an independent contractor and this Agreement does not create an agency, partnership, or joint venture relationship between Peraton and Customer or Peraton and Customer personnel. Personnel supplied by Peraton hereunder shall be deemed employees of Peraton and shall not for any purposes be considered employees or agents of Customer. Peraton assumes full responsibility for the actions and supervision of such personnel while performing services under this Agreement.

Article 17: Release of Information

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Agreement or the subject matter hereof, will be made by Customer without the prior written approval of Peraton. Customer shall not use any trademark or logo owned by Peraton, in whatever shape or form, without the prior written consent of Peraton.

Article 18: International Trade Compliance

(a) Both Parties agree to comply and will ensure that all personnel performing under this Agreement comply with all applicable U.S. export, import, re-export control, and trade-related laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations (EAR), 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable; as well as the Foreign Trade Regulations (FTR) and the Office of Foreign Assets Control (OFAC) regulations. Peraton will advise Customer of the export control classification/jurisdiction concerning any commodities, software or technology that they provide. Peraton warrants that: (i) if necessary and upon Customer’s request, it will provide Customer with technical specifications concerning commodities, software, technology or services covered by this Agreement sufficient for Customer to determine the appropriate export and import classification of such items under applicable regulations.

Customer is responsible for obtaining their own export authorizations (license, exemption, exception), unless notified otherwise by Peraton. Customer agrees to comply with all export authorization restrictions/provisos and not to exceed the scope of the authorization.

(a) Peraton agrees to notify Customer if any deliverable under this Agreement is restricted by export control laws or regulations, including without limitation the involvement of any denied or debarred parties under OFAC, licensing requirements under the ITAR or EAR, and technology export controls.

(b) Customer will not export, re-export or permit the re-export of any items or related technology in violation of any such law or regulation with regard to an ultimate destination of a restricted and/or embargoed country listed by the U.S. Department of State, Department of Commerce or the Department of Treasury and/or individuals on the Directorate of Defense Trade Controls' Debarred List and Nonproliferation Sanctions list; Bureau of Industry and Security's Denied Persons List, Entity List and Unverified List; and the Office of Foreign Assets Control's Specially Designated Nationals List or any other U.S. government list.

(c) All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Agreement shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of United States Standard weights and measures.

Article 19: Applicable Law and Disputes

(a) Any disputes under this Agreement that are not disposed of by mutual agreement of the Parties may be decided by recourse as an action at law or equity.

(b) This Agreement and any matter arising out of or related to this Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Virginia, excluding its choice of law statutes. The Parties specifically disclaim application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

(c) Jurisdiction and venue for any suit between the Parties arising out of or connected with this Agreement, or the goods and services furnished hereunder, shall be in the US District Court for the Eastern District of Virginia or, if no federal jurisdiction, the state courts of Fairfax County, Virginia.

(d) Customer consents to personal jurisdiction in the Commonwealth of Virginia and any litigation under this Agreement, if commenced by Customer, must be brought exclusively in a Court of competent jurisdiction in Fairfax County, Virginia, without regard to conflicts of law principles. THE PARTIES HEREBY MUTUALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY. The rights and remedies herein reserved to Peraton shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

Article 20: Compliance with Laws

In addition, Peraton, in the performance of this Agreement, agrees to the following:

(a) *Performance*: To perform its obligations in compliance with and in support of all applicable local, state, and federal laws, orders, rules, regulations, declarations, and ordinances including, but not limited to, its obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity, including ensuring nondiscrimination on the basis of age, sex, race, color, religion, disability, national origin, genetic information or veteran status; affirmative action, including developing a written affirmative action program if it meets regulatory size and contract value thresholds defined at 41 CFR 60-2; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.

(1) In the event the performance of this Agreement requires licenses, permits, or prior approval from any government body, Customer shall procure all licenses or permits, and pay all fees, and other required charges, and shall comply with of all applicable guidelines and directives of any local, state, and/or federal governmental authority. Customer warrants that in all countries in which it does business, its operations and shipments comply with all applicable laws and regulations regarding security.

Customer further represents that it will cooperate with Peraton in taking any actions that Peraton reasonably believes are necessary to comply with the regulatory obligations impacting this Agreement.

(2) If: (i) Peraton's contract price, cost or fee is reduced; (ii) any fines, penalties, or interest are assessed on Peraton; or (iii) Peraton incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Customer, its officers, employees, agents, suppliers, or subcontractors at any tier, Peraton may proceed as provided for in (4) below.

(3) Upon the occurrence of any of the circumstances identified in paragraph (2) above, Peraton may request an equitable adjustment (in whole or in part) in the price, cost or fee of this Agreement or any other contract with Customer, and/or may demand payment (in whole or in part) of the corresponding amounts. Customer shall promptly pay amounts so demanded. Such sums shall not be considered allowable costs under any provision of this Agreement. In the case of withholding(s), Peraton may withhold the same amount from Customer under this Agreement.

(b) *Anti-Corruption*: Customer shall comply with applicable laws and regulations relating to anti-corruption, including, without limitation, (i) the United States Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§78dd-1, et. seq.) irrespective of the place of performance, (ii) the U.K. Bribery Act and other analogous anti-corruption legislation in other jurisdictions in which Supplier conducts business or which otherwise apply to Supplier, and (iii) the laws and regulations implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.N. Convention Against Corruption, and the Inter-American Convention Against Corruption in Supplier's country or any country where performance of this Agreement will occur.

In carrying out its responsibilities under this Agreement –

- (1) Customer represents that it has not paid, offered, promised to pay or authorized and will not pay, offer, promise to pay, or authorize the payment directly or indirectly of any monies or anything of value to (i) any person or firm employed by or acting for on behalf of any customer, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office for the purpose of influencing any act or decision or inducing or rewarding any action by the customer in any commercial transaction or in any governmental matter or securing any improper advantage to assist Peraton or Customer in obtaining or retaining business or directing business to any person.
- (2) No owner, partner, officer, director or employee of Customer or of any parent or subsidiary company of Customer is or will become an official or employee of the government or of an agency or instrumentality of a government or a candidate for political office or a political party official during the term of this Agreement, unless such person obtains the prior written approval of Peraton.
- (3) Customer has not made and will not make, either directly or indirectly, any improper payments.
- (4) Customer has not made and will not make any facilitating payment (as that term is defined in the FCPA) without the prior written approval of Peraton.

Article 21: Termination

(a) *Termination for Cause*. If Peraton should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of, a substantial violation of any provision of this Agreement, Customer shall give Peraton ninety (90) calendar days written notice. Upon receipt of such termination notice, Peraton shall be allowed ninety (90) calendar days to cure such deficiencies.

(b) *Termination for Convenience.* The work may be terminated, in whole or in part, by both Parties at its sole discretion upon written notice, whenever, for any reason, Parties shall determine that such termination is in its best interests. Such notice to be effective must be in writing and tendered to either Party at least ninety (90) days prior to the effective date of termination specified therein, during which period Peraton will endeavor to mitigate and minimize costs relating to and/or rising from the termination. Upon receipt of such written notice of termination, Peraton shall within ninety (90) days after the date of termination, submit an invoice for all work performed prior to the effective date of termination and all costs incurred by Peraton (plus a reasonable profit) relating to and/or arising from the work or its termination. Such costs shall include but not limited to: prepaid travel and or travel change charges, restocking fees and termination and settlement of subcontract and subcontract claims and personnel costs relating to employees assigned to the terminated work who are awaiting reassignment for a period not to exceed thirty dates from the effective date of termination. Customer shall pay such invoice within thirty (30) days of receipt.

Article 22: Intellectual Property

Peraton warrants that the Work performed or delivered under this Agreement will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Peraton agrees to defend, indemnify, and hold harmless Customer and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Agreement infringes or otherwise violates the intellectual property rights of any person or entity.

Article 23: Warranties: Remedies

(a) *Warranties.* Unless specified to the contrary in the Scope of Work, for a period commencing on the date of successful completion of the Work, or acceptance by beneficial use, whichever occurs first, and thirty (30) days thereafter, PERATON warrants that (i) the software provided by it under this Agreement shall perform in accordance with the Quote; and (ii) the services performed by it under this Agreement shall be performed in accordance with the ordinary skill and care which would be reasonably executed by those who are knowledgeable, trained and experienced in rendering the services required at the time such services are performed. The warranty and maintenance for equipment shall be in accordance with the provisions received from the supplier. No such performance warranties are applicable to Time and Materials quotes.

THESE WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING OUT OF COURSE OF DEALING, OR CUSTOM OR USAGE OF TRADE.

THIS WARRANTY DOES NOT APPLY IF THE HARDWARE AND/OR SOFTWARE DELIVERED HEREUNDER (A) HAS BEEN ALTERED OR MODIFIED, EXCEPT BY SELLER; (B) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS PROVIDED BY SELLER; (C) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (D) IS USED IN ULTRA-HAZARDOUS ACTIVITIES.

(b) *Remedies.* (1) If, during the warranty period specified in Section a., above, Customer (a) discovers that the equipment provided by PERATON under this Agreement is not in accordance with the express warranty set forth in Section a., and (b) notifies PERATON in writing, of such, then PERATON shall, without charge to Customer and on behalf of Customer, be responsible for the enforcement of, or will perform without charge, the applicable obligations which the supplier of such equipment may have with respect to repairing or replacing such equipment to the extent necessary to correct such defects.

(2) If, during the warranty period specified in Section a., above, Customer (a) discovers reproducible defects in the software provided by PERATON under this Agreement, such that the software will not perform in accordance with the express warranty set forth in Section a., and (b) notifies PERATON, in writing, of such defects, then PERATON shall, without charge to Customer, correct such defects.

(3) If, during the warranty period specified in Section a., Customer (a) discovers that the services performed by PERATON under this Agreement had not been performed in accordance with the express warranty set forth in Section (a)., and (b) notifies PERATON in writing of such faulty services, then PERATON shall, without charge to Customer, re-perform such services to the extent necessary to correct the fault therein.

(4) Every claim that PERATON's goods or services are faulty shall be deemed waived unless such claim is made in writing during the warranty period specified in a. above.

(5) THE REMEDIES SET FORTH IN THIS SECTION B. ARE IN LIEU OF AND EXCLUDE ALL OTHER REMEDIES AVAILABLE TO THE CUSTOMER RELATING TO WARRANTIES FOR PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

Article 24: Limitation of Liability and Indemnification

(a) LIMITATION OF LIABILITY: EXCEPT WITH RESPECT TO EACH PARTY'S OBLIGATIONS OF INDEMNIFICATION, INTELLECTUAL PROPERTY INFRINGEMENT AND NON-DISCLOSURE OF PROPRIETARY INFORMATION HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS) ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR IN FURTHERANCE OF THE PROVISIONS OR OBJECTIVES OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, STRICT LIABILITY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PERATON'S CUMULATIVE LIABILITY TO SUPPLIER WITH RESPECT TO ANY CLAIMS, DEMANDS, SUITS OR PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THEORY OF LAW, SHALL NOT EXCEED THE TOTAL VALUE OF THE ORDER, OR ORDERS THAT GIVE RISE TO THE CLAIM OR DEMAND.

(b) Indemnification. Subject to the terms of this Article, each Party hereto (in such capacity, the "Indemnitor") shall indemnify, defend and hold harmless the other Party (in such capacity, the "Indemnitee") from and against any and all claims, demands, suits, judgments, settlements, damages or other losses (including reasonable attorneys' fees and costs of suit) incurred by the Indemnitee (i) as a result of damage to property or injury to person (including death) arising from the negligence or willful misconduct of the Indemnitor, its employees, representatives or agents in the performance of this Agreement; (ii) in connection with a third party claim against the Indemnitee arising as a consequence of the breach by the Indemnitor, its employees, representatives or agents, of any representation warranty or covenant given by the Indemnitor under this Agreement; and (iii) for a violation of applicable laws, regulations or government order. The Indemnitor's obligation to indemnify the Indemnitee hereunder is conditioned on the Indemnitee: (1) giving the Indemnitor prompt written notice of any claim for which indemnification will be sought, (2) allowing the Indemnitor to assume exclusively the control of the defense and settlement of such claim (it being understood that the Indemnitee shall have the right, at its sole cost, to participate in but not control the defense of such claim, with counsel of its own choosing), and (3) cooperating reasonably with the Indemnitor in the defense and settlement of a claim assumed by the Indemnitor hereunder, at the Indemnitor's cost.

Article 25: Nondisclosure of Proprietary Information

(a) *Definitions.* For purposes of this clause, "Proprietary Information" means confidential, proprietary or non-public information or materials owned or controlled by a Party, including by way of example and not limitation, inventions (whether or not patentable or reduced to practice), trade secrets, techniques, processes, procedures, test criteria, concepts and designs (including without limitation sketches, drawings

and models), know-how, algorithms and models, computer software (whether in source or object code form) and documentation related thereto, research, experimental and development work and results therefrom, design details and specifications, technical data, customer information, and business or financial information, including without limitation information related to future business plans, customer solicitations, and initiatives, sources of material and supply and other sensitive business information. Subject to the conditions set forth in the immediately following paragraph, Proprietary Information of a Party (in such capacity, the “Discloser”) disclosed or made available to or otherwise accessed by the other Party (the “Recipient”) pursuant to the discussions contemplated hereunder shall be considered “Proprietary Information” and subject to the terms and conditions of this Agreement regardless of how disclosed or by what medium or means, including without limitation disclosures effected in writing, by delivery of items, by initiation of access, including, by way of example, in an electronic data repository, or by oral and/or visual presentation.

In order to be deemed Proprietary Information under this Agreement, information or materials comprising or containing a Discloser’s Proprietary Information must be conspicuously marked with the Discloser’s restrictive legend at the time of disclosure, provided that nothing in the foregoing shall be deemed to render such information or materials non-proprietary if disclosed in non-written form, where the Discloser identifies to the Recipient that such information or material is proprietary at the time of initial disclosure, and, within 14 days thereafter, the Discloser provides the Recipient with written confirmation of the Proprietary Information so disclosed.

Notwithstanding the above, Proprietary Information shall not include any information, data, or materials that:

- (1) are received by or made available to Recipient without restriction from another source, where such source has not breached any duty of confidentiality to Discloser; or
- (2) are or become generally available to the public other than by Recipient’s breach of this Agreement; or
- (3) were already known to the Recipient prior to disclosure of the Proprietary Information without obligation of confidentiality, as can be substantiated by written documentation; or
- (4) are independently developed by the Recipient without use of, or access or reference to Discloser’s Proprietary Information, as can be substantiated by written documentation.

“Confidential Information” means any information or data disclosed that (i) is marked at the time of disclosure as proprietary or confidential, (ii) is concerning or related to Peraton’s or Customer’s products (including the discovery, invention, research, improvement, plans, roadmaps, development, manufacture, or sale thereof), processes, or general business operations (including sales costs, profits, pricing methods, organization, and employee lists), and any information obtained through access to any Peraton Information Systems, Peraton or Customer technical data, Peraton or Customer’s customers, the Agreement, any and all pricing information whether or not in the Agreement, (iii) is or concerns any Customer provided information; or (iv) if orally disclosed, is identified at the time of disclosure as proprietary or confidential and is described as such in a written summary delivered to the Supplier within thirty (30) days of disclosure.

(b) Except as expressly provided herein, the Recipient agrees not to use, disclose or otherwise disseminate any Proprietary or Confidential Information of the other Party (“Discloser”). Recipient shall use the same care and discretion in securing and safeguarding the Proprietary or Confidential Information of Discloser as it uses to secure and safeguard its own Proprietary Information, but in no event less than reasonable care. The Recipient also agrees to implement appropriate physical and/or electronic controls to secure Discloser’s Proprietary or Confidential Information, to avoid unauthorized or inadvertent disclosure. Recipient further agrees to segregate Discloser’s Proprietary Information from its own materials and the material of others, and not to combine or otherwise aggregate, in whole or in part, Discloser’s Proprietary or Confidential Information with the information or materials of Recipient or other Persons. Recipient shall

not remove, delete, alter or obscure any proprietary rights legend(s) included in Discloser's Proprietary or Confidential Information.

(c) Recipient shall use Proprietary or Confidential Information only in connection with discussions, deliberations and analyses related to the purpose of this Agreement and for no other reason.

(d) Recipient may, as reasonably necessary to fulfill the purpose of this Agreement, reproduce the Discloser's Proprietary or Confidential Information. All copies or other reproductions of Proprietary or Confidential Information, in whole or in part shall be deemed Proprietary or Confidential Information of the applicable Discloser hereunder, and subject to the terms, conditions and restrictions of this Agreement.

(e) Recipient may disclose Proprietary or Confidential Information to its employees, directors, officers, and agents who have a need to know and/or use such Proprietary Information in furtherance of the performance of this Agreement. Recipient shall, prior to any disclosure or delivery of Discloser's Proprietary or Confidential Information pursuant to this subparagraph (e), obtain from each such person a written agreement binding such person to a duty of confidentiality with respect to such Proprietary or Confidential Information no less restrictive than that applying to Recipient hereunder.

(f) Recipient shall not provide or disclose a Discloser's Proprietary or Confidential Information to any other person, including for the avoidance of doubt, any affiliate of Recipient, without first (A) obtaining from Discloser consent to such disclosure, and (B) entering into or having in place a non-disclosure and confidentiality agreement with such person obligating such person to maintain the confidentiality of such Proprietary or Confidential Information.

(g) In the event the Discloser provides written authorization to the Recipient to disclose Proprietary or Confidential Information to the United States government in connection with the above-stated Purpose, the Receiver shall:

(1) Identify the Proprietary or Confidential Information as belonging to the Discloser, and

(2) Mark the Proprietary or Confidential Information with appropriate restrictive legends as being subject to 18 U.S.C. Section 1905 (Trade Secrets Act), or other relevant laws, to protect the Discloser's rights in the Proprietary Information.

(h) Recipient may disclose Proprietary or Confidential Information when required by law or directed by an authorized representative of the U.S. government acting within the scope of his or her authority. In such cases the Recipient shall, to the extent permitted by law or regulation: (i) give the Discloser prompt notice; and (ii) make a reasonable effort to obtain appropriate protection; and (iii) provide the Discloser with every available opportunity to challenge, appeal, or seek modification of such order; and (iv) shall identify the Discloser as the source of the Proprietary or Confidential Information; and (v) include all restrictive legends in any released Proprietary or Confidential Information.

(i) Nothing in this Agreement shall be construed to prevent a Party from:

(1) Disclosing Proprietary or Confidential Information constituting trade secrets (as defined at 18 U.S.C. 1839 (De-fend Trade Secrets Act)) of the other, so long as such disclosure: (A) is made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and is solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; or

(2) Lawfully reporting waste, fraud or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

(j) *Exclusions.* The foregoing confidentiality obligations will not apply to Confidential Information that (a) is already known to the receiving party prior to disclosure by the disclosing party; (b) is or becomes a matter of public knowledge through no fault of the receiving party; (c) is rightfully received from a third party by the receiving party without a duty of confidentiality; (d) is independently developed by the receiving party; (e) is disclosed under operation of law; or (f) is disclosed by the receiving party with the prior written approval of the disclosing party.

Article 26: Insurance

Peraton, at their own expense, during the term of this Agreement and any Orders, including extensions the insurance outlined below.

(a) Commercial General Liability Insurance covering bodily injury and property damage arising out of premises, operations, completed operations and products of the Peraton with a limit of no less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate. Coverage to include the following extensions: Contractual Liability, Independent Contractor's Liability, Premises Operations, Products/Completed Operations, Broad Form Property Damage. Policies shall be endorsed to name Customer, its directors, officers, and employees, where required by Peraton's contract with its customer, as Additional Insureds.

(b) Business Automobile Liability: To the extent that automobiles are used in performance of Peraton's duties under this Agreement, Business Automobile Liability policies shall be for an amount of at least \$2,000,000 combined single limit for bodily injury and property damage; \$2,000,000 annual aggregate.

(c) Workers' Compensation Insurance as required by applicable Federal and State workers' compensation and occupational disease statutes and Employer's Liability Insurance with a limit no less than \$1,000,000 per employee/accident/disease. Where applicable, Peraton shall provide evidence of United States Longshore & Harborworkers' Act (USL&H) coverage for employees engaged in work on or near navigable waters of the United States.

(d) Professional Liability/Errors and Omissions policies for damages (including financial loss) caused by any acts, errors and omissions arising out of Peraton's performance or failure to perform professional services: \$1,000,000 per claim.

(e) Any other insurance that is required by Customer or determined to be required upon the review by Peraton, based on the Statement of Work or specifications of this Agreement. Such requirement will be communicated to Customer in writing.

Article 27: Recruitment of Team Member Employees

It is expressly agreed and understood by the Parties that, during the course of this Agreement, neither Party shall directly or indirectly solicit personnel of the other Party whom the other Party knows or should know are engaged in performance of this Agreement for the purpose of inducing them to join such other Party's employ. The foregoing shall not prohibit either Party from having employment discussions with, or hiring, employees of the other Party who: 1) have terminated employment with the other Party of their own volition; 2) respond to or apply for positions offered through the normal process of general public advertisement; or 3) are hired as a result of the use of an independent employment agency (so long as the agency was not directed to solicit such person) not specifically directed to employees of the Parties.

Article 28: Waiver/Cumulative Remedies

Failure by either party to enforce any of the provisions of this Agreement or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.

Article 29: Equal Opportunity Employer

Peraton is an equal opportunity employer. Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

Article 30: Severability

Each clause, paragraph and subparagraph of this Agreement is severable. If any part, term, or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term, or provision of this Agreement is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local government having jurisdiction over this Agreement, Peraton agrees to negotiate a replacement provision, construed to accomplish its originally intended effect that does not violate such law or regulation.

Article 31: Survival

Termination or expiration of this Agreement for any reason shall not release either Party from the liabilities or obligations set forth in said Agreement which remain to be performed or by their nature would be intended to be applicable following any such termination or expiration, including without limitation provisions relating to payment, funding, warranty, indemnification, intellectual property, confidentiality/non-disclosure, compliance with law, disputes, and compliance with applicable law, governing law, insurance, limitation of liability, security, and notices.



City of Grass Valley City Council Agenda Action Sheet

Title: Second reading of an ordinance amending Chapter 5.56 of Title 5 of the Grass Valley Municipal Code regulating Tobacco Retailers and adoption of a resolution to set fees related to tobacco retailers.

Recommendation: That the Council: 1) Hold a second reading by Title Only and adopt Ordinance #833; and, 2) approve Resolution #2025-04 setting fees related to Tobacco Retailers.

Prepared by: Alexander K. Gammelgard, Chief of Police

Council Meeting Date: 02/25/2025

Date Prepared: 02/20/2025

Agenda: Public Hearing

Background Information: At the last City Council meeting on 02/11/2025, the Council adopted the first reading of an updated Tobacco Retailer ordinance. That staff report and ordinance are attached.

The new Tobacco Retailer ordinance includes changes in types of tobacco retailers, to include significant tobacco retailers (STR) and standard tobacco retailers. As such, the City will have differing levels of staff review and compliance work, depending on the retailer type. The attached resolution includes revised/new fees to cover the costs to regulate license holders. The fees have been set based upon the costs to administer the regulatory program. The fees are proposed, per the attached resolution, as the following amounts:

New Tobacco Retailer’s License:	\$160
Renewal	\$100
New Significant Tobacco Retailer’s License	\$250
Renewal	\$250
Appeal Processing	\$275

Pursuant to the resolution, the fees will become effective 30 days after passage of the resolution, at the same time the new regulations become effective.

Council Goals/Objectives: The execution of this action attempts to achieve the following Strategic Goals:

- GOAL #1: COMMUNITY & SENSE OF PLACE
- GOAL #2: SAFE AND RELIABLE TRANSPORTATION SYSTEM
- GOAL #6 - SAFE PLACE TO LIVE, WORK AND PLAY

Fiscal Impact: N/A **Funds Available:** N/A **Account #:** N/A

Reviewed by: City Manager

Attachments: Ordinance 833, R2025-04

ORDINANCE NO. 833**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF GRASS VALLEY AMENDING CHAPTER 5.56
OF TITLE 5 OF THE GRASS VALLEY MUNICIPAL
CODE REGULATING TOBACCO RETAILERS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GRASS VALLEY

SECTION 1. CODE ADOPTION. Chapter 5.56 (“Tobacco Retailer License”) of Title 5 (“Business Licenses and Regulations”) of the Grass Valley Municipal Code is hereby amended and restated as set forth in Exhibit “A” attached to this Ordinance and incorporated by reference.

SECTION 2: CEQA FINDINGS. This Ordinance sets out the rules and regulations pertaining to tobacco retailer licenses. As a purely administrative and regulatory action, it will not affect the physical environment. This Ordinance is not a project within the meaning of California Environmental Quality Act (CEQA) Guidelines, California Code of Regulations, title 14, section 15378 because it has no potential to result in physical change in the environment, directly or indirectly. It is also exempt from CEQA review under CEQA Guidelines, California Code of Regulations, title 14, section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons and circumstances. The City Council of the City of Grass Valley hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 4. INCONSISTENT PROVISIONS. Any provision of the Grass Valley Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to give effect to this Ordinance.

SECTION 5. EFFECT OF ADOPTION. It is the intent of the City Council of the City of Grass Valley that the Grass Valley Municipal Code sections affected by this Ordinance shall not be considered repealed and reenacted in their amended form; that the portions which are not altered are to be considered as having been the law from the time when they were enacted; that the new provisions are to be considered as having been enacted at the time of the amendment; and that the omitted portions are to be considered as having been repealed at the time of the amendment.

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect 30 days after its adoption pursuant to Article VII, § 2 of the Grass Valley City Charter.

SECTION 7. PUBLICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published once in *The Union*, a newspaper of general circulation printed, published, and circulated within the City.

INTRODUCED and first read at a regular meeting of the City Council on the 11th day of February 2025.

FINAL PASSAGE AND ADOPTION by the City Council was at a meeting thereof held on the ____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Hilary Hodge, Mayor

APPROVED AS TO FORM:

ATTEST

Michael G. Colantuono, City Attorney

Taylor Whittingslow, City Clerk

EXHIBIT A

Chapter 5.56: TOBACCO RETAILER LICENSE

Section 5.56.010 – Definitions.

The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. “Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.
- B. “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- C. “Cannabis product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- D. “Cannabis retailer” means any retail establishment in which cannabis or cannabis products are sold or offered for sale to persons that do not hold a license to engage in commercial cannabis activity issued by the State of California in accordance with the Business and Professions Code Section 26000 et seq., as that section may be amended from time to time.
- E. “Child-resistant packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- F. “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand.
- G. “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- H. “Compliance checks” means systems the Department uses to investigate and ensure that tobacco retailers are following and complying with the

requirements of this chapter. Compliance checks may involve the use of persons between the ages of 16 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the Department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.

I. “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

J. “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

K. “Department” means the Grass Valley Police Department and any agency or person designated by the Department to enforce or administer the provisions of this chapter.

L. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

M. “Flavored tobacco product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

N. "Full retail price" means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

O. "Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.

P. "Manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

Q. "Moveable place of business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

R. "Nitrous oxide" means a colorless, nonflammable gas (N₂O) sometimes used in aerosols and sometimes used as an anesthetic, which, when inhaled, produces loss of sensibility to pain, often preceded by exhilaration and laughter and used often as an anesthetic in dentistry. Nitrous oxide is oftentimes called "laughing gas."

S. "Nitrous oxide device" means any cartridge, compressed gas cylinder, apparatus, container, or other device intended or designed to be used to contain or dispense or administer nitrous oxide.

T. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

U. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

V. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole

interest of security for debt. A managerial interest shall be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.

W. "Recreation facility" means an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes, and includes but is not limited to a gymnasium, playing court, playing field, and swimming pool.

X. "Sale" or "sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

Y. "Self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

Z. "Significant tobacco retailer" means any tobacco retailer for which the principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: 1% or more of floor or display area is devoted to tobacco products, tobacco paraphernalia, or both; 20% or more of gross sales receipts are derived from tobacco products, tobacco paraphernalia, or both; or 20% or more of completed sales transactions include tobacco products or tobacco paraphernalia.

AA. "Smoking" means inhaling, exhaling, burning, possessing, or carrying any lighted or heated cigar, cigarette, tobacco product, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, synthetic nicotine, nicotine analog, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.

BB. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for and/or capable of being used for the smoking, preparation, storing, or consumption of tobacco products. It does not include lighters, matches or other ignition products.

CC. "Tobacco product" means:

1. any product containing, made of, or derived from tobacco, nicotine, synthetic nicotine, and/or nicotine analog that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

DD. “Tobacco retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

EE. “Tobacco retailing” means engaging in the activities of a tobacco retailer.

FF. “Youth-oriented facility” means a parcel in the city that is occupied by:

1. a private or public kindergarten, elementary, middle, junior high, or high school;
2. a library open to the public;
3. a playground open to the public;
4. a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
5. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;
6. a park open to the public or to all the residents of a private community;

7. a licensed child-care facility or preschool other than a small-family day care home or a large-family day care home as defined in California Health & Safety Code § 1596.78;

Section 5.56.020 – General requirements and prohibitions.

A. **TOBACCO RETAILER’S LICENSE REQUIRED.** It shall be unlawful for any person to engage in tobacco retailing in the city without first obtaining and maintaining a valid tobacco retailer’s license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer’s license is a nuisance as a matter of law.

B. **LAWFUL BUSINESS OPERATION.** In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.

C. **SMOKING PROHIBITED.** Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this chapter. Smoking is also prohibited outdoors within 25 feet of any retail establishment licensed under this chapter.

D. **MINIMUM LEGAL SALES AGE.** No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.

E. **DISPLAY OF LICENSE.** Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

F. **POSITIVE IDENTIFICATION REQUIRED.** No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government issued photographic identification that the recipient is at least 21 years of age.

G. **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco retailing by means of a self-service display is prohibited.

H. **ON-SITE SALES.** All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer’s agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products

to any person that intends to engage in the delivery sale of the tobacco product in the city.

I. NITROUS OXIDE. It shall be unlawful for a tobacco retailer to sell, offer, distribute, or otherwise provide to any person nitrous oxide or a nitrous oxide device. This section shall not apply to:

1. The administration of nitrous oxide by a medical or dental practitioner licensed by the state or at the direction or under the supervision of a practitioner licensed by the state for the purpose of providing medical or dental care;
2. The sale or distribution of nitrous oxide as a propellant in food products such as whipped cream by Tier one commercial edible food generators, as defined in Section 8.24.010;
3. The sale or distribution of nitrous oxide by a wholesaler licensed by the Board of Pharmacy or manufacturer classified under Code Number 325120 or 424690 of the North American Industry Classification system (NAICS); or
4. Any other sale or distribution under an express exemption pursuant to Penal Code sections 381b through 381e.

Section 5.56.030 – Sale of flavored tobacco products prohibited.

A. FLAVORED TOBACCO PRODUCT SALES PROHIBITED. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

B. PRESUMPTIVE FLAVORED TOBACCO PRODUCT. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Section 5.56.040 – Tobacco product pricing and packaging.

A. PACKAGING AND LABELING. No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

B. DISPLAY OF PRICE. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.

C. DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS. It is unlawful for any person to distribute free or nominally priced tobacco products.

D. PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No tobacco retailer shall:

1. honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
2. sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
3. provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.

Section 5.56.050 – Limits on eligibility for a tobacco retailer license.

A. MOBILE VENDING. No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.

B. LICENSED CANNABIS BUSINESSES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.

C. PHARMACIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

D. PROXIMITY TO YOUTH-ORIENTED FACILITIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing by a significant tobacco retailer within 1,000 feet of a youth oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

1. Notwithstanding the forgoing, a tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

- i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
- ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;
- iii. the significant tobacco retailer does not substantially change the business premises or business operation; and
- iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

E. PROXIMITY TO OTHER SIGNIFICANT TOBACCO RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing by a significant tobacco retailer within 500 feet of a significant tobacco retailer location already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing significant tobacco retailer's business is located.

1. Notwithstanding the forgoing, a significant tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

- i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
- ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;
- iii. the significant tobacco retailer does not substantially change the business premises or business operation; and

iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

F. PROXIMITY TO CANNABIS RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing by a significant tobacco retailer within 2,000 feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer's business is located.

1. Notwithstanding the forgoing, a tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);

ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;

iii. the significant tobacco retailer does not substantially change the business premises or business operation; and

iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

G. POPULATION AND DENSITY. The issuing of tobacco retailer licenses is limited as follows:

1. The total number of tobacco retailer licenses issued to significant tobacco retailers within the city shall be limited to one for each 3,000 inhabitants of the city.

2. For the purposes of this subsection, the total population of the city shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed. For purposes of calculating the limit established by this

subsection, a fraction of .5 or more shall be rounded up to the next whole number. A fractional amount of less than .5 shall be rounded down to the next whole number.

3. No new license may issue to authorize tobacco retailing by a significant tobacco retailer if the number of significant tobacco retailers already issued equals or exceeds the total number authorized pursuant to subsection (1).

4. Notwithstanding the forgoing, a significant tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

- i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
- ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;
- iii. the significant tobacco retailer does not substantially change the business premises or business operation; and
- iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

Section 5.56.060 – Application Procedure.

A. An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.

B. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section 5.56.130(C) of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

C. Applicant submissions shall contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a license.
 2. The business name, address, and telephone number of the location for which a license is sought.
 3. The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter.
 4. Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter or any other local, state, or federal law governing the sale of tobacco products, and if so, the dates and locations of all such violations within the previous five years.
 6. A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this chapter.
 7. Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- D. A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.

Section 5.56.070 – License issuance or denial.

- A. **ISSUANCE OF LICENSE.** Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this chapter, the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
- B. **DENIAL OF APPLICATION.** The Department may deny an application for a tobacco retailer's license based on any of the following:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
2. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits a license to be issued;
3. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or
4. The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this chapter, that is unlawful pursuant to any other chapter of this Code, or that is unlawful pursuant to any other law.
5. Any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this chapter and other laws relating to the sale of tobacco products.

5.56.080 – License renewal and expiration.

A. RENEWAL OF LICENSE. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is 1 calendar year. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than 30 days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section 5.56.060.

5.56.090 – Licenses not transferable, past violations at retail location.

A. LICENSES NOT TRANSFERRABLE. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors.

B. PAST VIOLATIONS. Notwithstanding any other provisions of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

1. the location has been transferred to new proprietor(s) in an arm's length transaction;

2. the new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm's length transaction; and
3. no former proprietor retains any ownership or managerial interest in the location.

5.56.100 – License conveys a limited, conditional privilege.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the city identified on the face of the permit. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

5.56.110 – Fee for license.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the city council. The fee shall be calculated so as to recover the total cost of administration and enforcement of this chapter, including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

5.56.120 – Compliance Monitoring.

- A. Compliance with this chapter shall be monitored by the Department. In addition, the city may designate additional persons to monitor compliance with this chapter. All licensed premises must be open to inspection by city staff or designated persons during regular business hours.
- B. The Department may inspect each tobacco retailer 1 or more times in a 12 month period to ensure compliance with this chapter.
- C. The Department may conduct 1 or more compliance checks per 12-month period that involves the participation of persons between the ages of 16 and 20 to enter licensed premises to attempt to purchase tobacco products.

D. The Department may examine and audit the books, business records, and inventory of a tobacco retailer to ensure compliance with this chapter upon request during regular business hours.

E. Nothing in this section shall create a right of action in any licensee or other person against the city or its agents.

5.56.130 – Suspension or revocation of license.

A. **SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the Department finds, based on a preponderance of the evidence, that the licensee, or any of the licensee's agents or employees, have violated any of the requirements, conditions, or prohibitions of this chapter; such violation is determined by any court of competent jurisdiction; or the licensee has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 5.56.020 above. Enforcement shall be stayed during the pendency of an appeal which is properly and timely filed, unless a stay would jeopardize public health, safety, or welfare. During any period of license suspension, all tobacco products must be removed from public view.

1. Upon a finding by the Department of a first violation of this chapter at a location, the license may be suspended for up to 30 days.

2. Upon a finding by the Department of a second violation of this chapter at a location within any 5-year period, the license may be suspended for up to 90 days.

3. Upon a finding by the Department of a third violation of this chapter at a location within any 5 year period, the license may be suspended for up to 1 year.

4. Upon a finding by the Department of four or more violations of this chapter at a location within any 5 year period, the license may be revoked.

B. **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable. Any appeal must be filed in writing with the City Clerk within 10 days of receipt of the Department's decision.

1. The appeal must be in writing on a form provided by the City, state the specific reasons for the appeal and the grounds asserted for relief, and be accompanied by a nonrefundable appeals processing fee set by City Council resolution. The failure to file an appeal within the time or in the manner prescribed in this section, or to include the appeals processing fee, waives the right to appeal. If such an appeal is timely made, it shall stay enforcement of the appealed action.

2. Upon timely receipt of a written request for a hearing, the City Clerk shall schedule a hearing which shall be held no later than 30 calendar days after receipt of the request for hearing. The City Clerk shall serve a notice of hearing on the licensee at least 10 calendar days prior to the scheduled date of the hearing.

3. The Department shall have the burden of proof during the hearing, and shall prove by a preponderance of the evidence that the violations leading to suspension or revocation, or denial of the application, exist.

4. At the conclusion of the hearing, the hearing officer shall prepare a written decision which either grants or denies the appeal and contains findings of fact and conclusions of law. The written decision shall be filed with the City Clerk not later than 7 calendar days following the date on which the hearing is closed. The City Clerk shall, within 3 days of the filing of such decision, serve the applicant or licensee with notice and copy of the written decision.

5. The provisions of the California Administrative Procedure Act (Government Code § 11500 et seq.), and the formal rules of evidence do not apply at the hearing. Any and all evidence which the hearing officer deems reliable, relevant and not unduly repetitious may be considered.

6. The hearing officer's decision is final upon service of the hearing officer's decision on the appellant.

7. An appeal is not available for a revocation made pursuant to subsection (C) below.

C. REVOCATION OF LICENSE WRONGFULLY ISSUED. A tobacco retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 5.56.070 existed at the time application was made or at any

time before the license issued. The decision by the Department shall be the final decision of the city.

5.56.140 – Tobacco retailing without a license.

A. **INELIGIBLE FOR LICENSE.** In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, based on a preponderance of evidence after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

1. After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction and no former proprietor retains any ownership or managerial interest in the business), until 30 days have passed from the date of the violation.
2. After a second violation of this section at a location within any 5 year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction and no former proprietor retains any ownership or managerial interest in the business), until 90 days have passed from the date of the violation.
3. After of a third or subsequent violation of this section at a location within any 5 year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction and no former proprietor retains any ownership or managerial interest in the business), until 5 years have passed from the date of the violation.

5.56.150 – Additional remedies.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process

brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

C. Violations of this chapter, including violations for tobacco retailing without a license, shall be subject to all available enforcement actions, including administrative, criminal or civil citations as authorized pursuant to this code.

D. Violations of this chapter are hereby declared to be public nuisances.

E. Tobacco products offered for sale in violation of this chapter are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 5.56.130. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

F. For the purposes of the remedies provided in this chapter:

1. Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter; and
2. Each individual tobacco product that is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter.

G. All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

5.56.160 – Exceptions.

A. Nothing in this chapter prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.

- B. Nothing in this chapter shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

5.56.170 – Captions.

The captions to sections throughout this chapter are for convenience of reference but shall not affect construction of this article.

5.56.180 – Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this article or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed in this section, the time shall be computed so as to exclude the first and include the last day of the prescribed time.

5.56.190 – Construction and severability.

It is the intent of the City Council of Grass Valley to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this chapter, or its application to any other person or circumstance. The City Council of Grass Valley hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

5.56.200 – Rights reserved.

- A. The rights reserved to the City under this chapter are in addition to all other rights of the City, whether reserved by this section or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.
- B. Except as otherwise provided by state law, a State franchise shall not include, or be a substitute for:
1. Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not

- limited to, compliance with the conditions that the City may establish before constructing facilities for, or providing, nonvideo services;
2. Any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits, and street cut permits; and
 3. Any permit, agreement, or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the State franchise.
- C. Except as otherwise provided in state or federal law, a State franchise shall not relieve a franchisee of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every franchisee shall comply with the same.
- D. Nothing contained in this section shall ever be construed exempt a franchisee from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this section or California Public Utilities Code section 5800, *et seq.*

RESOLUTION NO. 2025-04**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY
AMENDING THE CITY OF GRASS VALLEY FEE SCHEDULE AS TO
TOBACCO RETAILERS**

WHEREAS, the City has general authority to regulate business activities within its jurisdiction, and to impose fees to fund such a regulatory program (Cal. Const., art. XI, § 7); and

WHEREAS, any such fee is not a “tax” requiring voter approval as long as it is “imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof” (Cal. Const., art. XIII C, § 1(e)(3)); and

WHEREAS, Chapter 5.56 of the Grass Valley Municipal Code, as amended by Ordinance #833, regulates tobacco retailers, and includes provisions regarding the issuance and renewal of licenses to engage in this business; and

WHEREAS, Chapter 5.56 specifically authorizes the City Council to adopt fees to cover the costs to issue or renew a tobacco retailer’s license, and to process any appeal from a decision to suspend or revoke such a license; and

WHEREAS, Chapter 5.56 distinguishes “significant tobacco retailers” from others who sell tobacco products, to recognize how the City must dedicate more resources to regulate retailers whose principal or core business is selling tobacco products; and

WHEREAS, the City maintains a Fee Schedule listing the various administrative, regulatory, and other fees the Council has approved; and

WHEREAS, City staff have analyzed the costs to administer the regulatory program described in Chapter 5.56, and they have recommended licensing and appeal fees to recover those costs.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GRASS VALLEY
does hereby resolve as follows:

SECTION 1. Pursuant to Chapter 5.56 of the Grass Valley Municipal Code, the City shall impose a fee of \$160 to issue any new tobacco retailer’s license for a business other than a significant tobacco retailer, and a fee of \$100 to renew any such license.

SECTION 2. Pursuant to Chapter 5.56 of the Grass Valley Municipal Code, the City shall impose a fee of \$250 to issue any new tobacco retailer’s license for a significant tobacco retailer, and a fee of \$250 to renew any such license.

SECTION 3. Pursuant to Chapter 5.56 of the Grass Valley Municipal Code, the City shall impose a fee of \$275 to process any appeal from a decision to suspend or revoke a tobacco retailer’s license.

SECTION 4. The City Clerk or her designee shall update the City’s Fee Schedule to reflect the fees adopted under Sections 1 through 3 of this Resolution, which fees shall go into effect 30 days after this Resolution’s adoption.

SECTION 5. This Resolution shall go into effect immediately upon its adoption.

SECTION 6. The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Grass Valley at a regular meeting held the ___ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

Hilary Hodge
Mayor

APPROVED AS TO FORM:

ATTEST:

David J. Ruderman
Assistant City Attorney

Taylor Whittingslow
Deputy City Manager & City Clerk



City of Grass Valley
City Council
Agenda Action Sheet

Title: Introduction of an ordinance of the City Council of the City of Grass Valley amending subsection (C) and adding subsection (D)(7) to Section 17.44.140 of Chapter 17.44 of Title 17 of the Grass Valley Municipal Code to allow eligible mixed-use projects to include up to 10 dwelling units in the Town Core zone pursuant to Government Code Section 65913.5

CEQA: Not a project pursuant to Government Code section 65913.5(a)(3)

Recommendation:

1. That City Council find the Ordinance is not a project for the purposes of the California Environmental Quality Act (CEQA) pursuant to California Government Code section 65913.5(a)(3).
 2. Introduce the attached Ordinance No. 834, waive full reading, and read by Title Only, to amend subsection (c) and add subsection (d)(7) to section 17.44.140 of chapter 17.44 of title 17 of the Grass Valley Municipal Code to allow eligible mixed-use projects to include up to 10 dwelling units in the Town Core zone pursuant to Government Code Section 65913.5
-

Prepared by: Amy Wolfson, City Planner

Council Meeting Date: February 25, 2025

Date Prepared: February 19, 2025

Agenda: Public Hearing

Background: Staff have received inquiries from property owners about the possibility of converting upper-level offices to residential use along the Mill Street pedestrian corridor. However, while the Town Core (TC) zone allows 20 dwelling units per acre, most of the buildings in this zone sit on very small lots, prohibiting them from taking advantage of the generous density allowance. Many of the buildings are large in size, and with the demise of office space interest in favor of home-office use, much of the non-ground level space is under-utilized.

At the City Council meeting held September 12, 2023, council directed staff to prepare special studies to support the drafting of an ordinance that would incentivize conversion of under-utilized upper and basement level spaces to residential use within the TC zoning designation. Staff prepared a Request for Proposals that circulated in January and February 2024. However, the city did not receive any proposals. Shortly after, staff began to look at California Senate Bill (SB) 10 as a means to move the increased density objective forward.

SB 10 was adopted and signed by the Governor in September 2021 and allows local agencies to adopt an ordinance to allow up to 10 dwelling units on any parcel if the parcel is within a transit-rich area or urban infill site. The bill language includes an explicit clause indicating that adoption of an ordinance under its provisions is not subject to CEQA review.

Proposed Ordinance: The proposed ordinance includes the following provisions:

- Limits the maximum residential density to a minimum of 10 dwelling units per parcel. This number can be made smaller, but not larger in order to comply with SB 10.
- A provision that disallows units permitted under this ordinance to be used as short-term rentals through means of a recorded restrictive covenant.
- An off-street parking agreement approved by the city at a ratio of 1 space per unit located within 1,300 feet of the property.
- Pursuant to SB 10, a restriction that a minimum of two-thirds of the property be designated for residential use.
- A restriction on ground-floor, street fronting space from being used for residential use in order to preserve the commercial and retail uses within spaces that are easily accessible to the public.

The goal of the proposed ordinance is to add to the revitalization effort downtown, encourage housing close to employment opportunities and close to the Tinloy Transit Station, and encourage investment in older buildings.

General Plan: The Town Core zoning designation has a corresponding Commercial General Plan designation and Town Center General Plan overly. The Town Center designation very specifically encourages mixed-use development and does not have a residential density range associated with it. The proposed ordinance furthers the following goals of the General Plan:

- **Land Use- 9-LUP:** Provide for higher residential densities on infill sites and in the Downtown area.
- **Land Use- 23-LUP:** Encourage mixed-use developments incorporating a variety of densities on infill sites and in areas proposed for annexation.
- **Housing- HE Goal D, POLICY 1:** The City shall encourage private reinvestment in older residential neighborhoods and private rehabilitation of housing. (While the TC zone is not considered a residential neighborhood, but the program encourages reinvestment in older buildings for the purpose of housing.)

Environmental Determination: Pursuant to Government Code section 65913.5(a)(3), an ordinance adopted under its provisions and any resolution to amend the jurisdiction's General Plan, or other regulation, is not a project for the purposes of the California Environmental Quality Act.

Planning Commission Recommendation: The Planning Commission reviewed the proposed ordinance at a public hearing held on January 21, 2025. Their discussion included consideration of reducing the number of units allowed to something less than 10, but ultimately their recommendation was to approve the ordinance as presented, which allows up to 10 units per State legislation.

Council Goals/Objectives: Adoption of this ordinance supports the 2022 Strategic Plan Update, Goal #1: The City of Grass Vally is dedicated to promoting programs and projects that improve livability and enhance the character and charm of Grass Valley.

Fiscal Impact: Drafting of the ordinance required staff time.

Funds Available: None **Account #:** TBD **Reviewed by:** City Manager

Attachments:

1. Draft Ordinance to allow up to 10 Dwelling Units in the Town Core Zone pursuant to SB10

ORDINANCE NO. 834

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY AMENDING SUBSECTION (C) AND ADDING SUBSECTION (D)(7) TO SECTION 17.44.140 OF CHAPTER 17.44 OF TITLE 17 OF THE GRASS VALLEY MUNICIPAL CODE TO ALLOW ELIGIBLE MIXED-USE PROJECTS TO INCLUDE UP TO 10 DWELLING UNITS IN THE TOWN CORE ZONE PURSUANT TO GOVERNMENT CODE SECTION 65913.5

WHEREAS, at its regular meeting held on September 12, 2023, the Grass Valley City Council directed staff to draft an ordinance that would incentivize conversion of under-utilized upper and basement level spaces to residential use within the Town Core zoning designation (the “Ordinance”); and

WHEREAS, the City of Grass Valley desires to incentivize investment in older buildings in order to preserve the historical integrity and aesthetics of downtown; and

WHEREAS, the City of Grass Valley encourages housing close to employment opportunities and the Tinloy Transit Station; and

WHEREAS, the General Plan Land Use Element includes policy 9-LUP to “provide for higher residential densities on infill sites and in the Downtown area,” and 23-LUP to “encourage mixed-use developments incorporating a variety of densities on infill sites and in areas proposed for annexation”; and

WHEREAS, the General Plan Housing Element Goal D, Policy I encourages “private reinvestment in older residential neighborhoods and private rehabilitation of housing”; and

WHEREAS, the City of Grass Valley desires to promote the conversion of underutilized buildings for residential use in order for the City to meet housing demand and meet housing production targets of the Regional Housing Needs Allocation (RHNA) established by the California Department of Housing and Community Development (HCD); and

WHEREAS, Senate Bill 10 (Weiner) added section 65913.5 to the Government Code, effective January 1, 2022, authorizing a local government to adopt an ordinance to zone any parcel for up to 10 units of residential density if the parcel is located on an urban infill site; and

WHEREAS, Government Code section 65913.5(a)(3) specifies that an ordinance adopted under its provisions and any resolution to amend the jurisdiction’s General Plan, or other regulation, is not a project for the purposes of the California Environmental Quality Act; and

WHEREAS, the Town Core zoning district is subject to adopted fire hazard mitigation measures pursuant to existing building standards and state fire mitigation measures in accordance with section 65913.5(a)(4)(A).

WHEREAS, the proposed Ordinance and increased density is consistent with the City’s obligation to affirmatively further fair housing pursuant to Government Code Section 8899.50 and with programs of Goal A of the 2019–2027 Housing Element, To Designate Sufficient Land at Appropriate Densities and Establish Development Standards and Permit Procedures to Accommodate the City’s Share of Nevada County’s Housing Needs for All Income Groups; and

WHEREAS, the Planning Commission, after considering public comment, held a duly noticed public hearing and reviewed the draft Ordinance at its regular meeting held on _____ and voted _____ to recommend adoption by the City Council.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GRASS VALLEY:

SECTION 1. RECITALS. The recitals and findings set forth above are true and correct and incorporated herein by reference.

SECTION 2. CODE AMENDMENT. Subsections (C) and (D) of Section 17.44.140 of Chapter 17.44 of Title 17 of the Grass Valley Municipal Code are hereby amended to read as follows (deletions denoted by ~~struck through~~ text and additions denoted by underlined text):

17.44.140 – Mixed use projects

...

C. Maximum Density. ~~The residential component of a mixed-use project shall not exceed a maximum density of fifteen units per acre. This standard shall not apply in the traditional community development zones.~~

1. The residential component of a mixed-use project shall not exceed a maximum density of fifteen units per acre. This standard shall not apply in the traditional community development zones.
2. A parcel within the Town Core Zone may be developed with a mixed-use project containing up to 10 dwelling units, subject to the approval of a Minor Use Permit application and compliance with the following standards:
 - a. The parcel meets the definition of “urban infill site” as defined by Government Code Section 65913.5(e)(3);
 - b. The parcel is not publicly owned land designated as open-space land or for park or recreational uses;
 - c. The maximum allowable density for the parcel does not already allow a minimum of 10 dwelling units; and
 - d. The proposed project is consistent with this Chapter, including the Project Design Standards outlined in subsection (D)(7) of this Section 17.44.140.

Nothing herein shall be construed to reduce the allowable density of any parcel in the Town Core Zone.

...

D. Site Layout and Project Design Standards. Each proposed mixed-use project shall comply with the property development standards of the applicable zone, and the following requirements.

...

7. In addition to the above standards, any mixed-use project taking advantage of the density allowance provided in subsection (C)(2) of this Section 17.44.140 shall comply with the following standards:
 - a. At least two-thirds of the square footage of the mixed-use project shall be designated for residential use.
 - b. Off-street parking at a minimum ratio of one parking space per dwelling unit shall be provided within 1,300 feet of the mixed-use project. A minimum of one parking space shall be assigned to each dwelling unit and be guaranteed by written instrument or agreement approved by the City.
 - c. No dwelling unit created pursuant to subsection (C)(2) of this Section 17.44.140 in excess of the otherwise maximum allowable density for a given parcel shall be rented for a period of less than 30 days. Developers shall record a restrictive covenant prior to certificate of occupancy, limiting the dwelling units created pursuant to this section to rental periods of at least 30 days, and agreeing to the foregoing. The restrictive covenant shall clearly indicate the number of dwelling units that may be rented for less than 30 days and the number that must be rented for at least 30 days.
 - d. Dwelling units shall not occupy ground-floor street-frontage space adjacent to a public or private street, regardless of whether that street is open to vehicular traffic. Dwelling units may be allowed at ground level behind street-fronting nonresidential uses. The ground-floor street-frontage space within a mixed-use building shall be reserved for commercial uses, except for a lobby or other entry feature providing access to the dwelling units.

...

SECTION 3. CEQA FINDINGS. This Ordinance not a Project under the California Environmental Quality Act (CEQA) pursuant to section 65913.5(a)(3) of the California Government Code, which provides that any ordinance adopted under its provisions and any resolution to amend the jurisdiction’s General Plan, zoning ordinance, or other local regulation adopted to be consistent with that zoning ordinance, shall not constitute a “project” for the purposes of CEQA.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons and circumstances. The City Council of the City of Grass Valley declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect 30 days after its adoption under Article VII, § 2 of the Grass Valley City Charter.

SECTION 6. Publication. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published once in *The Union*, a newspaper of general circulation printed, published, and circulated within the City.

INTRODUCED and first read at a regular meeting of the City Council on the ____ day of _____ 2025.

FINAL PASSAGE AND ADOPTION by the City Council was at a meeting held on the _____ day of _____ 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Hilary Hodge, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael G. Colantuono, City Attorney

Taylor Whittingslow, City Clerk



City of Grass Valley
City Council
Agenda Action Sheet

Title: A Resolution of the City Council Calling for a Ceasefire and an End to Violence Between Palestine and Israel

CEQA: Not a project as defined by the Public Resources Code section 21065 and CEQA Guidelines section 15378.

Recommendation: That Council discuss and consider the adoption of Resolution 2025-03 Council calling for a ceasefire and an end to violence between Palestine and Israel.

Prepared by: City Council

Council Meeting Date: 2/25/2025

Date Prepared: 2/19/2025

Agenda: Consent

Background Information: At the City Council meeting on February 19, 2025, Council Member Ivy introduced a motion, seconded by Council Member Bonomolo, to place a resolution before the Council calling for a ceasefire and an end to violence between Palestine and Israel. The motion was approved by a majority of the City Council.

Council is invited to review the attached resolution and provide direction on any modifications or additional considerations before taking action.

Council Goals/Objectives: N/A

Fiscal Impact: None

Funds Available: N/A

Account #: N/A

Reviewed by: City Manager

Attachments:

- Resolution 2025-03 Calling for a Ceasefire and an End to Violence Between Palestine and Israel

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY,
CALIFORNIA, CALLING FOR A CEASEFIRE AND AN END TO VIOLENCE
BETWEEN PALESTINE AND ISRAEL**

WHEREAS, The City of Grass Valley, California, stands committed to the Universal truth that all human life is precious, no matter a person's faith, ethnicity, culture, ability, or political or religious affiliations, and that every human being deserves to live a life of peace and dignity; and

WHEREAS, recent and ongoing armed violence against the Palestinian and Israeli people has resulted in the tragic loss of life of Palestinians and Israelis and injuries to many more innocent people on all sides; and

WHEREAS, Palestinians and Israelis both have a right to life, liberty, safety and security; and

WHEREAS, there are a growing number of people on all sides of this tragic conflict who are calling for a ceasefire and new direction, engagement, and negotiations to lead to peace; and

WHEREAS, the United States Government and Members of Congress hold immense diplomatic, military, and financial power that could save Palestinian and Israeli lives and seek a lasting peace, in our time and for all time; and

WHEREAS, the continued violence against the Palestinian and Israeli people and the rising anti-Semitism, Islamophobia, and bigotry across the United States and the world deeply impact the people in our community in Grass Valley, California, many of whom have direct ties to the Israeli and Palestinian region and peoples; and

WHEREAS, Grass Valley, California, with a rich history of advocating for justice and peace, supports the dignity and safety of residents in every community regardless of what crimes any government may commit, and that peaceful diplomacy and mutual understanding is the only way to achieve these permanent goals; and

WHEREAS, the City Council is united in protecting Grass Valley, California residents against acts of anti-Semitism and Islamophobia, as well as against hate crimes toward people of all faiths and religions, including our Arab, Jewish, and Muslim residents; and

WHEREAS, the City of Grass Valley, California, recognizes the importance of the First Amendment and the fundamental tenets of respect, dignity, and thoughtful civil discourse that are hallmarks of this community, upholding the value of our residents expressing and listening to differing opinions and points of view, especially on subjects where there is disagreement; and

WHEREAS, conflict among ourselves and among our community members can either exacerbate divisions or, if we are willing to engage with each other in difficult and important dialogues, can open doors to opportunities to find solutions that allow us to move forward as one community; and

**City of Grass Valley
Resolution No. 2025-03**

WHEREAS, the City of Grass Valley stands unequivocally against all forms of genocide and ethnic cleansing, recognizing these as crimes against humanity that must be prevented and condemned wherever they occur;

WHEREAS, the City of Grass Valley stands unequivocally against apartheid and the construction and expansion of illegal settlements and illegal occupation of Palestinian territories, recognizing these actions as violations of international law; and

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF GRASS VALLEY, CALIFORNIA, calls on the California Congressional Delegation to advocate for the following actions with regard to the conflict in Gaza and Israel:

1. Call urgently for an immediate, permanent, and unconditional ceasefire, an end to violence in the region, the safe and immediate return of all hostages and unjustly held prisoners, and the complete end to the occupation of all Palestinian territories; and
2. Immediately increase and ensure the delivery of humanitarian assistance, including fuel, water, food, medical supplies, and medical personnel, which are indispensable for the survival of Gaza's civilian population.
3. For all parties to fully comply with national and international law obligations and ensure strict adherence to the Leahy Laws and international humanitarian laws by immediately suspending military aid and weapons transfers to any country or state credibly suspected of committing war crimes or human rights violations.

BE IT FURTHER RESOLVED that the City of Grass Valley, California, condemns all forms of discrimination, including anti-Semitism, Islamophobia, and anti-Palestinian and anti-Israeli bigotry.

BE IT FURTHER RESOLVED that, on behalf of Grass Valley, California, the City Council extends condolences to those in our community who lost loved ones, including children and elderly, in the terrorist attack on October 7, 2023, by Hamas.

BE IT FURTHER RESOLVED that, on behalf of Grass Valley, California, the City Council expresses profound sorrow over the loss of Palestinian lives, including children and elderly, by the indiscriminate retaliation by the State of Israel.

BE IT FURTHER RESOLVED that the City Council, comprised of leaders of this community encourages all residents to embody the values of this City by seeking, inviting and practicing civil discourse, especially when we disagree, to strengthen our ties as a diverse, multicultural, and welcoming community.

PASSED AND ADOPTED by the City Council of the City of Grass Valley at a regular meeting held the 25th day of February, 2025, by the following vote:

AYES:
NOES:

City of Grass Valley
Resolution No. 2025-03

ABSENT:
NOT VOTING:

Hilary Hodge, Mayor
City of Grass Valley

ATTEST:

Taylor Whittingslow, City Clerk
City of Grass Valley

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney
City of Grass Valley



City of Grass Valley City Council Agenda Action Sheet

Title: Engineering Services - Authorization to Award Contract

CEQA: N/A - Consultant selection is a procedural action. CEQA review will be completed as part of the project work

Recommendation: That Council 1) authorize the City Engineer to execute a contract with GHD pending legal review, for Civil Engineering Design, Project Management and Environmental Services, in an amount not to exceed \$1,449,871.25 for the Downtown Grass Valley Roundabout Project

Prepared by: Bjorn P. Jones, PE, City Engineer

Council Meeting Date: 02/25/2025

Date Prepared: 02/20/2025

Agenda: Consent

Background Information: On November 21, 2024, Staff issued a Request for Proposals (RFP) for engineering services for the Downtown Grass Valley Roundabout Project. The project requires a full service consultant to assist the City in project and grant management; environmental services; traffic modeling; surveying; geotechnical services; hydrology and hydraulic services; preliminary and final engineering; public outreach; and preparation of project plans, specifications and estimate.

Two consultant firms submitted proposals and City Staff reviewed, evaluated the proposals and deemed both to be responsive and well qualified. Consultant team interviews were then conducted by a panel of reviewers and GHD was ultimately selected as the preferred consultant. Following contract negotiations, a total not to exceed cost of \$1,449,871.25 was agreed upon with GHD.

Staff recommends that Council authorize the City Engineer to execute a contract with GHD, for engineering, project management and environmental services for the Downtown Grass Valley Roundabout Project. The City's standard Professional Services Agreement template will be utilized for the contract, subject to minor revisions requested by GHD and as approved by legal counsel.

Council Goals/Objectives: A contract for Engineering Services executes portions of work tasks towards achieving/maintaining Strategic Plan Goal - High Performance Government and Quality Service

Fiscal Impact: Preliminary phases of the Downtown Grass Valley Roundabout Project were anticipated to be fully funded with Active Transportation Program (ATP) Grant funds. The total cost estimate and approved funding amount listed in the grant proposal for these phases was \$1,325,000. Once a more accurate construction cost estimate is developed the

City will look to move ATP grant funding forward into project development phases to fully fund the professional services contract.

Funds Available: Yes

Account #: 300-406-63455

Reviewed by: City Manager

Attachments: N/A



City of Grass Valley City Council Agenda Action Sheet

Title: Potential Hazard Trees adjacent to Police Department and City Hall Parking Lot
CEQA: Not a Project

Recommendation: That the City Council approve the removal of three redwood trees near the Police Department and three deciduous trees adjacent to City Hall and the City Hall parking lot to mitigate structural and safety risks, ensure compliance with the City's vegetation ordinance, and support best fire safety practices.

Prepared by: Timothy Kiser, City Manager

Council Meeting Date: 02/25/2025

Date Prepared: 02/19/2025

Agenda: Administrative

Background Information: On December 6, 2023, the City hired a consultant, *Leaf it To Me, Inc.*, to assess three redwood trees located near the police department, on the west side of the building by the stairs leading to the parking lot. Concerns were raised regarding the potential failure of these trees due to asymmetrical rooting and the risk of root damage to the adjacent retaining wall. To evaluate these concerns, the consultant conducted a Level 2 visual inspection and assessment of the trees.

The consultant's findings indicate that the three redwoods pose a moderate risk for whole tree failure within the next five years. If failure were to occur, it is somewhat likely to cause severe damage. Additionally, the trees present a high risk for continued root damage to the surrounding hardscape, with deterioration expected to progress within the same timeframe and very likely to result in significant damage. Based on this assessment, the consultant has recommended the removal of the trees. A detailed written analysis is attached for the Council's review.

To mitigate the impact of tree removal, staff recommends replanting three dogwoods as replacements. However, with the adoption of the city's new vegetation ordinance, staff has identified three deciduous trees in close proximity to City Hall that extend over the building's roof structure. Given the launch of the City's vegetation inspection program, staff believes it is crucial to lead by example by removing these trees and redesigning the surrounding landscape to align with the ordinance and best fire safety practices.

At a future meeting, Staff intends to present a landscaping plan for City Council approval that will demonstrate fire-wise landscaping options. The goal is to showcase alternatives that eliminate trees in Zone 0 (the 0- to 5-foot area adjacent to a structure) while providing guidance for residents and contractors on creating safer, more resilient landscapes.

Finally, it is important to note that once these trees are removed, the stumps must either be ground out or treated with an herbicide to prevent regrowth. Without proper treatment, the trees will regenerate from the stumps, leading to continued root damage.

Council Goals/Objectives: This item portions of work tasks towards achieving/maintaining Strategic Plan: Community Safety and City Infrastructure Investment.

Fiscal Impact: The Fiscal Impact to remove the trees would be less than \$10,000 based upon estimates received to date.

Funds Available: Yes **Account #:** General Fund

Reviewed by: __ City Manager

Attachments: A - Pictures of trees proposed to be removed
B - Leaf it To Me, Inc. Report on the Redwoods

Attachment A - Photos Of Trees To Be Removed





CA Lic. #799133
 PO Box 1795, Cedar Ridge, CA 95924
 LeafitToMe@comcast.net
 (530) 477-9822

December 9, 2023

The City of Grass Valley
 c/o Tim Kiser
 125 E Main Street
 Grass Valley, CA 95945

Dear City of Grass Valley,

Per your request, I have prepared a tree failure risk assessment and root damage risk assessment for the three redwood trees next to the police department building. This assessment is based on a 5-year time frame.

I have concluded that the three redwood trees are moderate risk for whole tree failure and a high risk for root damage to hardscape. It is possible within the 5-year timeframe for whole tree failure to occur, and if whole tree failure were to occur, it is somewhat likely to cause severe damage. These trees are high risk for root damage to hardscape. It is probable within the next 5-year timeframe that the damage will continue to occur and is very likely to cause severe damage. I recommend these trees be removed.

It is important to note that once these trees have been removed the stumps will either need to be ground out or treated and killed with an herbicide or the trees will grow back from the stumps and root damage will continue. If trees are replanted, they should be small stature trees more appropriate for the small size of the planting site. I also recommend that the damage that has been caused by the roots be inspected by a qualified professional to determine if and what repairs need to be made to the retaining walls, stairs, and parking lot.

Background

On December 6, 2023, I met with Tim Kiser, City Manager, to look at three redwood trees at the police department, on the west side of the building by the stairs to the parking lot. There was a concern that the trees could fail due to asymmetrical rooting and a concern about the root damage to the retaining wall the trees are planted above. I performed a basic, level 2 visual inspection and assessment of the trees.

A Basic, Level 2 Visual Tree Inspection and Risk Assessment following ANSI Standards consists of a qualitative visual inspection of the trees and surrounding site, and a synthesis of the information collected. This Tree Risk Assessment is based on a 5-year inspection interval. Please be aware that Tree Risk Assessment considers known targets and visible tree conditions and represents the conditions of the trees at the time of these

inspections. In addition, the time frame for risk categorization should not be considered a “guarantee period” for the risk assessment.

The basic premise of tree risk assessment is to help tree risk managers make an educated decision on how to reduce their risk to tolerable levels. All trees provide benefits, and all trees pose some risk. Usually, the benefits provided by trees outweigh the risks they pose. The only way to eliminate all tree risk is to eliminate all trees.

Tree Risk Assessment Methodology

There are three components to a Tree Risk Assessment: likelihood of failure, likelihood of impact, and consequences of failure and impact. For each combination of tree part and target, I rated each of these components. Then I combined them according to International Society of Arboriculture (ISA) Best Management Practice for Tree Risk Assessment using the tables in Figures 1 and 2 (page 6) to produce a risk rating for each tree part and target combination. Lastly, I assigned an overall failure risk rating and root risk rating for each tree equal to the risk rating of the tree part and target combination with the highest risk rating. I followed this process for my risk assessment of each of the 3 redwood trees.

Targets

I assessed multiple targets. For tree failure risk and for tree root impact risk, I assessed the targets as either the retaining wall, the steps, the curb, the drain, the building, the foundation, and parking lot. These are all fixed targets and are not practical to move.

People and cars are mobile targets traveling through these areas. They have a frequent occupancy rate in the tree failure target zone. In addition, root damaged hardscape features may increase tripping risk in these areas.

The target zone is defined as the area in which the tree is more likely to fall if it were to fail, or the roots are most likely to grow. For trees in which the direction of fall was not clear, I assessed the likelihood of impact by assessing all possible directions the tree could fall as weighted equally. For whole tree failure, I defined the target zone as 1.5 x tree height. For branch failure, I defined the target zone as 2X the dripline of the canopy. These trees are growing in heavy clay soils. Average root length is twice the tree height. I assessed the likelihood of impact by assessing all targets within twice the height of the tree. For this assignment, I determined target zones by visual approximation only.

Tree Information

There are three redwood trees growing from the planter bed between the police department building and the parking lot. The first redwood tree is a 36-inch DBH (Diameter at breast height) tree on the far left of the stairs if standing in the parking lot facing the building. This tree is in good health. It was planted within a few feet of the retaining wall which is on two sides of it and the parking lot is on the other sides. The trunk is now within 5 feet of the eave of the building. Due to the planting location, the tree’s primary structural defect is an asymmetrical root system which is already causing root damage to the retaining wall. This tree is a moderate risk for whole tree failure and a high risk for root damage to hardscape. It is possible within the 5-year

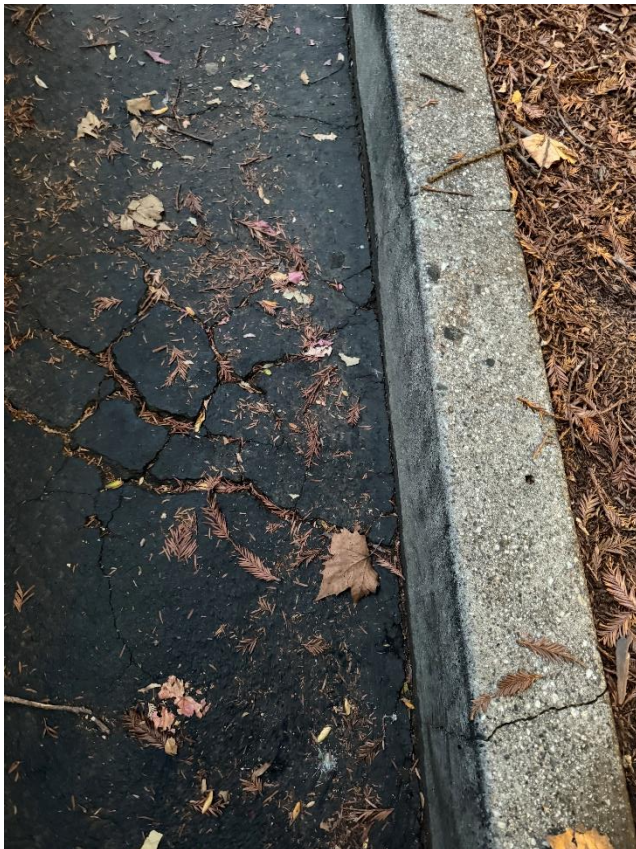
timeframe for whole tree failure to occur, and if whole tree failure were to occur, it is somewhat likely to cause severe damage. The tree is high risk for root damage to hardscape. It is probable within the next 5-year timeframe that the damage will continue to occur and is very likely to cause severe damage. I recommend this tree be removed.

The second redwood tree is 35-inch DBH on the left of the stairs if standing in the parking lot facing the building. This tree is in good health. It was planted within a few feet of the retaining wall, which is on two sides of it, and the parking lot and stairs are on the other sides. The trunk is now within 10 feet of the eave of the building. Due to the planting location, the tree's primary structural defect is an asymmetrical root system which is already causing root damage to the retaining wall and stairs. This tree is a moderate risk for whole tree failure and a high risk for root damage to hardscape. It is possible within the 5-year timeframe for whole tree failure to occur, and if whole tree failure were to occur, it is somewhat likely to cause severe damage. The tree is high risk for root damage to hardscape. It is probable within the next 5-year timeframe that the damage will continue to occur and is very likely to cause severe damage. I recommend this tree be removed.

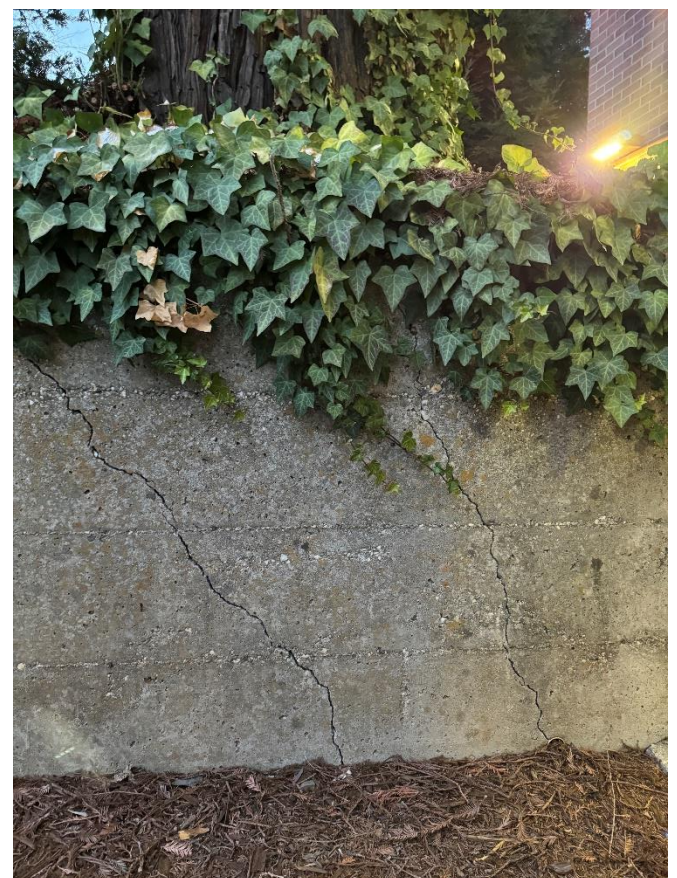
The third redwood tree is 40-inch DBH and is on the right side of the stairs if standing in the parking lot facing the building. This tree is in good health. It was planted within a few feet of the retaining wall which is on two sides of it and the parking lot is on the other sides. The trunk is now within 4 feet of the eave of the building. Due to the planting location, the tree's primary structural defect is an asymmetrical root system which is already causing root damage to the retaining wall, curb, and parking lot. This tree is a moderate risk for whole tree failure and a high risk for root damage to hardscape. It is possible within the 5-year timeframe for whole tree failure to occur, and if whole tree failure were to occur, it is somewhat likely to cause severe damage. The tree is high risk for root damage to hardscape. It is probable within the next 5-year timeframe that the damage will continue to occur and is very likely to cause severe damage. I recommend this tree be removed.

It is important to note that once these trees have been removed the stumps will either need to be ground out or treated and killed with an herbicide or the trees will grow back from the stumps and root damage will continue. If trees are replanted, they should be small stature trees more appropriate for the small size of the planting site. I also recommend that the damage that has been caused by the roots be inspected by a qualified professional to determine if and what repairs need to be made to the retaining walls, stairs, and parking lot.

Photos



Item # 10.



Figures

Likelihood of Failure	Likelihood of impacting Target			
	<i>Very Low</i>	<i>Low</i>	<i>Medium</i>	<i>High</i>
<i>Imminent</i>	Unlikely	Somewhat likely	Likely	Very likely
<i>Probable</i>	Unlikely	Unlikely	Somewhat likely	Likely
<i>Possible</i>	Unlikely	Unlikely	Unlikely	Somewhat likely
<i>Improbable</i>	Unlikely	Unlikely	Unlikely	Unlikely

Figure 1: Risk assessment matrix (1 of 2). This matrix synthesizes the likelihood of failure and the likelihood of impacting the target.

Likelihood of Failure & Impact	Consequences			
	<i>Negligible</i>	<i>Minor</i>	<i>Significant</i>	<i>Severe</i>
<i>Very likely</i>	Low	Moderate	High	Extreme
<i>Likely</i>	Low	Moderate	High	High
<i>Somewhat likely</i>	Low	Low	Moderate	Moderate
<i>Unlikely</i>	Low	Low	Low	Low

Figure 2: Risk assessment matrix (2 of 2). This matrix synthesizes the likelihood of failure & impact and the consequences of impact.

Glossary of Terms

Level 1: Limited Visual Assessment - Involves a visual assessment of trees near specified targets, conducted from one side, looking for obvious defects. Level one assessment is the fastest, but least thorough means of assessment, and is best of large populations of trees when time and resources are limited. This type of assessment is often done on a specified schedule or immediately after storms to rapidly assess a large number of trees.

Level 2: Basic Assessment - Involves a detailed visual assessment of trees and the surrounding site, and a synthesis of the information collected. Level 2 is the most commonly performed assessment and is ground based. Inspection of all sides of the tree from some distance, as well as close up is part of a basic assessment. Simple tools may also be used to gain some useful information, including measuring devices, binoculars, magnifying glass, mallet, probe, digging tools for minor excavation, compass and camera.

Level 3: Advanced Assessment – Involves a detailed assessment of tree parts, defects, targets or site conditions. Level 3 assessments are usually performed in conjunction with or after a basic assessment if additional information is needed. Advanced assessments might include aerial inspection, assessment for internal decay, root assessment, measuring change of lean and load testing.

Target – People, property, or activities that could be injured, damaged, or disrupted by a tree failure.

Static Target - A target that cannot be easily relocated. It is present 24 hours per day, seven days per week. Building and landscape fixtures are considered static targets.

Movable target - A target that may be relocated as a mitigation strategy.

Mobile target - A target that is constantly moving or stopping intermittently. Such targets include people, animals, bicycles, and vehicles.

Target zone: The area in which a tree or tree part can reasonably be expected to fall if it were to fail.

Occupancy rate: The amount of time that a mobile target is present in the target zone.

There are four possible ratings:

- 1) **Constant:** Within the assessed time frame, the target is always or nearly always present in the target zone, 20-24 hours per day.
- 2) **Frequent:** Within the assessed time frame, the target is present in the target zone for a large portion of the day, month, week, or year, averaging 4-20 hours per day.
- 3) **Occasional:** Within the assessed time frame, the target is infrequently or intermittently present in the target zone, averaging 0.25-4 hours per day.
- 4) **Rare:** Within the assessed time frame, the target is present in the target zone for a very small portion of time, averaging 0.25 hours per day or less.

Likelihood of failure - The chance that a tree or tree part could fall within a specified time frame.

There are four possible ratings:

- 1) **Imminent:** Without regard to the assessed time frame, the tree or tree part is about to fail or has already started to fail.
- 2) **Probable:** Within the assessed time frame, the tree or tree part may fail in ordinary weather conditions.
- 3) **Possible:** Within the assessed time frame, the tree or tree part may fail in extreme weather.
- 4) **Improbable:** Within the assessed time frame, the tree or tree part may not fail, even in extreme weather.

Likelihood of impact - The chance that the subject tree would impact the target if it were to fail. This is primarily determined by the occupancy rate of the targets, the direction of the tree's fall, and any potential protection factors.

There are four possible ratings:

- 1) **High:** If the tree or tree part were to fail, it may be expected to impact the target.
- 2) **Medium:** If the tree or tree part were to fail, the chance of impacting the target is approximately 50/50.
- 3) **Low:** If the tree or tree part were to fail, it would be unlikely to impact the target.
- 4) **Very Low:** If the tree or tree part were to fail, the chance of impacting the target is remote.

Consequences of impact - The amount of damage or harm caused by a tree or tree part failing and impacting a target. It may be personal injury, property damage, or disruption of an activity.

There are four possible ratings:

- 1) Severe: Hospitalization or death of a person, or property damage over \$20,000.
- 2) Significant: Personal injury that does not require professional medical care, or property damage costing less than \$20,000 to repair.
- 3) Minor: Very minor personal injury, or property damage costing less than \$1,000 to repair.
- 4) Negligible: Property damage that can be easily repaired. No personal injury.

Risk Rating: The combination of likelihood of failure, likelihood of impact, and consequences of impact.

There are four possible ratings:

- 1) Extreme: access to the target zone should be restricted immediately and mitigation should take place as soon as possible.
- 2) High: mitigation should take place as soon as practical.
- 3) Moderate: mitigation should take place as soon as pruning cycle allows.
- 4) Low: The risk may be mitigated as pruning cycle allows, or the tree may be retained and monitored.

Timeframe: The period of time over which the risk is assessed. For this assignment, I used a timeframe of 5 years.

Limitations

I relied upon historical information regarding the site and the subject trees that you provided to me. For the purposes of this report, I assumed all of the information you gave me to be true. If any of the information provided to me is found to be inaccurate, the conclusions in this report may be invalidated.

My observations are based on a strictly visual inspection of the property, and some hidden or buried symptoms and signs may not have been observed. I did not conduct excavation, coring, or aerial inspection to make observations. Additional work would be needed to conduct root crown inspections and extent-of-decay analysis on the trees if these additional inspections are desired.

Although the condition of the trees will change throughout the year, my analysis is only based on the observations I gathered at the time of inspection. I do not guarantee the safety, health, or condition of the trees. There is no warranty or guarantee, expressed or implied, that problems or deficiencies in the trees may not arise in the future.

Arborists are tree specialists who use their knowledge, education, training, and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living trees. Clients may choose to accept or disregard the recommendations of the arborist, or to seek additional advice.

Arborists cannot detect every condition that could possibly lead to structural failure of a tree or damage caused by roots. Trees and roots are living organisms that grow and fail in ways not fully understood. Conditions are often hidden within trees and below ground. Arborists cannot guarantee that a tree will be healthy or safe under all circumstances, or for a specified period of time. Likewise, remedial treatments, like any medicine, cannot be guaranteed.

Treatment, pruning, and removal of trees may involve considerations beyond the scope of the arborist's services such as property boundaries, property ownership, site lines, disputes between neighbors, and other issues. Arborists cannot take such considerations into account unless complete and accurate information is disclosed to the arborist. An arborist should then be expected to reasonably rely upon the completeness and accuracy of the information provided.

Trees can be managed, but they cannot be controlled. To live near trees is to accept some degree of risk. The only way to eliminate all risk associated with trees is to eliminate all trees.

Conclusion

I have concluded that the three redwood trees are moderate risk for whole tree failure and a high risk for root damage to hardscape. It is possible within the 5-year timeframe for whole tree failure to occur, and if whole tree failure were to occur, it is somewhat likely to cause severe damage. These trees are high risk for root damage to hardscape. It is probable within the next 5-year timeframe that the damage will continue to occur and is very likely to cause severe damage. I recommend these trees be removed.

It is important to note that once these trees have been removed the stumps will either need to be ground out or treated and killed with an herbicide or the trees will grow back from the stumps and root damage will continue. If trees are replanted, they should be small stature trees more appropriate for the small size of the planting site. I also recommend that the damage that has been caused by the roots be inspected by a qualified professional to determine if and what repairs need to be made to the retaining walls, stairs, and parking lot.

If you have any further questions, please feel free to give my office a call.

Sincerely,



Aero Acton



Aero Acton
ISA Certified Arborist #WE-4022A
ISA Tree Risk Assessment Qualified
ASCA Tree & Plant Appraisal Qualification



Contractors State License Board
CSLB #799133