City of Grass Valley
City Council
Agenda Action Sheet

Council Meeting Date: July 19, 2016    Date Prepared: July 26, 2016

Prepared by: Bob Richardson, City Manager

Title: Approval of Purchase Option Agreement with SFP-B Limited Partnership.

Recommended Action: Approve the attached Purchase Option Agreement and authorize the City Manager to execute the agreement on behalf of the City.

Agenda: Consent

Background Information: As part of the Wolf Creek Abatement Project to address the transient camps adjacent to Wolf Creek and south of Highway 20, the City discussed with the property owner, SFP-B Limited Partnership, the possibility of a portion of the real property being transferred to the City or a non-profit for future use. The property owner has agreed to grant the City an option to have approximately ten acres of the property transferred to itself or a non-profit in consideration of the City’s efforts to address the transient camps.

The City will have two years to decide whether to exercise the option. If the City exercises the option, the ten acres will be separated from the parcel by a lot line adjustment and then transferred to the City or a non-profit. Easements would be granted to the property owner for existing piped storm water drainage. The City agrees to work with the property owner in applying for a tax deduction for transferring the property. Exhibit A to the attached Purchase Option Agreement shows the parcel and the approximately ten acres to be transferred as well as the approximate locations of the drainage easements.

Reviewed by:                     /s/ City Manager

Attachments:
1. Purchase Option Agreement with SFP-B Limited Partnership

Agenda Item # 8-1
PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (the "Option") is made and entered into as of July 1, 2016, by and between SFP-B Limited Partnership, an Oregon limited partnership ("Owner"), and the City of Grass Valley, a California municipal corporation and charter city ("City"), with reference to the following recitals of fact:

RECATALS:

A. WHEREAS, Owner owns that certain real property located in the County of Nevada, State of California, known as 570 Freeman Ln. in the City of Grass Valley, which is approximately a 12.38 acre parcel and more particularly described on Exhibit A attached hereto and incorporated herein by this reference, (the "Main Property");

B. WHEREAS, as of the date of this Option there exists a large transient camp on a portion of the Main Property;

C. WHEREAS, on May 13, 2016, City and Owner entered into a License and Indemnity Agreement (the “License and Indemnity Agreement”) authorizing City to enter a portion of the Main Property, construct an access route thereon, and remove certain identified property and debris located thereon associated with the transient camp (Exhibit “B”);

D. WHEREAS, pursuant to the License and Indemnity Agreement, City agreed to indemnify Owner against any damages arising out of City’s entry on the Main Property.

E. WHEREAS, in consideration of City’s willingness to remove the identified property and debris associated with the transient camp at City’s expense, Owner desires to grant to City an option to purchase approximately 10 acres of the Main Property for City’s later use as a potential recreational area;

F. WHEREAS, the parties hereto desire to set forth the terms of the option granted hereinbelow from Owner to City to purchase an approximately 10 acre portion of the Main Property pursuant to the terms and conditions below.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT:

1. Grant of Option. Owner hereby grants to City an option (the "Option") to purchase the Property (as that term is defined below) on the terms and conditions set forth in this Option.

2. Term of Option. The term of the Option shall commence on July 1, 2016, and shall expire at 11:59 p.m. (Pacific Standard Time) on June 30, 2018 (the “Option Term”).

3. Manner of Exercising Option. City may exercise the Option by delivering to Owner, at any time during the Option Term, written notice of such exercise.
4. **Consideration:** The consideration for this Option and purchasing the Property pursuant to this Option will be $1.00 (One Dollar) and, in addition, the City will perform the following:

(a) **Transient Camp.** Removal of all trash and debris in and around the transient camp, subject to the terms and conditions of the License and Indemnity Agreement.

(b) **Lot Line Adjustment.** In order for Owner to grant to City a portion of the Main Property (estimated as approximately 10 acres in size, but to be of such size and dimension as the parties shall agree upon; for purpose of this Option such portion is referred to as the “Option Parcel”). The parties to this Option intend to separate the Option Parcel from the Main Property pursuant to a lot line adjustment. City will pay for the necessary survey and civil engineering work to complete the lot line adjustment and pay for any other costs necessary to accomplish the lot line adjustment. The dimensions of the Option Parcel shall be agreed upon by the parties in the exercise of their reasonable discretion but, for purposes of this Option, they are generally as outlined on Exhibit A. Owner agrees that following the purchase of the Option Parcel by the City, Owner will, at its cost, install a fence to segregate the Option Parcel from the Main Property.

(c) **Drainage.** City will reserve to Owner and adjacent parcels drainage easements for the existing down-slope drains on the Option Parcel, generally as shown on Exhibit A.

(d) **Grant of Property.** Owner will convey the Option Parcel to City or to an alternative 501(c)(3) nonprofit organization as designated by City within 30 days after City’s exercise of this option.

(e) **Tax Deduction.** City will cooperate to assist Owner in applying for a tax deduction due to its grant of the Property.

5. **Transfer.** The sale and transfer of the Property shall close no later than thirty (30) days after Owner’s receipt of City’s written notice of exercise of the Option. Owner shall convey the Property to City by means of a grant deed.

6. **Quitclaim Deed and Termination of Option.** Within thirty (30) days of the termination of the Option, City will execute and deliver to Owner an an instrument documenting a release of all of City’s right, title and interest in and to the Option within thirty (30) days after termination of the Option Term, and (b) execute, acknowledge and deliver such other documents as may be reasonably required by Owner’s title company to remove the cloud of the Option from title to the Main Property.

7. **Notices.** Notices, demands and communications between the parties shall be in writing and shall be served personally or by depositing the same in the certified United States mail, return receipt requested, post prepaid, and, if intended for Owner shall be addressed to:

SFP-B Limited Partnership  
Mail: PO Box 5350, Bend, OR 97708  
Delivery: 20900 Cooley Rd., Bend, OR 97701  
Attention: David Gibson  
Telephone: 541.416.5342
If intended for City shall be addressed to:

City of Grass Valley
Attn: Bob Richardson, City Manager
125 East Main St.
Grass Valley, CA 95945
Telephone: (530) 274-4312

Courtesy copy to:

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

or to such address as either party may have furnished to the other in writing as a place for the service or notice. Any notice so mailed shall be deemed to have been given on the delivery date, or the date that delivery is refused by the addressee, as shown on the return receipt.

8. Attorney's Fees. In the event of any action or proceeding at law or in equity between any of the parties hereto to enforce any provision of this Option or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to the litigation shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees incurred therein by the prevailing party, and if the prevailing party recovers judgment in any action or proceeding, the costs, expenses and attorney's fees shall be included in and as part of the judgment.


(a) Owner and City each represent and warrant that neither has had or will have any dealings with any person, firm, broker or finder in connection with the negotiation of this Option and/or the consummation of the transactions contemplated hereby. Each party hereto hereby agrees to indemnify and hold harmless the other party from and against costs, expenses of liabilities for compensation, commissions or charges which may be claimed by any broker, finder or similar party by reason of any actions of the indemnifying party.

(b) The rights and obligations of Owner and City under this Option shall inure to the benefit of, and bind the respective successors and assigns.

(c) The captions used herein are for convenience of reference only and are not part of this Option and do not in any way limit or amplify the terms and provisions hereof.

(d) Time is of the essence of each and every agreement, covenant and condition of this Option.
(e) This Option shall be interpreted in accordance with, and governed by, the laws of the State of California. Venue shall be in the Superior Court for the County of Nevada, California.

(f) This Option constitutes the entire agreement by and among Owner and City with respect to the subject matter hereof, and supersedes all prior offers and negotiations, oral and written. This Option may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Owner and City.

IN WITNESS WHEREOF, Owner and City have executed this Option by their duly authorized representatives:

OWNER:

SFP-B Limited Partnership, a California Limited Partnership

By: ________________________________

Corey J. Parks, Secretary of SSC-B, Inc., its General Partner

Dated: ________________________________

CITY:

CITY OF GRASS VALLEY, a California municipal corporation and charter city

By: ________________________________

Its: ________________________________

Dated: ________________________________

ATTEST:

By: ________________________________

Kristi Bashor, City Clerk

Dated: ________________________________

APPROVED AS TO FORM:

By: ________________________________

Michael G. Colantuono, City Attorney

Dated: ________________________________
EXHIBIT A

Diagram of Main Property, Property, and Drainage Easement

Attached
approximate area of Option Parcel

Approximate Les Schwab area to be retained

Drainage easement for existing piped storm water drainage at misc. locations
EXHIBIT B

License and Indemnity Agreement

Attached
LICENSE AND INDEMNITY AGREEMENT
BETWEEN CITY OF GRASS VALLEY
AND LES SCHWAB TIRE CENTER

LICENSE ISSUED TO: City of Grass Valley
125 East Main Street
Grass Valley, CA 95945
(530) 274-4310

Permission is hereby given to the City of Grass Valley and its officers, agents, employees, contractors, and volunteers (collectively, "City") to enter upon the property of SFP-B Limited Partnership ("Property Owner") located at 570 Freeman Lane in the City of Grass Valley, for the purposes and during the term as provided herein.

1. **AREA:** The license granted by this Agreement is limited to the areas of the property identified as 570 Freeman Lane, Grass Valley, California (the "Property"), which Property is legally described on Attachment B attached hereto, other than those areas of the Property that are improved for commercial business purposes.

2. **PURPOSE:** The license granted by this Agreement is nonexclusive and is limited to the following purposes: (1) construction of an access route on the Property from and to real property owned or controlled by the City, and (2) removal of certain identified property and debris located on the Property. Such purposes are more particularly described and set forth in Attachment A to this Agreement and incorporated herein by this reference (the "Scope of Work"). The parties acknowledge that the property and debris subject to removal is part of an unlawful "transient camp" established without permission from the Property Owner, that there are open fires and inadequate sanitation at the transient camp, and that such camp constitutes a nuisance subject to abatement. The parties further acknowledge that removal of such property and debris is required for the public safety, and the preservation of life, health, and property.

3. **TERM:** The term of this Agreement shall be from May 16, 2016 until the earlier of (i) completion of the Scope of Work or (ii) the first anniversary of the date hereof.

4. **CONSIDERATION.** Property Owner agrees that it will receive a benefit from the removal of the transient camp, and that such benefit represents adequate consideration for the grant of this license.

5. **CITY'S RESPONSIBILITIES:** City agrees as follows:

   (a) **Damage to Property Owner’s Property:** If the City chooses to undertake the Scope of Work, City shall be liable for and shall pay to Property Owner the cost of any damage to the Property and any property of the Property Owner, that is not identified in or contemplated by the Scope of Services, and arising from or in any way related to: (1) the acts or omissions of City under this Agreement, or (2) any breach by City of any obligations expressly imposed on City by this Agreement, except for the portion, if any, of any of the foregoing which are caused by
Property Owner. City’s obligations under this subsection (a) shall survive the termination of this Agreement. Completion of the Scope of Work in a reasonably workmanlike manner shall not constitute “damage” to the Property within the meaning of this subsection (a).

(b) **Third Party Property Damage or Personal Injury:** Except for damages arising from the gross negligence or willful misconduct of one or more of the Owner Indemnitees (as defined below), Property Owner and the other Owner Indemnitees shall not be liable for any damage of any kind whatsoever to any property belonging to or used by City or any persons entering upon the Property under this Agreement, including loss of use of any such property, or for any injury of any kind whatsoever to any person entering upon the Property under this Agreement, arising from any cause whatsoever, and City hereby waives all claims and demands relating thereto. City’s obligations under this subsection (b) shall survive the termination of this Agreement.

(c) **Indemnification:** City shall defend and hold Property Owner, and its officers, agents, employees, contractors, and volunteers, and their respective successors and assigns (collectively, the “Owner Indemnitees”), harmless from and against any and all claims, losses, liabilities, costs and expenses, including attorney’s fees (collectively, the “Claims”) whether incurred by or made against any Owner Indemnitee, for damage to property, including loss of use of any such property, and all Claims for bodily injury or death of any person, arising from (i) any negligent or otherwise wrongful act, omission or entry upon the Property or other activity under this Agreement by City (including but not limited to any Claim by any insurer which has paid a claim and is subrogated to the rights of the claimant), (ii) any breach by City of its express obligations under this Agreement; provided, however, that no Owner Indemnitee shall be entitled to indemnification for the portion, if any, of any Claim which is caused by the gross negligence or willful misconduct of such Owner Indemnitee. Payment shall not be a condition precedent to recovery under such indemnification, and a finding of liability or an obligation to indemnify shall not be a condition precedent to the duty to defend. City’s obligations under this subsection (c) shall survive the termination of this Agreement.

(d) **Insurance:** City acknowledges that it is sufficiently insured for the risks it undertakes pursuant to this Agreement.

(e) **City Discretion Not to Pursue Scope of Work:** If the City chooses to pursue the Scope of Work, it shall do so as set forth in this Agreement. However, nothing in this Agreement obligates the City to undertake the Scope of Work.

(f) **No Continuing Obligation.** Whether or not City performs the Scope of Work, City is under no obligation to prevent the establishment of transient camps on the Property.

6. **PROPERTY OWNER’S RESPONSIBILITIES:** Property Owner agrees as follows:

(a) **Approval of Scope of Work:** Property Owner acknowledges that it has reviewed the Scope of Work and agrees that such work is to the mutual benefit of Property Owner
and City. Property Owner hereby authorizes City to perform the Scope of Work on the Property at the City’s sole cost.

(b) **No City Interest in Property Owner’s Property:** Property Owner and City acknowledge that City has no ownership interest in, control over, or further responsibility regarding the Property unless otherwise agreed in a subsequent writing by the parties hereto. Any improvements or other modifications to the Property made by the City, including the access route contemplated by the Scope of Work, shall be owned, controlled, and the responsibility of Property Owner.

(c) **Indemnification:** Property Owner shall defend and hold City, and its officers, agents, employees, contractors, and volunteers, and their respective successors and assigns (collectively, the “City Indemnitees”), harmless from and against any and all Claims (as defined above) (including but not limited to any Claim by any insurer which has paid a claim and is subrogated to the rights of the claimant) whether incurred by or made against any City Indemnitee, for damage to property, including loss of use of any such property, and all Claims for bodily injury or death of any person, arising from or in any way related to the Property from and after the completion of the Scope of Work. The Scope of work shall conclusively be deemed to have been completed upon removal of all City equipment from the Property and written notice to Property Owner by City that the Scope of Work is complete. Payment shall not be a condition precedent to recovery under such indemnification, and a finding of liability or an obligation to indemnify shall not be a condition precedent to the duty to defend. Property Owner’s obligations under this subsection (c) shall survive the termination of this Agreement.

7. **Remedies:** The obligations and liabilities of the parties under this Agreement shall survive the termination or expiration of this Agreement. All powers, rights or remedies of the parties to this Agreement shall be cumulative with, and not exclusive of, any powers, rights or remedies otherwise available at law or in equity.

8. **Negation of Agency.** City and Property Owner acknowledge that, in entering into and performing under this Agreement, each is acting independently and not as an agent of the other in any respect. Nothing contained herein shall be construed to make the City and Property Owner joint venturers or partners or to establish a relationship of employer and employee between them.

9. **Severability.** If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement.

10. **Entire Agreement.** This Agreement represents the entire agreement between the Property Owner and City with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between them with respect to the matters contained in this Agreement. Each party enters into this Agreement based solely upon the representations set forth herein and upon each party’s own independent investigation of any and all facts such party deems material. This Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties hereto.
11. **EFFECTIVE DATE.** This Agreement shall be effective as of the date signed by the later of the parties to do so.

12. **SUCCESSOR AND ASSIGNS.** All of the terms, covenants and conditions of this Agreement shall be binding upon the parties and their respective successors and assigns.

13. **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the benefit of the City, its officers, agents and employees, the Property Owner, and the successors and assignees of the City or the Property Owner and for the benefit of no other person. No other person shall have the rights of a third-party beneficiary under this Agreement.

IN WITNESS WHEREOF, Property Owner and City have entered into this Agreement as of the date(s) indicated below.

**Property Owner:**
Signed: [Signature]
By: [Name]
Its: [Title]
Dated: 5-13-16

**City of Grass Valley:**
Signed: [Signature]
By: [Name]
Its: [Title]
Dated: 5/13/16

Attest:
By: [Signature]
Title: City Clerk
Dated: 5/13/2016
ATTACHMENT A

SCOPE OF WORK

A. The City of Grass Valley, utilizing City employees, agents, contractors, and volunteers, and their tools, equipment, materials, and supplies, shall:

Construct an Access Route on the Property:

1. Generally described as: Entering from the north property line and accessed from adjoining City-owned property, the access route will follow a general north-to-south direction to an area near the westerly corner of 600 Freeman Lane (currently Liberty Motors). The access route will follow closely along the south property line of 600 Freeman Lane and will pass over the “Little Wolf Creek” tributary. The route will then continue in a general southerly direction bordering the lower property line of the Pine Creek Shopping Center, while staying on the Property. As soon as practicable after crossing the tributary, the access route will connect to a pre-existing, wooded, and unmaintained construction road. Based on topography and/or rock/tree locations, the access route may deviate away from this “construction road” as the route continues south along the Property between the eastern banks of Wolf Creek and the west property line of the Pine Creek Shopping Center.

2. The access route described above will be constructed utilizing a tracked masticator, hand labor, and larger equipment necessary to improve a route capable of vehicle travel.

3. Upon completion of the removal of the property and debris as described below, remove access to the new road or otherwise block such access to prevent any party from accessing the road via motorized vehicle.

Remove Property and Debris Located on the Property:

4. Property and debris located on the Property without permission from the Property Owner, including personal property, temporary shelters, trash, debris, refuse, hazardous and/or environmentally-detrimental and human-caused waste and other materials associated with a “transient camp” located on the Property.

B. Nothing in this Scope of Work shall constitute a waiver of any ordinances of the City with respect to work Property Owner may undertake on the Property.
ATTACHMENT B

Parcel 1 of Parcel Map No. 95-05, as said map was filed for record on December 14, 1995, in Book 18 of Parcel Maps, at page 285, Nevada County Records