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

**Council Meeting Date:** April 24, 2018  
**Date Prepared:** April 19, 2018

**Prepared by:** Timothy M. Kiser, PE, City Manager/Public Works Director/City Engineer

**Title:** CONSIDERATION OF THE ADOPTION OF A RESOLUTION OF NECESSITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY REQUIRE THE ACQUISITION FOR PUBLIC PURPOSES BY EMINENT DOMAIN OF REAL PROPERTY LOCATED AT 600 FREEMAN LANE IN THE CITY (APN 29-290-40)

**Recommended Motion:** That the City Council, following a public hearing, adopt Resolution 2018-26 of Necessity finding and determining the public interest and necessity to acquire by eminent domain and authorizing the condemnation of certain real property located at 600 Freeman Lane in the City (APN 29-290-40) for the Little Wolf Creek Sinkhole Emergency Stabilization Project and authorizing the City Attorney to proceed with a condemnation action.

**Agenda:** Public Hearing

**Background Information:** Beginning January 3, 2017, a storm system resulting from an “atmospheric river” hit Nevada County, causing flooding and road damage throughout the City, and resulting in a large sinkhole adjacent to the Liberty Motors parking lot on Freeman Lane, south of Highway 20 and west of Highway 49 (the “Little Wolf Creek Sinkhole”). The Little Wolf Creek Sinkhole is approximately 70-feet deep and 80-feet wide and near persons, structures, businesses, infrastructure, and other improvements, and required immediate stabilization, remediation, and related work (“the Project”).

The Project repaired and stabilized the sinkhole and repaired of the drainage facilities in the Project area.

In consultation with the property owners, Tripp’s Auto Body Shop, a general partnership (“Tripp’s”), City staff designed the Project to include the permanent acquisition of 0.60 acres of land, (“Subject Property”) a portion of the Tripp’s larger parcel. The Subject Property is described in Exhibit A-1 to the proposed Resolution and shown on the map attached to the proposed Resolution as Exhibit B. The Project also contemplates the conveyance of an adjacent 5-foot strip of land to Tripp’s for fair market value if Tripp’s wishes to purchase it. This would benefit the Tripp’s remainder parcel.

The Project is in conformance with the California Environmental Quality Act (CEQA). The City Council determined that the Project to be categorically exempt from CEQA review on February 14, 2017 as an emergency project under 14 Code of California Regulations section 15269, a provision of the State CEQA Guidelines. A copy of the Notice of Exemption is attached to the proposed Resolution as Exhibit C.
City staff and the City right-of-way agent have not yet reached agreement with Tripp’s to acquire the Subject Property, but negotiations continue. Adoption of this Resolution of Necessity will ensure timely possession of the Subject Property, as required to obtain Caltrans certification for the Project and to assist the City’s efforts to obtain Federal Highway Administration Emergency Relief funds. Adopting the Resolution will protect the City’s ability to obtain funding for the Project without interfering with further negotiations toward an agreement with Tripp’s. City staff remains hopeful such an agreement will be reached soon.

The City Attorney’s office sent a Notice of Hearing of a Resolution of Necessity to Tripp’s attorney by email and Federal Express for overnight delivery on April 6, 2018 and by first class mail with a proof of service on April 9, 2018.

The property owner has the right to testify at the hearing on these issues:

1. Whether the public interest and necessity require this Project.
2. Whether the Project is planned and located in a manner that will be most compatible with the greatest public good and least privacy injury.
3. Whether the property sought to be acquired is necessary for the Project.
4. Whether an offer complying with Government Code section 7267.2 has been made.
5. Whether the City has complied with all other procedures prerequisite to the exercise of eminent domain.

The Tripp’s attorney gave written notice to the City that he and Tripp’s owners intend to speak at the hearing.

The City Council must make affirmative findings on each of the above points and the proposed Resolution does so. Code of Civil Procedure section 1245.240 requires a vote of two-thirds of all the members of the City Council to adopt the resolution, i.e., four or more votes are needed.

**Funds Available:** Yes  
**Account #:** 180-6326  
Adequate funds are provided in Fiscal Year 2017/18 Budget for the Little Wolf Creek Sinkhole Emergency Repair Project. Funding sources include General Funds, reimbursement by the City’s risk pool and reinsurers, and Federal Highway Administration funds.

**Reviewed by:**  
City Manager  
Finance  
Community Development

**Attachments:**  
1. Resolution with Exhibits A-1, B and C  
2. Notice of Intention to Adopt a Resolution of Necessity Letter dated April 6, 2018  
3. Offer Letter dated February 21, 2018 (without attachments)  
4. Offer Letter dated April 6, 2018 (without attachments)
RESOLUTION NO. 2018-260

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF GRASS VALLEY
FINDING AND DETERMINING THAT
THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY
REQUIRE THE ACQUISITION BY EMINENT DOMAIN
OF CERTAIN REAL PROPERTY LOCATED AT
600 FREEMAN LANE, GRASS VALLEY, CA 95949 (APN 29-290-40)
FOR PUBLIC PURPOSES

THE CITY COUNCIL OF THE CITY OF GRASS VALLEY DOES HEREBY RESOLVE
AS FOLLOWS:

SECTION 1. The City Council of the City of Grass Valley, after consideration of the
staff report, staff presentation, discussion, oral testimony and evidence presented at its City
Council Meeting on April 24, 2018 at 7:00 p.m. hereby finds, determines and declares as
follows:

a. City Council of the City of Grass Valley is authorized by statute to acquire
property by eminent domain within the City of Grass Valley for the Little Wolf
Creek Sinkhole Emergency Stabilization and Repair Project ("Project").

b. The public interest, convenience and necessity require the proposed Project; to
wit, the Little Wolf Creek Sinkhole Emergency Stabilization and Repair Project,
which includes an emergency repair of the Little Wolf Creek Sinkhole, which
included repair of a 90-inch city storm drain culvert facility necessary to
maintain service essential to the public health, safety and welfare, stabilization
of the surrounding area, and mitigation of an emergency.

c. The interests in real property to be acquired include the fee simple interest in a
portion of real property consisting of 0.60 acres of land described on Exhibit A-
l, and depicted on Exhibit B, attached hereto and incorporated herein by this
reference ("Subject Property"). The Subject Property is located within the City of
Grass Valley, in the County of Nevada, State of California.

d. The Project is planned and located in a manner that will be most compatible
with the greatest public good and least private injury.
e. The taking of the Subject Property is necessary for the stated Project and such taking is authorized by Section 19, Article I of the California Constitution, Article III of the Charter of the City of Grass Valley, Sections 37350, 37350.5 and 40401 et seq. of the California Government Code, Sections 1230.010 et seq., 1240.110, 1240.120 of the California Code of Civil Procedure, and other applicable law.

f. The offer to purchase required by California Government Code Section 7267.2 has been made to the owners of the Subject Property.

g. The necessary notice of hearing on this Resolution has been given, as required by Code of Civil Procedure section 1245.235.

h. The City Council of the City of Grass Valley has duly determined the Project to be categorically exempt under section 15269 of the California Environmental Quality Act. The Notice of Exemption is attached as Exhibit C.

SECTION 2. The City Council of the City of Grass Valley hereby declares that it is its intention to acquire the Subject Property in accordance with the provision of the laws of the State of California governing condemnation procedures.

SECTION 3. The City Council of the City of Grass Valley further finds that if any portion of the area of the Subject Property has been appropriated to some public use, the public uses to which it is to be applied by the City of Grass Valley, as described above, are more necessary and paramount public uses, pursuant to Code of Civil Procedure section 1240.610.

SECTION 4. The City Attorney is authorized and directed to prepare, institute and prosecute such proceedings in the proper Court having jurisdiction thereof as may be necessary for the acquisition of the Subject Property, including the filing of an application for an Order for Possession prior to judgment.

SECTION 5. This Resolution shall be effective immediately upon its adoption.
SECTION 6. The Clerk of the City of Grass Valley shall certify the adoption of this
Resolution and certify this record to be a full true, correct copy of the action taken.

PASSED AND ADOPTED by two thirds of all of the City Council of the City of Grass Valley
at a regular meeting held the 24th day of April, 2018, by the following vote:

AYES:
NOES:
ABSENT:
NOT VOTING:

____________________________
Howard Levine, Mayor
City of Grass Valley

ATTEST:

____________________________
Kristi Bashor, City Clerk
City of Grass Valley

APPROVED AS TO FORM:

____________________________
Michael G. Colantuono, City Attorney
City of Grass Valley

Exhibit A-1: Legal Description
Exhibit B: Map Depicting Property to be Acquired
Exhibit C: Notice of Exemption (CEQA)
EXHIBIT A-1
Acquisition Parcel -- City of Grass Valley

All that real property situated within the Section 34, Township 16 North, Range 8 East, M.D.B. & M., within the Incorporated City of Grass Valley, County of Nevada, California being a portion of Parcel 2 as shown on that certain Parcel Map No. 95-05 recorded December 14, 1995 in Book 18 of Parcel Maps at Page 285, Official Records of Nevada County, and being more particularly described as follows:

Beginning at the most easterly corner of said Parcel 2 of said Parcel Map No. 95-05 also being a point on the south side of the Freeman Lane right-of-way; thence from said Point of Beginning and along easterly and southerly lines of said Parcel 2 as shown on said Parcel Map No. 95-05 the following three (3) consecutive courses: 1) South 46° 21' 20" West, 112.99 feet; 2) North 43° 38' 40" West, 162.16 feet; and 3) North 31° 07' 06" West, 67.94 feet; thence leaving the southwesterly line of said Parcel 2, North 43° 00' 00" East, 104.06 feet to a point on the easterly line of said Parcel 2 and being the southerly right-of-way line of Freeman Lane; thence southeasterly along the easterly line of said Parcel 2 and southerly line of Freeman Lane, South 42° 16' 15" East, 233.60 to the Point of Beginning.

The herein described property contains an area of 0.60 acres, more or less.

The herein described property is shown on Exhibit "B" attached hereto and made a part hereof.

The herein described property affects a portion of APN 29-29Q-40.

This description has been prepared by me, or under my direct supervision, in conformance with the Professional Land Surveyors Act, on February 6, 2018.

Kevin J. Nelson, P.L.S. 8423
Expires 12-31-18
EXHIBIT B

1238 Acres (Existing)

Parcel 1

SFP-B Partnership

357.24'

1.74 Acres (Proposed)

Parcel 2

Tripp's Auto Body

2.37 Acres (Existing)

Building (E)

Area to City of Garden Grove

0.86 Acres (Existing)

Area to City of Grass Valley

1.50 Acres (Existing)

OPEN SPACE EASEMENT

VIEW EASEMENT

1.00 Acres (Existing)

PM 285

18

1.30 Acres (Existing)

20'

357.24'

SCALE: 1" = 80'

EXHIBIT MAP "B"
Notice of Exemption

To: Nevada County Clerk Recorder
950 Maidu Avenue, Suite 210
Nevada City, CA 95959

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Applicant/Project Title: Tim Kiser, Public Works Director/Little Wolf Creek Sinkhole Emergency Repair Project
City of Grass Valley
125 E. Main Street
Grass Valley, CA 95945
530-274-4351

Project Location: The project is located at the confluence of Wolf Creek and Little Wolf Creek, located at 570 Freeman Lane (APN: 29-290-39).

Project: An emergency repair of the Little Wolf Creek Sinkhole consisting of an approximate seventy-foot-deep by eighty foot wide sinkhole caused by severe flooding.

Categorical Exemptions: Section 15269 - Emergency Project
Reasons why project is exempt: Projects which maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects: i) to repair publicly or privately-owned service facilities necessary to maintain service essential to the public health, safety, or welfare; and, ii) to prevent or mitigate an emergency. This project is also categorically exempt under CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), 15304 (Minor Alterations to Land), 15307 (Protection of Natural Resources), 15308 (Protection of the Environment), and 15330 (Abatement of Hazardous Materials).

This is to advise that the City of Grass Valley City Council, as the lead agency in accordance with CEQA, determined the project Categorically Exempt on February 14, 2017, for the above described project.

Lead Agency Contact Person: Lance E. Lowe, AICP, Senior Planner
City of Grass Valley
Telephone Number: (530) 274-4712

Signature (Public Agency): Date: 4/5/18

FILE # ________ FILE NAME ____________________________
AUTHORIZED SIGNATURE ____________________________

RECEIPT # ________ FEE STATUS ________________
April 6, 2018

VIA FEDEX AND EMAIL

Craig A. Diamond, Esq.
Diamond Baker Mitchell, LLP
149 Crown Point Ct. Suite B
Grass Valley, CA 95945

Attorney for: Tripp's Auto Body Shop
127 Stewart Street
Grass Valley, CA 95945

Tripp's Auto Body Shop and Paint, Inc.
127 Stewart Street
Grass Valley, CA 95945

Re: NOTICE OF INTENTION TO ADOPT
A RESOLUTION OF NECESSITY
FOR ACQUISITION OF CERTAIN REAL PROPERTY
Site Address: 600 Freeman Lane,
Grass Valley, CA 95949
APN: 29-290-40; Nevada County

Dear Craig:

This notice is sent to you as counsel for Tripp's Auto Body Shop and Tripp's Auto Body Shop and Paint, Inc. pursuant to Code of Civil Procedure § 1245.235.

This notice concerns a portion of the property located at 600 Freeman Lane in the City of Grass Valley, bearing the Nevada County Assessor Parcel No. 29-290-40. As you know, the City of Grass Valley has been investigating the acquisition of 0.60 acres of this property in fee to construct sinkhole stabilization improvements, including reconstruction of a 90-inch culvert and restoration of the area to prevent environmental damage in which the City's has labeled the "Little Wolf Creek Sinkhole Emergency..."
Stabilization Project." I enclose a legal description of the property proposed to be acquired and map depicting it.

Code of Civil Procedure § 1240.030 authorizes the City to exercise its power of eminent domain to acquire property for a proposed public project if:

A. The public interest and necessity require the project.
B. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
C. The property sought to be acquired is necessary for the project.
D. The offer required by Government Code § 7267.2 has been made to the owner of record.

This notice is to inform your clients that the Grass Valley City Council will be asked to decide if these four conditions are met as to the City's acquisition of the property referenced above, and whether the City has complied with all other procedural requirements to acquire the property by eminent domain. The City Council will also be asked to find the environmental impacts associated with the proposed acquisition and the Little Wolf Creek Sinkhole Emergency Stabilization Project for which the property is proposed to be acquired, has been adequately reviewed and certified by the City Council, which found the project on February 14, 2017 to be categorically exempt from the California Environmental Quality Act (CEQA) as an emergency project under section 15269 of the State CEQA Guidelines.

This meeting will be held at 7:00 p.m., April 24, 2018 in the City Council Chambers at 125 East Main Street, Grass Valley, CA 95945. If the Council finds the conditions are met, it may adopt a Resolution of Necessity, a prerequisite for an eminent domain action to acquire property.

Your clients are entitled to appear and be heard on any of the matters the resolution addresses, including those listed above. If you wish to challenge in court any action taken by the adoption of the Resolution of Necessity, or any of the findings or matters included within it, you may be limited to raising only those issues raised at the
Resolution of Necessity hearing, or in written correspondence delivered to the City at or before the hearing.

Code of Civil Procedure § 1245.235(b)(3) provides: "Failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard" on the above matter and issues which are the subject of the hearing. The date this notice was mailed is stated in the attached proof of service.

The City Council must adopt a Resolution of Necessity before the City may file an eminent domain suit. The City may do so in Nevada County Superior Court within six months of the adoption of a Resolution of Necessity. In any such proceeding, the court will be asked to determine the just compensation to which your clients may be entitled if the property is taken in eminent domain.

Neither the City Council's consideration of the Resolution of Necessity nor the initiation of formal eminent domain proceedings prevents further negotiations between our clients for the City's acquisition of the property, and the City is most willing to continue those negotiations.

If you have any questions, please do not hesitate to contact Jenni Pancake in our Pasadena office at (213) 542-5708. Thank you for your consideration.

Very truly yours,

Michael G. Colantuono
City Attorney
City of Grass Valley

JLP:lh
Enclosures: Legal Description, Map, Proof of Service
cc:
Tim Kiser, City Manager
Mike Lahodny
Jennifer L. Pancake, Esq.
EXHIBIT A-1

Acquisition Parcel – City of Grass Valley

All that real property situated within the Section 34, Township 16 North, Range 8 East, M.D.B. & M., within the incorporated City of Grass Valley, County of Nevada, California being a portion of Parcel 2 as shown on that certain Parcel Map No. 95-05 recorded December 14, 1995 in Book 18 of Parcel Maps at Page 285, Official Records of Nevada County, and being more particularly described as follows:

Beginning at the most easterly corner of said Parcel 2 of said Parcel Map No. 95-05 also being a point on the south side of the Freeman Lane right-of-way; thence from said Point of Beginning and along easterly and southerly lines of said Parcel 2 as shown on said Parcel Map No. 95-05 the following three (3) consecutive courses: 1) South 46⁰ 21' 20" West, 112.99 feet; 2) North 43⁰ 38' 40" West, 162.16 feet; and 3) North 31⁰ 07' 06" West, 67.94 feet; thence leaving the southwesterly line of said Parcel 2, North 43⁰ 00' 00" East, 104.06 feet to a point on the easterly line of said Parcel 2 and being the southerly right-of-way line of Freeman Lane; thence southeasterly along the easterly line of said Parcel 2 and southerly line of Freeman Lane, South 42⁰ 16' 15" East, 233.60 to the Point of Beginning.

The herein described property contains an area of 0.60 acres, more or less.

The herein described property is shown on Exhibit “B” attached hereto and made a part hereof.

The herein described property affects a portion of APN 29-290-40.

This description has been prepared by me, or under my direct supervision, in conformance with the Professional Land Surveyors Act, on February 6, 2018.

[Signature]

Kevin J. Nelson, P.L.S. 8423
Expires 12-31-18
PROOF OF SERVICE

I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. On April 6, 2018, I served the document(s) described as NOTICE OF INTENTION TO ADOPT A RESOLUTION OF NECESSITY FOR ACQUISITION OF CERTAIN REAL PROPERTY on the interested parties in this action addressed as follows:

Craig A. Diamond
Diamond Baker Mitchell, LLP
149 Crown Point Court, Suite B
Grass Valley, CA 95945
Telephone: (530) 272-9977 x201
Email: cdiamond@dbplaw.net

[BY OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by FEDERAL with delivery fees fully provided for or delivered the envelope to a courier or driver of FEDERAL EXPRESS authorized to receive documents at 420 Sierra College Drive, Suite 140, Grass Valley, California 95945, with delivery fees fully provided for.]

[BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on April 6, 2018 from e-mail address: ALloyd@ehlaw.us. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.]

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

Executed on April 6, 2018, at Grass Valley, California.

Ashley A. Lloyd
February 21, 2018

Craig A. Diamond
Diamond Baker Mitchell, LLP
149 Crown Point Ct. Suite B
Grass Valley, CA 95945

Attorney for: Tripp’s Auto Body Shop
127 Stewart Street
Grass Valley, CA 95945

Tripp’s Auto Body Shop and Paint, Inc.
127 Stewart Street
Grass Valley, CA 95945

Re: Offer Pursuant to Government Code § 7267.2
Site Address: 600 Freeman Lane,
Grass Valley, CA 95949
APN: 29-290-40; Nevada County

Dear Mr. Diamond:

The City of Grass Valley (“City”) is proceeding with the “Little Wolf Creek Sinkhole” Emergency Stabilization Project (“Project”) and a portion of your clients’ property located at 600 Freeman Lane, Grass Valley, CA is necessary for that Project. The Project includes the City’s acquisition of 0.60 acres of your clients’ property to construct sinkhole stabilization improvements, including reconstruction of a 90-inch culvert and restoration of the area to prevent environmental damage. The 0.60-acre parcel will be acquired by the City in fee for the Project.

The Project also contemplates that a 5-foot strip, 0.045 acres of property, will be conveyed by the City to Tripp’s Auto Body Shop to benefit the Tripp’s remainder parcel in the after condition. This 0.045-acre parcel will be conveyed in fee as part of the Project.
The City has retained Colantuono, Highsmith, and Whatley, PC to acquire the necessary real property interests. Subject to the terms, conditions and contingencies contained herein, the City now makes an offer to purchase the fee interests (unencumbered by any leases, liens, etc.) in the subject property in the amount of $578,000.00 (Five Hundred Seventy-Eight Thousand Dollars and NO/100), which is calculated as follows:

- $525,400 Fair market value of .60-acre parcel (part taken)
- $91,600 Severance Damages to the remainder
- -$39,180 Benefits (conveyance of 0.045-acre strip to Tripp's)
- $578,000 Total Offer of Just Compensation

As the property is encumbered with a recorded lease between Tripp's Auto Body Shop and Tripp's Auto Body and Paint Shop, Inc., as well as several deeds of trust, and other encumbrances, the above-stated offer of just compensation is for all interests in the subject property and will have to be apportioned between all claimants thereto, including but not limited thereto, any tenants or deed of trust beneficiaries, depending on the value of their respective interests in the property.

In connection with the proposed acquisition, enclosed please find the following documents for your review:

1. Summary Statement Relating to Purchase of Real Property or an Interest Therein, with attached plat map showing the areas and rights to be acquired;
2. Appraisal Report;
3. Purchase and Sale Agreement and Joint Escrow Instructions, in duplicate;
4. "Exhibit “B” map showing location of Acquisition Property, Open Space Property and Remainder Parcel. (Note: the copy of Exhibit “B” attached to the Purchase and Sale Agreement is not to scale as it has been embedded in the Word document for convenience. We enclose a “to scale” version of this map for your review.);
5. Signing Instructions for Owner;
6. City of Grass Valley Your Property Your Public Improvement Project Brochure;
7. City of Grass Valley Title VI Civil Rights information; and
8. Verification of receipt of information, in duplicate.
Please take a moment to return the verification of receipt of information to the City, acknowledging that you have received this letter and the items listed above. We have provided you with a self-addressed, stamped envelope for your convenience.

If you find the City's offer acceptable, please have your clients sign, notarize and return the Purchase and Sale Agreement/Joint Escrow Instructions documents in accordance with the enclosed Signing Instructions. We have included an additional self-addressed stamped envelope.

I will be glad to answer any questions you may have regarding the acquisition process, the contents of this letter, or the attachments contained herein. Please contact me at (213) 542-5708, if you have any questions. If your clients wish to speak about the Project directly with Tim Kiser, City Manager, without attorneys, they may contact him at (530) 274-4312.

Thank you for your cooperation, and we look forward to working with you on this acquisition.

Sincerely,

Jennifer Pancake, Esq.
Designated Right of Way Agent
City of Grass Valley

JLP:1h

cc: Michael C. Colantuono, Esq.
    Tim Kiser, City Manager
    Mike Lahodny

Enclosures As Stated Above
April 3, 2018

Craig A. Diamond  
Diamond Baker Mitchell, LLP  
149 Crown Point Ct. Suite B  
Grass Valley, CA 95945

Attorney for: Tripp’s Auto Body Shop  
127 Stewart Street  
Grass Valley, CA 95945

Tripp’s Auto Body Shop and Paint, Inc.  
127 Stewart Street  
Grass Valley, CA 95945

Re: REVISED Offer Pursuant to Government Code § 7267.2  
Site Address: 600 Freeman Lane,  
Grass Valley, CA 95949  
APN: 29-290-40; Nevada County

Dear Mr. Diamond:

By this letter, the City is revising its previous offer for acquisition of the 0.60 acre parcel described in the City’s letter dated February 21, 2018. As we previously discussed, the City’s prior offer was for the acquisition of the 0.60 acres and included compensation for a global settlement of all claims related to the sinkhole incident including business losses.

When the city made its earlier offer, it had no information about the business’ claims for loss of business goodwill or other compensable business losses. We have since reviewed the two reports you provided (Dreshbach and McSweeney) and the City now revises its offer to include only compensation for the acquisition of the .60-acre parcel. We propose to separately resolve any compensable business losses because those will require additional investigation and analysis. The land exchange (Tripp’s acquisition of
the 5-foot strip) will facilitate your client’s proposed expansion on the Freeman Lane site. Thus, we believe resolving the real estate issues separately is our clients’ mutual interest.

**Acquisition of the real estate**

The City’s revised offer to purchase the fee interests of the 0.60-acre parcel (unencumbered by any leases, liens, etc.) in the subject property is the amount of $578,000.00 (Five Hundred Seventy-Eight Thousand Dollars and NO/100), calculated as follows:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$525,400</td>
<td>Fair market value of .60-acre parcel (part taken)</td>
</tr>
<tr>
<td>$ 91,600</td>
<td>Severance Damages to the remainder</td>
</tr>
<tr>
<td>-$39,180</td>
<td>Benefits (conveyance of 0.045-acre strip to Tripp’s)</td>
</tr>
<tr>
<td>$578,820</td>
<td>Total Offer of Just Compensation</td>
</tr>
</tbody>
</table>

This offer also contemplates that a 5-foot strip, 0.045 acres of property, can be conveyed by the City to Tripp’s Auto Body Shop (land exchange) to benefit the Tripp’s remainder parcel in the after condition. This 0.045-acre parcel would be conveyed in fee.

As the 0.60-acre parcel is encumbered by a recorded lease between Tripp’s Auto Body Shop and Tripp’s Auto Body and Paint Shop, Inc., as well as several deeds of trust, and other encumbrances, the above-stated offer of just compensation is for all interests in the subject property and will have to be apportioned among all claimants thereto, including but not limited thereto, any tenants or deed of trust beneficiaries, depending on the value of their respective interests in the property.

I have reviewed the real estate appraisal report prepared by your appraiser, Ms. Dreshbach, and after making adjustments for the size of the parcel which the City seeks to acquire, and the value of the 5-foot strip, it appears that her valuation comes out less than the amount of the City’s offer.

- Mr. Pensotti states an indicated land sale value at $20/SF; Ms. Dreshbach, at $23.50/SF.
- Ms. Dreshbach’s overall value of $675,000 assumes the part taken is 28,736 SF (larger than the City offers to acquire). The part the City proposes to take is 26,270
The two appraisers’ opinions of the part taken are: Mr. Pensotti- $525,400 and Ms. Dreshbach- $617,345.

- Ms. Dreshbach opines that the part taken is excess land, i.e., land not needed to support the existing use. Therefore she finds no severance damages.

- Ms. Dreshbach does not value the 5-foot strip (1,959 SF) that the City is to convey to Tripp’s. Applying her $23.50/SF to that 1,959 SF parcel, it has a value of $46,036. This renders a total compensation figure, calculated as follows: $617,345 - $46,036 = $571,309.

We appear to be very close on valuation issues as to the real estate, and I have revised the proposed Purchase and Sale Agreement to reflect an acquisition of the real estate interests only, reserving your client’s claims to compensation for alleged business losses.

Prior request for return of verifications of receipt

In the February 21, 2018 City’s letter of, we requested that you return the verification of receipt of information, acknowledging that you have received that letter and the items listed in it. I provided you with a self-addressed, stamped envelope for your convenience, but have not yet received the verification indicating that you received the documents. Can you kindly send the verifications back to me?

If your clients find the City’s revised offer for the real estate acceptable, please have your clients sign, notarize and return the enclosed Purchase and Sale Agreement/Joint Escrow Instructions documents in the additional self-addressed stamped envelope previously provided.

I will be glad to answer any questions you may have regarding the acquisition process, the contents of this letter, or the attachments contained herein. Please contact me at (213) 542-5708, if you have any questions. If you clients wish to speak about the Project directly with Tim Kiser, City Manager they (but not counsel, please) may contact him at (530) 274-4312.
Thank you for your cooperation, and we look forward to working with you on this acquisition.

Sincerely,

/s/ Jennifer Pancake – electronic signature

Jennifer Pancake, Esq.
Designated Right of Way Agent
City of Grass Valley

JLP:lh

cc: Michael C. Colantuono, Esq.
    Tim Kiser, City Manager
    Mike Lahodny

Enclosure: Purchase and Sale Agreement
RESOLUTION NO. 2018-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY FINDING AND DETERMINING THAT THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY REQUIRE THE ACQUISITION FOR PUBLIC PURPOSES BY EMINENT DOMAIN OF CERTAIN REAL PROPERTY LOCATED AT 600 FREEMAN LANE IN THE CITY (APN 29-290-40)

THE CITY COUNCIL OF THE CITY OF GRASS VALLEY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Grass Valley, after consideration of the staff report, staff presentation, discussion, oral testimony and evidence presented at its meeting on April 24, 2018 at 7:00 p.m. hereby finds, determines and declares as follows:

a. The City Council is authorized by statute to acquire property within the City by eminent domain for the Little Wolf Creek Sinkhole Emergency Stabilization and Repair Project (“Project”).

b. The public interest, convenience and necessity require the proposed Project, which includes the emergency repair of the Little Wolf Creek Sinkhole and repair of a 90-inch storm-drain culvert necessary to maintain service essential to the public health, safety and welfare, stabilization of the surrounding area, and mitigation of an emergency.

c. The interests in real property to be acquired include the fee simple interest in 0.60 acres of land described on Exhibit A-1, and depicted on Exhibit B, attached hereto and incorporated herein by this reference (“Subject Property”). The Subject Property is located in the City of Grass Valley, in the County of Nevada, State of California.

d. The Project is planned and located in a manner that will be most compatible with the greatest public good and least private injury.
e. The taking of the Subject Property is necessary for the stated Project and such taking is authorized by article I, section 19 of the California Constitution; article III and article XIV, section 1 of the City Charter; sections 37350, 37350.5 and 40401 et seq. of the California Government Code; sections 1230.010 et seq., 1240.110, 1240.120 of the California Code of Civil Procedure; and, other applicable law.

f. The City has made the offer to the owners of the Subject Property as required by California Government Code section 7267.2.

g. The City has given necessary notice of hearing on this Resolution as required by Code of Civil Procedure section 1245.235.

h. The City Council has duly determined the Project to be categorically exempt from review under the California Environmental Quality Act (CEQA) as an emergency project under 14 Code of California Regulations section 15269. The Notice of Exemption is attached as Exhibit C.

SECTION 2. The City Council hereby declares its intention to acquire the Subject Property pursuant to the laws of the State of California governing condemnation.

SECTION 3. The City Council further finds pursuant to Code of Civil Procedure section 1240.610 that if any portion of the Subject Property has been appropriated to some public use, the public uses described above to which it is to be applied by the City are more necessary and paramount public uses.

SECTION 4. The City Attorney is authorized and directed to prepare, institute and prosecute such proceedings in the court having jurisdiction thereof as may be necessary to acquire the Subject Property, including the filing of an application for an Order for Possession before judgment.

SECTION 5. This Resolution shall be effective immediately upon its adoption.

SECTION 6. The City Clerk shall certify the adoption of this Resolution and certify this record to be a full true, correct copy of the action taken.
PASSED AND ADOPTED by two thirds of all members of the City Council of the City of Grass Valley at a regular meeting held the 24th day of April 2018, by the following vote:

AYES: 
NOES: 
ABSENT: 
NOT VOTING: 

______________________________
Howard Levine, Mayor  
City of Grass Valley

ATTEST:

______________________________
Kristi Bashor, City Clerk  
City of Grass Valley

APPROVED AS TO FORM:

______________________________
Michael G. Colantuono, City Attorney  
City of Grass Valley

Exhibit A-1: Legal Description  
Exhibit B: Map Depicting Property to be Acquired  
Exhibit C: CEQA Notice of Exemption
EXHIBIT A-1

Acquisition Parcel – City of Grass Valley

All that real property situated within the Section 34, Township 16 North, Range 8 East, M.D.B. & M., within the incorporated City of Grass Valley, County of Nevada, California being a portion of Parcel 2 as shown on that certain Parcel Map No. 95-05 recorded December 14, 1995 in Book 18 of Parcel Maps at Page 285, Official Records of Nevada County, and being more particularly described as follows:

Beginning at the most easterly corner of said Parcel 2 of said Parcel Map No. 95-05 also being a point on the south side of the Freeman Lane right-of-way; thence from said Point of Beginning and along easterly and southerly lines of said Parcel 2 as shown on said Parcel Map No. 95-05 the following three (3) consecutive courses: 1) South 46° 21' 20" West, 112.99 feet; 2) North 43° 38' 40" West, 162.16 feet; and 3) North 31° 07' 06" West, 67.94 feet; thence leaving the southwesterly line of said Parcel 2, North 43° 00' 00" East, 104.06 feet to a point on the easterly line of said Parcel 2 and being the southerly right-of-way line of Freeman Lane; thence southeasterly along the easterly line of said Parcel 2 and southerly line of Freeman Lane, South 42° 16' 15" East, 233.60 to the Point of Beginning.

The herein described property contains an area of 0.60 acres, more or less.

The herein described property is shown on Exhibit “B” attached hereto and made a part hereof.

The herein described property affects a portion of APN 29-290-40.

This description has been prepared by me, or under my direct supervision, in conformance with the Professional Land Surveyors Act, on February 6, 2018.

Kevin J. Nelson, P.L.S. 8423
Expires 12-31-18
Notice of Exemption

To: Nevada County Clerk Recorder
950 Maidu Avenue, Suite 210
Nevada City, CA 95959

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Applicant/Project Title: Tim Kiser, Public Works Director/Little Wolf Creek Sinkhole Emergency Repair Project
City of Grass Valley
125 E. Main Street
Grass Valley, CA 95945
530-274-4351

Project Location: The project is located at the confluence of Wolf Creek and Little Wolf Creek, located at 570 Freeman Lane (APN: 29-290-39).

Project: An emergency repair of the Little Wolf Creek Sinkhole consisting of an approximate seventy-foot-deep by eighty foot wide sinkhole caused by serve flooding.

Categorical Exemptions: Section 15269 - Emergency Project
Reasons why project is exempt: Projects which maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects: i) to repair publicly or privately-owned service facilities necessary to maintain service essential to the public health, safety, or welfare; and, ii) to prevent or mitigate an emergency. This project is also categorically exempt under CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), 15304 (Minor Alterations to Land), 15307 (Protection of Natural Resources), 15308 (Protection of the Environment), and 15330 (Abatement of Hazardous Materials).

This is to advise that the City of Grass Valley City Council, as the lead agency in accordance with CEQA, determined the project Categorically Exempt on February 14, 2017, for the above described project.

Lead Agency Contact Person: Lance E. Lowe, AICP, Senior Planner
Telephone Number: (530) 274-4712

Signature (Public Agency):

Date: 2/14/17

FILE # ___________ FILE NAME ___________ RECEIPT # ___________
AUTHORIZED SIGNATURE __________________________ FEE STATUS ___________