



AGENDA

Meeting of the Scotts Valley City Council

Date: May 18, 2022

Time: 6:00 PM

CONTACT INFORMATION	MEETING LOCATION	POSTING
City of Scotts Valley 1 Civic Center Drive Scotts Valley, CA 95066 (831) 440-5600	Zoom Video Conference https://us02web.zoom.us/j/84689486296 <i>See information below for how to participate.</i>	The agenda was posted May 13, 2022 at City Hall and on the Internet at www.scottsvally.org .

PUBLIC ADVISORY REGARDING COVID-19 AND PUBLIC PARTICIPATION

On September 16, 2021, Governor Newsom signed Assembly Bill 361 ("AB 361"), an urgency measure effective upon adoption, amending the Brown Act to allow legislative bodies to continue teleconferencing during a proclaimed State of Emergency, and either state or local officials have imposed or recommended measures to promote social distancing, or the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees. In accordance with AB 361, the Scotts Valley City Council adopted Resolution No. 2007.8 on May 4, 2022 authorizing the continued use of teleconferenced meetings pursuant to AB 361. Elected Officials and City Staff Members will be participating remotely via videoconference.

Public Participation:

The meeting will be available on Zoom and broadcast through Community Television of Santa Cruz on Channel 25 and via their website at the following link: <https://communitytv.org/watch/> (be sure to click on Channel 25). For those wishing to participate via Zoom you can join the following ways:

- Join from a PC, Mac, iPad, iPhone or Android device:
Please click this URL to join. <https://us02web.zoom.us/j/84689486296>
- Or iPhone one-tap:
US: +16699009128,,84689486296# or +12532158782,,84689486296#
- Or join by phone:
Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 646 558 8656
or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 846 8948 6296

You will be given opportunities to provide public comment at the appropriate times throughout the meeting via Zoom. If you are participating via dial-up only, use *9 to raise your hand at the requested time.

How to comment via Zoom:

1. At the appropriate times during the meeting for public comment, on items not on the agenda, and on specific agenda items, the Mayor will announce that public comment will be accepted. Our usual time limits of 3 minutes per individual, or 5 minutes for an individual who is representing a group of three or more, will apply. Please note that per our standard practice, this is not a question and answer time, but simply a time for you to provide your comments to the Council.
2. There is an option on Zoom to raise your hand. Please click on this option when the Mayor announces that public comment will be taken. Zoom places people in line automatically. If you are participating via dial-up, you can raise your hand at the appropriate time by pressing *9. When it is your turn, the City Clerk will unmute you, and you will be able to make your comments based on the above time frames. Once your time is up, you will once again be muted and the next person in line will be given their opportunity to speak.

How to comment via email:

1. Members of the public may provide public comment by sending comments to the City Clerk via email at cityhall@scottsvalley.org.
2. Additional materials and emails must be received by 5:30 pm the day of the meeting and will be distributed to agenda recipients prior to the meeting.
3. Emails received after 5:30 pm the day of the meeting will not be included in the record.

ELECTED OFFICIALS	CITY STAFF MEMBERS
Donna Lind, Mayor Jim Reed, Vice Mayor Jack Dilles, Council Member Randy Johnson, Council Member Derek Timm, Council Member	Mali LaGoe, City Manager Casey Estorga, Administrative Services Director Kirsten Powell, City Attorney Steve Walpole, Chief of Police Taylor Bateman, Community Development Director Chris Lamm, Public Works Director Cathie Simonovich, City Clerk

MEETING NOTICE AND AGENDA PACKET MATERIALS

CALL TO ORDER 6:00 PM

MOMENT OF SILENCE

ROLL CALL

SPECIAL SET MATTER(S)

Presentation of Mayor's Proclamation recognizing the week of May 15-21, 2022, as National Public Works Week

COMMITTEE REPORTS

Council members are appointed to committees which are either City committees or committees dealing with other jurisdictions. This portion of the agenda allows the committee member to present oral or written reports to the Council regarding their committee assignments. It also allows the Council to make comments and give the committee member direction, as required.

CITY MANAGER REPORT

PUBLIC COMMENT TIME

This is the opportunity for individuals to make and/or submit written or oral comments to the Council on any items within the purview of the Council, which are NOT part of the Agenda. No action on the item may be taken, but the Council may request the matter be placed on a future agenda.
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ALTERATIONS TO CONSENT AGENDA

Council can remove or add items to the Consent Agenda.
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CONSENT AGENDA

The Consent Agenda is comprised of items which appear to be non-controversial. Persons wishing to speak on any items may do so raising their hand to be recognized by the Mayor.
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- A. Approve City Council minutes of 05-04-2022
- B. Approve check registers dated 05-06-2022, 05-09-2022, and 05-13-2022
- C. Second reading and adoption of Ordinance No. 200, Scotts Valley Police Department Lexipol Policy #706 – Military Equipment Use
- D. Approve agreement between the City of Capitola and the City of Scotts Valley for sharing of Chief Building Official services
- E. Amend Agreement with OpenGov to add Enterprise Resource Planning (ERP) software
- F. Approve purchase order with Peterson/CAT for an emergency generator
- G. Approve final map for the Encore condominium project at Final Map and Set Aside Agreement
- H. Approve Caltrans Electric Maintenance Agreement
- I. Approve Recreation Division Manager salary schedule

ALTERATIONS TO REGULAR AGENDA

Council can remove or add items to the Regular Agenda.
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REGULAR AGENDA

Persons wishing to speak on any item may do so by raising their hand to be recognized by the Mayor.

- 1. Consider Five-Year Capital Improvement Project and Capital Purchase Plan for FY 2022-23 to FY 2026-27 (Administrative Services Director Estorga)

2. First Reading of Ordinance No.188.1 which amends the Scotts Valley Municipal Code Regulations regarding smoking and tobacco products (Captain Rutherford)
3. Future Council agenda items
(This portion of the Regular Agenda allows the Council to determine items to be placed on a future agenda and to choose a date, if so desired.)

ADJOURNMENT

ADA NOTICE

The City of Scotts Valley does not discriminate against persons with disabilities. The City Council Chambers is an accessible facility. If you wish to attend a City Council meeting and require assistance such as sign language, a translator, or other special assistance or devices in order to attend and participate at the meeting, please call the City Clerk's office at (831) 440-5602 five to seven days in advance of the meeting to make arrangements for assistance. If you require the agenda of a City Council meeting be available in an alternative format consistent with a specific disability, please call the City Clerk's Office. The California State Relay Service (TTY/VCO/HCO to Voice: English 1-800-735-2929, Spanish 1-800-855-3000; or, Voice to TTY/VCO/HCO: English 1-800-735-2922, Spanish 1-800-855-3000), provides Telecommunications Devices for the Deaf and Disabled and will provide a link between the TDD caller and users of telephone equipment.

PROCEDURAL INFORMATION FOR THE PUBLIC

**THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN
APPROVAL OF A RESOLUTION:**

1. Move the Resolution number for approval.
2. Second the motion.
3. Vote by body, a roll call vote is not required.

**THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN
INTRODUCTION/ADOPTION OF AN ORDINANCE:**

1. Move the Ordinance number for introduction (or adoption).
2. Move the Ordinance be introduced by title only and waive the reading of the text.
3. Read the Ordinance title.
4. Second the motion.
5. Vote by body, a roll call vote is not required.

**THE FOLLOWING IS THE PROCEDURE COUNCIL SHOULD TAKE IN
PUBLIC COMMENT/PUBLIC HEARINGS:**

Unless otherwise determined by the presiding officer of the meeting:

1. Three minutes allowed per individual to speak.
2. Five minutes allowed per individual representing a group of three or more.



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City of Scotts Valley

Mayor's Proclamation

WHEREAS, public works professionals focus on infrastructure, facilities, emergency management, and services that are of vital importance to sustainable and resilient communities and the public health, high quality of life, and well-being of the people of Scotts Valley; and

WHEREAS, these infrastructures, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are federally mandated first responders, and the engineers, managers, and employees at all levels of government and the private sector, who are responsible for rebuilding, improving, and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and

WHEREAS, it is in the public interest for the citizens, civic leaders, and children in Scotts Valley to gain knowledge and maintain ongoing interest and understanding of the importance of public works first responders and public works programs; and

WHEREAS, the year 2022 marks the 62nd annual National Public Works Week sponsored by the American Public Works Association.

NOW, THEREFORE, I, Donna Lind, Mayor of the City of Scotts Valley, do hereby recognize May 15–21, 2022, as National Public Works Week; and urge all citizens to recognize the substantial contributions that our public works professionals, engineers, managers, and employees make to protecting our national health, safety, and quality of life.



Donna Lind, Mayor

Signed and sealed this 18th day of May, 2022



MINUTES

Meeting of the Scotts Valley City Council

Date: May 4, 2022

Time: 6:00 PM

CONTACT INFORMATION	MEETING LOCATION	POSTING
City of Scotts Valley 1 Civic Center Drive Scotts Valley, CA 95066 (831) 440-5600	Zoom Video Conference	The agenda was posted at City Hall and on the Internet at www.scottsvalley.org .

CALL TO ORDER 6:00 PM

The City Council meeting was called to order at 6:02 PM.

MOMENT OF SILENCE

ROLL CALL

ELECTED OFFICIALS PRESENT:

Donna Lind, Mayor
Jim Reed, Vice Mayor
Jack Dilles, Council Member
Randy Johnson, Council Member
Derek Timm, Council Member

CITY STAFF MEMBERS PRESENT:

Mali LaGoe, City Manager
Kirsten Powell, City Attorney
Steve Walpole, Chief of Police
Taylor Bateman, Community Development Director
Casey Estorga, Administrative Services Director
Chris Lamm, Public Works Director/City Engineer
Cathie Simonovich, City Clerk
Lauren Lambert, Deputy City Clerk

SPECIAL SET MATTER

1. Check Presentation – Scotts Valley High School Student, Mia Goericke, Senior Project

Mia Goericke, a student at Scotts Valley High School, presented a check to the City of Scotts Valley in the amount of \$1,628. Ms. Goericke's Senior Project was a fundraiser to get the bike lanes painted by Scotts Valley High School, Vine Hill Elementary School, and the Glenwood Preserve Trail network. To raise funds she coordinated a raffle, offered skills classes, and completed a bike ride. Local bike shops donated products for the raffle prizes. She worked with Ecology Action to collect the funds, and they are presenting the check for \$1628.

City Staff and Council expressed their thanks and appreciation to Ms. Goericke.

COMMITTEE REPORTS

CM Reed reported that he attended the 2nd Budget Subcommittee meeting where they took a more in depth look at some of the longer-term infrastructure needs.

CM Dilles reported that he attended the Santa Margarita Groundwater Agency meeting, and they discussed the proposed 2022-23 budget, approved a surface water monitoring contract, discussed contracting out the administration and planning, and discussed the process for managing various projects.

CM Dilles attended the Exchange Club Event honoring our Police Officer of the Year Patrick Ahrens, and Firefighter of the Year Will Post.

CM Dilles, along with Mayor Lind, attended the Housing Santa Cruz one year anniversary and kick off to affordable housing month.

CM Timm reported that he attended the Economic Recovery Subcommittee meeting and noted that they are very close to distributing the funds that were approved at the last Council meeting. They also discussed the future of the subcommittee, and how they will shift from post-pandemic into economic recovery for our community.

Mayor Lind reported that she attended the 2nd Budget Subcommittee meeting.

Mayor Lind attended the Housing Santa Cruz one year anniversary and presented the Mayor's proclamation.

Mayor Lind attended the Criminal Justice Council executive meeting where they are beginning a study on behavioral health and how it relates to law enforcement.

Mayor Lind, along with Captain Rutherford, attended the University of California Santa Cruz (UCSC) presentation on the university's mobile crisis response and what they are doing with grant funds. They were the only law enforcement agency represented, which was noted and appreciated by all involved.

Mayor Lind attended a Santa Cruz Metro Board meeting, and they are purchasing some additional zero emissions buses. They are also looking forward to opening a maintenance facility in Watsonville.

Mayor Lind attended a City Selection Committee meeting and was appointed to the Local Agency Formation Commission (LAFCO) as an alternate. They are looking at outside dining and working with other jurisdictions on regulations and policies surrounding outside dining. The committee also discussed Accessory Dwelling Units (ADUs), as well as a few other topics.

Mayor Lind thanked CM Dilles and the Exchange Club for their great work on the Blue and Gold Dinner.

Mayor Lind thanked everyone for their efforts on the Park Cleanup Day.

CITY MANAGER REPORT

1. **Town Center Subcommittee:** This subcommittee met last week, and they continue to talk about the condition of the property, the environmental work, and how to best move this project forward.
2. **Master Plan for Aging:** This is a quarterly meeting that City Manager LaGoe attends. They are coordinating with County staff and Agency staff to look at all the ways they can contribute to the master plan on aging.
3. **Archeological Display at City Hall:** The Santa Cruz Archeological Society has temporarily removed the artifacts from the display at City Hall. The Society is working on refreshing the display to make it accessible to all education levels. Once a plan is developed for the new display, it will be brought to Council for input.
4. **Boulder Creek Library Reopening:** The newly remodeled Boulder Creek Library will reopen this Saturday, and the Scotts Valley Library will also be reopening in the near future.
5. **Independence Day Celebration Sponsorships:** The City is currently looking for individuals, companies, and organizations to sponsor the Independence Day Celebration, which will take place on July 3rd.
6. **CalCities Legislative Conference:** City Manager LaGoe and Mayor Lind will attend the League of California Cities Legislative Conference next week.

PUBLIC COMMENT TIME

None.

ALTERATIONS TO CONSENT AGENDA

M/S: Dilles/Johnson

To approve the Consent Agenda.

Carried 5/0 (AYES: Dilles, Johnson, Lind, Reed, Timm)

CONSENT AGENDA

- A. Approve City Council minutes of 4-20-2022
- B. Approve check registers dated 4-22-2022 and 4-26-2022
- C. Approve Resolution No. 2007.8 authorizing the continued use of teleconferenced meeting pursuant to Assembly Bill 361
- D. Authorize the temporary display of banners honoring Scotts Valley High School Class of 2022 graduates on City light poles on Scotts Valley Drive

- E. Approve request for non-collection of fees for the Scotts Valley Library event to be held at the Community Center

ALTERATIONS TO REGULAR AGENDA

M/S: Johnson/Dilles

To approve the Regular Agenda.

Carried 5/0 (AYES: Dilles, Johnson, Lind, Reed, Timm)

REGULAR AGENDA

1. Future Council agenda items
Council had a brief discussion about the continued use of teleconference meetings. City Attorney Powell noted that the current Executive Order will expire at the end of June, and if the COVID restrictions allow, we could begin in-persons meeting in August.

PUBLIC HEARING(S) (To be heard after 6:30 p.m.)

1. Public hearing and resolution adopting Fiscal Year 2022-23 Fee Schedule

Administrative Services Director Estorga provided a PowerPoint presentation and responded to questions from Council.

PUBLIC HEARING OPENED – 6:39 pm

No one came forward

PUBLIC HEARING CLOSED – 6:39 PM

M/S: Dilles (with the understanding that the business license fees will not be increased)/Timm

To approve Resolution No. 1198.74 adopting Fiscal Year 2022-23 Fee Schedule

Carried 5/0 (AYES: Dilles, Johnson, Lind, Reed, Timm)

2. Public hearing and consideration of Resolution No. 1946.4 approving a project to be funded by SB1: The Road Repair and Accountability Act for Fiscal Year 2022-23 (Public Works Director Chris Lamm)

Public Works Director Lamm provided a PowerPoint presentation and responded to questions from Council.

PUBLIC HEARING OPENED – 6:50 pm

No one came forward

PUBLIC HEARING CLOSED – 6:50 PM

M/S: Dilles/Timm

To approve Resolution No. 1946.4 approving a project to be funded by SB1: The Road Repair and Accountability Act for Fiscal Year 2022-23

Carried 5/0 (AYES: Dilles, Johnson, Lind, Reed, Timm)

3. Public hearing and approval of Resolution No. 1923.5 approving the Fiscal Year 2022-23 to Fiscal Year 2026-27 five-year program of projects to be funded with Measure D revenues

Public Works Director Lamm provided a PowerPoint presentation and responded to questions from Council.

PUBLIC HEARING OPENED – 7:00 pm

No one came forward

PUBLIC HEARING CLOSED – 7:00 PM

M/S: Johnson/Dilles

To approve Resolution 1923.5 approving the Fiscal Year 2022-23 to Fiscal Year 2026-27 five-year program of projects to be funded with Measure D revenues

Carried 5/0 (AYES: Dilles, Johnson, Lind, Reed, Timm)

ADJOURNMENT

The meeting adjourned at 7:02 PM.

Approved: _____
Donna Lind, Mayor

Attest: _____
Cathie Simonovich, City Clerk

AGENDA ITEM B

DATE: 05-18-2022

SCOTTS VALLEY ACCOUNTS PAYABLE
05/06/2022 12:54:37 Check Register

CITY OF SCOTTS VALLEY
GL050S-V08.17 COVERPAGE
GL540R

Report Selection:

RUN GROUP... 050622 COMMENT... 05/06/2022 A/P

DATA-JE-ID DATA COMMENT

W-05062022-818 05/06/2022 A/P

Run Instructions:

Jobq	Banner	Copies	Form	Printer	Hold	Space	LPI	Lines	CPI	CP	SP	RT
L		01			Y	S	6	066	10			

BANK	VENDOR	CHECK#	DATE	AMOUNT
BA	GENERAL CHECKING ACCOUNT			
000041	ACC BUSINESS	123921	05/06/22	1,204.94
003919	ACCO ENGINEERED SYSTEMS	123922	05/06/22	3,333.92
001405	AFLAC-FLEX ONE	123923	05/06/22	1,231.87
001818	ALLIANT INSURANCE SERVIC	123924	05/06/22	475.00
004057	ANDREWS/SELINA	123925	05/06/22	311.60
004029	ARMSTRONG/AMANDA	123926	05/06/22	50.00
000097	AT&T	123927	05/06/22	878.21
003746	AVENU HOLDINGS, LLC	123928	05/06/22	2,029.09
004035	BABCOCK/COLTON	123929	05/06/22	50.00
001928	BATEMAN/TAYLOR	123930	05/06/22	50.00
001373	BAY TREE, LLC	123931	05/06/22	3,620.38
004067	BEERS/OLIVIA	123932	05/06/22	50.00
001066	BEHAVIORAL HEALTH CARE I	123933	05/06/22	112.00
000437	BRASS KEY LOCKSMITH	123934	05/06/22	12.22
000018	BRINK'S AWARDS & SIGNS	123935	05/06/22	101.93
003714	CAPITOLA/CITY OF	123936	05/06/22	8,819.43
003787	CARMEL AREA WASTEWATER D	123937	05/06/22	5,836.00
015008	CENTRAL HOME SUPPLY	123938	05/06/22	192.34
003887	CHEUNG/ATHENA	123939	05/06/22	50.00
003656	CIVICPLUS	123940	05/06/22	900.00
002091	COMCAST	123941	05/06/22	148.31
.15869	DAVID HODGIN	123942	05/06/22	498.56
000975	DEAN/MICHAEL R.	123943	05/06/22	50.00
001362	DUNCAN AUTO TECH	123944	05/06/22	107.07
001257	EBRAHIMIAN DDS/MARK	123945	05/06/22	276.80
004005	ESTORGA/CASEY	123946	05/06/22	50.00
004093	GERA/BEAUJO	123947	05/06/22	50.00
003706	GRANADOS/JUSTIN	123948	05/06/22	50.00
004015	GUARDIAN PUBLIC SAFETY	123949	05/06/22	1,600.00
004059	HAROS/JOANNA	123950	05/06/22	50.00
003944	HEBARD/TYLER	123951	05/06/22	50.00
004041	INTERWEST CONSULTING GRO	123952	05/06/22	8,797.50
003289	JETMULCH INC	123953	05/06/22	29,150.34
001308	JOHNSON DDS/BRETT	123954	05/06/22	881.60
001903	JONES/KIMARIE	123955	05/06/22	50.00
004079	KARNO/JENNIFER	123956	05/06/22	4,565.75
001660	KING/KATI	123957	05/06/22	50.00
001325	KUHN DDS/WILLIAM G	123958	05/06/22	320.00
004018	LAMBERT/LAUREN	123959	05/06/22	50.00
004046	LAMM/CHRIS	123960	05/06/22	50.00
003761	LEDGER/CHASE	123961	05/06/22	50.00
003389	LOCKE/CERINA	123962	05/06/22	50.00
003913	LONG/AMANDA	123963	05/06/22	50.00
003942	M-GROUP	123964	05/06/22	22,575.00
003565	MANAGEMENT PARTNERS	123965	05/06/22	1,466.25
001591	MARKELL/ROD	123966	05/06/22	1,974.00
001815	MC GRATH/TRISH	123967	05/06/22	50.00
000218	MID VALLEY SUPPLY	123968	05/06/22	274.36

BANK	VENDOR	CHECK#	DATE	AMOUNT	
BA	GENERAL CHECKING ACCOUNT				
	003676 MONTEREY ONE WATER	123969	05/06/22	585.00	
	003766 ORMONDE/ROBERT	123970	05/06/22	50.00	
	004042 PACE ANALYTICAL SERVICES	123971	05/06/22	132.00	
	004045 PHILLIP D NEUMAN	123972	05/06/22	16,536.83	
	000723 PIED PIPER INC./THE	123973	05/06/22	4,900.00	
	003967 PITNEY BOWES INC	123974	05/06/22	62.03	
	001233 PORTER DDS MS/BRENT J	123975	05/06/22	503.20	
	.15871 PRECISION POLYGRAPH	123976	05/06/22	280.00	
	001097 PRODESSE PROPERTY GROUP	123977	05/06/22	3,523.52	
	003503 PURETEC INDUSTRIAL WATER	123978	05/06/22	248.90	
	001118 RUTHERFORD/JAYSON	123979	05/06/22	50.00	
	004064 S.C. UNDERGROUND & PAVIN	123980	05/06/22	8,950.97	
	000135 SAN LORENZO VALLEY WATER	123981	05/06/22	45.01	
	001825 SANTA CRUZ CO HEALTH SER	123982	05/06/22	753.00	
	001825 SANTA CRUZ CO HEALTH SER	123983	05/06/22	753.00	
	001544 SANTA CRUZ COUNTY CONFER	123984	05/06/22	16,327.28	
	000126 SANTA CRUZ FIRE EQUIPMEN	123985	05/06/22	713.55	
	003367 SANTA CRUZ LIVE SCAN, IN	123986	05/06/22	120.00	
	003133 SANTA CRUZ/COUNTY OF	123987	05/06/22	44,170.00	
	000128 SCARBOROUGH LUMBER	123988	05/06/22	4,061.83	
	001586 SCOTTS VALLEY CLEANERS	123989	05/06/22	1,006.00	
	000133 SCOTTS VALLEY SPRINKLER	123990	05/06/22	232.50	
	004092 SIMONOVICH/CATHIE	123991	05/06/22	50.00	
	002065 SOTO/ART	123992	05/06/22	50.00	
	.15870 ST. LAWRENCE ORTHODOX	123993	05/06/22	300.00	
	004026 STEELE-FREITAS/SETH	123994	05/06/22	50.00	
	002053 STEPFORD	123995	05/06/22	3,556.22	
	.15868 STEVE DAVIS	123996	05/06/22	60.97	
	003973 THOMAS/TYLER	123997	05/06/22	50.00	
	004087 TIRECHOICE AUTO SERVICE	123998	05/06/22	2,003.02	
	003908 TRANSUNION RISK & ALTERN	123999	05/06/22	76.00	
	000146 U.S. POSTMASTER	124000	05/06/22	265.00	
	000151 VISION SERVICE PLAN	124001	05/06/22	1,037.40	
	003145 WAGE WORKS	124002	05/06/22	200.00	
	003708 YORK FRAMING	124003	05/06/22	156.60	
	003934 ZOLL MEDICAL CORPORATION	124004	05/06/22	309.39	
	GENERAL CHECKING ACCOUNT			214,813.69	***

SCOTTS VALLEY ACCOUNTS PAYABLE
CITY OF SCOTTS VALLEY
05/06/2022 12:54:37
GL540R-V08.17 PAGE 3

Check Register

BANK	VENDOR	CHECK#	DATE	AMOUNT
REPORT TOTALS:				214,813.69

RECORDS PRINTED - 000147

SCOTTS VALLEY ACCOUNTS PAYABLE
CITY OF SCOTTS VALLEY
05/06/2022 12:54:37
GL060S-V08.17 RECAPPAGE

Check Register

GL540R

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
----	-----	
001	GENERAL	191,145.38
004	RECREATION	483.48
010	WASTEWATER OPERATIONS	11,543.76
019	AFFORDABLE HOUSING	1,974.00
023	SVRDA SUCCESSOR AGENCY	7,143.90
028	SENIOR CENTER	273.99
112	DENTAL INS INTERNAL SERV	2,243.20
123	COMMUNITY FACILITY CENTER	5.98
TOTAL ALL FUNDS		214,813.69

BANK RECAP:

BANK	NAME	DISBURSEMENTS
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BA	GENERAL CHECKING ACCOUNT	214,813.69
TOTAL ALL BANKS		214,813.69

SCOTTS VALLEY ACCOUNTS PAYABLE
05/10/2022 13:42:49 Check Register

CITY OF SCOTTS VALLEY
GL050S-V08.17 COVERPAGE
GL540R

Report Selection:

RUN GROUP... 050922 COMMENT... 05/09/2022 A/P

DATA-JE-ID DATA COMMENT

W-05092022-833 05/09/2022 A/P

Run Instructions:

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Check Register

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BA	GENERAL CHECKING ACCOUNT				
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004096	ANNA WU	124006	05/09/22	50,000.00	
004097	BORA KIM	124007	05/09/22	7,500.00	
004099	DEBORAH PARCEL	124008	05/09/22	12,500.00	
004098	JUSTIN FLORES	124009	05/09/22	5,000.00	
005002	KAITLYN BRACKEN	124010	05/09/22	50,000.00	
005000	SARAH MEADS	124011	05/09/22	15,000.00	
005003	SCOTTS VALLEY SANDWICH,	124012	05/09/22	10,000.00	
005001	SVVC INC. SCOTTS VALLEY	124013	05/09/22	50,000.00	
	GENERAL CHECKING ACCOUNT			250,000.00	***

SCOTTS VALLEY ACCOUNTS PAYABLE
CITY OF SCOTTS VALLEY
05/10/2022 13:42:50
GL540R-V08.17 PAGE 2

Check Register

BANK	VENDOR	CHECK#	DATE	AMOUNT
REPORT TOTALS:				250,000.00

RECORDS PRINTED - 000009

SCOTTS VALLEY ACCOUNTS PAYABLE
CITY OF SCOTTS VALLEY
05/10/2022 13:42:50
GL060S-V08.17 RECAPPAGE

Check Register

GL540R

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
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317	EDG-REVOLVING LOAN FUND	250,000.00
TOTAL ALL FUNDS		250,000.00

BANK RECAP:

BANK	NAME	DISBURSEMENTS
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BA	GENERAL CHECKING ACCOUNT	250,000.00
TOTAL ALL BANKS		250,000.00

SCOTTS VALLEY ACCOUNTS PAYABLE
05/13/2022 12:44:54 Check Register

CITY OF SCOTTS VALLEY
GL050S-V08.17 COVERPAGE
GL540R

Report Selection:

RUN GROUP... 051322 COMMENT... 05/13/2022 A/P

DATA-JE-ID DATA COMMENT

W-05132022-857 05/13/2022 A/P

Run Instructions:

Jobq	Banner	Copies	Form	Printer	Hold	Space	LPI	Lines	CPI	CP	SP	RT
L		01			Y	S	6	066	10			

BANK	VENDOR	CHECK#	DATE	AMOUNT
BA	GENERAL CHECKING ACCOUNT			
003342	ACCENT CLEAN & SWEEP INC	124014	05/13/22	2,335.30
003919	ACCO ENGINEERED SYSTEMS	124015	05/13/22	2,115.00
003597	ADAMS ASHBY GROUP, INC	124016	05/13/22	1,125.00
001912	ADVANCED FLOW MEASUREMEN	124017	05/13/22	2,000.00
004057	ANDREWS/SELINA	124018	05/13/22	336.00
001670	AT & T	124019	05/13/22	3,528.56
000097	AT&T	124020	05/13/22	9.53
004048	BADGE FRAME, INC.	124021	05/13/22	880.58
000565	BANK OF NEW YORK MELLON/	124022	05/13/22	3,400.00
001963	BELLVILLE/WAYNE	124023	05/13/22	222.20
003899	BIGLER CONSTRUCTION	124024	05/13/22	6,360.25
003170	BOGARD CONSTRUCTION INC	124025	05/13/22	7,125.00
000018	BRINK'S AWARDS & SIGNS	124026	05/13/22	76.47
003894	BURKE, WILLIAMS & SORENS	124027	05/13/22	15,217.75
003974	CHRISTOPHER S CRAIG	124028	05/13/22	186.00
001896	D & G SANITATION	124029	05/13/22	984.90
000389	DASSEL'S PETROLEUM INC	124030	05/13/22	4,271.93
000207	DEPARTMENT OF JUSTICE	124031	05/13/22	66.00
000207	DEPARTMENT OF JUSTICE	124032	05/13/22	96.00
001597	ENVIRONMENTAL INNOVATION	124033	05/13/22	5,013.19
003185	EUROFINS EATON ANALYTICA	124034	05/13/22	12,495.00
000202	FEDERAL EXPRESS	124035	05/13/22	221.19
000202	FEDERAL EXPRESS	124036	05/13/22	407.96
004037	FERGUSON ENTERPRISES, LL	124037	05/13/22	318.77
004093	GERA/BEAUJO	124038	05/13/22	187.53
001881	GRAINGER	124039	05/13/22	184.38
003944	HEBARD/TYLER	124040	05/13/22	300.65
001841	IDEXX LABORATORIES, INC.	124041	05/13/22	2,063.30
001673	LINCOLN FINANCIAL GROUP	124042	05/13/22	2,291.67
000284	LOGAN & POWELL, LLP	124043	05/13/22	21,335.00
000195	MESITI-MILLER ENGINEERIN	124044	05/13/22	6,463.50
001787	MICHAEL WADE PETRINI	124045	05/13/22	125.00
003171	MICHALAK/GENE	124046	05/13/22	125.00
000218	MID VALLEY SUPPLY	124047	05/13/22	397.47
003684	MILES CHEMICAL COMPANY,I	124048	05/13/22	2,790.46
003685	MONTEREY BAY ANALYTICAL	124049	05/13/22	515.00
001418	MONTEREY REGIONAL	124050	05/13/22	5,800.86
000939	NATIONAL COMTEL NETWORK	124051	05/13/22	13.90
001872	NORTH CENTRAL LABORATORI	124052	05/13/22	245.39
003535	OCEAN PLASTIC PRODUCTS	124053	05/13/22	7,682.50
000101	PACIFIC GAS & ELECTRIC C	124054	05/13/22	45,499.16
000101	PACIFIC GAS & ELECTRIC C	124055	05/13/22	134.84
000098	PALACE BUSINESS SOLUTION	124056	05/13/22	13,925.20
004052	PATRIOT CONTRACTING, INC	124057	05/13/22	1,231,399.50
000127	SANTA CRUZ SENTINEL	124058	05/13/22	1,456.00
000985	SANTA CRUZ/COUNTY OF	124059	05/13/22	427.08
000133	SCOTTS VALLEY SPRINKLER	124060	05/13/22	13.15
001672	SILICON VALLEY PAVING IN	124061	05/13/22	10,253.58

Check Register

BANK	VENDOR	CHECK#	DATE	AMOUNT	
BA	GENERAL CHECKING ACCOUNT				
	001113 STERICYCLE INC	124062	05/13/22	300.46	
	003548 TORO PETROLEUM CORP	124063	05/13/22	4,461.95	
	001560 TRITON CONSTRUCTION	124064	05/13/22	300.00	
	001366 U.S. BANCORP OFFICE	124065	05/13/22	1,300.62	
	004030 U.S. BANK CORPORATE	124066	05/13/22	18,883.79	
	001106 VERIZON WIRELESS	124067	05/13/22	893.22	
	003145 WAGE WORKS	124068	05/13/22	1,601.15	
	000154 WINCHESTER AUTO STORES	124069	05/13/22	243.63	
	003971 WIZIX TECHNOLOGY GROUP,	124070	05/13/22	17.00	
	GENERAL CHECKING ACCOUNT			1,450,424.52	***

SCOTTS VALLEY ACCOUNTS PAYABLE
CITY OF SCOTTS VALLEY
05/13/2022 12:44:54
GL540R-V08.17 PAGE 3

Check Register

BANK	VENDOR	CHECK#	DATE	AMOUNT
REPORT TOTALS:				1,450,424.52

RECORDS PRINTED - 000192

GL540R

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
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001	GENERAL	107,323.28
002	RECYCLING/ENVIRONMENTAL	7,348.49
003	GAS TAX - SPECIAL STATE TRST	10,253.58
004	RECREATION	779.40
010	WASTEWATER OPERATIONS	59,787.80
011	TERTIARY TREATMENT PLANT	7,702.41
023	SVRDA SUCCESSOR AGENCY	3,400.00
028	SENIOR CENTER	858.29
050	PINEWOOD EST LNDSCP MAINT DT	2.72 CR
077	SKYPARK MAINT ASSESS DIST	8.14 CR
088	LIBRARY FACILITIES-MEAS "S"	1,238,524.50
112	DENTAL INS INTERNAL SERV	558.20
123	COMMUNITY FACILITY CENTER	760.39
150	GENERAL CAPITAL IMPROVEMENTS	6,675.54
155	TRANSPORTATION FUNDS-MEAS D	6,463.50
TOTAL ALL FUNDS		1,450,424.52

BANK RECAP:

BANK	NAME	DISBURSEMENTS
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BA	GENERAL CHECKING ACCOUNT	1,450,424.52
TOTAL ALL BANKS		1,450,424.52

City of Scotts Valley INTEROFFICE MEMORANDUM

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Jayson Rutherford, Captain

APPROVED: Mali LaGoe, City Manager

SUBJECT: **SECOND READING AND ADOPTION OF SCOTTS VALLEY
POLICE DEPARTMENT LEXIPOL POLICY #706 – MILITARY
EQUIPMENT USE.**

SUMMARY OF ISSUES

On April 6, 2022, staff presented the Military Equipment Use policy required by AB 481. On April 20, 2022, the City Council held a public hearing on the policy and introduced and conducted the first reading of Ordinance No. 200, which adopts the Scotts Valley Police Department Lexipol Policy #706 – Military Equipment Use, a copy of which is attached to this report as Exhibit A.

California Assembly Bill 481, codified in Government Code sections 7070 through 7075 requires a law enforcement agency (LEA) to obtain approval from the applicable governing body, via adoption of a “military equipment” use policy by ordinance, prior to the LEA funding, acquiring, or using military equipment.

The Scotts Valley Police Department (“SVPD”) did not purchase any military equipment from the State of California Department of General Services (DGS) or receive any military equipment from the Defense Logistics Agency Law Enforcement Support Program (formerly 1033).

Items deemed to be “military equipment” by AB 481 are used as a component of overall best practices for LEAs throughout the country. These tools have been tested in the field, and are used by LEAs to enhance citizen safety and officer safety. Loss of these items would jeopardize the welfare of citizens and SVPD officers.

The term “military equipment”, as used in AB 481, in fact does not necessarily indicate equipment that has been used by the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles,

armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long range acoustic devices, firearms categorized as assault weapons and rifles, and flashbangs.

SVPD is committed to using the most up to date tools and equipment to safeguard the citizens of Scotts Valley. Although very few items deemed to be “military equipment” by AB 481 are in fact employed by SVPD, Council is asked to approve Policy 706 in its entirety due to potential future equipment acquisitions and temporary department use of allied agency equipment.

SVPD Officers are trained on all department issued equipment before utilizing the equipment in the field. Officers receiving the equipment undergo training on the nomenclature, functionality, and risks associated with the use of the equipment. Furthermore, officers are required to requalify annually.

Officers must comply with mandated training as regulated by Federal, State and Local statutes. Most of the training is managed and administered by the California Commission on Peace Officer Standards and Training (POST), which sets minimum training standard for California law enforcement officers.

The following is a summary of the equipment the SVPD currently utilizes that is subject to AB 481:

AB 481 – Specialized Firearms

SVPD currently issues two different manufacturers of AR-15 .223 caliber rifles covered under SVPD Policy #306.3.3.

- Colt LE6920 AR-15 Tactical Carbine
- Bushmaster XM-E2S AR-15 Tactical Carbine

Officers issued a department patrol rifle must successfully complete a 16 hour POST Certified Basic Patrol Rifle Operator’s course and successfully complete the Department rifle qualification course. Officers are required to requalify annually.

There is demonstrated need for officers to carry the patrol rifle on duty as they are generally the first personnel to arrive on the scene of a critical and dynamic incident. Officers are trained to immediately move toward and engage armed subjects in deadly force situations.

The patrol rifle has multiple advantages over the traditional handgun. A patrol rifle can deliver controlled firepower in excess of 100 yards with accurate target hits. Rifle ammunition has a greater range than handgun ammunition and can penetrate soft body armor. Additionally, the rifle allows officers to create a greater distance between themselves and individuals. The increased distance provides more time for officers to react and decide the best outcome for the situation.

AB 481 – Kinetic Energy Weapons

SVPD currently issues Remington 870 shotguns converted to Less Lethal only capability and firing Safariland 12g Drag Stabilized Bean Bag Round, as covered under SVPD Policy #303.9.

Officers utilizing a Less Lethal shotgun must successfully complete department training consisting of policy review, written test, and qualification course. Officers are required to requalify annually.

There is a demonstrated need for officers to carry the less lethal shotgun on duty as it gives officers an additional use of force option that is less likely to cause great bodily injuries or be lethal.

If the Ordinance is adopted, SVPD will prepare an Annual Report to include the use of military equipment, any complaints received, any internal audits or other information about violations of the Military Equipment Use policy.

FISCAL IMPACT

There are no costs associated with this policy.

STAFF RECOMMENDATION

It is recommended that City Council approve Ordinance No. 200, which authorizes the Scotts Valley Police Department Lexipol Policy #706 – Military Equipment Use.

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A. Ordinance No. 200

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ORDINANCE NO. 200

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AMENDING TITLE 9 OF THE SCOTTS VALLEY MUNICIPAL CODE BY ADDING CHAPTER 9.22, USE OF MILITARY EQUIPMENT BY THE POLICE DEPARTMENT

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill 481 (AB 481), codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy at a regular meeting held pursuant to open meeting laws prior to taking certain actions relating to the funding, acquisition, or use of “military equipment”. The term “military equipment” is defined in California Government Code Section 7070; and

WHEREAS, AB 481 allows the City Council to approve the funding, acquisition, or use of military equipment, within its jurisdiction only if it makes specified determinations; and

WHEREAS, the proposed military equipment use policy is found within Scotts Valley Police Department Lexipol Policy Manual, General Order 706. The policy was published on February 16, 2022 and displayed on the Scotts Valley Police Department website on March 10, 2022 is being presented to the City Council on April 6, 2022. A copy of the policy is attached hereto as Exhibit A; and

WHEREAS, the Scotts Valley Police Department Policy 706 meets the requirements of California Government Code 7070; and

WHEREAS, this ordinance adds to the Municipal Code to affirm Scotts Valley Police Department Policy 706 and authorize the use of “military equipment” by the members of the Scotts Valley Police Department as described in Policy 706; and

WHEREAS, in the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. and found this activity is not a “project” as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SCOTTS VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. That a new Chapter 9.22 is added to Title 9 of the Scotts Valley Municipal Code to read as follows:

“CHAPTER 9.22 - MILITARY EQUIPMENT USE POLICY.

Section 9.22.010- Findings and Purpose

Sec. 9.22.010 – Findings and Purpose.

(a) The City Council has made the following determinations:

(1) The military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

(2) The Military Equipment Use Policy (“Policy”) will safeguard the public’s welfare, safety, civil rights, and civil liberties; and

(3) The military equipment identified in the Military Equipment Use Policy is reasonably cost effective compared to available alternatives that can achieve the same objective of Officer and civilian safety; and

(4) Prior military equipment use complied with the applicable Equipment Use Policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the accompanying Military Equipment Use Policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

(b) The Police Department has submitted a proposed Policy to the City Council and has made those documents available on the Police Department’s website for at least 30 days prior to the public hearing concerning the military equipment at issue.

(c) The Policy was considered by the City Council as an agenda item in an open session of a regular meeting, noticed in accordance with the Ralph M. Brown Act, at which public comment was permitted.

(d) The Policy shall be made publicly available on the Police Department’s website for as long as the military equipment is available for use.

(e) The Police Department shall submit an annual military equipment report to the City Council, containing the information required in Government Code Section 7072, and the City Council shall determine whether each type of military equipment identified in that report has complied with the standards for approval set forth in (a)(1)-(4) above.

(f) The City Council shall review this ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code Section 7071(e)(2)

(g) The City Council approves the use of the Policy and finds that it satisfies the requirements of Government Code Section 7070(d).”

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of

competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 4. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 5. CEQA COMPLIANCE. The City Council finds and determines that the enactment of this Ordinance is not a “project” as that term is used in the California Environmental Quality Act (“CEQA;” Cal. Pub. Resources Code Section 21000 et seq.) or the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.). Therefore, no environmental assessment is required or necessary.

SECTION 6. EFFECTIVE DATE. The above and foregoing ordinance was introduced for a first reading on April 20, 2022, and passed and adopted on May 4, 2022, at a duly held meeting of the City Council of the City of Scotts Valley by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED: _____
Donna R. Lind, Mayor

ATTEST: _____
Cathie Simonovich, City Clerk

APPROVED
AS TO FORM: _____
Kirsten Powell, City Attorney

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Taylor Bateman, Community Development Director

APPROVED BY: Mali LaGoe, City Manager

**SUBJECT: APPROVE AGREEMENT BETWEEN THE CITY OF CAPITOLA
AND CITY OF SCOTTS VALLEY FOR SHARED CHIEF
BUILDING OFFICIAL SERVICES**

SUMMARY OF ISSUE

Since 2018, the cities of Capitola and Scotts Valley have been sharing the Chief Building Official under the parameters of the 2018 agreement. The agreement has a three-year term and now must be extended. The following are highlights of the terms of the agreement:

- Shared model: Building Official is employed by Capitola but also serves as Building Official of Scotts Valley
- Shared services: Approximately half total working time is devoted to each City
- Term: Three years (January 1, 2022 – December 31, 2024)
- Termination: Either party may terminate the agreement with six months' notice.
- Contract is terminated if building official is no longer employed by the City of Capitola.
- Capitola provides a vehicle, with the cost incorporated into the contract
- Scotts Valley's share of total costs is not to exceed \$120,000 per year
- Each party is solely responsible for any claims arising out of employee's work for each jurisdiction
- Scotts Valley participated in the interview and selection process; Annual employee evaluation is completed in coordination with both jurisdictions

The Capitola City Council approved this agreement on March 24, 2022.

FISCAL IMPACT

The City of Scotts Valley's share of the total costs is not to exceed \$120,000 per year.

STAFF RECOMMENDATION

It is recommended that Council approve the attached agreement with the City of Capitola for the continuation of the shared building official services, and authorize the City Manager to sign the agreement.

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Agreement between the City of Capitola and the City of Scotts Valley for shared Chief Building Official Services	3

AGREEMENT BETWEEN THE CITY OF CAPITOLA
AND THE CITY OF SCOTTS VALLEY FOR SHARING
OF CHIEF BUILDING OFFICIAL SERVICES

THIS AGREEMENT, effective as of January 1, 2022 by and between the CITY OF CAPITOLA ("Capitola") and the CITY OF SCOTTS VALLEY ("Scotts Valley"), (referred to individually as a "Party" and collectively as the "Parties") is made with reference to the following facts:

A. Scotts Valley desires to obtain the services of a Chief Building Official.

B. Capitola is willing to provide such services by hiring a Chief Building Official and sharing with Scotts Valley this position, as herein set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Hiring Process. Capitola shall hire a Chief Building Official in consultation with Scotts Valley. Selection of Chief Building Official shall be mutually agreed upon by both parties.

2. Sharing of Services. The Chief Building Official shall act as the Chief Building Official for both Capitola and Scotts Valley, with approximately half of his or her total working time being devoted to each Party.

3. Employment of Chief Building Official by Capitola. The Chief Building Official shall at all times during the term of this Agreement remain a full-time employee of Capitola and shall continue to receive all of his or her salary, health insurance, and other employment benefits from Capitola. During the course of this Agreement, it is expected that the Chief Building Official will take time off from employment for eligible leaves as provided under Capitola's applicable personnel rules and regulations. Scotts Valley agrees that such leaves will not constitute a breach of this Agreement, and Capitola agrees that it will provide reasonable notice of all scheduled leaves as well as prompt notice of all unscheduled leaves. Capitola will coordinate with Scotts Valley to minimize any potential scheduling impacts. It is understood that the Chief Building Official may elect to leave the employment of Capitola at any time. In such event, Capitola shall provide prompt notice of such departure to Scotts Valley.

4. Work for Capitola and Scotts Valley. For purposes of this Agreement, the Chief Building Official shall be deemed to be working for a Party once he or she begins the commute, in a vehicle owned by Capitola, to the Party's city hall or the Party's work site, and/or performing services for that particular Party.

5. Automobile Use. Capitola shall provide a vehicle owned by Capitola for the Chief Building Official's use when conducting business for either Party. The vehicle may be used to commute to and from work within Santa Cruz County. The vehicle shall not be used for personal business by the Building Official.

6. Services for Scotts Valley. The Chief Building Official shall perform the customary and usual duties of Chief Building Official for Scotts Valley and shall report directly to the Scotts Valley Community Development Director. His or her duties for the City of Scotts Valley shall include the Essential Duties and Responsibilities outlined in the City of Capitola Building Official job description.

7. Term of Agreement. The term of this Agreement shall be for (3) three years, unless terminated by either Party pursuant to section 12 herein.

8. Payment.

(a) Scotts Valley agrees to pay Capitola fifty percent (50%) of the following, for the Building Official:

- (i) Actual salary;
- (ii) Actual Health Care Premium;
- (iii) Actual Employer PERS costs;
- (iv) Overhead costs (ISFs, liability, worker's compensation insurance, payroll, HR costs, etc.) which is calculated as 40% of Actual Salary; and
- (v) \$750 per month for vehicle operation, maintenance, and replacement costs.

(b) The Parties agree that Scotts Valley's share of the total costs shall not exceed one hundred and twenty thousand dollars (\$120,000) annually.

(c) Such costs shall be payable in monthly installments in response to invoices from Capitola showing the amount due for the preceding month. In the event an invoice covers only a portion of the month, the amount shall be pro-rated based upon the actual number of days in that month. Invoices shall be paid by Scotts Valley within thirty (30) days after receipt.

(d) Any proposed adjustment by Capitola to the total salary and benefit package for the Chief Building Official during the term of this Agreement shall be submitted to Scotts Valley for review and approval at least 60 days prior to the effective date of the adjustment, which will not be unreasonably withheld.

9. Employee Evaluations. The Parties shall meet and confer on an as needed basis to prepare a joint annual employee evaluation for the Chief Building Official. Either as part of the evaluation or otherwise, both Parties may establish performance goals and objectives, as appropriate.

10. Schedule. The Parties agree the Building Official will spend approximately 50% of their time working for each Party. Within 30 days from the effective date of this Agreement, the Community Development Directors of Capitola and Scotts Valley, and the Building Official, shall develop a work schedule for review and approval by the City Manager of each Party. The Parties agree that this schedule may be modified based on changes in workload by prior mutual written consent of the Parties.

11. Independent Contractor. It is understood that Capitola and its employees, in the performance of the services agreed to be performed hereunder, shall act as and be an independent contractor and not an agent or employee of Scotts Valley. As an independent contractor, no employee of Capitola shall obtain any rights to retirement benefits, medical benefits, leave, or any other benefits that accrue to Scotts Valley employees. Capitola agrees to make its employees available to testify in any litigation brought regarding the subject of the work performed for Scotts Valley under this Agreement. Should such need arise following the termination of this Agreement, Capitola shall be compensated for its employees' costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, plus 40% overhead costs, unless such litigation is brought by Capitola or is based on allegations of Capitola's negligent performance or wrongdoing.

12. Termination. Either Party may terminate this Agreement by providing six months written notice to the other Party. However if at any time the Chief Building Official commits acts of gross negligence and/or willful misconduct, the City of Scotts Valley shall have the right to terminate this contract with 60-days notice, or upon termination of the Chief Building Official, whichever occurs first.

Notwithstanding the above, Capitola reserves its full rights to make employment decisions regarding the Chief Building Official, including disciplining and terminating the Chief Building Official, pursuant to Capitola's policies and procedures governing employment. To the extent possible, Capitola will provide reasonable notice of any such employment decisions to Scotts Valley. If, for any reason, the Chief Building Official is no longer a full-time employee of Capitola, this Agreement shall terminate immediately.

13. Indemnification. Each Party ("Indemnitor") agrees to defend, indemnify, and hold harmless the other Party, its respective officials, officers, employees and agents (collectively "Indemnitees") from any and all claims, demands, losses, damages, legal defense costs, liability of any kind or nature ("Claims"), which Indemnitee may sustain or incur or which may be imposed upon it, but only in proportion to and to the extent such Claims result from, arise out of, or in any manner are caused by the Chief Building Official's acts or omissions on behalf of the Indemnitor, provided that such hold harmless and

indemnity shall not extend to liabilities or damages caused by the sole negligence or willful misconduct of Indemnitees. Capitola and Scotts Valley shall maintain any right to subrogation which any insurer for either party may acquire against the other by virtue of payment of any loss arising out of the Chief Building Official performing services or work for that party.

14. Insurance. Capitola shall maintain workers' compensation and employment liability insurance coverage or self-insurance for the Chief Building Official as required to be provided by Capitola to its employees under California law. This Agreement shall require both Parties to continue participation in Monterey Bay Area Self Insurance Authority (MBASIA) or other comparable insurance.

15. Waiver. No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that Party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Cruz.

17. Disputes. In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

18. Review of Service Sharing Arrangement. The City Managers of Capitola and Scotts Valley and the Chief Building Official may meet and evaluate the implementation of this Agreement and determine whether any changes should be made to the arrangement for sharing the services of the Chief Building Official at any time upon the request of the City Manager of Capitola or Scotts Valley or the Chief Building Official.

19. Notices. If either Party shall desire or is required to give notice to the other, such notice shall be given in writing, addressed to recipient as follows:

City of Capitola:
City Manager
420 Capitola Ave.
Capitola, CA 95010

City of Scotts Valley:
Community Development Director
One Civic Center Drive
Scotts valley, CA 95066

20. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

21. Entire Agreement. This Agreement constitutes the entire agreement between Capitola and Scotts Valley and supersedes and cancels any prior agreement or understanding, whether written or verbal. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by Capitola and Scotts Valley.

22. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. Electronic signatures and fully executed copies of this Agreement are deemed valid as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above written.

CITY OF CAPITOLA

By:

Jamie Goldstein, City Manager

APPROVED AS TO FORM:

Samantha W. Zutler, City Attorney

CITY OF SCOTTS VALLEY

By:

Mali LaGoe , City Manager

APPROVED AS TO FORM:

Kirsten Powell, City Attorney

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Casey Estorga, Administrative Services Director

APPROVED: Mali LaGoe, City Manager

SUBJECT: **AMEND AGREEMENT WITH OPENGOV TO ADD ENTERPRISE RESOURCE PLANNING (ERP) SOFTWARE**

SUMMARY OF ISSUE

The COVID-19 pandemic had a significant impact on the way the City of Scotts Valley conducts business. And while there is a greater need for online tools, many of the City's departments have not traditionally been equipped to accommodate the need for digital services, including remote options that are available 24/7, for staff and the community. When operations shifted to a digital format at the beginning of the pandemic, the City Council approved a five-year agreement with OpenGov to support the City's permitting, licensing, and code enforcement efforts. This bundle of resources is commonly known as the *Citizen Services* module and is actively being implemented. The City's Community Development Department is leading that project, with a plan to publicly launch *Citizen Services* to the community within the coming months.

As part of ongoing efforts to identify and adopt operational efficiencies, City staff continued to evaluate how modern technology could further enhance the ability to provide municipal services in a contemporary setting where accuracy, accessibility, and transparency were clear priorities for all stakeholders. As a result, the City received information about OpenGov's Enterprise Resource Planning (ERP) suite of products to help address the needs of the City's finance department and the internal and external customers they serve. NOTE: ERP software is typically the tool that centralizes all of an organization's financial activities, including all accounting functions, (i.e. A/P, A/R, payroll, etc.), budgeting, reporting, asset management, and procurement.

CURRENT SOFTWARE

The City currently uses an ERP product named New Vision, a system that has been in-place at the City for well over 20 years. The New Vision product has become antiquated technology, including some modules that continue to use a DOS "green screen" interface, and offers limited technical support from its vendor. Additionally, New Vision also requires an inordinate amount of time-consuming manual interaction for data entry, reporting, and financial monitoring. City staff's ability to be good stewards of public funds is hindered by the continued use of the New Vision product. Furthermore, the City also handles utility billing using Quickbooks software, outside of the New Vision ERP

system. The City currently pays approximately \$30,000 in annual subscription costs for these two software products.

Because of known challenges with the City's existing ERP technology, including the use of antiquated software and managing financial activities in multiple systems, staff engaged OpenGov to evaluate their ERP software as a potential solution. The City received multiple demonstrations to not only understand how OpenGov's ERP could improve operations internally, including exponentially improving the timeliness and accuracy of work products, but to vastly improving the public-facing financial information that would be made available to the Scotts Valley community – an attribute that is not currently available with the existing New Vision ERP product.

City staff were very impressed with the OpenGov ERP solution, including with the level of professionalism and customer service received by the OpenGov team during the process. Further, it is noteworthy that the OpenGov team and its products have also performed exceptionally well during the implementation of the *Citizen Services* project. As a result, and after evaluating the costs and abilities of OpenGov ERP as compared to other ERP solutions in the marketplace, staff is recommending the City Council approve a contract amendment with OpenGov for a 5-year term to add ERP software to their scope of services.

IMPLEMENTATION TIMELINE

This contract amendment would allow City staff to start an extensive project to introduce a new ERP product, a process that we anticipate taking roughly 18 months to complete. However, OpenGov has accommodated our request to have access to different aspects of the ERP system as those milestones are completed. For example, the City would potentially have access to the budgeting and reporting tools within 6-9 months, and then have access to the full suite of accounting products within 12-18 months. And although introducing a new ERP system is a significant undertaking, the short-term and long-term operational efficiencies are substantial and necessary, especially for an operation like ours with limited staffing.

This amendment would allow OpenGov to start providing ERP services effective July 1, 2022 and continuing through June 30, 2027, with software license fees due annually.

NEXUS TO STRATEGIC GOALS

Further, the OpenGov ERP product allows the City to accomplish activities in support of the City Council's strategic goal of ***Ensuring Long-Term Financial Sustainability*** in the following ways:

- Streamline and automate processes while considering both timeliness and accuracy of work products; and
- Implement tools for greater financial monitoring and reporting options; and
- Enhance ability to generate long-range financial forecasts; and
- Introduce a mechanism to monitor and report on performance measures related to the City's services, efforts, and accomplishments using both financial and non-financial data.

The OpenGov ERP product also addresses the City Council's strategic planning goal of ***Implementing Operational Initiatives to Enhance City Services***. Notably, the OpenGov ERP system has a public-facing platform that will allow all stakeholders (staff, elected officials, and the general public) to access real-time data about the City's financial health. The City currently does not have this type of tool, and as a result, generating any type of reports or conducting financial analysis is labor intensive and typically done on an ad hoc basis. Further, the OpenGov ERP tool is interactive and dynamic, allowing users to instantaneously review real-time reports about different data: for the City as a whole, for a specific department or fund, for a certain project or initiative, or for specific budget line items. Not only will this tool provide greater transparency, but it does so with a user-friendly tool that has become commonplace in contemporary finance departments.

Finally, while it is challenging to quantify the numerous positive impacts the OpenGov ERP product will have on the City's operation, the results and increase in productivity are expected to be profound. Staff will be able to redirect efforts away from duplicative data entry, designing reports, and formatting documents and will now be able to focus on analyzing complex financial information and making high-quality, data-driven recommendations to decision-makers.

FISCAL IMPACT

Total costs during the first year of the ERP amendment are \$334,175 which includes deploying the software and product implementation (configuration, setup, and training) as well as the annual software license fee for July 1, 2022 – June 30, 2023. City staff recommends these first-year costs to be funded with American Rescue Plan Act (ARPA) funds.

In the second year of the ERP amendment, annual software license fees are at \$109,025 and increase by 3% annually, for the duration of the agreement, as shown in the attachment. These annual software licenses fees will be included in the finance department's annual operating budget as approved by the City Council each year. Notably, once OpenGov ERP is fully implemented, the City will no longer incur annual software license costs for New Vision or Quickbooks products offsetting approximately 1/3 of the annual cost.

STAFF RECOMMENDATION

It is recommended the City Council authorizes the City Manager to amend the OpenGov agreement to include ERP services, in a form approved by the City Attorney, with year 1 costs being covered by ARPA funds and annual software licensing costs in subsequent years covered by the finance department's annual operating budget.

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OpenGov Inc. PO Box 41340
San Jose, CA 95160
United States

Created On: 3/29/2022
Order Form Expiration: 6/30/2022
Subscription Start Date: 7/1/2022
Subscription End Date: 6/30/2027

Prepared By: Julian Jackson
Email: Jjackson@opengov.com

Customer Information		
Customer:	City of Scotts Valley, CA	Billing Contact: Casey Estorga
Bill To/Ship To:	1 Civic Center Drive, Scotts Valley, CA 95066 United States	Email: cestorga@scottsvally.org
Order Details		
Billing Frequency: Annual		
Payment Terms: Net Thirty (30) Days		

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	Annual Fee
Financials Suite <i>Accounts Payable, Accounts Receivable, Cash Receipts, Dashboards, Fixed Assets, General Ledger, Open Town Hall, Operating & Capital Budgeting, Payroll, Payroll Timesheets, Performance Measures, Purchase Card, Reporting & Analytics, Requisitions, Story Builder, Transparency, Utility Billing, Workforce Planning</i>	7/1/2022	6/30/2023	\$106,875.00
Financials Suite <i>Accounts Payable, Accounts Receivable, Cash Receipts, Dashboards, Fixed Assets, General Ledger, Open Town Hall, Operating & Capital Budgeting, Payroll, Payroll Timesheets, Performance Measures, Purchase Card, Reporting & Analytics, Requisitions, Story Builder, Transparency, Utility Billing, Workforce Planning</i>	7/1/2023	6/30/2024	\$109,025.00
Financials Suite <i>Accounts Payable, Accounts Receivable, Cash Receipts, Dashboards, Fixed Assets, General Ledger, Open Town Hall, Operating & Capital Budgeting, Payroll, Payroll Timesheets, Performance Measures, Purchase Card, Reporting & Analytics, Requisitions, Story Builder, Transparency, Utility Billing, Workforce Planning</i>	7/1/2024	6/30/2025	\$112,296.00
Financials Suite <i>Accounts Payable, Accounts Receivable, Cash Receipts, Dashboards, Fixed Assets, General Ledger, Open Town Hall, Operating & Capital Budgeting, Payroll, Payroll Timesheets, Performance Measures, Purchase Card, Reporting & Analytics, Requisitions, Story Builder, Transparency, Utility Billing, Workforce Planning</i>	7/1/2025	6/30/2026	\$115,665.00
Financials Suite <i>Accounts Payable, Accounts Receivable, Cash Receipts, Dashboards, Fixed Assets, General Ledger, Open Town Hall, Operating & Capital Budgeting, Payroll, Payroll Timesheets, Performance Measures, Purchase Card, Reporting & Analytics, Requisitions, Story Builder, Transparency, Utility Billing, Workforce Planning</i>	7/1/2026	6/30/2027	\$119,135.00

Annual Subscription Total: See Billing Table

PROFESSIONAL SERVICES:

Product / Service	Description		
OpenGov Deployment — One Time Fee	Product configuration, setup, and training described in the attached SOW.		
OpenGov Deployment — Time & Materials	Hours will be billed upon completion on a time and material basis at a rate of \$205.00 per hour		
		Professional Services - One Time:	\$227,300.00
		Professional Services - Time & Materials (Utility Billing):	\$55,000.00
		Estimated Professional Services Total:	\$282,300.00

Billing Table:

Billing Date	Amount Due	
July 1, 2022	\$334,175.00	(Annual Software Fee + One Time Professional Services)
July 1, 2023	\$109,025.00	
July 1, 2024	\$112,296.00	
July 1, 2025	\$115,665.00	
July 1, 2026	\$119,135.00	

Order Form Legal Terms

Welcome to OpenGov! Thanks for using our Software Services. This Order Form is entered into between OpenGov, Inc., with its principal place of business at 6525 Crown Blvd #41340 San Jose, CA 95160 (“OpenGov”), and you, the entity identified above (“Customer”), as of the Effective Date. This Order Form includes and incorporates the OpenGov Software Services Agreement, signed between the parties, effective **June 3, 2021** as amended (“SSA”) and the applicable Statement of Work (“SOW”) incorporated herein in the event Professional Services are purchased. The Order Form, SSA and SOW shall hereafter be referred to as the “Agreement”. Unless otherwise specified above, fees for the Software Services and Professional Services shall be due and payable, in advance, on the Effective Date. By signing this Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by, the OpenGov Software Services Agreement. Each party’s acceptance of this Agreement is conditional upon the other’s acceptance of the terms in the Agreement to the exclusion of all other terms.

City of Scotts Valley, CA

Signature: _____

Name: _____

Title: _____

Date: _____

OpenGov, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

Statement of Work

City of Scotts Valley, CA

Created by: Adam J. Weems
Creation Date: 05/04/2022
Document Number: DD-02478
Version Number: 2

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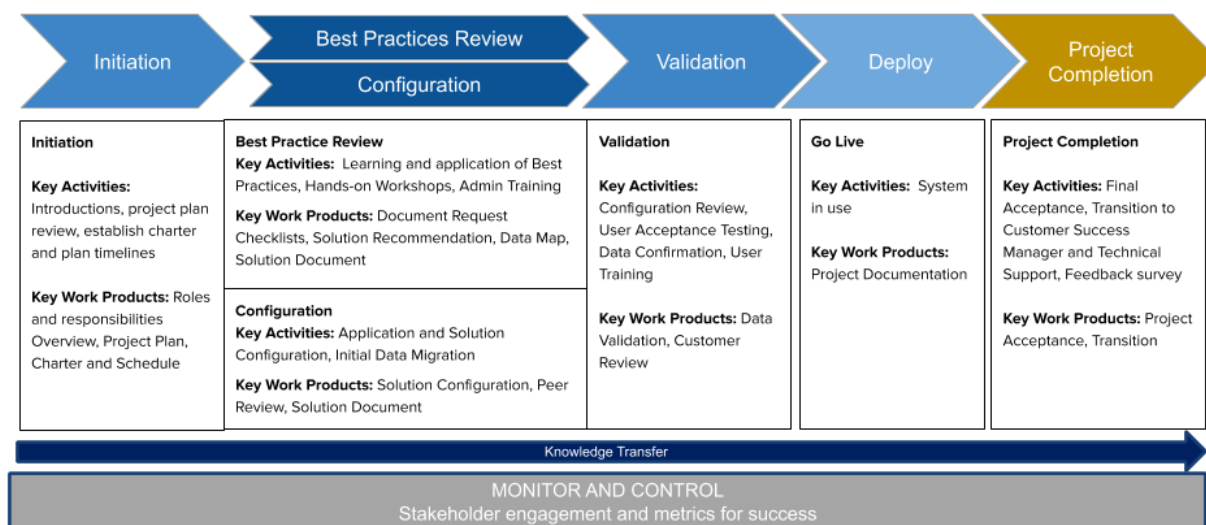
1. Overview

1.1. Preamble

This Statement of Work (“SOW”) identifies services that OpenGov, Inc. (“OpenGov” or “we”) will perform for City of Scotts Valley, CA (“Customer” or “you”) pursuant to that order for Professional Services entered into between OpenGov and the Customer (“Order Form”) which references the Software Services Agreement or other applicable agreement entered into by the parties (the “Agreement”).

- Customer’s use of the Professional Services are governed by the Agreement and not this SOW.
- Upon execution of the Order Form or other documentation referencing the SOW, this SOW shall be incorporated by reference into the Agreement.
- In the event of any inconsistency or conflict between the terms and conditions of this SOW and the Agreement, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Unless otherwise defined herein, capitalized terms used in this SOW shall have the meaning defined in the Agreement.
- This SOW may not be modified or amended except in a written agreement signed by a duly authorized representative of each party.
- openGov will be deployed as is, Customer has access to all functionality available in the current release.

OpenGov Implementation Methodology



2. Methodology

OpenGov's deployment methodology, often referred to as the OpenGov Way ("OG Way"), delivers on OpenGov's mission to power more effective and accountable governments. It is an innovative, modern, and iterative approach that leads our customers to successfully deploy our products and help them successfully achieve their vision. The OG Way differentiates itself in the market by its foundation of customer empowerment. We rely on our years of experience working with governments, leading in governments, and leveraging best practices from the public and private sector in order to coach our customers through the change management needed to leverage our best practices and quality software. This methodology requires a degree of focus and engagement to ensure collaboration between both parties to produce the desired results in a timely manner. We look forward to our partnership and can't wait to show you how The OG Way will improve the way you do business and the services you're able to provide to your citizens!

Project Initiation

During project initiation, we will introduce project resources, review the products and services purchased, finalize project timelines, and conduct the kickoff meeting. Both OpenGov and Customer are responsible for assigning their Project Managers for the project. We will hold a planning meeting to review all project documents OpenGov has received to date. We'll also provide additional worksheets that need to be included. We'll set-up meetings to finalize the project plan and ensure there is a centralized location for

these documents to be stored for collaboration. Lastly, we'll determine the date for the larger kickoff meeting and discuss the agenda for this critical meeting.

Best Practice Review

- OpenGov will provide your team with access to OG University and OpenGov's Resource Center so that you can start learning.
- Provided checklists with samples of data and information that we'll need completed. We will obtain all data and integration information at this time in our standard format.
- We will review your agency-specific documents to validate your business requirements.
- We will then coach you on our best practices by showing you how our tool works in the most effective manner.
- Based on our best practices review, we'll make solution recommendations based on our domain expertise.
- We'll align with your team based on our understanding of your operating processes based on technical requirements and product functionality.
- We'll review all data and integration requirements. A data map will be mutually agreed upon and signed off on by Customer.
- We'll present a solution document to be mutually agreed upon prior to starting the configuration.

Configuration

- We will set-up the base configuration based on the mutually agreed upon solution document.
- We will mutually configure the use cases based on the mutually agreed upon solution document.
- We will migrate your data based on our mutually agreed upon data map.

Validation

- Review the completed work performed during configuration.
- The appropriate members of the Customer project team will confirm that the solution has been configured correctly based on the solution and data mapping documents by testing the use of the solution.
- Training will be provided based on the selected package, or as set forth herein.
- Any items that were configured or migrated incorrectly based on the data map and solution document will be tracked via an issue log. We will work with your team to identify deployment critical issues that will be worked out prior to launch. If the item is not included in the mutually agreed upon data map and solution document, a

mutually agreed upon change order will be discussed as defined in Section 10 Change Management of this SOW.

- The exit criteria for this phase is the sign off by the Customer's Project Manager of the configuration based on the mutually agreed upon solution and data map as defined in Section 9 Acceptance of this SOW.

Deploy

- The solution is usable by Customer.

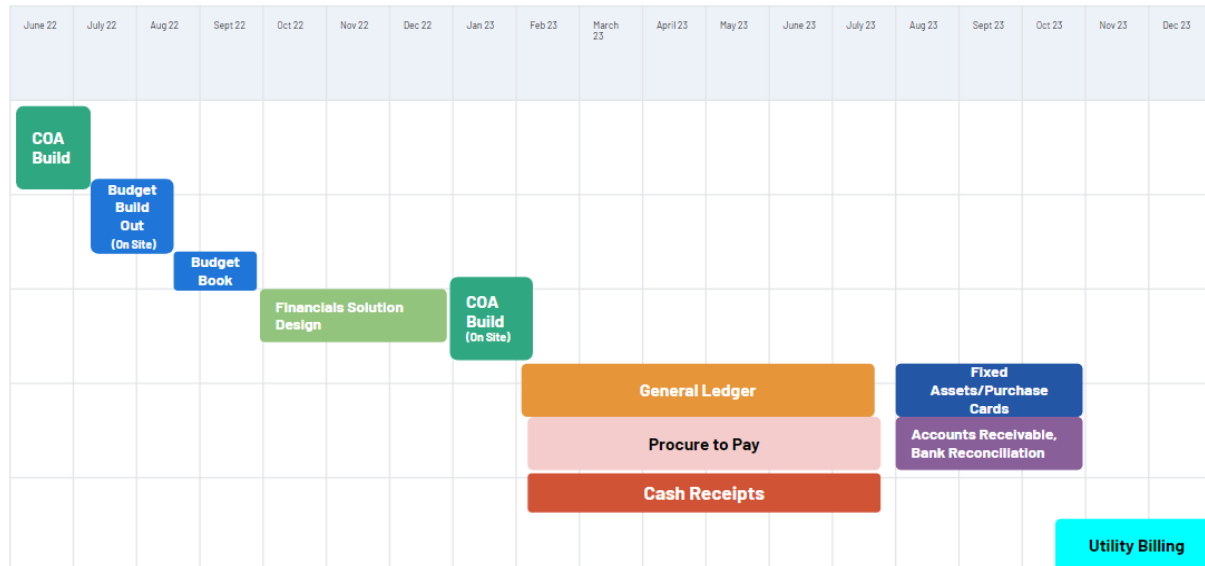
Project Completion

- Customer is sent a project acceptance form to sign as defined in Section 9 Acceptance of this SOW.
- Customer will be asked to respond to a brief survey to provide feedback about the experience.
- Customer is introduced to Customer Support and educated on how to engage with customer support based on Customer's procured package.

3. Project Schedule

OpenGov will schedule resources for this project upon signature of the order form. Unless specifically noted, the OpenGov assigned project manager (as identified below or such alternate designated by OpenGov, the "OpenGov Project Manager") will work with Customer Project Manager to develop the project schedule for all requested deliverables under this SOW. OpenGov reserves the right to adjust the schedule based on the availability of OpenGov resources and/or Customer resources, and the timeliness of deliverables provided by the Customer.

Estimated Project Schedule, to be confirmed and signed off on with the Project Manager at the beginning of the Project.



4. Roles and Responsibilities

4.1. Roles and Responsibilities Matrix

OpenGov	
Role	Role Description
Executive Sponsor (“ES”)	Responsible for ensuring alignment on project value proposition and vision. Escalation point for Customer Executive Sponsor to mitigate any risks that the project team cannot resolve. Executive Sponsor attends monthly (or other frequency) executive meetings to review deployment status, documented issue list, status and closure summary.
Project Manager (“PM”)	Responsible for the delivery of the professional services based upon the agreed upon contract and SOW within the budgeted hours and timeframe. Ensures the project is properly forecasted, assigns tasks/resources, and tracks toward project completion. Holds executive steering committee meetings and/or quarterly business reviews as appropriate to ensure project issues are properly escalated and success is achieved. Facilitates the transition to support.
Analyst (“IA”)	Responsible for helping Customer configure OpenGov’s product suites as assigned. The Analyst is the primary consultant, guiding Customer through configuration working sessions to put

	together successful workflows.
Subject Matter Expert (“SME”)	OpenGov Subject Matter Experts (“SMEs”) will engage in strategy, design, and execution discussions internally and with Customer during the deployment. The SME has a specific area of expertise, and depending on the scope of the project more than one SME may engage. The SME will not be on all working sessions, but will be involved per the direction of the OpenGov Project Manager.
Integration Engineer (“IE”)	Responsible for migrations, conversions, and integrations as assigned. Responsible for providing clear direction on specifications to ensure proper delivery of migration, conversions, and integrations. Clear data mapping and data validation to be provided with customer sign-offs obtained by the OpenGov Project Manager.
Account Executive (“AE”)	The Account Executive is responsible for the sales cycle. Aligning on program vision, value proposition, and contract terms. The Account Executive will facilitate project kickoff along with the OpenGov Project Manager. The Account Executive will be engaged with the customer throughout their journey with OpenGov, post-deployment and beyond.
Customer Manager (“CM”)	The Customer Manager (“CM”) is the primary customer relationship holder post-Deploy. The “Air Traffic Controller” or “Quarterback” of OpenGov resources with focus on long term success of Customer’s partnership with OpenGov. The CM will engage with Customer to discuss adoption strategy and conduct periodic reviews to ensure Customer’s key stakeholders understand all OpenGov offerings and how they align to key Customer priorities. The CM will be introduced at deployment kick-off, but will not be an active participant in deployment working sessions. As the deployment approaches closure, the CM’s engagement will ramp-up, and the OpenGov Project Manager to CM meeting with Customer will occur prior to Project Completion.
Customer	
Role	Role Description
Budget Owner (“BO”)	The Customer Budget Owner commits the funds to the project deployment, assesses the value to the cost (ROI), and approves changes orders. In some cases, the Budget Owner and Executive Sponsor are the same person.

Executive Sponsor (“ES”)	Responsible for ensuring Customer team is aligned to core project value proposition and goals. Able to intervene if the project goes off track, and has ability to make decisions on timeline and budget when decisions are stalled. The Executive Sponsor is not expected to regularly attend deployment working sessions. Executive Sponsors, attend monthly (or other frequency) executive meetings to review deployment status, documented issue list, status and closure summary.
Project Manager (“PM”)	Serves as the primary contact for OpenGov Project Initiation, Best Practice Review, Configuration, Validation, Deploy, Project Completion. Coordinates meetings and schedules. Controls communication between the Customer and OpenGov project teams.
Project Lead (“PL”)	Is an internal SME in the functional area of deployment. Attends working sessions, trainings, and responsible for reviewing configurations. Primary OpenGov counterpart will be the Analyst.
Data and SystemsLead (“DSL”)	Responsible for mapping out data infrastructure and validating migration, conversion, integration requirements. Someone who is able to connect OpenGov team with any of Customer’s third-party data sources and vendors as needed to fulfill SOW requirements.

5. Governance

Project Governance provides the foundation and framework to manage deployments by assessing progress and addressing questions and challenges during the course of deployment. OpenGov follows three guiding principles for governance to maximize the deployment value with our customers:

- **Regular communication** aligned to the agreed upon project plan and timing will occur. OpenGov expects our customers to raise questions or concerns as soon as they arise. OpenGov will do the same, as we can only address items when known.
- **Executive involvement** is expected from both OpenGov and Customer. Not only may Executives be called upon to clarify expectations and/or confusion, but also to steer strategic items to maximize the value through the deployment.
- **Commitment to the direction** outlined in this SOW and critical assessment change orders to ensure they drive value.

5.1. Regular Communication Components

Meeting		Frequency	Purpose	Participants	
				OpenGov	Customer
Quarterly Management Review (“QMR”)	Engagement Review	Quarterly	Overview of Program Status, Value Realization, trends, savings reports, program improvement, technology, and discuss program adjustments	PM, ES, others as necessary	PM, PL, ES, others as necessary
	Statement Committee	Bi-Annually	Review of milestones per commercial agreement, review budget and fiscal matters. Discuss strategic direction from deployment, alignment of OpenGov with Customer’s 3-year roadmap, evaluate potential shift in strategy and impact to relationship	PM, ES, AE, CM	PM, BO. ES
Executive Sponsor Meeting		Monthly / Bi-Monthly	Discuss deployment: - Strategic impacts: timing, scope, process - Value prop changes,	PM, ES, plus others as necessary	PM, ES, plus others as necessary

		confusion - Project specific: items that need guidance, support and/or clarity		
Weekly Deployment Updates	Weekly	Summary of project actions against project plan. Risks and achievements highlighted in addition to asks of leadership.	Project Team + ES(s)	Project Team + ES(s)

5.2. Commitment to Project Direction and Goals

This SOW is the direction agreed upon by Customer and OpenGov. Transparency of the plan is paramount for our Customers to attain the value the SOW or any subsequent change order outlines.

Should direction of the deployment become disconnected, OpenGov and Customer Project Managers will outline the gaps as they understand them and communicate the gaps to their respective Executive Sponsor(s) (or Project Teams) for discussion and resolution.

The communication path for this engagement will be outlined in the kick off meeting, documenting both phone numbers and email. The general path is:

OpenGov Project Manager → Professional Services Sr. Manager / SVP → Executive Sponsor

6. Escalation Process

The purpose of this section is to define the escalation process, should it be needed, to support closing issues that are raised, discussed to move forward with the deployment. OpenGov and Customer agree to raise concerns and follow the escalation process, resource responsibility, and documentation.

6.1. Process

- Identification of an issue impeding deployment progress, outcome or capturing the value proposition, that is not acceptable.
- Customer or OpenGov Project Manager summarizes the problem statement and impasse.
- Customer and OpenGov Project Managers will outline solution, acceptance or schedule Executive review in accordance with SLA as defined in Section 7 General Project Assumptions.
- Resolution will be documented and signed off following Executive review in accordance with SLA as defined in Section 7 General Project Assumptions.

6.2. Escalation Requirements

- OpenGov and Customer Project Managers will summarize the impasse and recommendation to present at scheduled or ad hoc executive meetings. Unless otherwise noted in this SOW, Customer Project Manager can approve how hours are used, but not where funding is required.
- Executive Sponsors attend monthly (or other frequency) executive meetings to review deployment status, documented issue list, status, and closure summary.
- Steering Committees, where applicable, will be the arbitrator to direction and issue closure. Unless otherwise noted in this SOW, the Customer Executive Sponsor must approve change orders that result in additional cost.
- Customer or OpenGov Subject Matter Experts may be requested to provide input to the issue and assist in closure. Both Customer and OpenGov will make best effort to enable those Subject Matter Experts to be available and participate.

6.3. Documentation

- Issue Escalation: Problem Statement with clear impact to the deployment and/or engagement.
- Acceptance Document: Which will include any change order(s) or other process adjustments required and summary of the resolution.
- Notes from Project Meetings, Executive Reviews, and Steering Committee meetings, as appropriate.

7. General Project Commitments

OpenGov is excited to work with Customer on the implementation of our OpenGov ERP Cloud. In order to ensure we are able to meet the project timeline and ensure Customer is successful in this implementation, OpenGov asks that Customer abide by the General Assumptions detailed in this SOW.

- This SOW is limited to the Implementation of the OpenGov Cloud as defined in the Project Scope. Any additional services or support will be considered out of scope.
- Customer will commit and provide access to all necessary stakeholders and subject matter experts, and other key parties whose roles are defined in Section 4.1, necessary to the successful implementation of the OpenGov ERP Cloud as defined in this SOW.
- Customer is responsible for internal change management associated with the purchase of new software.
- Response Protocol
 - OpenGov and Customer commit to responding to inquiries, updates, or any other project-related matters in no more than 10 business days throughout the course of this project. If Customer is delayed in its response, Customer acknowledges that: a) the delay may impact the project schedule; and b) any fees for Professional Services due to OpenGov after such delay shall become due and OpenGov may invoice Customer for such prepayment.
 - As set forth in Section 6.1(e) of the Agreement, if extended delays in Customer responsiveness are encountered, OpenGov may opt to put the project into an "On Hold" status, which includes causing OpenGov to stop or cause to be stopped the Professional Services to be provided to the Customer, until the Customer has fulfilled its obligations set forth in the On Hold Notice as described in the Agreement.
 - The Professional Services will be provided during regular business hours (8am to 6pm Pacific Time) Monday through Friday (holidays excluded).
- SOW Expiration:
 - This SOW is valid for up to 90 days from the Creation Date, or as agreed to in writing by OpenGov and Customer.

8. Project Scope

8.1. General

Description	OpenGov Responsibilities	Customer Responsibilities
Project Plan	OpenGov will deliver a project plan outlining milestones, deliverables and the timeframes in which they will be completed.	Customer to confirm resources and commitment to meet the proposed date. In conjunction with OpenGov Project Manager, review and sign off on the proposed plan.
Document Discovery	Review information and confirm sample data received from Customer Provide list of documents and data necessary for the project. (Additional information available)	Based on the project requirements, the Customer will supply documents and data requested by OpenGov
Solution Blueprint	OpenGov will: • Catalog legacy systems • Present the solution blueprint to be mutually agreed upon prior to beginning configuration.	Sign off on Solution Blueprint

8.2. Financial Suite

8.2.1. Chart of Accounts

Description	OpenGov Responsibilities	Customer Responsibilities
Chart of Accounts Configuration	Based on the OpenGov technical requirements for the Chart of Accounts in the system, OpenGov will: • Create a Proof of Concept for the Chart of Accounts • Gain Sign Off from Customer on Proof of Concept • Build Chart of Accounts in OpenGov	Customer will: • Provide current Chart of Accounts (CSV or Excel format) • Validate and provide written acceptance Proof of Concept for Chart of Accounts
Validate COA	Present Chart of Accounts in OpenGov Financials	Customer will: • Validate Chart of Accounts in OpenGov Financials
SignOff COA	Send COA Sign off Form	Sign off on format in OGF

8.2.2. Configuration of Core Financials

Description	OpenGov Responsibilities	Customer Responsibilities
Core Financials Data Migrations	OpenGov will: • Create an SFTP site for data transfer purposes • Upload the following data to Reporting and Transparency Platform ◦ 3 - 5 years of transaction detail into the Reporting & Transparency platform in a non-COA linked grid report. (Based on the number of years Customer uses for budgeting) • Upload the following data into OpenGov Financials Suite: ◦ Current Fiscal YTD Data (Detailed Transactions) ◦ Vendor List ◦ Current Year Budget ◦ POs, Open Invoices, Uncleared Checks, Calendar YTD 1099's (if applicable)	Customer will: • Provide copy of Database/files • Provide specified reports • Upload data to SFTP • Review Master Data
General Ledger	After initial data load, schedule configuration working session for: • Data Review • Improved Procedural Processes • Build recurring templates (if applicable) • Validate Reporting • Review configuration with Customer	Customer will: • Attend scheduled working sessions • Validate Data • Validate Reports • Validate Module Configuration
Procure to Pay	OpenGov will schedule no less than 3 working session to work with Customer to set up: • Banks • ACH • Positive Pay • Check format and printers	Customer will: • Attend scheduled working sessions • Test ACH files • Print Test Check • Order new equipment (as needed)

	• Current year budget • Vendors • 1099 Processing • Misc Vendors • Purchase controls • Encumbrances/Requisitions • Departmental purchasing • Approval routing • Approval limits	• Test Positive Pay file
Cash Receipts	OpenGov will schedule working session to work with Customer to set up: • Cash Receipt types • Receipts format and printers • Journal entry controls • Credit card processing interfaces/processors (as defined in presales process) • Utility Billing batches • Collection agencies	Customer will: • Attend scheduled working sessions • Validate processes
Reporting	OpenGov will configure two base financial reports in OpenGov Financials: • Budget Report • Revenue & Expense OpenGov will provide access to standard inapplication reports. • <i>Note: Inapplication reports are not customizable</i> OpenGov will train Customer on: • Import and Export Data into the system • How to build Reports and Dashboards in the Reporting and Transparency Platform. • Using Saved Views and Masks. After Core Financials Go-Live, OpenGov will configure 2 standard datasets: • GL • AP	Customer will: • Attend scheduled working sessions • Validate reports
Core Financial Solution Working Sessions	Per the agreed upon Project Plan, OpenGov will schedule weekly working session with Customer's system Administrators to:	

	• Review Configurations • Provide insight and training on system functionality • Gain feedback and answer questions regarding configured system functionality	
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8.2.3. Configuration of Extended Financials

Description	OpenGov Responsibilities	Customer Responsibilities
Purchase Card	OpenGov will schedule working session to work with Customer to set up: • Bank interface (for downloading and uploading statements) • Purchase card users • Journal entry OpenGov will train Customer on functionality of Purchase Cards Module	Customer will: • Attend scheduled working sessions and trainings. • Validate processes
Bank Reconciliation	OpenGov will schedule working session to work with Customer to set up: • Bank interfaces (for downloading and uploading statements) • Unmatched items process OpenGov will train Customer on functionality of Bank Reconciliation Module	Customer will: • Attend scheduled working sessions and trainings. • Validate processes
Fixed Assets	OpenGov will schedule working session to work with Customer to set up: • Asset groups • Fleet groups • Useful life and Depreciation Method OpenGov will train Customer on functionality of Fixed Asset Modules	Customer will: • Attend scheduled working sessions and trainings. • Validate processes
Accounts	OpenGov will schedule working	Customer will:

Receivable	session to work with Customer to set up: • Recurring and Miscellaneous Customer • Invoice formats • Billing Cycles OpenGov will train Customer on functionality of Accounts Receivable Modules	• Attend scheduled working sessions and trainings. • Validate processes
Extended Financial Solution Working Sessions	Per the agreed upon Project Plan, OpenGov will schedule weekly working session with Customer's system Administrators to: • Review Configurations • Provide insight and training on system functionality • Gain feedback and answer questions regarding configured system functionality	
Budget and CIT Rebuild	OpenGov will work with Customer on updating their existing Budgeting & Planning platform: • OpenGov will upload new Chart of Accounts into Budgeting & Planning Platform • OpenGov will update standard financial reports • OpenGov will build a new Operating budget instance referencing the new Chart of Accounts • OpenGov will update budget reports based the new budget OpenGov will work with Customer on updating their existing Online Budget Book Reports: • Rebuilding the 2 Online Budget Book Reports and Report views based on New Fincials COA • Training customer how to update report tables in Year 2 Budget Book. OpenGov will work with Customer updating the Citizen Services	

	Platform: Mapping/Rebuilding Fees to match new Chart of Accounts	
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8.2.4. Utility Billing (Phase 2)

Description	OpenGov Responsibilities	Customer Responsibilities
Initial Data Migration	OpenGov will: - Create an SFTP site for data to be loaded to Load data “as-is” : 2y Utility Billing Meter Reading History - Utility Billing Open Balances	Customer will: - Provide copy of Database/files - Provide specified reports - Upload data to SFTP - Review Master Data
Utility Billing	OpenGov will work with customer to configure the Utility Billing module and set up: - Cycles - Routes - Transactions types - Service types - Rates - Meters/Meter Reading - Work orders - Journal entries - Customers - Services addresses - Billing and Statements - Included OpenGov standard laser billing and standard delinquent notice - Delinquent Processing If applicable, OpenGov will also configure: - Bank interfaces - Payment Processing (Credit cards) - Unclaimed Property - CASS Certification	Customer will: - Attend scheduled working sessions and trainings. - Setup and configuration - Delinquent Processing (if applicable) - Validate processes Customer agrees to changing Billing frequency from every other month to monthly.
Reporting	OpenGov will provide Utility Billing module reports: - Service Account - Services Provided	Customer will: - Attend scheduled working sessions and trainings. - Validate reports

	• Meter related • Transaction history • Meter reading • Rate study • Month end • Account audit	
Utility Billing Solution Working Sessions	Per the agreed upon Project Plan, OpenGov will schedule weekly working session with Customer's system Administrators to: • Review Configurations • Provide insight and training on system functionality • Gain feedback and answer questions regarding configured system functionality	

8.2.5. Interfaces and Security

Description	OpenGov Responsibilities	Customer Responsibilities
Interfaces	OpenGov will work with Customer to assess Interface requirements. <i>Further discovery may be required to establish Customer's needs and could result in additional hours added to the project.</i>	Provide data exports and file formats required for interfaces. • Format change in source file may be required if format does not fit OG requirements. • Purchase and setup new equipment as applicable.
Security	OpenGov will: Schedule security session after Master Data Load. Set up authentication: • Users and Group (may or may not include SSO) Set up Authorization: • Module/application access controls • COA based • Separation of duties Evaluate and configure Security controls and log in requirements with assistance from Customer.	Customer will: Attend scheduled working sessions and trainings. Complete security user documentation Provide user list

8.3. Budgeting and Planning Suite

Description	OpenGov Responsibilities	Customer Responsibilities
Chart of Accounts Configuration	Based on the OpenGov technical requirements for the Chart of Accounts in the system, OpenGov will: • Create a Proof of Concept for the Chart of Accounts • Gain Sign Off from Customer on Proof of Concept • Build Chart of Accounts in OpenGov	Customer will: • Provide current Chart of Accounts (CSV or Excel format) • Validate and provide written acceptance Proof of Concept for Chart of Accounts
Operating Budget Configuration	OpenGov will: Configure and upload Customer's base budget files into OpenGov budget instances. OpenGov will configure: • 2 Proofs of Concept • 1 Final Budget instance • Proposals and worksheets for each department included in the base budget file and based on the agreed upon structure The OpenGov Project Manager will confirm with Customer's Budget Owner that all budget proposals are configured properly based on the agreed upon format.	Customer will: • Provide current budget in the format of .csv or .xlsx • Validate Proof of Concept prior to OpenGov building out proposals and worksheets Customer's Budget Owner will confirm with the OpenGov Project Manager and Analyst that all budget proposals are configured properly based on the agreed upon format.
Workforce Planning Configuration	OpenGov will provide: • 4 standard cost elements • Training and guidance on how to set up cost elements • Training and Guidance on how to populate Workforce Template	Customer will: Build out remaining cost elements Populate position template Upload position template into OpenGov Validate Workforce calculations
Budget and Planning Suite Reporting	• OpenGov will set up 1 export and dataset view to enable budget reports • OpenGov will set up 3 standard reports using the customer's integrated data. ○ Annual ○ Budget to Actuals	Customer System Administrator will validate that OpenGov system reports have been configured. Once trained, Customer will map OpenGov budget export to Customer ERP import format.

	○ Transactions ● OpenGov will configure up to 4 reports using OpenGov budget data: ○ Operating Budget ■ Milestones ■ Development ■ Budget Details ■ Categories* *Budget Categories report is only available to customers using a zero-based budget. The OpenGov Project Manager will verify that all OpenGov Reports have been configured and shared with Customer	
Budgeting and Planning Solution Working Sessions	Per the agreed upon Project Plan, OpenGov will schedule weekly working session with Customer's system Administrators to: ● Review Configurations ● Provide insight and training on system functionality ● Gain feedback and answer questions regarding configured system functionality	Per the agreed upon Project Plan Customer's System Administrators will attend weekly working sessions to: ● Review Configurations ● Gain insight and training on system functionality ● Give feedback and ask questions regarding configured system functionality

8.4. Online Budget Book

Description	OpenGov Responsibilities	Customer Responsibilities
Standard Online Budget Book	Based on Best practices OpenGov will build out: ● Look and feel of Online Budget Book ● Templates for: ○ Home Page ○ Generic (multi-use) ○ Operating ○ Department Once templates are finalized,	Customer will: ● Provide logo and branding colors to OpenGov Once trained, Customer will: ● Build out remaining Stories required for Online Budget Book to include: ○ Narrative ○ OpenGov Report Views ○ Images

	OpenGov will: • Create one Story shell for each department and fund from templates. (Department or fund can be substituted for another template listed above) • Create up to 2 reports for use in the Online Budget Book • Create OpenGov report views and add report tiles to created templates.	○ Data not in OpenGov • Set up additional Online Budget Book stories. • Create views in Online Budget Book Report(s) • Add report views to online budget book stories • Add narrative content to Online Budget Book Stories • Add any additional content to Online Budget Book Stories • Make Stories public and Publish Online Budget Book
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9. Acceptance

9.1. Acceptance Process

All Deliverables require acceptance from the Customer Project Manager(s) following the completion of Deliverables and upon Project Closure. Customer is responsible for conducting any additional review or testing of such Deliverable pursuant to any applicable mutually agreed upon acceptance criteria agreed upon by the parties for such Deliverable. Upon completion of these phases, the OpenGov Project Manager shall notify the Customer Project Manager(s) and provide the necessary documents for review and sign off.

The following process will be used for accepting or acknowledging Deliverables and Project Closure:

- OpenGov shall submit the completed Deliverables to Customer to review or test against the applicable acceptance criteria. Customer shall notify OpenGov promptly of its acceptance or rejection in accordance with the agreed upon acceptance criteria.
- Customer must accept all Deliverables that meet the applicable acceptance criteria. OpenGov Project Manager will provide the Customer Project Manager with the OpenGov Acceptance form to sign off on the Deliverable and project. Once all Deliverables required to meet a particular phase have been accepted or are deemed accepted, the phase shall be deemed complete.
- Upon completion of the phase or project, OpenGov allows Customer 10 business days to communicate that the particular Deliverable(s) does not meet Customer's requirements. Failure to communicate that the particular Deliverable(s) does not meet Customer's requirements will be deemed as acceptance and any further work provided to remedy Customer's complaint might incur additional cost.

- Customer shall provide to OpenGov a written notice detailing the reasons for rejection and the nature of the failure to meet the acceptance criteria. OpenGov shall make best effort to revise the non-conforming Deliverable(s) to meet the acceptance criteria and re-submit it to Customer for further review and testing.
- If the acceptance form is not received in accordance with Section 7 General Project Assumptions, the project phase and/or project will be considered accepted and automatically closed.

9.2. Acceptance Requirements

- All acceptance milestones and associated review periods will be tracked on the project plan.
- The Customer Project Manager will have decision authority to approve/reject all project Deliverables, Phase Acceptance and Project Acceptance.
- Any open issues shall receive a response in accordance with Section 7 General Assumptions of this SOW following the Validation Acceptance review, or as mutually agreed upon between the parties, for resolution prior to advancing on in the project.
- Both OpenGov and Customer recognize that failure to complete tasks and respond to open issues may have a negative impact on the project.
- For any tasks not yet complete, OpenGov and/or Customer will provide sufficient resources to expedite completion of tasks to prevent negatively impacting the project.

10. Change Management

This SOW and related efforts are based on the information provided and gathered by OpenGov. Customer acknowledges that changes to the scope may require additional effort or time, resulting in additional cost. Any change to scope must be agreed to in writing or email, by both Customer and OpenGov, and documented as such via a:

- *Change Order* - Work that is added to or deleted from the original scope of this SOW. Depending on the magnitude of the change, it may or may not alter the original contract amount or completion date and be paid for by Customer. Changes might include:
 - Timeline for completion
 - Sign off process
 - Cost of change and Invoice timing
 - Signed by OpenGov and Customer Executives approving funds.

Change documentation will be mutually agreed upon as defined in Section 7 General Assumptions of this SOW. Should that not occur, the change will be added to the next Executive Sponsor agenda for closure.

Example of changes that might arise during a deployment:

- Amending the SOW to correct an error.
- Extension of work as the complexity identified exceeds what was expected by Customer or OpenGov.
- Change in type of OpenGov resources to support the SOW.

11. Travel Expenses

All Travel and Lodging expenses will be approved in advance in writing by the Customer Project Manager prior to OpenGov incurring any such expenses and booking non-refundable travel expenses. Such expenses shall be in compliance with Customer's travel and expense guidelines provided to OpenGov.

Unless otherwise agreed to by the parties, such travel and expenses shall not exceed \$10,000 for the work specified in this SOW. If additional travel is needed as per discussion with the Customer, it will be mutually agreed upon and be billed as incurred.

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Chris Lamm, Public Works Director/City Engineer

APPROVED: Mali LaGoe, City Manager

**SUBJECT: APPROVAL OF PURCHASE ORDER WITH PETERSON/CAT FOR
AN EMERGENCY GENERATOR**

SUMMARY OF ISSUE

The City's Wastewater Division utilizes eight sanitary sewer lift stations around the City where gravity flow is infeasible to deliver wastewater to the Waste Water Treatment Plant at Lundy Lane. Each lift station is considered a critical facility asset with both PG&E power and backup generator power to ensure sewage conveyance under all conditions.

The generator located at Monteville is aging and in need of immediate replacement. Parts are no longer readily available meaning backup power is not available at times when waiting for hard to find parts. The generator has shut off several times due to overheating and has had multiple battery issues. The equipment also operates at a high noise level due to advanced wear. The risk of not having backup power available during a power outage could mean sanitary sewer overflows and penalties levied upon the City depending on the level of severity of a spill.

The City is proposing to purchase the replacement generator through a sole source purchase with Peterson/CAT. Peterson/CAT is the wastewater division's on-call service provider for all of the City's lift station generators. For consistency, and ease of operation, it is important to have the same or similar products at each lift station throughout the City. Peterson/CAT is local and has technicians that respond to emergency needs right away, usually within hours once called. It is not anticipated that a public bid would result in material savings without sacrificing operational savings experienced by utilizing the City's current vendor for maintenance and on-call servicing.

The purchase order includes delivery, installation, and certification with both the Monterey Bay Area Air Board and Santa Cruz County for the Diesel tank. The generator will be installed in a turnkey condition and includes staff training before hand over. The cost to furnish and install the generator is \$58,469.

FISCAL IMPACT

The purchase can be funded within the Waste Water Division operating budget for equipment replacement. No additional appropriation is required.

STAFF RECOMMENDATION

It is recommended that the City Council approve the purchase of a generator and expenditure in the amount of \$58,469 with Peterson/CAT.

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Peterson/CAT Quote	3
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Date: April 4, 2022

Thank you for the opportunity to propose new Caterpillar power equipment from Peterson Power Systems. Selecting Caterpillar equipment assures you of durable, reliable, and high quality products. Choosing Peterson assures you detailed customer service throughout the purchase, start up, and ownership process.

I am pleased to quote as follows:

Item	Qty	Description	Unit Price	Ext. Price
1	1	C4.4 50kW Outdoor packaged standby generator set 240/120 Volts, three phase, 60hz, 1800 rpm, including: UL2200 IBC Seismic Certification EPA Certified for Stationary Emergency Use EPA Tier III EMCP 4.2B Control Panel NFPA 110 Local Alarm Panel Circuit Breakers 1 x 150 amps 100% Rated Breaker, LSI with shunt trip and aux contacts PMG Excitation Jacket Water Heater DC Charging Alternator Starting Motor AC Battery Charger Starting Batteries w/ Rack Seismic Vibration Isolators Standard Manufacturers Warranty Package Genset Test Operation and Maintenance Manuals Freight: FOB Jobsite Off loading, crane, rigging and installation by others Fuel provided by others	55,710.00	55,710.00
2	1	Cat outdoor enclosure – CAT Enclosure Sound Attenuated, Weather Protected Sound Enclosure Level 2 Rated 74 dBA @ 23'	Included	Included
3	1	Base Tank – UL 142 137 gallons, 24+ hours run time at 100% load, 5 gal spill containment w/ overfill protection	Included	Included
4	1	Automatic Transfer Switch - ATS - CAT CG 125 Amp, 3 pole, NEMA 3R Open Transition, No Bypass	2,759.00	2,759.00

Date: April 4, 2022

5	1	Start Up, Testing, and Commissioning Services Fuel tank pressure tested w/Fire Marshall during regular business hours Genset start-up, testing and commissioning services ATS startup combined with generator startup, separate dedicated trips are charged at an additional hourly charge. Performed during regular business hours Standard start up includes: fuel alarm setup, interconnect wiring verification 2 hour, 1.0 PF Load Bank Test w/50' cable standard length Fuel not included	-	-
6	1	Training One 2 hours on site session w/ owner's representatives during regular business	-	-
7	1	Quote Escalation Prices are firm for delivery on or before 11/15/22, add 1% per month thereafter	-	-
BASE BID – Subtotal F.O.B jobsite less sales tax				58,469.00

Notes (N), Deviations (D), Exceptions (E):

(N) Fuel not included

(N) Coordinated breakers are not provided at time of quoting - Upcharges could apply if required

PETERSON**CAT**Reference (Job Name): Scott's Valley Reclamation -
Location 2

Quote #: 31052875

Revision: 0

Date: April 4, 2022**Dimensions:** Estimated L x W x H of generator, enclosure and fuel tank assembly

Length	Width	Height
99"	44"	76"

Weight: Estimated pounds of assembled generator, enclosure and fuel tank**3,300 lbs****Equipment Available:** Estimated weeks after submittal approval**27 - 30 weeks****Submittal Availability:** Estimated 2-4 weeks**Freight:** FOB Jobsite. Off loading, crane, rigging, and installation by others**Credit:** Order subject to approval. Ten percent (10%) down with order, twenty five percent (25%) due at submittal approval, and sixty five percent (65%) due at delivery of equipment. Payment due net 30 days from date of invoice.**Standard Exclusions (unless expressly provided for in writing in the quote):**

- All off engine piping, hangers, flanges, gasket, bolts, insulation, other materials and labor to install.
- Items noted are "shipped loose" for contractor installation including any required interconnecting piping or to customer connections.
- Permits: Any and all permit applications or costs including but not limited to local City, County, State and AQMD. Peterson Power will provide information as requested for use with permit application but assumes no responsibility or obligation to apply for or obtain subject permits. Peterson Power has provided equipment that to the best of our knowledge complies with all local, state and federal requirements.
- Testing: Any and all associated testing, inspection, equipment, and certifications requested or required to be performed by a third party including circuit breaker coordination, system commissioning or building load testing. Not limited to NETA testing, infrared scanning, harmonic content or other 3 party agency testing of switchgear, switchboards, protective relays, circuit breakers, arc flash studies and reactive load testing.
- Additional items that may be required by local utility for interconnection and parallel operation.
- Electrical, Mechanical, Civil, and Structural professional engineering and design services. Peterson is not responsible for systems design or engineering and does not guarantee system performance standards. Peterson will provide documentation and assistance to others responsible for engineering, design and performance.
- Engineering services other than supply of Peterson Power Systems standard drawings, equipment cut-sheets and controls per quoted scope of supply.
- Startup and Commissioning service charges other than as noted in the quoted scope of supply. Additional field or shop labor including travel costs to/from the jobsite will be quoted and charged separately at time of requested services.
- Balance of plant equipment, controls, and monitoring except as quoted.
- All fuel system piping and equipment not limited to: supply, return, venting, vent extensions, flame arrestors, coolers, valves, pumps, filters, storage tank and senders external to the generator set package. All fuel for testing and initial fill and on site fuel tank pressure testing.
- Intake and exhaust louvers, air dampers, sheet metal ducting, flex adapters, sound baffles, all off engine piping, connectors, labor, and coolant for remote cooling systems.
- All off engine wiring, field terminations of wiring, lugs and connectors.
- Mounting bolts and anchors.
- Environmental Protection Agency (EPA), local air quality district or Authority Having Jurisdiction (AHJ), including acoustical.
- All protective relay settings, breaker settings, PLC programing and all other device programming.
- Site specific labeling, exhaust back pressure, vibration analysis and airflow restriction.



Reference (Job Name): Scott's Valley Reclamation -
Location 2

Quote #: 31052875

Revision: 0

Date: April 4, 2022

- Any bonds, payment, or performance bond or other type of bond.
- Any application sales tax, permits, fees, or licenses.
- All items listed above are excluded and will only be supplied by Peterson Power Systems if agreed upon, in writing, by sales representative for Peterson.

Quote Term, Scope:

The Quote is valid for 14 days. The price is firm provided drawings are approved and returned within 14 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. Inclusion of dates or delivery times in this Quote or any purchase order connected with a Quote are for reference purposes only. Please collaborate closely with Peterson as you make commitments to your customers to assure we can meet your budget and delivery requirements. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation, or fuel, unless otherwise stated. This Quote / Proposal is subject to the Standard Commercial Terms and Conditions on the attached to this Quote/Proposal.

SPECIAL NOTE ON COMMODITIES COSTS

Due to the increasing cost of commodities, (steel and copper) Peterson is making the following changes to our terms effectively immediately. Quote validity is 14 days.

Inclusion of dates or delivery times in this Quote or any purchase order connected with a Quote are for reference purposes only. Please collaborate closely with Peterson as you make commitments to your customers to assure we can meet your budget and delivery requirements.

Be assured that Peterson is working diligently to manage costs and lead times. Our entire staff is focused on managing our way thru these volatile times. Your sales rep or project manager is the best source for accurate up to the minute information.

Thank you for considering Peterson Power Systems. Please contact me with any questions regarding this proposal.
I am available to discuss design and planning concerns with you.

Sincerely,

PETERSON

CAT

Reference (Job Name): Scott's Valley Reclamation -
Location 2

Quote #: 31052875

Revision: 0

Date: April 4, 2022

James Tucker
PPSI Sales Rep
510-362-3998

Accepted By:

Signature

Date

Printed Name

Company Name

Purchase Order #

Standard Commercial Terms and Conditions

- 1 **Conditions.** These Terms and Conditions (collectively, "Terms") together with the Quote, Sales Order and/or Credit Application on the front side, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified in this Agreement and Peterson Power Systems, Inc. ("Peterson") and supersede any previous agreement or understanding (oral or written) between the parties with respect to the equipment ("Equipment") identified in this Agreement.
- 2 **Quote Term, Scope:** The Quote is valid for 14 days. The price is firm provided drawings are approved and returned within 14 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation, fuel, or permits unless otherwise stated.

Date: April 4, 2022

3 Order and Delivery of Equipment. Any and all references to dates or delivery are for planning and scheduling purposes only. No guaranty is stated or implied, retention and or back charges are expressly excluded. All orders for equipment are subject to credit approval, which is subject to final acceptance by Company in its sole discretion. Peterson will exercise commercially reasonable efforts to meet any performance dates set forth in the Agreement, but Customer understands and agrees that any such dates are estimates only and failure by Peterson to deliver any equipment by such date shall not be deemed a breach of the sales agreement. Company will have no liability for any loss associated with the delay in the delivery of equipment, additionally, Peterson will not be deemed in breach of its obligations under this Agreement or otherwise liable to Customer or any third party for any costs, charges, losses sustained or incurred by Customer or applicable third party for any delay in the delivery or equipment arising out of, caused by or in any way related or connected with any circumstances beyond Peterson's control, including, but not limited to delays caused by acts or omissions to acts by Customer or its Agents (defined below), acts of God, acts of war or terrorism, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements. As used herein, the term "Agents" means principals, employees, contractors, subcontractors, consultants, agents, representatives and any persons within the direction or control of Customer or acting on behalf of or for the benefit of Customer.

4 Customer's Obligations. Customer shall comply with Applicable Law (defined below) in connection with its use, handling, maintenance, storage and operation of the machinery and equipment and shall cause its Agents to comply with all such Applicable Law. As used herein "Applicable Law" means all applicable federal, state and local laws pertaining to its covenants and obligations under the Agreement and its performance of the same, together with these Terms and all rules, regulations, standards, procedures and protocols pertaining or related to the equipment and each and all of them, subject to the Agreement, as stated or endorsed by Company or the manufacturer of such applicable equipment. Customer shall cooperate with Peterson in all matters relating to the sale and delivery by Peterson of the equipment. The representations and warranties of Customer under this Agreement, including, but not limited to, the foregoing, shall survive any expiration or termination of this Agreement.

5 Cancellation; Charges. If Customer cancels all or a portion of this Agreement after its release to Peterson, written cancellation notice is required.

Calendar Days	Cancellation Schedule	Cancellation Charge
From	To	Percent of Order
Order	15 ARO	5
16 ARO	30 ARO	10
31 ARO	60 ARO	20
61 ARO	91 before RTS	70
90 before RTS	On/after RTS	90

ARO – After receipt of order, RTS – Ready to ship

6 Pricing: Unless expressly provided for in writing on a quote, pricing for future orders is subject to change without notice. Unless otherwise stated pricing and risk of loss for purchased equipment is FOB Peterson's site. If purchased equipment is shipped FOB factory, pricing and risk of loss is the responsibility of the customer and any claims for shortages, damages, or delays must be made by Customer direct to the carrier.

Date: April 4, 2022

- 7 Taxes:** Customer will promptly pay to Peterson any taxes that Peterson is required to collect with respect to the purchase of the equipment or any amounts payable by Customer under the Agreement, including, but not limited to, value added, personal property, sales, use, excise and similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity (collectively, "Taxes"). For any Taxes on which Customer claims exemption, Customer must provide Peterson with properly completed exemption certificates and any documentation needed to validate the exemption. If Customer refuses or fails to provide an appropriate exemption certificate and supporting documentation, as determined by Peterson, Customer will remain liable for all such Taxes. Customer will indemnify, defend and hold harmless Peterson for any and all claim, loss or liability related to Taxes for the equipment. To the extent any taxing authority audits Peterson and assess any taxes related to this purchase, the Customer shall provide proper documentation to support that such taxes have been paid, and will be responsible for any unpaid assessments, interest, penalties, withholdings, defense cost and/or reimbursement to Peterson of defense cost.
- 8 Freight:** Freight costs indicated in the Agreement/Quote are estimated and subject to change. Any delivery, shipping, installation or performance dates indicated in this Agreement/Quote are estimated and not guaranteed. Peterson shall use best efforts to meet estimated dates, but shall not be liable for any delay in delivery, shipping, installation or performance, however occasioned.
- 9 Title, Risk of Loss:** Title and risk of loss for the Equipment shall pass to Customer with delivery made in accordance with the delivery terms set forth above.
- 10 Inspection and Acceptance:** Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Peterson within five (5) days from date of delivery after which time Equipment shall be deemed accepted. Peterson shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Peterson) or allow Peterson another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.
- 11 Payment Terms, Credit, Retainage:** For Customers with an open credit account with Peterson, payments terms are 10% with order, 25% due at submittal approval, and 65% at delivery of material unless otherwise stated in the proposal. Payment due Net 30 from the date of invoice. For Customers who do not have an open credit account with Peterson, progress payments with full payment in advance may be required. Peterson may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold equipment until receipt of full payment then owing by Customer to Peterson, whether such outstanding obligation of Customer is for the equipment described on the reverse side or otherwise. If payment is not received when due, in an addition to any rights Peterson has under the law and charges that Peterson may levy against Customer under statute (including attorney fees and costs of collection), Peterson may charge customer eighteen percent (18%) interest annually, or the maximum amount allowed by law, on late payments. Payment shall be due in advance if Customer does not have approved credit. Retainage is not acceptable nor binding, unless accepted and confirmed in writing by Peterson prior to shipment.
- 12 Invoice, Fees and Expenses:** Failure to notify Peterson in writing of any dispute regarding an invoice within thirty (30) days of receipt thereof will be deemed a waiver by Customer of Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counter-claim.
- 13 Bonds:** Cost for any required bid bond, payment and performance bond, or any other type of bond will be reimbursed to Peterson by Customer.
- 14 Permits, Fees, & Licenses:** Cost for any permits, fees, and licenses are the responsibility of the customer and if paid for by Peterson, will be reimbursed to Peterson by Customer.
- 15 Temporary Storage of Equipment Purchase:** Whereas Customer has purchased the equipment listed in this agreement from Peterson, and Customer has requested that Peterson provide storage for the equipment until such time as Peterson has the equipment delivered to their site, Customer will pay Peterson a monthly storage fee, and Exhibit A will be applicable and incorporated in these Terms.

Date: April 4, 2022

- 16 Training, Startup Services, Installation:** Startup services, load bank testing, commissioning, and owner training are not provided, unless otherwise stated in the quote. Site startup services require customer's account be current and will be performed during regular Peterson business hours, Monday through Friday. Additional charges may be added for work requested to be done outside normal business hours, on weekends or holidays. One visit for startup is allowed unless specified otherwise in the quote. A minimum of two weeks prior notice is required to schedule site startup and subject to availability of startup technicians and prior commitments of equipment. A signed site check sheet confirming system readiness is required, including and not limited to; wire termination, fuel lines connected, fuel tank full, and exhaust system complete. Peterson personnel may perform an installation audit prior to startup being completed to assure system readiness for startup. Any issues identified by the installation audit may be corrected at the customer's expense prior to startup. Portable load banks for site test (if offered in the Quote) are equipped with only 50 feet of cable. Additional lengths may be arranged at an extra cost. Installation of equipment is performed by others and not included unless otherwise stated in the quote.
- 17 Warranties:**
- (a) **Equipment.** For new equipment purchased by Customer from Peterson, Customer understands and acknowledges that (i) Peterson is not the manufacturer of the equipment or any parts thereof; (ii) Peterson does not and will not have any liability or responsibility to Customer or any third party with respect to any warranty for the Goods, except that Peterson will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) any claims Customer or its Agents may have with respect to the manufacturer's warranty shall be made solely against the manufacturer. Notwithstanding anything contained to the contrary in this Agreement, including this Section 17(a), Peterson makes no representation or warranty as to the equipment, its condition, purpose or use, or as to any manufacturer's warranty for such Goods.
- (b) **Extended Protection or Coverage.** Customer acknowledges that Customer may have the option of purchasing an equipment protection plan or extended services coverage (each, an "Extended Protection Plan") and Customer agrees that if an Extended Protection Plan is available and purchased by Customer at the time of sale, the Extended Protection Plan will be subject to the terms, conditions and exclusions contained in such applicable Extended Protection Plan.
- (c) **Disclaimer of Warranties.** Except as may be expressly described in the Agreement and these terms, company makes no warranty of any nature, scope or kind whatsoever hereunder. Peterson disclaims any warranty, express or implied, including, but not limited to, any (i) warranty of merchantability; (ii) warranty of fitness for a particular purpose; (iii) warranty of title; or (iv) warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. Peterson is neither a manufacturer of the goods or any parts thereof nor an agent of a manufacturer of such goods. Although Peterson may administer warranties issued by a manufacturer, Customer acknowledges and agrees that: (1) any express warranties by such manufacturer are not the responsibility of Peterson; (2) such manufacturer's warranty may contain limitations; and (3) Customer may incur certain repair, transportation or other charges by Peterson which are not covered by such manufacturer's warranty. Any warranty by Peterson shall be null and void and have no legal effect if Customer has failed to pay for the equipment at issue. Except for any express warranties contained hereunder, no other representation or warranty of any kind or nature will be binding on or obligate Peterson.
- 18 Limitation on Warranties:** Peterson expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness or a particular purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by Peterson. Some states do not allow limitation on warranties, so these limitations may not apply to you. The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to application guidelines; (b) normal wear and tear; (c) improper and/or unauthorized installation; (d) negligence, accidents or misuse; (e) lack of maintenance or unauthorized repair; (f) noncompliance with any Peterson published guideline or policy; (g) use of improper or contaminated fuels, coolant or lubricants; (h) improper storage before and after commissioning; (i) owners delay in making Equipment available after notification of potential equipment problem; (j) replacement parts and accessories not authorized by Peterson; (k) owner or operator abuse or neglect such as: operation without adequate coolant or lubricants; over fueling; over speeding; lack of maintenance to lubricating, cooling or air intake systems; late servicing and maintenance; improper storage; starting, warm-up, run-in or shutdown practices, or (l) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.
- 19 Limitation of Liability:**

Date: April 4, 2022

(a) IN NO EVENT SHALL PETERSON, ANY PETERSON ENTITIES, AFFILIATES OR ITS PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, AGENTS OR SUCCESSORS OR ASSIGNS (collectively, "Company Party") BE LIABLE TO CUSTOMER, ITS AGENTS OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUE, LOST BUSINESS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING WHETHER OR NOT THAT PARTY WAS AWARE OF THE POSSIBILITY OF THOSE DAMAGES AND DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT.

(b) EXCEPT FOR DAMAGES FOR PERSONAL INJURY, INCLUDING DEATH AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN CONNECTION WITH THE SALE OR DELIVERY BY PETERSON OF THE GOODS, OF ANY EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF PETERSON OR ANY COMPANY ENTITY OR THE PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF COMPANY OR ANY COMPANY ENTITIES, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PETERSON OR ANY PETERSON PARTY ARISING OUT OF THIS CSA EXCEED THE LESSER OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM OR TEN MILLION DOLLARS \$10,000,000.

(c) THE PARTIES AGREE THAT THIS SECTION 19 REPRESENTS A REASONABLE ALLOCATION OF RISK.

(d) THE PROVISIONS OF THIS SECTION 19 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

20 **Indemnification:** Neither Peterson nor any Peterson Party will be responsible for any loss or injury resulting from the condition of the Goods sold, including, but not limited to, any defects in the equipment or from the subsequent use of the equipment. Customer expressly agrees as a condition of the purchase and sale of the equipment that Customer will indemnify, defend and hold harmless Peterson and any applicable Peterson Party from and against any and all claims that may hereafter at any time be asserted by any subsequent owner or user of the items sold hereunder or asserted by any agent, contractor, employee, heirs, or successor or assigns of such owner or user or by any third party arising from the condition of the equipment, including but not limited to, any purported defect in the equipment or parts thereof, or by reason of the use of the equipment. Customer agrees to assume all responsibility in connection with the equipment upon delivery thereof to Customer or to a common carrier.

Customer shall indemnify and hold harmless Peterson and the Peterson Party from and against any and all losses, expenses, demands, and claims made against Peterson by Customer, its Agents, any subsequent owner or user of the equipment or any persons claiming under or through such persons because of injury or illness (including death), actual or alleged, whether caused by the sole negligence of Customer, its Agents, such subsequent owner or user or person claiming under or through such persons (the "Customer Parties"), the concurrent negligence of Peterson with Customer, or any Customer Parties arising from, resulting from, or in any way connected with the operation, maintenance, possession, use, transportation, or disposition of the equipment. Customer agrees to defend any suit action or cause of action brought against Peterson or the Peterson Party based on any such alleged injury, illness, or damage and to pay all damages, costs and expenses including reasonable attorney's fees in connection therewith or resulting therefrom.

21 **Force Majeure:** Peterson shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement to the extent such failure or delay is caused by or results from acts or circumstances beyond Peterson's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, pandemic/epidemic, Bankruptcy, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, and inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

22 **Privacy Statement:** Customer consents to the collection, use, retention and disclosure of information by Peterson and/or a Peterson Party in accordance with Peterson's Privacy Statement, which is posted on Peterson's website (as such statement may be revised from time to time), and agrees that such information may be accessed by Peterson or a Peterson Party and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.

Date: April 4, 2022

- 23 **Entire Agreement:** This Agreement and the exhibits and attachments hereto, represent and constitute the entire agreement between the parties, may only be amended in writing signed by both parties, and supersede all prior agreements and understandings with respect to the matters covered by this Agreement.
- 24 **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.
- 25 **Severability:** If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 26 **Counterparts:** This Agreement may be executed in any number of counterparts, including facsimile, PDF and other electronic copy, each of which when taken together shall constitute one instrument. No counterpart shall be effective until each Party has executed at least one counterpart.
- 27 **Assignment:** Neither Party may assign, convey or transfer this Agreement, or any portion thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Peterson may assign this Agreement or any portion thereof without the prior consent of Purchaser to a person or entity controlling, controlled by or affiliated with Peterson or its parent company.
- 28 **No Waiver:** A waiver of any term, right or condition of this Agreement by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.
- 29 **Relationship of the Parties:** No employment, agency, joint venture, or similar arrangement is created or intended between Customer and Peterson.
- 30 **Construction:** Words used herein, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. The provisions of this Agreement and the documents and instruments referred to herein, have been examined by the parties and no implication shall be drawn nor made against any party hereto by virtue of drafting this Agreement. The term "including" used herein shall mean "including, but not limited to". The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein. Each Party acknowledges that they have read this Agreement, have had an opportunity to review with an attorney of their respective choice, and have agreed to all of its terms, including these Terms. Each Party agrees that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Agreement and that in the event of any ambiguity in any provisions of this Agreement, including any Exhibits or attachments or agreed upon Change Orders hereto and whether or not placed of record, such ambiguity shall not be construed for or against any Party hereto on the basis of such Party did or did not author the same.
- 31 **No Third Party Beneficiaries:** Unless otherwise expressly provided, no provisions of this Agreement are intended or will be construed to confer upon or give to any person or entity other than Customer and Peterson any rights, remedies or other benefits under or by reason of this Agreement.
- 32 **Attorneys' Fees, Enforcement Costs and Expenses:** If any claim or action is brought by either party hereunder against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other relief granted, reasonable attorneys' fees and the expense of litigation.
- 33 **Governing Law, Venue:**

Date: April 4, 2022

(a) This Agreement and any attachments or documents related thereto shall be governed, construed and enforced in accordance with (i) the laws of the State of California, excluding conflict of law rules, for all sales made or accepted by Peterson at its offices within such state, (ii) with the laws of the State of Oregon, excluding conflict of law rules, for all sales made or accepted by Peterson at its office within such state, and (iii) with the laws of the State of Washington, excluding conflict of law rules, for all sales made or accepted by Peterson at its office within such state. For agreements made or accepted by Peterson in the State of California, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Alameda County, California and the United States District Court for the Northern District of California, for the purposes of any action, proceeding, suit or claim arising out of this Agreement. For agreements made or accepted by Peterson in the State of Oregon, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Multnomah County, Oregon and the United States District Court for the District of Portland in Portland, Oregon. For agreements made or accepted by Company in the State of Washington, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Cowlitz County, Oregon and the United States District Court for the Western District of Washington in Seattle, Washington.

(b) Each party irrevocably and unconditionally waives any objection to the laying of venue as described herein.

34 **Survival:** Notwithstanding anything contained herein to the contrary, Sections 7, 17(c), 19, 20, 21, 22, 30, 32, 33, and 34 will survive any termination or expiration of this Agreement.

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Chris Lamm, Public Works Director / City Engineer

APPROVED: Mali LaGoe, City Manager

SUBJECT: **APPROVAL FOR A FINAL MAP FOR A 16 UNIT CONDOMINIUM PROJECT WITH ONE COMMON LOT KNOWN AS THE “ENCORE” AT 4104 SCOTTS VALLEY DRIVE, APN’S 022-732-01 AND 022-732-48**

SUMMARY OF ISSUE

On September 1, 2021, the City Council approved a project tentative map and conditions of approval at a 1.49-acre vacant site consisting of two adjoining parcels. The site is mostly forested and located on the southeast side of Scotts Valley Drive 777 feet northeast of Mount Hermon Road in the central area of the City of Scotts Valley

The project proposes a 16-unit condominium project (16 individual residential ownerships) with one common owned parcel for vehicle access, parking, and open space. All residential units would be within a single three-story building not to exceed 35 feet in height. The first story would contain enclosed parking for 17 vehicles and storage spaces. Residential units would be located on the second and third stories with eight units on each floor. Each unit would have two bedrooms and two bathrooms. All units will be designed to be accessible to people with physical challenges. The floor area size of 8 units would be 1,134 sq. ft. (Type A unit) and the remaining 8 units would be 1,080 sq. ft. (Type B). All units would have private outdoor space. Community space areas are also included in the project design including a 5,000 sq. ft. outdoor area at the southwest portion of the site. Two units will be designated as affordable.

The conditions of approval for the project include a requirement to submit a final map in conformance with the California Government Code, Section 66410 et seq, and with the City Subdivision Ordinance. Staff has reviewed the proposed final map and finds it to be technically correct and consistent with the tentative map and that all applicable final map conditions of approval have been substantially satisfied or mechanisms are in place to ensure their completion.

The conditions of approval also require the Developer to complete approximately \$425,711.83 in improvements, both on and off-site street work, storm drain, sanitary

sewer, sidewalk, pervious pavers, landscape walls, signage, and pavement striping. An improvement agreement ensures that work can be performed to complete necessary on-site and off-site improvements associated with the project. Sureties have been submitted in the amount of \$425,711.83 for Faithful Performance and \$212,855.91 for Labor and Materials. Such sureties have been reviewed and approved by the City Engineer.

FISCAL IMPACT

There is no fiscal impact to the General Fund. Approximately \$12,330.24 was collected from the applicant to cover the intake process and applicable City costs for Surveyor, Planning and Department of Public Works Final Map.

STAFF RECOMMENDATION

It is recommended that Council approve Resolution No.2003.4, approving the final map & Resolution No. 960.92, approving the Subdivision Improvement Agreement and Bank Set Aside Letter for the “Encore” Project at 4104 Scotts Valley Drive (APN’s 022-732-01 and 022-732-48)

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RESOLUTION NO. 2003.4

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY APPROVAL FOR A FINAL MAP FOR A 16 UNIT CONDOMINIUM PROJECT WITH ONE COMMON LOT KNOWN AS THE “ENCORE” AT 4104 SCOTTS VALLEY DRIVE, APN’S 022-732-01 AND 022-732-48

WHEREAS, On September 1, 2021, the City Council approved a project tentative map and conditions of approval at a 1.49-acre vacant site consisting of two adjoining parcels; and

WHEREAS, The project is proposing a 16-unit condominium project (16 individual residential ownerships) with one common owned parcel for vehicle access, parking, and open space, requiring the completion of a final map; and

WHEREAS, The City Council approved conditions of approval, include a requirement to submit a Final Map in conformance with the California Government Code, Section 66410 et seq, and with the City Subdivision Ordinance; and

WHEREAS, staff has reviewed the proposed Final Map and finds it to be technically correct and consistent with the Tentative Map and that all applicable Parcel Map conditions of approval have been substantially satisfied or mechanisms are in place to ensure their completion; and

WHEREAS, the City has determined that the Final Map is statutorily exempt from the California Environmental Quality Act (CEQA) Statutory Exemptions, Title 14 of the California Code of Regulations Section 15268(b)(3) Ministerial Projects, approval of final subdivision maps.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scotts Valley as follows:

1. The location and configuration of the lots to be created by the Final Map substantially comply with the previously approved Tentative Map; and
2. The Final Map is categorically exempt from the California Environmental Quality Act (CEQA), Statutory Exemptions, Title 14 of the California Code of Regulations Section 15268(b)(3) Ministerial Projects, approval of parcel subdivision maps; and
3. The City Council of the City of Scotts Valley, pursuant to Government Code Section 66458, hereby approves the Final Map for the Subdivision, a copy of which is hereby attached as Exhibit A and made part of this Resolution.

The above and foregoing Resolution was duly and regularly adopted by the City Council of the City of Scotts Valley at a regular meeting held on the 18th day of May 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: _____
Donna Lind, Mayor

Attest: _____
Cathie Smonovich, City Clerk

OWNER’S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THE HEREIN MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT ARE NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS FOLLOWS:

WE HEREBY DEDICATE TO PUBLIC USE A STRIP OF LAND DELINEATED AND DESIGNATED AS "INGRESS EGRESS EASEMENT" (IEE) FOR INGRESS AND EGRESS PURPOSES ONLY.

WE HEREBY DEDICATE TO PUBLIC USE A STRIP OF LAND DELINEATED AND DESIGNATED AS "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE) FOR EMERGENCY ACCESS PURPOSES ONLY.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF SCOTTS VALLEY EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING BUT NOT LIMITED TO POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS "P.S.E." (PUBLIC SERVICE EASEMENT).

WE HEREBY OFFER THOSE AREAS OF LAND DELINEATED AND DESIGNATED AS "SCOTTS VALLEY WATER DISTRICT EASEMENT" (SVWDE) TO THE CITY OF SCOTTS VALLEY WATER DISTRICT FOR THE INSTALLATION, MAINTENANCE OF WATER DISTRIBUTION FACILITIES.

ALL OF THE HEREIN DESCRIBED STREETS AND EASEMENTS SHALL BE KEPT FREE OF BUILDINGS, EXCEPT LAWFUL UNSUPPORTED ROOF OVERHANGS, AND OBSTRUCTIONS THAT IMPAIR THE USE OF OR ARE INCONSISTENT WITH THE PURPOSES OF THE STREET OR EASEMENT. THE HEREIN DESCRIBED OFFERS OF DEDICATION TO THE CITY OF SCOTTS VALLEY ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CRUZ COUNTY A RESOLUTION ACCEPTING SAID STREETS OR EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE DEVELOPER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE HOMEOWNERS ASSOCIATION. THE CITY OF SCOTTS VALLEY SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON. ALL DEDICATED RIGHTS OF WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE COUNTY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

AS OWNER: _____

BY _____

NAME _____

TITLE _____

TRACT NO. XXXX
THE ENCORE AT
SCOTTS VALLEY

BEING A SUBDIVISION OF THE LANDS CONVEYED TO APPLE HOMES DEVELOPMENT, INC. A CALIFORNIA CORPORATION BY GRANT DEED DATED OCTOBER 12, 2021 AND RECORDED ON OCTOBER 14TH, 2021 IN RECORDERS SERIAL #2021-0051991, OFFICIAL RECORDS, SANTA CRUZ COUNTY.

OWNER’S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF SANTA CRUZ)

ON _____, 20_____, BEFORE
ME, _____, PERSONALLY APPEARED

_____, WHO PROVED
TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE
NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT

AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURES ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL:

SIGNATURE: _____

PRINT: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____

PRINCIPAL COUNTY OF BUSINESS: _____

BENEFICIARY ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF SANTA CRUZ)

ON _____, 20_____, BEFORE
ME, _____, PERSONALLY APPEARED

_____, WHO PROVED
TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE
NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT

AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURES ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL:

SIGNATURE: _____

PRINT: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____

PRINCIPAL COUNTY OF BUSINESS: _____

BENEFICIARY ACKNOWLEDGMENT

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STATE OF CALIFORNIA)
COUNTY OF SANTA CRUZ)

ON _____, 20_____, BEFORE
ME, _____, PERSONALLY APPEARED

_____, WHO PROVED
TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE
NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT

AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURES ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL:

SIGNATURE: _____

PRINT: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____

PRINCIPAL COUNTY OF BUSINESS: _____

BENEFICIARY

SANTA CRUZ COUNTY BANK, BENEFICIARY FOR PARCELS SHOWN ON THIS MAP UNDER DEED OF TRUST RECORDED AS INSTRUMENT NO. 2021-0051991 OF OFFICIAL RECORDS.

PRESIDENT, SANTA CRUZ COUNTY BANK
720 FRONT STREET
SANTA CRUZ, CA 95060

BENEFICIARY

APPLE HOMES DEVELOPMENT INC, A CALIFORNIA CORPORATION, BENEFICIARY FOR PARCELS SHOWN ON THIS MAP UNDER DEED OF TRUST RECORDED AS INSTRUMENT NO. 2021-0051991 OF OFFICIAL RECORDS.

PRESIDENT, APPLE HOMES DEVELOPMENT, INC.
15 SHERMAN COURT
SCOTTS VALLEY, CA 95066

SANTA CRUZ COUNTY APN: 022-732-48 & 022-732-01

ALPHA LAND SURVEYS, INC.			
4444 SCOTTS VALLEY DR. #7 SCOTTS VALLEY, CA 95066 (831) 438-4453	P.O. BOX 1146 MORGAN HILL, CA 95038 (831) 438-4453	THE ENCORE OF SCOTTS VALLEY COUNTY OF SANTA CRUZ	SHEET 1 OF THREE
DATE: 3/8/2022		JOB#: 2022-052	

TRACT NO. XXXX
THE ENCORE AT
SCOTTS VALLEY

BEING A SUBDIVISION OF THE LANDS CONVEYED TO APPLE HOMES DEVELOPMENT, INC. A CALIFORNIA CORPORATION BY GRANT DEED DATED OCTOBER 12, 2021 AND RECORDED ON OCTOBER 14TH, 2021 IN RECORDERS SERIAL #2021-0051991, OFFICIAL RECORDS, SANTA CRUZ COUNTY.

CITY SURVEYOR’S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP PURSUANT TO THE SUBDIVISION MAP ACT, SECTION 66442(a)(1)(4) AND I AM SATISFIED IT IS TECHNICALLY CORRECT.

ROBERT CRAIG, P.L.S. NO. 5418, CITY SURVEYOR
CONSULTANT TO THE
CITY OF SCOTTS VALLEY

DATE

CITY CLERKS STATEMENT

IT IS HEREBY ORDERED THAT THE MAP OF TRACT NO. _____ BE, AND THE SAME IS HEREBY, APPROVED, THAT ALL THE STREETS SHOWN ON THE MAP NOT BE ACCEPTED AT THIS TIME, THOUGH THE CITY’S RIGHTS TO ACCEPT SUCH DEDICATION IN THE FUTURE IS EXPRESSLY RESERVED AND EASEMENTS FOR PUBLIC SERVICE FACILITIES SHOWN HEREON BE ACCEPTED. THE STORM DRAIN AND SANITARY SEWER SYSTEMS SHALL BE PRIVATELY MAINTAINED BY THE HOME OWNERS ASSOCIATION. I HEREBY STATE THAT THE FOREGOING ORDER WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AT A MEETING HELD ON

LAUREN LAMBERT
DEPUTY CITY CLERK OF
THE CITY COUNCIL OF THE
CITY OF SCOTTS VALLEY, STATE OF CALIFORNIA

CITY ENGINEER’S STATEMENT

I HEREBY STATE I HAVE EXAMINED THIS MAP AND THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF ANY, AND ANY APPROVED ALTERATION THEREOF; THAT ALL PROVISION OF CHAPTER 2 OF THE SUBDIVISION ACT, 66442(A), (2), (3), ET SEQ. AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, IF ANY, HAVE BEEN COMPLIED WITH

CHRIS LAMM
RCE 82461
CITY ENGINEER
CITY OF SCOTTS VALLEY, CALIFORNIA

DATE

CLERK OF THE BOARD OF SUPERVISORS CERTIFICATE

THE CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ DOES HEREBY CERTIFY THAT ALL CERTIFICATES AND SECURITIES REQUIRED UNDER THE PROVISIONS OF THE SECTIONS 66492 OF THE GOVERNMENT CODE HAVE BEEN DULY MADE. PURSUANT TO THE AUTHORITY DELEGATED TO ME BY SAID BOARD, I HEREBY APPROVE SAID CERTIFICATES AND SECURITIES ON BEHALF OF THE COUNTY OF SANTA CRUZ.

EX-OFFICIO CLERK OF THE BOARD
OF SUPERVISORS OF SANTA CRUZ COUNTY
STATE OF CALIFORNIA

BY DEPUTY _____ DATE

SURVEYOR’S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF APPLE HOMES DEVELOPMENT, INC IN MARCH, 2019, AND THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE JANUARY 1, 2024 AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

ALAN BRODIE FRENCH
P.L.S. 9301



SOILS AND GEOLOGICAL REPORT

A SOILS REPORT AND/OR GEOTECHNICAL REPORT ON THIS PROPERTY HAS BEEN PREPARED BY DEES & ASSOCIATES, INC., DATED SEPTEMBER 9, 2020.
A COPY OF WHICH HAS BEEN FILED WITH THE CITY OF SCOTTS VALLEY.

AUDITOR CONTROLLER’S CERTIFICATE

I HEREBY STATE THAT THERE ARE NO LIENS FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES AGAINST THE LAND INCLUDED IN THE WITHIN SUBDIVISION OR AGAINST ANY PART THEREOF, EXCEPT TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES WHICH ARE NOT YET PAYABLE, AND WHICH IT IS HEREBY ESTIMATED WILL NOT EXCEED THE SUM OF \$_____FOR THE YEAR 20____ – 20____, AND THAT SAID LAND OR PORTION THEREOF IS SUBJECT TO SPECIAL ASSESSMENTS IN SPECIAL ASSESSMENT DISTRICTS AS FOLLOWS TO WIT:

NAME, NUMBER OR DESIGNATION OF DISTRICT	TOTAL OUTSTANDING PRINCIPLE AND INTEREST TO MATURITY	FINAL MATURITY DATE
---	--	---------------------

AND THAT THIS CERTIFICATE DOES NOT INCLUDE ANY ASSESSMENTS OF ANY ASSESSMENT DISTRICT THE BONDS OF WHICH HAVE NOT YET BECOME A LIEN AGAINST SAID LAND OR ANY PART THEREOF.

DATED: _____ AUDITOR-CONTROLLER OF THE COUNTY OF SANTA CRUZ

BY: _____ DEPUTY

RECORDER’S STATEMENT

FILED THIS _____ DAY OF _____, 20____ AT _____

IN VOLUME _____ OF MAPS, AT PAGE _____

AT THE REQUEST OF _____

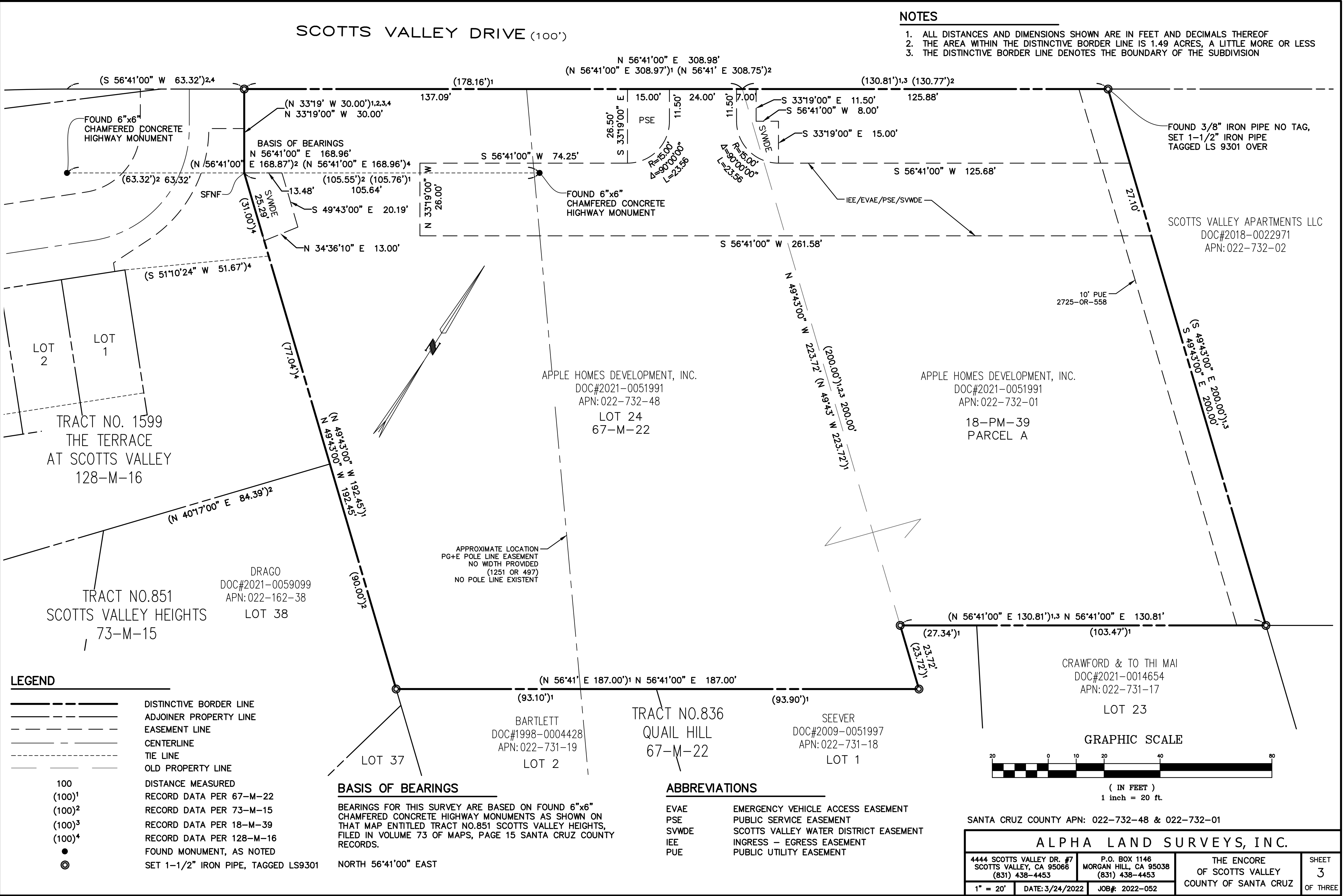
FEE: _____

SEAN SALDAVIA
COUNTY RECORDER IN AND FOR THE COUNTY OF SANTA CRUZ, CALIFORNIA

BY: _____ DEPUTY COUNTY RECORDER

SANTA CRUZ COUNTY APN: 022-732-48 & 022-732-01

ALPHA LAND SURVEYS, INC.			
4444 SCOTTS VALLEY DR. #7 SCOTTS VALLEY, CA 95066 (831) 438-4453	P.O. BOX 1146 MORGAN HILL, CA 95038 (831) 438-4453	THE ENCORE OF SCOTTS VALLEY COUNTY OF SANTA CRUZ	SHEET 2 OF THREE
DATE: 3/8/2022		JOB#: 2022-052	



RESOLUTION NO. 960.92

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY
AUTHORIZING EXECUTION OF THE SUBDIVISION IMPROVEMENT AGREEMENT
FOR A SUBDIVISION MAP FOR A 16 UNIT CONDOMINIUM PROJECT WITH ONE
COMMON LOT KNOWN AS THE “ENCORE” AT 4104 SCOTTS VALLEY DRIVE,
APN’S 022-732-01 AND 022-732-48)**

WHEREAS, the City Council of the City of Scotts Valley desires to enter into a Subdivision Improvement Agreement with Chris Perri, Apple Homes Development. (Developer) for the development of a new subdivision known as The Encore Final Map P.D. No. 19-004, M.L.D. No. 21-001; and

WHEREAS, this agreement will require the Developer to complete approximately \$425,711.83 in improvements, both on and off-site street work, storm drain, sanitary sewer, sidewalk, pervious pavers, landscape walls, signage, pavement striping., in accordance with the project conditions of approval and City standard construction design as shown on those certain improvement plans dated January 20, 2022; and

WHEREAS, Developer has submitted sureties in the amount of \$425,711.83 for Faithful Performance and \$212,855.91 for Labor and Materials. Such sureties have been reviewed and approved by the City Engineer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scotts Valley that the Subdivision Improvement Agreement with The Encore At 4104, LLC is hereby approved, and the City Manager is hereby authorized to execute the Subdivision Improvement Agreement for the development of the 4104 Scotts Valley Drive Subdivision in the form attached hereto as Exhibit A and is made part of this resolution.

The above and foregoing Resolution was duly and regularly adopted by the City Council of the City of Scotts Valley at a regular meeting held on the 18th day of May 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: _____
Donna Lind, Mayor

Attest: _____
Cathie Smonovich, City Clerk

LEGAL DESCRIPTION

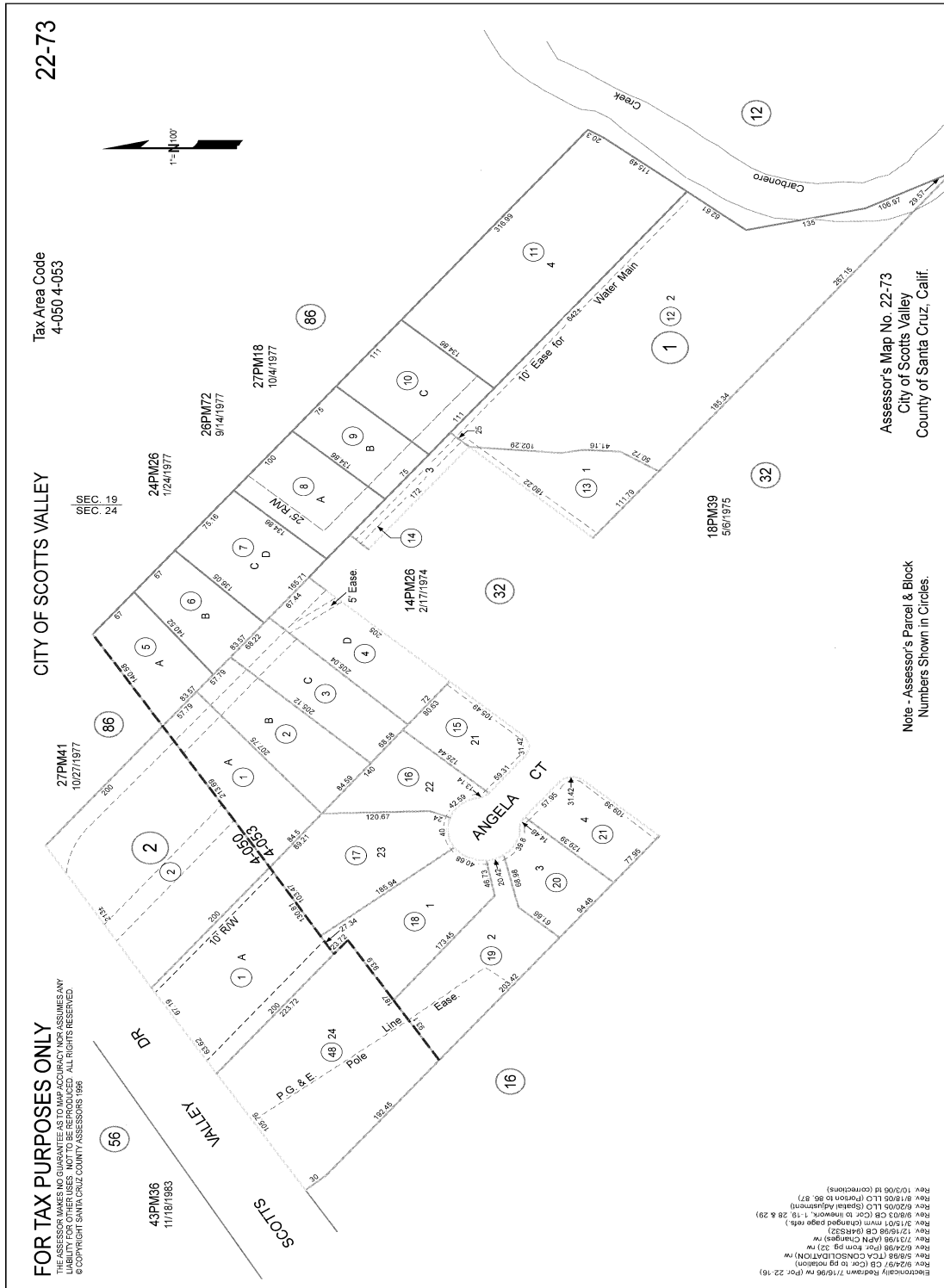
Real property in the City of Scotts Valley, County of Santa Cruz, State of California, described as follows:

PARCEL ONE: ([APN](#): 022-732-01)

PARCEL "A", AS SHOWN ON THAT PARCEL MAP OF LANDS OF LARRY C. HART, FILED FOR RECORD MAY 6, 1975, IN [BOOK 18, PAGE 39](#), PARCEL MAPS, SANTA CRUZ COUNTY RECORDS.

PARCEL TWO: ([APN](#): 022-732-48)

LOT 24, AS SHOWN ON THE MAP OF TRACT NO. 836, QUAIL HILL, FILED MARCH 13, 1979, IN [BOOK 67 OF MAPS, PAGE 22](#), SANTA CRUZ COUNTY RECORDS.



The Encore at Scotts Valley - Onsite Improvements

For Public Works - bonding purposes

ITEM NO.	DESCRIPTION OF ITEM	QUANTITY (APPROX.)	UNIT OF MEASURE	UNIT PRICE	ITEM TOTAL
Site Improvements					
1	AC pavement - 4" AC / 8" AB (Heavy Duty)	7,189	SF	10.00	\$ 71,890.00
2	AC pavement - 4" AC / 6" AB (Light Duty)	970	SF	8.00	\$ 7,760.00
3	Sidewalk (4" Conc. / 3" Sand)	850	SF	11.00	\$ 9,350.00
4	Pervious Pavers	1,740	SF	12.50	\$ 21,750.00
5	Vertical curb	500	LF	14.00	\$ 7,000.00
6	Valley Gutter	165	LF	35.00	\$ 5,775.00
7	Site Landscape Walls	480	SF	120.00	\$ 57,600.00
8	Signage (trunc. domes, ADA signs, etc.)	1	LS	6,000.00	\$ 6,000.00
9	Pavement Striping	1	LS	1,000.00	\$ 1,000.00
Subtotal					\$ 188,125.00

Site Utilities

Wet Utilities

10	Sanitary Sewer - 6" PVC SDR-26	219	LF	79.25	\$ 17,355.75
11	Sanitary Sewer - 48" Manhole (6' average depth)	0	EA	5,200.00	\$ 0.00
12	Storm Drainage - UG Chambers	1,056	SF	60.00	\$ 63,360.00
13	Storm Drainage - 24" HDPE Pipe	4	LF	125.00	\$ 500.00
14	Storm Drainage - 12" HDPE Pipe	70	LF	125.00	\$ 8,750.00
15	Storm Drainage - 8" HDPE Pipe	230	LF	90.00	\$ 20,700.00
16	Storm Drainage - 6" HDPE Pipe	225	LF	85.00	\$ 19,125.00
17	Storm Drainage - 2'x2' Drop Inlet	5	EA	2,240.00	\$ 11,200.00
18	Storm Drainage - V64 Drain Inlet	1	EA	2,000.00	\$ 2,000.00
19	Storm Drainage - 48" Manhole (8' average depth)	0	EA	5,900.00	\$ 0.00
20	Storm Drainage - 8" Area Drain	8	EA	550.00	\$ 4,400.00
Subtotal					\$ 147,390.75

Subtotals Combined

\$ 335,515.75

10% Contingency

\$ 33,551.58

GRAND TOTAL	\$ 369,067.33
--------------------	----------------------

Note: The above cost estimate does not include the following:

1. Construction Staking / surveying
2. City fees
3. SWPPP fees and inspections
4. Dry Utilities (Gas, Telecommunication, Electric)
5. Landscaping



Todd Creamer

The Encore at Scotts Valley - Offsite Improvements
for bonding purposes

ITEM NO.	DESCRIPTION OF ITEM	QUANTITY (APPROX.)	UNIT OF MEASURE	UNIT PRICE	ITEM TOTAL
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Offsite Improvements

1	Sawcut and offsite demolition	1	LS	8,500.00	\$ 8,500.00
2	AC pavement - 4" AC/ 8" AB (Heavy Duty)	100	SF	9.25	\$ 925.00
3	Concrete Sidewalk (4" Conc / 4"AB)	160	SF	11.00	\$ 1,760.00
4	Concrete Driveway Apron	290	SF	23.00	\$ 6,670.00
5	Storm Drainage - POC to Existing Storm Drain	1	EA	7,800.00	\$ 7,800.00
6	Storm Drainage - 15" RCP Pipe	28	LF	130.00	\$ 3,640.00
7	Storm Drainage - 48" Manhole (8' average depth)	1	EA	12,200.00	\$ 12,200.00
8	Traffic Control	1	LS	10,000.00	\$ 10,000.00
				Subtotal	\$ 51,495.00
				10% Contingency	\$ 5,149.50

GRAND TOTAL	\$ 56,644.50
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Note: The above cost estimate does not include the following:

1. Construction Staking / surveying
2. City fees
3. SWPPP fees and inspections
4. Dry Utilities (Gas, Telecommunication, Electric)
5. Landscaping



Todd Creamer

Recorded at Request of
and When Recorded, Return to:

City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066
Attn: City Clerk

NO RECORDING FEE PER GOV. CODE SEC. 27383

SUBDIVISION IMPROVEMENT AGREEMENT

AGREEMENT BY OWNER OR SUCCESSORS IN INTEREST TO CONSTRUCT LAND DEVELOPMENT IMPROVEMENTS

PROJECT IDENTIFICATION: THE ENCORE AT SCOTTS VALLEY

This Subdivision Improvement Agreement (the "Agreement") is made and entered into the 18th day of May 2022 by and between the City of Scotts Valley, a California municipal corporation, hereinafter referred to as "City", and The Encore At 4104, LLC, a California municipal corporation, hereinafter referred to as "Owners" The Encore

RECITALS

A. Owners desire to subdivide and develop the real property described and shown in Exhibit "A" (the "Property") and wish to defer construction of permanent improvements as set forth in Exhibit "B" (the "Improvements") and as shown on those certain plans entitled "The Encore Improvement Plans", dated 01-20-2022.

B. In exchange for the deferment of Owners' obligation as provided herein, Owners agree to complete the Improvements as provided herein.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

AGREEMENT

1. Agreement Binding On Successors In Interest. This Agreement is an instrument affecting the title and possession of the Property. All of the terms, covenants and conditions herein imposed shall be binding upon and inure to the heirs, successors or assigns of Owners. Upon any sale, division or transfer of the Property, the terms of this Agreement shall apply separately to each parcel and the new owner of each parcel and Owners shall be jointly liable to complete the obligations imposed on Owners by this Agreement.

2. Improvements.

2.1 Owners agree to construct the Improvements as indicated on the attached Exhibit "B". The Improvements required by City generally consist of street work, storm drain, sanitary sewer, sidewalk, pervious pavers, landscape walls, signage, pavement striping.

2.2 The Owners shall, within twelve (12) months of the date of this Agreement, complete to the satisfaction of the City Engineer, all Improvements in accordance with City's plans and specifications.

In the event Owners fail and/or neglect to complete all Improvements within twelve (12) months of the date of this Agreement, City shall have the right at any time thereafter to complete the Improvements at Owners' expense; provided, however, the City Council may in its sole discretion, extend the completion period for an additional period of time upon written request by Owners.

3. Performance Of Work. Owners agree to perform the work, construct, and install the Improvements and make the payments required by City within the time period of completion established herein and in a good workmanlike manner, in accordance with accepted construction practices and the plans and specifications for the improvements and to the satisfaction of the City Engineer. Owners agree to commence and complete the Improvements within a period of twelve (12) months from the date of this Agreement and to notify City at least forty-eight (48) hours prior to commencement of work. If it becomes necessary for City to construct the Improvements, permission is granted to City by Owners to enter upon to the property of Owners as may be necessary for City to construct the Improvements.

4. Improvement Plan Warranty. Owners warrant the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the City Council accepts the work as complete or during the one-year guarantee period, said improvement plans prove to be inadequate in any respect, Owners shall make whatever changes are necessary to accomplish the work as promised.

5. Maintenance Of Improvements And Guarantee Of Work. City agrees to accept for maintenance, only those Improvements which are constructed and completed in accordance with City's standards and requirements and are installed within public rights-of-way or easements dedicated and accepted as complete by City resolution, after the expiration of one (1) year from and after the date of satisfactory completion and acceptance by the City. After acceptance of the dedicated portion of the Improvements by City, Owners shall continue to maintain at their sole cost and expense the private portion of the Improvements. Owners guarantee that all completed Improvements shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year from and after the date the City Council accepts the work as complete. Owners agree to correct, repair, or replace, at Owners' sole cost and expense, any defects in said work.

Owners agree to provide necessary temporary drainage facilities, access road(s) or other improvements required by City Engineer, to assume responsibility for the proper functioning thereof, to submit plans to City for review, if required, and to maintain said improvements and facilities in a manner which will preclude any hazard to life or health or damage to adjoining property.

6. Bond, Cash Deposit Or Instrument Of Credit. Concurrent with the execution hereof, Owners shall furnish:

a. A bond, cash deposit or instrument of credit in a form acceptable to City, in its sole discretion, in an amount equal to at least one hundred percent (100%) of the engineer's estimated cost of Improvements (as approved by the City Engineer) as security for the faithful performance of this Agreement; and

b. A bond, cash deposit or instrument of credit in a form acceptable to City, in its sole discretion, in an amount equal to at least fifty percent (50%) of the engineer's estimated cost of Improvements (as approved by the City Engineer) as security for the payment of all persons, furnishing materials, equipment or labor in connection with this work.

The surety on any bond or instrument of credit shall be satisfactory to the City Engineer. Pursuant to Government Code Section 66499(a) all bonds shall be from an authorized corporate surety in the State of California. An instrument of credit shall be from an institution subject to regulation by the State of California or the Federal government, and shall pledge that the funds necessary to carry out the forms of the Agreement are on deposit and guaranteed for payment. The cash deposit may take the form of a Certificate of Deposit which shall name the City of Scotts Valley as the holder of the certificate. The certificate shall be held by City until satisfactory completion of all Improvements and upon certification of the City Engineer of satisfactory completion, shall be released by the City and endorsed over to Owners, along with any interest earned thereon. Should City be required to use any funds deposited to satisfy the requirements of this Agreement, City may use all principal and accrued interest to complete the Improvements. Principal and interest, if any, remaining after the satisfactory completion of the Improvements shall be returned to the Owners by City.

7. Insurance. Owners shall maintain, or shall require any contractor engaged by Owners to perform work, to maintain, at their sole cost and expense, at all times during the performance of the work called for herein, a comprehensive public liability and property damage insurance policy with City as additional named primary insured, for bodily injury (including death) with limits of not less than One Million Dollars (\$1,000,000) per person and Two Million Dollars (\$2,000,000) per occurrence and property damage limits of not less than Five Hundred Thousand Dollars (\$500,000). Owners shall provide City with a certificate evidencing such policy with a clause requiring the insurance carrier to give thirty (30) day written notice to the City's City Manager, in advance of the policy being canceled for any reason whatsoever.

8. Indemnity. Owners shall assume the defense with counsel selected by City and shall hold harmless, defend and indemnify City, its agents, servants or employees, from every expense, liability or payment, including attorney's fees, against any and all actions including claims or demands for injury, death, loss or damages, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss or damage was solely due to the negligent acts or omissions of City, its agents, servants or employees) arising out of performance of any of the duties, promises, covenants or conditions arising out of this agreement, including but not limited to injury, death, loss or damage is a consequence of, or arises out of, or is incidental to, the deferment of permanent drainage facilities or the adequacy, safety, use, or non-use of temporary drainage facilities, the performance or non-performance of the work, by Owners or any other persons or parties pursuant to authorization by Owners.

9. Time Is Of The Essence. Time is of the essence in this Agreement.

10. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

11. Attorney's Fees. If either party hereto incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by reason of any default or alleged default of the other party hereunder, the party prevailing in such action or proceeding shall be entitled to recover from the other party reasonable expenses and attorneys' fees in the amount determined by the Court, whether or not such action or proceeding goes to final judgement. In the event of a settlement or final judgement in which neither party is awarded all of the relief prayed for, the prevailing party as determined by the Court shall be entitled to recover from the other party reasonable expenses and attorneys' fees and inspections.

12. Notices. All required notices shall be in writing and delivered in person or by Registered U.S. Mail, postage pre-paid. Notices required to be given to City shall be addressed as follows:

Public Works Director
City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066

Notices required to be given to Owners shall be addressed as follows:

The Encore At 4104, LLC
15 Sherman Court
San Ramon, CA 94583

Either party may change such address by notice in writing to the other party. Thereafter, notices shall be addressed and transmitted to the new address.

13. Costs. Owner shall pay when due, all cost of the Improvements, including city fees and inspections.

14. Entire Agreement. This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included or referred to in this Agreement has been or is relied on by either party. Each party has relied on his own examination of this Agreement, the counsel of his own advisors, and the warranties, representation, and covenants in the Agreement itself and those referred to in the Agreement. The language in all parts of this Agreement shall be in all cases construed simply, according to its fair meaning and not for or against City or Owners, regardless of which party drafted the particular language which is being construed, all parties having been represented by adequate counsel.

IN WITNESS WHEREOF, the City and the Owners have executed this Improvement Agreement as of the date first set forth above.

"CITY"
CITY OF SCOTTS VALLEY

"OWNERS"
THE ENCORE AT 4104, LLC.

BY: _____
Mali LaGoe, City Manager

BY: _____
Chris Perri, Authorized signatory

ATTEST:

(ATTACH ACKNOWLEDGMENTS)

Cathie Smonovich, City Clerk

APPROVED AS TO FORM:

Kirsten Powell, City Attorney

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Chris Lamm, Public Works Director / City Engineer

APPROVED: Mali LaGoe, City Manager

SUBJECT: CALTRANS ELECTRONIC MAINTENANCE AGREEMENT

SUMMARY OF ISSUE

In March of 1980, the City Council adopted Resolution 765, approving an agreement for maintenance of State Highway facilities in the City of Scotts Valley. The agreement defined what portions of roadways and systems would be maintained by the City and by the State of California Department of Transportation (Caltrans). Per the agreement, the electrical program defined as traffic signal systems, flashing beacons and intersection lighting (for safety) would continue to be maintained Caltrans. General language was included in the agreement for the shared maintenance costs of the electrical program that benefit both the State Highway system and local roads and streets that connect to it. No list of applicable intersections is included, or defined shared costs

In practice, each quarter, the City receives an invoice for the shared costs (power and maintenance) based on the percentage of the 'legs' of an intersection that benefit the connecting jurisdiction, which follows best industry practices.

The proposed agreement for sharing cost of State Highway electrical facilities memorializes the billing practice that is in place and establishes the inventory of Caltrans maintained intersections and the shared costs at each location. The list and cost share is defined below.

Location	Type of Facility	Cost Distribution %	
		<u>State</u>	<u>City</u>
Mt Hermon Rd-NB Ramps	Safety Lighting	67	33
Mt Hermon Rd / La Madrona Rd-SB Ramps	Signal & Lighting	25	75
Scotts Valley Dr & Granite Creek Rd	Signal & Lighting		100

Granite Creek Rd / Santa's Village Rd-NB Ramps	Signal & Lighting	25	75
Scotts Valley Dr-SB Ramps	Signal & Lighting	25	75

FISCAL IMPACT

There is no change in fiscal impacts associated with the execution of the agreement. The agreement matches current billing practices and funds are budgeted in the Public Works operating budget to meet the contractual obligations. The typical annual cost share to the City for the listed intersections is approximately \$10,000.

STAFF RECOMMENDATION

It is recommended that Council adopt Resolution 765.1 authorizing execution of an agreement for sharing costs of State Highway electrical facilities with the State of California Department of Transportation.

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RESOLUTION NO. 765.1

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY
AUTHORIZING EXECUTION OF AN AGREEMENT FOR SHARING COST OF STATE
HIGHWAY ELECTRICAL FACILITIES WITH THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

WHEREAS, In March of 1980, the City Council adopted Resolution 765, approving an agreement with the State of California Department of Transportation (Caltrans) for maintenance of State Highway facilities in the City of Scotts Valley defining what portion of roadways and systems would be maintained by each party; and

WHEREAS, Per the agreement, the electrical program defined as traffic signal systems, flashing beacons and intersection lighting (for safety) would continue to be maintained Caltrans; and

WHEREAS, General language was included in the agreement for the shared maintenance costs of the electrical program that benefit both the State Highway system and local roads and streets that connect to it; and

WHEREAS, In practice, each quarter, the City receives an invoice for the shared costs (power and maintenance) based on the percentage of the 'legs' of an intersection that benefit the connecting jurisdiction, which follows best industry practices; and

WHEREAS, The proposed agreement for sharing cost of State Highway electrical facilities memorializes the billing practice that is in place and establishes the inventory of Caltrans maintained intersections and the shared costs at each location.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scotts Valley that the agreement for sharing costs of State Highway electrical facilities with the State of California Department of Transportation is hereby approved, and the Mayor and City Manager are hereby authorized to execute the Agreement in the form attached hereto as Exhibit A and is made part of this resolution.

The above and foregoing Resolution was duly and regularly adopted by the City Council of the City of Scotts Valley at a regular meeting held on the 18th day of May 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: _____
Donna Lind, Mayor

Attest: _____
Cathie Smonovich, City Clerk

**AGREEMENT FOR SHARING COST OF STATE HIGHWAY ELECTRICAL FACILITIES
WITH CITY OF SCOTTS VALLEY**

THIS AGREEMENT is made effective this 18th day of May, 2022, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the CITY of Scotts Valley, hereinafter referred to as "CITY" and collectively referred to as "PARTIES"

This Agreement shall supersede any previous Agreement and/or Amendments thereto for sharing State-incurred costs with the CITY.

The cost of operating and maintaining flashing-beacons traffic-signals, traffic-signal systems, safety-lighting, and sign-lighting now in place at the intersection of any State Highway Route and any CITY street/road shall be shared as shown in Exhibit "A".

1. Basis for Billing:

1.1. It is agreed that quarterly billings for flashing-beacons, traffic-signals, and traffic-signal systems shall be based on actual intersection costs, which are as follows:

1.1.1. Maintenance Labor, including overhead assessment, other expenses including, equipment, materials, and miscellaneous expenses

1.1.2. Electrical energy

1.2. It is agreed that quarterly billings for safety-lighting and sign-lighting shall be based on calculated unit-costs derived by averaging STATE's District-wide costs each quarter. Costs are as follows:

1.2.1. Maintenance Labor, including overhead assessment, other expenses including, equipment, materials, and miscellaneous expenses

1.2.2. Electrical energy

1.3. It is agreed that quarterly billings invoiced to CITY for STATE-owned and maintained electrical facilities identified in Exhibit "A" will be based on actual costs paid by STATE, when derived from utility company billings. STATE will bill CITY quarterly in arrears for any CITY share of electrical facilities expenses shown in Exhibit "A".

2. Exhibit "A" will be amended, as necessary by written concurrence of both parties, to reflect changes to the system.
3. STATE costs and expenses assumed under the terms of this Agreement are conditioned upon the passage of the annual State of California Budget by the Legislature, the allocation of funding by the California Transportation Commission as appropriate, and the encumbrance of funding to the District Office of STATE to pay the billings by CITY.

4. LEGAL RELATIONS AND RESPONSIBILITIES

- 4.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not PARTIES to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.
 - 4.2. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with exception of those actions of STATE necessary to cure a noticed default on the part of the CITY.
 - 4.3. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
5. TERMINATION - This Agreement may be terminated by timely mutual written consent by PARTIES; by either party upon thirty (30) days' notice to the other party.

6. TERM OF AGREEMENT - This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the PARTIES or until terminated by STATE for cause.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

THE CITY OF SCOTTS VALLEY

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mayor

Initiated and Approved

By: _____
Sara von Schwind
Deputy District Director
Maintenance District 5

By: _____
City Manager

ATTEST:

By: _____
City Clerk

By: _____
City Attorney

EXHIBIT A
TRAFFIC SIGNAL AND LIGHTING AGREEMENT
Caltrans and CITY of Scotts Valley
Effective May 18, 2022

BASIS OF COST DISTRIBUTION
State-Owned and Maintained
Billed by the State

County-Rte-PM	Location	Type of Facility	Cost Distribution %	
			<u>State</u>	<u>City</u>
SCR-017-3.3	Mt Hermon Rd-NB Ramps	Lighting	67	33
SCR-017-3.44	Mt Hermon Rd/La Madrona Rd-SB Ramps	Signal & Lighting	25	75
SCR-017-5.46	Scotts Valley Dr & Granite Creek Rd	Signal & Lighting		100
SCR-017-5.49	Granite Creek Rd/Santa's Village Rd-NB Ramps	Signal & Lighting	25	75
SCR-017-5.51	Scotts Valley Dr-SB Ramps	Signal & Lighting	25	75

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Casey Estorga, Administrative Services Director

APPROVED: Mali LaGoe, City Manager

**SUBJECT: APPROVE SALARY SCHEDULE AMENDMENT FOR THE
RECREATION DIVISION MANAGER JOB CLASSIFICATION**

SUMMARY OF ISSUE

As the City of Scotts Valley emerges from the COVID-19 pandemic, City staff continues to develop operational plans for Fiscal Year 2021-22 while also preparing for the operational needs and service responsibilities into the future. This includes the City's Public Works Department making progress with the Council-approved Recreation Assessment and Restoration Plan.

Among many other things, the Plan recommended that the City "...revise the recreation division manager position to focus on management activities..." The Plan made this recommendation while also noting that the position needed to shift away from being involved in program delivery. While evaluating the roles and responsibilities of this position, staff also recognized that the Salary Schedule for the position would also need to be amended to reflect the revised duties and to remain competitive in the regional labor market. Based on an analysis of comparable agencies, and evaluating how the job description will evolve with a focus on management duties, the proposed salary schedule for the Recreation Division Manager is shown below:

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Existing	\$5,390	\$5,660	\$5,943	\$6,240	\$6,552	\$6,880	\$7,224
Recommended	\$7,504	\$7,879	\$8,273	\$8,687	\$9,121	\$9,577	\$10,056

FISCAL IMPACT

Costs for this position have been included in the FY 2021-22 Amended Budget. Future costs will be included in subsequent budgets, subject to consideration and approval by the City Council during the annual budget process.

STAFF RECOMMENDATION

It is recommended that the City Council approve Resolution No. 1955.21 adopting the revised Salary Schedule for the Recreation Division Manager job classification.

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RESOLUTION NO. 1955.21

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY
APPROVING AN AMENDMENT TO THE SALARY SCHEDULE FOR THE
RECREATION DIVISION MANAGER JOB CLASSIFICATION**

WHEREAS, the economic impacts of the COVID-19 pandemic have steadied and City staff have analyzed the organization's and community's evolving needs, including for the recovery of the City's Recreation Division; and

WHEREAS, the City Council adopted a Recreation Assessment and Restoration Plan; and

WHEREAS, the Plan noted the Recreation Division Manager position needed to be revised and shift away from being involved in program delivery and focus on management activities; and

WHEREAS, revising the job duties to focus on management activities caused the City to analyze total compensation for similar positions in comparable agencies, with the results showing an amendment to the Recreation Division Manager Salary Schedule was warranted; and

WHEREAS, City Council approval is needed to amend a Salary Schedule.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Scotts Valley that the Salary Schedule for the Recreation Division Manager job classification is hereby approved as follows:

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
\$7,504	\$7,879	\$8,273	\$8,687	\$9,121	\$9,577	\$10,056

The above and foregoing resolution was duly and regularly adopted by the City Council of the City of Scotts Valley at a meeting held on the 18th day of May, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: _____
Donna Lind,
Mayor

Attest: _____
Cathie Simonovich,
City Clerk

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Casey Estorga, Administrative Services Director

APPROVED: Mali LaGoe, City Manager

SUBJECT: **FIVE-YEAR CAPITAL IMPROVEMENT PROJECT AND CAPITAL PURCHASE PLAN FOR FY 2022-23 TO FY 2026-27**

SUMMARY OF ISSUE

In anticipation of preparing the FY 2022-23 Annual Budget, staff has prepared a draft Five-Year Capital Improvement Project and Capital Purchase Plan ("Five-Year CIP Plan") that recommends major capital improvement projects ("CIP") and other significant capital expenditures during the five-year period from FY 2022-23 to FY 2026-27. The CIP describes individual projects and establishes a financing source and schedule. The attached draft plan is being presented to the City Council for input and policy direction.

PROJECT PRIORITY CATEGORY DESIGNATIONS

In FY 2017-18, the City adopted a CIP project prioritization methodology based on factors including health and safety issues and compliance with legal and/or regulatory requirements. The priority/criticality of a project is evaluated based on the nature of the project rather than merely the timing of when the project needs to be implemented. The priority categories are described as follows:

- Priority A: Projects **essential/critical** to health and safety or legal/regulatory requirements;
- Priority B: Projects **important** to maintaining health and safety or maintaining quality of life, but not critical; and
- Priority C: Projects **deferrable** and would only be implemented to the extent that higher priority projects are first funded.

Based on this framework, each project has been assigned a priority category based on staff's professional judgment. This approach allows the City to review its CIP projects in light of priority factors and, in cases where competing uses for financial resources exist, can identify the priority use of available funds.

SUMMARY OF THE PROPOSED FIVE-YEAR CIP PLAN AND FUNDING AVAILABILITY

There are 65 identified CIP and capital outlay projects in the proposed Five-Year CIP Plan. This includes 44 ongoing projects and 21 new projects that are based on the evolving needs of the Scotts Valley community and available funding, including investments in public infrastructure and 9 new CIPs specifically tailored to investing in City parks.

Specifically, this Five-Year CIP Plan addresses numerous Council priorities, including the goal of ***Maintaining the Quality of Life for Residents***. The CIP Plan does this in the following ways:

- Maintaining service levels in the Police Department, including by upgrading facilities and technology to allow officers to continue to protect the life, safety, and general welfare of the community; and
- Prioritizing projects related to parks maintenance and parks infrastructure; and
- Completing a Parks Master Plan to identify existing and future needs of City parks; and
- Supporting a sense of community through placemaking that allows for social and educational gatherings, activities, and inclusivity.

The Five-Year CIP Plan also addresses Council goals to ***Implement Operational Initiatives to Enhance City Services*** and ***Ensure Long-Term Financial Stability*** by implementing projects as recommended in the Wastewater Rate Study and addressing numerous needs identified in the City's Active Transportation Plan and various other infrastructure projects to protect the City's assets and invest in the health and safety of the community and sustaining a high quality of life while maximizing the use of limited resources.

FUNDING AVAILABILITY

All projects are projected to have sufficient funding for implementation based on estimated project costs and timing.

Notably, the proposed CIP Plan for FY 2022-23 incorporates approximately \$11.5 million in projects. Of that total, \$4.3 million in projects have been carried forward from FY 2021-22. These projects were delayed due to limited staffing capacity and strains on the global labor and supply chain markets. However, City staff is confident that the optimistic undertaking of the proposed CIP is both realistic and necessary.

FUTURE MEETINGS

Following tonight's meeting and incorporating City Council direction, the Five-Year CIP Plan will be presented to the Planning Commission and Parks and Recreation Commission for review regarding the plan's consistency with the City's General Plan.

The final Five-Year CIP Plan will then be included as part of the FY 2022-23 Annual Budget, which is scheduled for public hearing on June 1, 2022 and final adoption on June 15, 2022.

FISCAL IMPACT

There is no fiscal impact related to a discussion of the draft Five-Year CIP.

STAFF RECOMMENDATION

It is recommended that the City Council provide policy direction on the proposed Five-Year CIP Plan, considering the (1) Priority Category, (2) Timing, or (3) Funding Source. Projects may also be added, deleted, or delayed based on City Council direction.

Subject to City Council direction, staff will make the necessary changes to the Five-Year CIP Plan and incorporate the revised draft in the Preliminary FY 2022-23 Annual Budget.

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DRAFT Five-Year Capital Improvement Project (CIP) Plan Summary
FY 2022-23 through FY 2026-27

CIP #	Priority	Description	Funding Source	Carry Forward	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Wastewater									
1	A	Wastewater Recovery Master Plan	WWTP-C	\$ -	\$ 100,000	\$ 50,000	\$ -	\$ -	\$ -
2	A	PLC/SCADA Upgrades	WWTP-C		\$ 55,000	\$ 150,000	\$ 350,000		
3	A	Clarifier Superstructure & Walkways	WWTP-C	\$ -	\$ 150,000	\$ 150,000	\$ 150,000	\$ -	\$ -
5	A	Upgrade Tertiary Treatment Pumps	TTF	\$ 265,000	\$ 340,000	\$ -	\$ -	\$ -	\$ -
6	A	Aeration Basin System Upgrade	WWTP-C	\$ 250,000	\$ 1,000,000	\$ -	\$ -	\$ -	\$ -
7	B	Stormwater LID	WWTP-C	\$ -	\$ -	\$ -	\$ 150,000	\$ 150,000	\$ -
9	B	Sewer Vactor Truck	WWTP-C	\$ -	\$ 450,000	\$ -	\$ -	\$ -	\$ -
10	B	Effluent Pump Replacement	WWTP-C	\$ -	\$ 110,000	\$ 110,000	\$ 200,000	\$ 200,000	\$ -
11	B	Wastewater Offices Facility Improvements	WWTP-C	\$ -	\$ -	\$ 100,000	\$ -	\$ -	\$ -
12	B	Facility Truck	WWTP-C	\$ -	\$ -	\$ 55,000	\$ -	\$ -	\$ -
13	A	Collection System Lift Stations	WWTP-C	\$ -	\$ 175,000	\$ 580,000	\$ 300,000	\$ 330,000	\$ 300,000
14	A	Collection System Pipeline Upgrades	WWTP-C	\$ 200,000	\$ 200,000	\$ 430,000	\$ 260,000	\$ 290,000	\$ 330,000
15	A	Collection System Inspection & Monitoring	WWTP-C	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
NEW	A	Belt Press Conveyor Replacement	WWTP-C	\$ -	\$ 300,000	\$ -	\$ -	\$ -	
NEW	B	New Technology - Identified in Wastewater Rate Study	WWTP-C	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,000,000
Wastewater TOTAL²				\$ 815,000	\$ 2,980,000	\$ 1,725,000	\$ 1,510,000	\$ 1,070,000	\$ 5,730,000
Transportation									
16	A	Annual Street Maintenance/Resurfacing	GT/SB-1	\$ -	\$ -	\$ 275,000	\$ 275,000	\$ 275,000	\$ 275,000
17	A	Annual Street Maintenance Program	GT	\$ -	\$ -	\$ 66,000	\$ 66,000	\$ 66,000	\$ 66,000
18	A	Bean Creek Road Pavement Rehab - Phase 1 ¹	Meas D/RSTPX/SB-1	\$ 974,100	\$ 1,026,000	\$ -	\$ -	\$ -	\$ -
19	B	Mt. Hermon Road Corridor Improvements ¹	TDIF	\$ 365,000	\$ 365,000	\$ -	\$ -	\$ -	\$ -
20	A	Janis Way Digout, Overlay, Sidewalk, Bike Lanes	Measure D	\$ -	\$ 250,000	\$ -	\$ -	\$ -	\$ -
21	A	Scotts Valley Drive Crack Seal	Measure D	\$ -	\$ 75,000	\$ -	\$ -	\$ -	\$ -
22	A	Glenwood Drive Street Improvements, Bike Lanes ¹	Measure D	\$ -	\$ -	\$ 100,000	\$ -	\$ -	\$ -
23	A	Mt. Hermon Road Pavement Maintenance	Measure D	\$ -	\$ -	\$ -	\$ 200,000	\$ -	\$ -
24	A	Bean Creek Road Pavement Rehab - Phase 2	Measure D	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ 500,000
25	A	Lockwood Lane Street Improvements	Measure D	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ -
NEW	B	PG&E Rule 20A Utility Undergrounding	Rule 20A	\$ -					\$ 1,261,345
NEW	A	Annual Citywide Street Striping and Signage ¹	CIP	\$ -	\$ 100,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000
NEW	A	Granite Creek Overcrossing Improvements ¹	RSTPX/GT/CIP	\$ -	\$ 608,800	\$ -	\$ -	\$ -	\$ -
Transportation TOTAL				\$ 1,339,100	\$ 2,424,800	\$ 491,000	\$ 591,000	\$ 591,000	\$ 2,152,345
Storm Drains									
27	A	Storm Drain Trash Capture System	CIP	\$ 125,000	\$ 125,000	\$ 125,000	\$ 218,800	\$ 125,000	\$ -
28	B	Storm Drain Master Plan Update	SD DIF	\$ 25,000	\$ 25,000	\$ 75,000	\$ -	\$ -	\$ -

DRAFT Five-Year Capital Improvement Project (CIP) Plan Summary
FY 2022-23 through FY 2026-27

CIP #	Priority	Description	Funding Source	Carry Forward	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
29	B	Pinecone Drive Draining Improvements	CIP	\$ 105,000	\$ 200,000	\$ -	\$ -	\$ -	\$ -
30	B	Sunridge Drive Stormwater Repair	CIP	\$ 62,500	\$ 362,500	\$ -	\$ -	\$ -	\$ -
Storm Drains TOTAL				\$ 317,500	\$ 712,500	\$ 200,000	\$ 218,800	\$ 125,000	\$ -

Parks									
31	A	Parks ADA Improvements - Phase 1	Lennar	\$ 116,300	\$ 116,300	\$ -	\$ -	\$ -	\$ -
32	A	Parks ADA Improvements - Phase 2	Lennar	\$ -		\$ 104,200	\$ -	\$ -	\$ -
33	A	Senior Center ADA Improvements - Phase 2	CIP	\$ -	\$ 74,000	\$ -	\$ -	\$ -	\$ -
36	B	Parks System Master Plan	Parks DIF	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ -
37	A	Skypark Play Structure Equipment	P68, CIP	\$ 223,000	\$ 260,000	\$ -	\$ 757,000	\$ -	\$ -
38	C	Hocus Pocus Park Play Structure Equipment	Parks DIF	\$ -	\$ -	\$ -	\$ -	\$ 520,000	\$ -
39	A	Brook Knoll and Vine Hill Childcare Facilities	Federal	\$ -	\$ 1,400,000	\$ 1,400,000	\$ -	\$ -	\$ -
40	C	Skypark Tennis Area Improvements	Parks DIF, Lennar	\$ 50,000	\$ 50,000		\$ -	\$ -	\$ -
NEW	B	Hocus Pocus - Electrical and Lighting Repairs	CIP	\$ -	\$ -	\$ 75,000	\$ -	\$ -	\$ -
NEW	B	Hocus Pocus - Basketball Court Resurfacing	CIP	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ -
NEW	B	Skatepark - Fence Replacement	CIP	\$ -	\$ -	\$ -	\$ -	\$ 55,000	\$ -
NEW	B	MacDorsa Park - Irrigation System Replacement	CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 80,000
NEW	B	MacDorsa Park - Play Structure Replacement	CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,000
NEW	B	Skypark - Painting (Bldgs, gazebos, BBQ)	CIP	\$ -	\$ -	\$ 55,000	\$ -	\$ -	\$ -
NEW	B	Siltanen Park - Bleacher Upgrades / Replacements	CIP	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ -
NEW	B	Siltanen Park - Softball Fencing and Netting Replacement	CIP	\$ -	\$ -	\$ 50,000	\$ -	\$ -	\$ -
NEW	A	Siltanen Park Irrigation System Replacement	GF	\$ -	\$ 255,000	\$ -	\$ -	\$ -	\$ -
Parks TOTAL				\$ 389,300	\$ 2,255,300	\$ 1,684,200	\$ 857,000	\$ 575,000	\$ 155,000

General Facilities									
42	A	HVAC Replacement at City Hall	GF	\$ 300,000	\$ 300,000	\$ -	\$ -	\$ -	\$ -
43	A	City Facility ADA Improvements - Phase 1	CIP	\$ 48,400	\$ 73,400	\$ -	\$ -	\$ -	\$ -
44	A	City Facility ADA Improvements - Phase 2	CIP	\$ -	\$ -	\$ 147,200	\$ -	\$ -	\$ -
46	A	Public Works Facility Improvements	ARPA/CIP	\$ 805,000	\$ 1,250,000	\$ -	\$ -	\$ -	\$ -
47	C	Public Works Quonset Hut Replacement	CIP	\$ -	\$ -	\$ 318,000	\$ -	\$ -	\$ -
48	C	Public Works Equipment Storage Building Replacement	CIP	\$ -	\$ -	\$ -	\$ 196,200	\$ -	\$ -
NEW	A	City Hall Roof Replacement	CIP	\$ -	\$ 285,000	\$ -	\$ -	\$ -	\$ -
NEW	A	City Facilities Condition Assessment	CIP	\$ -	\$ 75,000	\$ -	\$ -	\$ -	\$ -
NEW	A	City Hall / Police Department Generator Replacement	CIP	\$ -	\$ -	\$ 175,000	\$ -	\$ -	\$ -
General Facilities TOTAL				\$ 1,153,400	\$ 1,983,400	\$ 640,200	\$ 196,200	\$ -	\$ -

Police									
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DRAFT Five-Year Capital Improvement Project (CIP) Plan Summary
FY 2022-23 through FY 2026-27

CIP #	Priority	Description	Funding Source	Carry Forward	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
49	A	Police Department Locker Room	Police DIF	\$ 93,000	\$ 125,000	\$ -	\$ -	\$ -	\$ -
50	C	Police Department Armory	Police DIF	\$ -	\$ 70,000	\$ -	\$ -	\$ -	\$ -
NEW	A	Police Department Fitness Facility Upgrades	CIP	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ -
NEW	A	Universal Power Supply	Police DIF	\$ -	\$ 50,000	\$ -	\$ -	\$ -	\$ -
Police TOTAL				\$ 93,000	\$ 275,000	\$ -	\$ -	\$ -	\$ -
Information Technology									
51	A	Citywide Network Infrastructure Upgrades	ARPA	\$ 185,000	\$ 250,000	\$ -	\$ -	\$ -	\$ -
NEW	A	Finance ERP System Upgrade	ARPA	\$ -	\$ 400,000	\$ -	\$ -	\$ -	\$ -
NEW	A	Computerized Maintenance Mgmt Software	CIP	\$ -	\$ 250,000	\$ -	\$ -	\$ -	\$ -
Information Technology TOTAL				\$ 185,000	\$ 900,000	\$ -	\$ -	\$ -	\$ -
GRAND TOTAL				\$ 4,292,300	\$ 11,531,000	\$ 4,740,400	\$ 3,373,000	\$ 2,361,000	\$ 8,037,345

NOTES:

¹ Addresses some projects listed in the Active Transportation Plan

² Assumes City utilizes debt as discussed in Wastewater Rate Study

UNFUNDED AND/OR FUTURE PROJECTS:

AI Shugart Park Phase 1, 2, and 3 Construction; Active Transportation Plan (Misc. Projects)

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: May 18, 2022

TO: Honorable Mayor and City Council

FROM: Jayson Rutherford, Captain

APPROVED: Mali LaGoe, City Manager

**SUBJECT: AMEND THE SCOTTS VALLEY MUNICIPAL CODE
REGULATIONS REGARDING SMOKING AND TOBACCO
PRODUCTS**

SUMMARY OF ISSUE

In 2020, City Council directed staff to review the ordinances relating to tobacco. Due to COVID, the project was put on hold until 2022. During the review, it was determined that amendments to certain chapters of the Scotts Valley Municipal Code relating to the regulation of smoking and flavored tobacco products to protect the public health, safety, and welfare by discouraging the sale and distribution of flavored tobacco products and prohibiting smoking in certain areas within the City are required due to the risks associated with smoking.

BACKGROUND

In 2009, the Federal Food and Drug Administration (FDA) banned all flavored cigarette products (with the exception of menthol). Following the FDA ban, tobacco use by youth decreased by 6% and decreased the likelihood of becoming a cigarette smoker by 17%. Currently, Federal law does not restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigarillos or electronic smoking devices, and the solutions used in these devices. Mentholated and flavored non-cigarette products have been shown to be “starter” products for youth who begin using tobacco, helping to establish tobacco habits that can lead to long-term addiction. Tobacco use remains the number one most preventable cause of death and disease in the United States. Evidence and studies show that youth believe flavored tobacco products are safer and less addictive than non-flavored varieties. In the last 2 years, vaping has increased 218% by middle schoolers and 135% by high schoolers. 96% of kids who vape use flavors. In 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 of 10 tobacco retailers near schools sold flavored, non-cigarette tobacco products.

SALES OF FLAVORED TOBACCO PRODUCTS

Currently, Scotts Valley is the only jurisdiction in the County that does not have an ordinance banning the sale of flavored tobacco products. Letters were sent to the tobacco retailers within the City asking for input regarding a potential ban. Staff received a response from two retailers in opposition which are attached to this report for reference.

The proposed ordinance amends Sections 5.22, 8.20, and 8.25 of the Scotts Valley Municipal Code to prohibit the sale of flavored tobacco products and includes changes recommended by the Tobacco Education Coalition.

SMOKING IN OUTDOOR DINING AREAS

Currently, there is no city ordinance prohibiting smoking within outdoor dining areas, as long as it is not done within 25 feet of the entrance to the business. Some of the outdoor dining areas within the city have seating which is further than the 25' regulation. As proposed, the ordinance would prohibit smoking in any designated seating areas of restaurants or outdoor eating establishments.

The City has six restaurants with outdoor dining areas; Jia Tellas/ JT's Next Door, Malone's, Bruno's, Casa Nostra, La Chimichanga, and Tony and Albas. Staff contacted each business and all six already had a policy to prohibit smoking in their outdoor dining areas. All six stated they would support City Council enacting an ordinance banning smoking in outdoor dining areas.

The vast majority of restaurant patrons support smoke-free dining. Eighty-four percent of Californians, including 66 percent of smokers, prefer dining in smoke-free restaurants with outdoor dining areas. (CA Dept. of Public Health, California Adult Tobacco Survey, 2018).

FISCAL IMPACT

There is no fiscal impact associated with the adoption of this ordinance.

STAFF RECOMMENDATION

It is recommended that City Council introduce Ordinance No. 188.1, An Ordinance Of The City Council Of The City Of Scotts Valley Amending Chapter 5.22 Of Title 5 Of The Scotts Valley Municipal Code Requiring Tobacco Retailer Licenses And Amending Chapters 8.20 And 8.25 Of The Scotts Valley Municipal Code To Regulate The Sale Of Tobacco Products and waive the reading thereof.

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ORDINANCE NO. 188.1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AMENDING CHAPTER 5.22 OF TITLE 5 OF THE SCOTTS VALLEY MUNICIPAL CODE REQUIRING TOBACCO RETAILER LICENSES AND AMENDING CHAPTERS 8.20 AND 8.25 OF THE SCOTTS VALLEY MUNICIPAL CODE TO REGULATE THE SALE OF TOBACCO PRODUCTS

WHEREAS, the City of Scotts Valley desires to amend certain chapters of the Scotts Valley Municipal Code relating to the regulation of smoking and flavored tobacco products to protect the public health, safety, and welfare by discouraging the sale and distribution of flavored tobacco products and prohibiting smoking in certain areas within the City; and

WHEREAS, in 2009, the federal Food and Drug Administration (FDA) banned all flavored cigarette products (with the exception of menthol); and

WHEREAS, following the FDA ban, tobacco use by youth decreased by 6% and decreased the likelihood of becoming a cigarette smoker by 17%; and

WHEREAS, federal law does not restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigarillos or electronic smoking devices, and the solutions used in these devices; and

WHEREAS, mentholated and flavored non-cigarette products have been shown to be “starter” products for youth who begin using tobacco, helping to establish tobacco habits that can lead to long-term addiction; and

WHEREAS, tobacco use remains the number one most preventable cause of death and disease in the United States; and

WHEREAS, evidence and studies show that youth believe flavored tobacco products are safer and less addictive than non-flavored varieties; and

WHEREAS, in the last 2 years, vaping has increased 218% by middle schoolers and 135% by high schoolers; and

WHEREAS, 96% of kids who vape use flavors; and

WHEREAS, in 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 of 10 tobacco retailers near schools sold flavored, non-cigarette tobacco products.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AS FOLLOWS:

SECTION 1. Section 5.22.010 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

“5.22.010 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. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm’s length transaction.

(b) “Chief of Police” shall refer to the City of Scotts Valley Chief of Police or the person designated by the Chief of Police.

(c) “Drug paraphernalia” shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

(d) “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.

(e) “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, or any candy, dessert, alcoholic beverage, herb, or spice.

(f) “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.

(g) “Person” shall mean any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal

entity.

(h) "Pharmacy" shall mean 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.

(i) "Proprietor" shall mean a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent 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 can or does have or share ultimate control over the day-to-day operations of a business.

(j) "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 person-to-person transfer between the purchaser and the retailer or employee of the retailer.

(k) "Tobacco Product" means:

- (1) any product containing, made of, or derived from tobacco or nicotine 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 as defined in this section 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, 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.

(l) "Tobacco Retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco or Tobacco Products. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

(m) “Significant Tobacco Retailer” means any Tobacco Retailer for which the principal or core business is selling Tobacco Products as evidenced by the fact that (1) twenty percent (20%) or more of floor or display area is devoted to Tobacco Products, Tobacco Paraphernalia, or both; (2) sixty-seven percent (67%) or more of gross sales receipts are derived from Tobacco Products; or (3) fifty percent (50%) or more of completed sales transactions include Tobacco Products.

(n) “Youth-sensitive area” means a parcel in the City that is occupied by:

- a. A private or public kindergarten, elementary, middle, junior high, or high school;
- b. A library open to the public;
- c. A playground open to the public;
- d. A youth center, defined as a facility where persons under the age of 18 come together for programs and activities;
- e. A recreational 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. “recreational facility” includes but is not limited to, a gymnasium, playing court, playing field, and swimming pool;
- f. A park open to the public or to all residents of a private community;
- g. A licensed child-care facility or preschool, other than a small family day care facility as defined in California Health and Safety Code § 1596.78.”

SECTION 2. Section 5.22.020 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

“5.22.020 TOBACCO RETAILER LICENSE – REQUIREMENTS AND VIOLATIONS.

(a) It shall be unlawful for any person to act as a Tobacco Retailer, without complying with Chapter 8.20 and obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this chapter for each location at which that activity is to occur.

(b) It shall be unlawful for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any 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 or produces a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a Flavored Tobacco Product.

(c) Tobacco Retailing by persons from a movable place of business is prohibited. Only fixed-location businesses are eligible to be licensed for Tobacco Retailing.

(d) Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(e) Positive Identification Required. No person engaged in Tobacco Retailing shall sell or transfer 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. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(f) Minimum Age for Persons Selling Tobacco. No person who is younger than 21 years of age shall engage in Tobacco Retailing.

(g) Self-Service Displays Prohibited. Tobacco Retailing by means of a self-service display is prohibited.

(h) In the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a Tobacco Retailer's license has been 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 Tobacco Products or Tobacco Retailing.

(i) All sales of Tobacco Products to consumers shall be conducted in-person at 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 deliver Tobacco Products or to knowingly or recklessly sell Tobacco Products to any person that intends to deliver the Tobacco Product to a consumer in the City. For purposes of this subsection, "Deliver" means the commercial transfer of Tobacco Products to a consumer at a location not licensed pursuant to this chapter."

SECTION 3. Section 5.22.040 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

"5.22.040 APPLICATION PROCEDURE.

(a) 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. The application shall include a statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the license is sought.

(b) It shall be the responsibility of each proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license.

(c) No proprietor may rely on the issuance of a Tobacco Retailer's license as a

determination by the city that the proprietor has complied with all laws applicable to Tobacco Retailing.

(d) A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 5.22.090.

(e) Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a Tobacco Retailer's license any status or privilege to act as a Tobacco Retailer in contravention of any provision of law.

(f) All applications shall be submitted on a form supplied by the City Police Department and shall contain the following information:

(1) The name, address, and telephone number of each proprietor of the business that is seeking a license.

(2) The business name, address, and telephone number of the single fixed location for which a license is sought.

(3) A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (f)(2).

(4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state Tobacco Retailer's license by the California State Board of Equalization, if the Tobacco Retailer sells products that require such license.

(5) Whether a proprietor has previously been issued a Tobacco Retailer's license pursuant to this chapter that is or was at any time suspended or revoked, and, if so, the dates and locations of all such suspensions or revocations.

(6) Whether or not any proprietor or agent of the proprietor has admitted to violating, or has been found to have violated, this chapter, and if so, the dates and locations of all such violations within the previous five years.

(6) Such other information as the Chief of Police deems reasonably necessary for the administration or enforcement of this chapter.

(7) All information required to be submitted in order to apply for a Tobacco Retailer's license shall be updated with the City Police Department whenever the information changes. A Tobacco Retailer shall provide the City Police Department with any updates within ten business days of a change."

SECTION 4. Section 5.22.050 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

"5.22.050 ISSUANCE OF TOBACCO RETAIL LICENSE.

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the city planning department shall forward the application to the Chief of Police. The Chief of Police 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. The Chief of Police may deny an application for a Tobacco Retail license based on any of the following:

- (a) The application seeks authorization for Tobacco Retailing at a location for which a current proprietor's suspension is in effect pursuant to this chapter, for which a current proprietor's license has been revoked pursuant to this chapter, or for which this chapter otherwise prohibits issuance of Tobacco Retailer licenses;
- (b) The application seeks authorization for Tobacco Retailing for a proprietor to whom a suspension is in effect pursuant to this chapter for the subject location or another location, whose license has been revoked pursuant to this chapter for the subject location or another location, or to whom this chapter otherwise prohibits a tobacco retailer license to be issued;
- (c) The city has information that the proprietor or his or her agent or employee has violated any local, state or federal tobacco control law, including this chapter, within the preceding twelve months;
- (d) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter; or
- (e) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this chapter or Chapter 8.20, that is otherwise unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law.

Any denial of an application shall be in writing and shall set forth the reasons for denial of the permit. Such denial shall be subject to appeal in accordance with Section 5.22.130 of this code."

SECTION 5. Section 5.22.060 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

“5.22.060 LICENSE RENEWAL AND EXPIRATION.

(a) A Tobacco Retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a Tobacco Retailer license is one year beginning each fiscal year on July 1st and ending on June 30th of the same year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer’s license and submit the license fee no later than thirty (30) days prior to expiration of the term.

(b) A Tobacco Retailer’s license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to subsection (a), the proprietor must:

- (1) Submit the license fee, if required.
- (2) Submit a signed affidavit affirming that the proprietor:
 - (i) Has not sold and will not sell any Tobacco Product after the license expiration date and before the license is renewed; or
 - (ii) Has waited the appropriate ineligibility period established for Tobacco Retailing without a license, as set forth in Section 5.22.090(b) before seeking renewal of the license.”

SECTION 6. Section 5.22.070 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

“5.22.070 LICENSE NONTRANSFERABLE.

(a) A Tobacco Retailer’s license may not be transferred from one person to another or from one location to another. Whenever a Tobacco Retailing location has a change in proprietor a new Tobacco Retailer’s license is required.

(b) Notwithstanding any other provision 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 fully transferred to a new proprietor or fully transferred to entirely new proprietors in an arms length transaction; and
- (2) The new proprietor(s) provides the city with clear and convincing evidence that the new proprietor(s) has acquired or is acquiring the location

in an arm's length transaction. “

SECTION 7. Section 5.22.130 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

“5.22.130 TOBACCO RETAILING WITHOUT A LICENSE – SEIZURE.

(a) Tobacco Products or Flavored Tobacco Products offered for sale or exchange in violation of this chapter are subject to seizure by the Chief of Police, or any peace officer, and shall be forfeited after the licensee and any other owner of the Tobacco Products or Flavored Tobacco Products seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products or Flavored Tobacco Products were not offered for sale or exchange in violation of this chapter.

(b) Forfeited Tobacco Products or Flavored Tobacco Products shall be maintained and destroyed pursuant to the Police Department's policy for seized evidence. Tobacco Products or Flavored Tobacco Products that are hazardous waste shall be properly disposed of according to applicable hazardous waste regulations.”

SECTION 8. Section 5.22.140 of Chapter 5.22 of Title 5 of the Scotts Valley Municipal Code, Tobacco Retailer Licenses, is hereby amended to read as follows:

“5.22.10 ENFORCEMENT.

(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 eighteen years old, 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 are hereby declared to be public nuisances.

(d) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied or prosecuted pursuant to Title 4 of this code.

(e) (1) A first violation of this chapter shall constitute an infraction punishable by a fine of three hundred dollars.

(2) A second violation of this chapter committed within one year of a first violation shall constitute an infraction punishable by a fine of one thousand dollars.

(3) A third violation of this chapter committed within one year of a second

violation shall constitute an infraction punishable by a fine of three thousand dollars.

(4) A fourth or subsequent violation of this chapter committed within one year of a prior violation shall constitute a misdemeanor punishable by a fine of five thousand dollars.

Each day a violation of this chapter exists is a separate offense.”

SECTION 9. Section 8.20.040C of Chapter 8.20 of Title 8 of the Scotts Valley Municipal Code, Smoking and Tobacco Regulations, is hereby amended to read as follows:

“SECTION 8.04.020C. Smoking shall be prohibited in the following non-enclosed public places within the city:

1. Service lines for retail, service or entertainment venues;
2. City parks, except where posted "smoking permitted";
3. Community pools or play areas (such as in multifamily developments), except where posted "smoking permitted";
4. Within twenty-five feet of the main entrance used by employees or customers of any business, except for those places specifically exempted by Section 8.20.060;
5. Ticket, boarding and waiting areas for public transit, except for areas posted "smoking permitted";
6. Designated outdoor dining areas of restaurants or eating establishments.”

SECTION 10. Section 8.25.020H of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code, Regulation of Tobacco and Electronic Cigarettes Advertising and Sales, is hereby amended to read as follows:

“8.25.020H “Retail tobacco store” means a retail store that sells, offers for sale, or does or offers to exchange for any form of consideration Tobacco Products.

SECTION 11. Section 8.25.020J of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.020J “Tobacco Product” means:

- (1) any product containing, made of, or derived from tobacco or nicotine 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 as defined in this section and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine.

(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, 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.”

SECTION 12. Section 8.25.020L of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.020L “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.

SECTION 13. Section 8.25.020M of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.020M “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, or any candy, dessert, alcoholic beverage, herb, or spice.

SECTION 14. Section 8.25.020N of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.020N “Tobacco Retailer” shall mean any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Tobacco Products.

“Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products sold, offered for sale, exchanged, or offered for exchange.”

SECTION 15. Section 8.25.030D of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.030D Positive Identification Required. Positive Identification Required. No person engaged in Tobacco Retailing shall sell or transfer 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. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.”

SECTION 16. Section 8.25.030E of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.030E Minimum Age for Persons Selling Tobacco. No Person who is younger than the minimum age established by State law for the purchase of Tobacco Products shall engage in Tobacco Retailing.”

SECTION 17. Section 8.25.030F of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended to read as follows:

“8.25.030(f) Self-Service Displays Prohibited. Tobacco Retailing by means of a self-service display is prohibited.”

SECTION 18. Section 8.25.030 of Chapter 8.25 of Title 8 of the Scotts Valley Municipal Code is hereby amended by adding subsection 8.25.030G to read as follows:

“8.25.030G Flavored Tobacco Sales Prohibited. The sale of Flavored Tobacco Products is prohibited.”

SECTION 19. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 20. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 21. CEQA. The City Council finds and determines that the enactment of this Ordinance is statutorily exempt from environmental review pursuant to the State CEQA Guideline Section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 22. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption. Prior to the expiration of fifteen (15) days from the date of

adoption, this Ordinance shall be published in at least three (3) public places.

This Ordinance was introduced on the 18th day of May, 2022, and passed and adopted by the City Council of the City of Scotts Valley on the 1st day of June, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Donna Lind, Mayor

ATTEST:

Cathie Simonovich, City Clerk

APPROVED AS TO FORM:

Kirsten Powell, City Attorney



SCOTTS VALLEY POLICE DEPARTMENT

ONE CIVIC CENTER DRIVE • SCOTTS VALLEY, CALIFORNIA 95066 • PHONE (831) 440-5670 • FAX (831) 438-6930

CHIEF OF POLICE
STEVE WALPOLE

April 12, 2022

Dear Tobacco Retailer:

You are invited to share insights about potential changes under consideration by the Scotts Valley City Council related to the sale of flavored tobacco products and electronic cigarettes in the City.

In 2009, the Food and Drug Administration (FDA) banned the sale of flavored cigarettes, as part of a national effort to reduce smoking in the United States. However, at the time, the FDA stopped short of prohibiting menthol in cigarettes or flavoring in other products such as e-cigarettes, e-liquid, cigars, hookah, and chewing tobacco. Flavored tobacco products play a key role in enticing new users, particularly youth. Data from the 2013-2014 Population Assessment of Tobacco and Health study found that 80.8% of 12-17 year olds who had ever used a tobacco product initiated with a flavored product.

The City Council has directed City staff to review issues related to the ban of the sale of flavored tobacco and return to the City Council with a draft ordinance. The City of Scotts Valley is the last jurisdiction in Santa Cruz County to address this important public health concern.

We are interested in hearing from you about how these changes may impact your business:

1. What considerations do you want the City Council to know as it weighs a potential ban on the sale of flavored tobacco in the City?
2. What considerations do you want the City Council to know as it weighs a potential ban on the sale of electronic cigarettes in the City?
3. Should the City Council act to ban flavored tobacco/electronic cigarettes in the City, what factors should they consider related to implementation?

Please direct your responses by April 27th, 2022 to Captain Jayson Rutherford at jrutherford@scottsvally.org

Sincerely,

A handwritten signature in black ink that reads "Steve Walpole".

Steve Walpole
Police Chief
Scotts Valley Police Department

From: Abe Ghaffarian <abe.ghaffarian@yahoo.com>
Sent: Sunday, April 24, 2022 9:10 AM
To: Jayson Rutherford <jrutherford@scottsvalley.org>
Subject: Tobacco Retail Insight

Dear Scotts Valley City Council,

Thank you for including our perspective in this decision as independent business owners, as this decision will greatly impact our shop.

As you know many cities have banned the sales of electronic cigarettes and flavored tobacco, thus many consumers come to Scotts Valley for their purchases. Not only this, but there has been a big boost in the economy in Scotts Valley, because while making the short trip here for these purchases, they in turn do other shopping such as groceries, gas, and other essential goods. My customers express that they prefer doing their shopping in Scotts Valley as there is less traffic and busy lines, and in addition they can purchase their electronic cigarettes and/or flavored tobacco.

I understand the concern for the sales of these products, and of course think the health of our consumers and Scotts Valley citizens should be a priority, however, it's inevitable that people who want to use these products will find a different source and still purchase them. If not here, somewhere else or illegally where the risk increases with unknown products and brands.

I would urge the Scotts Valley City Council, as a small business owner, to not ban these products. They bring a major source of revenue for small business owners here, and in turn other revenue that drives consumers to Scotts Valley.

I appreciate your time and consideration in this important decision.

Scotts Valley Gas and Mart

From: Omeed <omeedahrary1@gmail.com>
Sent: Monday, April 25, 2022 5:36 PM
To: Jayson Rutherford <jrutherford@scottsvally.org>
Cc: Abdul Jan <ahrarnawa@gmail.com>; lila ahrary <Lilanoorzei@gmail.com>
Subject: Response to recent Flavored Tobacco letter for Scotts Valley

Hello Captain Rutherford,

My name is Omeed and I will be speaking on behalf of my parents - Lila and Abdul(aka Hadi) Ahrary.

It is with our great pleasure to own and operate the Scotts Valley Smoke Shoppe on 3105 Scotts Valley Dr. for over 12 years. We greatly enjoy the city and people of Scotts Valley.

In response to the letter:

- 1) Passing a ban now is silly because voters get to decide on Nov 8th in the election as the issue is on the ballot. November is not that far away so why waste council and staff time on a matter that might be a moot point soon (or not). Enacting a ban before voters get to have a say is an act of voter suppression.
- 2) Recent studies, including one by Yale, have shown that flavor bans may not have the intended result they seek (i.e. minimizing or eliminating youth use) since in San Francisco, one of the first major cities with a flavor ban showed a considerable increase in youth SMOKING:

<https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248>

Note, though, while the study doesn't go into detail on a few things, this wasn't kids who vaped that turned to smoking (though I am sure there was a percentage of that) it was mostly kids who suddenly had easy access on the streets, often via entrepreneurial friends, to black market menthol cigarettes. Since those were part of the ban those were products that flooded the illicit market and since nobody asks for any ID's in a black market, more youth had access that they never had before. Since youth can still get their hands on vapor products by many means other than retailers they would have likely continued so the rise is mostly due to the inclusion of menthol cigarettes in the ban.

3) Municipalities should not take on the SCIENTIFIC role of the FDA and assume they know better. FDA authorizes or denies market applications for new tobacco products and while they have so far only approved a few, very old and not very popular products, there may be more authorizations in the coming years for products that are scientifically proven (and accepted by FDA) to be in the "interest of the protection of public health". Most municipal flavor ban language does not take this into account and would automatically ban product AUTHORIZED by the federal government after many months, sometimes years, of stringent scientific review.

Please let us know if there is any other request for us or if we can be of any other help.

Thank you for your time and consideration.

Best,
Omeed Ahrary on behalf of Lila and Abdul Ahrary



108 Whispering Pines Drive, Suite 115
Scotts Valley, CA 95066
(831) 438-1820 • FAX: (831) 438-2314 • www.scottsvalleysd.org

May 19, 2022

Dear Scotts Valley City Council Members,

I am writing to you as the Superintendent of the Scotts Valley Schools in support of a ban on the sale of flavored tobacco in the City of Scotts Valley.

As an educational leader, it has been alarming to see the growing popularity of flavored tobacco products, especially electronic devices or vapes. Products such as Juul and Puff Bar have proven especially popular with teens due to their compact size (which makes them easy to hide from adults) and techy appearance similar to a computer thumb drive. In fact, in 2020 the Scotts Valley Unified School District joined several other school districts in a Class Action Suit against JUUL LABS, INC. due to the significant impact we see these products are having on our youth.

We see these products every day in our classrooms, on our playgrounds, in gathering areas, and in our student restrooms. Students have become emboldened to use them even in class, blowing the vapor down their shirts when a teacher's back is turned! I continue to hear reports from the site administrators and counselors about how out of control this issue has become and is taking a significant amount of time and energy from the administration, the SRO, teachers, and counselors to respond to all of these acts. It is also impacting instructional time and learning.

On an even more concerning note, the tobacco industry has a long history of targeting kids, with devastating consequences for the nation's health. Research shows that tobacco is not good for one's health but is even more detrimental to a young person's development. As an educator, I am particularly worried about the impact of nicotine on the developing brain, leading to memory and learning difficulties.

I believe that Scotts Valley may be the only jurisdiction not yet put this ban in place. I urge the City of Scotts Valley to join the other jurisdictions in our County in banning the sale of flavored tobacco products.

Sincerely,

Tanya Krause