




## City of Grass Valley City Council Agenda Action Sheet

**Council Meeting Date:** April 26, 2011

**Date Prepared:** April 12, 2011

**Prepared by:** Tony Clarabut, Fire Chief 

**Title:** Approval of the renewal of the Office Space Lease Agreement Between the City of Grass Valley and the Fire Safe Council of Nevada County.

**Agenda:** Consent

**Recommended Motion:** That the City Council approve the renewal of the Lease Agreement between the City of Grass Valley and the Fire Safe Council of Nevada County for office space at 139 E. Main Street, Grass Valley, and that the City Administrator be authorized to sign the lease on behalf of the City.

**Background Information:** At its April 28, 2009 meeting and at its May 25, 2010 the City Council approved the initial and first extension of a lease of surplus office space within an unused city fire station at 139 East Main Street to the Fire Safe Council of Nevada County (FSC). These leases expire one year after their effective date, and in accordance with the terms of the lease the FSC has requested renewal of the lease for another one year period under the same terms and conditions. Because of the contribution the FSC makes towards fire prevention within and around the City and the fact that the Fire Department or City has no current or anticipated need for the office space, the Fire Department supports the requested renewal of the lease.

**Funds Available:** N/A

**Account #:**

**Reviewed by**



City Administrator

**Council or Departmental (use the appropriate one) Goal/Objective: -**

City Council Strategic Goal #6 Inclusive Community Involvement and Leadership.

**LEASE AGREEMENT BETWEEN THE CITY OF GRASS VALLEY AND THE FIRE SAFE COUNCIL OF NEVADA COUNTY FOR USE OF OFFICE SPACE AT 139 E. MAIN STREET, GRASS VALLEY, CALIFORNIA**

This Lease Agreement ("Lease") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011 ("Effective Date"), by and between the Fire Safe Council of Nevada County ("FSCNC"), a federally recognized nonprofit 501(c)(3) corporation, and the City of Grass Valley ("City"), a municipal corporation,

**WHEREAS**, the City is the record owner of that real property commonly referred to as 139 E. Main Street, Grass Valley, APN No. 08-348-02-000, Grass Valley, California ("Premises"); and

**WHEREAS**, the purpose of FSCNC is to reduce the risk of life and property loss from wildfire, and to increase public awareness of the potential for fire loss and educating the public on reducing the chances of wildfires; and

**WHEREAS**, the City desires to lease to FSCNC the Premises, and FSCNC wishes to lease from City the Premises, for office space in order to assist FSCNC in reaching their goals;

**NOW, THEREFORE**, the parties mutually agree as follows:

1. Recitals. The parties acknowledge that the foregoing recitals are true and correct, and are incorporated herein as a part of this Lease.
2. Premises. City hereby leases to FSCNC and FSCNC leases and hires from City on an exclusive basis for the term, at the rental and upon the terms and conditions set forth herein, the Premises (limited to the second floor access and the second floor office space and restroom).
3. Use. The Premises shall be used and occupied only for the offices of the FSCNC and for no other purpose. FSCNC, at its expense, shall comply with all local, state, federal or otherwise applicable, rules, laws or regulations, now in effect or that may be later be in effect, applicable to the Premises or FSCNC's use or occupancy thereof. FSCNC shall not cause or permit any hazardous materials to be brought upon, kept, used, released, discharged or disposed of in or about the Premises; provided, however, that FSCNC shall have the right to use and store reasonable and customary amounts of chemicals and/or solvents used for ordinary office purposes, as long as such use and storage complies with applicable laws.
4. Term of Lease. This Lease shall commence upon the Effective Date, and shall end one year from the date of this Lease, unless sooner terminated pursuant to the terms of this Lease ("Lease Term"). The FSCNC shall have the option of extending this lease for additional one (1) year terms, with the approval of the City Council of the City of Grass Valley. Notice of FSCNC's desire to extend the may be provided to the City at least forty-five (45) days prior to the end of the Lease term. After receipt of the notice stating an intent to renew the Lease, City shall schedule approval of the Lease before the City Council, at the next available City Council meeting in compliance with the noticing requirements of the Brown Act.
5. As-Is Condition. The FSCNC agrees that it is leasing the Premises on an "AS-IS" basis,

with all defects, without any representation or warranty by City or its agents as to the condition of the Premises or their fitness for FSCNC's use. FSCNC acknowledges that City has not made any representations or warranties that the Premises or the Building comply with current building or occupancy standards, and FSCNC assumes any and all responsibility for causing the Premises to comply with applicable laws. FSCNC acknowledges that it has satisfied itself that the Premises are suitable for its intended use. City shall have no obligation to do any work in and to the Premises in order to prepare the Premises for occupancy or use by Lessee.

6. Rent. FSCNC shall pay City, on the Effective Date of this Lease, annual rent in the amount of one dollar (\$1.00) per year payable in advance of the Lease Term. If FSCNC renews this Lease, FSCNC shall pay rent in the amount of one dollar (\$1.00) for each subsequent year.
7. Utility Expenses. FSCNC shall pay all of its utility costs, including but not limited to, janitorial, telephone, DSL/Cable, electricity, water, sewer and gas costs.
8. Alterations. FSCNC shall not make any alterations or improvements to the Premises without the prior written approval of the City, which consent may be granted or withheld in City's sole and absolute discretion. Improvements that are necessary in order to make the building habitable or suitable for human occupancy ("Necessary Improvements"), shall be allowed after obtaining prior written approval of the City, in compliance with City, State, Federal or otherwise applicable, codes, rules and regulations. Any improvements made by the FSCNC on the Premises shall belong to the City upon termination of this Lease.
9. Maintenance. At all times during the Term of this Lease, and at FSCNC's sole cost, FSCNC shall maintain and keep the Premises in good condition. FSCNC waives all rights to make repairs at the expense of the City or instead vacate the Premises, and FSCNC further waives the provisions of Civil Code Sections 1941 and 1942 with respect to City's obligations under this Lease. Prior to the expiration or earlier termination of this Lease, FSCNC shall remove its trade fixtures, personal property and shall surrender the Premises to City in broom clean condition and in as good order, repair and condition as when the Premises were delivered to FSCNC, ordinary wear and damage, excepting damage by fire and the elements.

FSCNC shall be responsible for maintenance and repair of the plumbing, heating, ventilation, air conditioning systems, electrical and lighting facilities and equipment in the Premises, fixtures, interior wall and interior surfaces of exterior walls, ceilings, windows, doors and glass located within the Premises. Except for damage resulting from any wrongful or negligent act or omission of FSCNC, FSCNC's employees, agents, contractors or invitees, which damage FSCNC shall repair, the City shall keep in good order, condition and repair (a) the foundations, exterior walls, structural condition of interior bearing walls and structural roof of the Premises, as well as (b) the parking lots, walkways, driveways, landscaping, fences, and signs on the Premises. City shall not have any further repair or maintenance obligations, as FSCNC accepts the Premises as-is.

10. Termination and Condition Upon Termination. In the event that City wishes to terminate this Lease, with or without cause, City shall provide FSCNC with notice in writing of the intent to terminate this Lease at least sixty-days (60) in advance of the date of

termination.

11. Indemnification. FSCNC agrees to indemnify, defend, and hold harmless City from any and all liabilities, legal or equitable actions or other proceedings instituted by any person not a party to this Lease challenging the validity of the Lease or otherwise arising out of or stemming from this Lease, including any claims related to the Premises, except for those claims arising from the sole or gross negligence of City. In the event a claim is made against City or FSCNC, the party receiving the claim shall immediately forward the claim to the other party City, so that the FSCNC may City. City, in its sole discretion, may select the legal counsel to defend Owner, and City will pay all such costs associated with the defense.
12. Waiver of Liability. FSCNC waives all claims against City for damage to any property or injury or death of any person on the Premises arising at any time and from any cause other than the negligence or willful misconduct of City or City's employees, agents, or contractors. FSCNC shall indemnify, protect, defend and hold City and City's employees, agents and representatives harmless from any and all claims, liability, damage, or loss arising out of or any way related to, any injury or death of any person or damage to or destruction of property attributable to the use of the Premises by FSCNC, except that caused by the sole negligence or willful misconduct of City or City's agents, contractors, or employees. These indemnity obligations shall include reasonable attorney fees, investigation costs, and all other reasonable costs incurred by City from the first notice that any claim or demand is to be made or may be made. City shall promptly give notice to FSCNC of any claim or demand. The provisions of this Section shall survive the termination of this Lease for any event occurring prior to the termination.
13. Insurance. FSCNC shall, at FSCNC's expense, obtain and keep in force during the term of this Lease, a policy of Commercial General Liability Insurance or equivalent self-insurance, against liability for bodily injury, personal injury, death and damage to property occurring on the Premises with combined single limit coverage of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence and a general aggregate limit of bodily injury and property damage liability of at least Three Million and no/100 Dollars (\$3,000,000.00). FSCNC shall provide evidence of the insurance through certificate(s) and endorsement(s) in form(s) satisfactory to the City. The policy of insurance required to be carried by Lessee pursuant to this Section shall name the City as an additional insured, and shall provide that the policy shall not be subject to cancellation, lapse or change, except after at least thirty (30) days written notice to the City.
14. Entry by City. City may enter the Premises between normal business hours, Monday through Friday, and at any other reasonable hour, and except in the event of an emergency, on twenty-four (24) hours prior notice to (a) inspect the Premises; (b) exhibit the Premises to prospective purchasers, lenders or tenants; (c) determine whether FSCNC is comply with all obligations under this Lease; (d) post notices of nonresponsibility; and (e) make repairs or perform maintenance pursuant to this Lease, to any adjoining space or utility services, or make repairs, alterations or improvements to any other portion of the property where the Premises is located. However, all this work shall be done as promptly as possible and cause as little interference to FSCNC as possible. Subject to City's undertakings in the previous sentence, FSCNC waives any damage claims for inconvenience to or interference with FSCNC's business or loss of occupancy or quiet enjoyment of the Premises caused by City's entry. At all times City

shall have a key with which to unlock the doors on the Premises. In an emergency, City shall have the right to use any means that City deems proper to open FSCNC's doors and enter the Premises. Entry to the Premises by City in an emergency shall not be construed as a forcible or unlawful entry, a detainer, or an actual or constructive eviction of FSCNC.

15. Modifications. This Lease may be modified only in writing, and only if signed by all of the parties at the time of modification.
16. Entire Lease. This Lease represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be given any force or effect with respect to those matters covered in this Lease.
17. Severability. If any provision of this Lease is determined to be illegal or unenforceable, this determination shall not affect any other provision of this Lease, and all other provisions shall remain in full force and effect.
18. Construction of Lease. Each party has had an opportunity to consult with an attorney in reviewing this Lease. Therefore, the usual construction as to the drafting party shall not apply to this Lease.
19. Governing Law. This Lease shall be governed and construed pursuant to the laws of the State of California, and any action arising out of this Agreement shall be brought in the Superior Court of Nevada County, regardless of where else venue may lie.
20. Assignment. FSCNC shall not sublet or assign its interest in this Lease without the prior written consent of the City.
21. Binding on Successors. The agreements, conditions and provisions contained in this Lease shall, subject to the provisions of assignment, apply to and bind the administrators, successors and assigns of the parties to it.
22. Authority. The individual or individuals signing this Lease on behalf of FSCNC represent and warrant that: (i) FSCNC has full power and authority to enter into this Lease and to perform this Lease; (ii) the execution, delivery and performance of this Lease by FSCNC have been duly and validly authorized by all necessary action on the part of FSCNC and all required consents and approvals have been duly obtained, and (iii) this Lease is a legal, valid and binding obligation of FSCNC, enforceable against FSCNC in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
23. Independent Covenants. This Lease shall be construed as though the covenants between City and FSCNC are independent.
24. Notices. All notices under this Lease shall be in writing and sent by (a) first class mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, or (b) hand delivered to City Hall, and addressed as follows:

City: City of Grass Valley

125 East Main Street  
Grass Valley, CA 95945  
ATTN: City Administrator

FSCNC: Fire Safe Council of Nevada County  
P.O. Box 1477  
Nevada City, CA 95959  
ATTN: Chairman

25. Waiver. Waiver by either party of any agreement, condition or provision contained in the Lease shall not be deemed a waiver of any subsequent breach of the agreement, condition or provision, or any other agreement, condition, or provision contained in the Lease, nor shall any custom or practice that may arise between the parties in the administration of the terms of this Lease be construed to waive or to lessen the right of City or FSCNC to the performance by the other in strict accordance with these terms. The subsequent acceptance of rent under this Lease shall not be deemed to be a waiver of any preceding breach by the other party of any agreement, condition or provision of this Lease, other than the failure of Lessee to pay the particular accepted rent, regardless of knowledge of the preceding breach at the time of the rental acceptance.
26. Limitation of Liability. No directors, employee, agent, or agents of City shall be personally liable in any manner, or to any extent hereunder, or in connection with this Lease. In no event shall City or any of its directors, employees, agents be responsible for any consequential damages suffered or incurred by FSCNC, including without limitation, on account of lost profits or the interruption of FSCNC's business.

IN WITNESS WHEREOF, the parties hereto do hereby execute this Lease as of the date first set forth above.

**CITY OF GRASS VALLEY**

\_\_\_\_\_  
Dan Holler, City Administrator

**FIRE SAFE COUNCIL OF NEVADA COUNTY**

\_\_\_\_\_  
Chairman, Authorized Representative of FSCNC

**LEASE AGREEMENT BETWEEN THE CITY OF GRASS VALLEY AND THE FIRE SAFE  
COUNCIL OF NEVADA COUNTY FOR USE OF OFFICE SPACE AT 139 E. MAIN STREET,  
GRASS VALLEY, CALIFORNIA**

This Lease Agreement ("Lease") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011 ("Effective Date"), by and between the Fire Safe Council of Nevada County ("FSCNC"), a federally recognized nonprofit 501(c)(3) corporation, and the City of Grass Valley ("City"), a municipal corporation,

**WHEREAS**, the City is the record owner of that real property commonly referred to as 139 E. Main Street, Grass Valley, APN No. 08-348-02-000, Grass Valley, California ("Premises"); and

**WHEREAS**, the purpose of FSCNC is to reduce the risk of life and property loss from wildfire, and to increase public awareness of the potential for fire loss and educating the public on reducing the chances of wildfires; and

**WHEREAS**, the City desires to lease to FSCNC the Premises, and FSCNC wishes to lease from City the Premises, for office space in order to assist FSCNC in reaching their goals;

**NOW, THEREFORE**, the parties mutually agree as follows:

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3. Use. The Premises shall be used and occupied only for the offices of the FSCNC and for no other purpose. FSCNC, at its expense, shall comply with all local, state, federal or otherwise applicable, rules, laws or regulations, now in effect or that may be later be in effect, applicable to the Premises or FSCNC's use or occupancy thereof. FSCNC shall not cause or permit any hazardous materials to be brought upon, kept, used, released, discharged or disposed of in or about the Premises; provided, however, that FSCNC shall have the right to use and store reasonable and customary amounts of chemicals and/or solvents used for ordinary office purposes, as long as such use and storage complies with applicable laws.
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termination.

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12. Waiver of Liability. FSCNC waives all claims against City for damage to any property or injury or death of any person on the Premises arising at any time and from any cause other than the negligence or willful misconduct of City or City's employees, agents, or contractors. FSCNC shall indemnify, protect, defend and hold City and City's employees, agents and representatives harmless from any and all claims, liability, damage, or loss arising out of or any way related to, any injury or death of any person or damage to or destruction of property attributable to the use of the Premises by FSCNC, except that caused by the sole negligence or willful misconduct of City or City's agents, contractors, or employees. These indemnity obligations shall include reasonable attorney fees, investigation costs, and all other reasonable costs incurred by City from the first notice that any claim or demand is to be made or may be made. City shall promptly give notice to FSCNC of any claim or demand. The provisions of this Section shall survive the termination of this Lease for any event occurring prior to the termination.
13. Insurance. FSCNC shall, at FSCNC's expense, obtain and keep in force during the term of this Lease, a policy of Commercial General Liability Insurance or equivalent self-insurance, against liability for bodily injury, personal injury, death and damage to property occurring on the Premises with combined single limit coverage of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence and a general aggregate limit of bodily injury and property damage liability of at least Three Million and no/100 Dollars (\$3,000,000.00). FSCNC shall provide evidence of the insurance through certificate(s) and endorsement(s) in form(s) satisfactory to the City. The policy of insurance required to be carried by Lessee pursuant to this Section shall name the City as an additional insured, and shall provide that the policy shall not be subject to cancellation, lapse or change, except after at least thirty (30) days written notice to the City.
14. Entry by City. City may enter the Premises between normal business hours, Monday through Friday, and at any other reasonable hour, and except in the event of an emergency, on twenty-four (24) hours prior notice to (a) inspect the Premises; (b) exhibit the Premises to prospective purchasers, lenders or tenants; (c) determine whether FSCNC is comply with all obligations under this Lease; (d) post notices of nonresponsibility; and (e) make repairs or perform maintenance pursuant to this Lease, to any adjoining space or utility services, or make repairs, alterations or improvements to any other portion of the property where the Premises is located. However, all this work shall be done as promptly as possible and cause as little interference to FSCNC as possible. Subject to City's undertakings in the previous sentence, FSCNC waives any damage claims for inconvenience to or interference with FSCNC's business or loss of occupancy or quiet enjoyment of the Premises caused by City's entry. At all times City

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15. Modifications. This Lease may be modified only in writing, and only if signed by all of the parties at the time of modification.
16. Entire Lease. This Lease represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be given any force or effect with respect to those matters covered in this Lease.
17. Severability. If any provision of this Lease is determined to be illegal or unenforceable, this determination shall not affect any other provision of this Lease, and all other provisions shall remain in full force and effect.
18. Construction of Lease. Each party has had an opportunity to consult with an attorney in reviewing this Lease. Therefore, the usual construction as to the drafting party shall not apply to this Lease.
19. Governing Law. This Lease shall be governed and construed pursuant to the laws of the State of California, and any action arising out of this Agreement shall be brought in the Superior Court of Nevada County, regardless of where else venue may lie.
20. Assignment. FSCNC shall not sublet or assign its interest in this Lease without the prior written consent of the City.
21. Binding on Successors. The agreements, conditions and provisions contained in this Lease shall, subject to the provisions of assignment, apply to and bind the administrators, successors and assigns of the parties to it.
22. Authority. The individual or individuals signing this Lease on behalf of FSCNC represent and warrant that: (i) FSCNC has full power and authority to enter into this Lease and to perform this Lease; (ii) the execution, delivery and performance of this Lease by FSCNC have been duly and validly authorized by all necessary action on the part of FSCNC and all required consents and approvals have been duly obtained, and (iii) this Lease is a legal, valid and binding obligation of FSCNC, enforceable against FSCNC in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
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24. Notices. All notices under this Lease shall be in writing and sent by (a) first class mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, or (b) hand delivered to City Hall, and addressed as follows:

City: City of Grass Valley

125 East Main Street  
Grass Valley, CA 95945  
ATTN: City Administrator

FSCNC: Fire Safe Council of Nevada County  
P.O. Box 1477  
Nevada City, CA 95959  
ATTN: Chairman

25. Waiver. Waiver by either party of any agreement, condition or provision contained in the Lease shall not be deemed a waiver of any subsequent breach of the agreement, condition or provision, or any other agreement, condition, or provision contained in the Lease, nor shall any custom or practice that may arise between the parties in the administration of the terms of this Lease be construed to waive or to lessen the right of City or FSCNC to the performance by the other in strict accordance with these terms. The subsequent acceptance of rent under this Lease shall not be deemed to be a waiver of any preceding breach by the other party of any agreement, condition or provision of this Lease, other than the failure of Lessee to pay the particular accepted rent, regardless of knowledge of the preceding breach at the time of the rental acceptance.
26. Limitation of Liability. No directors, employee, agent, or agents of City shall be personally liable in any manner, or to any extent hereunder, or in connection with this Lease. In no event shall City or any of its directors, employees, agents be responsible for any consequential damages suffered or incurred by FSCNC, including without limitation, on account of lost profits or the interruption of FSCNC's business.

IN WITNESS WHEREOF, the parties hereto do hereby execute this Lease as of the date first set forth above.

**CITY OF GRASS VALLEY**

\_\_\_\_\_  
Dan Holler, City Administrator

**FIRE SAFE COUNCIL OF NEVADA COUNTY**

\_\_\_\_\_  
Chairman, Authorized Representative of FSCNC

4-11