

Staff Report

for the Board of Directors Meeting of April 10, 2019

TO: Honorable Board of Directors

FROM: Chip Close, Water Operations Manager

DATE: April 2, 2019

SUBJECT: City of Grass Valley Contract for Water Supply - Amendment No. 1

OPERATIONS

RECOMMENDATION:

Approve Amendment No. 1 to the 2013 Contract between Nevada Irrigation District and City of Grass Valley for Water Supply.

BACKGROUND:

The Nevada Irrigation District (District) provides a surplus raw water supply to the City of Grass Valley (City) of up to 8 cubic feet per second for treatment and delivery to their customers. This water supply contract has been in existence since 1968, with updates and renewals from time to time. The last contract update was completed in 2013.

The Contract provides a delineation of service area boundaries between both agencies. The intent is to allow each agency to provide water service in a manner that minimizes new construction and avoids the duplication of pipelines already installed, thereby allowing customers to be served at the lowest reasonable cost. Any proposed change to the service area requires written notification.

The District received written notification from the City on January 19, 2016 of a request to provide treated water supply for the proposed Berriman Ranch Development. The Berriman Ranch Development is currently located within the District's service area boundary, but borders the City's service area. The City has made the request based upon existing water supply infrastructure owned and operated by the City that borders the proposed development. The District does not have water supply infrastructure in the area to provide service in a timely manner.

Through negotiation, District and City staff have developed an amendment to the 2013 Water Supply Contract that will allow the City to provide service to phase one and two of the Berriman development. In return, the City will construct a future intertie station at the edge of future Berriman Ranch phases that will allow for the connection to the District's future infrastructure.

The collaborative working relationship between the City and the District in determining the most efficient, cost effective manner to provide water service to the community is in alignment with District's Strategic Plan Goal No. 2 "Stewardship of District resources requires a collaborative and responsive relationship with our Local and Regional community".

BUDGETARY IMPACT:

There is no immediate impact to the District's budget. Future impacts include the loss of connection fee revenue from the approximately 35 proposed lots in phase one and two of the Berriman Development.

AC

Attachments (5):

- Proposed Amendment No. 1
- 2013 Contract Between Nevada Irrigation District and City of Grass Valley for Water Supply
- Grass Valley Service Area Map (Exhibit A)
- Service Area Amendment No. 1 Map (Exhibit B)
- Berriman Ranch Phase 1 & 2 Boundary (Exhibit C)

**FIRST AMENDMENT
TO THE CONTRACT BETWEEN NEVADA IRRIGATION DISTRICT
AND CITY OF GRASS VALLEY
FOR WATER SUPPLY**

This First Amendment to the Contract Between Nevada Irrigation District and City of Grass Valley For Water Supply (“First Amendment”) is entered into as of the date of the last signature below by and between NEVADA IRRIGATION DISTRICT (“District”), an Irrigation District organized and existing under the laws of the State of California, and the CITY OF GRASS VALLEY (“City”), a municipal corporation, organized and existing under the laws of the State of California. This First Amendment is made with reference to the following facts and understandings:

1. On April 10, 2013, City and District entered into that certain ‘Contract Between Nevada Irrigation District and City of Grass Valley for Water Supply’ (“Contract”). The Contract provides for, among other things a delineation of certain water service territory boundaries between City and District (“Service Area Boundaries”). The Service Area Boundaries are depicted in Exhibit A to the Contract, which is also attached to this First Amendment as Exhibit A and incorporated herein by this reference.
2. Pursuant to the Contract, the Service Area Boundaries depicted in Exhibit A cannot be changed without the written consent of each of the City and District.
3. City has requested District consent to an amendment of the Service Area Boundaries to enable City to provide water to Phases I and II of the Berriman Ranch Subdivision, which are currently located within the District’s Service Area Boundary. The location of Phases I and II of the Berriman Ranch Subdivision are depicted in Exhibit B attached hereto and incorporated herein by this reference; and
4. City and District wish to amend the Contract with this First Amendment to accommodate City’s request, pursuant to the terms and conditions herein.

NOW, THEREFORE, the parties agree as follows:

1. Service Area Boundaries Adjustment. Exhibit A to the Contract Between Nevada Irrigation District and City of Grass Valley for Water Supply of April 10, 2013 is hereby amended to add APN's 022-140-054, 022-140-055, and 022-140-056 to the City Service area. The revised Service Area Boundaries resulting from this First Amendment are depicted in Exhibit C hereto. Exhibit C shall, upon and after the Effective Date of this First Amendment, supersede and replace, for all purposes, Exhibit A to the Contract.
2. Intertie Station. City's water delivery system for Phases I and II of the Berriman Ranch Subdivision shall be constructed in a manner and fashion that allows for the installation of a future intertie station that facilitates the physical interconnection of the City's and District's water systems (Intertie Station). The Intertie Station shall be designed and constructed concurrent to completion of Phase III of the Berriman Ranch Subdivision. The exact date of completion and location of the Intertie Station shall be agreed upon by the City and District, and subject to the following:
 - a. City, or its qualified designee, shall develop plans and specifications for the Intertie Station. Such plans and specifications shall be reviewed and approved by District prior to completion. City shall submit any changes in the approved plans and specifications to District. Such changes shall not be incorporated into the Intertie Station without District's prior approval.
 - b. City, or its qualified designee, shall perform all necessary environmental review, and obtain all necessary permits related to the construction and installation of the Intertie Station.
 - c. Prior to acceptance of the Intertie Station by District, City shall provide to District, at no cost to District and in a form reasonably acceptable to District, appropriate easements and rights of way providing unrestricted access to District for the ownership, operation, maintenance, repair, and replacement of all Intertie Station facilities.
 - d. City, or its qualified designee, shall, without expense to District, construct the Intertie Station pursuant to the approved plans and specifications. City shall provide in any contract for construction of the Intertie Station that all contractor's and material supplier's guarantees thereunder shall be assignable to, and inure to the benefit of, District. Unless satisfactory insurance is otherwise secured by City directly, City shall provide in any contract for construction of the Intertie Station that the contractor's public liability and property damage insurance shall name District and its agents, officers and employees as

additional insured with liability and bodily injury/ property damage limits of not less than \$3,000,000, combined single limit per occurrence, with aggregate limits of not less than \$5,000,000.

e. Throughout the course of construction, District shall be permitted to inspect construction of the Intertie Station to ensure that the works are installed in accordance with the approved plans. District shall notify City of any deviation from the plans and specifications and City shall correct any such deviation or failure.

f. City is not acting as contractor, agent, official or representative of District in constructing or developing the Intertie Station. The approval of plans and specifications presented by City shall not be deemed as a warranty or guarantee by District of proper design or proper specifications of materials or construction and does not guarantee eventual acceptance of the Intertie Station by District. Any failure of District to discover defects in construction or to note variances in the work from the plans and specifications does not excuse or exempt City from complying with all terms of the plans and specifications. The fact that District inspects the construction of work and notifies City of deviations or failures to construct them pursuant to the approved plans shall not be deemed to constitute a guarantee by District that the works have been built in accordance with the approved plans and specifications.

g. City shall warrant that the Intertie Station will be constructed free of defects in material and workmanship, and that it will be fit for its intended purpose. City, or its qualified designee, shall, without delay and upon notice from District repair or replace, as required, all defects in materials or workmanship appearing in the 12 months following acceptance by District.

h. Within ninety days after completion of construction of the Intertie Station in accordance with the approved plans and specifications therefore:

a. City shall offer to dedicate the completed Intertie Station works and associated rights of way to District without cost and free and clear of all liens and encumbrances.

b. City shall provide District with one set of 24" by 36" reproducible record drawings of the completed Intertie Station.

c. City shall provide easements as described in section 2.c., above.

i. District shall accept the Intertie Station upon City's, and/or its qualified designee(s), satisfactory completion of the obligations set forth herein, and by action of its Board of Directors will include the Intertie Station as part of its District Maintained System, and shall thereafter operate and maintain said Intertie Station.

3. Extent of Amendment Effective Upon Approval. Except as expressly set forth in this First Amendment, the Contract, and all appendices, attachments, and exhibits thereto, remain unchanged and are hereby continued in full force and effect.

4. Effective Date. This First Amendment shall become effective when signed by the parties.

IN WITNESS WHEREOF, the parties execute this First Amendment on the dates set forth below.

NEVADA IRRIGATION DISTRICT

Dated: _____, 2019.

By _____
President

Dated: _____, 2019.

By _____
Secretary

CITY OF GRASS VALLEY

Dated: _____, 2019.

By _____
Mayor

APPROVED AS TO FORM:

City Attorney

Dated: _____, 2019.

ATTEST:

City Clerk

Dated: _____, 2019.

**CONTRACT BETWEEN NEVADA IRRIGATION DISTRICT
AND CITY OF GRASS VALLEY FOR WATER SUPPLY**

THIS AGREEMENT "Agreement", is effective as of April 10, 2013 set forth between the NEVADA IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as "District", and the CITY OF GRASS VALLEY, a charter city, organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, City owns, operates and maintains the Grass Valley Treatment Plant, which treats water for the major portion of the City's service area; and

WHEREAS, District has raw water that is surplus to the requirements of District customers (surplus raw water) that can be sold and delivered to City for treatment and delivery to City's customers; and

WHEREAS, commencing July 1, 1968, District and City entered into a series of written agreements, restated, extended, and amended from time to time thereafter, (collectively, all such agreements shall be referred to as the "Agreement"), providing for sale of raw and treated water to City on a surplus water basis; and,

WHEREAS, District and City have agreed to amend and restate, in the form of a comprehensive agreement governing the purchase of surplus treated water and surplus raw water the most recently executed Agreement, dated September 28, 1983, and the four (4) amendments and one (1) letter thereto, described as follows:

- Amendment dated October 28, 1986 which allowed the City to add a portion of the area near Brighton Street and McCourtney Road to its Service Area No. 1
- Amendment dated July 25, 1990 which allowed the City to add a portion of the land near Freeman Lane and West McKnight Way (Carriage House Subdivision) to its Service Area No. 1
- Amendment dated June 23, 1992 which allowed the City to add a parcel near Race Street (APN 09-610-03) to its Service Area No. 1
- Amendment dated March 14, 1995 which allowed the City to add Scotia Pines development (APN's 29-030-04, 29-030- 04, 29-030-06, 08-300-92 and 29-030-07) to its Service Area No. 1; and
- Letter of Extension dated December 12, 2012 which allowed the City and District to extend the term of the Agreement for up to six (6) months.

NOW, THEREFORE, the parties hereto agree as follows:

1. District agrees to sell and deliver to City, during the term of this Agreement, such surplus raw water as may be ordered by City, not to exceed 8 cubic feet per second (approximately 5 MGD), subject to the availability of raw water and capacity in District's existing conduits that is not needed for customers within District's boundaries (hereafter referred to as "surplus raw water"), for use within the present boundaries of City's Service Area No. 1 as shown in Exhibit A attached hereto and made a part of this Agreement. District's point of delivery for surplus raw water shall be at its Alta Hill Reservoir outlet as shown on Exhibit A.

Requests for changes in water deliveries shall be submitted to District prior to 10 a.m. each day in order to provide sufficient advance notice for District to make changes that day. No more than one change in deliveries per day, requested by City shall be made by District personnel without cost, provided it is made during normal working hours (7:30 a.m. to 4 p.m.). Multiple changes in flow, or other regulation of District's water delivery system to accommodate City's requests, in excess of one (1) per day during regular working hours, or at any time outside of normal business hours, will constitute an extra expense and shall be charged at District's normal rate for labor and equipment. Changes made outside normal working hours shall be charged at District's overtime rate for labor and equipment.

Raw water sold and delivered hereunder is untreated water which has flowed in open canals, conduits and flumes and which has been stored in open reservoirs. Such water is subject to interruption in flows, and is not potable and is not fit for human consumption. District does not represent or guarantee that it is fit for any purpose. City shall be solely responsible, at its sole cost and expense, for any treatment, including filtration, of said water as may be required to render it fit for any particular purpose, including for human consumption. City will treat the raw water delivered by District at City's sole cost, expense, and responsibility in order to supply its municipal requirements. City agrees to defend District, and to hold District free and harmless from, any and all claims, injuries and damages arising directly or indirectly from use of said water by City or any of its customers.

2. When requested by the City, the District will sell and deliver surplus treated water via City intertie facilities as shown on Exhibit A, subject to availability of surplus water and capacity available in the Districts distribution system that is not needed for customers within District's boundaries. For planned City treatment plant outages, advanced notice to the District of three (3) days will be required.

It is understood and agreed that nothing obligates District to provide treated water at any specified rate of flow or in any specified volume or quantity or at any specified time. Only water surplus to the requirements of District's own customers shall be delivered through the intertie. If surplus treated water is not available or if the delivery of water through the intertie would, in the sole judgment of the District, jeopardize or unduly tax the District's water supply, water system, property or inhabitants, then such water deliveries may be restricted, or curtailed or eliminated without advance notice and without obligation or liability of any kind to the City or its inhabitants. In the event that water services were to be curtailed or

eliminated, District will endeavor to provide advance notification, or if not possible such notice thereafter as is reasonably feasible.

3. District agrees to sell and deliver a supply of surplus treated water for plant use (domestic, sanitation, irrigation and mixing of chemicals, etc.) at the Grass Valley Treatment Plant as is currently available to the City from District via a 2-inch meter connection as shown on Exhibit A, subject to District's applicable rates and charges.
4. Subject to the requirements and limitations of Paragraph 2, above, District agrees to sell and deliver surplus treated water sufficient to serve the Broadview Heights/Washington Heights area designated as Service Area No. 2. All water to be furnished to City for the purposes of serving Service Area No. 2 will be delivered to City at the point shown on Exhibit A. All water furnished to City for Service Area No. 2 shall be measured by District at the point of delivery.
5. District agrees to use reasonable diligence to maintain service without interruption, but it is agreed that surplus raw water delivered under this Agreement is subject to interruption or disruption by conditions affecting District's system, including but not limited to planned maintenance, snow or ice blockages, pipe, ditch or flume breaks, contamination or theft, and other causes. The parties hereto agree that District shall not be liable for damages for disruption and interruption in delivery of service and District shall be held harmless, defended, and indemnified under the indemnity set forth in Paragraph 13 for damages claimed by City or City's customers as a result of any such interruption or disruption or in the event City or its water users suffer damages from not receiving water under this Agreement, or an inadequate amount of water.

In the event District is unable to provide water as requested by City for any reason under this Agreement, District shall notify City in writing of the reasons preventing delivery by District of the water as requested by City and keep City advised thereafter of District's efforts to address the situation and its best estimate for resumption of requested service. Where the interruption or disruption will be due to planned maintenance, District shall notify City as to the expected date(s) and duration as soon as feasible after the outage is scheduled.

6. All meters and measuring structures will be maintained and operated by the District. All determinations relative to the measuring of water shall be made by District, and upon request by City, the District will furnish measurement data. If, for any reason, the measuring facilities fail to register during any period of time, the amount of water delivered to City shall be estimated by District, from the best information available. City may inspect such measuring equipment for the purpose of determining the accuracy thereof and upon request by City the accuracy of such equipment shall be investigated by District. Any error appearing shall be adjusted retroactively for a period not to exceed six months. After such water has passed the point of delivery, as mentioned hereinabove, neither District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality.

7. It is understood and agreed that this Agreement provides for purchase of surplus water and that, in a year which is considered or deemed to be a drought year or in a year which, in the estimation of District, requires rationing or curtailment of use of water by District's customers, District, at its discretion, may reduce or restrict the water service to City as may reasonably be required to mitigate such reductions or curtailments of District's customers. Such reductions, if necessary, will be imposed by District only in those circumstances where continuation of such service would require District to ration or curtail service to customers within the District's boundaries.
8. City agrees that for the period of this Agreement, any water served the City that returns to a natural waterway shall be subject to recapture and reuse by District in its discretion and City shall have no right to sell, transfer, reclaim or recapture said return flow of water delivered by District to City pursuant to this Agreement.
9. City shall pay District for all raw and treated water requested by, and delivered to, City at District's Outside District Municipal Rate (Schedule 5-R of District's Rules and Regulations) as established and modified by the District's Board of Directors from time to time in accordance with applicable law.
10. City shall pay District for surplus treated water delivered pursuant to Paragraph 3 of this Agreement at the Grass Valley Treatment Plant for plant use via a 2-inch meter connection at District's Non-Commercial Outside District Rate (Schedule 4-EO of District's Rules and Regulations) as established and modified by the District's Board of Directors from time to time in accordance with applicable law.
11. City agrees to pay District each month within thirty (30) days of billing for deliveries made in accordance with this Agreement, in lawful money of the United States, all sums due and owing for water furnished during the preceding month by District to City.
12. District shall not be required to increase service to City beyond the quantity specified in Paragraph 1, notwithstanding any expansion or modification of City's boundaries, customers, or service area, unless City requests and obtains, prior to such expansion or modification, the express written consent of District to expand such service. In order to minimize new construction and to avoid the duplication of pipelines already installed by District, and to provide service to customers that can be served by District or City at the lowest reasonable cost, City shall not expand its service area beyond service areas 1 and 2, as shown on Exhibit A; without the express written consent of District, which consent shall not be unreasonably withheld.

In order to minimize new construction and avoid the duplication of pipelines already installed by City which have capacity to serve additional customers, and to provide service to customers that can be served by District or City at the lowest reasonable cost, District shall not expand its service area to include areas within service areas 1 and 2, as shown on Exhibit A; without the express written consent of City, which consent shall not be unreasonably withheld.

13. City shall indemnify District, its officers, agents and employees against all loss, damage, expense and liability, including attorney fees and costs of litigation, resulting from injury to or death to any person or persons or injury to property, arising out of the use of raw water, provided hereunder, or in any way arising out of or connected with the performance of this Agreement, including without limitation the interruption or restriction of water deliveries hereunder by District. City shall, on District's request, defend any suit or administrative agency action, asserting any claim covered by this indemnity. City shall pay any costs that may be incurred by the District in enforcing this indemnity. Without, in any way limiting this indemnity and in accordance with the terms hereof, City shall defend and indemnify District against all claims for damages or other relief, including declaratory or injunctive relief, claimed by other water users contending that surplus raw water should not have been delivered to City under this Agreement.

14. Should any dispute between the parties arise over the terms and conditions of this Agreement, or the obligations of the parties thereunder, the parties will use their best effort to continue operating under the Agreement without interruption of service to City, or disruption of payments and other obligations of City to District. In this regard, District will take no action to reduce contract quantities of water to City, as are provided in this contract, and City shall take no action to reduce or withhold amounts due District under its then established rates and charges, until the dispute is resolved and no longer subject to appeal. In this regard, prior to the initiation of any litigation with respect to said dispute, the parties hereto agree to submit the dispute to arbitration. The process for said arbitration shall be as follows:

The parties will endeavor to mutually agree on a single arbitrator for purposes of considering and ruling on said dispute. If within 30 days from the demand for arbitration, the parties are unable to agree upon a single arbitrator, then the parties will each nominate their own representative to the arbitration panel. Within 30 days after selection of said arbitration panel, the arbitrators so chosen shall agree upon a third neutral arbitrator. The parties hereto will have all rights of discovery during said arbitration as are permitted under the Code of Civil Procedure of the State of California.

Upon submission of the dispute to the arbitrator or arbitrator panel, and presentation of the facts thereon, the arbitrator or arbitration panel shall reach agreement within 45 days of said submission. Each party will bear its own costs and expenses of a mutually agreed arbitrator chosen by the parties, or an arbitrator selected solely by that party and the parties shall split the expenses and costs contributable to the third neutral arbitrator.

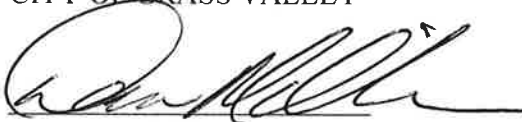
15. The Agreement is subject to the approval of the Board of Directors of the District and the City Council of City, and shall become effective as of date upon execution by all parties and shall remain in effect through December 31, 2042. After the expiration of the terms of this Agreement, City shall be entitled to continued service from year to year, and under such terms and conditions as may be mutually agreed upon. Such year to year service shall be subject to termination by either party on one year's notice. During such continued, year by year service, the physical conditions of service, including time, place, quantity and rate of delivery, shall remain as are provided for hereunder, unless changed conditions or mutual assent of the parties requires modification thereof. Other terms and conditions of the

continued service, including rates, shall be reasonable, lawful and equitable and shall be mutually agreed upon. In the event that District and City agree to continued service for a period of more than one year, City shall have the same option to receive continued service on a year by year basis as here provided for upon expiration of that and each succeeding period of any continued, multi-year contract. As deemed necessary, or upon each five (5) year anniversary, either party may request a meeting to discuss and review the terms of this Agreement. Except for the establishment of the rates as set forth in Paragraphs 9 and 10 hereof, no modifications of the other terms and conditions of this Agreement shall be made without the mutual consent of both City and District.

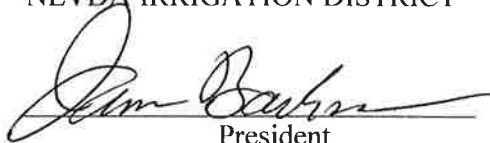
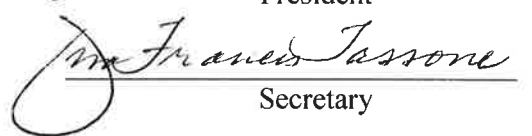
16. This Agreement shall not create or convey any right, title or interest, legal or equitable, in or to the property, conduits, water or water rights of District, nor interfere with or obstruct the full, free and unobstructed use or disposition thereof by District; and District shall have full control of the distribution of water through its system, and the right to establish and enforce such rules and regulations as it may deem expedient; and the furnishing of water hereunder shall not become the basis of a permanent right.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

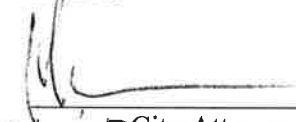
CITY OF GRASS VALLEY


Mayor


NEVDA IRRIGATION DISTRICT

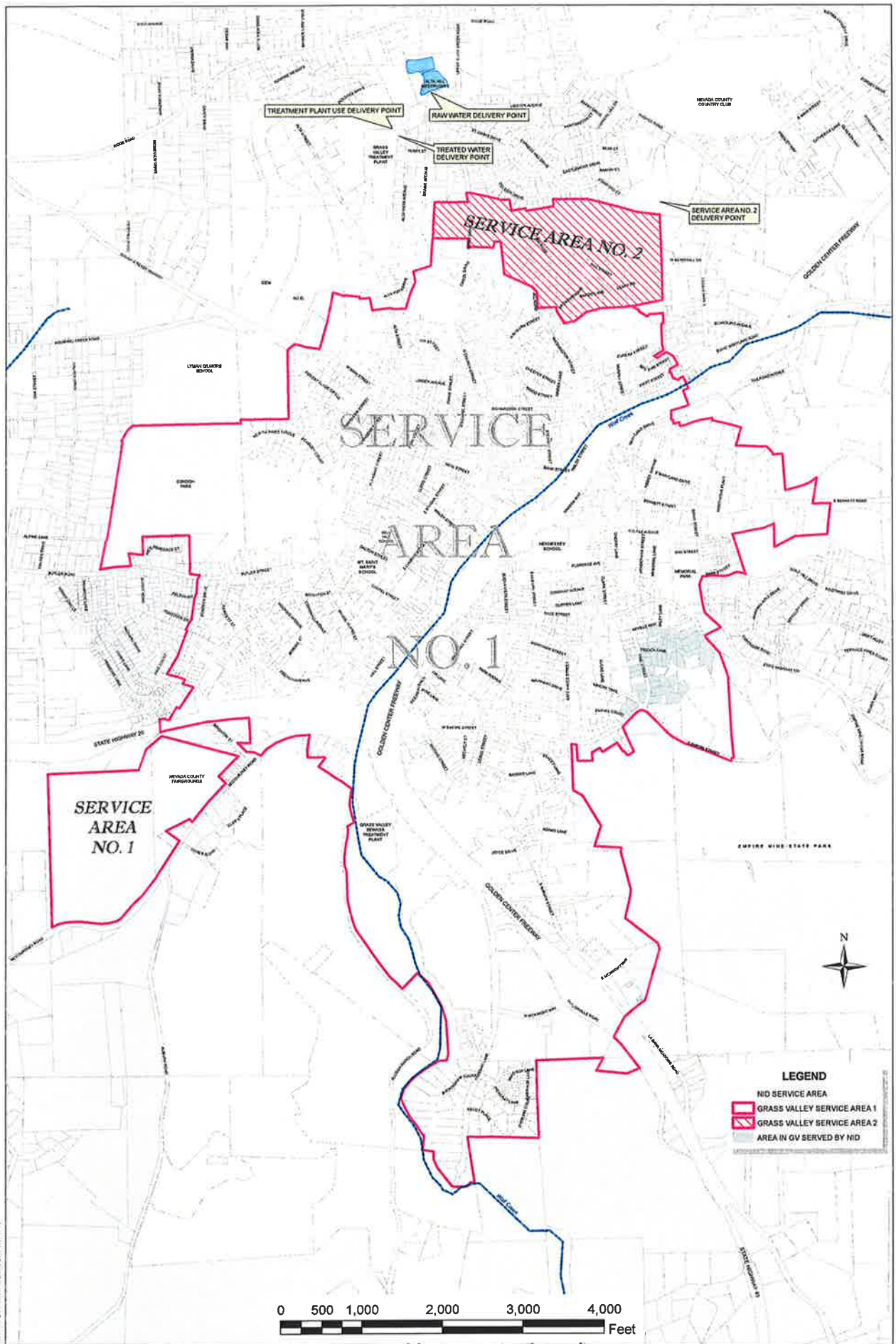

President

Secretary

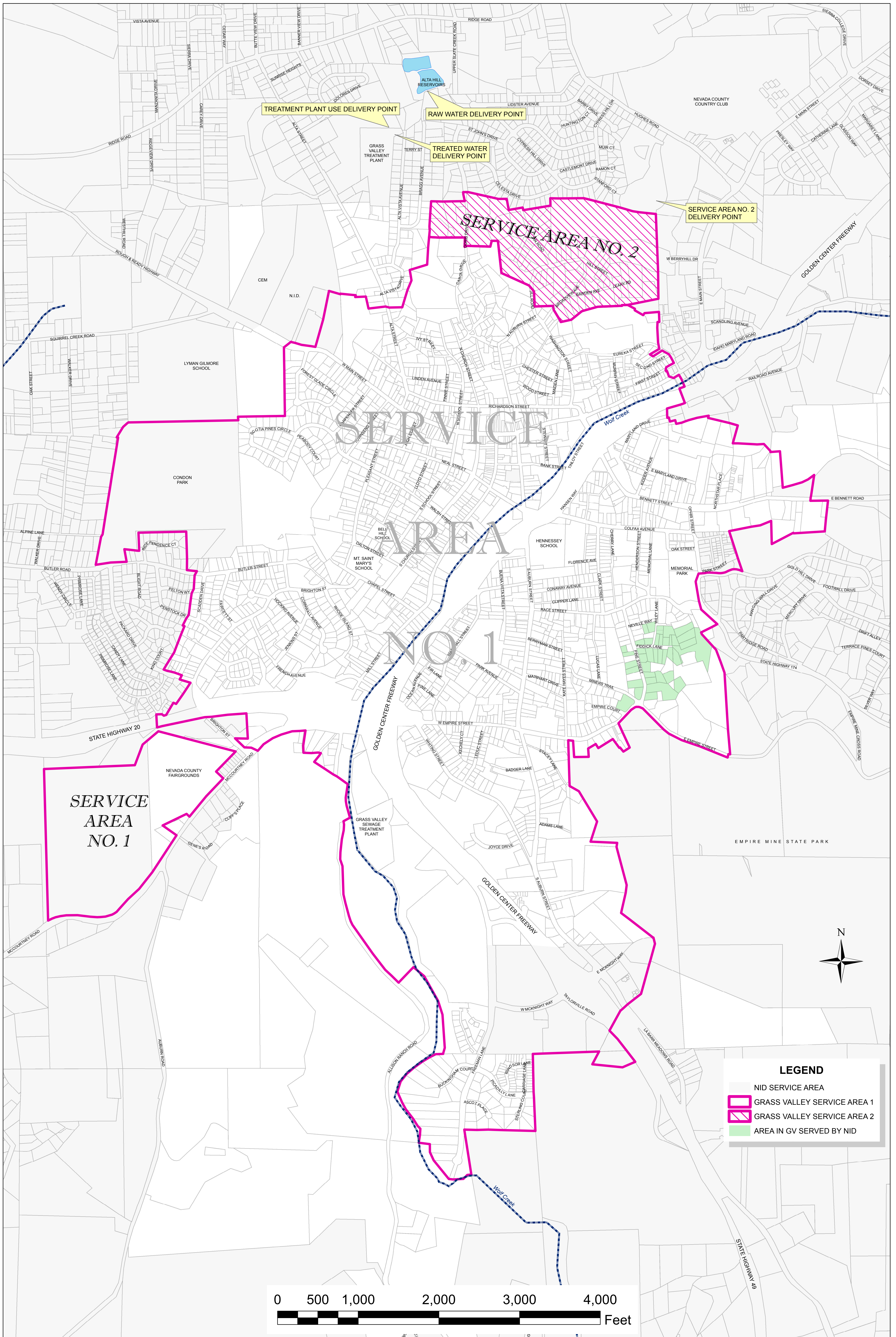
APPROVED AS TO FORM:


City Attorney
Michael R. Cabot 4/17/2013

ATTEST:


City Clerk 4/17/2013





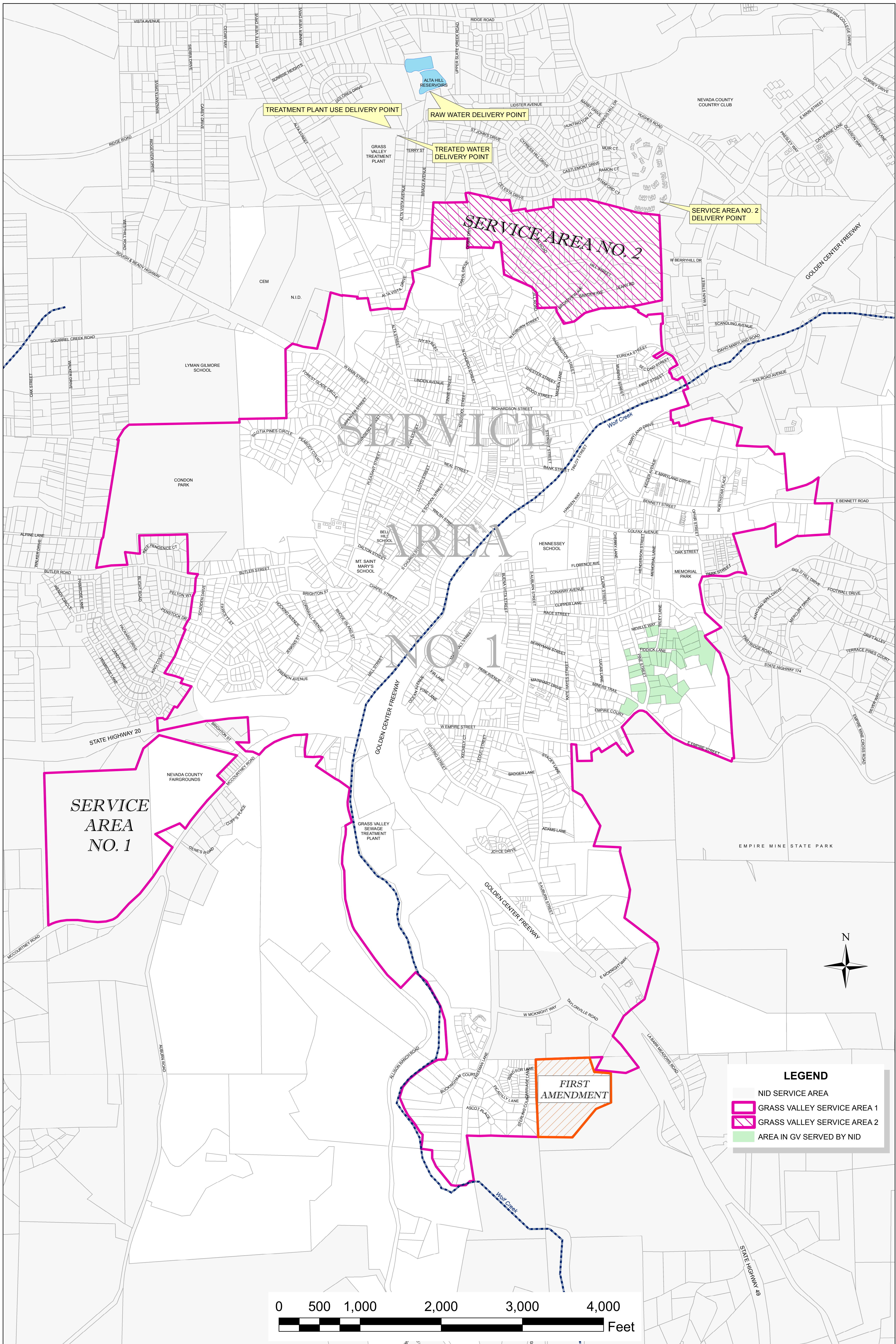
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NEVADA IRRIGATION DISTRICT
 NEVADA COUNTY -- PLACER COUNTY
 GRASS VALLEY, CALIFORNIA

GRASS VALLEY SERVICE AREAS

Drawn By: D. HUNT Date: 10/31/2012 Scale: 1" = 500' @ 24x36 **EXHIBIT 'A'**



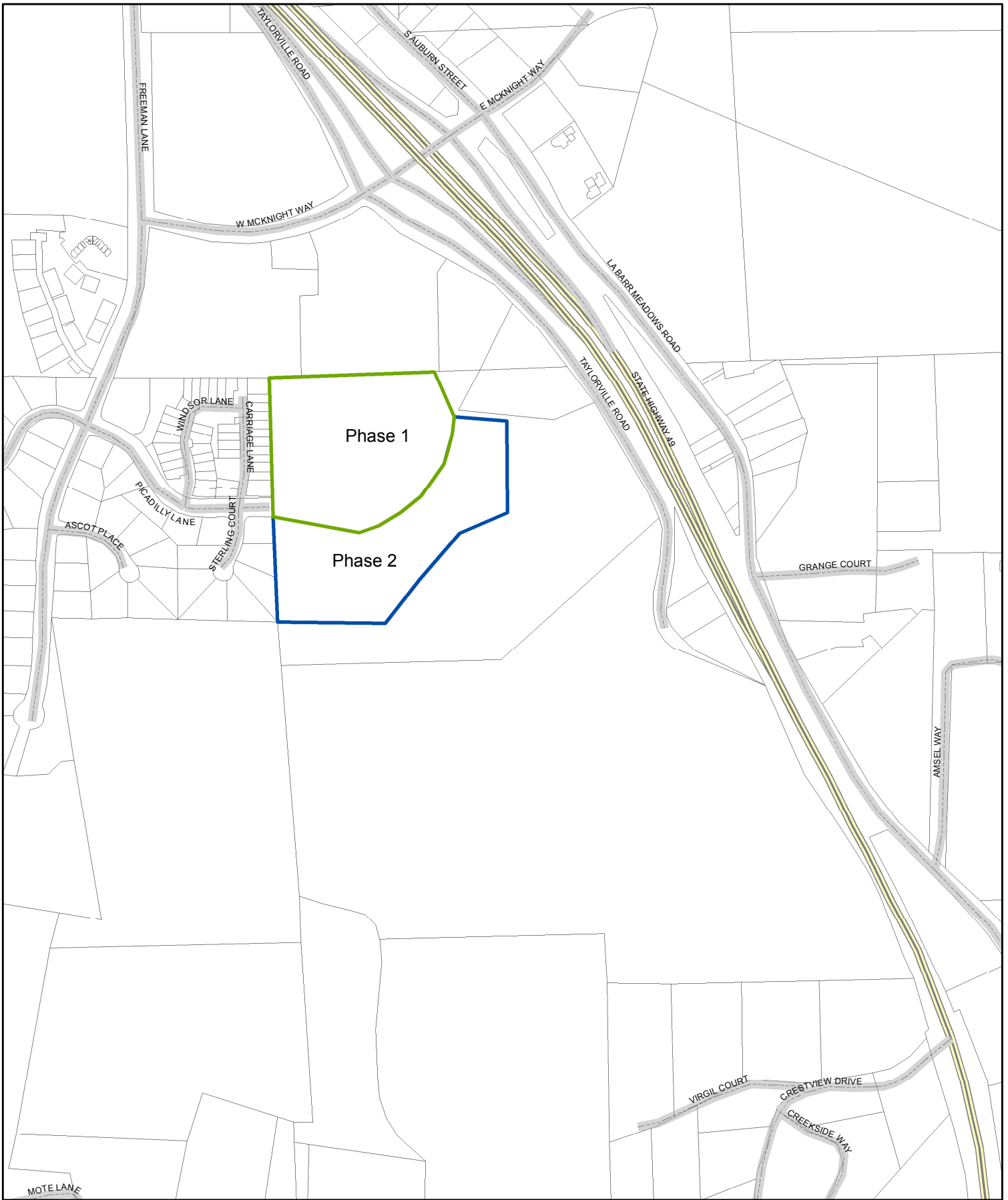
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NEVADA IRRIGATION DISTRICT
 NEVADA COUNTY -- PLACER COUNTY
 GRASS VALLEY, CALIFORNIA

GRASS VALLEY WATER SUPPLY CONTRACT

Drawn By: D. HUNT Date: 1/24/2019 Scale: 1" = 500' @ 24x36 **EXHIBIT 'B'**



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BERRIMAN RANCH DEVELOPMENT PHASE 1 & 2 (Exhibit C)



Date: 1/24/2019
 Drawn By: D. HUNT

NEVADA IRRIGATION DISTRICT
 NEVADA COUNTY -- PLACER COUNTY
 GRASS VALLEY, CALIFORNIA

Scale: 1" = 500' @ 8-1/2x11
 Sheet: 1 of 1