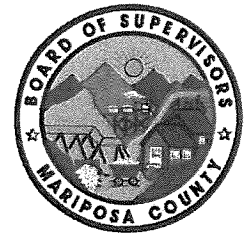


MARIPOSA COUNTY

Public Works · 209 966 5356



RESOLUTION - ACTION REQUESTED 2021-304

MEETING: May 25, 2021
TO: The Board of Supervisors
FROM: Mike Healy, Public Works Director
RE: Purchase of Real Property in a Downtown Parking Lot

RECOMMENDATION AND JUSTIFICATION:

Purchase Assessor's Parcel Number 013-184-0100 Located Within the Vehicle Parking District for the Purchase Price of \$58,806; Find This Action Exempt from Environmental Review; and Authorize the Board of Supervisors Chair to Sign the Notice of Exemption and the Purchase Agreement .

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On December 17, 2019 the Board authorized as part of Board Resolution 2019 - 729 a budget to purchase parking rights within the downtown parking lots. Attached is a Purchase and Sale Agreement for a large parcel within the parking lot between 5th and 6th Street.

The Board approved the retention of Willdan Engineering to facilitate real estate services on behalf of the County and they have negotiated and forwarded this Purchase and Sale Agreement for consideration by the Board.

The Board approved a resolution of intention to sell this property with Resolution 2021-221, which has been advertised for three consecutive weeks in the Mariposa Gazette.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

An opportunity to purchase land required for parking to enhance the viability of the Central Business District would be lost.

FINANCIAL IMPACT:

Sufficient dollars have been appropriated in the MID Settlement Fund.

ATTACHMENTS:

Res 2019-729 (PDF)
Parcel 013-184-0100 Offer of Purchase and Sale Agreement (PDF)
Parking Real Estate Services Agreement (PDF)
CEQA NOE for Purchase of Real Property in Parking District (DOCX)
Vicinity Map 1 - Purchase of Parcel in Parking District (JPG)
Vicinity Map 2 - Purchase of Parcel in Parking District (JPG)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Wayne Forsythe, District IV Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made and entered into as of May 25, 2021 ("Effective Date") by and between the County of Mariposa, a political subdivision of the State of California ("Grantee") and Mareka G. Lodge, successor trustee under the Wilfred L. Von Der Ahe Jr. Family Trust dated June 17, 1981 ("Grantor"). Grantee and Grantor are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

A. Grantor is the owner of certain real property located at 5010 5th Street, Mariposa, County of Mariposa, State of California, designated as Assessor's Parcel Number 013-184-0100 ("Property").

B. Grantee desires to acquire a portion of the Property which is necessary for the Mariposa County Parking District Rehabilitation Project ("Project"), a public use for which Grantee has the authority to exercise the power of eminent domain. The Parties acknowledge that this Agreement is made and entered into under threat of eminent domain. The Parties further desire to fully and finally resolve all claims, rights, interests and/or disputes relating to Grantee's construction and operation of the Project in the manner proposed as well as the acquisition, possession and/or use of the Acquisition Area (defined below).

The interest in the Property to be acquired pursuant to this Agreement (collectively, the "Acquisition Area") is 13,068± sf of Fee Simple Interest as more fully depicted in Exhibit A to the Grant Deed attached hereto as Exhibit 1 and incorporated herein by this reference.

C. The Parties acknowledge and agree that the Acquisition Area is (i) being acquired for a public use; (ii) necessary for the construction, operation and/or maintenance of the Project; and (iii) being acquired pursuant to this Agreement in lieu of a condemnation action or proceeding.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the covenants, agreements, representations and/or warranties contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties hereto do hereby agree as follows:

AGREEMENT

1. PURCHASE AND SALE; GRANTEE'S ADDITIONAL WORK.

a. Grantor agrees to sell, and Grantee agrees to purchase the Acquisition Area upon and subject to the terms and conditions set forth herein.

b. The purchase price for the Acquisition Area shall be FIFTY-EIGHT THOUSAND EIGHT HUNDRED SIX DOLLARS AND NO CENTS (\$58,806.00) ("Purchase Price").

c. The Purchase Price reflects the fair market value of the Acquisition Area without the presence of contamination. If the property being acquired is found to be contaminated by the presence of Hazardous Waste which requires mitigation under Federal or State law, Grantee may elect to recover its cleanup costs as allowed by law.

2. FULL AND COMPLETE SETTLEMENT IN LIEU OF CONDEMNATION.

a. Grantor acknowledges and agrees that payment and receipt of the Purchase Price includes, without limitation, full payment of just compensation for Grantee's acquisition of the Acquisition Area and/or construction and operation of the Project in the manner proposed, including, without limitation, claims for lease bonus value, lost rents, damage to improvements, severance damages, business goodwill, furniture, fixtures and equipment, pre-condemnation damages, claims of inverse condemnation, attorneys' fees, costs, interest, and any and all other damages, causes of action and demands of Grantor against Grantee because of Grantee's purchase of the Acquisition Area and for any and all claims (known and unknown) arising from or relating to the purchase and sale which is the subject of this Agreement. Consistent with the foregoing, Grantor, on behalf of itself and its heirs, executors, administrators, successors and assigns, acknowledges that Grantee's performance under this Agreement constitutes full and complete satisfaction of Grantee's obligations to compensate Grantor not only for the purchase of the Acquisition Area, but also for construction and/or operation of the Project.

b. Grantor expressly acknowledges that execution of this Agreement does not constitute a waiver or other limitation on Grantee's constitutional and/or statutory right to commence an eminent domain proceeding in Superior Court to either (1) acquire the Acquisition Area to address a defect in Grantor's ability to convey clear and unencumbered title to Grantee; or (2) to clear any additional recorded or unrecorded encumbrances that impact Grantee's ability to own and possess the Acquisition Area free of any encumbrance, license, easement, property right and/or lien.

3. GRANTOR'S WARRANTIES, REPRESENTATIONS AND COVENANTS.

Grantor hereby warrants, represents and/or covenants to Grantee that:

- a. Grantor owns the Property in fee simple and has full power and authority to sell, transfer and/or otherwise convey the Acquisition Area to Grantee and to perform its obligations pursuant to this Agreement.
- b. To the best of Grantor's knowledge, there are no action, suits, material claims, mechanics or materialmen liens, legal proceedings or any other proceedings or claims affecting the Property or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.
- c. Grantor shall not do anything which would impair Grantor's title to any of the Acquisition Area during the completion of the acquisition process contemplated in this Agreement.
- d. To the best of Grantor's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease or other agreement or instrument to which the Acquisition Area may be bound.
- e. Other than as is disclosed or covered in this Agreement, there are no agreements for occupancy in effect for the Acquisition Area, and no unrecorded possessory interests or unrecorded agreements that would adversely affect Grantee's use of the Acquisition Area. Grantor will not enter into any agreements or undertake any obligations prior to Closing which will in any way burden, encumber or otherwise affect the Acquisition Area without the prior written consent of Grantee, including, without limitation, any agreements for occupancy or use of the Acquisition Area.

- f. Grantor is aware of and shall comply with its obligation under California Health and Safety Code Section 25359.7 to disclose information to Grantee regarding the environmental status of the Property. To Grantor's knowledge, the Property and any contiguous real property owned by Grantor is not in violation of any federal, state or local statute, regulation or ordinance relating to industrial hygiene or to environmental conditions on, under or about the Property, including, without limitation, soil and groundwater conditions underlying the Property which could affect the Property, including, without limitation, the Acquisition Area, or its use.
- g. Until the close of escrow, Grantor shall upon learning of any fact or condition which would cause any of Grantor's warranties and representations in this Agreement not to be true as of closing, immediately give written notice of such fact or condition to Grantee.
- h. Grantor shall maintain the Acquisition Area in good condition and shall perform all of its obligations under any service contracts or other contracts affecting the Acquisition Area until the Effective Date.
- i. Each of the above warranties and representation is material and is relied upon by Grantee separately and collectively. Each of the above representations and warranties shall be deemed to have been made as of the date of execution of this Agreement and shall survive the recording of the deeds for the Acquisition Area.

4. POSSESSION.

Upon execution of this Agreement by Grantee and Grantor, and deposit of funds in the amount of the Purchase Price into Escrow, Grantee shall have the right of possession and use of the Acquisition Area, including, without limitation, the right to remove and dispose of improvements thereon, thereat and/or thereto and construct the Project.

5. DAMAGE OR DESTRUCTION OF PROPERTY.

Prior to the transfer of title, should the Acquisition Area or any improvements thereon be materially damaged or destroyed by fire, earthquake or other calamity without the fault of Grantee, Grantee may elect to terminate this Agreement by written notice to Grantor. Such termination shall relieve the Parties of their obligations under this Agreement. Grantee, in its sole discretion may elect to reappraise the Property and make an offer to purchase the Property.

6. GRANTEE REPRESENTATION.

Grantee makes no representation, warranty, covenant or agreement that the Project shall be constructed or operated; and Grantor acknowledges and agrees that no obligation, liability or duty whatsoever shall exist or be incurred by Grantee or any other person or entity to Grantor or any other person or entity as a result of any failure to construct or operate the Project for any reason. The foregoing agreement of Grantor shall survive the Closing, or the termination of this Agreement by either party (whether Grantor or Grantee) for any reason, including a breach by the other party.

7. TIME OF ESSENCE.

Time is of the essence of each and every term, condition, obligation and provision of this Agreement.

8. ENTIRE AGREEMENT; WAIVER AND MODIFICATION.

This Agreement is the entire Agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior agreements and understandings, whether oral or written, between the Parties with respect to matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the Party to be bound thereby. No waiver by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

9. COUNTERPARTS; COPIES.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Except as required for recordation, the parties as well as Escrow Holder and Title Company shall accept copies of signatures, including, without limitation, electronically transmitted (for example, by e-mail, facsimile, PDF or otherwise) signatures.

10. CAPTIONS.

Any captions to, or headings of, the articles, sections, subsections, paragraphs, or subparagraphs or other provisions of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision of this Agreement.

11. NO OBLIGATIONS TO THIRD PARTIES.

Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than the Parties.

12. EXHIBITS.

The Exhibits attached to this Agreement are hereby incorporated into this Agreement by this reference.

13. NOTICES.

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given as of the date of mailing when delivered in person or sent by registered or certified mail return receipt requested), postage prepaid, or Federal Express, UPS or other overnight mail carrier, addressed as follows:

To Grantor: Mareka G. Lodge
53690 Road 432
Bass Lake, CA 93604

To Grantee: Public Works & Transportation
4639 Ben Hur Road
Mariposa, CA 95338

14. GOVERNING LAW; VENUE.

This Agreement shall be construed in accordance with the laws of the State of California. Any and all legal actions brought to enforce or interpret the terms and provisions of this Agreement shall be commenced exclusively in a court of competent jurisdiction in the County of Mariposa.

15. SUCCESSORS AND ASSIGNS.

This Agreement as well as the deed attached as Exhibit 1 shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

16. RATIFICATION.

This Agreement is subject to the approval and ratification by the Grantee's governing body or its delegated representative.

17. SEVERABILITY.

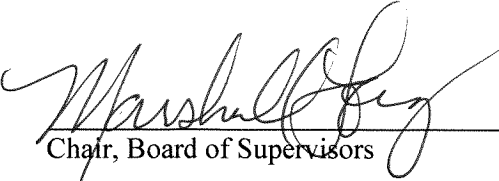
If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

GRANTOR: Mareka G. Lodge, successor trustee under the
Wilfred L. Von Der Ahe Jr. Family Trust dated June 17, 1981


Mareka G. Lodge, Successor Trustee 3/12/21
Date

COUNTY OF MARIPOSA


Chair, Board of Supervisors 5-25-21
Date

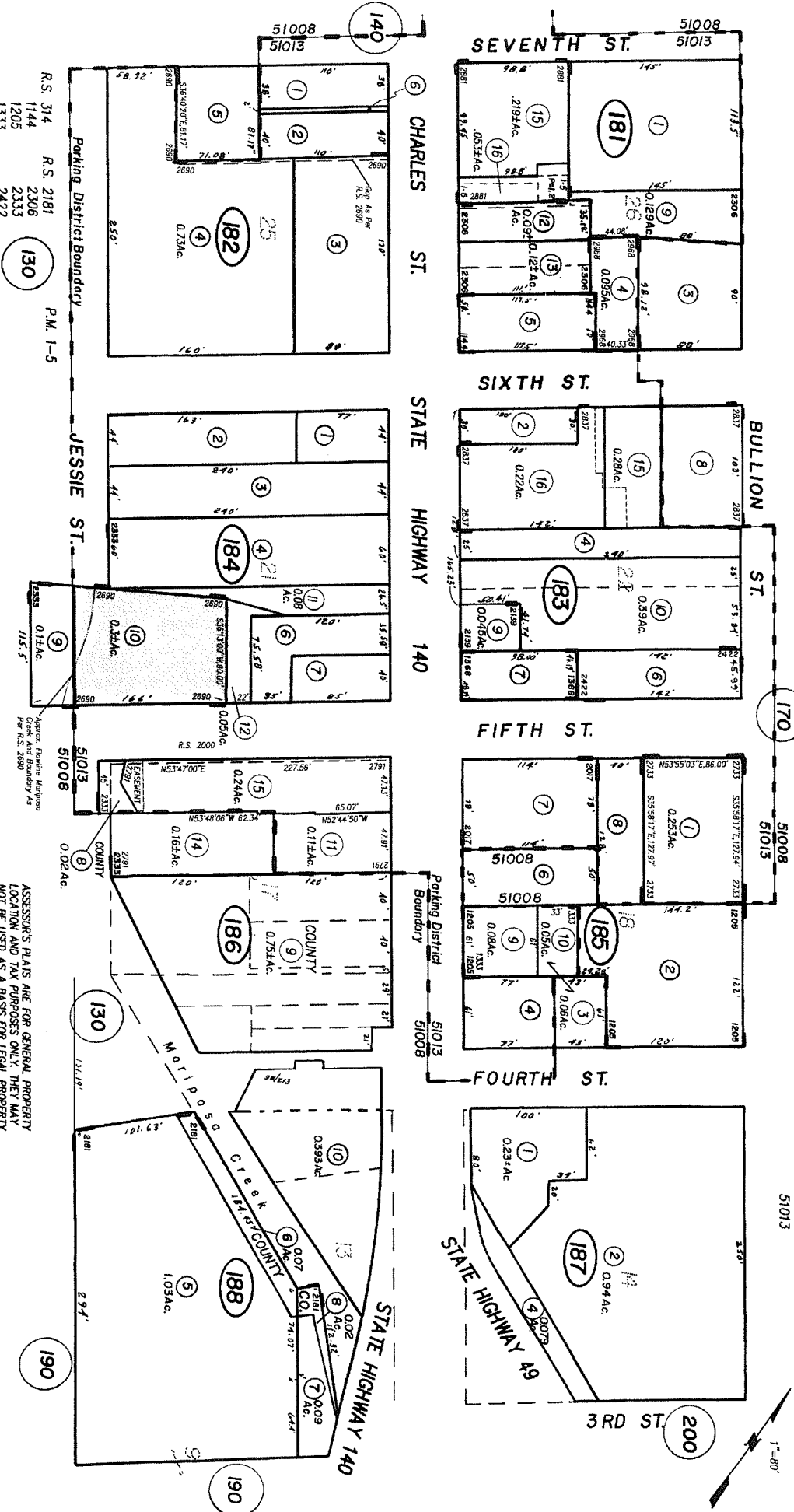
APPROVED AS TO FORM:


STEVEN W. DAHLEM
COUNTY COUNSEL

BLOCKS 13,14,17,18,21,22,25&26, TOWN OF MARIPOSA

Tax Area Code
51008
51013

13-180



R.S. 314	R.S. 2181
1144	2306
1205	2333
1333	2422
1368	2690
1476	2733
1771	2791
2000	2837
2017	2881
2139	2968

P.M. 1-5
130

NOTE: Assessor's Parcel Numbers Shown in Small Circles.
ASSESSOR'S PLATS ARE FOR GENERAL PROPERTY LOCATION AND TAX PURPOSES ONLY. THEY MAY NOT BE USED AS A BASIS FOR LEGAL PROPERTY DESCRIPTIONS.

Assessor's Map Bk. 13-Pg. 180
County of Mariposa, Calif.
2018

JUL 30 2018

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Grant of Easement to the County of Mariposa, a political subdivision of the State of California, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the County pursuant to authority conferred by the Mariposa County Board of Supervisors Resolution No. _____ adopted on _____, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated _____

Marshall Long, Chair
Mariposa County Board of Supervisors