

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *mlm*

BOARD AGENDA # \*C-1

Urgent  Routine

AGENDA DATE October 11, 2011

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way for the McHenry Avenue Widening Project, Parcel Owner Amerine Properties, L.P., APN: 074-002-010

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
2. Authorize the Chairman of the Board to execute the agreement.
3. Authorize the Director of Public Works to sign and cause to record the Grant Deed on behalf of Stanislaus County as authorized by Board Resolution dated March 8, 2011 and Government Code 27281.
4. Direct the Auditor-Controller to issue a warrant in the total amount of \$80,066, payable to First American Title Company, for the purchase amount of \$78,566 and \$1,500 for estimated escrow fees and title insurance.

FISCAL IMPACT:

The total estimated cost for the McHenry Avenue Widening Project is approximately \$3,200,000. The \$80,066 for the purchase of this right-of-way is funded 100% by the Regional Transportation Impact Fee Program (RTIF) and consists of \$78,566 for the purchase of the right-of-way, and \$1,500 for estimated escrow and title insurance fees.

BOARD ACTION AS FOLLOWS:

No. 2011-627

On motion of Supervisor DeMartini, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:

*Christine Ferraro*  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the McHenry Avenue Widening Project, Parcel Owner Amerine Properties, L.P., APN: 074-002-010

**DISCUSSION:**

As approved by the Board of Supervisors, the scope of the McHenry Avenue Widening Project is to widen McHenry Avenue between Ladd Road to the south and Hogue Road to the north. This widening will provide two through lanes in each direction and a dual left turn lane in the center of the road. To accomplish this project, pavement will be widened on both sides of the road, widened shoulders will be provided, additional right-of-way will be acquired from the adjacent properties, and additional storm drainage facilities will be constructed.

In December 2007, the Board of Supervisors awarded a contract to Associated Engineering for the design of the McHenry Avenue Widening Project (Ladd Road to Hogue Road). The Board also awarded a contract to Sycamore Environmental for the preparation of the environmental clearance documents in accordance with the California Environmental Quality Act.

Pursuant to the California Environmental Quality Act (CEQA), Sycamore Environmental has prepared and circulated a Negative Declaration to various agencies and to the public. The public comment period closed on November 3, 2009. Public Works' staff received comments from four agencies and incorporated the comments into the Final Initial Study/Negative Declaration.

On March 2, 2010, the Board of Supervisors approved the Initial Study/Negative Declaration for the McHenry Avenue Widening Project.

To accomplish the future McHenry Avenue Widening Project, the County will need to acquire additional roadway right-of-way from the Amerine parcel on the east side of McHenry Avenue. The property owner and its tenants have agreed to accept the following compensation:

Property Owners: Amerine Properties, L.P.  
Tenants: Jerry & Moya Semone; Fidel Yepez Mora  
Amount of Compensation: \$78,566  
Assessor's Parcel Number: 074-002-010  
Right-of-Way Area: 0.359 acres

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

**POLICY ISSUES:**

The McHenry Avenue Widening Project supports the Board's priorities of providing A Safe Community, A Healthy Community and A Well-Planned Infrastructure System by improving traffic congestion on the County road system.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the McHenry Avenue Widening Project, Parcel Owner Amerine Properties, L.P., APN: 074-002-010

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4130  
Chris Brady, Public Works.

CB:la

L:\ROADS\9216 - McHenry Ave Widening (Ladd Rd to Hogue Rd) Phase 1\Design\Board Items\ROW Acquisition Process\Right of Way Amerine 10-11-2011.pdf

Project: McHenry Avenue Widening  
Grantor: Amerine Properties, L.P.  
APN.: 074-002-010 (portion)

## **AGREEMENT FOR ACQUISITION OF PROPERTY**

This Agreement for Acquisition of Property is between the County of Stanislaus (County) and Amerine Properties, L.P. (Grantor), Jerry Semone and Moya Semone (collectively "Lessees Semone"), and Fidel Yopez Mora (Lessee Mora). (Grantor, Lessees Semone and Lessee Mora are collectively referred to herein as the "Compensated Parties") This Agreement is expressly subject to approval by the County Board of Supervisors.

### **1. PROPERTY.**

Grantor agrees to sell to County, and County agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, the fee simple portion of real property described in Exhibit A and shown in Exhibit B, along with a temporary construction easement described in Exhibit A-1 and shown on Exhibit B-1, each attached hereto which are incorporated herein by this reference (the "Property"), and improvements.

### **2. DELIVERY OF DOCUMENTS/ESCROW.**

All documents necessary for the transfer of the Property shall be executed and delivered by Grantor to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with First American Title Company, 1506 H Street, Modesto, CA 95354, at (209) 529-5000.

### **3. PURCHASE PRICE AND TITLE.**

The consideration to be paid by the County for the Property and improvements (the "Purchase Price") is SEVENTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-SIX AND NO/100 DOLLARS (\$78,566.00), and is payable and segregated as follows:

**\$19,629.00** Total amount payable to **Amerine Properties, LP**, as compensation and,

**\$36,886.00** Total amount payable to **Jerry Semone and Moya Semone** as compensation and,

**\$22,051.00** Total amount payable to **Fidel Yopez Mora** as compensation. This amount does not include compensation for loss of business goodwill, if any, which will be determined at a future date.

County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents. Grantor

shall convey good, marketable and insurable title to the Property free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded.

Good, marketable and insurable fee simple title to the Property shall be evidenced by a CLTA owner's policy of title insurance ("Title Policy"). The Title Policy shall be in the amount of \$14,352.00, showing title to the Property interest vested in County. It shall be a condition precedent to County's obligations under this Agreement that escrow holder is able to issue the Title Policy to County.

County shall pay all costs of any escrow, title insurance, and recording fees incurred in this transaction.

The Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.

The Compensated Parties acknowledge that this transaction is a negotiated settlement in lieu of condemnation and agree that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon.

**4. PRORATION OF TAXES.**

- (a) Taxes shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq., as of the recordation of the Grant Deed conveying title to County, except that where County has taken possession of the Property, taxes shall be prorated as of the date of possession.
- (b) Grantor authorizes County to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to the Property.

**5. LEASE WARRANTY**

Grantor represents and warrants to County that there are no oral or written leases on all or any portion of property exceeding a period of one month, and Grantor further agrees to hold County harmless and reimburse County for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month, except: Jerry Semone and Moya Semone, and Fidel Yopez Mora.

**Agreement for Purchase  
Amerine Properties, L.P.**

Page 3 of 4

**6. POSSESSION.**

Possession of real property shall be given to County upon the recording of Grantor's deed.

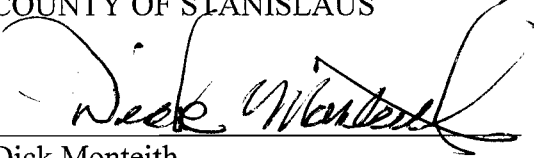
**7. HAZARDOUS WASTE MATERIAL**

The Grantor hereby represents and warrants that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or County law, the County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination.


IN WITNESS WHEREOF, the parties have executed this Agreement on OCT 11 2011 as follows:

COUNTY OF STANISLAUS



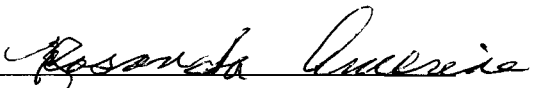
Dick Monteith  
Chairman of the Board of Supervisors

GRANTOR(S)  
AMERINE PROPERTIES, L.P.


By: 

ATTEST:  
Christine Ferraro Tallman  
Clerk of the Board of Supervisors of the  
County of Stanislaus, State of California

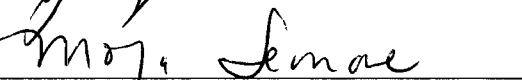
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Deputy Clerk

By: 

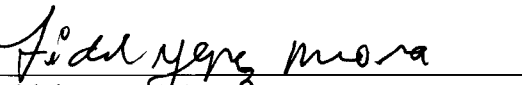
LESSEE(S):

  
Jerry Semone

APPROVED AS TO CONTENT:  
Department of Public Works

  
Moya Semone

By:   
Matt Machado  
Public Works Director

LESSEE:  
  
Fidel Yopez Mora

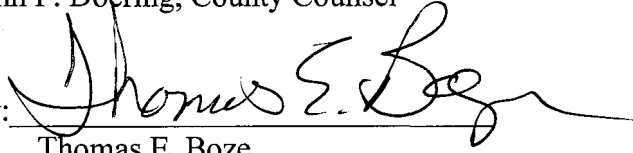
**Agreement for Purchase  
Amerine Properties, L.P.**

**Page 4 of 4**

APPROVED AS TO FORM:

John P. Doering, County Counsel

By:

A handwritten signature in black ink, appearing to read "Thomas E. Boze", written over a horizontal line.

Thomas E. Boze  
Deputy County Counsel