



RESOLUTION No. 23-589

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION TO PURCHASE RIGHT OF WAY FROM PETER H. RIVARA AND JAMIE T. COLE, TRUSTEES OF THE PETER AND JAMIE RIVARA LIVING TRUST, ON FLORISTON AVENUE – DISTRICT V

WHEREAS, to assist the County and several neighbors on Floriston Avenue in coming to a mutually agreeable solution to road right of way concerns, the acquisition of right of way from Peter H. Rivara and Jamie T. Cole, Trustees of the Peter and Jamie Rivara Living Trust, is recommended by staff; and

WHEREAS, the acquisition of 227 square feet of right of way, on property located at 10930 Floriston Avenue, Nevada County, California (APN 48-120-40), has successfully been negotiated; and

WHEREAS, the negotiated price of this easement is \$2,356.23, which reflects fair market value based on recent nearby appraisals; and

WHEREAS, the County may incur additional costs associated with this acquisition, including recording and title insurance charges, if any; and

WHEREAS, Nevada County Administrative Code Section A-II 42.10.5 does not provide authorization for the Director of Public Works to acquire this right of way without Board of Supervisor approval because Floriston Avenue is a non-maintained County Road, the work has not been included in a Board or Supervisors approved Capital Improvement Plan, environmental review specific to the proposed acquisition or budgeted for, nor is the acquisition in conjunction with approval of a land development project; and

WHEREAS, sufficient budget is available in the Road Capital Improvement budget.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Board of Supervisors:

1. Approves the agreement for the acquisition of 227 square feet right of way on property located at 10930 Floriston Avenue, Nevada County, California (APN 48-120-40) from Peter H. Rivara and Jamie T. Cole, Trustees of the Peter and Jamie Rivara Living Trust in the amount of \$2,356.23, in substantially the form attached hereto, and the Chair of the Board of Supervisors is hereby authorized to execute the Purchase Agreement.
2. Authorizes the payment of the County's purchase, share of closing costs, including all recording and title insurance charges, if any and authorizes the Auditor Controller to encumber these costs along with the purchase agreement.
1114-30154-702-1000 / 540110 \$2,356.23 purchase agreement plus all fees.
3. Authorizes the Director of the Department of Public Works to execute on behalf of the County any and all additional documents required to consummate this real property transaction, including the certificate of acceptance.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 5th day of December, 2023, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarthout,
Susan Hoek and Hardy Bullock.
Noes: None.
Absent: None.
Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

pw

By: *Heidi Hall, Deputy COB*

Edward C. Scofield
Edward C. Scofield, Chair

GRANTOR: Peter H. Rivara and Jamie T. Cole
Project Name: Floriston Avenue

APN: 48-120-40

**COUNTY OF NEVADA
PURCHASE AGREEMENT (VALUE UNDER \$5,000)**

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, by and between the COUNTY OF NEVADA, (hereinafter referred to as (COUNTY) and PETER H. RIVARA AND JAMIE T. COLE, TRUSTEES OF THE PETER AND JAMIE RIVARA LIVING TRUST, DATED DECEMBER 7, 2012 (hereinafter referred to as GRANTOR). This Agreement is made with reference to the following facts:

WHEREAS, COUNTY desires to purchase and GRANTOR is willing to convey to COUNTY for the price and under the terms and conditions specified herein, Right of Way interest to a portion of assessor's parcel number 48-120-40, as described in the Grant Deed (Attachment "A") and Legal Description (Attachment "B") and shown in the plat map (Attachment "C"), attached hereto, and incorporated herein by this reference ("Property"); and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

In consideration of the terms and conditions set forth in this Agreement, GRANTOR shall execute and deliver a Grant Deed suitable for recordation and conveying from GRANTOR to COUNTY, Right of Way interest to the Property in the forms set forth in Attachment "A" and Attachment "B" and Attachment "C".

1. Entire Contract

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Grant Deed and shall relieve COUNTY of all further obligations or claims on this account or on account of the location, grade, construction or operation of the proposed public improvement.

ATTACHMENTS

Designate all required and included attachments:	Req'd	Not Req'd
Attachment A: Grant Deed	<u> x </u>	_____
Attachment B: Legal Description Right of Way Exhibit A	<u> x </u>	_____
Attachment C: Plat Map Right of Way Exhibit B	<u> x </u>	_____
Attachment D: Schedule of Changes	_____	<u> x </u>

2. COUNTY shall

A. Pay the sum of \$2,356.26 (Two Thousand Three Hundred Fifty-Six Dollars and 26/100) for the Property, and any improvements thereon, to the GRANTORS, conditioned upon the Property vesting in COUNTY free and clear of all liens, leases, encumbrances, (*recorded or unrecorded*), assessments and taxes. Clearing of any title exceptions not acceptable to COUNTY is the responsibility of GRANTOR.

B. Pay all recording and title insurance charges, if any, incurred in this transaction.

GRANTOR: Peter H. Rivara and Jamie T. Cole
Project Name: Floriston Avenue

APN: 48-120-40

- C. Have the authority to deduct and pay from the amount shown in Clause 2A above any amount necessary to satisfy any liens, bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent assessments, which may have become a lien at the close of escrow. Current taxes, if unpaid, shall be segregated and prorated as of the close of escrow and paid from the amount shown in Clause 2A above. Close of escrow for this transaction shall be contingent upon the title company receiving deeds of reconveyance from any deed of trust or mortgage holder trustees and beneficiaries.
- D. Taxes for the tax year in which escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the at the close of escrow.

4. Hazardous Waste

The acquisition price for the Property reflects the fair market value of the Property 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, the COUNTY may in its sole discretion elect to recover its clean-up costs from those who caused or contributed to the contamination or to terminate this Agreement immediately without further obligation to GRANTOR. GRANTOR shall further indemnify, defend, save and hold harmless the COUNTY from any and all claims, costs and liability, including reasonable attorney's fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on the property, save and except claims, costs or litigation arising through the sole willful misconduct of the County, its agents or employees.

GRANTOR further agrees as part of the consideration herein that GRANTOR will not, during any occupancy before or after the close of escrow, use, generate, manufacture, store, dump, bury, leak or dispose of any flammable, explosive or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent on the Property, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency (hereinafter "Hazardous Substance"). In such event GRANTOR will, at its sole expense, remove, cleanup or otherwise mitigate such problem, and will further release and indemnify COUNTY from any and all liability arising from such problem.

5. Right of Possession and Use

It is agreed and confirmed by the parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the subject property by COUNTY, and/or its designees or assignees shall commence one day following payment and that the amount shown in Clause 2A herein includes, but is not limited to, full payment for such possession and use, including interest and damages if any, from said date.

6. Binding on Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the parties to this Agreement.

GRANTOR: Peter H. Rivara and Jamie T. Cole
Project Name: Floriston Avenue

APN: 48-120-40

7. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the property, 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.

8. Quitclaim Deeds

If any lessee interests are identified in Paragraph 7 herein, as a condition precedent to approval of this Agreement by the County Executive Officer for the County of Nevada, Quitclaim Deeds or similar releases sufficient to clear any possessory rights from the subject property will be required. GRANTOR agrees to secure said Quitclaim Deeds or releases. Close of escrow shall be contingent upon the title company receiving said Quitclaim Deeds or releases, if required by COUNTY.

9. Release of All Claims

GRANTOR hereby acknowledges and agrees that the receipt and acceptance by GRANTOR for the payment set forth in Clause 2(A) of this Agreement constitutes full and complete satisfaction of all claims, cost, expenses including relocation expenses, demands, damages, compensation for acquisition of property as described herein, severance damages, loss of business goodwill, interest, litigation expenses, and attorney fees, and all claims, whether asserted or alleged by GRANTOR or not, for other losses or damages recognized under law which GRANTOR could assert or allege against the COUNTY, as a result of the COUNTY's acquisition of the property described herein, including but not limited to relocation expenses and/or benefits pursuant to existing Federal and/or HCD guidelines or any other law, regulation, or guideline. GRANTOR hereby waives and releases all rights, claims, costs, expenses, demands, damages or causes of action the GRANTOR has or may have in the future against the County of Nevada as a result of or arising out of the COUNTY's acquisition of the property described herein. In furtherance of the intentions set forth herein, GRANTOR acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

GRANTOR hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Paragraph 10.

10. Approval of COUNTY

GRANTOR understands that this Agreement is subject to approval by the County Executive Officer and/or the Board of Supervisors of the County of Nevada, and this Agreement shall have no force or effect unless and until such approval has been obtained.

GRANTOR: Peter H. Rivara and Jamie T. Cole
Project Name: Floriston Avenue

APN: 48-120-40

11. Warranties

- A. GRANTOR and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of GRANTOR.
- B. GRANTOR represents that they will have at time of payment the power to sell, transfer and convey all right, title and interest in the Property to COUNTY save and except for COUNTY approved exceptions. GRANTOR further represents that to the best of its current knowledge, the Property is not subject to any litigation proceedings, or investigation and contains no easements or interests of other parties which, if revealed or known, might materially affect the obligations or intentions of either party with respect to the objects of this Agreement. GRANTOR further represents that there are no contracts, agreements or understandings with other parties concerning the Property that GRANTOR has not disclosed in writing to COUNTY.
- C. GRANTOR warrants that they shall not allow any liens, encumbrances, assessments, easements, leases or taxes to accrue on the Property during the pending of its transfer to the COUNTY except as provided in this Agreement, nor shall GRANTOR attempt to resell the Property to any other person or entity whatsoever during the pending of its sale to the COUNTY.
- D. The parties warrant that they are not represented by any real estate agents or brokers in this transaction, and that there are no commissions due as a result of its completion.

12. Notices

All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, by courier service or express mail, or by first-class mail postage prepaid, to the addresses set forth below. All notices shall be deemed given or delivered (a) if sent by mail, when deposited in the mail, first-class postage prepaid, addressed to the party to be notified, (b) if delivered by hand, courier service or express mail, when delivered, or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

TO GRANTOR:

Name: Peter Rivara & Jamie Cole
Address: 10930 Floriston Avenue
Truckee, CA 96161

**TO: COUNTY OF NEVADA,
COMMUNITY DEVELOPMENT
AGENCY DIRECTOR**

Name: Trisha Tillotson
Address: 950 Maidu Avenue
Nevada City, CA 95959

13. Entire Agreement

This Agreement constitutes the Entire Agreement between GRANTOR and the COUNTY pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14. Time of the Essence

Time is of the essence in this Agreement. In the event that any date specified in this Agreement falls on a Saturday, Sunday or public holiday, such date shall be deemed to be the succeeding day on which the public agency and major banks are open for business.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Venue

An action at equity or law arising out of the subject matter of this Agreement shall be filed and tried in the County of Nevada, State of California.

17. Headings

The captions to the paragraphs of this Agreement are inserted for convenience only and shall not affect the intent of this Agreement.

18. Language Construction

The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

19. Exercise of Discretion

Where the terms of this Agreement require approval or the exercise of discretion by GRANTOR or by the COUNTY, discretion shall not be exercised in an unreasonable, arbitrary, or capricious manner.

20. Specific Performance

In the event of a breach of this Agreement by GRANTOR, COUNTY shall be entitled to pursue any and all remedies available to it against GRANTOR, including, without limitation, claims for all damages attributable to GRANTOR'S breach, and specific performance of this Agreement.

GRANTOR: Peter H. Rivara and Jamie T. Cole
Project Name: Floriston Avenue

APN: 48-120-40

IN WITNESS WHEREOF, the COUNTY OF NEVADA, a public entity, has authorized the execution of this Agreement in duplicate by its County Executive Officer of the County of Nevada on the ____ day of _____, 2023, and GRANTOR has caused this instrument to be executed on their behalf:

COUNTY OF NEVADA:

By: 
Chair Edward Scofield
Board of Supervisors


Date: 12/5/23

APPROVED AS TO FORM:

Office of the County Counsel

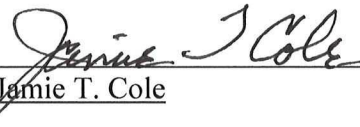
By: 
Katherine Elliott
Deputy County Counsel

PETER H. RIVARA AND JAMIE T. COLE, TRUSTEES OF THE PETER AND JAMIE RIVARA LIVING TRUST, DATED DECEMBER 7, 2012

By: 
Peter H. Rivara

Title: Co-Trustee

Date: 11-16-2023

By: 
Jamie T. Cole

Title: Co-Trustee

Date: 11-16-2023

NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED

RECORDING REQUESTED BY

Nevada County

WHEN RECORDED RETURN TO:

Nevada County
Nevada County Department of Public Works
950 Maidu Avenue
Nevada City, CA 95959

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Exempt from recording fees under Government Code §6103

GRANT DEED

APN # 48-120-40

For a valuable consideration, receipt of which is hereby acknowledged **PETER H. RIVARA AND JAMIE T. COLE, TRUSTEES OF THE PETER AND JAMIE RIVARA LIVING TRUST, DATED DECEMBER 7, 2012**, (hereinafter "**Grantor**"), hereby GRANTS to **County of Nevada, a political subdivision of the State of California**, (hereinafter "**Grantee**"), all rights, title and interest in the following described property for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, in, on, under, over and across the real property in Nevada County, California, more particularly described on **Exhibit "A"** and shown on **Exhibit "B"** attached hereto and incorporated herein by this reference.

GRANTOR:

PETER H. RIVARA AND JAMIE T. COLE, TRUSTEES OF THE PETER AND JAMIE RIVARA LIVING TRUST, DATED DECEMBER 7, 2012

Dated: 11-10-2023

By: 
Peter H. Rivara, Trustee

By: 
Jamie T. Cole, Trustee

ACKNOWLEDGEMENT

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.

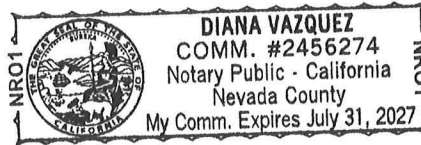
STATE OF California)
) ss.
COUNTY OF Nevada)

On 11/16/2023, before me, Diana Vazquez, Notary Public, personally appeared Peter H. Rivara & Jamie T. Cole, 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 signature(s) 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.

Diana Vazquez
Signature



My Commission Expires: 07/31/2027 This area for official notarial seal

EXHIBIT "A"

All that real property situated within the Southwest quarter of Section 34, Township 18 North, Range 17 East, M.D.B. & M., within the unincorporated territory of the County of Nevada and being a portion of that certain property conveyed to Peter H. Rivara and Jamie T. Cole, Trustees of The Peter and Jamie Rivara Living Trust dated December 7, 2012 as described in the Deed document recorded January 10, 2013 as Document No. 2013-000898, Official Records of Nevada County, and being more particularly described as follows:

Beginning at the northeast corner of the said Rivara Living Trust property and being the southeast corner of the Trailer Park Parcel as shown on that certain Parcel Map for Thomas Kirby recorded February 2, 1971 in Book 1 of Parcel Maps at Page 131 in the Official Records of Nevada County; thence from said Point of Beginning and southerly along the westerly right-of-way for Floriston Avenue, South 12° 30' 00" East, 86.96 feet; thence continuing southerly along the westerly right-of-way of Floriston Avenue, South 23° 00' 00" East, 16.38 feet to the southeast corner of said Rivara Living Trust property; thence leaving said Floriston Avenue right-of-way and along the south property line of said Rivara Living Trust property, South 89° 54' 30" West, 7.14 feet; thence leaving the south line of said Rivara Living Trust property, North 10° 15' 00" West, 100.59 feet to the Point of Beginning.

The herein described property contains an area of 227 square feet, more or less.

The herein described property is shown on Exhibit "B" attached hereto and made a part hereof.

The herein described property affects a portion of APN 48-120-40.

This description has been prepared by me, or under my direct supervision, in conformance with the Professional Land Surveyors Act, on October 23, 2023.



Kevin J. Nelson, P.L.S. 8423
Expires 12-31-24



EXHIBIT "B"

SCALE: 1" = 30'



FLORISTON AVE

Edge Road

Edge Road(E)

S.23°00'00"E.

66.58'

82.96'

86.96'

100.59'

16.38'

S.89°54'30"W.

7.14'

S.12°30'00"E.

N.10°15'00"W.

P.O.B.

Rock pp

Rock

Area to the County of Nevada (227 SF)

Fence(E)

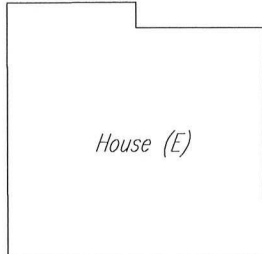
227.37'

S. 89°54'30" W.

Trailer Park Parcel
1 P M 131

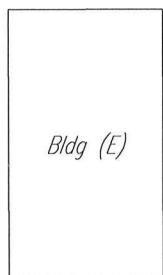
102.31'

N. 89°54'30" E.



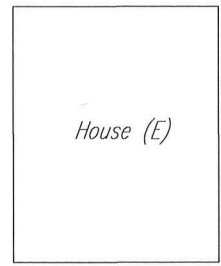
House (E)

RIVARA TRUST
Doc. No. 2013-000898



Bldg (E)

ANDRESEN
Doc. No. 2003-047940



House (E)

N. 00°05'30" W.

50.00'

100.00'

LOT 35

LOT 34

LOT 33

1 S U B S 3 7

N. 89°54'30" E.

N. 00°05'30" W.

50.00'

JUNIPER WAY

