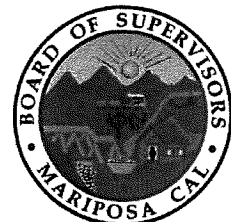




# MARIPOSA COUNTY

Administration • 966-3222



## RESOLUTION - ACTION REQUESTED 2019-730

MEETING: December 17, 2019  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: Sierra Foothill Conservancy Land Acquisition Agreement

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### RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Sierra Foothill Conservancy for Land Acquisition Services (\$240,000); and Authorize the Board of Supervisors Chair to Sign the Agreement.

A staff report is attached for review. Staff recommends approval of the agreement.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has supported efforts to expand the Mariposa Creek Parkway in the past.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve. The County can use General Fund dollars, seek grants without the aid of Sierra Foothill Conservancy or abandon plans to expand the Mariposa Creek Parkway. Any of these options will likely delay the County's ability to move forward on Parkway expansion.

### FINANCIAL IMPACT:

**This action would encumber up to \$240,000 of MID funds for land acquisition**

### ATTACHMENTS:

**Staff Report (DOCX)**  
**Sierra Foothill Conservancy Agreement (DOCX)**  
**Mariposa Area Map (PDF)**

**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Merlin Jones, District II Supervisor  
**SECONDER:** Kevin Cann, District IV Supervisor  
**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

# MARIPOSA COUNTY

DALLIN KIMBLE  
County Administrative Officer



5100 Bullion Street  
P.O. Box 784  
Mariposa, CA 95338  
209-966-3222  
1-800-736-1252  
FAX 209-966-5147  
dkimble@mariposacounty.org

To: Board of Supervisors  
From: Dallin Kimble, County Administrative Officer  
Date: December 17, 2019  
Subject: Sierra Foothill Conservancy Agreement

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Mariposa County Strategic Plan Objective 4.1 directs staff to "increase the number and mileage of publicly accessible trails". Additional objectives encourage "sustainable management of natural resources" and development of infrastructure and amenities that contribute to Mariposa as an attractive place for families to live, work and play.

One effort that bridges these strategic plan objectives is the development of the Mariposa Creek Parkway. Extending the Parkway would enlarge a community amenity accessible to all ages, provide environmental and health benefits to our community, and possibly create economic development opportunities. This project has been recently revitalized with grants and public events focused on gathering public input and designing the Parkway to best meet the needs of Mariposans.

A significant obstacle to the development of the Mariposa Creek Parkway is the need to have control of the land where it is located either through ownership or easements. Some landowners along the path have made clear that they are willing to sell, but not provide easements to their property.

Acquisition of four properties would secure the land for the Mariposa Creek Parkway and present some additional opportunities for the County. These properties are commonly known as the Fiske property, the Hulbert property, the Clark property and the Pfremmer property. These four properties total over 350 acres and are cumulatively valued in excess of \$1.5 million.

This agreement is an attempt to acquire the needed properties at a much lower cost to the County. If approved, the agreement allows Sierra Foothill Conservancy to lead the effort to obtain funding and acquire the four named properties with little or no General Fund dollars. Payments to Sierra Foothill Conservancy would be based on performance and achievements of milestones. The County would be the sole owners of the property after each transaction is complete.

Understanding that some grant funds may have restrictions on the way acquired

property can be used, staff will be working with Sierra Foothill Conservancy to provide input on the type of funds that should be sought. The Board retains the ability to refuse a transaction if terms of acquisition are undesirable.

Once transactions are complete, the County will be able to complete several valuable projects. Extension of the Mariposa Creek Parkway from its current end to the Mariposa County Jail is the first goal of this agreement. Acquiring these properties would also allow for the establishment of a shaded fuel break on the hillside adjacent to Mariposa, additional trails along the ridge and between the ridge and Parkway, land for future housing development, a more level potential site for a new Mariposa County Sheriff's Office and potential economic development opportunities.

There is some risk associated with this agreement. It is possible that the County could spend up to \$120,000 and not be able to secure any of the intended properties. This risk is present but unlikely. Sierra Foothill Conservancy has already begun working on the County's behalf and some grants have already been received. Because the acquisition of even one property delivers more in value than the amount being risked, it is very unlikely that even a partially successful effort would yield less benefit than cost.

Given the above, staff recommends approval of the agreement with Sierra Foothill Conservancy.

**AGREEMENT FOR LAND ACQUISITION SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into this 17<sup>th</sup> day of Dec., 2019, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Sierra Foothill Conservancy, ("Contractor"), pursuant to the following terms and conditions.

**WITNESSETH:**

**1. TERM**

The term of this Agreement shall commence on December 17, 2019, and terminate on December 31, 2021 unless extended as provided by this Agreement.

**2. SERVICES**

Contractor shall perform work to acquire parcels identified for acquisition within the Phase Three (3) expansion area of the Mariposa Creek Parkway Project as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

**3. COMPENSATION**

Contractor shall be compensated for services performed in an amount not to exceed two hundred and forty thousand (\$240,000) as described in Exhibit B. The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

**4. INSURANCE**

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(4) Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

**B. OTHER INSURANCE PROVISIONS**

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the

Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **5. HOLD HARMLESS/INDEMNIFICATION**

Contractor shall hold harmless, defend and indemnify County and its officers, employees, agents, and volunteers, from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of County.

## **6. INDEPENDENT CONTRACTOR**

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

## **7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)**

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the

payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

## 8. STATE AND FEDERAL TAXES

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

## 9. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

## 10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

### **CONTRACTOR:**

Bridget M. Fithian  
5065 Suite G, HWY 140  
P.O. Box 691  
Mariposa, CA 95338

### **COUNTY:**

County Administrative Officer  
County of Mariposa  
5100 Bullion Street  
P.O. Box 784  
Mariposa, CA 95338

## 11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

## 12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

### **13. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County Administrative Officer. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

### **14. ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

### **15. TERMINATION AND RIGHTS UPON TERMINATION**

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon thirty (30) calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

### **16. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

### **17. DISPUTES**



Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

## **18. CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

## **19. NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

## **20. MANDATORY AND PERMISSIVE**

"Shall" is mandatory. "May" is permissive.

## **21. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

## **22. COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

## **23. OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

## **24. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

## **25. AUTHORITY**

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

## **26. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

## **27. NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

## **28. WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.


## **29. FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.


If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

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

COUNTY OF MARIPOSA

  
Miles Menetrey, Chair  
Board of Supervisors

ATTEST:

  
Daniella Bondino, Deputy  
René LaRoche  
Clerk of the Board

CONTRACTOR

  
Bridget M. Fithian  
Executive Director

APPROVED AS TO FORM:


  
Steven W. Dahlem  
County Counsel

Exhibit A  
SCOPE OF WORK

Contractor's current scope of work includes services to acquire parcels known as the "Hulbert Property" (APN 013-130-045), the "Fiske Property" (APNs 012-140-034, 012-140-039, 012-143-004, 013-130-078, 013-230-053), and the "Pfremer Property" (APNs 012-340-005, 012-140-062, 012-140-065, 012-140-064, 012-140-017, 012-140-063, 012-140-016, 012-140-022, 012-140-023) and the "Clark Property" (APNs 013-230-054 and 012-143-003). These parcels are located within the Phase 3 Expansion Area of the Mariposa Creek Parkway Project. Additional parcels may be added to this contract subject to agreement by both parties.

Contractor will complete acquisition of subject properties in three phases as follows:

1. ***Phase A Project Development*** includes landowner engagement, landowner commitment (option agreement or letter of intent) and project due diligence. Due diligence shall include, but is not limited to, discovery of zoning, utilities and/or easements on site, tax liens or judgments, lease agreements, pending or ongoing litigation, structures on site, a title report and an appraisal.
2. ***Phase B Financing*** includes all steps necessary to secure funding for acquisition. Funds may be acquired through grants from public, nonprofit and/or private sources.
3. ***Phase C Acquisition Completion*** includes all steps to complete acquisition of the property and transfer of said property to the County.

Exhibit B  
COST PROPOSAL

<b>Performance</b>	<b>Compensation</b>	<b>Paid</b>
Phase A: Project Development	\$15,000 per project	At initiation
Phase B: Financing	\$15,000 per project	Begin Phase B
Phase C: Acquisition Completion	\$15,000 per project	Upon transfer
Appraisal	Up to \$7,500	As needed
Phase 1 Environmental Assessment	Up to \$5,500	As needed
Survey, if required	Up to \$13,000	As needed
Mineral Remoteness Study, if required	Up to \$5,500	As needed
Biological Constraints Analysis, if required	Up to \$15,500	As needed
Matching grant funds, if required	As needed, subject to Board approval	As needed

Additional professional services may be considered by the County and Contractor as needed.