**RESOLUTION NO. 2017-184**

**AMENDED AND RESTATED RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA: (1) DECLARING THE BOARD’S INTENTION TO SELL THE REAL PROPERTY LOCATED AT 933 WATER STREET, NAPA, CALIFORNIA, APN 003-242-003-000; (2) ESTABLISHING A MINIMUM PRICE FOR SALE OF THE PROPERTY AND OTHER TERMS, CONDITIONS AND REQUIREMENTS APPLICABLE TO ALL BIDS; (3) SETTING THE PROCEDURES, DATE, TIME, AND PLACE FOR THE OPENING AND REVIEW OF SEALED BIDS FOR PURCHASE OF THE PROPERTY; (4) SETTING THE DATE, TIME AND PLACE FOR A MEETING OF THE BOARD OF SUPERVISORS AT WHICH THE BOARD SHALL CONSIDER COUNTY STAFF’S RECOMMENDATIONS REGARDING SELECTION AND ORDER OF BIDS; AND (5) DIRECTING THE CLERK OF THE BOARD TO PUBLISH AND POST NOTICE**

**WHEREAS,** the County has owned and operated the property located at 933

Water Street, Napa, APN 003-242-003-000 (the “Water St. Property” or “Property”) as a corporation yard and for other County uses for more than twenty years; and

**WHEREAS**, on January 12, 2016, the Board of Supervisors (“Board”) adopted Resolution No. 2016-05 declaring the Water St. Property as surplus; and

**WHEREAS,** the County received no timely notices, proposals or indications of any interest in the Property from any of the agencies or entities specified by the Surplus Lands Act to whom notice was given of the Board’s decision to declare the Property as surplus; and

**WHEREAS,** the County has thus complied fully with the Surplus Lands Act (Government Code sections 54220 et seq.) prior to initiating steps to sell the Property; and

**WHEREAS,** it is the Board’s desire to sell the Property in a timely, expeditious manner to a purchaser whose proposed use of the Property is compatible with zoning and general plan restrictions applicable to the site (subject of course to discretionary approvals that may be required from the City of Napa); and

**WHEREAS,** Government Code section 25526 requires that the Board of Supervisors, by at least a two-thirds vote of all of its members, adopt a resolution declaring the County’s intention to sell the Property, setting forth a description of the Property, the minimum price for sale of the Property and any other terms and conditions of such sale that shall apply to Bids, and establishing the procedures, date, time and place for the opening and consideration of sealed Bids for purchase of the Property; and

**WHEREAS,** the County has retained a real estate broker in connection with the contemplated sale and will pay from the proceeds of sale a broker’s commission of two and one-half percent (2.5%) of the sales price, the disclosure of which is required by Government Code section 25527; and

**WHEREAS**, on August 22, 2017, the Board unanimously adopted Resolution No. 2017-129 (the “Original Resolution of Intent”) declaring the Board’s intent to sell the Property and describing the terms and procedures applicable to the sale, including, but not limited to, procedures for issuance of a Request for Proposals (“RFP”) and for bid opening and award of a purchase contract; and

**WHEREAS**, staff has determined that before the sale of the Property may proceed, certain modifications to the RFP are necessary, including but not limited to modification of the legal description and mapping of the Property, which modifications necessitate a change in the timeline for submission, opening and review of bids, and for the Board’s award of the contract for the purchase and sale of the Property, which in turn necessitate the amendment and restatement of the Original Resolution of Intent,

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Napa County that the Original Resolution of Intent is hereby amended, superseded and restated in its entirety as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. The Board declares Napa County’s intention to sell the Property, consisting of 1.397 acres located at 933 Water Street, Napa, APN 003-242-003-000.
3. The Board declares that the minimum net bid price that will be acceptable shall be the sum of Three Million, Nine-Hundred Thousand Dollars ($3,900,000.00), in net proceeds to the County after payment of any and all brokerage commissions owed to the bidder/buyer’s real estate broker(s), and after payment of all escrow, title and recording fees (the “Net Minimum Price”). It shall be the sole responsibility of the buyer of the Property to pay through escrow all amounts necessary to pay any and all real estate brokerage commissions or fees owed to any real estate brokers or agents retained by or representing the buyer, and any and all escrow, title and recording fees and costs.
4. The County is selling the Property in “as-is” condition with the requirement that all bidders will represent in their bid package (“Bids”) that they have conducted their own independent due diligence investigation of the Property prior to submission of Bids, and that they understand all applicable zoning and land use restrictions on the Property.
5. The Board establishes the following requirements, prerequisites, terms and conditions that have been specified in a RFP and addenda previously issued and addenda to be issued by the Director of Public Works, which will govern. and/or be required of, all Bids before they may be deemed responsive and considered:
6. The Bid must be in writing and signed by the bidder and comply with all of the procedural and substantive provisions of the RFP.
7. The Bid must be for a net purchase price that meets or exceeds the Net Minimum Price of $3,900,000.00 that the County must receive after payment of any and all brokerage commissions owed to the bidder/buyer’s real estate broker(s) and all escrow, title and recording fees.
8. The Bidder must agree to lease the Property back to the County, rent-free, for a period of up to eighteen (18) months.
9. The Bid must describe the bidder’s proposed short-term and long-term intended uses of the Property.

1. The Bid must state whether or not a broker’s commission is to be paid to a buyer’s broker and, if so, provides the name(s) of any broker to whom a commission is to be paid, and the rate and/or method of calculating the amount of the commission to be paid.
2. The Bid must be accompanied by a deposit in the form of a cashier’s check (which must be the equivalent of cash) payable to First American Title Company (with reference to the purpose of purchasing the County Property) in the amount of $250,000.00 (the “Deposit”).
3. The Bid must be accompanied by the bidder’s fully executed Purchase and Sale Agreement in the form attached to the RFP, without modification (the “Agreement”), with the amount of the bidder’s proposed purchase price filled in and initialed by the bidder’s authorized signatory.
4. All Bids must include a signed written statement (“Bid Statement”) from the bidder (using the form that will be provided to bidders as part of the RFP), which states as follows:
   1. The bidder agrees to buy and accept the Property in “as-is” condition.
   2. The bidder represents and agrees that the bidder has conducted independent due diligence investigation of the Property prior to submission of the Bid, understands all applicable zoning and land use restrictions on the Property, and understands the City of Napa’s land use entitlement and permitting process.
   3. The bidder acknowledges that the Property is located in an area of potential flooding, acknowledges the importance of existing and future flood control improvements adjacent to or in the vicinity of the Property, acknowledges that the Napa County Flood Control and Water Conservation District (“Flood District”) owns the right to use certain easements which burden the Property and owns an area of land in fee simple adjacent to the Property, and acknowledges and agrees that the Flood District shall have the right and need to access the Property periodically in order to construct and maintain flood control improvements on the Property and on adjacent property, including some work that must be done from time to time during business hours.
   4. The bidder shall, if selected to purchase the Property, comply with all laws, ordinances, codes, rules, covenants, restrictions, regulations and licensing requirements that are applicable to the Property and to any proposed development of the Property, including such laws and regulations of any and all federal, state, and local agencies having jurisdiction and /or authority.
   5. The bidder agrees to cooperate with the County in good faith to complete all actions and to prepare and execute all documents and instruments to complete the purchase and transfer of the Property.
   6. If selected as the purchaser of the Property, the bidder agrees to waive any and all contingencies to close of escrow no later than thirty (30) days after the Agreement is fully executed, and to close escrow on the purchase of the Property no later than forty-five (45) days after the Agreement is fully executed.
   7. If selected as the purchaser of the Property, the bidder agrees to pay through escrow all amounts necessary to pay any and all real estate brokerage commissions or fees owed to any real estate brokers or agents retained by or representing the buyer, and any and all escrow, title and recording fees and costs necessary for consummation of the purchase.
5. The procedure and order for the County’s acceptance of Bids and the handling and application of Deposits shall be as follows:
   1. Subject to further adoption of a Resolution by this Board as described below, after the opening of Bids by the Bid Selection Committee (“Committee”) and the consideration of the Committee’s recommendations, the intent is to accept the Bid from the highest responsive bidder (the “Selected Bidder”).
   2. The Selected Bidder’s Deposit shall become non-refundable upon the Selected Bidder’s waiver of contingencies to close of escrow or upon the date upon which the Selected Bidder will be deemed to have waived all contingencies as specified in the Agreement, whichever occurs first, and shall be credited toward payment of the purchase price at the close of escrow.
   3. If for any reason escrow fails to close on the Agreement with the Selected Bidder, then County staff will promptly notify the next highest responsive bidder of the County’s acceptance of that bidder’s Bid as the next Selected Bidder, which acceptance shall become effective upon timely receipt of the required Deposit from that bidder. That new Selected Bidder shall be given five (5) days in which to deliver to the County a Deposit, again in the form of a cashier’s check (which must be the equivalent of cash) payable to First American Title Company (with reference to the purpose of purchasing the County Property), and again in the amount of $250,000.00. The new Selected Bidder’s Deposit shall, as with that of any prior Selected Bidder, become non-refundable upon the Selected Bidder’s waiver of contingencies to close of escrow or upon the date upon which the Selected Bidder will be deemed to have waived all contingencies as specified in the Agreement, whichever occurs first, and shall be credited toward payment of the purchase price at the close of escrow.
   4. At such time as the next Selected Bidder provides the Deposit and indicates a desire to proceed with the purchase of the Property, then the County will use the Purchase and Sale Agreement executed by that Bidder, which that Bidder submitted along with its proposal and bid package, shall have that Agreement signed by the Chair of the Board, and shall cause escrow to be opened with the new Selected Bidder.
   5. This same procedure shall apply to the sequence of the County’s acceptance of Bids from other responsive bidders and handling of their Deposits, in order of highest responsive bid to lowest responsive bid, until the list of responsive bidders is exhausted.
6. Pursuant to Government Code section 25527, the Board intends that the County will pay a broker’s commission to Colliers International on the sale in an amount calculated as two and one-half percent (2.5%) of the purchase price received by the County for the Property.
7. Pursuant to Government Code section 25539. the Board hereby orders the use of a procedure alternative to that required by Government Code sections 25526 through 25535 with respect to the manner in which, and the location at which, the Property may be sold:

The Board delegates to the County Executive Officer (“CEO”) the authority to designate a committee of no fewer than three and no more than five people who shall serve as the Committee. The Committee shall together, in public and at the time and place specified below, open and review all sealed Bids and carry out the following duties:

1. Determine which Bids are responsive according to the criteria and requirements listed above and in the RFP;
2. Announce which Bids are determined to be responsive and which Bids are determined to be non-responsive and the basis for that determination as to each Bid found to be non-responsive;
3. Allow the non-responsive bidders an opportunity to show the Committee how the information expressly stated or contained within the four corners of their written Bid satisfies those terms and conditions and why the Bid should be determined to be responsive;
4. Consider whether the determination of non-responsiveness as to any Bid should be changed based on the bidder’s showing of where in the Bid the information satisfying the terms and conditions of responsiveness is set forth (and the Committee should not consider supplemental information not set forth in the Bid);
5. Determine which responsive Bid offers the highest net purchase price for the Property (net of any commissions to be paid to any broker retained by the bidder);
6. Announce publicly which responsive Bid is the highest and would thus be the Bid that the Committee would recommend to the Board of Supervisors be accepted in the absence of any oral overbids;
7. After making that announcement, call for oral overbids in accordance with Government Code section 25531 (each of which must be at least five percent (5%) higher than the last highest and responsive Bid or oral overbid) from those bidders whose written Bids were determined to be responsive;
8. If any oral overbid is made by a bidder whose written Bid was determined to be responsive, ask each of the oral bidders to confirm in writing that the oral overbid is also subject to all of the terms, conditions, statements and promises made by the bidder in its written Bid;
9. Announce publicly, after any and all oral overbids are taken, the order of the responsive Bids, including all oral overbids, from highest to lowest in the net amount offered for purchase of the Property, which will form the sequence of acceptance of responsive Bids to be recommended to the Board;
10. Assist the CEO in presenting the recommendations to the Board of which Bid should first be accepted by the Board, and the order of other responsive Bids to be accepted in sequence.
11. Bids and all materials required above as part of the Bids must be presented to the County no later than noon on January 11, 2018, by delivery to the person and address specified in the RFP. The Committee shall open and evaluate the Bids at 1:30 p.m. on January 11, 2018, at 1195 Third Street, 3rd Floor, Board of Supervisors meeting room, Napa, California 94559. The Committee’s opening of sealed Bids, determination of which Bids are responsive, invitation of oral overbids, and determination of the highest responsive Bid and the order of other Bids that may be accepted in sequence from highest to lowest pursuant to the procedure specified above, shall then take place at that time and place.
12. The Committee’s recommendation shall be presented by the CEO to the Board of Supervisors for consideration at the regular Board of Supervisors meeting on January 23, 2018, at 9:30 a.m., in the Board of Supervisors meeting room, 1195 Third St., Third Floor, Napa, California 94559.
13. Except for the delegation of authority to the CEO and the CEO’s designated members of the Committee, as described above, all of the provisions of Government Code sections 25526 et seq., shall be applicable to the process of selling the Property and the purchase and sale of the Property shall not occur unless and until the Board of Supervisors adopts a resolution pursuant to Government Code section 25535.
14. Notwithstanding the Committee’s recommendations, the Board reserves the right to reject any and all Bids.
15. The Clerk of the Board is hereby directed to: (a) post the attached Notice of Adoption of Resolution of Intent to Sell (“Notice”), along with a copy of this resolution as signed by the Board Chair, in three public places in the County, not less than 15 days prior to January 23, 2018; and (b) to publish the Notice in a newspaper of general circulation in Napa County, in compliance with Government Code section 6063, once per week for three consecutive weeks prior to that date.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by at least a two-thirds vote of all members of the Board of Supervisors at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the 5th day of December, 2017, by the following vote:

AYES: SUPERVISORS: GREGORY, WAGENKNECHT, DILLON,

PEDROZA and RAMOS

NOES: SUPERVISORS: NONE

ABSTAIN: SUPERVISORS: NONE

ABSENT: SUPERVISORS: NONE

NAPA COUNTY, a political subdivision of the

State of California

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BELIA RAMOS, Chair of the

Board of Supervisors

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| APPROVED AS TO FORM  Office of County Counsel  By: *Jeffrey Richard*  (via e-signature)  Acting County Counsel  Date: November 21, 2017 | APPROVED BY THE NAPA COUNTY  BOARD OF SUPERVISORS  Date: December 5, 2017  Processed By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Deputy Clerk of the Board | ATTEST: GLADYS I. COIL  Clerk of the Board of Supervisors  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**NOTICE OF ADOPTION OF AMENDED AND RESTATED RESOLUTION OF INTENT TO SELL NAPA COUNTY PROPERTY LOCATED AT 933 WATER STREET, NAPA, CALIFORNIA**

**NOTICE IS HEREBY GIVEN** that the Board of Supervisors of Napa County, State of California, did, on the 5th day of December, 2017, adopt Resolution No. 2017-184 (the “Amended and Restated Resolution of Intent”), by not less than a two-thirds vote of all of its members, declaring the County’s intention to sell the following real property on the terms, conditions and requirements stated in the Resolution of Intent:

A parcel of real property located at 933 Water Street, Napa, California, Assessor’s Parcel Number 003-242-003-000 (the “Property”)

The complete terms, conditions and procedures for sale of the Property are set forth in the Amended Resolution of Intent, copies of which are available to be obtained from the County Executive Office, 1195 Third Street, 3rd Floor, Napa, California 94559.

**NOTICE IS FURTHER GIVEN** that on January 23, 2018, at 9:30 a.m., in the Board of Supervisors meeting room, 1195 Third St., Third Floor, Napa, California 94559, the Board of Supervisors will consider the recommendations of the Bid Selection Committee (as that Committee’s procedures are described and governed by the Amended Resolution of Intent) regarding the order of responsive Bids to be accepted by the County for purchase of the Property, and will consider adoption of a resolution under Government Code section 25535 authorizing sale of the Property pursuant to the Amended Resolution of Intent and the Committee’s recommendations.

DATED: December 5, 2017

ATTEST: Gladys I. Coil

Clerk of the Board