

## **2.7 Settlement of Eminent Domain Lawsuit for Property Located at 150 North Montgomery Street.**

### **Recommendation:**

Approve the settlement of an eminent domain lawsuit brought by Plaintiff City of San José against Defendant Property Owners Rodolfo Duenas, Raul Jimenez, and Yolanda Jimenez in the total amount of \$1,980,470 and authorize the City Attorney to execute a stipulation for entry of judgment.

CEQA: Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942) for the Lot E Parking Structure Project. (City Attorney)



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

**SUBJECT:** SETTLEMENT OF EMINENT  
DOMAIN LAWSUIT FOR  
PROPERTY LOCATED AT 150 N.  
MONTGOMERY STREET

**DATE:** May 3, 2024

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## **RECOMMENDATION**

Approve the settlement of an eminent domain lawsuit brought by Plaintiff City of San Jose against Defendant Property Owners Rodolfo Duenas, Raul Jimenez, and Yolanda Jimenez in the total amount of \$1,980,470 and authorize the City Attorney to execute a stipulation for entry of judgment.

## **OUTCOME**

Settlement of the eminent domain lawsuit brought by Plaintiff City of San Jose against Defendant Property Owners Rodolfo Duenas, Raul Jimenez, and Yolanda Jimenez in the total amount of \$1,980,470. Of this total amount, \$10,000 is for the payment of Defendant Property Owners costs and attorneys' fees.

## **BACKGROUND**

Plaintiff City of San Jose filed a complaint in eminent domain in Santa Clara County Superior Court against Defendant Property Owners Rodolfo Duenas, Raul Jimenez, and Yolanda Jimenez. As part of this lawsuit, the City seeks to condemn the property for public use for the construction of a parking structure, the Lot E Parking Structure, located at 150 N. Montgomery Street. The settlement is for settlement of all claims by Defendant Property Owners with respect to the property interests acquired in this case.

## **ANALYSIS**

This is a negotiated settlement between the parties to avoid the risks and delays inherent in litigation. The City will pay Defendant Property Owners the total sum of \$1,980,470 in full satisfaction and settlement of all claims, and title to the property will transfer to City of San Jose for the construction of the Lot E Parking Structure. The proposed agreement will conclude the litigation without further cost, expense, or risk of

loss to the City and City employees. As part of the settlement amount, the City will pay Defendant Property Owners \$10,000 for costs and attorneys' fees spent defending the action. The remaining balance of \$1,970,470 is just compensation for the fee interest of the real property, and the settlement of all claims, and is well within the standard margin of error of the requisite government code appraisal of the property's fair market value.

## PUBLIC OUTREACH/INTEREST

This memorandum and the Settlement Agreement have been posted on the City's website for the May 14, 2024 agenda.

## COST SUMMARY/IMPLICATIONS

The purchase of the property will be funded by the Greater Downtown Parking Inventory appropriation in the General Purpose Parking Capital Fund.

**CEQA**

Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No 78942) for the Lot E Parking Structure Project.

By: /s/  
NORA FRIMANN  
City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900

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2 ARDELL JOHNSON, Assistant City Attorney (95340)  
3 ELISA T. TOLENTINO, Chief Deputy City Attorney (245962)  
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6 200 East Santa Clara Street, 16<sup>th</sup> Floor  
7 San José, California 95113-1905  
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9 Facsimile Number: (408) 998-3131  
10 E-Mail Address: cao.main@sanjoseca.gov

11 Attorneys for CITY OF SAN JOSE, a municipal  
12 corporation

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA  
15 UNLIMITED JURISDICTION

16 CITY OF SAN JOSE, a municipal  
17 corporation,

18 Plaintiff,

19 v.

20 RODOLFO DUENAS; RAUL JIMENEZ;  
21 YOLANDA JIMENEZ; ALLIANCE TITLE  
22 COMPANY; JOSEPH R. FRANCA AND  
23 THERESA J. FRANCA, CO-TRUSTEES  
24 OR THEIR SUCCESSORS IN TRUST  
25 UNDER THE JOSEPH R. FRANCA AND  
26 THERESA J. FRANCA FAMILY TRUST  
27 DATED 9-13-85; BENJAMIN R. FRANCA  
28 AND ALICE V. FRANCA, CO-  
TRUSTEES OR THEIR SUCCESSORS  
IN TRUST UNDER THE BENJAMIN R.  
FRANCA AND ALICE V. FRANCA  
FAMILY TRUST DATED SEPTEMBER  
11, 1985; and DOES 1 through 20,  
inclusive,

Defendants.

Case Number: 23-CV-414892

**STIPULATION FOR ENTRY OF  
JUDGMENT IN EMINENT DOMAIN;  
JUDGMENT AND ORDER THEREON**

1           **IT IS HEREBY STIPULATED AND AGREED** by and between Plaintiff the City of San  
2 Jose ("City") and Defendants Rodolfo Duenas, Raul Jimenez, and Yolanda Jimenez  
3 ("Property Owners")(collectively "parties"), by their respective counsel, as follows:

4           WHEREAS, Plaintiff the City of San Jose ("City") is a public entity with the power to  
5 acquire real property by eminent domain;

6           WHEREAS, on April 18, 2023, the City filed its complaint in eminent domain in this  
7 action, seeking a fee acquisition for the parcel located at 150 N. Montgomery Street, San  
8 Jose, California (Assessor's Parcel Number 259-29-003) (the "Subject Property");

9           WHEREAS, Rodolfo Duenas, Raul Jimenez, and Yolanda Jimenez are the owners of  
10 the Subject Property;

11           WHEREAS, on May 11, 2023 the City originally deposited \$1,770,000 as the amount  
12 of probable compensation with the California State Treasury Condemnation Fund;

13           WHEREAS, default has been entered in this case as to the other Defendants to this  
14 action, Joseph R. Francia and Theresa J. Francia, co-trustees or their successors in trust  
15 under the Joseph R. Francia and Theresa J. Francia Family Trust dated 9/13/85; Benjamin  
16 R. Francia and Alice V. Francia, co-trustees or their successors in trust under the Benjamin  
17 R. Francia and Alice V. Francia Family Trust dated 9/11/95, and Alliance Title Company  
18 (collectively "defaulted Defendants").

19           WHEREAS, the defaulted Defendants were identified as beneficiaries to a deed of  
20 trust, and the trust company, that had recorded an interest in the Subject Property on the  
21 most recent title report available to City;

22           WHEREAS, the parties have agreed that total just compensation to be paid by City to  
23 Property Owners for the acquisition of the property interests described in City's Complaint  
24 and the settlement of all claims by Property Owners shall be One Million Nine Hundred and  
25 Seventy Thousand and Four Hundred and Seventy Dollars (\$1,970,470) plus ten thousand  
26 dollars (\$10,000) for Property Owners' costs and attorneys' fees spent defending the action,  
27 for a total amount of One Million Nine Hundred and Eighty Thousand and Four Hundred and  
28 Seventy Dollars (\$1,980,470).

1 WHEREAS, after payment of the One Million Nine Hundred and Eighty Thousand and  
2 Four Hundred and Seventy Dollars (\$1,980,470) to counsel for Property Owners, it shall be  
3 the duty and obligation of the Property Owners to divide up the total just compensation  
4 amount between them, with no right, duty, or obligation of City for how the amount is divided.

5 **IT IS THEREFORE STIPULATED AND AGREED BY AND BETWEEN THE**  
6 **PARTIES THAT:**

7 1. The Subject Property including all improvements on the land shall be  
8 condemned for the uses and purposes stated in the Complaint;

9 2. The use for which the Subject Property is sought to be condemned, the Lot E  
10 parking structure, is authorized by law and is a public use, and that the taking in  
11 condemnation is necessary for that public use;

12 3. The negotiated amount of just compensation for the Subject Property as of May  
13 11, 2023, the date of valuation, shall be deemed to be One Million Nine Hundred and  
14 Seventy Thousand and Four Hundred and Seventy Dollars (\$1,970,470) plus ten thousand  
15 dollars (\$10,000) for Property Owners' costs and attorneys' fees spent defending this action,  
16 for a total amount of One Million Nine Hundred and Eighty Thousand and Four Hundred and  
17 Seventy Dollars (\$1,980,470);

18 4. Property Owners hereby represent and warrant they are the sole owners of the  
19 property interests described in the City's Complaint and that there are no other persons or  
20 entities entitled to share in the compensation to be paid by the City for such property  
21 interests;

22 5. Property Owners through their counsel, Edgar Law Group LLP shall, or  
23 Property Owners shall withdraw the amount of just probable compensation from the  
24 California State Treasury Condemnation Fund in the amount of \$1,770,000;

25 6. By June 10, 2024, the City shall send to the office of the Edgar Law Group at  
26 675 N. First Street, Suite 550, San Jose, CA 95112, a draft made payable to "Edgar Law  
27 Group LLP Iolita" in the amount of two hundred and ten thousand, four hundred and seventy  
28 dollars (\$210,470) which sum, when added to the amounts already deposited by the City and



1 to be withdrawn by Property Owners from the California State Treasury Condemnation Fund,  
2 equals the total amount of agreed-upon just compensation for the Subject Property, loss of  
3 goodwill, construction costs, any and all damages arising from the City's take, and statutory  
4 interest and costs;

5 7. Upon payment by the City as set forth in paragraph 6 above, plaintiff City shall  
6 be entitled (1) to a Final Order of Condemnation upon *ex parte* application to the Court, with  
7 or without notice to Property Owners, and (2) to withdraw for the City's benefit any remaining  
8 funds on deposit with the California State Treasury Condemnation Fund;

9 8. This total sum of just compensation is for settlement of all claims and potential  
10 claims by Property Owners (including their agents, employees, and assigns) with respect to  
11 the property interests acquired in this case, including tort-based claims, contract-based  
12 claims, eminent domain claims, inverse condemnation claims, goodwill claims, relocation  
13 claims, leasehold value claims, trespass claims, bonus value claims, costs, interest, and  
14 attorneys' fees;

15 9. The Court shall further Order the disbursement of all accrued interest in the  
16 California State Treasury Condemnation Fund to City. The City will submit the Court's  
17 judgment with its Order setting forth the terms of disbursement to the State Treasury  
18 forthwith;

19 10. Each person executing this Stipulation on behalf of any person or entity hereby  
20 warrants that he or she has full authority to do so;

21 11. This Stipulation may be signed in counterparts.

22 DATED: May \_\_\_\_, 2024

NORA FRIMANN, City Attorney

23  
24 By: \_\_\_\_\_  
25 NORA FRIMANN  
26 City Attorney

27 APPROVED AS TO FORM:

28 By: Wesley Klimczak  
4 Wesley Klimczak, Sr. Deputy City Attorney

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Attorneys for Plaintiff CITY OF SAN JOSE

DATED: May 07, 2024

EDGAR LAW GROUP

By:   
RONDA EDGAR

Attorneys for Defendants  
RODOLFO DUENAS; RAUL JIMENEZ;  
YOLANDA JIMENEZ

DATED: May, 2024

Rodolfo Duenas



DATED: May 07, 2024

Raul Jimenez



DATED: May 07, 2024

Yolanda Jimenez



Attorneys for Plaintiff CITY OF SAN JOSE


DATED: May \_\_\_\_, 2024

EDGAR LAW GROUP

By: \_\_\_\_\_  
RONDA EDGAR

Attorneys for Defendants  
RODOLFO DUENAS; RAUL JIMENEZ;  
YOLANDA JIMENEZ

DATED: May 8, 2024

  
Rodolfo Duenas

DATED: May \_\_\_\_, 2024

\_\_\_\_\_  
Raul Jimenez

DATED: May \_\_\_\_, 2024

\_\_\_\_\_  
Yolanda Jimenez

## J U D G M E N T

The parties herein having stipulated as herein provided and good cause appearing:

### IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Subject Property including all improvements on the land shall be condemned for the uses and purposes stated in the Complaint;

2. The use for which the Subject Property is sought to be condemned, the Lot E parking structure, is authorized by law and is a public use, and that the taking in condemnation is necessary for that public use;

3. The negotiated amount of just compensation for the Subject Property as of May 11, 2023, the date of valuation, shall be deemed to be One Million Nine Hundred and Seventy Thousand and Four Hundred and Seventy Dollars (\$1,970,470) plus ten thousand dollars (\$10,000) for Property Owners' costs and attorneys' fees spent defending the action, for a total amount of One Million Nine Hundred and Eighty Thousand and Four Hundred and Seventy Dollars (\$1,980,470)

4. Property Owners through their counsel, Edgar Law Group LLP shall, or Property Owners shall withdraw the amount of just probable compensation from the California State Treasury Condemnation Fund in the amount of \$1,770,000;

5. By June 10, 2024, the City shall send to the office of the Edgar Law Group at 675 N. First Street, Suite 550, San Jose, CA 95112, a draft made payable to Edgar Law Group LLP in the amount of two hundred and ten thousand, four hundred and seventy dollars (\$210,470) which sum, when added to the amounts already deposited by the City and to be withdrawn by Property Owners from the California State Treasury Condemnation Fund, equals the total amount of agreed-upon just compensation for the Subject Property, loss of goodwill, construction costs, any and all damages arising from the City's take, and statutory interest and costs;

6. Upon payment by the City as set forth in paragraph 4 above, plaintiff City shall be entitled (1) to a Final Order of Condemnation upon *ex parte* application to the Court, with

1 or without notice to Property Owners, and (2) to withdraw for the City's benefit any remaining  
2 funds on deposit with the California State Treasury Condemnation Fund;

3 7. The accrued interest in the California State Treasury Condemnation Fund shall  
4 be disbursed to the City, after the amount of probable compensation is withdrawn by  
5 Property Owners.

6 **78.** Real property taxes for the Subject Property including all delinquencies, costs  
7 and interest, if any, shall be cancelled, in accordance with Revenue and Taxation Code  
8 §5082, as of the date the City takes possession of the Subject Property.

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13 DATED: May \_\_\_\_, 2024

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14 Santa Clara County Superior Court Judge  
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