

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Authorize Final Purchase of Property (Gearhart)
DATE: May 2, 2006

NEEDS: For the City Council to consider adopting Resolution No. 06-xx authorizing the purchase of property at 1650 Riverside Avenue.

- FACTS:**
1. The City has an approved Project Study Report (PSR) to install a new southbound on-ramp to Highway 101 at 16th/17th Street.
 2. To facilitate the future installation of the ramp, the City needs to acquire property at 1650 Riverside Avenue to construct the on-ramp that will result in 101/46 East operational and related improvements. The improvements will include a new southbound ramp at 16th/17th Streets, modification of the 13th Street overcrossing over Highway 101, and addition of one more southbound on-ramp to Highway 101 from Highway 46 East.
 3. At the direction of the City Council, the City Attorney drafted a Purchase Agreement to acquire approximately 3000 SF of property located at 1650 Riverside Avenue, also known as Assessor's Parcel No. 008-296-008.
 4. The Agreement was forwarded to the property owner (Kelly Gearhart) and returned with signature agreeing to the terms of the Purchase Agreement.
 5. Section 65402 of the California Government Code (Planning, Zoning and Development Laws) provides for the Planning Commission to report on proposals by the City to acquire property. At their meeting on March 28, 2006 the Planning Commission considered the purchase and concluded that purchasing the property would not conflict with the City's General Plan.
 6. On March 28, 2006, the Planning Commission held a public hearing to consider the purchase and adopted a Negative Declaration of environmental impact. A map is attached illustrating the property location to be acquired.

**ANALYSIS
AND**

CONCLUSION: The proposed property acquisition would facilitate the installation of a southbound on-ramp to Highway 101 at 16th/17th Streets as part of the 101/46 East project. This improvement was identified in the Circulation Element of the General Plan as a needed measure to mitigate traffic congestion in this area as part of the 101/46 East project.

POLICY

REFERENCE: Adopted Capital Improvement Project budget

FISCAL

IMPACT:

The signed Purchase Agreement established a purchase price of \$235,000. This will be paid from Budget No. 200.910.5452.787 adopted for this project.

OPTIONS:

- a. Adopt the following Resolutions:
 - 1) Resolution No. 06-xx accepting the Planning Commission report on consistency with the General Plan and the Negative Declaration, and
 - 2) Resolution No. 06-xx accepting the deed of purchase and authorizing and directing the City Clerk to record the document with the County Recorder's Office.

- b. Amend, modify, or reject the above option.

Prepared by:

Ditas Esperanza, P.E., Capital Projects Engineer

Attachments (4)

- 1) Resolution (2)
- 2) Exhibit
- 3) Purchase Agreement

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
ACCEPTING THE PLANNING COMMISSION REPORT ON CONSISTENCY
WITH THE GENERAL PLAN AND THE NEGATIVE DECLARATION
FOR THE PURCHASE OF PROPERTY
(GEARHART – APN 008-296-008)

WHEREAS, the City Council of the City of El Paso de Robles is scheduled to consider purchasing of property located at 1650 Riverside (APN 008-296-008); and

WHEREAS, Section 65402 of the Government Code (Planning and Zoning Laws) provides that the Planning Commission must be requested to report on whether or not a proposed purchase of property would be in conflict with the City's General Plan; and

WHEREAS, on March 28, 2006 the Planning Commission considered the subject property in relation to the City's General Plan; and

WHEREAS, based on the Planning Commission's evaluation of the proposed property purchase, specifically in relation to the Circulation Element of the General Plan, the Commission unanimously concluded that there would appear to be no conflict with the City's General Plan; and

WHEREAS, the Planning Commission adopted a Negative Declaration for the property purchase.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles does hereby accept the Planning Commission's report to the City Council that purchase of the subject property would, in the judgment of the Planning Commission, not be in conflict with the City's General Plan.

SECTION 2. That in order to implement the Circulation Element of the General Plan, the City Council does hereby authorize the City Manager to sign all documents related to purchase of the subject property.

SECTION 3. The City Council does hereby accept the Planning Commission's adoption of a Negative Declaration for purchase of the property.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 2nd day of May 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Cathy M. David, Deputy City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

The City of El Paso de Robles
Public Works Department
1000 Spring Street
Paso Robles, CA 93446

Attn.: Ditas Esperanza

FOR RECORDERS USE ONLY

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
ACCEPTING A DEED TO CERTAIN PROPERTY AND AUTHORIZING AND
DIRECTING THE CITY CLERK TO RECORD THE SAME WITH THE RECORDER
OF THE COUNTY OF SAN LUIS OBISPO

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES AS
FOLLOWS:

SECTION 1. The City of El Paso de Robles does hereby accept the deed to certain property within the City executed by First Regional Bank as custodian for the benefit of the Gearhart Development 401k Plan. A true and correct copy of the deed is attached hereto as Exhibit "A" and hereby incorporated by reference.

SECTION 2. The City Clerk is hereby authorized and directed to record the deed in the office of the County Recorder of the County of San Luis Obispo. The City Clerk may utilize the services of a land title company to effectuate the recording by delivering a certified copy of this resolution to the title company for presentation to the County Recorder together with the original deed.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 2nd day of May 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Cathy M. David, Deputy City Clerk

RECORDING REQUESTED BY:

Fidelity National Title Company
Escrow No.: 06-288635-NDW
Locate No.: CAFNT0940-0940-0009-0000288635
Title No.: 06-288635-KD

**When Recorded Mail Document
and Tax Statement To:**
City of El Paso De Robles

APN: 008-296-008

GRANT DEED

SPACE A

The undersigned grantor(s) declare(s)
Documentary transfer tax is \$

- [] computed on full value of property conveyed, or
- [] computed on full value less value of liens or encumbrances remaining at time of sale,
- [] Unincorporated Area City of ,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, First Regional Bank as custodian for the benefit of the Gearhart Development 401K Plan

hereby **GRANT(S)** to City of El Paso De Robles

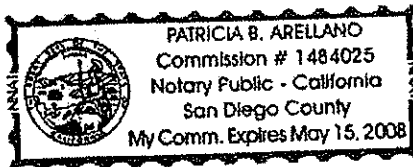
the following described real property in the City of , County of **San Luis Obispo**, State of **California**:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: March 17, 2006

FIRST REGIONAL BANK CUSTODIAN
BY: *[Signature]*

STATE OF CALIFORNIA)
COUNTY OF San Diego)
ON April 3, 2006 before me,
Patricia B. Arellano
(here insert name and title of the officer), personally
appeared Karen Deal

personally known to me (or 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.



Witness my hand and official seal.

Signature *[Signature]*

MAIL TAX STATEMENTS AS DIRECTED ABOVE

CITY OF EL PASO DE ROBLES

1000 Spring Street

Paso Robles, CA 93446

PROJECT: Highway 46 West

APN # 008-296-008

ESCROW # 288635-NDW (Fidelity National Title Company)

CITY OF EL PASO DE ROBLES
PURCHASE AGREEMENT

This Agreement is made between the CITY OF EL PASO DE ROBLES, a municipal corporation ("CITY"), and FIRST REGIONAL BANK AS CUSTODIAN FOR THE BENEFIT OF THE GEARHART DEVELOPMENT 401K PLAN, ("OWNER"), for certain property interests in the City of El Paso de Robles, County of San Luis Obispo, California, for a public project consisting of improvements to State Highway 46 West (the "PROJECT").

1. PROPERTY

OWNER agrees to sell to CITY, and CITY agrees to purchase from OWNER, pursuant to the terms and conditions set forth in this Agreement, the fee simple interest in certain real property located at 1650 Riverside Avenue (SE Corner with 17th Street), Paso Robles, California, also identified as Assessor's Parcel No. 008-296-008 in the County of San Luis Obispo ("PROPERTY").

2. TITLE

Title to the PROPERTY is held by First Regional Bank ("FRB") as custodian for the benefit of the Gearhart Development 401K Plan. Kelly Gearhart, whose signature appears on the last page of this Agreement, warrants that he is authorized to, and will instruct FRB to execute the GRANT DEED, and to take such other steps as are necessary to carry out the terms of this Agreement.

Title shall be delivered subject only to the following items shown on the Preliminary Report issued as No. 06-288635-KD with a effective date of February 24, 2006: 1 (prorated), 2, 3, 4 and 5. Items 6 and 7 will be deleted from the title policy.

3. DELIVERY OF DOCUMENTS/ESCROW

The GRANT DEED, as attached hereto as Exhibit A and incorporated herein by reference, shall be executed and delivered by OWNER to CITY for the purpose of placing the GRANT DEED into escrow. CITY shall not be deemed to have

accepted delivery of the GRANT DEED until such time as it is recorded in the Official Records of County of San Luis Obispo, California.

The escrow shall be handled through Fidelity National Title Company, 806 9th Street, Suite 2, Paso Robles, CA 93446; Telephone 805-227-1100; Nance Delphenich, Escrow Officer. The escrow number is 288635-NDW.

OWNER affirms that it is the owner of PROPERTY to be conveyed by the GRANT DEED and is empowered to execute the conveyance documents and this Agreement.

CITY shall pay all costs of escrow and all recording fees incurred in this transaction.

4. PURCHASE PRICE

CITY shall pay OWNER the sum of TWO HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$235,000) for the PROPERTY.

Fidelity Title Company shall deliver the purchase price to OWNER when title to the PROPERTY vests in the CITY, free and clear of all liens, encumbrances, and conflicting easements.

There will be a pro-ration of real property taxes currently owed, with the Owner's obligation paid out of escrow.

5. DEED OF TRUST OR OTHER MORTGAGE OBLIGATION

OWNER warrants that the PROPERTY is not encumbered with any deed of trust, lien, mortgage, or other encumbrance evidencing an indebtedness and OWNER agrees that no such indebtedness will be secured by the PROPERTY between the date of this Agreement and the close of escrow.

6. CLOSE OF ESCROW

Escrow shall close not later than sixty (60) days after the effective date of this Agreement (which is the date the Agreement is executed by the City Manager on behalf of the City); provided, however, that one or more reasonable extensions of time in which to close the escrow may be requested by either party and shall not be unreasonably withheld by the party from whom the extension is requested.

7. GRANTOR'S INDEMNIFICATION

OWNER covenants and agrees to indemnify and hold the CITY harmless from any and all claims that third parties may make or assert with respect to the title of the PROPERTY. The OWNER'S obligation herein to indemnify the CITY shall not exceed the amount paid to OWNER under this Agreement.

8. CITY'S LIABILITY

CITY covenants and agrees to defend, indemnify, and hold harmless OWNER from any liability arising out of construction of the PROJECT.

9. SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force without being impaired.

10. GOVERNING LAW/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action concerning this Agreement shall be venued in the Superior Court of San Luis Obispo County.

11. SALE UNDER THREAT OF EMINENT DOMAIN

CITY acknowledges that OWNER is selling the PROPERTY to CITY for the PROJECT under threat of eminent domain.

Both OWNER and CITY recognize the expense, time, effort and risk to both OWNER and CITY in resolving a dispute over compensation for the Property by eminent domain litigation. The compensation set forth is in compromise and settlement in lieu of such litigation. In the absence of this Agreement, CITY would have pursued acquisition of the PROPERTY by eminent domain.

CITY further agrees to cooperate with and assist OWNER by providing all relevant, non-confidential information within CITY'S control if the OWNER should seek to acquire replacement property pursuant to IRS Code section 1031 or 1033. CITY also agrees to cooperate with, and assist, OWNER by providing all relevant, non-confidential information within CITY'S control to the San Luis Obispo County Assessor's Office for Proposition 13 tax assessment purposes.

12. ENVIRONMENTAL ASSESSMENT PRIOR TO CLOSE OF ESCROW

OWNER agrees that CITY may wish to perform an environmental assessment of the PROPERTY. Such an assessment includes what is commonly referred to as a Phase I analysis, and, if necessary thereafter, a Phase II analysis. A Phase II analysis may require test borings to determine the existence and extent of any toxic substances or hazardous materials on the PROPERTY. CITY shall return the PROPERTY to its pre-existing condition if test borings are done and CITY thereafter, for whatever reason, does not purchase the PROPERTY.

13. PURCHASE CONTINGENT ON PROPERTY BEING FREE OF TOXICS

OWNER understands and agrees that CITY has no obligation to purchase the PROPERTY if it is determined during an environmental assessment that the PROPERTY contains toxic and/or hazardous materials which will require remediation under applicable State and/or federal law.

CITY will provide to OWNER all test results obtained during any environmental assessment.

14. AUTHORITY AND EXECUTION

This Agreement, which is valid only when executed by CITY, constitutes the complete understanding and agreement of the parties hereto and no oral representation shall in any manner vary the terms hereof or be binding.

15. ENTIRE AGREEMENT

The performance of this Agreement constitutes the entire consideration for the conveyance of the PROPERTY from OWNER to CITY.

This Agreement shall bind the respective heirs, personal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

OWNER

CITY

Date: March 31, 2006

Date: March 20, 2006

First Regional Bank, as Custodian
for the Benefit of the Gearhart
Development 401k Plan

City of El Paso de Robles

By: [Signature]
Name: Karen Neal
Its: Vice President

By: [Signature]
James L. App
City Manager

AGREED:

[Signature]
Kelly Gearhart