

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Authorize Final Purchase of Property (Kim) at Highway 101/46W
DATE: June 6, 2006

NEEDS: For the City Council to consider adopting Resolution No. 06-xx authorizing the purchase of property at the southwest corner of Highway 46 and Theatre Drive.

- FACTS:**
1. The City has an approved Project Study Report (PSR) to install interchange improvements at Highway 46 and 101.
 2. To facilitate the future improvements, the City needs to acquire property at the southwest corner of Highway 46 and Theatre Drive (APN 009-831-020).
 3. At the direction of the City Council, the City Attorney drafted a Purchase Agreement to acquire the property.
 4. The Agreement was forwarded to the property owners (Peter Kim and Soo Jung Kim) on May 8, 2006 and they returned it with signatures 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 May 23, 2006 the Planning Commission considered the purchase and concluded that purchasing the property would not conflict with the City's General Plan.
 6. On May 23, 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 ultimate interchange improvements at Highway 101/46. This improvement was identified in the Circulation Element of the General Plan as a needed measure to mitigate traffic congestion in this area.

POLICY

REFERENCE: Adopted Circulation Element of the General Plan

FISCAL

IMPACT: A Community Facilities District will be formed to fund the interchange improvements and the property acquisitions needed to facilitate construction of the improvements. Costs incurred prior to forming the CFD will be reimbursed from the CFD funds.

As it will take several months for formation of the CFD and for the improvement bonds to be sold, the costs to purchase this property would need to be advanced from General Fund Reserves. Should the formation of the CFD fail, then General Fund Reserves would decrease by \$1,370,000.

The signed Purchase Agreement established a purchase price of \$1,352,883.

It is requested that \$1,370,000 be advanced from General Fund Reserves to cover the purchase price and any additional closing costs including environmental assessments, appraisal costs and printing costs incurred.

Since an appropriation for this acquisition does not exist, the Council will need to appropriate funds.

- 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, and
 - 3) Resolution No. 06-xx approving a transfer from General Fund Reserves to the Hwy101/46W CFD Fund and appropriating funds from the Hwy101/46W CFD Fund for this project.
 - b. Amend, modify, or reject the above option.

Prepared by:

Ditas Esperanza, P.E., Capital Projects Engineer

Attachments (5)

- 1) Resolution (3)
- 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
(KIM – APN 009-831-020)

WHEREAS, the City Council of the City of El Paso de Robles is scheduled to consider purchasing of property located at the southwest corner of Highway 46 and Theatre Drive (APN 009-831-020); 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 May 23, 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 6th day of June 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 Peter Kim and Soo Jung Kim. 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 6th day of June 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Cathy M. David, Deputy City Clerk

RECORDING REQUESTED BY
City of El Paso De Robles

AND WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:

NAME
City of El Paso de Robles
STREET
ADDRESS
c/o City Engineer
1000 Spring Street

CITY, STATE &
ZIP CODE
Paso Robles, CA 93446

TITLE ORDER NO. 06-288765-A-AS

ESCROW NO. 288765-NDW

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

GRANT DEED

APN: 009-831-020

The undersigned grantor(s) declare(s)
DOCUMENTARY TRANSFER TAX \$

\$0.00 [Transfer to City of El Paso de Robles]

- computed on full value of property conveyed, or
- computed on full value less liens and encumbrances remaining at time of sale.
- Unincorporated Area City of El Paso de Robles

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, I (We)
PETER KIM, a married man and SOO JUNG KIM, a married woman, as tenants in common

hereby remise, release and grant to
City of El Paso de Robles, a municipal corporation of the State of California

the following described real property in the City of El Paso de Robles, County of San Luis Obispo
State of California, with the following legal description:
Parcel 1 of Parcel Map PRAL 00-0240, Book 55, Page 59, Official Records of San Luis Obispo County

5-19-06
Date

[Signature]
(Signature of declarant)

[Signature]
(Signature of declarant)

STATE OF California

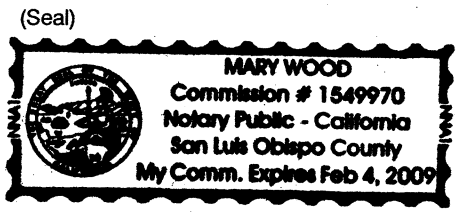
COUNTY OF San Luis Obispo

On May 19, 2006 before me, Mary Wood, Notary Public personally
(Name/title, e.g., "Jane Doe, notary public")

appeared Peter Kim and Soo Jung Kim 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.

Mary Wood
Signature



RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
TO APPROPRIATE FUNDS TO PURCHASE PROPERTY
TO INSTALL IMPROVEMENTS AT 101/46W
(KIM – APN 009-831-020)

WHEREAS, the City’s Circulation Element has identified the need to install improvements at the 101/46 interchange; and

WHEREAS, a Project Study Report (PSR) was approved by Caltrans which identified several alternative designs; and

WHEREAS, in order to install these improvements the City would need to acquire property known as Assessor’s Parcel No. 009-831-020; and

WHEREAS, the City Council authorized the City Attorney to draft a Purchase Agreement which was subsequently signed by the property owners; and

WHEREAS, the City will form a Community Facilities District (CFD) to fund the project costs; and

WHEREAS, the City will need to advance General Funds to purchase the property until the CFD is formed.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles does hereby authorize a transfer of \$2,000,000 from the General Fund Reserves to the Highway 101/46W Community Facilities District Fund as follows:

Budget No. 100.000.5899.000 (\$1,370,000).
Budget No. 309.000.4899.000 \$1,370,000.

SECTION 2. The City Council of the City of El Paso de Robles does hereby authorize a one-time budget appropriation of \$1,370,000 from the Highway 101/46W Community Facilities District Fund to Project No. 309.710.5450.222.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 6th day of June 2006 by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk

CITY OF EL PASO DE ROBLES

1000 Spring Street

Paso Robles, CA 93446

PROJECT: Highway 46 West

APN # 009-831-020

ESCROW # 288765-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 PETER KIM, a married man and SOO JUNG KIM, a married woman, as tenants in common ("OWNERS"), 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

OWNERS agree to sell to CITY, and CITY agrees to purchase from OWNERS, pursuant to the terms and conditions set forth in this Agreement, the fee simple interest in certain real property located at the southwest corner of Highway 46 West and Theater Drive, Paso Robles, California, legally identified as Parcel 1 of Parcel Map PRAL 00-0240, Book 55, Page 59, Official Records of San Luis Obispo County, Assessor's Parcel No. 009-831-020 (the "PROPERTY").

2. TITLE

Title to the PROPERTY is held by OWNERS in the form described above.

Title shall be delivered subject only to the following items shown on the Preliminary Report issued by Fidelity National Title Company as No. 06-288765-A-AS, with an effective date of April 17, 2006: 1 through 14.

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 OWNERS 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 288765-NDW.

OWNERS affirm that they are the owners of the PROPERTY to be conveyed by the GRANT DEED and are 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 OWNERS the sum of ONE MILLION THREE HUNDRED FIFTY-TWO THOUSAND EIGHT HUNDRED EIGHTY-THREE DOLLARS (\$1, 352, 883.00) for the PROPERTY, computed as follows:

- a. For the PROPERTY itself: \$1,150, 000.00.
- b. To reimburse OWNERS for payments to the Parking Improvement Association: \$118,008.00.
- c. To reimburse OWNERS for property taxes paid between the time CITY initially determined to take the property, October 1, 2005, through the remainder of fiscal year 2005-2006, which is seventy-five percent (75%) of the taxes paid for that fiscal year: \$9437.00 (rounded).
- d. For interest paid by OWNERS on loans between the time CITY initially determined to take the property, October 1, 2005, until close of escrow, June 15, 2006: \$75,438.00

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

There will be no pro-ration of real property taxes since CITY is reimbursing OWNERS for property taxes already paid.

5. DEED OF TRUST OR OTHER MORTGAGE OBLIGATION

OWNERS warrant that the PROPERTY is not encumbered with any deed of trust, lien, mortgage, or other encumbrance evidencing an indebtedness except as may be shown on the Preliminary Report and OWNERS agree 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 on Thursday, June 15, 2006, unless by mutual agreement, which will not be unreasonably withheld by either party, the parties agree to a different date, but in no event later than Monday, July 17, 2006. In the event escrow closes after June 15, 2006, CITY shall pay to those parties identified in section 13 c. and d. of this Agreement the following amounts, through escrow, for each and every day until escrow closes.

a. To the Keith Mundee and Beverly Marie Mundee Revocable Trust: \$229.16 per day.

b. To Frank Sheahan, Trustee of the Frank Sheahan Retirement Plans; Kenneth G. Porche, Trustee of the Charles Shoes, Inc. Profit Sharing Plan; Steven Pults, Trustee of the Pults and Associates Profit Sharing Plan; and Paul Pobor, Trustee of the Paul Pobor Profit Sharing Plan, collectively: \$66.66 per day.

7. OWNERS' INDEMNIFICATION

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

8. CITY'S LIABILITY

CITY covenants and agrees to defend, indemnify, and hold harmless OWNERS 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 OWNERS are selling the PROPERTY to CITY for the PROJECT under threat of eminent domain.

Both OWNERS and CITY recognize the expense, time, effort and risk to both OWNERS 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 OWNERS by providing all relevant, non-confidential information within CITY'S control if OWNERS should seek to acquire replacement property pursuant to IRS Code section 1031 or section 1033. CITY also agrees to cooperate with, and assist, OWNERS 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

OWNERS understand 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. OWNERS authorize CITY, its employees, agents, and contractors to enter the PROPERTY for purpose of conducting an environmental assessment, including for the purpose of conducting such test borings as may be necessary. 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.

12. PURCHASE CONTINGENT ON PROPERTY BEING FREE OF TOXICS

OWNERS understand and agree 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 OWNERS all test results obtained during any environmental assessment.

13. OBLIGATION TO VERIFY AMOUNTS PAID BY OWNERS TO THIRD PARTIES

Prior to close of escrow, OWNERS shall provide to CITY evidence satisfactory to it that the amounts identified in section 4 b., 4 c., and 4 d., have, in fact, been paid to the parties to which they are due, as follows:

a. Payments to the Parking Improvement Association, c/o LJ Consulting Services, in the total amount of \$ 118,008.00. Funds on deposit with the Parking Improvement Association to the credit of OWNERS shall, upon recording of the GRANT DEED, be credited to CITY.

b. Payments to the Tax Collector of the County of San Luis Obispo in the total amount of \$9437.00 (rounded).

c. Payments to the Keith Mundee and Beverly Marie Mundee Revocable Trust in the total amount of \$58,438.00.

d. Payments to Frank Sheahan, Trustee of the Frank Sheahan Retirement Plans; Kenneth G. Porche, Trustee of the Charles Shoes, Inc. Profit Sharing Plan; Steven Pults, Trustee of the Pults and Associates Profit Sharing Plan; and Paul Pobor, Trustee of the Paul Pobor Profit Sharing Plan in the total amount, collectively, of \$17,000.00.

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 OWNERS 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:

OWNERS

CITY

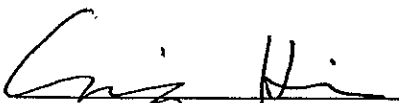
Date: 5-11-06

Date: _____



Peter Kim

City of El Paso de Robles



Soo Jung Kim

By: _____
James L. App
City Manager