

RESOLUTION NO. 06-087

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: Heggarty, Nemeth, Picanco, Strong, and Mecham  
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

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**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 9<sup>th</sup> 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 Munde and Beverly Marie Munde 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**

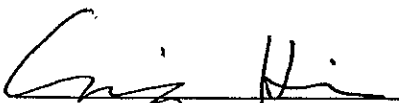
**CITY**

Date: 5-11-06

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Peter Kim

City of El Paso de Robles

  
\_\_\_\_\_  
Soo Jung Kim

By: \_\_\_\_\_  
James L. App  
City Manager