

TO: JAMES L. APP, CITY MANAGER
FROM: JOHN R. McCARTHY, DIRECTOR OF PUBLIC WORKS
SUBJECT: AUTHORIZE THE MAYOR TO ENTER AN AGREEMENT WITH LEO AND TAMARA TIDWELL
DATE: JUNE 15, 1999

Needs: For the city Council to authorize the Mayor to enter an Agreement with Leo and Tamara Tidwell.

- Facts:**
1. In 1998, the Planning Commission approved PD 98-008 to construct a Jack-in-the-Box restaurant, convenience and gasoline facility located at the east end of Ramada Drive by Highway 46 and 101.
 2. As part of the Conditions of Approval, the developer dedicated property for the future construction of a public road. This future road is in the Circulation Element of the General Plan and is commonly referred to as the "Loop Road".
 3. The property owner is requesting that, in the interim, a parking lot be installed within a portion of the dedicated right-of-way.

Analysis and

Conclusion: The City Attorney has drafted the attached agreement to allow the use of this area as a parking lot until such time as the City needs the property for roadway purposes.

Policy Reference: None

Fiscal Impact: None

- Options:**
- A. That the City Council authorize the Mayor to enter an Agreement with Leo and Tamara Tidwell to allow a parking lot to be constructed within property dedicated for future road purposes.
 - B. That the City Council amend, modify or reject the above option.

Attachments: (1)
1) Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446

Attention: City Manager

FOR RECORDER USE ONLY

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into this _____ day of _____, 1999, by and between the CITY OF EL PASO DE ROBLES ("City") and LEO W. TIDWELL AND TAMARA ANN TIDWELL, HUSBAND AND WIFE (collectively, "Tidwell") who agree as follows:

RECITALS

A. Tidwell has dedicated certain real property to the City (the "Dedication Parcel") and the City has accepted this dedication by City Council Resolution No. _____, adopted on _____, 1999. This dedication is recorded in Book _____, Page _____, in the Official Records of the County of San Luis Obispo.

B. As owner of the property adjacent to the Dedication Parcel, Tidwell desires to enter into this Agreement to provide for the non-exclusive access to and use of a portion of the Dedication Parcel (the "Licensed Parcel") for purposes of installation, operation, maintenance, and removal of a parking lot (the "Parking Lot").

C. This Agreement was authorized by the El Paso de Robles City Council by Resolution No. 99-__, dated _____, 1999, which is incorporated into this Agreement by reference.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual conditions, promises and covenants hereinafter contained, the parties agree as follows:

1. Use of Licensed Parcel

Subject to the terms and provisions of this Agreement, the City hereby grants to Tidwell a license to use, on a non-exclusive basis, the Licensed Parcel, more

particularly described in the Legal Description of the Licensed Parcel, attached hereto as **Exhibit A** and shown on the Map of the Licensed Parcel, attached hereto as **Exhibit B**, as set forth herein

Tidwell's use of the Licensed Parcel shall be non-exclusive, and the City at all times shall have use of the remainder of the Licensed Parcel for all purposes that the City deems necessary or desirable. The Licensed Parcel shall be maintained in a clean and orderly condition by Tidwell.

2. Term of License; Installation and removal of Parking Lot

a. The term of the license shall commence on the date of this Agreement and continue for an initial term of five (5) years provided however, that City may terminate this agreement, for any reason, upon sixty (60) days written notice from City to Tidwell.

b. Tidwell is allowed to use the Licensed Parcel only for purposes of installation, operation, maintenance, and removal of the Parking Lot. Any installation of any Parking Lot by Tidwell shall be at its sole cost and expense, subject to the prior written approvals from the City as discussed in Section 5.

c. Tidwell shall, prior to termination of this Agreement and if so requested by City, remove all improvements to the Licensed Parcel and surrender the Licensed Parcel in at least the same condition as received. Tidwell shall repair any and all damage to the Licensed Parcel resulting from the presence, operation, maintenance and removal of the Parking Lot or any other improvements.

d. If Tidwell fails to perform such repair within thirty (30) days after written notice from the City, the City may perform the repair on behalf of Tidwell. Tidwell shall reimburse the City, upon demand, for the reasonable third-party costs and expenses of such performance. The removal, repair and reimbursement obligations of Tidwell under this Section 2 shall survive the termination of this Agreement.

3. Express Waiver

TIDWELL EXPRESSLY WAIVES ANY AND ALL ACTIONS ARISING OUT OF THE TERMINATION OF THIS AGREEMENT AND THE REQUIRED REMOVAL OF ANY AND ALL IMPROVEMENTS MADE TO THE LICENSED PARCEL BY TIDWELL.

4. Operation of the Parking Lot; Maintenance

All costs for installation, ongoing operation and maintenance of the parking lot, including without limitation all electrical charges, landscaping, maintenance costs, repair costs, and insurance costs with respect to the Parking Lot shall be paid by Tidwell. Electricity for the parking lot shall be billed to Tidwell by City.

5. City Approvals

Tidwell shall secure all necessary approvals from the City for the construction of the Parking Lot, including but not limited to landscaping, and design review, prior to the issuance of a building permit by the City.

6. Access to the Licensed Parcel

Tidwell shall have access to the Licensed Parcel at all times during this term of this Agreement.

7. Condition of License Parcel

Tidwell hereby accepts that the Licensed Parcel in its "as is" condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Licensed Parcel.

The City shall not be required to provide any additional improvements to the Licensed Parcel. The Licensed Parcel shall be maintained in a clean and orderly condition, with such maintenance of the parking lot performed by Tidwell.

8. Indemnifications

Tidwell shall be solely responsible for, and shall indemnify, defend (by counsel reasonably acceptable to the Indemnified Party in question) and hold the City, its members, officers, directors, agents, employees and any other person acting for or on behalf of the City (collectively, the "Indemnified Parties") harmless from and against any and all costs, claims, losses, damages, causes of action and liability which may arise by reason of any occurrence attributable to or arising out of Tidwell's failures to observe or perform any obligation of Tidwell's under this Agreement; Tidwell's installation, presence, alteration, operation, maintenance, repair and removal of the Parking Lot, including without limitation any claim or cause of action for injury to or death of any person or damage to any property arising out of any such occurrence occurring from and after the date hereof. The City shall have no liability to Tidwell, and Tidwell waives all claims against the City, arising

from, or in any way related to, occurrences within the scope of the indemnity set forth in this Section 8, except to the extent caused by the negligence or willful misconduct of the City or its employees, licensees or invitees and except to the extent caused by a dangerous condition on the Licensed Parcel.

The provisions of this Section 8 shall survive the termination of this Agreement.

9. Insurance

Tidwell shall, at its sole cost and expense, obtain and keep in force during the term hereof: (a) commercial general liability insurance insuring Tidwell and naming the City as an additional insured against claims for bodily injury, personal injury and property damage, providing coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence, covering the installation, presence, alteration, operation, maintenance, repair and removal of the parking lot; and (b) any other insurance relating to the installation, presence, alteration, operation, maintenance, repair and removal of the parking lot as the City may reasonably require from time to time, all in form and with companies reasonably acceptable to the City. Upon execution of this Agreement, Tidwell shall deliver to the City current certificates evidencing the existence and amounts of the insurance, and with the additional insureds required under this Section 9. Each policy shall contain an endorsement providing that it is not cancelable or subject to nonrenewal or reduction in coverage except after thirty (30) days prior written notice from the insurance company to the City. If Tidwell fails to obtain the required insurance, the City may (but shall not be required to) obtain such insurance and the cost thereof shall be payable by Tidwell to the City upon demand.

10. Assignment

Tidwell may not assign the license or any of its rights under this Agreement without the express prior written consent of City.

11. Notices

Notices desired or required to be given pursuant to this Agreement or by any law now or hereafter in effect may be given by enclosing the same in a sealed envelope addressed to the party for whom intended and by depositing such envelope with postage prepaid in the United States Post Office or any substation thereof, or any public letter box, and any such notice and the envelope containing the same, if to Tidwell, shall be addressed as follows:

LEO W. TIDWELL AND TAMARA ANN TIDWELL
11 B RAMADA DRIVE
Paso Robles, CA 93446

and any such notice and the envelope containing the same, if to the City, shall be addressed as follows:

CITY OF EL PASO DE ROBLES
1000 Spring Street
Paso Robles, CA 93446
Attention: City Manager

Either party may, by notice to the other given in accordance with this Section 11, specify a different address for notice purposes.

12. Attorneys' Fees

Should any action be brought arising out of this Agreement, including without limitation any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of investigation incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code or any successor statutes, and any judgment or decree rendered in any such actions or proceedings shall include an award thereof.

13. Default; Remedies; Termination

It shall be a default under this Agreement if (a) Tidwell shall fail to pay any other sum payable to City hereunder as and when due, (b) Tidwell shall fail to observe and comply with any other term, condition, covenant or agreement to be observed and complied with by Tidwell hereunder and such failure shall continue for thirty (30) days after written notice of such default, unless Tidwell shall have commenced to cure such failure within such thirty (30) days and is diligently pursuing such cure to completion. In addition to any other remedies for Tidwell. The City shall have no liability to Tidwell or any other person. If any default of Tidwell shall continue uncured for a period of thirty (30) days after notice from the City and no attempt to cure has been commenced and is being diligently pursued, the City shall have the right to terminate this Agreement. Upon such termination, Tidwell shall remove the Parking Lot as provided for under Section 3. In the event Tidwell fails to remove the Parking Lot, the City shall have, in addition to any other remedy available hereunder at law or in equity, the right to remove the parking lot from the Licensed Parcel. Tidwell shall be liable to the City for the City's reasonable costs of removing the Parking Lot. The liability of Tidwell under this Section 13 shall survive the termination of this Agreement.

14. Amendments

This Agreement may be amended or modified only in writing, signed by the City and Tidwell.

15. Binding Effect

The provisions of this Agreement shall inure to the benefit of and be binding upon the City and Tidwell and their respective successors.

16. No Waiver

No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

17. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

IN WITNESS WHEREOF, the City and Tidwell have executed this Agreement as of the dates set forth below their signatures. The effective date of this Agreement shall be the date it is signed by the City.

DATED: _____, 1999

CITY:

THE CITY OF EL PASO DE ROBLES,
a public body, corporate and politic

By: _____
Duane J. Picanco
Mayor

Attest:

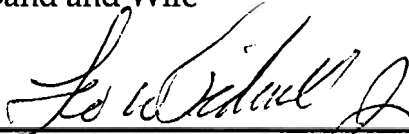
By: _____
Cindy Pilg
Deputy City Clerk

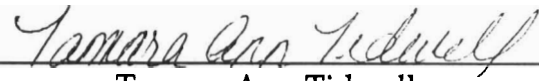
-AND-

DATED: May 18, 1999

TIDWELL:

LEO W. TIDWELL and
TAMARA ANN TIDWELL
Husband and Wife

By: 
Leo W. Tidwell, Jr.

By: 
Tamara Ann Tidwell

STATE OF CALIFORNIA)
) ss
COUNTY OF San Luis Obispo

On May 18, 1999, before me the undersigned, a notary public,
personally appeared Leo W. Tidwell, Jr. and Tamara Ann Tidwell

() 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 Kathryn H. Nichols

~~~~~



STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me the undersigned, a notary public,  
personally appeared \_\_\_\_\_

( ) 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 \_\_\_\_\_

**Legal Description  
(Future Right of Way)**

**Licensed Parcel**

That portion of Lot 4 of the Subdivision of a part of the Rancho Paso de Robles, in the County of San Luis Obispo, State of California, according to map filed October 22, 1886 in Book A, Page 164 of Maps, in the office of the County Recorder of said County, described as follows:

Commencing at a ½" rebar with tag marked "LS 3976" on the westerly line of the Southern Pacific Railroad and marking the Northeasterly corner of the land described in the deed to Edward D. Ward recorded March 31, 1964 in Book 1290, Page 626 of Official Records of said County;

Thence along the Northerly line of said land South 77°45'00" West, a distance of 210.48 feet to a ½" rebar with tag marked "LS 3976" marking an angle point in said Northerly line of said land;

Thence leaving said Northerly line South 12°56'53" West, a distance of 193.01 feet to the True Point of Beginning, from which a 1" iron pipe with tag marked "LS 5751" set at an angle point in the North line of Parcel 2 of Parcel Map CO 77-359 recorded in Book 28, Page 91 of Parcel Maps, bears South 12°56'53" West;

Thence North 76°34'31" West, a distance of 193.55 feet;

Thence North 13°28'11" East, a distance of 8.76 feet;

Thence North 76°34'31" West, a distance of 84.76 feet to a point on the Easterly line of the property described in the deed to the State of California recorded October 15, 1964 in Book 1319, Page 597 of Official Records;

Thence along said Easterly line South 11°15'24" West, a distance of 28.78 feet to an angle point in said Right of Way;

Thence South 21°57'51" East, along said Right of Way, a distance of 48.15 feet;

Thence South 70°06'17" East, along the Northerly lines of Parcels 1 and 2 of said Parcel Map CO 77-359, a distance of 251.05 feet to said angle point in the North line of said Parcel 2;

Thence North 12°56'53" East, to the Point of Beginning.



Licensed Parcel

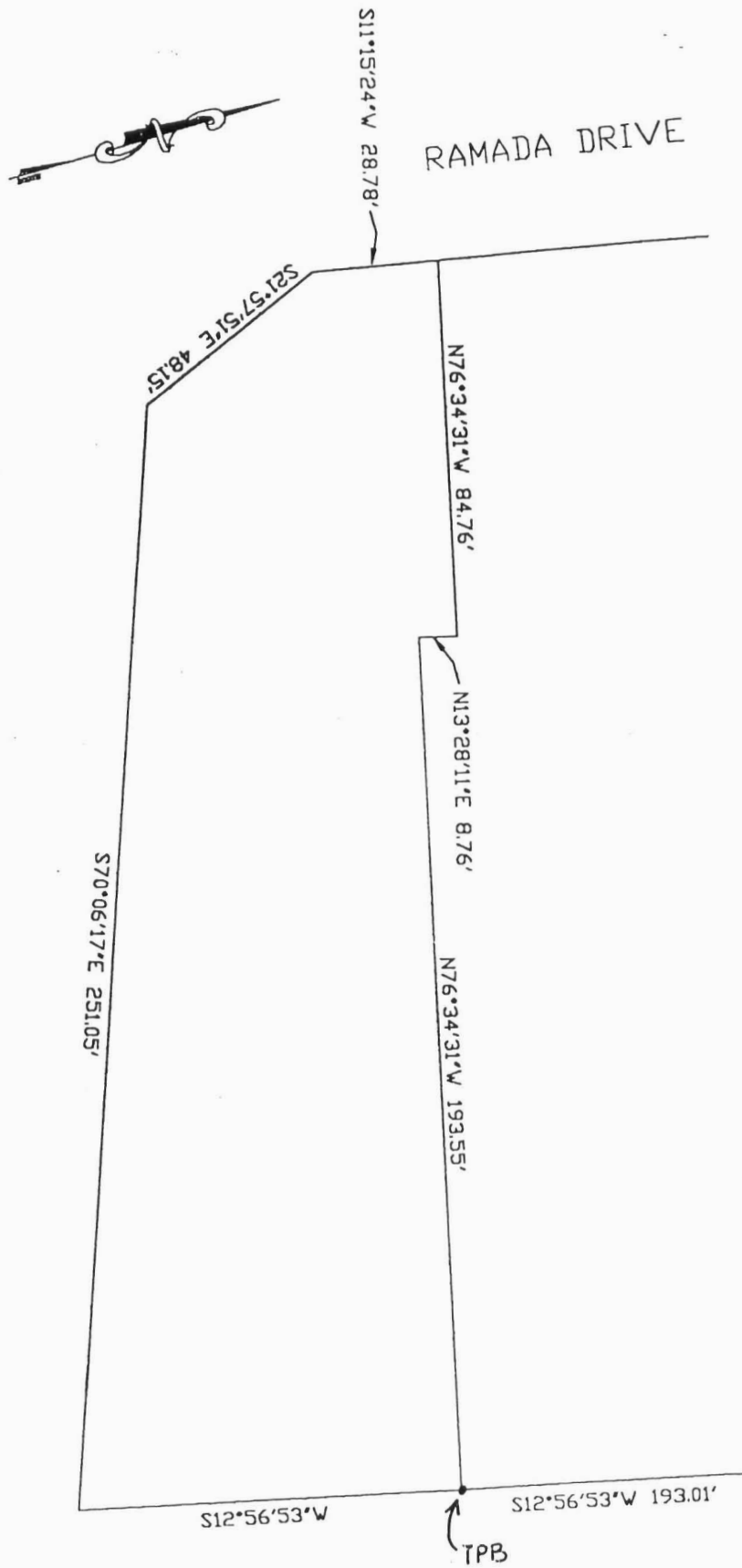


Exhibit B

