

**TO:** James L. App, City Manager

**FROM:** Doug Monn, Public Works Director

**SUBJECT:** Reimbursement for Installation of a Traffic Signal and Related Improvements at Golden Hill Road and Highway 46E;  
Regency Centers, PD 06-025

**DATE:** April 20, 2010

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**Needs:** For the City Council to authorize an agreement providing for reimbursement to Paso Golden Hill, LLC, also known as Regency Centers and developer of PD 06-025, for the installation of a traffic signal and related improvements at the intersection of Golden Hill Road and State Highway 46E.

**Facts:**

1. On August 12, 2008, the Planning Commission adopted Resolution 08-037 amending the approval of PD 06-025.
2. Conditions of Approval of PD 06-025 require Paso Golden Hill, LLC to install a traffic signal and related improvements at the intersection of Golden Hill Road and Highway 46E in accordance with plans approved by Caltrans and the City Engineer.
3. The traffic signal and improvements at Golden Hill Road and Highway 46E appear on the AB 1600 Needs List adopted by the Council in October 2006.
4. In accordance with Council Resolution 06-188, a developer that has been required to construct any facility on the AB 1600 Needs List may request reimbursement of the applicable development impact fee.
5. A Reimbursement Agreement between the City and Paso Golden Hill LLC has been drafted describing the work that was done and the reimbursement process, in accordance with the approvals for PD 06-025.

**Analysis  
and**

**Conclusion:** The development of PD 06-025 prompted the need to improve the intersection of Golden Hill Road and State Highway 46E. In accordance with the conditions of approval of the project, Paso Golden Hill, LLC has completed the improvements in accordance with plans approved by Caltrans and the City Engineer. The City's AB 1600 fee program allows for reimbursement of applicable impact fees when improvements shown on the adopted Needs List are required of and completed by a developer.

In order to qualify for reimbursement, all improvements must be completed in accordance with the provisions of the attached Reimbursement Agreement. All expenses must be reviewed and approved by the City Engineer. The attached agreement sets a maximum reimbursement amount.

Once a final accounting has been provided by Paso Golden Hill, LLC, the City Engineer will review all expense reports and will recommend a fixed reimbursement amount to the Public Works Director. The Director will then forward the claim to Council for appropriation at a subsequent date.

**Policy**

**Reference:** Council Resolution 06-188, Development Impact Fees

**Fiscal**

**Impact:** The council action recommended below will set an agreement in place that will set the terms by which Paso Golden Hill, LLC will be eligible for reimbursement of a portion of transportation impact fees paid to date.

All expenses must be verified by the City Engineer and then provided to the Director of Public Works with a recommendation for reimbursement. The City Council will subsequently appropriate the funds.

To date, developers at the Golden Hills Plaza, including Paso Golden Hill LLC and Lowe's have paid \$1,712,784 in transportation impact fees and an additional \$99,981 in Borkey traffic fees. Based on current rates, the shopping center will ultimately yield another \$563,716 in transportation fees (includes Borkey).

Paso Golden Hill, LLC, has estimated that it has expended nearly \$1,700,000 in reimbursable construction related to the intersection of Golden Hill Road and Highway 46E and traffic calming improvements on Dallons Drive.

Sources of funds will be the Borkey "interchange" account and the transportation impact fee fund. Current balances are \$1,061,900 in Borkey and \$2,018,108 in transportation impact fees. \$1,640,000 of traffic impact fees has been earmarked for interchange work at Highways 101/46E; however those funds will not be fully appropriated until 2012.

- Options:**
- a. Adopt Resolution No. 10-xx authorizing the City Manager to enter into a Reimbursement Agreement to reimburse Paso Golden Hill, LLC, expenses for improvements to the intersection of Golden Hill Road and Highway 46E in an amount not to exceed \$1,700,000.
  - b. That the City Council amend, modify or reject the above options.

Prepared by: John Falkenstien, City Engineer

Attachments: (3)

- 1) Resolution No. 06-188
- 2) Reimbursement Agreement
- 3) Resolution

RESOLUTION NO. 06-188

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
ADOPTING THE DEVELOPMENT IMPACT FEE CALCULATION AND  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY FOR THE CITY OF  
PASO ROBLES, CALIFORNIA AND ESTABLISHING REVISED  
DEVELOPMENT IMPACT FEES FOR ALL DEVELOPMENT WITHIN THE CITY  
OF EL PASO DE ROBLES

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WHEREAS, several policies within the City's General Plan require that that new development mitigate its share of the impacts to the natural and built environment to be fiscally neutral and not result in a net economic loss for the City; and

WHEREAS, such General Plan policies include Goal LU-4 requiring the maintenance of existing quality of life, Policy LU-4A regarding maintenance of existing service levels and related Action Item 2 regarding funding new facilities, Policy CE-1A (j) requiring new development to mitigate a fair share of its impacts, and Action Item CE-1, Item 9, calling for the use of impact fees to fund needed improvements to serve new development, among other policies; and

WHEREAS, in accordance with these General Plan policies established in the 2003 General Plan update, the City Council has directed staff to conduct a comprehensive review of the City's development impact fees to determine whether those fees are adequate to defray the cost of public facilities related to new development; and

WHEREAS, the City contracted with David Taussig & Associates, Inc to provide a comprehensive evaluation of the City's existing development impact fees; and

WHEREAS, David Taussig & Associates, Inc. prepared a report, entitled *Development Impact Fee Justification Study for the City of Paso Robles, California*, dated October 3, 2006 (the "Nexus Study"), that provides an evaluation of existing development impact fees, recommends an increase in certain development impact fees and establishes the nexus between the imposition of such impact fees and the estimated reasonable cost of providing the service for which the fees are charged; and

WHEREAS, the Nexus Study has been available for public review and comment; and

WHEREAS, the Nexus Study substantiates the need for an increase in development impact fees in seven of the development impact fees; and

WHEREAS, the City has collected development impact fees to mitigate the impacts of new development, including fees for transportation, park development, storm drainage, public safety, library and other public facilities since the adoption of Resolution No. 03-031; and

WHEREAS, the City Council desires to update these new development impact fees, in accordance with the calculations and recommendations contained in the Nexus Study; and

WHEREAS, in compliance with the Mitigation Fee Act (Government Code section 66000 *et seq.*), the City Council held a noticed public hearing on the proposed increase in development impact fees at its regular meeting on August 1, 2006, which hearing was continued to October 3, 2006, to solicit public input on the proposed increases to development impact fees;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Findings pursuant to Government Code section 66001.

The City Council finds and determines that the Nexus Study complies with California Government Code section 66001, and as to each of the proposed increases in fees to be imposed on new development:

- (a) Identifies the purpose of the fee;
- (b) Identifies the use to which the fee will be put;
- (c) Shows a reasonable relationship between the use of the fee and the type of development project on which the fee is imposed;
- (d) Demonstrates a reasonable relationship between the need for the public facilities and the type of development projects on which the fee is imposed; and
- (e) Demonstrates a reasonable relationship between the amount of the fee and the cost of the public facilities or portion of the public facilities attributable to the development on which the fee is imposed.

SECTION 2. Fees for Uses Consistent with the Nexus Study.

The City Council hereby determines that the fees imposed, pursuant to this resolution shall be used solely to finance the public facilities described or identified in the Nexus Study.

SECTION 3. Approval of Items in Nexus Study.

The City Council has considered the specific public facilities and cost estimates identified in the Nexus Study and hereby approves such public facilities and cost estimates and further finds that the cost estimates serve as a reasonable basis for calculating and imposing the development impact fees for such public facilities.

RESOLUTION NO. 06-188

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#### SECTION 4. Consistency with General Plan.

The City Council finds that the public facilities and fee methodology identified in the Nexus Study are consistent with the City's General Plan and, in particular, those policies that require new development to mitigate its share of the impacts to City infrastructure and to be fiscally neutral.

#### SECTION 5. Differentiation Among Public Facilities.

The City Council finds that the public facilities identified in the Nexus Study and funded through the collection of those fees recommended in the Nexus Study are separate and distinct from those public facilities funded through other fees presently imposed and collected by the City. To the extent that other fees imposed and collected by the City, including Specific Plan fees, are used to fund the construction of the same public facilities identified in the Nexus Study, then such other fees shall be a credit against the applicable development impact fees.

Notwithstanding the above provision, this resolution shall not be deemed to affect the imposition or collection of the water and sewer connection fees authorized by section 14.04.020 and 14.16.020 of the Municipal Code.

#### SECTION 6. CEQA Finding.

The adoption of the Nexus Study and the increase in development impact fees is not subject to the California Environmental Quality Act in that pursuant to CEQA Guidelines, section 15378(b) (4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause a significant effect on the environment, is not defined as a "project" under CEQA.

#### SECTION 7. Adoption of Report.

The Nexus Study, including Appendices A, B and C, is hereby adopted.

#### SECTION 8. Timing of Fee.

Except as provided below in this Section 8, the development impact fees imposed by this resolution shall be paid upon the issuance of a Certificate of Occupancy, at the rate in effect at that time. All building permit applications that were received by the City Building Division on or before October 3, 2006 and, based upon the submissions made by that date, that have been deemed by the City to be accepted for review to determine their compliance with City requirements, shall be processed on a first-come, first-served basis, in accordance with the City's standard policies and practices, shall be subject to the development impact fees that applied pursuant to Resolution 03-031, prior to adoption of this resolution.

SECTION 9. Amount of Fee.

The City Council hereby approves and adopts the development impact fees as set forth in Exhibit A to this resolution, attached hereto and incorporated herein. Exhibit A sets forth the aggregate amount imposed as a development impact fee for both residential and non-residential land uses and also sets forth the breakdown of each development impact fee by type of facility. The development impact fees set forth in Exhibit A are consistent with the Nexus Study. The amount of the development impact fees shall be modified annually each July 1 based on the change in the Engineering News Record's construction cost index as reported for the twelve month period ending in April of each year.

SECTION 10. Use of fee.

The development impact fees shall be solely used for (1) the purposes described in the Nexus Study; (2) reimbursing the city for the development's fair share of those public facilities already constructed by the City; or (3) reimbursing developers who have already constructed public facilities described in the Nexus Study.

A developer that has been required by the City to construct any facilities or improvements (or a portion thereof) described in Table 2 of the Nexus Study as a condition of approval of a development entitlement may request a credit against the payment of the applicable development impact fee. This credit shall only be applied against the specific development impact fees attributable to the public facility, described in the Nexus Study and constructed in conjunction with the subject development. The amount of the credit shall not exceed the actual cost of construction.

When an applicant is required, as a condition of approval of a development entitlement, to construct any facility or improvement listed in Table 2 of the Nexus Study and the cost of the public facility exceeds the development impact fees that would otherwise be due, the applicant shall be reimbursed for such costs pursuant to the terms of a reimbursement agreement approved by the City Council.

Fees collected pursuant to Resolution 03-31 for Aquatic Facilities and for Public Meeting Facilities shall be used exclusively for those purposes and accounts for these fees shall remain in effect and shall be maintained by the Director of Administrative Services.

Fees collected under any of the seven categories listed A through G in Table 2 of the Nexus Study may be used to finance the construction or implementation of any public facility listed in those categories to the extent that use of the fees may not exceed the percentage allocated to new development of all of the public facilities listed in the category, or sub-category as shown on Table 2.

SECTION 11. Fee Determination by Type of Use.

A. Residential Development.

Development impact fees for residential development shall be based upon the type of unit constructed. The development impact fee categories as shown in Exhibit A generally correspond to the City's land use designations in the land use element of the City's General Plan.

B. Nonresidential Land Uses.

Development impact fees for nonresidential land uses shall be based upon the square footage of the building. The development impact fee categories as shown in Exhibit A generally correspond to the City's land use designations in the land use element of the City's General Plan.

C. Uses Not Specified.

In the event that there are land uses not specified in Exhibit A, the development impact fee for such use shall be determined by the City's Community Development Director or his or her designee who shall determine such fee based on an analysis of the impacts of the proposed use on public facilities in relation to other uses shown in Exhibit A.

SECTION 12. Prior Resolutions and Ordinances Superseded.

The development impact fees approved and adopted by this resolution shall take effect in sixty (60) days and, upon the effective date, shall supersede previously adopted resolutions that set the amounts of development impact fees, including Resolution 03-31.

SECTION 13. Severability.

If any action, subsection, sentence, clause or phrase of this resolution, the Nexus Study, or other attachments hereto, shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this resolution or other fees levied by this resolution that can be given effect without the invalid provisions or application of fees.

SECTION 14. Effective Date.

Consistent with California Government Code section 66017(a), the fees as identified in attached Exhibit "A" adopted by this resolution shall take effect sixty (60) days following the adoption of this resolution by the City Council.

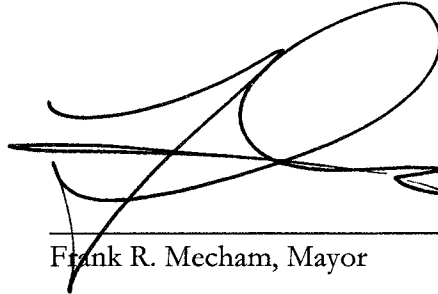
PASSED AND ADOPTED by the City Council of the City of Paso Robles this 3<sup>rd</sup> day of October, 2006 by the following vote:

AYES: Nemeth, Picanco, Strong, and Mecham


NOES:

ABSTAIN:

ABSENT: Heggarty

  
\_\_\_\_\_  
Frank R. Mecham, Mayor

ATTEST:

  
\_\_\_\_\_  
Deborah D. Robinson, Deputy City Clerk

Attachment:

A: Development Impact Fee Justification Study



# Exhibit "A"

## Development Impact Fee Summary

	A Transportation Facilities		B Drainage Facilities West of Salinas River	C Bike and Pedestrian Path Facilities	D Public Safety Facilities		E General Governmental Facilities	F Park and Recreation Facilities	G Library Facilities	Total	
	East of Salinas River	West of Salinas River			Police	Fire				East of Salinas River	West of Salinas River
Single Family	\$8,119	\$4,042	\$1,660	\$469	\$61	\$726	\$4,868	\$4,895	\$948	\$20,086	\$17,669
											unit

Multiple Family Condominium/Duplex Mobile Homes	\$6,495	\$3,234	\$830	\$417	\$72	\$646	\$4,327	\$4,351	\$844	\$17,152	\$14,721
Assisted Living Units	\$1,820	\$990	\$830	No Fee	\$72	\$10,451	\$4,327	No Fee	No Fee	\$16,670	\$16,670
Commercial Lodging Motel/Hotel	\$2,123	\$2,123	No Fee	No Fee	\$72	\$342	\$71	No Fee	No Fee	\$2,608	\$2,608
RV Parks & Campgrounds	\$1,770	\$1,770	No Fee	No Fee	\$72	\$342	\$71	No Fee	No Fee	\$2,255	\$2,255
											unit

Commercial per sq. ft.	\$6.83	\$5.71	\$1.12	NA	\$0.05	\$0.45	\$0.35	NA	NA	\$7.68	\$7.68
											sq ft.

Industrial per sq. ft.	\$3.43	\$2.68	\$0.75	NA	\$0.02	\$0.05	\$0.10	NA	NA	\$3.60	\$3.60
											sq ft.

The following uses are allowed in commercial zones under Conditional Use Permits. Buildings constructed for these uses shall be considered Industrial for the purposes of Development Impact Fees.

Recycling  
 Wholesale and Storage  
 Mini-Storage  
 Warehousing  
 Manufacturing and Processing, including:  
   Apparel, Chemical Products, Electrical Equipment, Food and Kindred Products, Furniture and Fixtures,  
   Glass Products, Cabinet Shops, Prefabricated Walls and Tussets, Machinery, Metal Fabrication, Mobile Home Manufacturing  
   Paper Products, Plastics, Fiberglass, Rubber, Jewelry, Stone, Structural Clay and Pottery, Testing Laboratories

## REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 ("Effective Date"), by and between the City of El Paso de Robles, a California municipal corporation (the "**City**") and PASO GOLDEN HILL, LLC, a Delaware limited liability company (the "**Developer**") individually referred to herein as a "party" and collectively referred to as the "**parties**", with reference to the following facts:

### RECITALS

A. The Developer owns certain real property in the City, located at Dallons Drive and Golden Hill Road, Paso Robles consisting of 25.08 acres ("**Real Property**") and more particularly described on Exhibit "A." The Real Property is permitted for the development of a retail shopping center ("**Center**") containing 300,000 square feet of building pursuant to Planning Commission Resolution No. 07-077 adopted on August 27, 2007, which approved PD 06-025, together with the Conditional Use Permit issued therefore (CUP No. 06-013), all as modified by Planning Commission Resolution 08-037, adopted on August 12, 2008 (collectively the "**Entitlements**");

B. The Real Property is located within an area for which a specific plan has been adopted by the City Council called the Borkey Area Specific Plan (the "**Specific Plan**"). Pursuant to the Specific Plan, development of property within the Specific Plan area is subject to certain development impact fees for public improvements (the "**Borkey Fees**");

C. In addition, pursuant to Government Code section 66000 *et seq.*, the City has adopted a schedule of impact fees for development within the City ("**City Fees**") to help defray the cost of certain public facilities and improvements, which City Fees may be amended from time to time, in accordance with law;

D. The parties wish to document, among other things, (i) certain matters related to the Borkey Fees; and (ii) certain credits and reimbursements available to Developer by the City in accordance with Section 10 of City Council Resolution No. 06-188;

E. As a condition of City's approval of the Entitlements, specifically including PD 06-025, the Developer has been required to install a new traffic signal at the intersection of Golden Hill Road and State Route 46E and other associated street and highway improvements at such intersection and on Dallons Drive (collectively the "**Improvements**"), which are listed on Exhibit "B," attached hereto. The Improvements will accommodate the development of the Real Property as well as other future third party developments and benefit the public, the City and surrounding public improvements, roads and intersections;

F. The Developer has paid or is paying for the construction and/or installation of the Improvements. The Developer is entitled to be reimbursed for the costs of the Improvements, to the extent and as set forth in this Agreement; and

G. The City has found that the execution and fulfillment of this Agreement is vital and in the best interests of the City and in the health, safety and welfare of the City's residents, and is in accord with the public purposes and provisions of the applicable federal, state and local laws and requirements.

NOW, THEREFORE, the parties agree as follows:

### AGREEMENT

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals, and in the preamble preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

2. Fees.

(a) Borkey Fees. One of the Borkey Fees is designated for transportation improvements ("**Borkey Transportation Fee**"). These transportation improvements are also included on the list of transportation improvements to be funded by a portion of the City Fees. Therefore, in accordance with Council Resolution No. 06-188, all of the Borkey Transportation Fees paid in connection with the development of the Center or portion thereof shall be credited against and therefore reduce the amount of the City Fees designated for transportation improvements to be paid in connection with such development of the Center or portion thereof.

In addition, the Borkey Fees include certain fees to pay for storm drainage improvement (the "**Borkey Drainage Fee**"). Developer has installed storm drainage improvements that serve and benefit the entire Center, and therefore Developer shall not be required to pay any Borkey Drainage Fees. However the City shall require any applicant for a building permit within the Center, other than Developer, to pay the Borkey Drainage Fee. The City agrees that it shall pay to Developer any Borkey Drainage Fees paid to the City for the development of any parcels within the Center and shall provide an accounting to Developer of any such Borkey Drainage Fees paid by applicants for building permits within the Center..

(b) City Fees. Except for the credit for any Borkey Transportation Fees paid, as set forth above in subsection (a), any applicant for a building permit for development within the Center shall be required to pay all applicable City Fees.

3. Improvements. As a condition of development, the Developer is required to install and/or construct the Improvements listed in Exhibit B. As applicable, the Improvements shall be installed in accordance with the plans and specifications prepared by licensed engineers and consultants, pursuant to permits issued by the City, and (if applicable) approved by the California Department of Transportation ("Caltrans"), Caltrans District 5, or in accordance with any revisions to those plans as approved by Caltrans District 5, and in accordance with this Agreement.

4. Nondiscrimination. The Developer, for itself and its successors and assigns, agrees that in the construction and installation of the traffic signal and associated, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

5. Prevailing Wages. The Improvements to the intersections of the public streets are public works within the meaning of Part 7 of Division 2 of the California Labor Code (Sections 1720 and following) the ("Prevailing Wage Law"), and the Developer, any contractor, and any subcontractor, shall pay not less than the specified prevailing rates of wage to all workmen employed in connection with the installation of the intersection Improvements. It shall be the responsibility of the Developer to ensure that each contractor and subcontractor hired to perform work in connection with such intersection Improvements comply with the requirements of this Section 7, and all other applicable requirements of the Prevailing Wage Law.

Pursuant to the provisions of Section 1770 of the Labor Code of the State of California, the City Council of the City of Paso Robles has obtained the City's general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes, a copy of which is on file in the office of the Director of Public Works, and which shall be made available for viewing to any interested person upon request.

The Developer shall indemnify, hold harmless, and defend the City (with counsel reasonably acceptable to the City), against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of the Developer or its contractors to pay prevailing wages, if and to the extent required by law, or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the intersection Improvements identified in this Agreement.

6. Conditions of Reimbursement. The Developer hereby warrants that it has secured, or will secure, any and all permits required by the City, Caltrans or any other governmental agency affected by the construction and installation of the Improvements. The City warrants that it has issued all of its applicable approvals and permits for the Improvements. The Developer shall, at its sole cost and expense, construct and install the Improvements. All of the following conditions must be satisfied before the City will reimburse the Developer for any portion of the costs of the Improvements and/or Studies and Plans as herein provided:

6.1 All costs for the construction and installation of the Improvements shall be fully paid by the Developer, and the Developer shall have obtained lien releases or waivers satisfactory to the City before the Developer shall be entitled to any reimbursement. The Developer shall take any and all actions necessary to convey and vest full, complete, and clear title to those Improvements on City property, and to Caltrans with respect to those Improvements on State property.

6.2 The Improvements shall be completely installed and approved by staff from both the City and Caltrans, as applicable, before the Developer shall be entitled to any reimbursement.

6.3 The amount of reimbursement for the Improvements to the intersection shall be the documented actual cost of construction of the Improvements. Developer shall provide evidence reasonably satisfactory to the City of all costs for which reimbursement is sought. To be eligible for reimbursement, any such costs resulting from changes to the public works constructed pursuant to this Agreement must be approved in writing by the City prior to construction unless resulting from field-ordered changes initiated by City inspectors. At the completion of the construction of the Improvements, Developer shall provide City a written final accounting of all actual costs and expenses, inclusive of change orders (the “**Final Accounting**”). Within thirty (30) days of receipt of the Final Accounting, City shall provide to Developer either written confirmation of the Final Accounting or written requests for clarification.

Notwithstanding any of the above, the City shall not reimburse the Developer for any costs related to the intersection Improvements unless the Developer pays prevailing wages for all work done in connection with the construction and installation of the intersection Improvements, as required by Section 5 of this Agreement and by state law, and provides evidence satisfactory to the City of compliance with the Prevailing Wage Law.

7. Reimbursement Limit. The parties have agreed that City shall remit to Developer the amount of any Borkey Drainage Fees paid to City for any development within the Center. In addition, Developer shall be entitled to be reimbursed for the costs of the Improvements, up to a maximum amount of ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000.00) (the “**Intersection Improvement Reimbursement**”). The total amount of Intersection Improvement Reimbursement will be based upon evidence provided by the Developer and reasonably satisfactory to City, including, but not limited to the documents listed in Section 10 hereof, supporting the cost of the Improvements and a Final Accounting provided by Developer to City upon completion of the Improvements pursuant to Section 6.3. The Intersection Improvement Reimbursement shall be paid by City to Developer within forty-five (45) days after City has accepted the Improvements and approved such Final Accounting.

8. Source of Funds. Reimbursement for the Improvements identified in this Agreement shall be made exclusively from (i) the funds collected for the Borkey Transportation Fee and (ii) the funds collected and allocated from City Fees to the Improvements (collectively, the “**Transportation Funds**”). The City’s obligation to the Developer is expressly conditioned and contingent upon the availability of monies within said Transportation Funds, as determined by the City Council in its sole and absolute discretion, subject to the right of audit by Developer. The Developer shall have no claim against any other source of City revenue, including but not limited to, general fund monies.

9. Conveyance of Documents. Upon conveyance of the Improvements identified in this Agreement, the Developer shall convey and deliver to the City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, construction contracts, warranties, and any other documents relating to the design, construction and operation of the Improvements, which are in the Developer's custody or control, or in the custody or control of any of the Developer's contractors, subcontractors or agents.

9.1 The City does not assume any liability, duty or obligation with respect to the Developer's contractors, subcontractors or agents by execution or performance of this Agreement, and no contractors, subcontractors or agents or any other individuals or entities are third party beneficiaries of this Agreement.

9.2 Upon the Developer's completion of the Improvements, the Developer agrees to assign to the City the warranties provided by its contractors for the Improvements identified in this Agreement as to materials and workmanship and should any failure of the Improvements or any parts thereof occur within a period of one (1) year after substantial completion of the Improvements, the City shall have the right to seek correction or cure of the defective situation from the contractor installing the same.

9.3 The Developer shall require its contractor(s), before beginning the construction of the traffic signal at Highway 46, to file bonds in accordance with Caltrans District 5 requirements. These bonds shall be issued by a Surety Company authorized to do business in the State of California, and shall be maintained during the entire life of this Agreement at the expense of the Developer or its contractor.

10. Submission of Documentation; City's Right to Audit. Upon the Developer's completion of the Improvements, the traffic signals and street improvements shall be deemed transferred to the City (or CalTrans, as applicable), and the Developer shall submit documentation to the City reasonably evidencing the costs of constructing and installing the Improvements. Such documentation may include, but is not limited to, copies of the Developer's construction contract(s), invoices, canceled checks, complete lien releases with respect to the new traffic signal and improvements, and any other documentation reasonably requested by the City. The Developer agrees that the City shall have the right to audit, upon the City's reasonable request, the Developer's records of the costs associated with the construction and installation of the new traffic signal and improvements in order for the City to verify the Developer's costs.

11. Insurance. Prior to the commencement of construction of the Improvements, the Developer shall furnish, or cause to be furnished, to Caltrans, appropriate certificates of bodily injury and property damage insurance policies in accordance with Caltrans District 5 requirements. Developer shall maintain all such insurance in full force and effect during the entire time of construction of the Improvements until conveyance.

12. Indemnification. The Developer shall indemnify, defend, and hold harmless the City, its agents, officers, and employees from and against any damages, claims, liability,

losses, causes of action, suits, judgments, fines and expenses, arising out of, or in any way connected to, this Agreement, or the design, construction or installation of the Improvements provided herein, or resulting from any act or omission of the Developer arising out of this Agreement on or prior to the date that the Improvements are transferred from the Developer to the City and/or Caltrans; provided that in such event, Developer shall retain the benefit of all third party warranties. Indemnification required by this Agreement shall include, but need not be limited to, indemnification of the City if the Developer does not pay prevailing wages for all work done in connection with the design, construction and installation of the Improvements, as required by Section 5 of this Agreement and by state law. The provisions of this Section 12 shall remain in full force and effect for one (1) year following the completion of the new traffic signal and street improvements.

13. Public Safety Protections. The Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the property or the Developer's activities in connection with the property, including without limitation, fire, or the failure, collapse or deterioration of any improvements or structures.

14. No Joint Venture. Neither this Agreement, nor any obligation under this Agreement shall constitute a joint venture between the City and the Developer. In performing its obligations under this Agreement, the Developer shall be deemed an independent contractor and not an agent or employee of the City.

15. Assignment. The Developer shall not assign this Agreement or delegate the performance of all or any of the obligations under it without the prior express written consent of the City which shall not be unreasonably withheld, conditioned or delayed. In no event shall any assignment by the Developer release the Developer from its obligations under this Agreement unless such assignment has been approved in writing by the City. This Section 15 shall in no way prevent or limit the Developer from entering into any contracts with its contractor, subcontractors or materialmen that may be necessary or desirable in the performance of the Developer's responsibilities under this Agreement.

16. Non Liability of City Officials and Employees. No official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

17. Compliance with All Laws. The Developer agrees that it shall comply with all laws applicable to the work described in this Agreement.

18. Termination. This Agreement may be terminated by the mutual, written consent of both parties.

19. Amendment. This Agreement shall only be amended by the mutual agreement of both parties. Such amendment shall be in writing and signed by both parties.

20. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

21. Governing Law and Choice of Forum. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Luis Obispo.

22. Authority to Enter into Agreement. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the City and the Developer.

23. Notices. Any notice or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

- (a) By personal delivery, effective upon receipt by the addressee;
- (b) By facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. mail, return receipt requested, postmarked the same day as the facsimile;
- (c) By certified mail, return receipt requested, upon receipt or refusal.

CITY: City of Paso Robles  
Attn: City Engineer  
1000 Spring Street  
Paso Robles, CA 93446  
(tel.): (805) 237-3860  
(fax): (805) 237-3904

DEVELOPER: c/o Regency Centers, a California corporation  
2999 Oak Road, Suite 1000  
Walnut Creek, CA 94596  
Attention: Ryan Nickelson  
(tel.): (925) 279-1865  
(fax): (925) 935-5902

With a copy to:  
Kennerly, Lamishaw & Rossi LLP



707 Wilshire Blvd., Suite 1400  
Los Angeles, CA 90017  
Attention: Paul C. Anderson, Esq.

24. Attorneys' Fees and Costs. If either party to this Agreement brings a suit or proceeding to enforce or require performance of the terms of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorneys' fees, including fees for outside counsel.

25. Successors. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns and subcontractors of both parties.

26. Severability. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, or subsequently enacted legislation, this Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

27. Captions. The captions of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

28. Entire Agreement. This Agreement, including the Exhibits attached hereto (all of which are deemed incorporated into this Agreement by reference), constitutes the entire agreement between the City and the Developer with respect to the subject matter hereof and supersedes all prior negotiations, oral and written.

29. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

30. Effective Date. The effective date of this Agreement shall be the date of first above written.

*{Signatures on following page}*

IN WITNESS WHEREOF, the parties do hereby agree to the full performance of the terms set forth herein.

**"CITY"**

**CITY OF EL PASO DE ROBLES**

DATED: \_\_\_\_\_, 2010

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

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_  
Deputy City Clerk

**"DEVELOPER"**

DATED: \_\_\_\_\_, 2010

PASO GOLDEN HILL, LLC,  
a Delaware limited liability company

By: Regency Realty Group, Inc.,  
a Florida corporation  
Its managing member

By: \_\_\_\_\_  
Name:  
Its:

## ACKNOWLEDGMENT

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

## ACKNOWLEDGMENT

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

[Seal]

EXHIBIT “A”

LEGAL DESCRIPTION OF REAL PROPERTY

That certain real property located in the County of San Luis Obispo, California:

APNs 025-391-037, 025-391-038, 025-391-039, 025-391-063, and 025-391-067

## EXHIBIT “B”

### LIST OF IMPROVEMENTS AND ESTIMATED COSTS<sup>1</sup>

1. Golden Hill and Hwy 46 intersection improvements:
  - a. Intersection traffic signal modification \$88,855
  - b. Intersection improvements based on:
    - i. approved CalTrans Project plans for Construction of Highway 46 and Golden Hill Road
    - ii. Approved City off-site improvement plans for Golden Hills Plaza for (a) Golden Hill Road from SR 46 to project entry, and (b) Golden Hill Road south of SR 46
    - iii. Field change direction by CalTrans/City of Paso Robles
    - iv. Changes due to concealed or unknown conditionsTotal: \$1,420,606
  - c. Engineering/Design costs of a. and b., above \$146,672Total of 1.a., b., and c., above \$1,656,133
2. Traffic Calming Improvements to Dallons Road:
  - a. Cost of improvements based on:
    - i. Striping on Dallons Drive in residential subdivision next to the western boundary of the Site, based on approved City Bike Lane Improvement Plans for Dallons Drive (Buena Vista Drive to Golden Hills Plaza)
    - ii. Field change direction by CalTrans/City of Paso Robles
    - iii. Changes due to concealed or unknown conditionsTotal: \$17,465
  - b. Engineering/Design costs \$7,200Total of 2.a. and b., above \$24,665

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<sup>1</sup> All costs are estimated and subject to verification in accordance with the terms of the Agreement.

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PASO ROBLES APPROVING AND AUTHORIZING THE EXECUTION OF A  
REIMBURSEMENT AGREEMENT WITH PASO GOLDEN HILL LLC FOR  
INSTALLATION OF A TRAFFIC SIGNAL AND RELATED IMPROVEMENTS AT  
GOLDEN HILL ROAD AND STATE HIGHWAY 46E  
(PASO GOLDEN HILL, LLC)

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WHEREAS, on August 12, 2008, the Planning Commission approved Resolution No. 08-037 amending PD 06-025, a commercial shopping center located near the northwest corner of Golden Hill Road and State Highway 46E; and

WHEREAS, in accordance with conditions of approval of Amended PD 06-025, Paso Golden Hill, LLC has installed a traffic signal and related improvements at the intersection of Golden Hill Road and State Highway 46E in accordance with plans approved by Caltrans and the City Engineer; and

WHEREAS, improvements to the intersection of Golden Hill Road and State Highway 46E appear on the AB 1600 Needs List adopted by the City Council in October, 2006; and

WHEREAS, in accordance with Council Resolution 06-188, a developer that has been required to construct any facility on the AB 1600 Needs List may request reimbursement of its costs; and

WHEREAS, the City Attorney has prepared a Reimbursement Agreement allowing for the reimbursement to Paso Golden Hill, LLC, of construction costs associated with improvements in the intersection of Golden Hill Road and State Highway 46E, subject to the terms of the Agreement.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based on the staff report prepared by the City Engineer, the City Council finds as follows that Paso Golden Hill, LLC is eligible for reimbursement of the cost of installation of a traffic signal and related improvements at the intersection of Golden Hill Road and State Highway 46E, and certain traffic calming improvements on Dallons Drive. The reimbursement is estimated to be no more than \$1,700,000.

SECTION 2. That the City Council hereby approves and authorizes the City Manager to execute a Reimbursement Agreement in substantially the form attached hereto as Exhibit A and

incorporated herein by reference, subject to any minor technical and clarifying changes approved by the City Manager and City Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 20<sup>th</sup> day of April, 2010 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Duane Picanco, Mayor

ATTEST:

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Lonnie Dolan, Deputy City Clerk