

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

**FROM:** Meg Williamson, Assistant City Manager

**SUBJECT:** Charolais Road - Property Purchase

**DATE:** November 15, 2011

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**Needs:** For the City Council to authorize the City Manager to enter into a Purchase Agreement with Santa Lucia Bank (now Mission Bank) to purchase approximately 2.47 acres of residential land to provide for future trail connection opportunities.

**Facts:**

1. The City has been actively pursuing the development of River trail connections since the installation of the 1- ½ mile Salinas River Parkway Trail in 2005. In 2012 there will be two additional ½ mile trail segments developed, each utilizing federal and/or state funding through grants and/or transportation funds.
2. Charolais Road, between Creston and South River Roads, is mostly developed with a multi-use sidewalk/trail that is heavily used by Paso Robles residents. The parcel that is the focus of purchase would provide the potential for a future trail linkage between the Charolais multi-use sidewalk and the Salinas River Parkway trail (see attached location map).
3. The City has the opportunity to purchase the 2.47 acre parcel using Parks and Recreation funds.
4. In closed session on October 4, 2011, the City Council authorized the purchase negotiation discussions.
5. The property had been approved for a 5-lot residential subdivision and has been foreclosed on. In August 2011 the property was listed at \$275,000, but was reduced to \$239,595 asking price in September. A Brokers Opinion of Value was obtained by the City from Pacifica Commercial Realty, placing a range of value at \$199,000 to \$215,000.
6. On October 25, 2011 the Planning Commission adopted Resolution No. 11-023 making findings per Government Code Section 65402 that the purchase of the 2.47 acre Charolais Road property would be consistent with the City's General Plan.

7. Santa Lucia Bank (Mission Bank) has accepted a purchase offer of \$215,000 for the site along with a negotiated set of terms, including escrow closing by December 31, 2011.
8. The attached Purchase and Sale Agreement was drafted by the City Attorney to reflect the standard and customary terms of purchase in addition to the specific accepted terms of the purchase offer.
9. The purchase can be accomplished without impact to general fund resources as discussed in the fiscal analysis section of this report.

**Analysis &  
Conclusion:**

The proposed purchase will secure the City's ability to utilize the property for future recreational trail opportunities, including application for grant funds to do so. Extension of the Charolais Road multi-use sidewalk to connect to the multi-use river trail represents significant progress in the City's vision to further enhance the Salinas River corridor with recreational opportunities.

**Policy**

**Reference:**

General Plan and City Council Adopted Goals, noted by excerpts from the Planning Commission staff report dated October 25, 2011:

*Parks and Recreation Element – Policy PR 1B – Master Plan.* Develop a Master Park, Recreational and Trails Plan addressing City wide needs and financing for development, maintenance and operation through the year 2025.

*Circulation Element Goal CE-1A.* Establish a safe, balanced and efficient circulation and pedestrian system serving all segment of the community, preserving the City's small town character and quality of life, and planning for anticipated growth.

*Circulation Element Goal CE-1F.* Pedestrian and Bicycle Access. Provide safe and convenient pedestrian and bicycle access to all areas of the City.

**Fiscal Impact:**

The agreed upon purchase price for the property is \$215,000. Additional escrow contingencies (phase I environmental analysis and closing costs) are estimated not to exceed \$10,000, for a total cost of \$225,000.

The unencumbered City's Park Development fund cash balance is currently \$1.1 million. The intended future purpose of the property for recreational trail enhancements will meet intended goals for use of park and recreational development funds.

**Options:**

1. For the City Council to adopt the attached resolution 11-XXX:
  - a) Authorizing appropriation of \$225,000 from Park Development Impact Fee Fund reserves to account code 216-910-5450-396. to facilitate the purchase of 2.47 acres located at the northeast corner of Charolais Road and South River Road;
  - b) Authorizing the City Manager to enter into a Purchase and Sale Agreement with Santa Lucia Bank (Mission Bank) for the acquisition of the Charolais property and any other documents necessary to effectuate the purchase of the property.
2. Amend, modify, or reject the forgoing option.

**Attachments:**

1. Charolais Property acquisition location exhibit
2. Resolution 11-XXX authorizing the appropriation of Park Development funds and the City Manager to execute a Purchase and Sale Agreement and related documents for land acquisition
3. Purchase and Sale Agreement (Exhibit A to Resolution)

## **AGREEMENT OF PURCHASE AND SALE**

This AGREEMENT OF PURCHASE AND SALE (the "Agreement") is entered into this \_\_\_\_ day of November, 2011 (the "Effective Date"), by SANTA LUCIA BANK, a California Corporation ("Seller"), and the CITY OF PASO ROBLES, a municipal corporation, ("Buyer;" collectively, Seller and Buyer are referred to as the "Parties").

### **RECITALS**

A. Seller is the current owner of certain real property situated in the City of Paso Robles, San Luis Obispo County, California, commonly known as Assessor's Parcel Number 009-770-04 (the "Property"), consisting of approximately 2.47 acres, and as more particularly described in Exhibit A, attached hereto.

B. Buyer wishes to acquire the Property, located at the northeast corner of Charolais Road and South River Road, as shown on Exhibit B, attached hereto, to implement certain policies with the City's General Plan, including preservation of open space and construction of recreational trail connections.

C. The purpose of this Agreement is to provide for the purchase and sale of the Property from Seller to Buyer.

D. The purchase of said Property is consistent with multiple City of Paso Robles policies, including the Circulation Element of the General Plan and its policies that support pedestrian and bicycle trails, as determined by the Planning Commission on October 25, 2011 via Resolution No. 11-023.

### **AGREEMENT**

In consideration of the above Recitals and the agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

#### **ARTICLE 1. GENERAL**

##### **1.01. Recitals.**

The Recitals set forth above, and the definitions they contain, are hereby incorporated as a part of this Agreement.

##### **1.02. Effective Date.**

The effective date of this Agreement ("Effective Date") shall be the date when both parties have signed and initialed this Agreement.

## ARTICLE 2. PURCHASE AND SALE

### 2.01. Purchase and Sale.

Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller on the terms and conditions specified in this Agreement.

### 2.02. Purchase Price.

The purchase price (the "Purchase Price") for the Property shall be TWO HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000). The conveyance of the Property to Buyer, a public entity, is exempt from the parcel map requirements of the Subdivision Map Act (Gov't Code § 66426.5).

### 2.03. Payment of Purchase Price.

Buyer shall deposit, or shall cause to be deposited, the full amount of the Purchase Price in escrow with the Escrow Agent in cash or by cashier's check or form of wire transfer or other immediately available funds, during business hours at least one (1) business day before close of escrow.

### 2.04 Earnest Money.

A. Within two (2) business days after the Effective Date, Buyer shall deposit the sum of TEN THOUSAND DOLLARS (\$10,000) as Earnest Money with Escrow Agent (defined in Section 3.01 below). Escrow Agent shall invest the money in government-insured interest-bearing accounts satisfactory to Seller and Buyer, shall not commingle the Earnest Money with any funds of Escrow Agent or others, and shall promptly provide Buyer and Seller with confirmation of the investments made. Such accounts shall have no penalty for early withdrawal, and Buyer accepts all risks with regard to such accounts.

B. The Earnest Money shall be in the form of a certified or cashier's check or the wire transfer to Escrow Agent of immediately available U.S. federal funds. If Buyer fails to timely deposit any portion of the Earnest Money within the time period required, Seller may terminate this Agreement by written notice to Buyer, in which event the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

C. The Earnest Money (including any accrued interest) shall be applied as a credit to the Purchase Price at Closing. However, if Buyer elects to terminate this Agreement prior to the expiration of the Feasibility Expiration Date (as defined in Section 4.04.2 below), Escrow Agent shall pay the entire Earnest Money (including any accrued interest) to Buyer within one (1) business day following receipt of the written notice of such termination from Buyer. No notice to Escrow Agent from Seller shall be required for the release of the Earnest Money to Buyer by Escrow Agent if Buyer terminates this Agreement pursuant to Section 4.04.5. If the Agreement is terminated by Buyer because Seller is either unable or unwilling to remove any title exception objected to by Buyer by the date for close of escrow, as set forth in Section 4.03, Escrow Agent shall pay the entire Earnest Money (including any accrued interest) to Buyer.

If the Agreement is otherwise terminated after the Feasibility Expiration Date, Escrow Agent shall pay the entire Earnest Money (including any accrued interest) to Seller, and the parties shall have no further rights against or obligations to each other.

### **ARTICLE 3. ESCROW**

#### **3.01. Opening.**

The purchase and sale of the Property shall be consummated by means of an escrow (the "Escrow") which is to be opened at First American Title Company in Paso Robles, California ("Escrow Agent"), within two (2) days following the execution of this Agreement by both parties. This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by Buyer and Seller, constitutes the joint escrow instructions of Buyer and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow in the shortest possible time.

#### **3.02. Instructions.**

The escrow instructions given to Escrow Agent shall be consistent with the terms of this Agreement and, as between the Parties, the terms of this Agreement shall prevail if there is any inconsistency, unless the typewritten rather than printed portion of the instructions specifically provide to the contrary.

#### **3.03. Close of Escrow.**

The term "Close of Escrow," if and where written in these instructions, shall mean the date the Deed and other necessary instruments of conveyance are recorded in the office of the San Luis Obispo County Recorder. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper in the issuance of the policy of title insurance pursuant to Section 4.02 hereof.

#### **3.04 Time Limits**

All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties, provided, however, that the parties understand that such delays may jeopardize the City's entitlement to and receipt of the Grant monies. Any amendment of, or supplement to, any instructions must be in writing.

#### **3.05. Time is of the Essence**

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE ON OR BEFORE December 31, 2011. If this escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in Section 6.01 below, and if any objections are raised within

such five (5) day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instruction.

3.06. Costs and Prorations.

A. Buyer shall bear one-half (1/2) of the escrow fees and recording costs. Buyer shall also bear the cost of any special endorsements and the incremental increase in cost for any ALTA survey and ALTA extended policy of title insurance requested by Buyer, all with respect to the Property.

B. Seller shall bear the cost of transfer taxes, the ALTA standard owner's title insurance premiums and one-half (1/2) of the escrow fees and recording costs.

C. All real estate taxes, assessments, and personal property taxes due and owing as of the Close of Escrow, and all penalties and interest thereon, shall be paid by Seller. Buyer shall be responsible for all real estate taxes and assessments and personal property taxes on and after the Close of Escrow. Real estate taxes, assessments and personal property taxes shall be prorated based upon the most recent tax bill, so that the portion of taxes and assessments allocable to the period from the beginning of such tax year through the Close of Escrow shall be charged to and paid by Seller, and the portion of the taxes and assessments allocable to the portion of such tax year from the Close of Escrow to the end of such tax year shall be charged to and paid by Buyer. Proration of taxes and assessments shall be final as of the Close of Escrow, regardless of the amount of taxes or assessments that actually are, or subsequently become, due.

D. All other fees and miscellaneous costs shall be borne or prorated by the Parties according to the custom in San Luis Obispo County, as determined by Escrow Agent.

3.07. Deposits Into Escrow.

At least one business day prior to the Close of Escrow, Seller shall deposit into Escrow:

(a) A fully executed and acknowledged grant deed in the form attached hereto as Exhibit C and incorporated herein by reference (the "Deed") and Seller's share of the escrow costs;

(b) An executed affidavit of qualifying statement which satisfies the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Non-Foreign Affidavit");

(c) A "Withholding Exemption Certificate, Form 590," pursuant to Revenue and Taxation Code Sections 18662 and 18668, stating either the amount of withholding required from Seller's proceeds or that Seller is exempt from such withholding requirement (the "Certificate");

(d) To the extent Seller is an entity, certified copies of Seller's organizational documents and/or other entity resolutions or other authorizing documents authorizing the execution and delivery of this Agreement and all other documents and

agreements contemplated herein, the consummation of all transactions contemplated hereby, and authorizing those persons signing on behalf of Seller to bind Seller; and

(e) Such other agreements or documents reasonably necessary from Seller to close escrow as provided herein.

At least one business day prior to the Close of Escrow, Buyer shall deposit into Escrow:

(a) The Purchase Price, less the Earnest Money, as provided in Section 2.03;

(b) Buyer's share of closing costs, in the form of wire transfer or other immediately available funds;

(c) A fully executed and acknowledged Certificate of Acceptance acceptance of the Deed, in the form attached to the Deed; and

(d) Such other agreements, documents or funds reasonably necessary from Buyer to close escrow as provided for herein.

### 3.08 Escrow Account

All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

### 3.09 Insurance

Insurance policies for fire or casualty are not to be transferred, and Seller will cancel its own policies after close of escrow.

### 3.10 Closing Statement

Seller instructs Escrow Agent to release a copy of Seller's closing statement to Buyer.

## **ARTICLE 4. CONDITIONS TO CLOSE OF ESCROW**

### 4.01. General.

The provisions of this Article are conditions precedent to the Close of the Escrow described in Article 3 and, unless otherwise provided expressly or by context, are covenants.



#### 4.02. Title.

Seller shall convey to Buyer fee simple title to the Property by grant deed, free and clear of all recorded and unrecorded liens, encumbrances, assessments, leases and taxes except those exceptions approved by Buyer pursuant to Section 4.03 below or which are otherwise specifically approved by Buyer in writing (the "Permitted Exceptions"). At closing, Seller shall cause Escrow Agent to cause its underwriter to issue its policy of title insurance including any special endorsements requested by Buyer, insuring title to the Property in Buyer with liability in the amount of the Purchase Price. The policy shall list only the current taxes and Permitted Exceptions plus the printed exceptions common to such policies.

#### 4.03. Approval of Encumbrances.

Seller shall, upon the signing of this Agreement, order from Escrow Agent and, within five (5) days of the Effective Date, cause to be delivered to Buyer a preliminary title report and legible copies of all documents referred to therein covering or relating to the Property. Buyer shall have ten (10) business days following receipt of such report and documents within which to disapprove any additional exceptions listed therein by forwarding to Seller written notice in accordance with Section 6.01. Buyer's failure to give written notice of disapproval to Seller of some or all of the exceptions shall be deemed to be disapproval of all exceptions, except for monetary liens other than current real property taxes and assessments not yet due and payable. If Buyer disapproves any exceptions, Seller shall have ten (10) days within which to agree to remove the exception. Notice shall be given as provided in Section 6.01. Failure to give written notice of such agreement to Buyer shall be deemed to be refusal, except that Seller shall automatically be deemed to agree to remove monetary liens other than current real property taxes and assessments not yet due and payable. If Seller does not agree to remove any other exceptions properly and timely disapproved by Buyer, Buyer may elect: (a) to terminate this Agreement; or (b) to waive Buyer's objection and close escrow. If Seller shall agree to remove any exception objected to by Buyer, Seller shall then have until the date for Close of Escrow within which to remove such exception. If Seller is unable to remove any exception objected to by Buyer by the date for close of escrow, Buyer may elect: (a) to terminate this Agreement; or (b) to waive Buyer's objection and close escrow.

Seller shall not voluntarily create any new exceptions to title following the date of this Agreement.

#### 4.04. Buyer's Conditions Precedent.

4.04.1. Buyer's obligation to purchase the Property is subject to the satisfaction of the conditions set forth in this Section 4.04, which are for Buyer's benefit only.

4.04.2. This Agreement is contingent on Buyer's review and approval of the physical condition of the Property and all other matters that Buyer may elect to investigate concerning any aspect of the Property or this Agreement on or before 5:00 p.m. on the 30th day following the Effective Date of this Agreement (the "Feasibility Expiration Date"), unless such Feasibility Expiration Date is extended by mutual agreement of the parties in writing. Buyer shall have the right, at its sole cost and expense, to conduct any and all feasibility studies and investigative due diligence with respect to the Property which Buyer in its sole discretion deems

advisable, including without limitation, the suitability of the Property for Buyer's intended use; all soil conditions on the Property, including any asbestos or hazardous materials and environmental matters including the presence of endangered species and archeological resources; the requirements of all governmental agencies; all environmental reports; and any and all other matters directly or indirectly affecting the Property. Buyer shall be responsible for performing all due diligence contemplated herein, and Buyer shall bear any and all costs and expenses related thereto. Buyer shall rely on its own investigation and due diligence to evaluate whether the Property meets its standards; provided, however, Buyer's investigation shall not in any way preclude Buyer from relying on the express representations and warranties made by Seller in this Agreement. Buyer shall give Seller reasonable notice of such tests and inspections which shall be scheduled so as to not unreasonably interfere with Seller's use of the Property. Buyer shall keep the Property free from liens resulting from any activity permitted by this Section and shall repair any damages done to the Property as a result of such activity, and shall hold Seller harmless from and against any liability resulting from any such activities.

Seller hereby grants to Buyer, or its authorized agents, permission to enter upon the Property at all reasonable times prior to Close of Escrow for the purpose of making necessary or appropriate inspections.

4.04.3. Once Buyer approves the inspection of Property as provided herein, Seller covenants that it shall take no action, which would result in a change in the condition or status of the Property from that approved by Buyer hereunder until the Property has been transferred to Buyer.

4.04.4. This Agreement is contingent on Buyer not objecting to the condition of title, or Seller agreeing to remove any exceptions to title objected to by Buyer in accordance with Section 4.03.

4.04.5 Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement for any reason or no reason by given written notice of termination to Seller and Escrow Agent (the "Termination Notice") on or before the last day of the Feasibility Expiration Date.

#### 4.05. Delivery of Documents.

Within five (5) days after the Effective Date, Seller shall deliver to Buyer, for Buyer's approval, the following:

A. Copies of all existing environmental assessments and site characterization reports which Seller has in its possession.

B. Copies of all existing soils reports, geological reports, well reports, surveys and any other reports, documents or related information pertaining to the Property which Seller has in its possession.

4.06. Deed and Deposit of Purchase Price.

Buyer shall cause Escrow Agent to be ready, willing and able to deliver to Seller the Purchase Price from Buyer. Seller shall cause Escrow Agent to be ready, willing and able to record and deliver to Buyer the grant Deed required from Seller, duly executed by Seller and notarized, and to issue the title policy.

4.07. Assessments.

Seller shall indemnify and hold harmless Buyer of and from any assessments or assessment liens encumbering the Property, other than those specifically excepted in this Agreement, by reason of any work or improvement completed or installed at or before the Close of Escrow.

**ARTICLE 5. SELLER'S REPRESENTATIONS AND WARRANTIES**

5.01. Representations and Warranties in General.

Seller acknowledges that the execution of this Agreement by Buyer is made in material reliance by Buyer on the Seller's representations and warranties made in this Article 5.

5.02. No Pending Governmental Action.

Seller warrants that (i) to the best of its knowledge, as of the close of escrow there will not be any violation of any law, ordinance, rule or administrative or judicial order affecting the Property that would (a) interfere with the close of escrow or, (b) have a material adverse effect upon the value or use of the Property; and (ii) Seller has not received notice of any condemnation or other proceeding or action that is pending in which Seller is a party and, to the best of Seller's knowledge, there is no such proceeding or action threatened or contemplated by any governmental body, authority or agency that will affect in any way the size of, use of, improvements on, construction on or access to the Property, other than zoning and other land use controls of the City of Paso Robles, County of San Luis Obispo or other applicable governmental agencies.

5.03. Environmental Compliance.

Seller represents and warrants that, to the best of Seller's knowledge, as of the Close of Escrow, the Property will not violate any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

5.04. Pending Claims.

To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

#### 5.06 Seller's Title

Until the close of Escrow, Seller shall not do anything which would impair Seller's title to any of the Property.

#### 5.07 Conflict with Other Obligations

To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Seller or the Property may be bound.

#### 5.08 Authority

Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to Buyer as provided herein and to carry out Seller's obligations hereunder. If Seller is a corporation, partnership, limited liability company or other similar entity, each party executing this Agreement on behalf of Seller represents and warrants that such person is duly and validly authorized to do so on behalf of Seller.

#### 5.09 Bankruptcy

Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.

#### 5.10 Governmental Compliance

Seller has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Seller following the date this Agreement is signed by Buyer, Seller shall notify Buyer within ten (10) days of receipt of such notice. Seller then, at its option, may either elect to perform the work or take the necessary corrective action prior to the close of Escrow or refuse to do so, in which case Seller shall notify Buyer of such refusal and Buyer shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.

#### 5.10 Right to Possession

No person or entity other than Seller and Licensee, under the License Agreement, has the right to possess the Property or any portion of it, as of the date of this Agreement.

#### 5.11 Non-Foreign Transferor

Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Act or any similar state statute, and Seller will comply with all of the requirements of the Foreign Investment in Real Property Act and any similar state statute in connection with this transaction.

## ARTICLE 6. MISCELLANEOUS

### 6.01. Notices.

Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice is to be given, or on the second day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed as follows:

Seller:	Santa Lucia Bank
	_____
	_____
	Attention: _____
	Facsimile: (805) _____
Buyer:	City of Paso Robles
	1000 Spring Street
	Paso Robles, CA 93446
	Attention: Ms. Meg Williamson
	Facsimile: (805) 237-4032
With a copy to:	Best Best & Krieger, LLP
	400 Capitol Mall, Suite 1650
	Sacramento, CA 95814
	Attn: Iris P. Yang
	Facsimile: (916) 325-4010

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

### 6.02. Brokers.

The parties each acknowledge that Merrill & Associates Real Estate ("Broker") is Seller's broker and is the only broker associated with this transaction. Seller shall be responsible to Broker for a real estate sales commission at Closing. Seller agrees to indemnify and hold Buyer harmless for the payment of any commission to Broker arising from or related to this Agreement. Under no circumstances shall Seller owe a commission or other compensation directly to any other broker, agent or person. Other than as stated above in this Section 6.02, Seller and Buyer each represent and warrant to the other that it has dealt with no broker or finder in connection with this exchange and, insofar as they know, no broker or other person is entitled to any commission or finder's fee in connection with this transaction. Buyer and Seller each

agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

#### 6.03 Full and Complete Settlement for Fee Interest.

The total compensation to be paid by Buyer to Seller is in consideration for all of Seller's interest in the Property and any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's fee interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation or inverse condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller and Seller's Parties (defined below) which might arise out of or relate in any respect to the acquisition of the Property by the Buyer.

Seller, on behalf of itself and all Seller's Parties, fully releases and discharges Buyer from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) the sale of the Property or the relocation of Seller's Parties' business operations, if any, or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Property, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under California Government Code Section 7260, *et seq.*, notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under said sections or other state or federal law; and (ii) compensation for any interest in the Property or the business operations conducted thereon, including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, goodwill, severance damage, attorneys' fees or any other compensation of any nature whatsoever. The term "Seller's Parties" means Seller and Seller's affiliates, parent companies, subsidiaries, successors and assigns; and its and their officers, directors, partners, members, employees, agents and representatives.

It is hereby intended that the above release relates to both known and unknown claims that the Seller's Parties may have, or claim to have, against the Buyer with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with, the items set out above, the Seller expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

#### 6.04 Hazardous Waste

6.04.1 Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes, prior to the close of Escrow, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined



as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos or asbestos containing materials, (vii) polychlorinated biphenyls, (viii) Methyl-tert-Butyl Ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*

6.04.2 Compliance with Environmental Laws. Seller shall be responsible for the removal of all Hazardous Materials, in, on, under and about the Property, if any, including, without limitation, the removal and disposal of any asbestos and asbestos containing materials which may be located in the improvements on the Property before Seller conveys and relinquishes actual possession of the Property; provided, however, that the Seller shall not be responsible for the removal of Hazardous Materials in, on under or about the Property which have migrated from outside the Property. Seller represents and warrants that to the best of Seller's knowledge, the Property and its present use complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Paso Robles, the California Department of Toxic Substances Control, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

6.04.3 Environmental Indemnification. Seller agrees to indemnify, defend and hold Buyer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, remediation expense, or other expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials prior to the close of Escrow on, under, in or about, the Property, or the transportation of any such Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials prior to the Closing on, under, in or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, remediation expense, fine, penalty, parallel indemnity

after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury, including sickness, disease or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity extends to liability arising from (a) acts or omissions to act occurring prior to or up to the date of Closing or (b) any condition existing upon the close of Escrow or which arises after the close of Escrow due to acts or omissions to act occurring on or prior to the close of Escrow, whether any such claim is asserted prior to or after the Closing. Seller shall not be responsible for damage, liability, fines, penalties or costs or expenses arising from acts or omissions occurring after the Closing.

6.04.4. Buyer's Environmental Contingency. As soon as practicable after the completion of the tests conducted pursuant to Section 4.04.2 hereof, but in any event no later than the Feasibility Expiration Date, Buyer shall notify Seller in writing of whether Buyer approves or disapproves the environmental condition of the Property. Buyer's failure to give written notice of approval or disapproval within such period shall be deemed disapproval of the environmental condition of the Property. In the event Buyer disapproves, or is deemed to have disapproved, the environmental condition of the Property, the Escrow shall be cancelled and this Agreement shall terminate. Regardless of the Buyer's right to cancel Escrow and terminate this Agreement, in the event Hazardous Materials are found in, on or under the Property, neither party waives or relinquishes any common law or statutory rights it or they may have against one another or third persons arising from or related to the cause or source of the Hazardous Materials, or for contribution or indemnity as a result of site evaluation, remediation and clean-up costs and liability.

6.05. Assignment.

This Agreement shall bind and inure to the benefit of Seller's successors and assigns and Buyer's successors and assigns.

6.06. Interpretation.

The paragraph headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

6.07. Attorneys' Fees.

In the event either Seller or Buyer shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the prevailing party shall be entitled to reasonable attorneys' fees which shall consist of the fees for services rendered by counsel, the fees for services of experts, and all other expenses incurred in connection with the action, including those expenses recoverable as allowable costs of suit under the applicable state or federal statute, and those attorneys' fees and costs incurred executing upon or appealing any judgment, as well as all other expenses incurred during the course of the action.



6.08. Integration.

This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter which are not fully expressed herein.

6.09. Additional Documents.

From time to time prior to and after the close of escrow, each party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

6.10. Dependency and Survival of Provisions.

The respective warranties, representations, covenants, agreements, obligations and undertakings of each party hereunder shall be construed as dependent upon and given in consideration of those of the other party, and shall survive the close of escrow and delivery of the deed.

6.11. California Law.

This Agreement shall be governed by the laws of the State of California.

6.12. Reporting to Internal Revenue Service.

The escrow instructions for this transaction shall obligate Escrow Agent to report this transaction to the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended.

6.13. Counterparts.

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one (1) document.

6.14. Calculation of Time Periods.

If any date for performance under this Agreement falls on a Saturday, Sunday or bank holiday, then the date of performance shall be the next day which is not a Saturday, Sunday or bank holiday, and the next time period shall be calculated from and after the date of such actual performance.

6.15. Exhibits.

All exhibits to which reference is made in this Agreement are incorporated in this Agreement by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to "this Agreement" includes matters incorporated by reference.

6.16. List of Exhibits.

- A - Legal Description of the Property
- B - Map of Property
- C Form of Grant Deed
- D Non-Foreign Transferor Declaration

IN WITNESS WHEREOF, Buyer and the Seller have executed this Agreement as of the date first set forth above.

Santa Lucia Bank, a California \_\_\_\_\_  
\_\_\_\_\_.

By: \_\_\_\_\_

Title:

"SELLER"

CITY OF PASO ROBLES, a municipal  
corporation

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

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

"BUYER"

*APPROVED AS TO FORM*

By: \_\_\_\_\_  
Iris P. Yang  
City Attorney

## CONSENT OF ESCROW AGENT

Escrow Agent hereby acknowledges receipt of three (3) counterparts of this Agreement, each of which has been executed by the parties. Escrow Agent hereby agrees (i) to be and serve as Escrow Agent pursuant to this Agreement; and (ii) subject to further escrow instructions mutually agreeable to the parties and Escrow Agent, to be bound by the Agreement in the performance of its duties as Escrow Agent and to hold and disburse all funds received by Escrow Agent in accordance with the provisions of this Agreement; provided, however, Escrow Agent shall have no obligation, liability, or responsibility under any amendment to the Agreement unless and until the same is accepted by Escrow Agent in writing. Escrow Agent further agrees to immediately deliver to each of Seller and Buyer's counsel one (1) original counterpart of this Agreement executed by the parties and Escrow Agent. Escrow Agent has assigned this Agreement file number \_\_\_\_\_.

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**

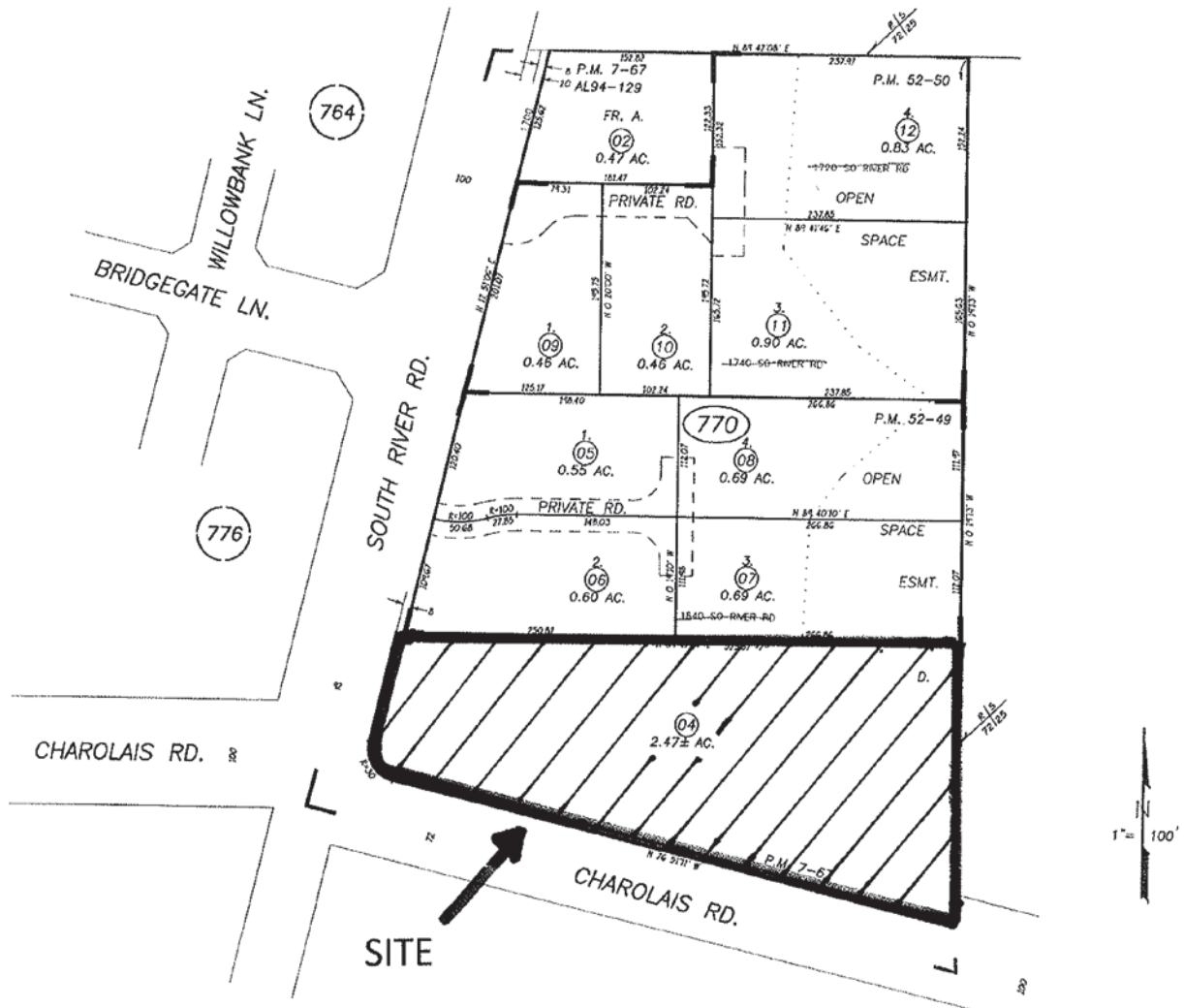
**LEGAL DESCRIPTION OF THE PROPERTY  
(APN 009-770-004)**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PASO ROBLES, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel "D" of Parcel Map CO-71-232 as filed in Book 7, Page 67, of Maps in the Office of the County Recorder, County of San Luis Obispo, State of California.

# EXHIBIT B

## Map of Property



**EXHIBIT C**

**GRANT DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
THIS GRANT DEED AND ALL  
TAX STATEMENTS TO:

(Above Space for Recorder's Use Only)

**GRANT DEED**

The undersigned grantor declares:

Documentary transfer tax is shown by an unrecorded separate affidavit pursuant to R&T Code § 11932

( ) computed on full value of property conveyed, or

( ) computed on full value, less value of liens and encumbrances remaining at time of sale.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SANTA LUCIA BANK, a California \_\_\_\_\_ ("Grantor"), hereby GRANTS to THE CITY OF EL PASO DE ROBLES, a municipal corporation, the following described real property (the "Property") located in the County of San Luis Obispo, State of California:

SEE EXHIBIT "1" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

"GRANTOR"

SANTA LUCIA BANK, a California \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



COUNTY OF SAN LUIS OBISPO )

On \_\_\_\_\_, 2011, before me, \_\_\_\_\_ (here insert name and title of the officer), 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 paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ATTACHMENT NO. 1  
TO EXHIBIT "C"

Legal Description

## CERTIFICATE OF ACCEPTANCE

This is to certify that the fee interests in real property conveyed by Grant Deed dated \_\_\_\_\_, 201\_\_ from \_\_\_\_\_, a \_\_\_\_\_, as grantor, to the City of Paso Robles, a municipal corporation, as grantee, are hereby accepted by the \_\_\_\_\_ of the \_\_\_\_\_ pursuant to authority conferred by Resolution No. \_\_\_\_\_ of the City adopted on \_\_\_\_\_, \_\_\_\_\_, and the \_\_\_\_\_, as grantee, consents to recordation of said Grant Deed.

Dated: \_\_\_\_\_, 200\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT "D"

### NON-FOREIGN TRANSFEROR DECLARATION

Section 1445 of the Internal Revenue Code of 1954, as amended ("Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U. S. real property interest by \_\_\_\_\_, the undersigned hereby certifies the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor's U. S. employer identification number or social security number is \_\_\_\_\_.
3. The Transferor's office address or mailing address is \_\_\_\_\_.

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury the undersigned declares that he/she has examined this Certification and to the best of his/her knowledge and belief it is true, correct, and complete, and further declares that he/she has authority to sign this document on behalf of the Transferor.

\_\_\_\_\_, a  
\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_  
[Print Name]  
Date: \_\_\_\_\_

RESOLUTION NO. 11-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
TO APPROPRIATE FUNDING AND AUTHORIZE PURCHASE OF 2.47 ACRES OF  
RESIDENTIALLY ZONED PROPERTY FROM SANTA LUCIA BANK FOR FUTURE TRAIL  
CONNECTION OPPORTUNITIES

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WHEREAS, the City has been actively pursuing the development of River trail connections since the installation of the 1- ½ mile Salinas River Parkway Trail in 2005, and in 2012 there will be two additional ½ mile trail segments developed, each utilizing federal and/or state funding through grants and/or transportation funds; and

WHEREAS, Charolais Road, between Creston and South River Roads, is mostly developed with a multi-use sidewalk/trail that it heavily used by Paso Robles residents and the subject purchase parcel will provide the potential for a future trail linkage between the Charolais multi-use sidewalk and the Salinas River Parkway trail; and

WHEREAS, the City has the opportunity to purchase the 2.47 acre parcel using Parks and Recreation funds; and

WHEREAS, in closed session on October 4, 2011, the City Council authorized the purchase negotiation discussions; and

WHEREAS, a Brokers Opinion of Value was obtained by the City from Pacifica Commercial Realty, placing a range of value at \$199,000 to \$215,000; and

WHEREAS, on October 25, 2011 the Planning Commission adopted Resolution No. 11-023 making findings per Government Code Section 65402 that the purchase of the 2.47 acre Charolais Road property would be consistent with the City's General Plan; and

WHEREAS, Santa Lucia Bank (Mission Bank) has accepted a purchase offer of \$215,000 for the site along with a negotiated set of terms, including escrow closing by December 31, 2011; and

WHEREAS, the attached Purchase and Sale Agreement was drafted by the City Attorney to reflect the standard and customary terms of purchase in addition to the specific accepted terms of the purchase offer; and

WHEREAS, the purchase can be accomplished without impact to general fund resources; and

WHEREAS the City's "Park Development Fund" reserve has a cash balance of approximately \$1.1 million; and

WHEREAS, the proposed purchase will meet intended goals for use of park and recreational development funds, securing the City's ability to utilize the property for future recreational trail opportunities, including application for grant funds to do so.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of El Paso de Robles to authorize appropriation of \$225,000 from Park Development Impact Fee Fund reserves to account code

216-910-5450-396 to facilitate the purchase of a 2.47 acre parcel located at the northeast corner of Charolais and South River Roads.

BE IT FURTHER RESOLVED by the City Council of the City of El Paso de Robles to authorize the City Manager to enter into a Purchase and Sale Agreement with Santa Lucia Bank (Mission Bank) in substantially the form attached hereto as Exhibit A and subject to any non-substantive changes approved by the City Attorney, for the acquisition of approximately 2.47 acres of property consistent with the City's General Plan, and any other documents necessary to effectuate the purchase of the property.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 15<sup>th</sup> day of November 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Duane Picanco, Mayor

ATTEST:

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Caryn Jackson, Deputy City Clerk