

TO: James L. App, City Manager
FROM: Ed Gallagher, Community Development Director
SUBJECT: Authorize Rescission of Agreement to Pay Fees and Construct Interchange Improvements at Highway 46E and Golden Hill Road
DATE: December 3, 2013

Needs: That the City Council authorize the Mayor to sign a Rescission of Agreement to Pay Fees and Construct Interchange Improvements at Highway 46E and Golden Hill Road.

Facts:

1. On October 3, 2006, the City Council adopted Resolution No. 06-188, the Development Impact Fee Calculation and Development Impact Fee Justification Study. The Justification Study is based upon a Needs List of infrastructure improvements.
2. The Transportation section of the Needs List included improvements to the intersection of Highway 46E and Golden Hill Road.
3. Inclusion of this project on the Needs List and the City-wide AB 1600 Impact Fee program supersedes individual participatory agreements related to the same projects.
4. In 2009, Regency Centers completed traffic signal improvements to the intersection of Highway 46E and Golden Hill Road, including lane widening, to accommodate the development of the Golden Hills Plaza shopping center.
5. In 2009, Caltrans published the Comprehensive Corridor Study. The Corridor Study makes no reference to an interchange at the intersection of Highway 46E and Golden Hill Road.
6. On April 5, 2011, the City Council adopted the Circulation Element of the General Plan. The Circulation Element reflects the findings and recommendations of the Corridor Study and makes no reference to an interchange, or any further improvements, to the intersection of Highway 46E and Golden Hill Road.

**Analysis
and**

Conclusion: The 2003 Circulation Element of General Plan referenced the eventual need for an interchange at Highway 46E and Golden Hill Road but went on to state that funding must come from Caltrans. Caltrans and the City collaborated on the development of the Comprehensive Corridor Study which was eventually published by Caltrans in 2009. This study effectively eliminated all further improvement interest in the intersection of Highway 46E and Golden Hill Road in favor of a Project Study Report at Union Road. The 2011 Circulation Element reflects the findings and recommendations of the Corridor Study.

An Agreement to pay fees and participate in an assessment district was required of the developers of the property at the southeast corner of the intersection in 2002. Today, the property is subject to an escrow agreement. Ryan Horn has requested the Council to sign a Declaration of Rescission of the 2002 Agreement. Fees referenced in the Agreement are superseded by AB 1600 transportation development impact fees adopted in 2006.

**Policy
Reference:** Circulation Element of the General Plan; AB 1600

Fiscal

Impact: None

Options: That the City Council take the following action:

- a. Authorize the Mayor to sign a Declaration of Rescission of Agreement to Pay Fees and Construct Interchange Improvements at Highway 46 East and Golden Hill Road.
- b. Amend, modify, or reject the above option.

Attachments: (3)

- 1) Letter of Request
- 2) 2002 Agreement to Pay Fees and Construct Interchange Improvements
- 3) Declaration of Rescission



The Vintner Vault



3230 Riverside Ave Suite 140 Paso Robles, CA 93446

Ph: (805) 226-8100 Fax: (805) 226-8188

www.TheVintnerVault.com

John Falkenstien
City Engineer
Paso Robles Government Center
Paso Robles, CA 93446

Mr. Falkenstien:

This letter and request concerns the original Golden Hills / 46 E intersection improvement agreement (circa 2001) which encumbers title on a commercial property we are acquiring on 2615 Germaine in the Golden Hills Business Park.

Per our recent discussions, you have indicated that this agreement has been obviated by a subsequent set of actions by the city and Cal Trans, and thus is no longer valid or effective.

Could you please ask the city officials to draft and execute a recordable title document which cancels or releases this property from that agreement?

In the best of all worlds, we would have such a document to record prior to or along with our close of escrow in the next several weeks.

Thank you,

Ryan Horn
The Vintner Vault
Paso Robles

Ryan Horn
805-712-4088
Ryan@thevintrervault.com

DEAN DISANORO
(805) 423-3861
ddisandro@epcweb.com

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

ENGINEERING DIVISION
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446

JULIE RODEWALD
San Luis Obispo County – Clerk/Recorder
Recorded at the request of
Public

SK
2/01/2002
9:32 AM

DOC#: 2002008916



Titles: 1 Pages: 7

Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

AGREEMENT TO PAY FEES FOR THE DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS AT THE HIGHWAY 46 AND GOLDEN HILL ROAD INTERCHANGE

THIS AGREEMENT, is made and entered into this 18th day of December 2001, by and between Billy L. and Marjorie B. Danley, husband and wife as community property as to an undivided 1/2 interest as to Lots 1 and 3; Michael Frederick, a single man, and Roland Ramirez, an unmarried man, as tenants in common, as to Lot 2; and Ranch & Coast Properties, Inc., as to an undivided 1/2 interest as to Lots 1 and 3, and as to Lot 4, (hereinafter collectively referred to as "**OWNER**") and the **CITY OF EL PASO DE ROBLES**, a municipal corporation (hereinafter referred to as "**CITY**").

WITNESSETH:

WHEREAS, OWNER is the record owner of the real property situated in the City of El Paso de Robles, County of San Luis Obispo, State of California, hereinafter referred to as the "subject property", which is more particularly described as follows:

Lots 1, 2, 3 and 4 of Oakwood Orchard Tract, in the County of San Luis Obispo, State of California, according to Map recorded October 10, 1925 in Book 3, page 68 of Maps, in the Office of the County Recorder of said County.

WHEREAS, pursuant to Condition No. 7 of Planning Commission Resolution No. 98-014, **OWNER** is required to either enter into an agreement not to protest the formation of an Assessment District for future improvements required at the intersection of Highway 46 and Golden Hill Road, or to enter into an Agreement to pay the Highway 46 and

Golden Hill Road interchange fees established for the Borkey Specific Plan, before the final map for Tract 2269 may be recorded; and

WHEREAS, OWNER has elected to enter into an Agreement to pay the Highway 46 and Golden Hill Road interchange fees established for the Borkey Specific Plan, as established by Resolution 98-221 of the City Council on December 15, 1998; and

WHEREAS, execution of this agreement by **OWNER** and **CITY**, and subsequent performance of its obligations by **OWNER** and his successors in interest will satisfy the requirement described above imposed as a condition of approval of said **Project**.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated herein as if set forth in full.

2. **Payment of Fees.** **OWNER** hereby agrees that it shall pay in full, as part of any application for a building permit, all applicable City fees including, but not limited to, any fees in the amount required at such time for the construction of certain interchange improvements at

2. **Agreement Runs with the Land.** This Agreement shall run with the subject property described above and shall be binding upon the **OWNER** and all his assigns and successors in interest.

3. **Indemnification.** The **OWNER**, and his successors in interest, shall defend, indemnify and save harmless the City of El Paso de Robles, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, inverse condemnation, equitable relief, or any wrongful act or any negligent act of omission to act on the part of the **OWNER** or of agents, employees, or independent contractors directly responsible to the **OWNER**; providing further that the foregoing shall apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed

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jointly or concurrently by the **OWNER**, the **OWNER's** agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the **OWNER** to indemnify the **CITY** against any responsibility of liability in contravention of Section 2782 of the Civil Code.

4. **Effect of Waiver.** Waiver of breach of any one term, covenant, or other provision of this Agreement, is not a waiver of breach of any other term, nor subsequent breach of the term or provision waived.

5. **Notices.** Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given shall be addressed as follows:

CITY: Director of Community Development
City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446

OWNER: Ranch and Coast Properties, Inc.
P.O. Box 510
Paso Robles, CA 93447

Billy and Marjorie Danley
P.O. Box 61
Shandon, CA 93461

Michael Frederick
Roland Ramirez
P.O. Box 573
Atascadero, CA 93423

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

6. **Validity of Other Agreements.** This Agreement is in addition to, and does not supersede, any other agreement or agreements entered into by and between the parties hereto.

7. **Invalidity.** If any term, convenient, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

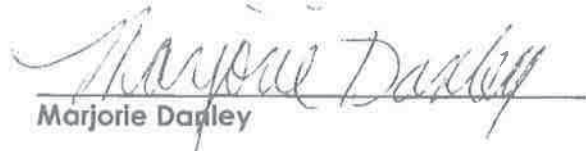
8. **Agreement to be Recorded.** OWNER and CITY intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo.


IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

OWNER:


Ranch & Coast Properties, Inc.


Billy Danley


Marjorie Danley


Michael Frederick


Rolanda Ramirez

CITY OF EL PASO DE ROBLES


FRANK MECHAM, MAYOR

ATTEST:


Sarah Ryan, Deputy City Clerk

Approved as to Form and Effect:


Iris Yang, City Attorney

NOTE: SIGNATURES MUST BE NOTARIZED

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**Recording Requested by
And When Recorded, Mail to:**

City of El Paso de Robles
Attn: John Falkenstien, City Engineer
1000 Spring Street
Paso Robles, CA 93446

Space Above Line for Recorder's Use Only

**DECLARATION OF RESCISSION OF AGREEMENT TO PAY FEES FOR THE
DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS AT THE HIGHWAY
46 AND GOLDEN HILL ROAD INTERCHANGE**

THIS DECLARATION OF RESCISSION OF AGREEMENT TO PAY FEES FOR THE DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS AT THE HIGHWAY 46 AND GOLDEN HILL ROAD INTERCHANGE is made and dated this _____ day of _____, 2013, by the City of El Paso de Robles, hereinafter referred to as "Declarant."

Recitals

WHEREAS, on October 3, 2006, the City Council of the City of El Paso de Robles adopted Resolution No. 06 – 188, the Development Impact Fee Calculation and Development Impact Fee Justification Study; and

WHEREAS, the Justification Study is based upon a Needs List of infrastructure improvements; and

WHEREAS, the Transportation Section of the Needs List includes improvements to the intersection of Highway 46 East and Golden Hill Road; and

WHEREAS, inclusion of this project in the City-wide fee program supersedes individual participatory fee agreements related to the same projects; and

WHEREAS, in 2009 Caltrans accepted the completion of traffic signal and lane widening improvements to the intersection of Highway 46 East and Golden Hill Road; and

WHEREAS, the California State Department of Transportation (Caltrans) published the "State Route 46 East Comprehensive Corridor Study" (CCS) in June, 2009; and

WHEREAS, the CCS eliminates all reference to construction of an "interchange" at the intersection of Highway 46 East and Golden Hill Road; and

WHEREAS, on April 5, 2011, the City Council of the City of El Paso de Robles adopted the Circulation Element of the General Plan. The Circulation Element reflects the findings and

recommendations of the CCS and makes no reference to an interchange or other improvements at the intersection of Highway 46 East and Golden Hill Road

NOW, THEREFORE, by recordation of this Declaration of Rescission of Agreement to Pay Fees for the Development and Construction of Improvements at the Highway 46 and Golden Hill Road Interchange, it is the intention of the Declarant that the Agreement to Pay Fees for the Development and Construction of Improvements at the Highway 46 and Golden Hill Road Interchange shall be rescinded and shall have no further for or effect upon the property described in Exhibit "A".

DECLARANT:
City of El Paso de Robles

Dated: _____

Duane Picanco
Mayor

Dated: _____

Dennis Fansler
City Clerk

[Acknowledgments Attached]

ACKNOWLEDGMENT

Exhibit A

Legal Description of Property