

TO: James L. App, City Manager
FROM: Iris P. Yang, City Attorney
John Falkenstien, City Engineer
SUBJECT: Brimhall Property Acquisition
DATE: September 1, 2015

NEEDS: That the City Council approve an agreement for purchase of property in the neighborhood of 20th and Olive Streets (APN 008-213-011). The property is owned by a family trust for which Keith Brimhall is the trustee

FACTS:

1. In 1999, the City sold a portion of antiquated subdivision (Lots 1 – 20, B Maps 29, recorded in 1894) along Olive Street, east of and below the 21st Street reservoir site, to Bill Ridino.
2. Ridino retained a land surveyor for the purposes of filing a lot line adjustment to create four single family residence building parcels. Ridino also applied for abandonment of the 20th Street unimproved right-of-way along the southern boundary of the property created with B Maps 29.
3. The Brimhall family owned a portion of the remainder of Villa Lot 2. Due to a series of events over the years, including land subdivisions, sales, and street abandonments, the remaining 33,000 square foot parcel does not have access to a public right-of-way.
4. The property is located in the vicinity of a City water reservoir and close to major water transmission lines. It would serve the City's interest to provide a buffer for that portion of the water system.
5. The proposed purchase price of \$116,000 is the appraised fair market value of the property.
6. Mr. Brimhall has approved the form of the purchase and sale agreement.

ANALYSIS &

CONCLUSION: Keith Brimhall is the trustee of the Ernest L. Brimhall Tax Credit Trust of June 16, 1994, which owns the approximately ¾ acre landlocked parcel. The appraisal commissioned by the City states that the property has an "as is" market value of \$116,000.

FISCAL

IMPACT: \$116,000 to the Water Enterprise Fund

OPTIONS:

- a. Adopt Resolution No. 15-XXX approving an agreement with Keith Brimhall, Trustee of the Ernest L. Brimhall Tax Credit Trust of June 16, 1994, for the purchase of property identified as APN 008-213-011 for the purchase price of \$116,000.
- b. Amend, modify or reject the above options.

ENCLS.

RESOLUTION

RESOLUTION NO. 15-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
EL PASO DE ROBLES APPROVING A N AGREEMENT WITH
KEITH BRIMHALL, TRUSTEE OF THE ERNEST L. BRIMHALL TAX CREDIT TRUST
OF JUNE 16, 1994

WHEREAS, the Ernest L. Brimhall Tax Credit Trust of June 16, 1994 owns certain property in the vicinity of Chestnut Street and 20th Street, which property does not have access to a public right-of-way; and

WHEREAS, the property is located in the vicinity of a major City reservoir and water transmission lines; and

WHEREAS, the City commissioned an appraisal which determined that the as-is market value of the property is \$116,000; and

WHEREAS, Keith Brimhall, Trustee of the Ernest L. Brimhall Tax Credit Trust of June 16, 1994 is willing to sell the property to the city for the appraised value and has approved the proposed purchase and sale agreement; and

WHEREAS, acquisition of the property would serve the public interest by providing a buffer around the City reservoir;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES:

Section 1. The City Council hereby approves the Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions, attached hereto as Exhibit A and incorporated herein by reference, and authorizes the City Manager to execute the Agreement, subject to any minor technical and non-substantive changes as approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 1st day of September, 2015, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Steve Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

Exhibit A

**Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions
[to be inserted]**

**AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY AND
JOINT ESCROW INSTRUCTIONS**

This Agreement for the purchase and sale of real property (“**Agreement**”) is made and entered into this ____ day of _____, 2015, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California (“**City**”) and KEITH BRIMHALL, TRUSTEE OF THE ERNEST L. BRIMHALL TAX CREDIT TRUST OF JUNE 16, 1994 (“**Seller**”). The parties hereto have executed this Agreement on the dates set forth below next to their respective signatures. This Agreement shall be effective as of the date, following all legally required notices and hearings, this Agreement has been approved by Buyer’s governing body or its delegated representative and signed by all parties (“**Effective Date**”).

RECITALS

A. Seller is the record owner of approximately 33,000 square feet of unimproved real property commonly identified as Assessor’s Parcel Number 008-213-011, generally located at Chestnut Street and 20th Street, in the City of El Paso de Robles, County of San Luis Obispo, more particularly depicted in Exhibit A attached hereto (“**Property**”).

B. The Property was part of an antiquated subdivision and does not have access to a public right-of-way. Due to topographic conditions and the proximity of a City reservoir and City water transmission lines, it is unlikely that a public right-of-way could be provided to the Property.

C. Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller, pursuant to the terms and conditions set forth in this Agreement.

AGREEMENTS

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:

1. Conveyance Of Property.

Seller agrees to sell and Buyer agrees to purchase the Property described and depicted in Exhibit A, including any and all fixtures and improvements thereon upon the terms and conditions set forth herein.

2. Purchase Price

Buyer shall pay to the order of the Seller the total purchase price of ONE HUNDRED SIXTEEN THOUSAND DOLLARS (\$116,000.00) (the “**Purchase Price**”) which includes, without limitation, full payment of just compensation, attorneys’ fees, costs, interest and damages in complete settlement of all claims (known and unknown), causes of action and demands of Seller against the Buyer because of Buyer’s purchase of the Property, and for any

and all claims (known and unknown) arising from or relating to the purchase and sale which is the subject of this Agreement. At Close of Escrow (defined below), Buyer shall pay to Seller through escrow the Purchase Price, payable in cash, by cashier's or certified check, or by wire transfer.

The Parties acknowledge that pursuant to California Revenue and Taxation Code Section 18662, Buyer may be required to withhold from funds otherwise payable to Seller at Close of Escrow an amount equal to 3 1/3% of the total sales price/Purchase Price for the Property and submit such amount to the California Franchise Tax Board, unless Buyer is relieved of such withholding requirements under the provisions of said Section 18662.

3. Escrow

3.1 Opening of Escrow. Within ten (10) business days following the Effective Date, Seller and Buyer shall open an escrow ("**Escrow**") for the conveyance of the Property with Fidelity National Title Company, 1212 Marsh Street, Suite 2, San Luis Obispo, CA 93401; Attn: Reece Benson ("**Escrow Holder**"). For purposes of this Agreement, the Escrow shall be deemed open on the date Escrow Holder shall have received a fully executed original or originally executed counterparts of this Agreement from Seller and Buyer ("**Opening of Escrow**"). Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened and shall execute the "Acceptance by Escrow Holder" attached hereto.

3.2 Escrow Instructions. This Agreement constitutes the joint basic escrow instructions of Buyer and Seller for conveyance of the Property. Either an original or a copy, at Escrow Holder's discretion, of this Agreement, fully executed by the Parties, shall be delivered to Escrow Holder upon the Opening of Escrow. Buyer and Seller shall execute, deliver and be bound by any reasonable or customary supplemental or additional escrow instructions ("**Additional Instructions**") of Escrow Holder or other instruments as may be reasonably required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such Additional Instructions shall not conflict with, amend or supersede any portions of this Agreement unless expressly consented or agreed to in writing by Seller and Buyer. In the event of any conflict or any inconsistency between this Agreement and such Additional Instructions, this Agreement shall govern unless otherwise specifically agreed to in writing by the Parties.

3.3 Close of Escrow. For purposes of this Agreement, "**Close of Escrow**" or "**Closing**" means the recordation of the grant deed conveying the Property to Buyer ("**Grant Deed**") in the Official Records of San Luis Obispo County, California, and the disbursement of funds and distribution of any other documents by Escrow Holder, all as described herein. Close of Escrow shall occur **sixty (60) days** following the Opening Date ("**Closing Date**"), provided that Seller and Buyer may, but shall not be obligated to, close the Escrow upon such earlier date as the Seller and Buyer mutually agree to in writing. Buyer and Seller may mutually agree to change the Closing Date by joint written notice to Escrow Holder. The Closing shall be conditioned upon satisfaction, or waiver by the Party for whose benefit the condition exists, of all conditions precedent thereto. In the event the Escrow is not in a condition to close by the Closing Date for any reason other than the uncured breach of either Buyer or Seller, then any Party who is not then in default of the terms of this Agreement may terminate this Agreement as

provided in Article 7. If no notice of termination as provided in Article 7 is received by Escrow Holder, Escrow Holder is instructed to proceed with Close of Escrow as soon as possible.

3.4 Costs of Escrow. Because of Buyer's status as a public entity, pursuant to California Revenue and Taxation Code Section 11922, no documentary transfer tax will be payable with respect to the conveyance contemplated by this Agreement. Similarly, pursuant to California Government Code Section 27383, no recording fees will be payable with respect to the recording of the Grant Deed. Buyer shall pay the costs of the Title Policy (defined below).

Buyer shall pay the Escrow fees, recording fees and notary fees attributable to the conveyance of the Property. Buyer shall pay the additional costs, if applicable, associated with an Extended Policy (defined below) and any title endorsements requested by Buyer. Escrow Holder shall provide an estimated closing costs statement to Buyer and Seller at least three (3) days prior to the Closing Date.

3.5 Proration of Property Taxes and Assessments. All property taxes and assessments levied and assessed against the Property shall have been paid by Seller before delinquency and shall be current as of Close of Escrow. Current, non-delinquent property taxes and assessments will be prorated between Buyer and Seller by Escrow Holder as of the Closing Date.

3.6 Buyer's Conditions Precedent to Close of Escrow. The Close of Escrow and Buyer's obligation to accept title to the Property and pay the Purchase Price are subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the Closing Date:

3.6.1 Seller shall have tendered into Escrow all documents required of it pursuant to this Agreement.

3.6.2 Seller shall have completed in a timely fashion all of its obligations which are to be completed prior to the Close of Escrow as provided in this Agreement.

3.6.3 Escrow Holder shall have received an irrevocable commitment from the Title Company to issue the Title Policy required pursuant to this Agreement, subject only to the Permitted Exceptions, as set forth in more detail in Article 4.

3.6.4 All representations and warranties of the Seller hereunder shall be true as of the Effective Date and as of the Close of Escrow and shall continue thereafter for the full statutory period.

3.6.5 All property taxes and assessments attributable to the Property shall have been paid by Seller before delinquency and shall be current as of Close of Escrow.

3.6.6 Buyer shall have approved Escrow Holder's estimated closing costs statement.

3.6.7 Buyer's governing body (City Council) shall have approved this transaction, as set forth in Section 10.12 below.

3.7 Seller's Conditions Precedent to Close of Escrow. The Close of Escrow and Seller's obligation to convey the Property are subject to the satisfaction of the following conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) on or prior to the Closing Date:

3.7.1 Buyer shall have tendered into Escrow all payments and documents required of it pursuant to this Agreement.

3.7.2 Buyer shall have completed in a timely fashion all of its obligations which are to be completed prior to the Close of Escrow as provided in this Agreement.

3.7.3 All representations and warranties of the Buyer hereunder shall be true as of the Effective Date and as of the Close of Escrow and shall continue for the full statutory period.

3.7.4 Seller shall have approved Escrow Holder's estimated closing costs statement.

3.8 Buyer's Payments and Documents. No less than one (1) day prior to Closing, Buyer shall pay or tender (as applicable) to the Escrow Holder the following-described funds and documents (in recordable form, as necessary):

3.8.1 The Purchase Price;

3.8.2 Funds required to pay the Escrow fees, recording fees and notary fees attributable to the conveyance of the Property, and the additional costs, if applicable, associated with an Extended Policy and any title endorsements requested by Buyer payable by Buyer pursuant to Section 3.4 of this Agreement.

• 3.8.3 Funds required to pay any additional escrow charges in San Luis Obispo County, at the discretion of Escrow Holder.

3.8.4 Certificate accepting the Grant Deed and consenting to recording of same.

3.8.5 Preliminary Change of Ownership form.

3.8.6 Such other documents and funds required of Buyer under this Agreement and by Escrow Holder in the performance of its contractual or statutory obligations.

3.9 Seller's Payments and Documents. No less than one (1) day prior to Closing, Seller shall pay or tender (as applicable) to the Escrow Holder the following-described funds and documents (in recordable form, as necessary):

3.9.1 Funds required to pay the prorated amount of *ad valorem* taxes, if applicable, upon the Property with respect to the period prior to Close of Escrow.

3.9.2 Funds required to pay all sales or brokerage commissions and finder's fees payable by Seller, if any, with respect the transaction which is the subject of this Agreement.

3.9.4 A fully-executed and acknowledged Grant Deed commonly used by Escrow Holder and in a form acceptable to Buyer in its reasonable discretion.

2.9.5 FIRPTA Certificate and appropriate California Form 593. 3

3.9.6 Such other documents and funds required of Seller under this Agreement and by Escrow Holder in the performance of its contractual or statutory obligations.

3.10 Escrow Holder Responsibilities. Upon the Closing, Escrow Holder is authorized and instructed to:

3.10.1 Cause the satisfaction and removal of all exceptions to title to the Property representing monetary liens or encumbrances from funds otherwise payable to Seller at Close of Escrow, including, without limitation, all unpaid taxes and assessments respecting the Property which became due and payable prior to Close of Escrow and all penalties and interest, if any, thereon. Before such payments or charges are made, Escrow Holder shall notify Seller of the sums necessary to satisfy and remove such monetary liens or encumbrances.

3.10.2 Pay, and charge Buyer and Seller, respectively, for any fees, charges and costs payable under this Agreement, including, but not limited to, Sections 3.8 and 3.9. Before such payments or charges are made, Escrow Holder shall notify Buyer and Seller of the fees, charges and costs necessary to clear title and close the Escrow.

3.10.3 Credit Buyer and debit Seller for Seller's prorata amount of all unpaid *ad valorem* taxes, if applicable, upon the Property with respect to the period prior to Close of Escrow. Before such charges and credits are made, Escrow Holder shall notify Buyer and Seller of the sums necessary therefor.

3.10.4 Insert into the Grant Deed the true and correct legal description for the Property.

3.10.5 Record the Grant Deed, and any other instruments as appropriate, delivered through Escrow.

3.10.6 Disburse such other funds and deliver such other documents to the Parties entitled thereto.

3.10.7 Cause the Title Policy or Extended Policy, as applicable, to be issued.

3.11 Notices. All communications from Escrow Holder to either Buyer or Seller shall be directed to the addresses and in the manner established in Section 9.1 for notices, demands and communications between the Buyer and Seller.

3.12 Facsimile/Counterpart Documents. In the event Buyer or Seller utilizes “facsimile” transmitted signed documents, the Parties hereby agree to accept and instruct Escrow Holder to rely upon such documents as if they bore original signatures. Buyer and Seller hereby acknowledge and agree to provide to Escrow Holder, within seventy-two (72) hours after transmission, such documents bearing the original signatures. Buyer and Seller further acknowledge and agree that facsimile documents bearing non-original signatures will not be accepted for recording and that the Parties will provide originally executed documents to Escrow Holder for such purpose. Escrow Holder is authorized to utilize documents which have been signed by Buyer and Seller in counterparts.

4. Title

4.1 Condition of Title; Title Policy. It is a condition to the Close of Escrow for Buyer’s benefit that fee title to the Property and the right to possession to any portion of the Property conveyed to Buyer pursuant to this Agreement shall be subject only to the Permitted Exceptions (defined below), as evidenced by the receipt by Escrow Holder of an irrevocable commitment from FidelityNational Title Company. (“**Title Company**”) to issue to Buyer upon Close of Escrow its Standard Owner’s Form Policy of Title Insurance (“**Title Policy**”) in an amount equal to the Purchase Price showing title to the Property vested in Buyer, subject only to the Permitted Exceptions. Buyer may, at its option, request an Extended Owner’s Form Policy of Title Insurance (“**Extended Policy**”) and/or any title endorsements, provided that the issuance of said Extended Policy and/or endorsements does not delay the Close of Escrow. Such Extended Policy, if applicable, shall be in an amount equal to the Purchase Price showing title to the Property vested in Buyer, subject only to the Permitted Exceptions. Seller shall cause Title Company to issue to Buyer such Title Policy or Extended Policy, as applicable, upon Close of Escrow.

4.2 Permitted Exceptions. The term “**Permitted Exceptions**” as used herein shall mean the following-described conditions and exceptions to title or possession:

4.2.1 A lien to secure payment of general and special real property taxes and assessments, not delinquent.

4.2.2 A lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code accruing on or after the Close of Escrow.

4.2.3 Matters affecting the condition of title created by or with the consent of Buyer.

4.2.4 Other exceptions to title disclosed by the Title Report (defined below) which have been approved in writing by Buyer prior to the Close of Escrow.

Notwithstanding any other provision(s) in this Agreement, any exceptions to title to the Property representing monetary liens or encumbrances are hereby disapproved and deemed a Disapproved Item, and Escrow Holder is hereby authorized and instructed to cause at Close of Escrow the satisfaction and removal of any such monetary exceptions from funds otherwise payable to Seller at Close of Escrow.

4.3 Title Report. Within fifteen (15) calendar days following the Opening of Escrow, Buyer shall obtain a standard preliminary report from the Title Company, together with the underlying documents relating to the Schedule B exceptions set forth in such report (collectively, the “**Title Report**”).

5. Suitability and Condition of Property

5.1 Determination of Suitability and Approval of Environmental and Other Conditions. It is a condition precedent to the Close of Escrow for Buyer’s benefit that Buyer has provided notice in writing as provided in this Section 5.1 that it has determined the Property is suitable for Buyer’s intended use and development. It is understood and agreed that the obligation of Buyer to purchase the Property is subject to and conditioned upon the Property being suitable for Buyer’s intended use and development, as determined by Buyer in its sole discretion. Prior to the Closing Date, Buyer shall determine whether the Property is so suitable and shall provide to Seller and Escrow Holder its written notice of such determination. In the event Buyer determines that the Property is so suitable, such determination by Buyer shall not alter or diminish Seller’s representations and warranties made herein or under law, unless a representation or warranty is specifically waived in whole or in part by Buyer. In the event Buyer determines the Property is not so suitable, then Buyer may terminate this Agreement as provided in Section 7.1 herein.

5.2 Inspections, Testing and Right of Entry. Prior to Close of Escrow, Buyer may conduct, at Buyer’s sole expense, such inspections and testing of the Property, including the improvements thereon, as Buyer may desire or deem appropriate, in Buyer’s sole discretion, to determine the suitability of the Property for Buyer’s intended use and development. Such inspections and testing may include, but shall not be limited to, removing paint samples to test for lead-based paint; removing roofing, ceiling or other portions of the Property including the improvements thereon to test for asbestos; or minor boring samples of the Property, including the improvements thereon. In conducting such inspections and testing, the Buyer shall endeavor to minimize damage to the Property, and the improvements thereon, and shall, in the event escrow fails to close as the result of a condition outside of Buyer’s control, return the Property, including the improvements thereon, to its condition prior to the inspections and testing, reasonable wear and tear excepted. Seller hereby grants to Buyer and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property at all reasonable times prior to the Closing Date for the purpose of conducting such inspections and testing. In the event the Property is occupied by any person(s) other than Seller, Seller shall make arrangements with such person(s) to ensure access by Seller its authorized employees, representatives, agents and contractors in order to conduct the inspections and testing pursuant to this section.

6. Seller's Acknowledgement and General Release

6.1 Waivers and Releases. Upon the close of escrow, Seller hereby waives, to the maximum legal extent, any and all claims, remedies and causes of action for damages, liabilities, losses or injuries related to Buyer's acquisition of the Property, whether known or unknown, foreseeable or unforeseeable. The Parties hereto agree that this Agreement is a settlement of claims in order to avoid litigation and shall not, in any manner be construed as an admission of the fair market value of the Property, or of any liability by any party to this Agreement. Seller on behalf of himself and his heirs, executors, administrators, successors and assigns, hereby fully releases Buyer, its successors, agents, representatives and assigns, and all other persons and associations, known and unknown, from all claims and causes of action by reason of any damage which has been sustained, or may be sustained, as a result of Buyer's purchase of the Property or any preliminary steps thereto.

6.2 California Civil Code Section 1542. Seller hereby acknowledges that it has either consulted with legal counsel or had an opportunity to consult with legal counsel regarding, and represents and warrants that it is familiar with, the provisions of 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 or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Seller acknowledges that with respect to the sale of the Property to Buyer, Seller may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Seller hereby acknowledges, represents and warrants that this Agreement has been negotiated and agreed upon in light of that situation, and hereby waives, to the maximum legal extent, any rights accruing to him under Section 1542 or other statute or judicial decision of similar effect.

Seller's Initials

This acknowledgment and release shall survive the Close of Escrow.

7. Termination, Defaults and Remedies

7.1 Exercise of Rights to Terminate. In the event Buyer elects to exercise its rights to terminate this Agreement and the Escrow as provided in Sections 2.3, 5.2 or 9.3, then Buyer may so terminate by giving notice, in writing, of such termination to Seller and Escrow Holder. In the event Seller elects to exercise its rights to terminate this Agreement and the Escrow as provided

in Sections 3.3 or 9.3, then Seller may so terminate by giving notice, in writing, of such termination to Buyer and Escrow Holder. In such event, the Party so terminating shall pay all Escrow Holder and Title Company termination fees and charges (collectively, “**Termination Costs**”). Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for the obligation of Party so terminating to pay Termination Costs as provided herein, shall cease and terminate.

7.2 Buyer’s Breach. In the event Buyer breaches any obligation hereunder which Buyer is to perform prior to the Close of Escrow, and fails to cure such breach within a reasonable period of time determined at the sole discretion of Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement and the Escrow by giving notice, in writing, of such termination to Buyer and Escrow Holder. In such event, Buyer shall pay all Termination Costs. Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for Buyer’s obligation to pay Termination Costs as provided herein, shall cease and terminate.

7.3 Seller’s Breach. In the event Seller breaches any obligation hereunder which Seller is to perform prior to the Close of Escrow, and fails to cure such breach within a reasonable period of time determined at the sole discretion of Buyer, then, in addition to pursuing any other rights or remedies which Buyer may have at law or in equity, Buyer may, at Buyer’s option, (i) terminate this Agreement and the Escrow by giving notice, in writing, of such termination to Seller and Escrow Holder, or (ii) initiate an action for specific performance of this Agreement. Should Buyer elect to terminate this Agreement and the Escrow as provided herein, then Seller shall pay all Termination Costs, and upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for Seller’s obligation to pay Termination Costs as provided herein, shall cease and terminate.

7.4 Return of Funds and Documents; Release of Liability as to Escrow Holder. In the event Escrow Holder terminates this Escrow as a result of having received notice, in writing, from Buyer or Seller of its election to terminate the Escrow as provided in Article 7, then Escrow Holder shall terminate the Escrow and return all funds, less Termination Costs, as appropriate, and documents to the Party depositing the same. Further, the Parties hereby release Escrow Holder, and shall hold Escrow Holder free and harmless, from all liabilities associated with such termination excepting for Escrow Holder’s obligations to return funds and documents as provided herein.

8. Representations and Warranties

8.1 Seller’s Representations and Warranties. Seller hereby represents and warrants to Buyer that the following statements are true and correct as of the Effective Date, and shall be true and correct as of Close of Escrow, and the truth and accuracy of such statements shall constitute a condition precedent to all of Buyer’s obligations under this Agreement:

8.1.1 Authority. Seller has full power and authority to own, sell and convey the Property to Buyer and to perform its obligations pursuant to this Agreement. This Agreement and all other documents delivered by Seller to Buyer now or at Close of Escrow have been or

will be duly executed and delivered by Seller and are or will be legal, valid and binding obligations of Seller, sufficient to convey to Buyer good and marketable title to the Property and are enforceable in accordance with their respective terms.

8.1.2 No Unrecorded Possessory Interests; No Agreements or Undertakings. To Seller's current actual knowledge, there are no agreements for occupancy in effect for the Property and no unrecorded possessory interests or unrecorded agreements that would adversely affect Buyer's title to or use of the Property. Seller will not enter into any agreements or undertake any obligations prior to Close of Escrow which will in any way burden, encumber or otherwise affect the Property without the prior written consent of Buyer, including, without limitation, any agreements for occupancy for the Property.

8.1.3 Hazardous Materials. Seller is aware of its obligation under California Health and Safety Code Section 25359.7 to disclose information to Buyer regarding the environmental status of the Property. Seller warrants to Buyer that to the best of Seller's knowledge the Property and any contiguous real property owned by Seller is not in violation of any federal, state or local statute, regulation or ordinance relating to industrial hygiene or to environmental conditions on, under or about the Property, including, without limitation, soil and groundwater conditions underlying the Property which could affect the Property or its use or development. Neither Seller nor any other person or predecessor in interest has used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property any "**Hazardous Materials**" as defined in any state, federal or local statute, ordinances, rules or regulation applicable to the Property, including without limitation any flammable materials, explosives, radioactive materials, hazardous or contaminated materials or substances, toxic or noxious materials, substances or related materials or substances.

8.1.4 Litigation. There are no claims, actions, suits or proceedings continuing, pending or threatened against or affecting Seller or the Property, or involving the validity or enforceability of this Agreement or of any other documents or instruments to be delivered by Seller at Close of Escrow, at law or in equity, or before or by any federal, state, municipal or other governmental department, board, commission, bureau, Buyer or instrumentality. Seller is not subject to or in default under any notice, order, writ, injunction, decree or demand of any court or any governmental department, board, commission, bureau, Buyer or instrumentality.

8.1.5 No Breach. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not violate or result in any breach of or constitute a default under or conflict with or cause any acceleration of any obligation with respect to any provision or restriction of any lien, lease, agreement, contract, instrument, or, according to Seller's knowledge, any order, judgment, award, decree, statute, regulation or ordinance, or any other restriction of any kind or character to which Seller is a party or by which Seller or the Property are bound.

8.1.6 No Condemnation or Other Proceedings. Seller is unaware of any contemplated condemnation of the Property or any portion thereof by any other public entity.

8.2 Survival of Representations and Warranties. The covenants, representations and warranties of Seller under this Agreement shall be true on and as of the Close of Escrow and shall survive the recordation of the Grant Deed and the Close of Escrow. Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and litigation expenses, which Buyer may reasonably incur or sustain by reason of or in connection with any misrepresentation made by Seller pursuant to this Article 8.

9. Other

9.1 Notices and Demands. All notices or other communications required or permitted between the Parties hereunder shall be in writing, and shall be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by facsimile transmission with confirmation of receipt, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service), addressed to the Party to whom the notice is given at the addresses provided below, subject to the right of any Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the third business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by personal delivery, facsimile transmission or courier service, shall be deemed given upon receipt, rejection or refusal of the same by the Party to whom the notice is given. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice or other communication sent.

To Buyer: City of El Paso de Robles
 Attn: John Falkenstien, City Engineer
 1000 Spring Street
 Paso Robles, CA 93446
 Facsimile: (805) 237-3970
 Telephone: (805) 237-3904

With Copy to: Best, Best & Krieger, LLP
 Attn: Iris P. Yang
 500 Capitol Mall, Suite 1700
 Sacramento, CA 95814
 Facsimile: (916) 325-4010
 Telephone: (916) 325-4000

To Seller: Keith Brimhall, Trustee
Ernest L. Brimhall Tax Credit Trust of June 16, 1994
3232 Stone Valley Rd.
Alamo, CA. 94507
Telephone: 925-837-7284

To Escrow Holder: Reece Benson, Title Officer
Central Coast Title Group
Fidelity National Title
1212 Marsh Street, Ste 2
San Luis Obispo, CA 93401
Ph: 805-782-6900
Fx: 805-782-6914

9.2 Possession; Risk of Loss. Buyer shall be entitled to sole possession of the Property immediately upon Close of Escrow. All risk of loss or damage to the Property will pass from the Seller to the Buyer at the Close of Escrow. In the event that material loss or damage occurs to the Property prior to the Close of Escrow, either Party may terminate this Agreement as provided in Article 7.

9.3 No Brokers and Sales Commissions. Seller and Buyer each represent that it has not engaged a broker with respect to the purchase and sale of the Property. Seller and Buyer shall each indemnify, protect, defend and hold harmless the other Party and its successors hereunder from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and litigation expenses, arising from or in connection with any sales or brokerage commissions, finder's fees or other commissions which are (or are claimed to be) payable in connection with the transaction which is the subject of this Agreement by reason of the actions (or alleged actions) of such indemnifying Party.

10. Miscellaneous

10.1 Survival of Covenants. The covenants, representations and warranties of both Buyer and Seller set forth in this Agreement shall survive the recordation of the Grant Deed and the Close of Escrow.

10.2 Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use their best efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

10.3 Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

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

10.5 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

10.6 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than the Parties.

10.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference.

10.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

10.9 Applicable Law. All questions with respect to this Agreement, and the rights and liabilities of the Parties and venue hereto, shall be governed by the laws of the State of California. Any and all legal actions sought to enforce the terms and provisions of the Agreement shall be brought in the courts of the County of San Luis Obispo.

10.10 Assignment. Buyer shall have the right, in its sole discretion, to assign this Agreement, and any right or obligation herein, to any party of its choice without the prior consent or approval of Seller. Seller shall not assign this Agreement, or any right or obligation herein, to any party without the prior written consent of Buyer, which consent may be given or withheld in Buyer's sole discretion.

10.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

10.12 Ratification. This Agreement is subject to the approval and ratification by the Buyer's governing body or its delegated representative.

10.13 Severability. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

10.14 Construction. This Agreement will be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either Party (including the Party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly

understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting thereof.

10.15 Legal Fees. Each Party shall be responsible for payment of its own attorney's fees with respect to negotiation and preparation of this Agreement and processing of the escrow. In the event of the bringing of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing Party in such action or proceeding, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other Party all costs and expenses of suit, including actual attorney's fees.

10.16 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

10.17 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

10.18 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date(s) set forth below next to their respective signatures.

Signatures on following page

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the dates set forth below their signatures.

_____, 2015

“Buyer”

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

By: _____

Attest

Dennis Fansler, City Clerk

Approved as to Form:

Iris P. Yang, City Attorney

_____, 2015

“Seller”

KEITH BRIMHALL, Trustee of the ERNEST L. BRIMHALL TAX CREDIT TRUST OF JUNE 16, 1994

By: _____
Keith Brimhall

ACCEPTANCE BY ESCROW HOLDER

_____ hereby acknowledges that it has received a fully-executed counterpart of the foregoing Agreement for Purchase and Sale and Joint Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

The Opening Date of this Escrow is _____, 2015.

Dated: _____

FIDELITY NATIONAL TITLE COMPANY

By: _____
Reece Benson, Escrow Officer

**EXHIBIT A TO
AGREEMENT FOR PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

[INSERT LEGAL DESCRIPTION OF PROPERTY]

Exhibit A