

Resolution No. 93-96

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF EL PASO DE ROBLES AUTHORIZING A
SETTLEMENT AGREEMENT BETWEEN THE CITY, HILL TOP
DEVELOPERS AND THE FEDERAL DEPOSIT INSURANCE
CORPORATION RELATING TO BRIDGE DEVELOPMENT FEES
AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

WHEREAS, two separate legal actions have been filed against the City of Paso Robles regarding the payment of paid bridge development fees; and

WHEREAS, the City's legal counsel has successfully negotiated favorable settlement terms which terminate both current legal actions and provide protection against future actions; and

WHEREAS, the other two parties to this settlement agreement, Hill Top Developers and the Federal Deposit Insurance Corporation are desirous of settling this matter accordingly; and

WHEREAS, the City Council is also desirous of settling this matter.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Paso Robles that the settlement agreement attached herewith as Exhibit "A" is hereby approved and the mayor is further authorized to execute said settlement agreement.

APPROVED AND ADOPTED by the City Council of the City of El Paso de Robles this 18th day of May, 1993 by the following vote:

AYES: Heggarty, Macklin, Martin, Picanco, and Iversen

NOES: None

ABSENT: None

ABSTAIN: None


Christian Iversen, Mayor

Attest: 
Richard J. Ramirez, City Clerk

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS, effective as of January 1, 1993, (hereinafter the "Agreement") is entered into by and between the CITY OF EL PASO DE ROBLES (hereinafter the "City"), for itself, and any and all of its agents, partners, attorneys, employees, servants, representatives, officials and assigns, HILL TOP DEVELOPERS, INC. (hereinafter "HILL TOP"), for itself, and any and all of its affiliated corporations or companies, its agents, partners, attorneys, officers, directors, employees, servants, successors, representatives or assigns, and the FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver of FIRST PACIFIC BANK (hereinafter "FDIC") and successor in interest to FIRST PACIFIC BANCORP (First Pacific Bank and First Pacific Bancorp shall collectively be referred to as "First Pacific"), and any and all of FDIC or First Pacific's affiliated corporations or companies, agents, partners, attorneys, officers, employees, servants, successors, representatives and assigns.

R E C I T A L S

A. This Agreement is made as a good faith compromise between the parties for the complete and final settlement of their claims, differences, and causes of action as described below.

B. In or about April 1985, the City adopted Resolution 3001 which authorized the sale of Bridge Certificates (the "Bridge Certificates") to finance the Niblick Bridge in the City. Pursuant to an agreement dated September 3, 1985 (the "Bridge Certificate Agreement"), Hill Top purchased Bridge Certificates from the City

for \$1,000 each to provide the City with "up-front" money to build the bridge project. Thereafter, Hill Top sold and/or assigned 1566 Bridge Certificates to First Pacific. In addition, Hill Top sold 8 Bridge Certificates (numbered 3301 through 3308, inclusive) and has used 220 Bridge Certificates as collateral/security. As of the date of this Agreement, FDIC holds 960 Bridge Certificates and Hill Top holds 471 Bridge Certificates and has rights in and can deliver possession of an additional 220 Bridge Certificates. Except as expressly provided in this Agreement, the 8 Bridge Certificates (numbered 3301 through 3308, inclusive) shall not be governed by this Agreement.

C. A complaint was filed on or about May 3, 1990 in the Superior Court of the State of California for the County of San Luis Obispo, entitled "Hill Top Developers, Inc., a California corporation, plaintiff vs. City of El Paso De Robles, a California municipal corporation and Does 1 through 50, inclusive, defendants, and bearing Case No. 68092 (hereinafter the "Action"). On or about November 12, 1992, FDIC filed a claim against the City pursuant to Government Code §910, in which it demanded that the City (1) account for all bridge development fees received since April 1990, (2) immediately pay all fees received by the City from April 1990 to the date of the claim, and (3) immediately pay all future redemptions of Bridge Certificates in accordance with the Bridge Certificate Agreement (hereinafter the "Claim").

TERMS OF THE SETTLEMENT

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Payment to FDIC and Hill Top.

1.1 Upon execution of this Agreement by all parties, the City will cause to be paid to FDIC the sum of \$451,126.63, which sum represents 80% of the funds received by the City for redemption of Bridge Certificates from April 1990 to December 31, 1992 (the "Accumulated Funds") less the 7% trustee fee (the "Trustee Fee") due the City pursuant to the Bridge Certificate Agreement, and the sum of \$112,781.66 to Hill Top, which sum represents 20% of the Accumulated Funds less the Trustee Fee. FDIC and Hill Top further agree to return to the City upon execution of this Agreement and concurrently with payment of the aforesaid sums, all Bridge Certificates in their possession or in which they maintain rights as an assignor or otherwise, save and except the 8 Bridge Certificates numbered 3301 through 3308, inclusive.

1.2 Thereafter, the City shall continue to redeem the Bridge Certificates pursuant to the Bridge Certificate Agreement at the rate of \$2,189 each until all Bridge Certificates issued pursuant to the Bridge Certificate Agreement are redeemed. Redemption of each Bridge Certificate shall also be subject to the Trustee Fee pursuant to the Bridge Certificate Agreement. In the City's sole discretion, the rate of redemption of the Bridge Certificates may be adjusted upward or downward at the times and rates provided in the Bridge Certificate Agreement. If the rate of redemption is adjusted as provided herein, the amounts payable to FDIC and Hill Top pursuant to this Agreement shall be adjusted accordingly. In no event shall the rate of redemption be less than \$2044 per Bridge Certificate. Nothing in this Agreement shall

prevent the City from implementing new development fees in the future, including bridge fees. However, any new development fees shall only be in addition to, and not to the exclusion of, fees required to be collected upon the issuance of all building permits by the City and required to be used for redemption of the Bridge Certificates pursuant to the Bridge Certificate Agreement and this Agreement.

1.3 Beginning February 10, 1993, and on a monthly basis thereafter, the City shall then cause to be paid to FDIC the net sum of \$1,628.62 and to Hill Top the net sum of \$407.15 for each Bridge Certificate redeemed during the preceding calendar month. The above payments shall continue until FDIC has received the aggregate sum of \$1,954,339.20 pursuant to this Agreement (the "FDIC Pay-Off Date"). After the FDIC Pay-Off Date, Hill Top shall receive the net sum of \$2,035.77 for each Bridge Certificate redeemed by the City during the preceding calendar month until such time as Hill Top receives the aggregate sum of \$1,406,717.07 pursuant to this Agreement. As used in this paragraph, the "aggregate sum" to be collected by FDIC and Hill Top includes the payment referred to in paragraph 1.1. Notwithstanding the above to the contrary, in the event that the rate of redemption of the Bridge Certificates is adjusted in accordance with paragraph 1.2, then the net sums and aggregate sums to be received by FDIC and Hill Top as set forth in this paragraph 1.3 shall likewise be adjusted according to the rate of redemption and number of Bridge Certificates then outstanding.

1.4 The above monthly distribution shall be made by check or warrant payable to "Federal Deposit Insurance Corporation" and/or "Hill Top Developers, Inc.", or their designees, and shall be mailed to:

FDIC
Post Office Box 9349
Newport Beach, California 92658-9349

Hill Top Developers, Inc.
1830 Brundage Lane
Bakersfield, California 93304

In the event FDIC or Hill Top wishes to change the payee designation or location to which the distributions are sent, the City must be notified in writing by mailing notification to the Director of Administrative Services, City of El Paso de Robles, 801 4th Street, Paso Robles, California 93446. All sums paid to the parties' designees shall be deemed part of the "aggregate sums" due FDIC and Hill Top under paragraph 1.3 of this Agreement.

2. Dismissal of the Action and Claim.

2.1 Upon receipt of the payment of the sum of \$451,126.63 to FDIC and the sum of \$112,781.66 to Hill Top from the Accumulated Funds, Hill Top shall file with the Court a Request for Dismissal with prejudice of the Action, in its entirety, and FDIC will abandon the Claim, with prejudice, in its entirety.

3. Purpose of Settlement.

3.1 The parties to this Agreement desire to avoid the risks and expenses attendant upon further litigation or pursuant of the Action and the Claim, and to reach a full and final compromise and settlement of all matters, claims, causes of action and the like as described in the Action and the Claim.

4. Reliance on Documentation.

4.1 In negotiating and agreeing to the terms of this Agreement, First Pacific has relied upon certain documentation, including, without limitation, the following:

(a) Resolution No. 2972 of the City dated January 15, 1985;

(b) Resolution No. 3001 of the City dated April 16, 1985;

(c) Bridge Certificates in possession of First Pacific Bank;

(d) Bridge Certificate Agreement;

(e) Correspondence between the City and Hill Top, undated, confirming the City's acceptance and willingness to transmit Bridge Development fees collected to new assignee of Hill Top; and

(f) Correspondence from Hill Top to the City dated May 19, 1988, designating First Pacific as new assignee.

4.2 The parties understand and acknowledge that if the information provided to First Pacific in the documents listed above is later discovered and proved to be false, the Claim otherwise settled and resolved by this Agreement shall be automatically revived in all respects without further agreement or consent of any party to this Agreement. Without limiting the foregoing, it is expressly understood and agreed that the matter so revived shall be enforceable as though prosecuted as of the date of this Agreement and, without limiting the foregoing, any applicable statute of limitations period shall be deemed to have been tolled

from the date of this Agreement through and including the date of the revival of the Claim.

4.3 The parties further understand and acknowledge that they may be subject to criminal prosecution under 18 U.S.C. §1007 if they have knowingly made or have invited reliance upon false, forged or counterfeit statements, documents or things.

5. Prior Agreements Null and Void.

5.1 Except as otherwise expressly stated herein, this Agreement shall supersede and render null and void any and all prior agreements or contracts, whether oral or written, between the parties hereto, and shall constitute the only valid, binding and enforceable agreement among them.

6. Mutual Release and Waiver of Civil Code §1542.

6.1 Except for the obligations and rights conferred by this Agreement, the parties hereto, on behalf of themselves, their attorneys, officers, directors, agents, partners, servants, representatives, employees, successors, heirs, executors, administrators, assigns, and affiliated corporations or companies, whether past, present or future, hereby waive and release and discharge each other, as well as, to the extent applicable, their attorneys, officers, directors, agents, partners, servants, representatives, employees, successors, assigns, and affiliated corporations or companies, whether past, present or future, from any and all claims, demands, costs, contracts, liabilities, objections, rights, damages, expenses, compensation and actions and causes of action of every nature, whether in law or in equity, known or unknown or suspected or unsuspected, which the parties had

or have or may make claim to in the Action, the Claim or otherwise against the other, including any and all claims for breach of contract or failure to pay sums owed pursuant to the Action or the Claim. The parties also expressly waive and relinquish any and all rights which they may have under the provisions of §1542 of the California Civil Code, which reads as follows:

"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."

7. Limitation of Release from Liability.

7.1 Nothing set forth in this Agreement shall release or discharge any rights or remedies that First Pacific heretofore had, now has, or may hereafter acquire against any person, other than with respect to the Claim, and then only in accordance with the terms and conditions hereof, and the FDIC expressly reserves its rights against each such person.

8. Compromise and Settlement.

8.1 This Agreement is a compromise and settlement of disputed claims and is not intended as and shall not constitute or be construed as an admission of the truth or correctness of any allegation against any party in the Action or the Claim, or of liability on the part of any of the parties hereto.

9. Entire Agreement.

9.1 Except as expressly provided herein, this Agreement contains the entire agreement between the parties with respect to the matters described herein, and, as such, supersedes and cancels any prior understandings, statements, representations,

promises and agreements with respect to such matters. This Agreement shall not be extended, modified, altered or otherwise changed except in a writing executed by all of the parties hereto which expressly states that it is an amendment to this Agreement.

10. Representation of Comprehension of Documents.

10.1. In entering into this Agreement, the parties represent that they have relied upon the legal advise of their attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their respective attorneys, and that those terms are fully understood and voluntarily accepted by the parties without duress or coercion, economic or otherwise.

11. Governing Law.

11.1 The laws of the State of California shall govern this Agreement in all respects, including, but not limited, matters of construction, validity, enforcement and interpretation.

12. Successors in Interest.

12.1 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, representatives, assigns and successors.

13. Non-Assignment.

13.1 FDIC and Hill Top represent and warrant that there has been no assignment or other transfer of any claims, actions, causes of action, demands, rights, damages, costs, expenses, compensation or any other interest which those parties have or may have had at any time whatsoever against the City or in the Bridge Certificates, except the sale and/or assignment of

Bridge Certificates to First Pacific and as referenced in Recital B of this Agreement. Except as to any claim by First Pacific or FDIC, Hill Top shall indemnify and hold harmless the City against any claim, loss or damage, including reasonable attorneys' fees, arising from Hill Top's use of the Bridge Certificates (numbered 2955 through 3300, inclusive, and numbered 3309 through 3653, inclusive) as collateral/security, or from the sale of Bridge Certificates numbered 3301 through 3308, inclusive, so long as the City acknowledges and honors their use for the issuance of building permit(s) without further charge to the holder of said Bridge Certificates. Further, upon execution of this Agreement, Hill Top shall provide the City with an acknowledgment document from the holders of the 220 Bridge Certificates used by Hill Top as collateral/security as referenced in Recital B of this Agreement, which acknowledgment document shall be substantially in the form of Exhibit "A" attached to this Agreement and shall be fully executed by both Hill Top and the holders.

14. Costs.

14.1 In entering into this Agreement, the parties hereto agree that each party will bear its own costs and attorneys' fees incurred as a result of the filing of the Action or the Claim.

15. Attorneys' Fees.

15.1 In the event that any party institutes any action, arbitration or other proceeding against the other with respect to this Agreement, or any matter released or waived in, arising out of or connected with this Agreement, the prevailing party shall be entitled to recover, in addition to costs and any

other relief to which it may be entitled, its reasonable attorneys' fees. All reference to attorneys' fees in this Agreement shall be deemed to include, without limitation, such amounts as may then be charged for legal services furnished by attorneys in the employ of either party at rates not exceeding those charged by outside attorneys for comparable service.

16. Authority to Execute the Agreement.

16.1 The parties hereto warrant and guaranty that each person whose signature appears hereon has been duly authorized and has full authority to execute this Agreement on behalf of the person, persons or entity for whom such signature is indicated.

17. Counterparts.

17.1 This document may be executed in one or more counterparts.

The undersigned have read this Agreement and fully understand the terms.

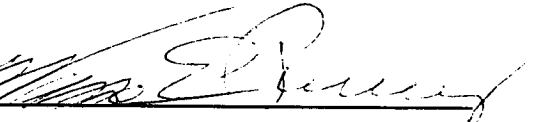
DATED: 5/18, 1993

CITY OF EL PASO DE ROBLES

By: 

DATED: 5/17, 1993
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FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver of First Pacific Bank and successor in interest to First Pacific Bancorp.

By: 
Wayne E. Powers
Its Attorney-in-Fact

DATED: April 30, 1993

HILL TOP DEVELOPERS, INC.

By: Jessie Shannon
Its: Alice President

SIGNATURES CONTINUE
APPROVED AS TO FORM AND LEGAL CONTENT:

DATED: May 7, 1993

STRADLING, YOCCA, CARLSON & RAUTH
A Professional Corporation

By: Darryl S. Gibson
DARRYL S. GIBSON, Attorney
for City of El Paso de
Robles

DATED: May 7, 1993

Debra H. Jameson
DEBRA JAMESON, Attorney for
Federal Deposit Insurance
Corporation, as receiver for
First Pacific Bank

DATED: April 30, 1993

LAW OFFICES OF DAVID A. ELWELL

By: D. A. Elwell
DAVID A. ELWELL, Attorney
for HILL TOP DEVELOPERS, INC.