

RESOLUTION NO. 09-151

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
TO AUTHORIZE PURCHASE OF PORTIONS OF THE SALINAS RIVER CORRIDOR IN
CONJUNCTION WITH THE SALINAS RIVER PARKWAY GRANT AND TO AUTHORIZE
MODIFICATION TO PROJECT FUNDING APPROPRIATIONS

WHEREAS, the City was awarded a \$4 million Grant by the State Water Resources Board for the acquisition of up to 260 acres of land within the river corridor and for the restoration of portions of public property adjacent to the River and Larry Moore Park; and

WHEREAS, the goal of the Grant is to protect and improve the water quality of the Salinas River through property acquisitions and storm water channel restoration efforts; and

WHEREAS, the restoration and acquisition components of the Grant are structured as follows:

- a) Restoration – The total project scope of work will cost \$420,000, of which \$300,000 is reimbursable from the grant;
- b) Acquisition – The total project scope is set at \$4,600,000, of which \$3,700,000 would be reimbursable from the grant; and

WHEREAS, on March 6, 2007, the City Council appropriated \$420,000 from the General Emergency and Contingency Fund to budget account # 110-910-5452-542 to accomplish the first phase of Grant work; and

WHEREAS, on November 18, 2008, the City Council appropriated \$49,000 from the General Emergency and Contingency Fund to budget account # 110-910-5452-542 to fund land appraisals; and

WHEREAS, in May, 2008, the owners (Triple P, LLC) of 226 acres within the river corridor signed a letter of Interest (LOI) indicating their willingness to negotiate sale of all or some of their property; and

WHEREAS, the City has obtained appraisals of the subject property; and

WHEREAS, on August 11, 2009 the Planning Commission adopted Resolution 09-024 making findings per Government Code Section 65402 that the purchase of the Triple P, LLC property would be consistent with the City's General Plan; and

WHEREAS, on October 6, 2009, the City Council authorized staff to negotiate for all or portions of the 226 acre Triple P, LLC holdings; and

WHEREAS, the property owners have agreed to sell approximately 102 to 112 acres of river corridor that runs the length of the Triple P, LLC holdings, where the precise boundary of the sale will be determined during escrow (as depicted in the Attached Exhibit A); and

WHEREAS, the window of State Grant fund availability is very narrow, where funds are available on a first come first served basis and must be encumbered before the close of this calendar year; and

WHEREAS, the purchase agreement is contingent on the State procuring funds directly to an escrow account which minimizes risk to the City in the event the State is unable to fund; and

WHEREAS, the appraised market value for the river corridor/riparian area is \$12,800 per acre; and

WHEREAS the City Attorney has generated the Purchase and Sale Agreement in a format that meets City standards (Attached as Exhibit B); and

WHEREAS, the estimated cost of purchase will range from \$1.2 to \$1.4 million depending on the final boundary of the purchase area and acreage, and the State should fund the cost of the acquisition provided the City contributes twenty-five percent (25%) matching value to the project cost; and

WHEREAS, the City's matching obligation can be via a combination of hard cost/expenses and soft cost/in-kind resources, and the City has accumulated approximately \$444,000 in matching value to the grant; and

WHEREAS, the purchase agreement is the result of a long string of steps to assure the City meets its General Plan River Parkway goals and to fulfill the State Grant contract goals and the purchase represents significant progress in the City's vision to further enhance and restore the Salinas River corridor and watershed; and

WHEREAS, the City's "Park Development Fund" has a balance of approximately \$2.2 million and the original appropriations should be reassigned to the Park Development Fund, leaving approximately \$1.7 million available in the Park Development Fund; and

WHEREAS, the precise cost of the purchase will be determined once the land survey is complete and total acreage of the purchase site is verified in the field with the seller; and

WHEREAS, the grant represents a significant and generous "return on the dollar" for a project that promotes multiple community and state wide goals; and

WHEREAS, at this time, no additional appropriation of funds are anticipated in order to finalize the purchase, but because the State's budget is so precarious it cannot be predicted as to the availability of Grant funds, making it prudent to create the flexibility for the City Manager to appropriate a limited amount of Park Development funds in the event it becomes necessary to finalize the land sale.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of El Paso de Robles to authorize appropriation of \$469,000 from Park Development Fund to the General Emergency and Contingency Fund to reimburse the cost of Larry Moore Park restoration and land acquisition related costs; and

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 Triple P, LLC for the acquisition of approximately 102 to 112 acres of Salinas River corridor property consistent with the City's General Plan and State Water Resource Agency Grant contract goals and any other documents necessary to effectuate the purchase of the property; and

BE IT FURTHER RESOLVED by the City Council of the City of El Paso de Robles to authorize the City Manager to appropriate up to \$450,000 of Park Development funds if/as necessary to finalize the property purchase if needed to supplement State grant funds.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 17th day of November 2009 by the following vote:

AYES: Gilman, Hamon, Steinbeck, Strong, and Picanco

NOES:

ABSTAIN:


ABSENT:

Duane Picanco, Mayor


ATTEST:


Lonnie Dolan, Deputy City Clerk

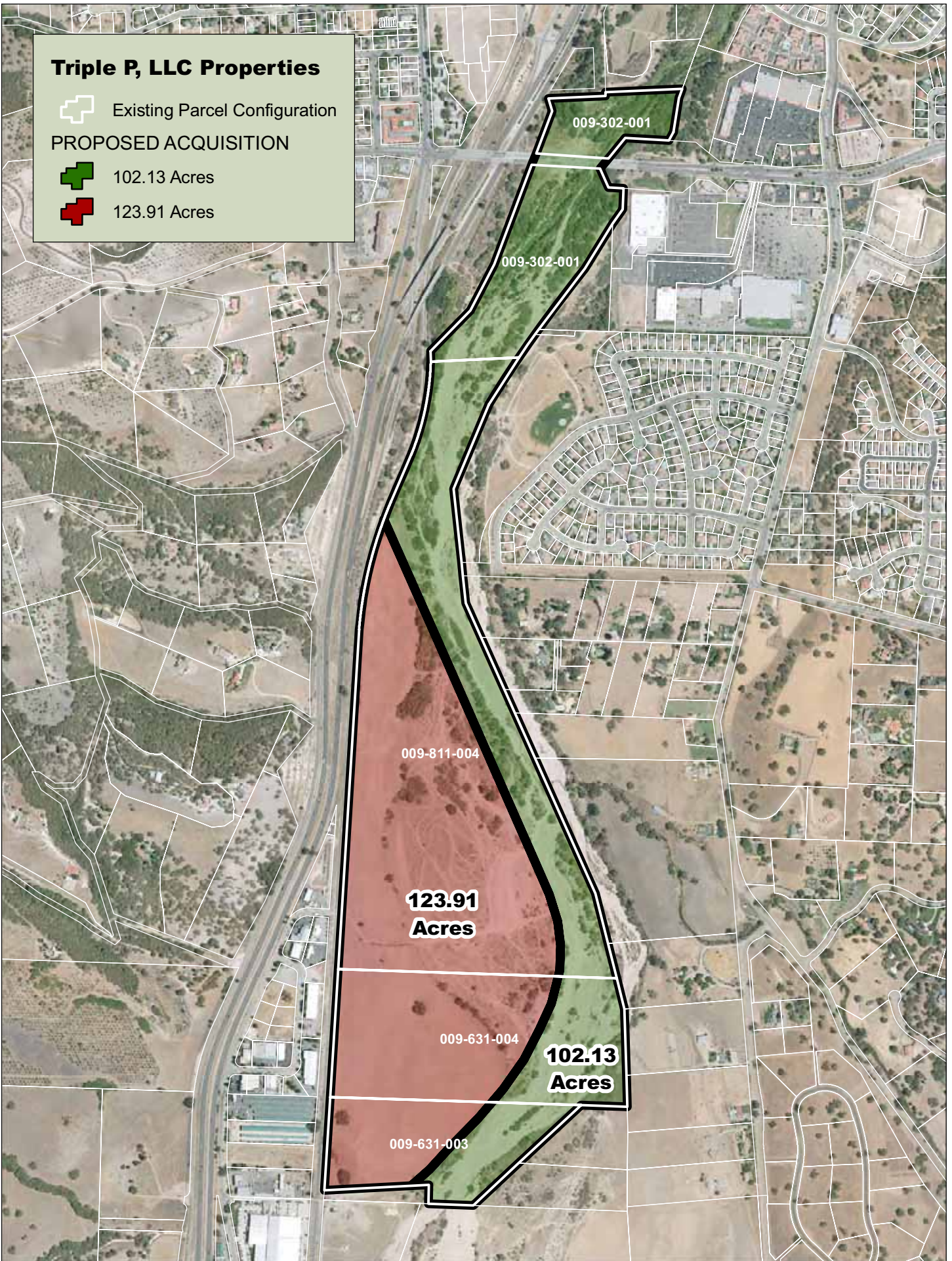
Triple P, LLC Properties

 Existing Parcel Configuration

PROPOSED ACQUISITION

 102.13 Acres

 123.91 Acres



Triple P, LLC Property Purchase

AGREEMENT OF PURCHASE AND SALE

This AGREEMENT OF PURCHASE AND SALE (the "Agreement") is entered into this ____ day of _____, 2009 (the "Effective Date"), by TRIPLE P, LLC, a California limited liability 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 Numbers: 009-631-03, 009-631-004, 009-811-004 and 009-302-001 (the "Property"), consisting of approximately 226 acres, and as more particularly described in Exhibit A, attached hereto.

B. Seller has obtained a grant from the State of California Water Resources Agency, Proposition 40 Grant funds (the "Grant") to acquire a portion of the Property within and adjacent to the Salinas River (the "Acquisition Property") to implement certain policies within the City's General Plan. The Acquisition Property is more particularly described in Exhibit B, attached hereto.

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

D. The purchase of said Acquisition Property is consistent with multiple City of Paso Robles policies, including the Salinas River Parkway Overlay designation of the General Plan.

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; CONTINGENT STATE FUNDING

2.01. Purchase and Sale.

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

2.02. Purchase Price.

The purchase price (the "Purchase Price") for the Acquisition Property shall be TWELVE THOUSAND EIGHT HUNDRED DOLLARS (\$12,800.00) per acre, **excluding** that portion of the Acquisition Property that is subject to that certain Irrevocable License Agreement (Sand), dated February 28, 2008, by and between EA UAI Properties LLC, a California limited liability company (Licensor) and UAI Real Estate Acquisition, LLC, a California limited liability company (Licensee), a memorandum of which was recorded February 29, 2008 as Instrument No. 2008-009966 in the Official Records of San Luis Obispo County (the "License Agreement"). Buyer and Seller agree that the approximate size of the Acquisition Property is between One Hundred Two (102) to One Hundred Twelve (112) acres, approximately Four (4) acres of which are subject to the License Agreement. The exact Purchase Price shall be determined based on a survey of the Acquisition Property and the area within the Acquisition Property subject to the License Agreement, which survey shall be prepared by Buyer at Buyer's expense. The conveyance of the Acquisition 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 Contingent on Receipt of Grant Monies

Seller specifically acknowledges and understands that the purchase of the Acquisition Property is expressly contingent upon the approval of the State of California of this Agreement and the receipt by Buyer of the Grant monies. Upon execution of this Agreement by the Parties, Buyer shall promptly forward a copy of the executed Agreement of the State of California for its review and approval.

ARTICLE 3. ESCROW

3.01. Opening.

The purchase and sale of the Acquisition Property shall be consummated by means of an escrow (the "Escrow") which is to be opened at First American Title Company in San Luis Obispo, 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 15, 2009. 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 Acquisition 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 hereunder (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 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 Acquisition 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 Acquisition 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 Acquisition 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 Acquisition 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 Acquisition Property and all other matters that Buyer may elect to investigate concerning any aspect of the Acquisition Property or this Agreement on or before 5:00 p.m. on the 15th day following the Effective Date of this Agreement (the "Feasibility Expiration Date"). 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 Acquisition Property which Buyer in its sole discretion deems advisable, including without limitation, the suitability of the Acquisition Property for Buyer's intended use; all soil conditions on the Acquisition 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 Acquisition 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 Acquisition 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 Acquisition Property. Buyer shall keep the Acquisition Property free from liens resulting from any activity permitted by this Section and shall repair any damages done to the Acquisition 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 Acquisition 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 Acquisition 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 Acquisition Property from that approved by Buyer hereunder until the Acquisition 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 This Agreement is contingent upon Buyer's receipt of the Grant monies, as set forth in Section 2.04 hereof.

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 Acquisition 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 Acquisition 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 Acquisition Property that would (a) interfere with the close of escrow or, (b) have a material adverse effect upon the value or use of the Acquisition 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 Acquisition 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 Acquisition 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 Acquisition 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 Acquisition 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: Triple P, LLC
7210 Lewis Lane
San Luis Obispo, CA 93401

Attention: Mr. Christopher L Will

Facsimile: (805) 888-0201

Buyer: City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

Attention: Ms. Meg Williamson

Facsimile: (805) 237-4032

With a copy to: Mcdonough Holland & Allen PC
500 Capitol Mall, 18th Floor
Sacramento, CA 95814

Attn: Iris P. Yang
Facsimile: (916) 444-8334

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.

Each of the parties hereto represents 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 Acquisition Property and any rights or obligations which exist or may arise out of the acquisition of the Acquisition 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 Acquisition 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 Acquisition 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 Acquisition 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 Acquisition 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 byphenyls, (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 Acquisition 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 Acquisition Property before Seller conveys and relinquishes actual possession of the Acquisition Property; provided, however, that the Seller shall not be responsible for the removal of Hazardous Materials in, on under or about the Acquisition Property which have migrated from outside the Acquisition Property. Seller represents and warrants that to the best of Seller's knowledge, the Acquisition 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 Acquisition Property, or the transportation of any such Hazardous Materials to or from the Acquisition 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 Acquisition 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 Acquisition 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 Acquisition Property. In the event Buyer disapproves, or is deemed to have disapproved, the environmental condition of the Acquisition 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 Acquisition 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 Triple P, LLC Acquisition 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.

TRIPLE P, LLC, a California limited liability company.

By: _____
Christopher L.. Will

Title: Non-Member Manager

"SELLER"

CITY OF PASO ROBLES, a municipal corporation

By: _____
James L. App, City Manager

By: _____
Deputy City Clerk

"BUYER"

APPROVED AS TO FORM

By: _____
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 _____)

[to be inserted]

EXHIBIT B

DESCRIPTION OF THE ACQUISITION PROPERTY

[to be inserted]

EXHIBIT "C"

Recording Requested by and)
After Recordation Mail to:)
)
_____)
_____)
_____)
_____)
Attn: _____)
_____)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, _____, a _____, hereby grants to _____, a _____, the real property located in the City of Paso Robles, California, described in Attachment No. 1 attached hereto.

Dated: _____, 200__

_____, a

By: _____

Its: _____

By: _____

Its: _____

ATTACHMENT NO. 1
TO EXHIBIT "C"

Legal Description

[TO BE INSERTED]

State of California

County of _____

On ____ before me, _____, a Notary Public, 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 _____ (Seal)

State of California

County of _____

On ____ before me, _____, a Notary Public, 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 _____ (Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the fee interests in real property conveyed by Grant Deed dated _____, 200__ 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: _____