Atascadero City Council
Staff Report – City Manager

East Mall Pedestrian Bridge Access
Approval of Purchase Agreement for 5901 East Mall
Lot 14, Block OL
(City of Atascadero)

(Request for authorization to purchase property from Robert and Elise Olson)

RECOMMENDATION:

Council authorize the City Manager to execute a Purchase Agreement with Robert and Elise Olson in the amount $124,000 for the purchase of a 2,500 square foot, vacant lot at 5901 East Mall, Atascadero, deemed necessary for adequate public access to the proposed Atascadero Creek pedestrian bridge.

DISCUSSION:

Background: The City’s Downtown Revitalization Plan identified a need for a pedestrian bridge across Atascadero Creek, linking the Sunken Gardens to Colony Square. The pedestrian bridge project was recently identified as a top priority by the Redevelopment Agency. The project is currently funded and in the design and environmental review process. The bridge is slated to be completed by September 2012.

The purpose of the bridge is to both enhance access and enjoyment of the creek and to provide a functional pedestrian connection between Downtown and Colony Square. The pedestrian bridge will provide access to public parking areas around the Sunken Gardens that will serve Colony Square at peak times. The pedestrian bridge will also create a visual link between historic City Hall (Veterans Memorial Building) and the Galaxy Theatre rotunda.
Analysis: One of the primary issues identified in the design of the pedestrian bridge is the lack of a direct public connection between the pedestrian bridge location and East Mall. A direct walking connection is very important to the usability and safety of the pedestrian bridge. Staff, including the Police Department, has concluded that in order for people to use the bridge in the evening for theatre parking, a straight, well lit path between East Mall and Colony Square is a high priority.

Staff has identified the lot at 5901 East Mall as the most suitable location for a pedestrian connection to East Mall. The lot is located along an ideal visual axis between City Hall and the theater, right on the corner of East Mall and Palma Avenue. Purchase of the lot will allow the City to provide a straight line pedestrian connection and maximizes security and police monitoring of the bridge.
View Axis toward Galaxy Theatre

View Axis toward City Hall
The City Council has authorized staff to enter into negotiations to purchase the parcel for $124,000. The vacant, 2,500 square foot lot at 5901 East Mall is owned by Robert and Elise Olson. The Olson’s have accepted the City’s offer and signed a purchase agreement and grant deed (refer to Attachments 1 and 2).

**FISCAL IMPACT:**

The purchase of the lot would result in the expenditure of $124,000 for the property. There will also be some addition title and escrow fees due at closing. Staff will have an exact number at the Council meeting. The City currently has $200,000 budgeted for “Downtown Property Purchase” under the Blight Elimination Project Fund which this purchase is consistent with. The City has contracted with the Redevelopment Agency to undertake blight elimination projects.
ALTERNATIVES:

1. The City Council may request additional staff analysis of issue.
2. The City Council may decline to purchase the parcel.

ATTACHMENTS:

1. Purchase Agreement and related Exhibits
2. Signed Grant Deed
Attachment 1: Purchase Agreement

PARCEL NO.: 029-347-032 (Olson)
PROJECT: Pedestrian Bridge Landing
TITLE REPORT NO.: 4001-3739247
ESCROW NO.:
AGREEMENT NO.:

AGREEMENT FOR ACQUISITION OF REAL PROPERTY
(WITH ESCROW INSTRUCTIONS)

THIS AGREEMENT is entered into this ___ day of _____________, 2011, by and between the City of Atascadero, a municipal corporation (hereinafter called "Buyer"), and Robert E. Olson and Elise G. Olson, husband and wife as community property (hereinafter called "Seller"), for acquisition by Buyer of certain real property as hereinafter set forth.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. AGREEMENT TO SELL AND PURCHASE. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and for the consideration set forth in this agreement, all that certain real property (hereinafter called "Property") situated in the City of Atascadero, County of San Luis Obispo, State of California, and legally described as follows:

See Legal Description attached as Exhibit A hereto.

2. PURCHASE PRICE. The total purchase price, payable in cash through escrow, shall be the sum of One Hundred Twenty Four Thousand Dollars ($124,000).

3. CONVEYANCE OF TITLE. Seller agrees to convey by Grant Deed to Buyer marketable fee simple title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases and taxes, EXCEPT:

A. Taxes for the fiscal year in which this transfer occurs.

B. Quasi-public utility, public alley, public street easements and rights of way of record.

C. Items numbered 1 through 5 of the above referenced title report dated April 1, 2011, issued by First American Title Company, Order No. 4001-3739247.

4. TITLE INSURANCE POLICY. Escrow Agent shall, following recording of deed to Buyer, provide Buyer with a CLTA Standard Coverage Policy of Title Insurance in the amount of $124,000 issued by First American Title Company showing title to the Property vested in Buyer, subject only to the exceptions set forth in Paragraph 3 hereinafore, and the printed exceptions and stipulations in said policy. Seller agrees to pay the premium charged therefor.

5. ESCROW. Buyer agrees to open an escrow in accordance with this Agreement at First American Title Company. This Agreement 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.

Seller has executed a deed to Buyer, for deposit into escrow concurrently with this Agreement. As soon as possible after opening of escrow, Buyer will deposit the executed deed, with Certificate of Acceptance attached, with Escrow Agent on Seller's behalf. Buyer agrees to deposit the purchase price upon demand of Escrow Agent. Buyer and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

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

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

ESCROW AGENT IS AUTHORIZED AND INSTRUCTED TO COMPLY WITH THE FOLLOWING TAX ADJUSTMENT PROCEDURE:

A. Pay and charge Seller for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the Property;

B. Escrow is not to be concerned with pro-rata of Seller's taxes for the current fiscal year if this escrow closes between July 1 and November 1 unless current tax information is available from title insurer between October 15 and November 1. In the event said tax information is available, Seller's taxes shall be pro-rated in accordance with Paragraph "C" below. From July 1 until November 1 and the ensuing period, when the tax information referred to above is not available, Seller's pro-rata portion of taxes due to close of escrow, shall be cleared and paid by Seller, outside of escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.

C. From the date that tax information is available, as per Paragraph "B" above, up to and including June 30, Seller's current taxes, if unpaid, shall be pro-rated to date of close of escrow on the basis of a 365-day year in accordance with Tax Collector's pro-rata requirements, together with penalties and interest if said current taxes are unpaid after December 10 and/or April 10. At close of escrow, a check payable to the County Tax Collector for Seller's pro-rata portion of taxes shall be forwarded to Buyer with closing statement;

D. Any taxes which have been paid by Seller, prior to opening of this escrow, shall not be prorated between Buyer and Seller, but Seller shall have the sole right, after close of escrow, to apply to the County Tax Collector of said County for refund of such taxes which may be due Seller for the period after Buyer's acquisition pursuant to Revenue and Taxation Code Section 5096.7.
ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

E. Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement;

F. Pay and charge Buyer and Seller for any escrow fees, charges and costs payable under Paragraph 6 of this Agreement;

G. Disburse funds and deliver deed when conditions of this escrow have been fulfilled by Buyer and Seller.

The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is authorized if necessary or proper in the issuance of said policy of title insurance.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any instructions must be in writing.

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE. If (except for deposit of money by Buyer, which shall be made by Buyer upon demand of Escrow Agent before close of escrow) this escrow is not in condition to close within 90 days from date of these instructions, any party who then shall have fully complied with his instructions may, in writing, demand the return of his money or Property; but if none have complied no demand for return thereof shall be recognized until ten (10) days after Escrow Agent shall have mailed copies of such demand to all other parties at their respective addresses shown in these escrow instructions, and if any objections are raised within said ten (10) day period, Escrow Agent is authorized to hold all papers or documents until instructed by a court of competent jurisdiction or mutual instructions. If no demands are made, proceed with closing this escrow as soon as possible.

Responsibility of Escrow Agent under this Agreement is expressly limited to Paragraphs 1, 2, 3, 4, 5, 6, 7, 10, and 11 and to its liability under any policy of title insurance issued in regard to this transaction.

6. ESCROW FEES CHARGES AND COSTS. Buyer agrees to pay all usual escrow, title and recording fees, charges and costs which arise in this escrow, except any costs specifically associated with providing clear title to the Property to Buyer in accordance with the provisions of Paragraph 3 of this Agreement, which costs shall be borne by Seller.

7. LEASE INDEMNIFICATION. Warrants there are no oral or written leases on all or any portion of the herein referenced real property. Seller agrees to hold the Buyer harmless and reimburse Buyer for any and all of the expenses occasioned by reason of any undisclosed lease of said property held by tenant of Seller.
8. TESTING, INSPECTION, ENTRY ON PREMISES, AND RESPONSIBILITY FOR CONDITION OF PREMISES. Seller grants to Buyer, and its authorized agents, permission to enter upon the Property at all reasonable times prior to close of escrow for the purpose of making all such inspections, tests, borings, samplings, and other such investigations as Buyer shall deem reasonable to determine the physical condition of the Property, including, but not limited to, the existence of asbestos, lead-based paint and other surface coverings, and the existence of, or contamination of the Property by "hazardous materials". Should Buyer discover any physical condition of the Property which Buyer deems unacceptable, Buyer may terminate this Agreement and cancel the escrow, by giving written notice to Seller and escrow holder, within sixty-five (65) days after the date of Buyer's execution of this Agreement. Upon receipt of written notice of Buyer's intent to terminate this Agreement, escrow holder shall return all money and documents deposited in escrow to the party originally making such deposit, and neither party shall have any further obligation to the other under this Agreement. Buyer's failure to give written notice of termination of this Agreement within sixty-five (65) days of the date of Buyer's execution of this Agreement shall be deemed Buyer's acceptance of all such conditions of the Property, as Buyer could have discovered by reasonable inspection, testing, boring, sampling, and other investigations of the Property.

As used in this Agreement, the term "hazardous materials" means all flammable, explosive, noxious, toxic, or otherwise dangerous materials, wastes, products, or substances, the handling, use, discharge, or release of which is regulated or the contamination by which is prohibited by any federal, state, or local statute, ordinance, rule, or regulation, including, but not limited to, those substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; The Resource Conservation & Recovery Act, 42 U.S.C. Section 6901, et seq.; and also including those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code; and those chemicals to which reference is made in the Safe Drinking Water and Toxic Enforcement Act of 1986, Section 25249.5, et seq. of the California Health and Safety Code.

9. COUNTERPARTS. This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same instrument.

10. CLOSING STATEMENT. Seller hereby authorizes and instructs Escrow Agent to release a copy of Seller's closing statement to Buyer, purpose being to ascertain if any reimbursements are due Seller.

11. TAX REPORTING AND WITHHOLDING – NON-FOREIGN STATUS. The Foreign Investment in Real Property Tax Act of 1980, as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (Seller) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-resident corporation or partnership.
Seller hereby advises Buyer that Seller is NOT a "foreign person" for the purposes of Section 1445 (as may be amended) of the Internal Revenue Code of 1954, as amended, and any regulations promulgated thereunder, and that, in accordance with the provisions of Section 1445, Seller shall execute an affidavit under penalty of perjury setting forth Seller's name, address, federal tax identification number, and certifying that Seller is not a "foreign person" in accordance with the provisions of the Internal Revenue Code.

It is specifically understood and agreed by Seller that closing of this escrow is subject to, and contingent upon, deposit into escrow, or notification to Escrow Agent by Buyer, of receipt of said Affidavit.

12. MISCELLANEOUS TERMS. The terms, conditions, covenants and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto.

This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation not contained in this Agreement.

This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Atascadero. This Agreement is not binding upon Buyer until executed by the appropriate City official(s) acting in their authorized capacity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first set forth hereinafore.

Dated: 7/28/11

Robert E. Olson

Dated: 7/28/11

Elise G. Olson

SELLER’S MAILING ADDRESS:
870 Capitolio-Way #B
San Luis Obispo, CA 93401

[Signature]
BUYER: CITY OF ATASCADERO, a municipal corporation

Dated: ____________________

By _______________________
Name: _____________________
Title: _____________________

MAILING ADDRESS OF BUYER:
City of Atascadero
6907 El Camino Real
Atascadero, CA 93422

APPROVED AS TO FORM:

By: _______________________
City Attorney

ATTEST:

By: _______________________
City Clerk

APPROVED AS TO CONTENT:

By: _______________________

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Atascadero, County of San Luis Obispo, State of California, described as follows:

Lot 14 in Block "OL" of Atascadero, in the City of Atascadero, County of San Luis Obispo, State of California, according to Amendment "N" to map of Atascadero recorded September 3, 1925 in Book 4, Page 67-C of Maps, in the office of the County Recorder of said county.

Excepting therefrom all streets, roads and alleys as shown on the map above referred to.

Also excepting therefrom all oil and minerals in, under or upon said land.

APN: 029-347-032
Attachment 2: Signed Grant Deed

Recording Requested By
Hammer, Jewell & Associates
Government Real Estate Services

When Recorded Mail to
City of Atascadero
Attn: Jim Lewis, Asst City Manager
6907 El Camino Real
Atascadero, CA 93422

APN: 029-347-032
NO FEE DUE Gov't Code 6103
No Documentary Transfer Tax per Revenue
Taxation Code 11922

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Robert E. Olson and Elise G. Olson, husband and wife as community property
hereby GRANT(S) to

the City of Atascadero, a municipal corporation

the real property in the City of Atascadero, County of San Luis Obispo, State of California, described as
Lot 14 in Block "OL" of Atascadero, in the City of Atascadero, County of San Luis Obispo, State of California,
according to Amendment "N" to map of Atascadero recorded September 3, 1925 in Book 4, Page 67-C of Maps, in
the office of the County Recorder of said county. Excepting therefrom all oil and minerals in, under or upon said land.

Dated __7/28/11__

GRANTOR

Robert E. Olson

Elise G. Olson

State of California

County of San Luis Obispo

On __________________ before me,
personally appeared Robert E. Olson and Elise G. Olson, personally known to me (or 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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal

Signature __SEE ATTACHED__ (Seal)

City of Atascadero/Pedestrian Bridge Landing/Olson/Deed 6-13-11
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California,
County of ________________

On ________________ before me, ________________, Notary Public
personally appeared ________________

__________________________
Name(s) of Signer(s)

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: ____________________
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ________________________

Document Date: ________________________ Number of Pages: ________________________

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: ________________________

☐ Corporate Officer — Title(s):
☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ________________________

Signer Is Representing: ________________________

Signer's Name: ________________________

☐ Corporate Officer — Title(s):
☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ________________________

Signer Is Representing: ________________________
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of:

On 7-3-2011 before me, ,

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:

Description of Attached Document

Title or Type of Document:

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: 

Signer is Representing:

Signature of Notary Public:

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Signer's Name: 

Signer is Representing:

Top of thumb here
CERTIFICATE OF ACCEPTANCE

This is to certify that the City of Atascadero hereby accepts for public purposes the real property, or interest therein, described in that deed dated ________________, from Robert E. Olson and Elise G. Olson, grantors therein, to the City of Atascadero, a municipal corporation, grantee therein, and consents to the recordation thereof.

In Witness Whereof, I have hereunto set my hand this ___ day of _____________, 2011.

City of Atascadero

By: ____________________________

Name: __________________________

Title: ___________________________