SUBJECT: ACQUISITION OF RIGHT OF WAY - PROPERTY LOCATED AT APN 261-080-012 – OWNER ROY A. MACOMBER – DATE AVENUE STREET PROJECT

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: During the April 5, 2005 Closed Session of the City Council meeting, Council directed staff to bring this item back for approval. Council requested additional wording to be included in the Purchase Contract regarding the removal of personal property, junk, trash, and refuse stored on the property and the relocation of said personal property, junk, trash, and refuse.

Attached for Council’s review is the revised Purchase Contract for Mr. Macomber. Section 3B of the contract covers the removal of personal property, junk, trash, and refuse from the property before escrow closes. This same section also covers the relocation of personal property, junk, trash, and refuse once removed from the property.

RECOMMENDATION: That City Council:

1. Approve the Purchase Agreement;
2. Authorize staff to begin escrow, with the City paying escrow fees;
3. Authorize staff to make payment to Roy A. Macomber, owners of property in the amount of $56,000.00, after completion of escrow;
4. Authorize the Mayor to sign all necessary documents; and
5. Authorize staff to record all documents with the County Recorder.

ATTACHMENTS: 1. Purchase Agreement
2. Right of Way Take Map
3. Resolution

DD_____ APPROPRIATED/FUNDED_____ CM_____ ITEM NO. 8
PURCHASE CONTRACT

This Purchase Contract (this “Agreement”) is between the City of Porterville (“City”) and Roy A. Macomber, by deed dated September 11, 1989 (“Grantor”).

It is mutually agreed as follows:

1. Grantor agrees to sell to City, and City agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, the real property more particularly described in the Grant Deed delivered herewith, together with such other property interests as may be specified herein (together, the “Property”). Grantor hereby states that Grantor has full title except as hereinafter mentioned and has full authority to sign this Agreement and to convey the rights described herein.

2. The parties hereto have set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Property and shall relieve the City of all further obligation on this account, or on account of the location, grade, or construction of the proposed public improvement.

3. Upon approval by the City Council, the City shall:

   A. Pay the undersigned Grantor the sum of Fifty-Six Thousand Dollars ($56,000) for the Property within thirty (30) days after the date title to said Property vests in the City free and clear of all liens, encumbrances, assessments, easements, and leases (recorded and/or unrecorded), subject to the conditions set forth below.

   B. Pay all the escrow and recording fees incurred in this transaction and, if title insurance is desired by the City, then the City will pay the premium charged therefore. Said escrow and recording charges shall not, however, include reconveyance fees, trustee's fees for any full reconveyance of Deed(s) of Trust, all of which fees, where required, shall be paid by the Grantor. Grantor hereby authorizes the City to prepare and file escrow instructions with the escrow agent on behalf of Grantor in accordance with this Agreement. Said instructions shall provide that escrow shall not close until the property has been cleared completely of all personal property, junk, trash, and refuse. Grantor is prohibited from relocating said personal property and junk, etc. to
any outdoor area or area otherwise visible to the public, or relocating said items in such a way as to create or perpetuate a public nuisance, within the City's jurisdictional limits.

C. Have the authority, if Grantor has not cleared the property of all personal property, junk, trash, and refuse by June 30, 2005, to remove and dispose of all said personal property and deduct and pay from the amount shown in Clause 3.A. above all actual costs and charges (including all costs for its own labor) the City incurs for the removal of any junk, trash, and refuse from the property as required by City of Porterville Municipal Code Section 13-4. The City shall also have the authority to deduct any amount necessary to pay reconveyance fees and trustee's fees for any full reconveyance of Deed(s) of Trust, and to satisfy any bond demands and/or delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid nondelinquent assessments, which have become a lien at the close of escrow. Current taxes shall be prorated as of the date of possession or the date the conveyance is recorded, whichever occurs first. However, if an Order of Immediate Possession has been obtained, then the date of proration of taxes shall be as of the effective date of said Order.

4. Grantor grants to the City, its permittees, contractors, agents or assigns, an immediate right, effective upon execution by the parties of this Purchase Contract, to enter upon, over, across, and under Grantor's property shown on Exhibit "A" attached hereto and Grantor's property lying adjacent to the property shown on Exhibit "A" during the period of construction for the purpose of constructing the public improvement and accomplishing all necessary incidents, thereto, including, but not limited to, the repair, replacement, restoration, removal, and/or disposal of existing improvements.

A. Any actual damage or substantial interference with the possession or use of the adjacent land caused by City, its permittees, contractors, agents or assigns shall be cured by same. In addition, the City of Porterville agrees to indemnify the Grantor and hold said Grantor harmless from any loss of, or damage to any property or injury or death of any person whomsoever arising out of or connected with their performance of any work authorized under this Agreement.

B. It is agreed and confirmed by the parties hereto that, notwithstanding other provisions in this Agreement, the right of possession and use of the Property by the City (including, but not limited to, the right to construct and install new improvements and to replace, repair, restore, remove, and/or dispose of existing improvements) shall commence upon execution of this Agreement and shall terminate upon completion of construction of the project, and that the amount shown in Clause 3.A. herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said commencement date.

5. The sum set forth in Clause 3.A. above includes payment for the following: fee title to 13,500 square feet of land clear of all personal property, junk, trash, and refuse, and any
and all landscaping and improvements thereon, and all rights of possession and use provided for herein, together with any and all other losses, whether separately mentioned in this Agreement or not.

A. Grantor hereby forever releases City, its officers, employees, and agents (the "Released Parties") from any and all losses, claims, demands, and causes of action of every type, kind, nature, description or character, including, whether known or unknown, under contract or at law, which Grantor may have against the Released Parties which in any way arise out of, are connected with or relate to City’s purchase and use of the Property described herein and property donated by Grantor to the City described in the deed recorded June 2, 2004 as Document 2004-0054045 in the Official Records of Tulare County. Grantor hereby specifically acknowledges that he or she is familiar with, and has been advised by counsel with respect to, 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.”

B. Grantor, being aware of such code section, and having been advised by counsel as to such code section, hereby waives any and all rights and benefits thereunder, as well as any other statutes or common law principles of similar effect of any other state or the United States.

6. The parties understand the Property may contain hazardous materials requiring mitigation under state or federal law. The purchase price herein reflects the fair market value of the Property without the presence of contamination. If clean-up of hazardous materials on or under the Property is required, City may elect to recover its clean-up costs from those who are legally responsible therefor.

A. Grantor represents and warrants that during the period of Grantor’s ownership of the Property, there have been no disposals, releases or threatened releases of hazardous materials on, from, or under the Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous materials on, from or under the Property that have occurred prior to Grantor taking title to the Property.

B. Grantor hereby agrees to indemnify, defend and hold City harmless from any and all past, present and future claims, losses, liabilities, obligations, or causes of action arising out of or connected with the disposal or release of hazardous materials on, from or under the Property.
7. It is understood that once this Agreement is executed it must be approved by the City Council to complete the transaction. Delivery of this Agreement and the accompanying Grant Deed is conditioned upon the City Council’s approval of said documents.

8. NO OTHER OBLIGATION OTHER THAN THOSE SPECIFICALLY SET FORTH HEREIN WILL BE RECOGNIZED.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year shown.

GRANTOR:

Roy A. Macomber

Date: __________________________

CITY OF PORTERVILLE:

By: ___________________________
   For City of Porterville

Date: __________________________

Witness/Received:

By: ___________________________
   Baldomero S. Rodriguez,
   Public Works Director

Date: __________________________

By: ___________________________
   Acquisition Agent

Date: __________________________
RESOLUTION NO. ________________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ACCEPTING A GRANT DEED IN FEE FOR REAL PROPERTY FROM ROY A. MACOMBER

BE IT RESOLVED by the City Council of the City of Porterville that the City of Porterville hereby accepts a Grant Deed in fee from Roy A. Macomber, by deed dated September 11, 1989, for real property, in the City of Porterville, County of Tulare, State of California, to-wit:

See Exhibit “A” attached hereto and made a part thereof.

BE IT FURTHER RESOLVED that the purchase price of $56,000 is hereby approved with the City to open escrow account, pay the normal and customary escrow fees, authorize Mayor to sign all necessary documents, and said deed to be recorded in the office of the Tulare County Recorder. The foregoing has been accepted by the City Council for the City of Porterville.

____________________________
Pedro R. Martinez, Mayor

ATTEST:

John Longley, City Clerk

By: Georgia Hawley, Chief Deputy City Clerk

Form RW 6-1(B) (Revised 3/02)
EXHIBIT A

COMMENCING AT A POINT 1040 FEET EAST FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 21 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN; THENCE A DISTANCE OF 150 FEET SOUTH; THENCE A DISTANCE 90 FEET EAST; THENCE A DISTANCE OF 150 FEET NORTH; THENCE A DISTANCE OF 90 FEET TO THE POINT OF BEGINNING.