

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES AUTHORIZING THE USE
OF A PRIVATE WELL TO SERVE A SINGLE FAMILY RESIDENCE
(ERSKINE - 3001 PASO ROBLES BOULEVARD)

WHEREAS, Tom and Gwen Erskine have requested City Council authorization for use of a well to serve a single family residence at 3001 Paso Robles Boulevard; and

WHEREAS, the establishment of a residence on the Erskine property would be an accessory to the Erskine's existing and planned agricultural use of the property; and

WHEREAS, the location of the proposed residence is over 1,000 feet from a source of City water and where topographic and physical constraints would make extending a water line to the farm dwelling difficult; and

WHEREAS, the Erskine property is located in Zones 2 and 4 as described in the Airport Area Land Use plan which will only support residential use of existing parcels; and

WHEREAS, it is the goal of the City Council to support and augment the viability of agricultural use of properties; and

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. That the City of Paso Robles does hereby authorize the use of a private well to serve a new residence on property owned by Tom and Gwen Erskine at 3001 Paso Robles Boulevard.

SECTION 2. That the applicant enter into an agreement, subject to approval of the City attorney, to incorporate the following provisions:

- a. That the City reserves the right to place a meter in order to determine the water use on the subject property.
- b. That any other non-agricultural development entitlements gained on the property in the future shall be served by City water.
- c. The obligations and covenants outlined in the Agreement shall run with the land and shall be binding on the successors and assigns of the applicant and shall inure to the benefit of the City of Paso Robles, its successors and assigns.

SECTION 3. That the City Clerk be authorized to cause a certified copy of this Resolution to record in the Office of the County Recorder of the County of San Luis Obispo, State of California.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 15th day of August 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY ENGINEER
COMMUNITY DEVELOPMENT DEPT.
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446

**PERMIT AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND
RANCH & COAST PROPERTIES, INC. REGARDING REPAIR, OPERATION AND
MAINTENANCE OF GROUNDWATER WELL (APN 042-431-041)**

This Agreement ("Agreement") is entered into this ____ day of _____, 2006, by and between the City of El Paso de Robles (the "**City**"), a California municipal corporation, and Ranch and Coast Properties, Inc., referred to herein as "**Owner**" and collectively referred to as the "**Parties**."

RECITALS

A. **Owner** is the owner of certain real property located at **3001 Paso Robles Blvd.**, Paso Robles, California (the "Property"). A legal description of the Property is attached hereto as Exhibit A and incorporated herein by this reference. A map of the Property is attached hereto as Exhibit B and incorporated herein by this reference.

B. It is the goal of the **City** to supply water to all premises within it's boundaries. It is also the goal of the **City** to support the viability of agriculture where appropriate. Therefore, the City Council has provided authorization to use, maintain, operate and repair a well for agriculture and domestic use at the Property.

C. Because of concerns about public health, safety and welfare, the City Municipal Code contains provisions governing the private use of well facilities within the City. Where the context is appropriate, "well" shall also mean any associated pump, motor, and other appurtances necessary to the extraction of groundwater and conveyance of it. The City Municipal Code provides that a private well may only be constructed pursuant to a permit issued by the City. In addition, water extracted from private wells may only be used for the purposes outlined in the permit. Use of water extracted from a private well for any purpose not related to agricultural is prohibited by the City Municipal Code.

D. In addition, groundwater management issues have been of increasing concern in the City and in the San Luis Obispo County region generally. The City is actively engaged in, and seeks to ensure, groundwater basin stewardship which will maximize long-term protection of potentially limited water resources.

E. The parties desire to execute this Agreement to set out the terms and conditions between the **Parties** regarding operation of the well by **Owner**.

NOW, THEREFORE, THE CITY AND OWNER, HEREBY MUTUALLY AGREE AS FOLLOWS:

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

2. Grant of Permit. The **City** hereby grants **Owner** a permit to use, maintain, operate and repair well and extract groundwater therefrom for agriculture and related uses on the Owners Property.

2.01. Place of Use. **Owner** shall not use any of the water extracted from the well at, on or under any property other than the **Owners** Property.

2.02. Agricultural Use Only. **Owner** shall use the water extracted from the well only for agricultural and related purposes on the **Owner's** Property. "Agricultural purposes" include activities in any way related to farming, horticulture or ranching, including, but not limited to, irrigation (including the leaching of salts), stock watering, frost protection and heat control. A domestic accessory agricultural residence which contains bathroom fixtures such as a sink, toilet and shower may be served by the well.

2.03. Operation of Well. **Owner** shall, at all times, operate the well in a way that does not interfere with the City's ability to operate the City's own wells, and to deliver water from whatever source to customers of the City's municipal water system. In addition, operation of the well, including a failure to operate, must in no way jeopardize the quality of City water.

2.04. Prohibited Activities. **Owner** shall not operate, or fail to maintain or repair, the well so as to result in cross-connection between the well and the City's municipal water system or to allow the introduction of contaminants into the City's municipal water system or waste water system.

2.05. Maintenance and Repair. **Owner** shall be responsible, at his sole cost, for maintaining the well. Such maintenance shall include, but is not limited to, ensuring that the well remains in good working order and free from debris. **Owner** shall properly maintain the well in such a way that; a) the well has no defects that will permit the impairment of water quality in the well or in the water bearing formations penetrated; b) the well head is appropriately protected to prevent accidental entry and to prevent the entrance of undesirable water or foreign matter; c) the well is marked so that it can be clearly seen and; d) the area surrounding the well is kept clear of brush and debris.

Any and all maintenance, repair of the well must be in accordance with all applicable federal, state and local laws, regulations and ordinances. The well may not be enlarged or substantially modified by **Owner** without the express prior written consent of the **City**.

2.06. Metering. The **City** reserves the right to place a meter for measuring the volume of water extracted from the well, at any such time that the **City** determines such

metering is necessary. Should the **City** require metering, **Owner** will allow a meter to be installed. All cost to install, maintain and remove the meter shall be borne by the **City**. If a meter is installed, **Owner** shall report the amount of water extracted from the well periodically, as designated by the **City**, with the understanding that such data is considered proprietary and shall be used by the **City** for municipal business purposes only. The **City** will, to the extent allowed by law, protect all information regarding water extractions given to the **City** by **Owner**.

2.07. Overdraft. If the Paso Robles groundwater basin is adjudged to be in overdraft by a court of competent jurisdiction, this Agreement shall be subject to modification or possible termination.

2.08. Subdivision of Land. If the **Owner's** Property is subdivided, any subdivided portion of land will connect to City water. The remainder of the property will continue to be subject to this Agreement.

2.09. City Right to Inspect. Upon reasonable notification to **Owner** and/or lessee, the **City** shall have the right to inspect the well at all times to ensure compliance with the terms and conditions of this Agreement.

2.10. Permit Appurtenant to the Land. The provisions of this Agreement shall run with the **Owner's** Property in perpetuity and shall bind and be enforceable against **Owner**, his agents, tenants, successors and assigns.

3. Waiver of Claims Against City. **Owner** waives, now and at any time in the future, any and all claims against the **City** for interference with **Owner's** right or ability to extract water from the well, including a claim based on any action, or inaction, of the **City**, regulatory actions, changes in the Municipal Code or operations of the City's own wells or any other features of the City's municipal water system.

4. Entire Agreement. It is expressly understood and agreed that this written instrument embodies the entire agreement between the parties regarding the subject matter herein, and there are no understandings or agreements, verbal or otherwise, between the parties except as expressly set forth herein.

5. Amendments. Any amendment to this Agreement must be in writing signed by both parties hereto, and recorded in the Office of the County Recorder of San Luis Obispo County, California, before it is effective.

6. Assignment. **Owner** shall not assign this Agreement except as provided in Section 2.10.

7. Compliance With Laws. **Owner** shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees in exercising his rights and responsibilities under this Agreement.

8. Termination. This Agreement shall terminate as follows:

(a) By operation of the terms set out in this Agreement.

(b) By the mutual, written consent of both **parties**.

(c) By the **City**, if the **City** determines that operation of, or failure to operate or maintain, the well is interfering with the City's ability to deliver water to City residents, is jeopardizing the quality of City water, or is otherwise posing a threat to human health and safety.

(d) By the City for nonuse. If either well is not used for a period of two or more years then the **City** will give notice to **Owner** of its intention to terminate this Agreement. If use of the well has not resumed within one-hundred eighty (180) days of such notice the **City** may terminate this Agreement. Any such termination must be in writing, stating the reasons for such termination

(e) By the **City**, at any time, for breach of this Agreement. If the **City** finds that it has cause to terminate this Agreement for breach, the **City** shall deliver written notice of such violation to **Owner** and **Owner** shall have seven (7) days from the date of receiving such notice to cure the violation. The **City** need not give **Owner** written notice or notice to cure should the violation of this Agreement present a danger to human health or safety, including but not limited to, contamination of the City water supply or interference with the City's ability to deliver water to City residents.

9. Abandonment. Upon termination of this Agreement pursuant to subsection (a), (b), (c), (d), or (e) of Section 8 above, **Owner** will, at his sole cost, follow all required procedures to abandon the well in accordance with federal, state and local laws and ordinances.

10. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

11. Notices. Any notice or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

(a) By personal delivery, effective upon receipt by the addressee;

(b) By facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. Mail, return receipt requested, postmarked the same day as the facsimile; or

(c) By certified mail, return receipt requested, upon receipt or refusal.

CITY:

City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446
Attn: Public Works Director
(tel.): (805) 237-3861 / (fax): (805) 237-3904

OWNER: Ranch & Coast Properties, Inc.
P.O. Box 510
Paso Robles, CA 93447
Attn: Tom Erskine
(tel.): (805) 239-5150 / (fax): (805) 239-5656

Either party may change its address or contact person by giving written notice to the other party. Notices and other communications which are sent by mail shall be deemed to be received five (5) days after their deposit in the U.S. Mail.

12. Attorneys' Fees and Costs. If either party to this Agreement brings a suit or proceeding to enforce or require performance of the terms of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorneys' fees, including outside counsel.

13. Captions. The captions of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

CITY: CITY OF EL PASO DE ROBLES

DATED: _____, 20____

By: James L. App, City Manager

Attest:
By: _____
Deborah D. Robinson, Deputy City Clerk

OWNER: Ranch & Coast Properties, Inc.

DATED: _____, 20____

By: Thomas H. Erskine