

TO: Tom Frutchey, City Manager

FROM: Iris P. Yang, City Attorney

SUBJECT: Status of City Property South of Paso Robles Street/7th Street Intersection and Extension of TUP 12-003

DATE: July 19, 2016

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Needs: Determine whether City-owned property (the "City Property") south of the Paso Robles Street and 7th Street intersection should be dedicated as a City street and approve Encroachment and License Agreement with Paul Viborg and Debbie Sturgis-Viborg. In addition, determine whether to approve request for extension of Temporary Use Permit 12-003 for storage of vehicles and equipment.

Facts:

1. In the 1950s, CalTrans and the City entered into a Freeway Agreement whereby CalTrans took possession of certain property to construct a portion of Highway 101 and the Paso Robles Street off-ramp. Upon completion of the project, CalTrans relinquished to the City in 1959, via a Freeway Maintenance Agreement, a portion of the off-ramp and unused and unimproved property, totaling approximately 3.35 acres. The City Property is depicted on Attachment 3.
2. The City Property has never been paved nor has it been accepted into the City street system. It does not meet City street standards. The City has used the property to access City wells.
3. The Paso Robles Street off-ramp directs traffic northbound onto Paso Robles Street. Vehicles traveling southbound on Paso Robles Street are required to make a U-turn after crossing 7th Street, and merge onto the off-ramp.
4. Paul Viborg and his wife own numerous parcels adjacent to the City Property. They believe and have requested that the City Council determine, that the unimproved City Property is a public City street. The Viborg properties are unimproved except for a single residence built several decades ago.
5. Mr. Viborg believes that the 1959 Freeway Maintenance Agreement between the City and CalTrans requires that the relinquished City Property must be used as a City street. However, that only applies to the portion of the off-ramp relinquished to the City. The remainder of the City Property was relinquished to the City without any conditions, as is made clear in a 2015 CalTrans letter to Mr. Viborg.
6. In addition, Streets and Highways Code section 1806 provides that "no public or private street or road shall become a city street or road until the governing body, by resolution, has caused the street or road to be accepted into the city street system." The City has never accepted the City Property into the City street system. As stated by the courts, one purpose of this code section is to protect a city from accepting into the city street system any roadway that might not meet the safety, engineering, soils and other feasibility standards for city streets.

7. According to the City Engineer, the City Property does not meet any City street standard. Moreover, CalTrans has indicated that if any of the properties south of the Paso Robles Street/7th Street intersection were to develop, significant improvements would have to be made to make the Paso Robles Street off-ramp and the surrounding area safe. The off-ramp does not meet current CalTrans design or operational standards. Two possible improvements suggested by CalTrans include either reconstructing the off-ramp or constructing a roundabout, both of which would require the City to acquire additional property.
8. Historically, the City has constructed streets in connection with the development of City property, such as at the Airport or Sherwood Industrial Park. It consistently requires private developers to construct and dedicate streets in connection with the development of private property, and all have complied. Dedicating the City Property as a city street would primarily benefit one private property owner and would relieve him of the obligation to construct and dedicate a public street when he develops his property.
9. Mr. Viborg originally obtained a temporary use permit in 2003 to allow him to store certain vehicles and equipment on his property. The temporary use permit was previously extended and expired on April 6, 2016. He has requested that the temporary use permit be extended for two additional years.
10. Staff has proposed entering into an encroachment and license agreement that would specifically allow Mr. Viborg to use the City Property to access his properties under certain specified conditions. It also would allow Mr. Viborg, as he has requested, to chip and seal the City Property to facilitate such access. However, the license agreement would terminate upon the development of any of his properties in accordance with City development requirements or the expiration of the two-year term of the agreement, whichever comes first.
11. If the City Council approves entering into an encroachment and license agreement, the term of the agreement and the extension of the temporary use permit could be co-terminous.

Analysis &

Conclusion:

The City Property is not a City street as it does not meet City street standards and has never been accepted into the City street system. However, the City may enter into a license agreement with Mr. Viborg allowing him to use the City Property to access his properties, under certain terms and conditions. In addition, the City could grant Mr. Viborg's request for an extension of the temporary use permit.

There are access / circulation alternatives that are available to be explored for these properties. The two-year term for the license agreement and extension of the TUP would allow Mr. Viborg to initiate the planning process for a long term development concept that would be consistent with the City's policies and standards for the Paso Robles Street area.

Policy

Reference: Streets and Highways Code section 1806; *Rink v City of Cupertino* (1989) 215 Cal.App. 3d 1362; Department of Public Works Standard Details and Specifications for Public Works Projects; Uptown/Town Centre Specific Plan.

Fiscal

Impact: If the City determines that the City Property should be a City street, it will incur costs to acquire the additional property necessary to meet City street standards, as well as the costs of construction, which are estimated to be \$5 million, and ongoing maintenance costs. Approval of the Encroachment and License Agreement and extension of TUP 12-003 would have minimal fiscal impact.

- Options:
- a. (1) Adopt the attached Resolution Determining that the City Property is Not Part of City Street System and Approving and Authorizing the Execution of An Encroachment and License Agreement with Paul S. Viborg and Debbie K. Sturgis-Viborg; and  
  
(2) Approve the attached Resolution Approving a Two-Year Extension for Temporary Use Permit 12-003; or
  - b. Amend, modify or reject the foregoing option.

Attachments:

1. Resolution Determining that City Property is Not a City Street and Approving and Authorizing Execution of an Encroachment and License Agreement
2. Resolution Approving a Two-Year Extension for Temporary Use Permit 12-003
3. Map of City Property
4. Freeway Maintenance Agreement, dated November 16, 1959
5. CalTrans letter to John Falkenstien, dated January 4, 2011
6. Encroachment and License Agreement
7. CalTrans letter to Paul Viborg, dated April 27, 2015
8. Preliminary Roundabout design

**Resolution No. 16-XXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
DETERMINING CITY PROPERTY IS NOT PART OF CITY STREET SYSTEM AND  
APPROVING AND AUTHORIZING EXECUTION OF AN ENCROACHMENT AND LICENSE  
AGREEMENT WITH PAUL S. VIBORG AND DEBBIE K. STURGIS-VIBORG**

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WHEREAS, in the mid-1950s, the City of Paso Robles and the California Department of Transportation ("CalTrans") entered into an agreement whereby CalTrans took possession of certain City property in order to construct Highway 101 and the Paso Robles Street off-ramp; and

WHEREAS, in 1959, upon completion of the project, CalTrans retained a portion of the property as part of the state highway system and relinquished the remaining property to the City (the "City Property"); and

WHEREAS, the City Property has never been paved nor has it been accepted into the City street system; and

WHEREAS, Streets and Highways Code section 1806 requires that the governing body of a city must first accept a street or road by resolution before it can be considered a city street; and

WHEREAS, the City Property does not meet City street standards; and

WHEREAS, the Highway 101 off-ramp at Paso Robles Street directs traffic northbound onto Paso Robles Street at 7th Street; and

WHEREAS, southbound traffic on Paso Robles Street must make a U-turn and drive onto the northbound off-ramp; and

WHEREAS, CalTrans has stated that the off-ramp does not meet current CalTrans standards from both an operational and safety perspective; and

WHEREAS, the City uses the City Property to access City wells at the southern end of the City Property; and

WHEREAS, the properties adjacent to the City Property are unimproved except for a house built several decades ago and which is rented; and

WHEREAS, Paul Viborg and Debbie Sturgis-Viborg own the majority of the properties (the "Viborg Properties") adjacent to the City Property; and

WHEREAS, CalTrans has recommended that significant improvements be made to or around the Paso Robles Street off-ramp area if any development is proposed on the Viborg Properties; and

WHEREAS, the City Property must be traversed in order to access the Viborg Properties from Paso Robles Street; and

WHEREAS, the City is willing to allow the City Property to be used for such occasional access so long as the current use of the Viborg Properties is not intensified;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds and determines that the City Property has not been and is not a public City street that is part of the City street system. This finding is based on the fact that the City Property was a remnant unimproved parcel relinquished to the City upon CalTrans' construction of a portion of Highway 101 and the Paso Robles Street off-ramp, has never been improved as a street, does not meet City street standards, and has never been accepted by the City Council as part of the City street system as required by Streets and Highways Code section 1806.

Section 2. The City Council hereby approves the Encroachment and License Agreement with Paul S. Viborg and Debbie K. Sturgis-Viborg in substantially the form attached hereto as Exhibit A and incorporated herein by reference, and authorizes the City Manager to execute such agreement, subject to any minor, non-substantive or technical revisions as approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 19<sup>th</sup> day of July 2016 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Steven Martin, Mayor

ATTEST:

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Kristin L. Buxkemper, Deputy City Clerk

Exhibit A: Encroachment and License Agreement

RESOLUTION NO. 16-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
APPROVING A TWO YEAR EXTENSION FOR  
TEMPORARY USE PERMIT 12-003 – TEMPORARY EQUIPMENT STORAGE YARD  
(VIBORG)

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WHEREAS, in 2012, the applicant, Paul Viborg, (“Permittee”) established a temporary fenced equipment storage yard south of the Paso Robles St. / US 101 off-ramp; and

WHEREAS, the Uptown/Town Center Specific Plan allows Contractor Storage yards for a one-year period subject to approval of a Temporary Use Permit (TUP); and

WHEREAS, Permittee was originally granted Temporary Use Permit No. 12-003 (the “TUP”) to allow for the temporary storage of materials, vehicles and equipment under his ownership; and

WHEREAS, the City granted additional extensions of the TUP, which expired on April 6, 2016; and

WHEREAS, Permittee has requested an additional two (2) year extension of the TUP; and

WHEREAS, the request is being forwarded to the City Council because the time extension period exceeds staff authority; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, AS FOLLOWS:

Section 1. Based upon facts and analysis presented in the staff report and the attachments thereto, the public testimony received, and subject to the Conditions of Approval listed below, the City Council makes the following findings:

1. The proposed use is temporarily permitted within, and would not impair the integrity and character of the subject Zoning District.
2. The subject site is physically suitable for the type and intensity of the proposed use.
3. The location, size, design, and operating characteristics of the proposed temporary use as conditioned, will not adversely impact surrounding properties.
4. As conditioned, the proposed temporary use will not adversely impact the public health, safety, and welfare.

5. There will be no potentially significant negative impacts upon environmental quality and natural resources that could not be properly mitigated and monitored, because the permit is only for passive storage of materials, vehicles and equipment.

6. The above mentioned temporary use is permitted as described in Table 5.3-1 of the Uptown Town Center Specific Plan for contractor storage yards in the Riverside Corridor (RC) zone.

Section 2. The City Council of the City of El Paso de Robles does hereby approve the time extension request for TUP 12-003 for two years, to April 6, 2018, subject to the following conditions:

1. TUP 12-003, as extended, would allow for the outdoor storage of materials, vehicles, and equipment owned by Paul Viborg ("Permittee") within the temporary storage yard located on APNs: 009-271-004, 009-271-008 and 009-271-009, for a two year period.

2. Permittee shall remove any materials, vehicles and equipment on the adjacent City Property within thirty (30) days of the issuance of this TUP.

3. Permittee shall ensure that the Site shall be kept in a neat and clean manner at all times, and that necessary trash and recycling containers shall be provided and maintained on a regular basis. Residual trash on neighboring properties owned by Permittee shall also be removed.

4. The entire storage yard must be fenced and kept in a safe and secure condition.

5. No business may be conducted from the storage site or on any properties owned by Permittee south of the Paso Robles Street/7th Street intersection.

6. Permittee shall take the necessary steps to ensure that storage of materials, vehicles and equipment does not cause any contamination of soil or groundwater with hazardous materials (i.e. no leaks, and proper disposal of any hazardous materials). Permittee shall provide City with a copy of the permit issued to him or his business by the San Luis Obispo County Environmental Health Department regarding the generation, storage or transport of hazardous materials.

7. This Temporary Use Permit may be revoked or modified by the Police Department, Fire Department or Community Development Director if any one of the following findings can be made:

- a) That circumstances have changed so that one or more of the required findings can no longer be made. This would include noise levels becoming a nuisance.
- b) That the Temporary Use Permit was obtained by fraud or misrepresentation.
- c) That one or more of the conditions of the Temporary Use Permit have not been met.

d) That the use is in violation of any statute, ordinance, law, or regulation.

Section 3. The City Council hereby directs that Permittee be notified of the approval of the extension of TUP 12-003, as modified by the above conditions.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 19<sup>th</sup> day of July 2016 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

---

Steven Martin, Mayor

ATTEST:

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Kristen L. Buxkemper, Deputy City Clerk





RESOLUTION NO. 1141

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES  
APPROVING FREEWAY MAINTENANCE AGREEMENT

WHEREAS, the State of California, through its Department of Public Works, Division of Highways, has presented an agreement entitled "Freeway Maintenance Agreement" which concerns State Highway Route 2, within the limits of the City of El Paso de Robles

and,

WHEREAS, the City Council has heard read said agreement in full and is familiar with the contents thereof;

THEREFORE, be it resolved by the City Council of the City of El Paso de Robles that said maintenance agreement be and the same is hereby approved and the mayor and the city clerk are directed to sign the same on behalf of said City.

ADOPTED THIS 16th DAY OF November, 1959.

By /s/ Vernon L. Sturgeon  
Mayor of the City of El Paso de Robles

Attest: By /s/ S. S. Tucker  
City Clerk of the City of El Paso de Robles

Attest:

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of El Paso de Robles at a regular meeting thereof held November 16, 1959.

/s/ S. S. Tucker  
Clerk of the City of El Paso de Robles

FREEWAY MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into, in duplicate, this 16th day of November , 1959, by and between the State of California, acting by and through the Department of Public Works, Division of Highways, hereinafter for convenience referred to as "the State," and the **City** of **El Paso de Robles**, hereinafter for convenience referred to as "the **City** ," witnesseth:

WHEREAS, on **September 7** , 1954 , a freeway agreement was executed between the **City** and the State wherein the **City** agreed and consented to certain adjustments of the **City street** system required for the development of that portion of State Highway Route **2** , within the limits of the **City of El Paso de Robles** as a freeway, and

WHEREAS, the work described under the above-mentioned freeway agreement is now completed, and

WHEREAS, under Section **3** of the above freeway agreement, the **City** will resume control and maintenance over each of the relocated or reconstructed **City streets** except on those portions thereof adopted as a part of the freeway proper.

NOW THEREFORE, it is agreed:

1. The **City** will maintain at **City** expense all portions of **City streets** and appurtenant structures and bordering areas colored in yellow and purple on the attached map marked Exhibit "A", and made a part hereof by this reference.

2. The State will maintain at State's expense all portions of the freeway and those portions of **City streets** adopted hereby as a part of the freeway proper and as colored in pink and green on the attached map Exhibit "A".



### 3. VEHICULAR OVERCROSSINGS

The State will maintain, at State expense, the entire structure below the deck surface except as hereinafter provided. The **City** will maintain, at **City** expense, the deck and/or surfacing and shall perform such work as may be necessary to ensure an impervious and/or otherwise suitable surface. The **City** will also maintain all portions of the structure above the bridge deck, as above specified, as well as all traffic service facilities that may be required for the benefit or control of **City Street** traffic.

### 4. VEHICULAR UNDERCROSSINGS

The State will maintain the structure proper. The roadway section, including the traveled way, shoulders, curbs, sidewalks, walls, drainage installations and traffic service facilities, will be maintained by the **City**.

### 5. PEDESTRIAN OVERCROSSINGS

Except for damage to the structure resulting from freeway vehicular traffic, the **City** will maintain pedestrian overcrossings in their entirety.

### 6. PEDESTRIAN UNDERCROSSINGS

The State will maintain the structure from a structural standpoint. The **City** will maintain all drainage and lighting installations and will be responsible for all cleaning and painting as may be required to keep the structure free of debris and obscenity.

7. LANDSCAPED AREAS ADJACENT TO CROSSING STRUCTURES

Landscaped areas within the limits reserved for freeway use, including traffic interchanges and on and off ramp areas but excluding frontage road areas, will be maintained by the State. All plantings or other types of roadside development lying outside of the area reserved for freeway use will be maintained by the **City**.

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS

~~XXXXXXXXXXXX~~  
~~STATE HIGHWAY ENGINEER~~

Approval Recommended

By /s/ Chas. E. Waite  
Deputy State Highway Engineer

/s/ A. M. Nash  
District Engineer

City of El Paso de Robles

/s/ F. E. Baxter  
Maintenance Engineer

By /s/ Vernon L. Sturgeon  
**Meyer**

Approval as to Form

By /s/ S. S. Tucker  
**City Clerk**

/s/ Warren P. Marsden  
Attorney for Department

\_\_\_\_\_  
Attorney

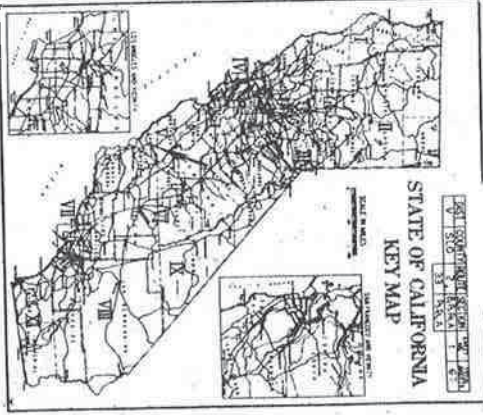
STATE OF CALIFORNIA  
 DEPARTMENT OF PUBLIC WORKS  
 DIVISION OF HIGHWAYS

PLAN AND PROFILE OF  
**STATE HIGHWAY**  
 In San Luis Obispo County on Route 2 between 1.3 miles south and 1.0 mile north of Paso Robles and  
 on Route 33 between Route 2 and 2m Paso Robles and Herliero Creek

Scales: Plan: 1 in. = 100 Ft.  
 Profile: Horizontal: 100 Ft. Vertical: 10 Ft.

Having the actual plans of a portion of the route for the  
 State Highway prepared by the California Highway Commission  
 August 17, 1947, May 19, 1948, May 12, 1950, June 10, 1951, December 4,  
 by resolution of the California Highway Commission  
 August 17, 1947, May 19, 1948, May 12, 1950, June 10, 1951

PREVIEW



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968-972	Construction Details
973-977	Construction Details
978-982	Construction Details
983-987	Construction Details
988-992	Construction Details
993-997	Construction Details
998-1002	Construction Details

CONVENTIONAL SIGNS

City or Town Limit	Bank or Retaining Wall
County Line	Clearance
Right of Way Line	Overhead Power Line
Utility Line	Overhead Telephone Line
Unimproved Property	Power Pole
Thruway	Telephone Pole
Railway Tracks	Marsh



Length of Project = 38,603.93 feet = 7.32 miles

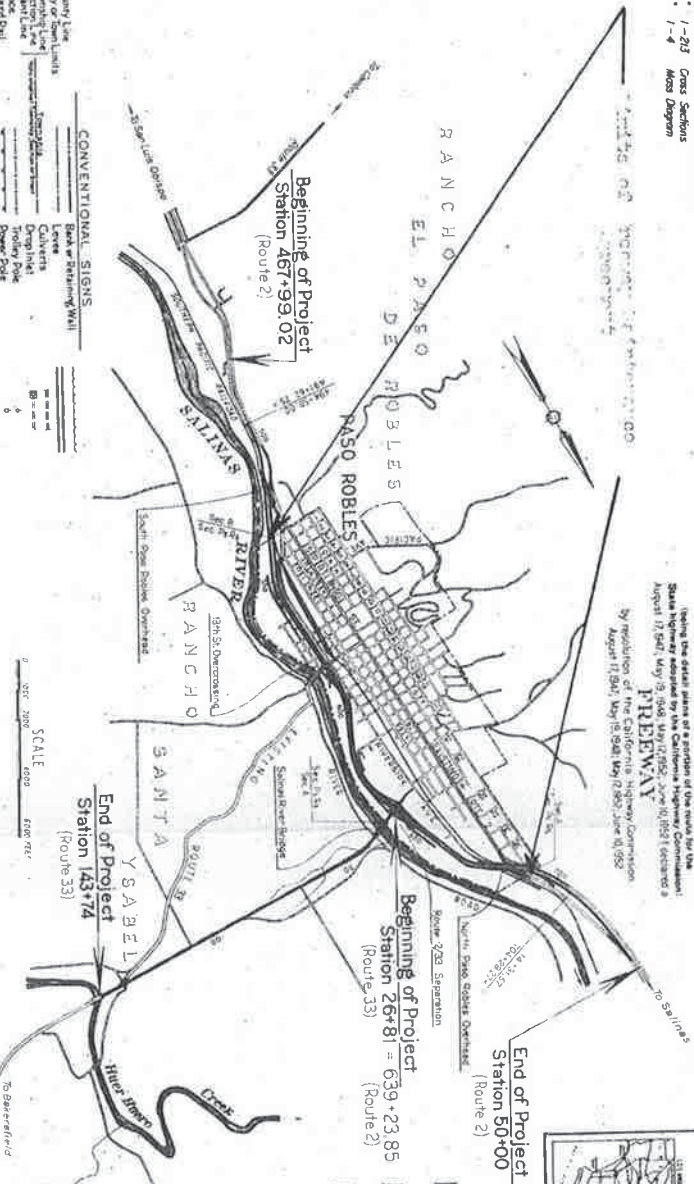
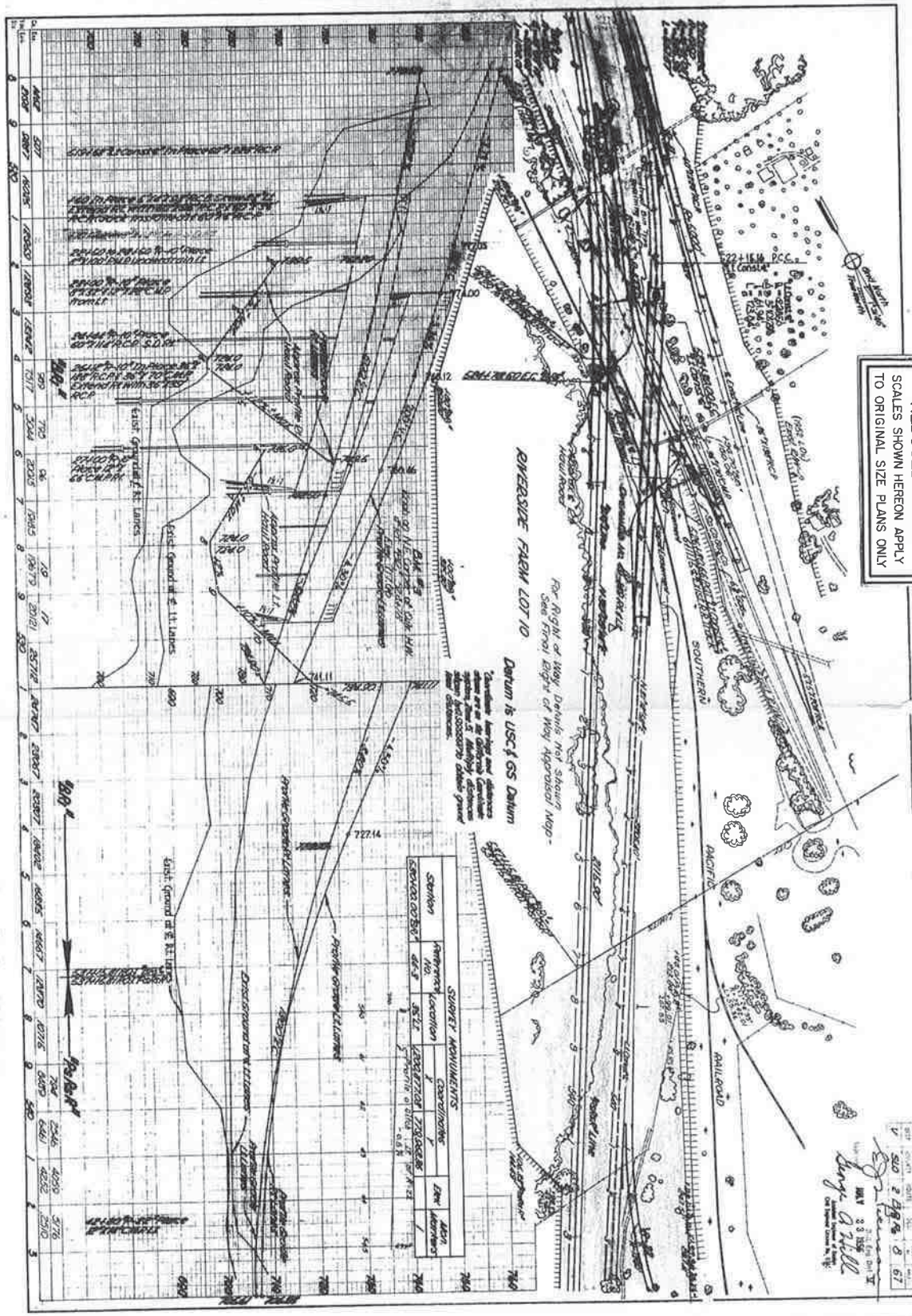


Exhibit "A"

By: *[Signature]*  
 State Engineer  
 Date: July 21, 1956





REDUCED PLAN  
 SCALES SHOWN HEREON APPLY  
 TO ORIGINAL SIZE PLANS ONLY

SUBJECT MONUMENTS

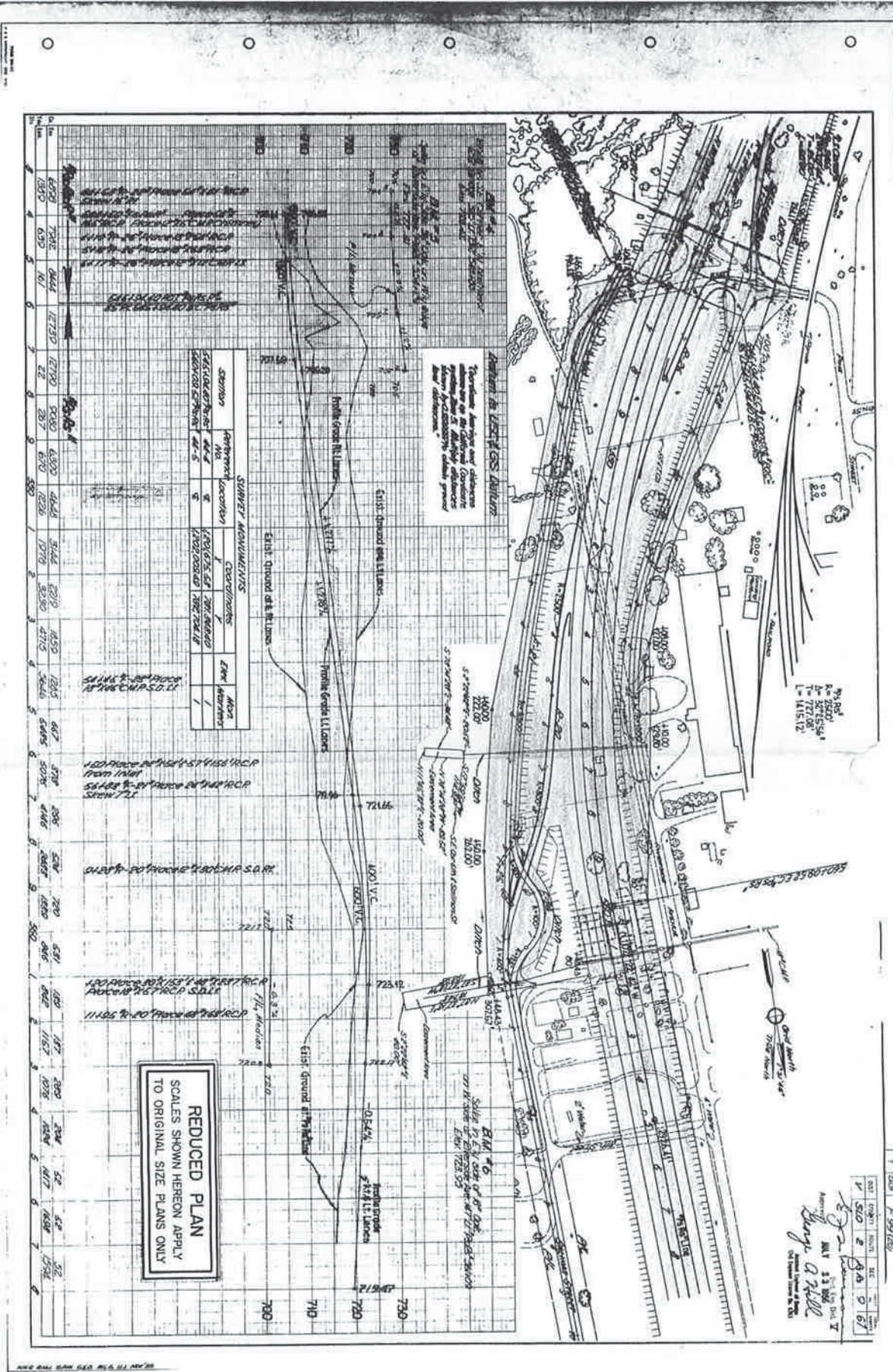
SECTION	AMERICAN LOCATION NO.	CORNER	MARK	DATE
SECTION 0250	48-9	SE 1/4	PROBATIONAL 27852828	1914
			5' PROVISIONAL 0110	1914

Datum is USC & GS Datum  
 The bearings and distances shown are as shown on the original plan and are not necessarily shown here.

RIVERSIDE FARM LOT 10  
 For Right of Way, Details not shown. See first Right of Way Approval Map.

J. W. Hill  
 MAY 23 1925  
 2-1/2" = 1' (REDUCED)  
 1" = 1' (ORIGINAL)





STATION	VERTICAL CURVE	LOCATION	CONTRACT	DATE	BY
65+00	100'	100'	100'	100'	100'
65+50	100'	100'	100'	100'	100'
66+00	100'	100'	100'	100'	100'
66+50	100'	100'	100'	100'	100'
67+00	100'	100'	100'	100'	100'
67+50	100'	100'	100'	100'	100'
68+00	100'	100'	100'	100'	100'
68+50	100'	100'	100'	100'	100'
69+00	100'	100'	100'	100'	100'
69+50	100'	100'	100'	100'	100'
70+00	100'	100'	100'	100'	100'
70+50	100'	100'	100'	100'	100'
71+00	100'	100'	100'	100'	100'
71+50	100'	100'	100'	100'	100'
72+00	100'	100'	100'	100'	100'
72+50	100'	100'	100'	100'	100'
73+00	100'	100'	100'	100'	100'
73+50	100'	100'	100'	100'	100'

**REDUCED PLAN**  
 SCALES SHOWN HEREON APPLY  
 TO ORIGINAL SIZE PLANS ONLY

**NOTICE**  
 The user of this GIS data is responsible for ensuring that the data is current and accurate. The user should verify the data before using it for any purpose. The user should also verify the data before using it for any purpose.

DATE: 5/11/16  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 APPROVED BY: [Signature]  
 PROJECT: [Project Name]  
 SHEET: 16 OF 45

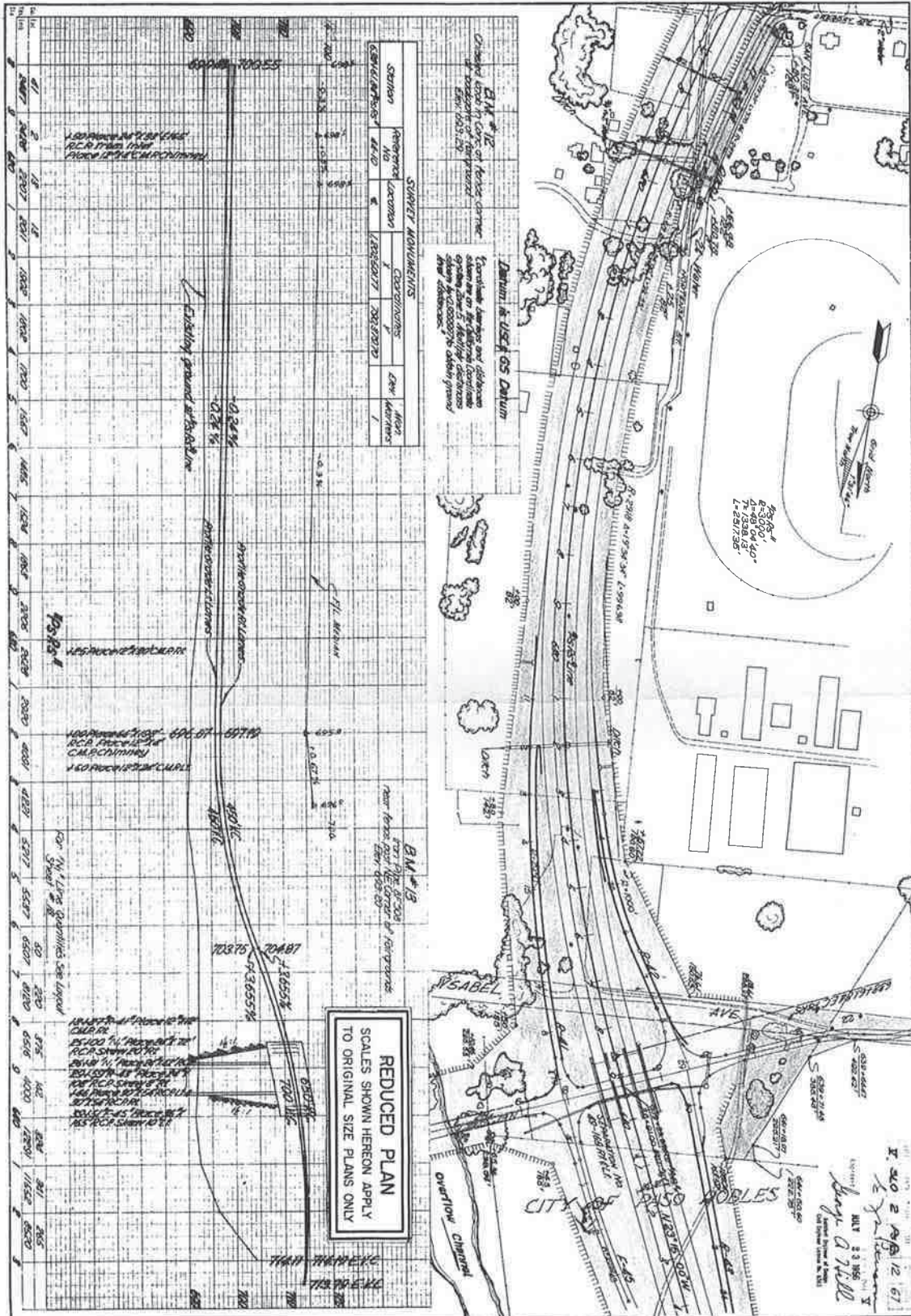




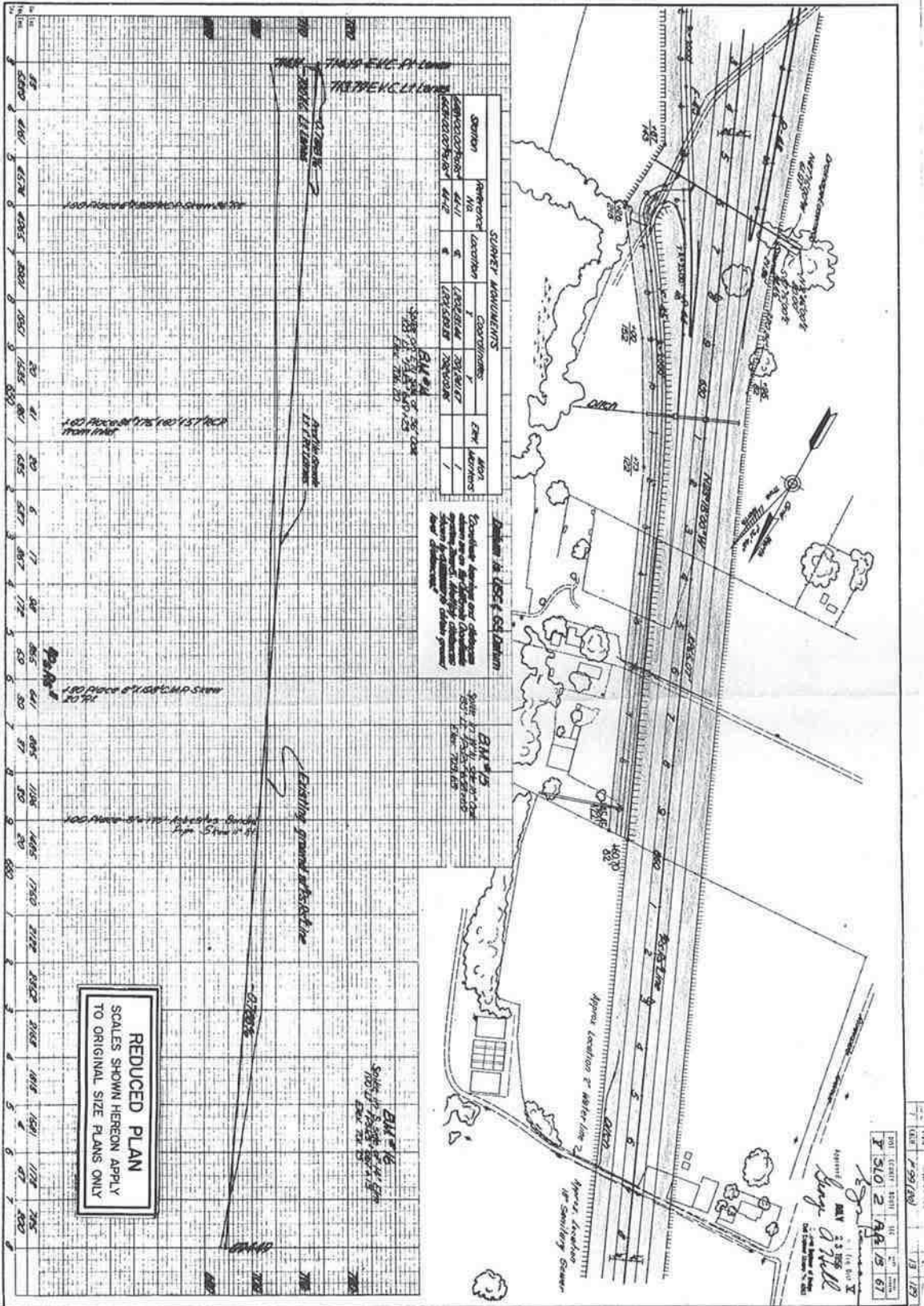










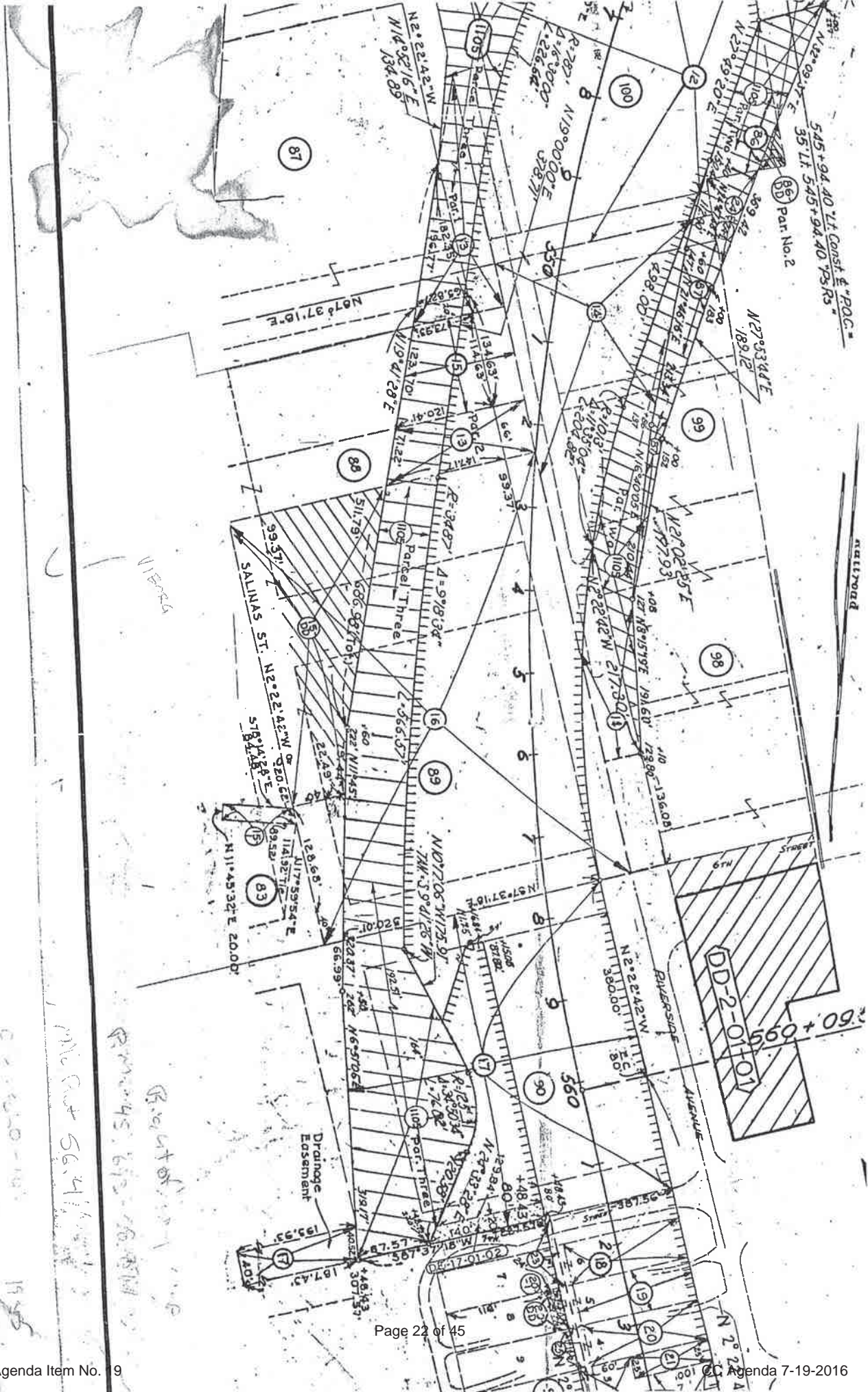


**REDUCED PLAN**  
 SCALES SHOWN HEREON APPLY  
 TO ORIGINAL SIZE PLANS ONLY







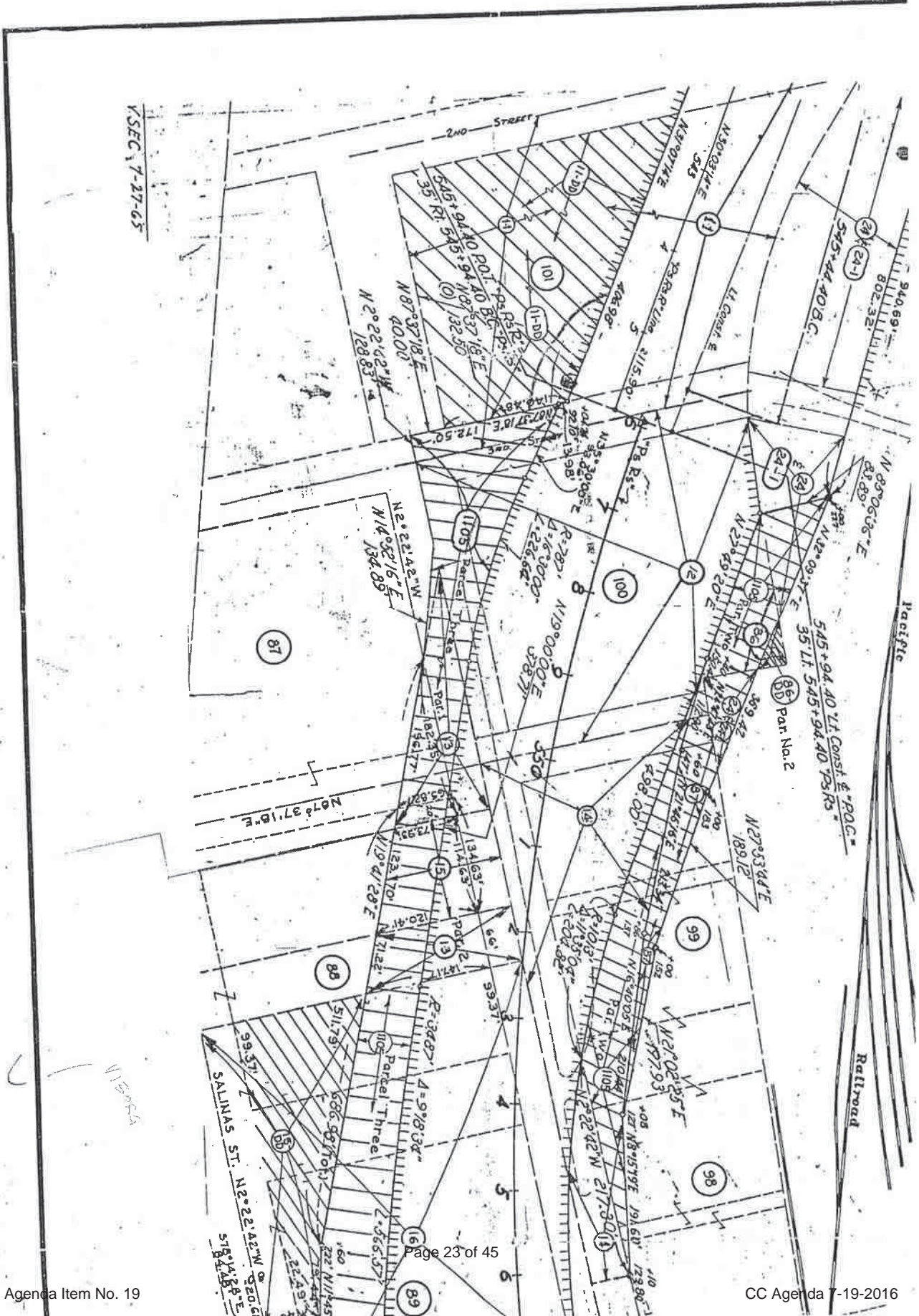


VIERS

Right of Way  
 Parcel 45, 612, 668, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000



YSEC 7-27-65



**DEPARTMENT OF TRANSPORTATION**

50 HUGHES STREET  
SAN LUIS OBISPO, CA 93401-5415  
PHONE (805) 549-3101  
FAX (805) 549-3329  
TDD (805) 549-3259  
<http://www.dot.ca.gov/dist05/>



*Flex your power!  
Be energy efficient!*

January 4, 2011

John Falkenstien, City Engineer  
City of El Paso de Robles  
100 Spring Street  
Paso Robles, CA 93446

SLO-101-56.3

Subject: Northbound U.S. 101 off-ramp at Paso Robles Street

Dear Mr. Falkenstien:

This correspondence is a follow up to a continuing dialog between the City and Caltrans with respect to solutions at the subject location. The current context, relative to geometrics and performance, is one which does not suffer from an accident history nor is delay experienced for vehicles exiting U.S. 101. We have discussed a number of times that the off-ramp does not meet current design standards per the Highway Design Manual, Sixth Edition, a vertical crest and overall ramp length being two principal issues, both of which impact driver sight distance. There is advisory speed reduction signage near the diverge point on the freeway.

Presently before us is a development proposal for Tentative Tract 2922, the applicant being Paul Viborg. This project if approved will change the contextual operating characteristics from those described above to one that significantly increases opportunities for conflicts and delays. This will occur because opposing turning movements, severely constrained geometrics for vehicles turning right onto Paso Robles Street from the off-ramp, and new merging movements will be introduced throughout the day, where those moves are now essentially zero.

An additional consideration at this location is right of way ownership. Caltrans' operating right of way terminates prior to the ramp terminus actually entering the "elephant ear" intersection. With the exception of a drainage easement, the intersection area is City right of way. The significance of this situation lies in that any and all improvements will probably occur in a space not controlled by Caltrans (This depends upon the course of action eventually undertaken).

The above discussion sets the conditions for the following comments. There are two potential courses of action that the City may wish to pursue, one of which should be made a condition of approval for Tract 2922.



1. The preferred improvements would be off-ramp reconstruction to current standards. This would correct all non-standard items. The base of the ramp could then include right turn channelization into the Viborg project and potentially provide opportunities for a controlled intersection on all approaches. The intersection of Paso Robles Street with the off-ramp should be reconfigured to eliminate the acute angle that now exists. Because it presents a very tight 180 degree turn for trucks turning from the ramp onto southbound Paso Robles Street, this undesirable movement would essentially cause any vehicles following behind to come to a virtual stop on the off-ramp. Therefore it is desirable to relocate this particular turning movement to a location where this connection would be at 90 degrees. This may require realigning a segment of Paso Robles Street within the subdivision. Caltrans staff anticipates that California Transportation Commission action may be required to change any operational right of way boundaries that would need modification. If the applicant were to accomplish this improvement, perhaps there may be incentives available within the City in the event the applicant has multiple developments pending.
2. It is worth revisiting the concept of a roundabout. Given that there is now more space available for siting this feature, expanded opportunities may yield a viable design. If this were to be the case, the major issue is that stopping sight distance for the off-ramp would still need to conform to the Highway Design Manual standards. The analysis would have to be taken from potential end-of-queue on the ramp. Other design considerations would include meeting STAA truck turning template requirements.

The roundabout should be placed as far north as possible, to include overlaying the drainage easement if needed. The entire feature would be within City right of way which could result in administrative benefits, such as eliminating the requirements for a roundabout fact sheet, a project approval document, and a cooperative agreement with Caltrans. Caltrans would be in the role of commenting upon the roundabout design with respect to FHWA guidelines.

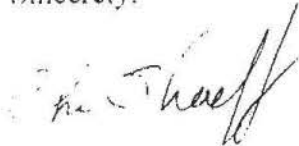
In the event that additional space is required to locate the feature (again, based on design) it is probable that the City could obtain some right of way from Caltrans between the freeway and the "elephant ear". The stipulation for right of way transfer is a statement that it is required for transportation purposes only.

Lastly, Caltrans would require, post-construction, a stipulation that the roundabout exterior circumference and a portion of its connecting road approaches are dedicated as access denial. This will ensure that no additional intersections or driveways will connect to the roundabout at undesirable locations.

John Falkenstien  
January 4, 2011  
Page 3

Please consider these courses of action. Caltrans staff believes that either of these solutions could provide the operational and safety features that both agencies want to provide to our constituencies. If you have any questions about this letter or would like to follow up with staff further, I can be reached at (805) 549-3632.

Sincerely,



Chris Shaeffer  
Development Review  
Caltrans District 5

cc L. Newland, CT  
D. Nash, Paso Robles  
P. McClintic, CT  
J. Fouche, CT  
S. Senet, CT  
F. Boyle, CT

## ENCROACHMENT AND LICENSE AGREEMENT

THIS ENCROACHMENT AND LICENSE AGREEMENT (“AGREEMENT”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”) by and between the CITY OF EL PASO DE ROBLES, a California municipal corporation and general law city (“City”), to PAUL S. VIBORG and DEBBIE K. STURGIS-VIBORG, husband and wife (collectively, “Permittee”). City and Permittee are sometimes hereinafter referred to individually as “Party” and collectively as the “Parties.”

### RECITALS

**A.** The City owns certain property that generally runs parallel to Highway 101, which was relinquished to the City in 1958 by the California Department of Transportation (“CalTrans”) upon completion of Highway 101 and the Paso Robles Street off-ramp that terminates on Paso Robles Street in the City. The relinquished property (the “City Property”) was and remains unimproved and is shown on the map attached hereto as **Exhibit A** and is more particularly described in the legal description attached hereto as **Exhibit B**.

**B.** Permittee is the owner of certain real property identified as San Luis Obispo County Assessor Parcel Numbers 009-214-002; 009-271-003, 009-271-004; 009-271-005, 009-271-006, 009-271-007, 009-271-008, 009-271-010, 009-271-012, and 009-301-002 (collectively, the “Permittee’s Properties”) which are immediately adjacent to the City Property and south of the existing Paso Robles Street. The Permittee’s Properties are also shown on the Map of the Permittee’s Properties, attached hereto as **Exhibit C** and more particularly described in the legal description attached hereto as **Exhibit D**. Except for a single-family home, the Permittee’s Properties are undeveloped and none of Permittee’s Properties have access to a public right-of-way. The City has issued Conditional Certificates of Compliance for the Permittee’s Properties which state that any proposed development on the Permittee’s Properties must comply with all applicable City requirements, including the provision of access to a public right-of-way. The City Property is not a public right-of-way and is unimproved, but is used by City to access City water wells.

**C.** Permittee has a tenant who is occupying the single-family home located on one of Permittee’s Properties. In addition, Permittee desires to use the City Property for interim access to the Permittee’s Properties from Paso Robles Street on an occasional and incidental basis and has requested that City allow Permittee to enter onto City Property to chip seal a portion of the City Property to facilitate such interim access by Permittee’s tenant and by Permittee for its occasional access to Permittee’s Properties.

**D.** City is willing to allow Permittee to chip seal a portion of the City Property and to use a portion of the City Property for purposes of interim vehicular and pedestrian access, ingress and egress to and from the Permittee’s Properties to Paso Robles Street, subject to all of the terms and conditions of this Agreement.

**E.** Viborg has previously been granted by City Temporary Use Permit No. 12-003 (the “TUP”) to allow for the temporary storage of materials, vehicles and equipment owned by

Viborg on a portion of the Viborg Properties (the “Temporary Storage Area”). The City Council has approved an extension of the TUP to \_\_\_\_\_ 2017, subject to the terms and conditions specified in the TUP.

## AGREEMENTS

**1. Incorporation of Recitals.** The above recitals are true and correct and are hereby incorporated in this Agreement by reference.

**2. Encroachment Permission.** City hereby provides to Permittee permission to encroach upon the City Property, for the purpose of installing the Improvements (defined below), subject to the limitations set forth herein and Permittee’s fulfillment and ongoing compliance with the terms and conditions set forth herein. The installation and maintenance of, and any use of, the Improvements (defined below) shall be subordinate to any use and operations which City may conduct during the effective period of this Agreement, and Permittee shall not cause any unreasonable delay or interference with City’s access to or use of the City Property.

**3. Authorized Improvements.** The improvements authorized to be installed pursuant to this Agreement is the chip sealing of a portion of the City Property in the area shown “Access Area”) attached hereto as **Exhibit E** (the “Improvements”). The right of Permittee to install, maintain, and use the Improvements are subject to the following limitations, and conditioned upon Permittee implementing the following protective measures and physical construction standards in connection with the Improvements:

**a.** Detailed design drawings prepared by a registered engineer depicting the Improvements in the Access Area shall be provided to, reviewed by, and approved by City prior to construction. The design drawings shall include an accurate depiction of the width and length of the proposed Improvements within the Access Area.

**b.** City reserves the right, and Permittee hereby acknowledges, that City may reject without liability the design drawings for any proposed Improvements and/or require any changes thereto if City determines, in its sole and absolute discretion, that such action is necessary to protect the City Property and City’s use thereof, as well as any trees located on City Property.

**c.** Upon City’s approval of the final design drawings for the Improvements, Permittee shall install and maintain, at its sole cost and expense, the Improvements in strict compliance with the approved final design drawings, and no changes or deviations therefrom shall be permitted without Permittee first obtaining the prior written consent of City, which may be granted or denied in the City’s sole discretion. The issuance of building and encroachment permits by the City for any changes and modifications shall be presumed to constitute consent of such changes and modifications under this Agreement.

**d.** A schedule of construction activities within the Access Area will be provided to and approved by City prior to the commencement of any construction work within the Access Area. All Improvements shall be open and subject to inspection by City.



e. Permittee shall be required to obtain all other necessary and required licenses, permits and authorizations from any governmental agency with jurisdiction over the Improvements and to pay all fees and charges associated therewith prior to commencing any work on the Improvements. This Agreement does not constitute, nor grant, permission to use or occupy property not belonging to, or under the control of City, and permission to use or occupy such property must be obtained from the owner or controller of such property, separate from and in addition to this Agreement.

f. Permittee shall not alter, replace, or otherwise change the Improvements without complying with the terms of this Section 3.

**4. Repair of Damage.** Any damage caused directly or indirectly by Permittee to the City Property outside of the Access Area and other property shall be repaired by City, at Permittee's sole cost and expense, or if authorized by City may be repaired by Permittee at its sole cost and expense. If City elects to perform the repair work itself, Permittee shall reimburse City for the full costs of the repair work within thirty (30) days after receiving written demand and a statement from City detailing such costs.

**5. Access License; No Conveyance of Interest in City Property.** During the term of this Agreement, the City additionally grants to Permittee and Permittee's invitees and guests (collectively, "Viborg Permittees") a revocable, non-exclusive, non-transferable license to use the Access Area for purposes of vehicular and pedestrian access, ingress and egress to and from the Permittee's Properties for the purpose of accessing the Paso Robles Street, near the end of the Highway 101 off-ramp ("Access License"). The parties hereby acknowledge and agree that Permittee's right to access the Access Area directly from the Permittee's Properties, for the purpose of ingress and egress to and from Paso Robles Street, as set forth in this Agreement, is with the consent of the City and shall be considered permissive. Nothing in this Agreement, including the permission to install the Improvements, shall be interpreted as, or otherwise be deemed to be, a transfer or conveyance of any interest in the Access Area or the City Property whatsoever between the City and Permittee.

**6. Termination.** Unless otherwise terminated or revoked, as provided for herein, the term of this Agreement shall commence upon the Effective Date, and shall continue thereafter until the earlier of (i) two (2) years; or (ii) the completion of the first approved development on any of Permittee's Properties in accordance with all development conditions, including the provision by Permittee of any required public access improvements to Permittee's Properties ("Term"). This Agreement shall automatically terminate at the end of the Term and shall thereafter be of no further force or effect, unless the parties mutually agree in writing to extend the Term. Notwithstanding the foregoing, nothing in this Agreement shall extend or modify in any respect the terms and conditions of the TUP.

**7. Scope of Access License; Conditions.** In addition to the other terms and conditions set forth herein, the Access License provided for hereunder shall be subject to the following:

a. The Access License shall include, and shall be limited to, the right and privilege of Permittee and Viborg Permittees to use the Access Area for the exercise of the

purposes herein described, so long as such use does not interfere with the use of the Access Area or the remaining portion of the City Property by the City or any City Permittee (as defined below).

b. The Access License provided for herein is a revocable, non-exclusive, non-transferrable right and privilege of Permittee and Viborg Permittees.

c. The Access License is subject and subordinate to the rights of City, its successors and assigns, and City may use and/or permit any other person, employee, official, agent, contractor, subcontractor or invitee of City (collectively, the "City Permittees") the right to use all or any portion of the City Property, including the Access Area, at any time for any lawful purpose.

d. During the Term of the Access License, neither City nor Permittee, nor any Viborg Permittee, shall block, obstruct or in any way interfere with the use of the Access Area by any City Permittee.

e. Viborg's use of the City Property shall be limited to vehicular and pedestrian ingress and egress on, over and across the Access Area, and Viborg shall not use any other portion of the City Property without the express prior written consent of City.

f. Other than the residential use of the single-family home currently located on the Permittee's Properties, all of the Permittee's Properties are and will continue to be, during the Term of this Agreement, unimproved, vacant and not used for any commercial or business purposes or any other use that might otherwise be permitted under the City's Zoning Code. This Access License may be revoked by the City if any portion of the Permittee's Properties is used for any purpose other than one single-family residence, or if use is expanded beyond the current level of use, described above.

g. The Access Area may be used by Permittee and Viborg Permittees as an access route between the Permittee's Properties and Paso Robles Street for passenger vehicles only, and may not be used as a truck access route or loading zone for larger commercial or industrial vehicles or equipment, delivery trucks, 18-wheel semi-trucks or tractor/trailer rigs.

h. In utilizing the rights herein granted, Viborg shall comply with any and all local, state, and federal laws, regulations, ordinances and other governmental restrictions relating to the use of the Access Area, as well as the terms and conditions of the TUP.

**8. Waiver and Release.** Permittee, in perpetuity, expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Permittee may now or hereafter have against City, and its officials, officers, employees, and agents, whether known or unknown, with respect to liability for any damage to or loss, upon, above, beneath, or across the Access Area pursuant to this Agreement unless such damage or loss is caused by the sole active negligence or willful misconduct of City. As a material part of City's decision to issue this Agreement, Permittee hereby assumes all risk of damage to the Improvements in, upon, or about the Access Area arising, from any cause attributable to City's exercising its rights hereunder, and Permittee hereby waives all claims in respect thereto against City, except if caused by the sole active negligence or willful misconduct of City.

PERMITTEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“SECTION 1542”), WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

BY INITIALING BELOW, PERMITTEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

\_\_\_\_\_  
PERMITTEE’s Initials

The waivers and releases by Permittee contained herein shall survive the term of this Agreement and shall be binding upon the assignees, transferees, and successors in interest of Permittee.

**9. No Transfer of Rights; Termination.** This Agreement and the Access License, and all rights and obligations of Permittee with respect thereto, under the terms and conditions hereof, are personal to Permittee, and shall not be assigned or transferred by Permittee to any third party, unless approved by the City in advance and in writing, which approval the City may withhold in its sole discretion. This Agreement, and the Access License provided for hereunder, shall automatically terminate upon the sale, lease (excepting the rental of the single-family home currently located on the Permittee’s Properties), assignment or other transfer by Permittee, either directly or indirectly, of any of its interest in all or any portion of the Permittee’s Properties.

In addition, this Agreement may be terminated upon any of the following events

a. If, during the Term of this Agreement, Permittee fails to observe or perform any of the covenants, obligations or provisions of this Agreement to be observed or performed by Permittee, which termination shall be effective upon ten (10) days written notice by the City to Permittee of such termination; or

b. Upon any unapproved sale, lease, assignment or other transfer by Permittee, either directly or indirectly, of any of its interest in all or any portion of the Permittee’s Properties, which termination shall be effective immediately upon any such sale, lease, assignment or transfer; or

c. Permittee violates any of the terms or conditions of the TUP.

Upon any termination of this Agreement, for any reason, neither party shall have any rights or obligations hereunder, except as specifically provided for in Section 12 of this Agreement, and Permittee shall immediately discontinue using the Access Area to access the

Permittee's Properties, and shall obtain rights of access from the Permittee's Properties to Paso Robles Street through other adjacent properties or via an alternative method.

**10. Maintenance, Improvement of the Access Area.** City shall have no obligation to maintain, repair or improve the City Property, the Access Area, or any portion thereof. City shall have the right, but not the obligation to improve the City Property, including upgrading any existing improvements, or substituting any greater improvement, as City may decide in its sole discretion.

Notwithstanding anything herein to the contrary, Permittee shall have the right, at its sole expense, to maintain and perform minor repairs to the Access Area, which may include filling in potholes lying within the Access Area and double chip seal or slurry seal the Access Area to provide for easier travel over and across the Access Area; provided any such work shall be subject to City's prior written approval with respect to the work to be performed and the materials to be used by Permittee for any such maintenance and repair work.

**11. Recovery of Costs for Enforcement of Permit.** The terms of this Agreement may be enforced by City or its successors or assigns. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

**12. Restoration of Access Area.** Upon revocation or termination of this Agreement in any manner provided in this Agreement, Permittee, upon demand of City and at Permittee's own cost and expense, shall abandon the use of the Improvements and remove it and restore the Access Area to the same condition in which it existed prior to the placing of the Improvements, reasonable wear and tear excepted. In no event shall Permittee have any claim against the City for any of the costs of constructing, maintaining or removing the Improvements. In case Permittee shall fail to restore the Access Area as provided herein within 10 (ten) calendar days after the effective date of revocation, City may proceed with such work at the expense of Permittee or may assume title and ownership of the Improvements and any other property of Permittee located on or within the Access Area. No revocation hereof shall release Permittee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Improvements are removed and the Access Area is restored as provided above.

**13. Hazardous Materials Use.**

**a.** Permittee covenants that it will not handle or transport Hazardous Materials on the Improvements or the Access Area. As used in this Agreement, the term "Hazardous Materials" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code



Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as “the State Toxic Substances Law”); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

In the event the Improvements are now or in the future used in the handling or transporting of Hazardous Materials, Permittee agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as “Hazardous Materials Standards”) concerning Hazardous Materials. Permittee further agrees that at City’s request it will furnish City with proof, satisfactory to City, that Permittee is in compliance with all such laws, rules, regulations, orders, decisions and ordinances.

**b.** Notwithstanding anything else contained in this Agreement and to the fullest extent permitted by law, in case of a breach of the obligations contained in this Section, Permittee agrees to assume liability for and to save, indemnify, defend and hold harmless City from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of City and Permittee, and all related expenses, including without limitation reasonable attorneys’ fees, investigators’ fees, litigation expenses, and mitigation costs resulting in whole or in part from Permittee’s failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. Permittee, at its cost, shall assume the defense of all claims, in accordance with Section 15 hereof. Permittee agrees to reimburse City for all reasonable costs of any kind incurred as a result of the failure to comply with this Section, including, but not limited to, judicial or administrative fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of Permittee’s handling, transporting, or disposing of Hazardous Materials on, over, or across the Improvements and Access Area.

#### **14. Insurance.**

**a.** Types; Amounts. Permittee shall obtain, and shall require any subcontractor to obtain, insurance in the amounts described below unless specifically altered or waived by City (“Required Insurance”). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

- (i) *General Liability Insurance.* Permittee shall maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. The general liability insurance policy must include coverage for the following:
  - (1) Bodily Injury and Property Damage
  - (2) Personal Injury/Advertising Injury
  - (3) Premises/Operations Liability
  - (4) Products/Completed Operations Liability
  - (5) Explosion, Collapse and Underground (UCX) exclusion deleted
  - (6) Contractual Liability with respect to this AGREEMENT
  - (7) Broad Form Property Damage
  - (8) Independent Contractor Coverage
- (ii) *Business Automobile Liability Insurance.* Permittee shall maintain business automobile liability insurance with an each accident limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage, which shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).
- (iii) *“All Risk” Property Insurance.* Permittee shall maintain a policy of property insurance for perils usual to a standard “all risk” insurance policy on all its improvements or alterations in, on, or about the Access Area, with limits equal to the value of all such improvements or alterations.

**b. General Provisions.** The general liability insurance policy and the business automobile liability insurance policy shall (1) name City, its officials, officers, employees and agents as additional insureds; (2) be endorsed to waive subrogation against City, its officials, officers, employees and agents as additional insureds; and (3) be primary and non-contributory. All Required Insurance herein shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of protection provided to City, its officials, officers, employees and agents.

**c. Certificates; Insurer Rating; Cancellation Notice.** Prior to conducting any work in Access Area, Permittee shall furnish to City properly executed certificates of insurance which evidence all Required Insurance. Permittee shall maintain the Required Insurance at all times while this Agreement is in effect, and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on

thirty (30) days prior written notice to City. Unless approved in writing by City, Permittee shall place the Required Insurance with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A-:VII.

**d. Waiver of Subrogation.** Permittee releases City, its officials, officers, employees and agents from any claims for damage or harm to any person, the City Property, the Access Area, or the Improvements, caused by, or which result from, risks insured under any insurance policy carried by Permittee at the time of such damage or harm. Permittee shall cause each insurance policy required herein to provide a waiver of subrogation in favor of City, its officials, officers, employees and agents.

**15. Indemnity.** Permittee hereby agrees to defend, indemnify and hold City and its officials, officers, agents and employees free and harmless from and against any and all claims, demands, causes of action, costs, liabilities, expenses, losses, damages or injuries of any kind in law or equity, to persons or property, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Permittee, its partners, affiliates, agents officials, officers or employees in performance of this Agreement, use of the City Property or Access Area, or the construction, use, or operation of the Improvements. Permittee shall defend, with counsel of City's choosing and at Permittee's sole expense, any and all aforesaid suits, actions or proceedings, legal or affirmative, that may be brought or instituted against City, its officials, officers, agents or employees. Permittee shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, agents or employees. Permittee shall reimburse such parties for any and all legal expenses and costs incurred by one or all of them in connection with this Agreement or the indemnity herein provided. Permittee's obligation shall survive termination or expiration of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City or its officials, officers, agents or employees.

**16. Miscellaneous.**

**a. Amendments.** The provisions of this Agreement may be amended by mutual written consent of both parties.

**b. Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

PERMITTEE: Paul S. Viborg & Debbie K. Sturgis-Viborg

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

CITY: City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attn: Dick McKinley, Public Works Director

Such notice shall be deemed made when personally delivered or forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

c. Entire Understanding. This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein.

d. Invalidity. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

e. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

f. Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Luis Obispo, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Permittee expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

g. Exhibits. All exhibits attached hereto form material parts of this Agreement.

## **SIGNATURES ON FOLLOWING PAGE**

**SIGNATURE PAGE TO  
ENCROACHMENT AND LICENSE AGREEMENT  
BETWEEN  
CITY OF EL PASO DE ROBLES AND  
PAUL S. VIBORG AND DEBBIE K. STURGIS-VIBORG**

**CITY OF EL PASO DE ROBLES,  
A California municipal corporation and general  
law City**

**By:** \_\_\_\_\_  
Tom Frutchey  
City Manager

**Date:** \_\_\_\_\_  
"CITY"

**- AND -**

**PAUL S. VIBORG**

**By:** \_\_\_\_\_  
**DEBBIE K. STURGIS-VIBORG**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

"PERMITTEE"

**EXHIBIT "A"**  
**MAP OF THE CITY PROPERTY**

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE CITY PROPERTY**

**EXHIBIT C**

**MAP OF THE PERMITTEE'S PROPERTIES**



**EXHIBIT D**

**LEGAL DESCRIPTION OF THE PERMITTEE'S PROPERTIES**

**EXHIBIT E**  
**MAP OF THE ACCESS AREA**

## DEPARTMENT OF TRANSPORTATION

50 HIGUERA STREET  
 SAN LUIS OBISPO, CA 93401-5415  
 PHONE (805) 549-3111  
 FAX (805) 549-3329  
 TTY 711  
<http://www.dot.ca.gov/dist05/>



RECEIVED

Serious drought  
 Help save water!

APR 30 2015

City of Paso Robles  
 Public Works Dept.

April 27, 2015

Mr. Paul Viborg, Owner  
 Viborg Sand & Gravel  
 607 Creston Road  
 Paso Robles, California 93446

Dear Mr. Viborg:

Caltrans Right of Way Agent, Tim Romano, forwarded your recent e-mail to Maintenance & Operations branch for review because it is here that the Freeway Maintenance Agreement records are kept. Attached for your reference (and that of the City of Paso Robles is the 1956 Freeway Maintenance Agreement (FMA) which has not been altered since Route 101 (then referred to as Route 2) was converted to a freeway through the City of Paso Robles.

One item that became immediately clear (and is a common misinterpretation of documents) is that references and almost all records and mapping in your transcript to the District 5 office are with regard to the Freeway Agreement which is completely unrelated to the FMA. The Freeway Agreement is a right of way document that proposes right of way takes and controls that the state temporarily adopts PRIOR to construction to make local roadway changes adjacent to the new freeway alignment. Caltrans proposes these temporary takes to the local agency (in this case, the City of Paso Robles) for that agency to sign. The city is agreeing to sell these parcels temporarily to the state as the state alters the side streets to accommodate the proposed new freeway alignment. The city is also agreeing to take the altered surface streets back in relinquishment once the project is completed and the changes proposed in the Freeway Agreement are made.

This is important because the location that the city is arguing they do not own is validated when referencing the Freeway Agreement parcel maps. All of that information is now outdated. Presently, the parcel beyond the end of the freeway off-ramp that was in state ownership during the construction of the freeway has since been relinquished back to the city. This is a common error since the documents (Freeway Agreement and Freeway Maintenance Agreement) sound and read nearly alike. In reality they are completely different documents. Generally speaking, the state does not own land in excess of that required for the operating state highway right of way.

Refer to sheet numbers 1 and 9 of 67 in the attached EXHIBIT "A" at the end of the written FMA (attached). You will see the color code legend on Sheet 1 and using that legend will see where the state right of way ends and the city begins on sheet number 9 of 67. That occurs at the intersection where Paso Robles Avenue, southbound intersects the off-ramp. You will also note that the area colored orange is referenced on the title sheet as parcels relinquished back to the City of Paso Robles.

Mr. Paul Viborg  
April 27, 2015  
Page 2

I hope this clarifies the boundary issues at the Paso Robles Street (formerly named Salinas Street) and State Route 101 off-ramp. Please contact Lance Gorman at [Lance.Gorman@dot.ca.gov](mailto:Lance.Gorman@dot.ca.gov) or (805) 549-3315 if you have any further questions.

Sincerely,



SARA VON SCHWIND  
Deputy District Director  
Maintenance & Operations

Enclosure 1 – Excerpts from the 1959 Freeway Maintenance Agreement for Route 101 through Paso Robles (sheets 1 and 9 of 67)

C: City of Paso Robles – Public Works Department  
1000 Spring Street  
Paso Robles, CA 93446



Paso Robles St

Riverside Av

US HWY 101