



## Council Agenda Report

From: John Falkenstien, City Engineer

Subject: Adopt Standard Detail and Encroachment Permit Agreement for Outdoor Sidewalk Café Areas

Date: May 16, 2017

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### Facts

1. At their meeting of December 7, 1993, the City Council adopted Ordinance No. 667 N. S. amending the Municipal Code for street furniture in the public right-of-way. Ordinance No. 667 N. S. allows for *"properly designed and located tables, chairs and similar improvements to be appropriate encroachments into the public right-of-way."*
2. The Land Use Element of the General Plan contains policies that call for the revitalization of the historic downtown by encouraging specialty retail, cultural and entertainment activities.
3. The Paso Robles Economic Strategy advocates:
  - creating inspiring and memorable places
  - emphasizing the appearance and qualities of the public realm,
  - creating streetscapes, pathways and public spaces of beauty, interest and functional benefit to pedestrians
  - encouraging adaptive reuse of historic buildings
4. Municipal Code Section 11.30, established by Ordinance No. 667 N. S., outlines the provisions for street furniture as *"does not impede pedestrian traffic or cause tripping hazards."*
5. The Public Works Department has developed a Standard Detail that reflects the provisions of Municipal Code Section 11.30.
6. The City Attorney has developed a standard encroachment permit agreement that includes the insurance provisions included in Municipal Code Section 11.30.
7. The Downtown has seen a steady increase in of requests to install fenced sidewalk café areas over the past few years.
8. The number of café areas is beginning to impact pedestrian circulation and accessible clearance on some Downtown streets.
9. The City has no policy or process to review or limit the number, size, or location of sidewalk cafés.
10. There is no fee for converting public sidewalk space into commercial dining areas.

**Options**

1. Take no action.
2. Approve a Formal Sidewalk Café Fencing Policy in the Downtown by adding City Standard Detail C-18 to the Public Works Standard Details and outlining a policy, annual fee and procedure for approvals of encroachment permits for fenced sidewalk café seating.
3. Refer back to staff for additional public input and options for policies and procedures for allowing fenced sidewalk café in the Downtown.

**Analysis and Conclusion**

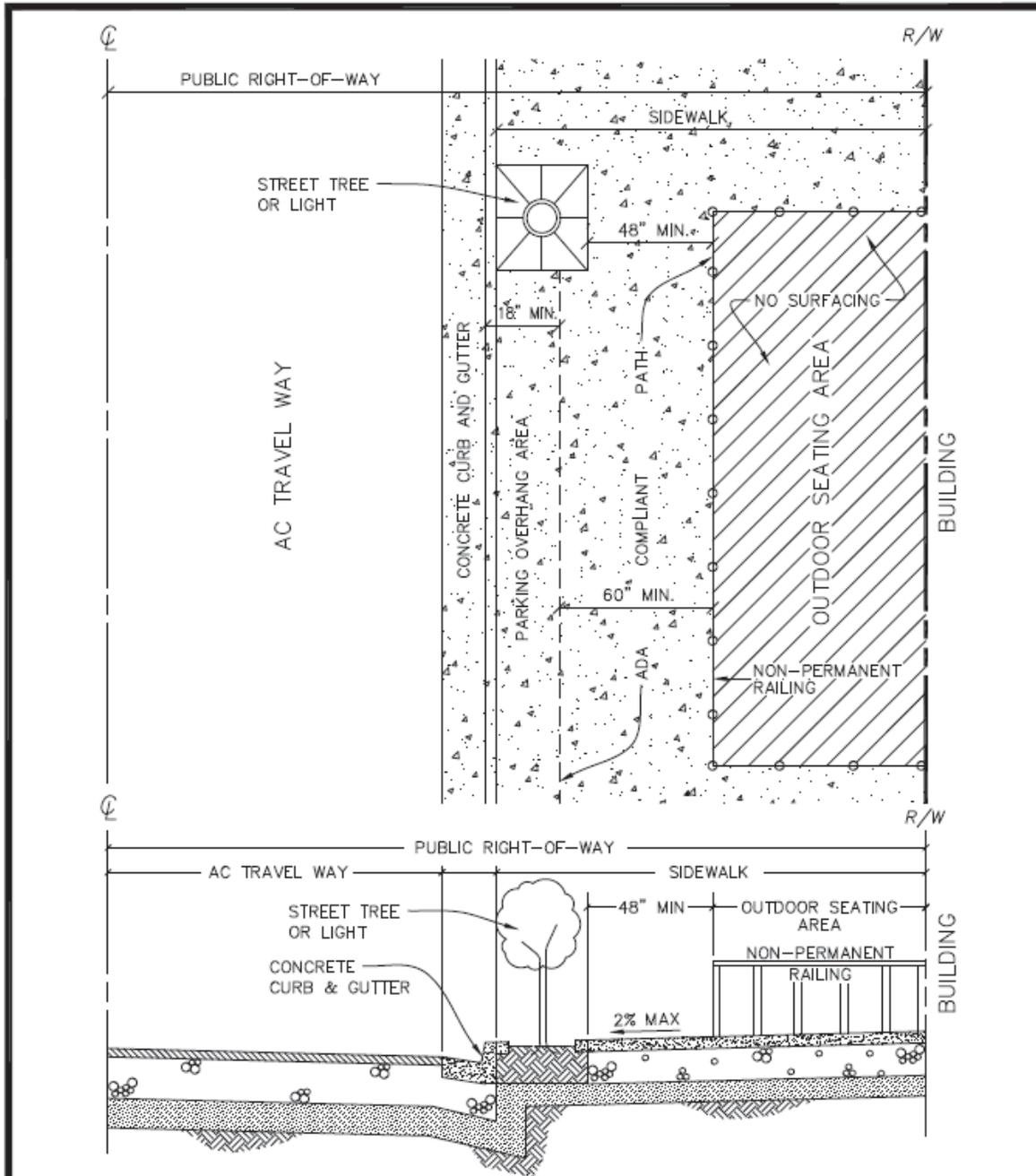
Fenced Sidewalk Cafes is becoming more common in the Downtown as the number of restaurants continues to increase. While the Café’s create additional Downtown activity and are enjoyed by restaurant customers, they also reduce the width of the sidewalk area for pedestrians. A wide sidewalk is essential to a comfortable and inviting walking environment in a downtown. As the number of shoppers and tourists increase, the narrower five foot walks next to the fenced cafes are becoming congested during busy time with detracts from a pleasant walking experience. The number of cafes now located along Pine St, 12<sup>th</sup> St. and 13<sup>th</sup> St. are beginning to affect pedestrian flow. In addition, designs and layouts of fenced cafes are not consistent, leading to issues of Americans with Disabilities Act (ADA) compliance and potential liabilities for the City.

An adopted standard policy and café detail will help establish consistency in design and provide a process to review impacts on pedestrian flow and over concentration of fenced cafes. The standard will also help insure ADA compliance. Sidewalk conditions vary in the downtown and some frontages are not amenable to sidewalk seating without significant sidewalk reconstruction. The policy will also require the following:

- Development Review Committee approval the location, size and design of all proposed new fenced cafes.
- Requirement for all existing and proposed sidewalk cafes to obtain a City encroachment permit and enter into an Encroachment Permit Agreement.
- Establish an annual per square foot use fee for the use of the public sidewalk as a commercial dining area.

The standard will serve both as an example of consistent enforcement and as education of the importance of ADA compliance. The City Council should provide direction on the appropriate sidewalk use fee and how the fee will be applied to existing cafés. Most sidewalk cafes range in size from 100 to 200 square feet.

<b>Sidewalk Use Fee</b>	<b>Monthly Use Fee / square foot</b>	<b>Annual Use Fee / square foot</b>	<b>Annual Fee 100 square foot cafe</b>
<b>\$0.10 / square foot</b>	\$0.10	\$1.20	\$120
<b>\$0.25 / square foot</b>	\$0.25	\$3.00	\$300
<b>\$0.50 / square foot</b>	\$0.50	\$6.00	\$600
<b>\$1.00 / square foot</b>	\$1.00	\$12.00	\$1200
<b>\$2.00 / square foot</b>	\$2.00	\$24.00	\$2400
<b>\$3.00 / square foot</b>	\$3.00	36.00	\$3600



- NOTES:
1. NO PERMANENT STRUCTURES CONSTRUCTED OR PLACED IN THE PUBLIC RIGHT-OF-WAY.
  2. STREET TREE AND STREET LIGHT LOCATIONS DETERMINED BY CITY ENGINEER.
  3. ALL RAILING MUST BE ARCHITECTURAL QUALITY AND SHALL BE APPROVED BY DEVELOPMENT REVIEW COMMITTEE.
  4. NO MORE THAN ONE ADA COMPLIANT PATH LIMITING STRUCTURE (STREET TREE OR LIGHT) ALONG LENGTH OF SEATING AREA.

DRAWN BY: KGE	CITY OF PASO ROBLES ENGINEERING DIVISION	DRAWING NO.
DESIGNED BY: JF		
DATE: 01/16	OUTDOOR SIDEWALK SEATING	C-18
FILE NAME: PR-C-18.DWG		

**Fiscal Impact**

The new Standard will encourage ADA compliance and reduce liabilities. Establishment of a use fee will help to off-set City maintenance costs in the Downtown area. Once adopted, the use fees will be included in the City's master fee schedule, and adjusted as needed.

**Recommendation**

Adopt Resolution 17-xxx adding City Standard Detail C-18 to the City Public Works Standard Details and Specifications and outlining policy, use fees, and procedures for allowing sidewalk seating in public right-of-ways in the downtown.

**Attachments:**

1. Draft Resolution 17-xxx
  - a. Exhibit A - Fenced Café Standard C-18
  - b. Exhibit B - Draft Encroachment Permit Agreement

# Attachment 1

## Draft Resolution

### RESOLUTION 17-xxx

#### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES ADOPTING A POLICY, USE FEE AND STANDARD DETAIL FOR FENCED SIDEWALK CAFÉ SEATING IN THE PUBLIC RIGHT-OF-WAY AND AGREEMENT FOR ENCROACHMENT PERMIT

WHEREAS, at its meeting of December 7, 1993, the City Council adopted Ordinance No. 667 N. S. amending the Municipal Code for street furniture in the public right-of-way. Ordinance No. 667 N. S. allows for “*properly designed and located tables, chairs and similar improvements to be appropriate encroachments into the public right-of-way*”; and

WHEREAS, the Land Use Element of the General Plan contains policies that call for the revitalization of the historic downtown by encouraging specialty retail, cultural and entertainment activities; and

WHEREAS, the Paso Robles Economic Strategy advocates: creating inspiring and memorable places; emphasizing the appearance and qualities of the public realm; create streetscapes, pathways and public spaces of beauty, interest and functional benefit to pedestrians; and encourage adaptive reuse of historic buildings; and

WHEREAS, Municipal Code Section 11.30, established by Ordinance No. 667 N. S., outlines the provisions for street furniture as “*does not impede pedestrian traffic or cause tripping hazards*”; and

WHEREAS, the Public Works Department has developed a Standard Detail that reflects the provisions of Municipal Code Section 11.30; and

WHEREAS, the City Attorney has developed a standard encroachment permit agreement that addresses the insurance provisions outlined in Municipal Code Section 11.30; and

WHEREAS, the Downtown has seen a steady increase in of requests to install fenced sidewalk café areas over the past few years; and.

WHEREAS, the number of café areas are beginning to impact pedestrian circulation and accessible clearance on some Downtown streets; and

WHEREAS, the City has no policy or process to review or limit the number, size or location of sidewalk cafés; and

WHEREAS, there is no fee for converting public sidewalk space into commercial dining areas.

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

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby approves the addition of City Standard C-18 “Outdoor Sidewalk Seating”, attached hereto as Exhibit “A” to the Department of Public Works Standard Details and Specifications.

# Attachment 1

## Draft Resolution

Section 3. The City Council hereby determine that all existing and proposed sidewalk café's shall obtain a City Encroachment Permit and enter into an Encroachment Permit Agreement, attached hereto as Exhibit "B" for fenced sidewalk cafe seating as a mandatory permit requirement.

Section 4. The City Council hereby determine that prior to the issuance of Encroachment Permits for new sidewalks cafes, the Development Review Committee shall approve the location, size and design of all proposed new fenced cafes.

Section 5. The City Council hereby determine that all existing and proposed sidewalk cafes shall be subject to an annual use fee of \$X.XX to be collected concurrently with annual business license renewal fees.

APPROVED this 16<sup>th</sup> day of May 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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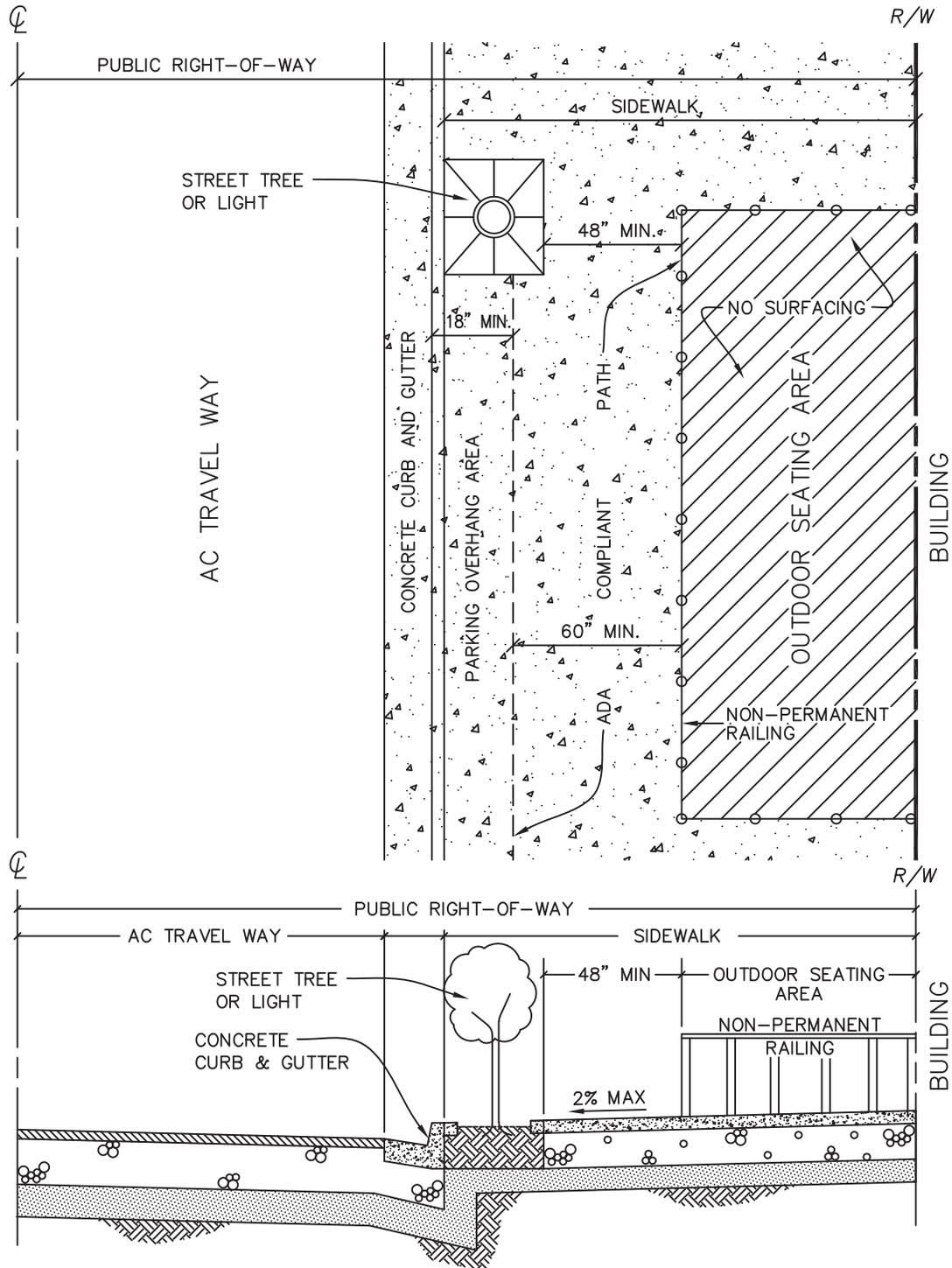
Steven W. Martin, Mayor

ATTEST:

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Kristen L. Buxkemper, Deputy City Clerk

Exhibit A: City Standard C-18 "Outdoor Sidewalk Seating"  
Exhibit B: Encroachment Permit Agreement for Sidewalk Seating



**NOTES:**

1. NO PERMANENT STRUCTURES CONSTRUCTED OR PLACED IN THE PUBLIC RIGHT-OF-WAY.
2. STREET TREE AND STREET LIGHT LOCATIONS DETERMINED BY CITY ENGINEER.
3. ALL RAILING MUST BE ARCHITECTURAL QUALITY AND SHALL BE APPROVED BY DEVELOPMENT REVIEW COMMITTEE.
4. NO MORE THAN ONE ADA COMPLIANT PATH LIMITING STRUCTURE (STREET TREE OR LIGHT) ALONG LENGTH OF SEATING AREA.

DRAWN BY: KGE	CITY OF PASO ROBLES ENGINEERING DIVISION	DRAWING NO.
DESIGNED BY: JF	OUTDOOR SIDEWALK SEATING	C-18
DATE: 01/16		
FILE NAME: PR-C-18.DWG		

# Exhibit B

RECORDING REQUESTED BY <hr/> AND WHEN RECORDED RETURN TO:  CITY OF EL PASO DE ROBLES 1000 Spring Street Paso Robles, CA 93446 Attn: _____  <b>Exempt from Recording Fees pursuant to Gov't          Code § 27383</b>	
	Space Reserved for Recorder's Use Only

## ENCROACHMENT PERMIT AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND \_\_\_\_\_

This Encroachment Permit Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ by and between the CITY OF EL PASO DE ROBLES ("City"), a California municipal corporation, and \_\_\_\_\_, a (“Permittee”).

### RECITALS

A. Permittee is the record title owner of property commonly described as [insert ADDRESS] (APN \_\_\_\_\_) (“Property”) located in the City of El Paso de Robles, County of San Luis Obispo, State of California.

B. Permittee desires that City allow Permittee to construct and maintain the following improvements: \_\_\_\_\_

\_\_\_\_\_ (the “Improvements”) within the public right-of-way adjacent to the Property (the “Encroachment Area”). The Improvements are more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, subject to the terms and conditions of this Agreement. The Encroachment Area is more particularly described in Exhibit B, attached hereto and incorporated herein by reference.

# Exhibit B

## AGREEMENT

1. Specific Purpose. The City hereby issues this permit only for the specific purposes described herein. This permit does not constitute, nor grant permission to use or occupy property not owned by, or under the control of, the City.
2. Permit Requirement. Permittee shall be required to obtain all necessary permits and approvals from the City for the construction of the encroaching Improvements, and to pay all fees and charges associated therewith prior to commencing any work under this permit within or upon the Encroachment Area. No change in the encroaching Improvements may be made without the prior written consent of the [DESIGNATE OFFICIAL] prior to alteration. Permittee is not authorized to use any City property or public right-of-way located outside of the Encroachment Area.
3. Inspection. The construction of the Improvements shall be subject to monitoring, inspection, and approval by the City. Permittee shall request a final inspection and acceptance of the work.
4. Compliance with Laws. Permittee agrees to comply with all Federal, State and local laws, regulations, ordinances, and rules.
5. Taxes. Permittee agrees that it will be solely responsible for any and all lawful taxes, fees and assessments relating to its use and maintenance of the Improvements and the Encroachment Area. Pursuant to Section 107.6 of the California Revenue and Taxation Code, City hereby advises, and Permittee recognizes and understands, that its use of the public rights-of-way may create a possessory interest subject to property taxation and that it will be subject to the payment of property taxes levied on such interest.
6. Indemnification. Permittee shall indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, arising out of or connected with the Improvements or performance of this Agreement including, but not limited to, the existence and maintenance of the authorized Improvements by Permittee or Permittee's employees, officers, officials, agents, transferees or independent contractors, except when such liability is solely caused by the gross negligence or willful misconduct of the City, its officers, employees, or agents..
7. Maintenance of Improvements. During the entire term of this Agreement, Permittee shall maintain the Improvements in a safe condition and clean condition. In the event Permittee fails to maintain the Improvements in a safe and clean condition, or fails to immediately correct an existing unsafe condition of the Improvements, Permittee agrees and understands that City may, at its option, repair said Improvements or correct said unsafe condition. Permittee further agrees to pay City the cost of any such removal, repair or correction, including collection costs and attorneys' fees, if any.
8. Termination. City may terminate this Agreement by giving sixty (60) days written notice for violation of any provision of this Agreement where such violation is not cured within sixty (60)

# Exhibit B

days after written notice by City or, where such violation cannot reasonably be cured within sixty (60) days, Permittee fails to promptly begin such cure and thereafter bring it to completion in a reasonably expeditious fashion.

9. Removal Due to City Project. Upon receipt of a demand from City, Permittee at its sole cost and expense, shall remove and relocate any Improvements installed, used and/or maintained by Permittee under this Agreement when such removal or relocation is made necessary due to any work being done by or on behalf of City or other applicable governmental agency, including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs or gutters, installation of landscaping, and/or construction, maintenance or operation of any underground or aboveground facilities by City. Permittee shall complete the removal or relocation within one hundred twenty (120) days of receipt of notice from City or according to an agreed-upon schedule with the City of no less than one hundred twenty (120) days. Notwithstanding the foregoing, the City Engineer may require a shorter period due to exigent circumstances and may authorize a longer period if it will not delay the City's project. If Permittee fails to remove or relocate the facilities within the prescribed time period, City may remove the facilities at the expense of Permittee and Permittee shall promptly reimburse the City any and all expenses, including administrative overhead. Any removal or relocation work by Permittee shall only be done pursuant to an encroachment permit.

10. Repair of Rights-of-Way. Whenever the removal or relocation of facilities is required under this Agreement, Permittee shall promptly repair and return the public rights-of-way and adjacent property to a safe and satisfactory condition to City in accordance with City's usual standards. If Permittee fails to do so, City shall have the option to perform such work at Permittee's sole expense, which Permittee shall promptly reimburse to City.

11. Insurance Requirements. Permittee shall procure and maintain at his sole cost for the duration of this Agreement the following insurance:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form number GL0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

(2) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Permittee shall maintain policy limits of no less than:

(1) General Liability: ONE MILLION DOLLARS (\$1,000,000) per occurrence, TWO MILLION DOLLARS (\$2,000,000) general aggregate, for bodily injury, personal injury and property damage. The policy must include coverage for contractual liability that has not been

# Exhibit B

amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted. A certificate of insurance evidencing this coverage shall be provided to the City prior to the start of any work under this Agreement.

(2) Worker’s Compensation Insurance. Worker’s compensation insurance as required by the latest edition of the City’s Public Works Standard Plans & Specifications.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the City, its officers, officials, employees and volunteers; or Permittee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The policies shall contain, or be endorsed to contain, the following provisions:

(1) General Liability Coverage.

(a) The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds with an endorsement in favor of the City.

(b) Permittee’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, employees, agents or volunteers shall be excess of Permittee’s insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

(d) Permittee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(2) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a Best’s rating of no less than A:VII.

F. Verification of Coverage. Permittee shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The

# Exhibit B

certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City before work on the authorized encroachment commences. The City reserves the right to require complete certified copies of all required insurance policies, at any time.

12. Uses Subordinate. This Agreement is not a grant by City of any property interest. This Agreement shall not create a vested right of any nature in Permittee to use the public right-of-way. This Agreement is subject and subordinate to the prior and continuing right of City and its assigns to use any and all of the public rights-of-way for any lawful use. It is further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the public rights-of-way. Permittee shall be solely responsible for obtaining all necessary permits and approvals from all public and private entities.

13. Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted through first class United States mail, or by private delivery systems, to the following address or such other address of which a party may give written notice:

City: City of El Paso De Robles  
City Engineer  
1000 Spring Street  
Paso Robles, CA 93446

Permittee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Assignment. This Agreement shall not be assigned by Permittee without City's prior written consent, in its sole discretion, and any such attempted assignment shall be void. Permittee shall give to City thirty (30) days' prior written notice of such proposed transfer. The sale, lease or other transfer of interests by Permittee of its facilities to third parties in the normal course of its business shall not be deemed an Assignment.

15. Construction of Agreement. This Agreement shall be governed and construed by and in accordance with the laws of the State of California. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California, County of San Luis Obispo, or in the United States District Court, Central District of California, in the County of Los Angeles.

16. No Precedent Established. This Agreement is entered with the understanding that it is not to be considered as establishing any precedent regarding encroachments into the public right-of-way.

# Exhibit B

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

<p>Date: _____, 201__</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Iris P. Yang City Attorney</p>	<p style="text-align: right;">C</p> <p>CITY OF EL PASO DE ROBLES, a municipal corporation</p> <p>By: _____ Thomas Frutchey, City Manager</p> <p>ATTEST:</p> <p>By: _____ City Clerk</p> <p style="text-align: right;"><b>“CITY”</b></p>
<p>Date: _____, 201__</p>	<p>_____ _____, a _____</p> <p>By: _____</p> <p style="text-align: right;"><b>“PERMITTEE”</b></p>

# Exhibit B

Exhibit A

Description and Depiction of Improvements  
[to be inserted]

# Exhibit B

Exhibit B

Description of Encroachment Area

[to be inserted]