



Council Agenda Report

From: David Athey, City Engineer

Subject: Encroachment Agreement to Permit Installation of a Private Underground Irrigation Line Crossing Wisteria Lane

Date: September 5, 2017

Facts

1. San Antonio Winery Inc. and Riboli Paso Robles, LLC (hereafter collectively referred to as “Applicants”) are owner and tenant, respectively, on property on either side of Wisteria Lane (Figure 1, on the following page).
2. The Applicants are requesting that the City allow the installation of a private three-inch irrigation line encased in an eight-inch plastic pipe. The casing and pipe will cross Wisteria Lane.
3. The irrigation line will allow San Antonio Winery to supply the Riboli Paso Robles property with irrigation water.
4. The irrigation line will be installed via boring under Wisteria Lane and will not affect City or Public Utilities.
5. The City has prepared an encroachment agreement that spells out terms and conditions for the encroachment agreement, including insurance coverage, indemnification, removal, and maintenance.
6. The Landowners are in agreement with the Encroachment Agreement terms and have provided a signed copy to the City.

Options

1. Take no action.
2. Adopt, Resolution 17-xxx, Attachment 1, authorizing the City Manager to enter into an encroachment agreement with San Antonio Winery Inc. and Riboli Paso Robles, LLC, for the installation of an eight-inch sleeve and three inch irrigation line crossing Wisteria Lane.
3. Refer this item back to staff for additional information and refinement.

Analysis and Conclusion

San Antonio Winery Inc. and Riboli Paso Robles, LLC own property at the corner of Wisteria Lane and Danley Court (See Figure 1). The Applicants, while separate legal entities, are closely related under the same business umbrella. The Applicants are working together to share recycled winery irrigation water.

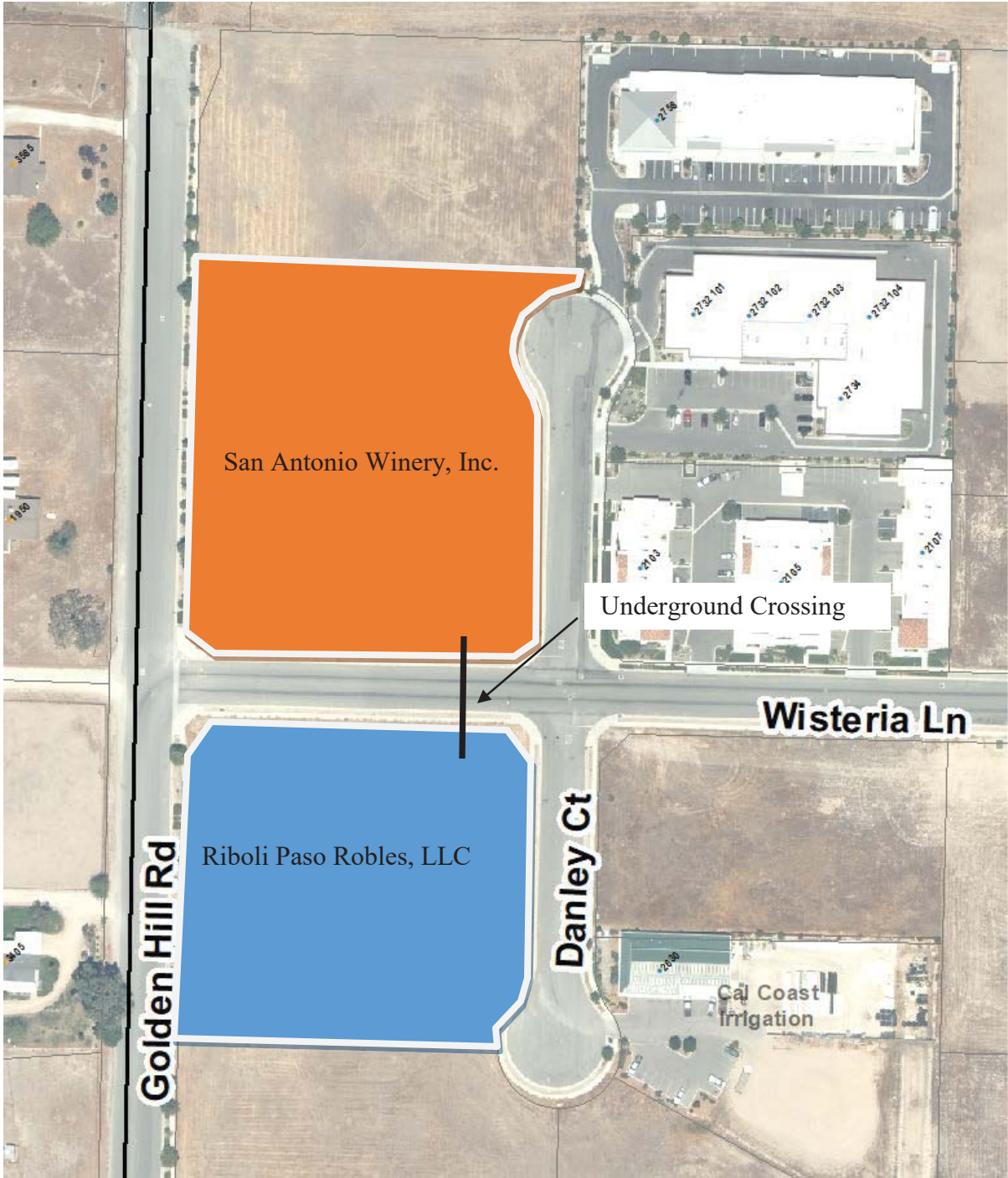


Figure 1 - Location Map

The recycled winery wastewater will be used to irrigate ornamental landscape on the Riboli Paso Robles property. This will reduce the amount of potable water needed for landscape irrigation.

The landowners are proposing to install an eight-inch casing across Wisteria Lane. The casing will be bored across the road a minimum of 5 feet deep, but no deeper than the existing sewer in Wisteria Lane. The casing and the internal pipe will be high density polyethylene pipe. High density polyethylene is very

durable and will not pose a problem to nearby utilities. In addition, the sleeve will allow the irrigation pipe to be removed for maintenance without disturbing nearby utilities or requiring cutting into the road.

The Landowners have agreed to and signed an Encroachment Agreement (Attachment 2) that stipulates the terms of the private utility crossing. The terms include requirements for repair, removal, insurance and indemnification. The agreement has similar terms to the recently approved encroachment agreement with Firestone Brewery. The difference being the pipeline will be installed underground. Lastly, this agreement does not give the Landowners a perpetual right of way encroachment as the City can request the pipeline be removed upon 60- day notice.

Fiscal Impact

None. This encroachment agreement will not have a fiscal impact on the City as the Applicants will reimburse the City for all permitting costs.

Recommendation

Approve Resolution 17-xxx authorizing the City Manager to enter into an encroachment agreement with San Antonio Winery Inc. and Riboli Paso Robles, LLC, for the installation of an eight-inch sleeve and three-inch irrigation line crossing Wisteria Lane.

Attachments

1. Draft Resolution 17-xxx
2. Encroachment Permit Agreement Between the City of El Paso de Robles and Riboli Paso Robles, LLC (“Owner”) and San Antonio Winery, Inc., (“Tenant”)

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

**ENCROACHMENT PERMIT AGREEMENT
BETWEEN THE CITY OF EL PASO DE ROBLES
AND RIBOLI PASO ROBLES, LLC (“OWNER”) AND SAN ANTONIO WINERY, INC
 (“TENANT”)**

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 Riboli Paso Robles, LLC, a California Limited Liability Company (“Owner”) as well as San Antonio Winery, Inc., a California Corporation (“Tenant”). Owner and Tenant are collectively referred to herein as “Permittee.”

RECITALS

A. Owner is the record title owner of property commonly described as 2017 Wisteria Lane (APN’s 025-421-028 and 025-421-029) (“Property”) located in the City of El Paso de Robles, County of San Luis Obispo, State of California. Tenant has a leasehold interest in the Property.

B. Permittee desires that City allow Permittee to construct and maintain the following improvements: 8-inch high-density polyethylene (HDPE) transverse casing enclosing a 3-inch HDPE irrigation pipeline (the “Improvements”) within the public right-of-way adjacent to the Property (the “Encroachment Area”), which shall be placed under Wisteria Lane at the same depth as a sewer line. 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.

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 City Engineer 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) 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 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 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
1000 Spring Street
Paso Robles, CA 93446
Attn: City Engineer

Permittee: Riboli Paso Robles, LLC
737 Lamar Street
Los Angeles, CA 90031
Attn: Steve Riboli

and

San Antonio Winery
737 Lamar Street
Los Angeles, CA 90031
Attn: Steve Riboli

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.

17. Joint and Several Liability. Owner and Tenant shall be jointly and severally liable for all obligations under this Agreement.

{Signatures on following page}

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;">“CITY”</p>
<p>Date: <u>August 17</u>, 201<u>7</u></p>	<p>OWNER</p> <p>Riboli Paso Robles, LLC, a California limited liability company</p> <p>By: <u>[Signature]</u>, a <u>managing member</u> Steve Riboli, Managing Member</p> <p>TENANT:</p> <p>San Antonio Winery, Inc., a California corporation</p> <p>By: <u>[Signature]</u> Steve Riboli, Owner</p> <p style="text-align: right;">“PERMITTEE”</p>

Attach Acknowledgments

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On August 17, 2017 before me, Lisa Diane Elzholtz, Notary Public
(insert name and title of the officer)

personally appeared Steve Riboli
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

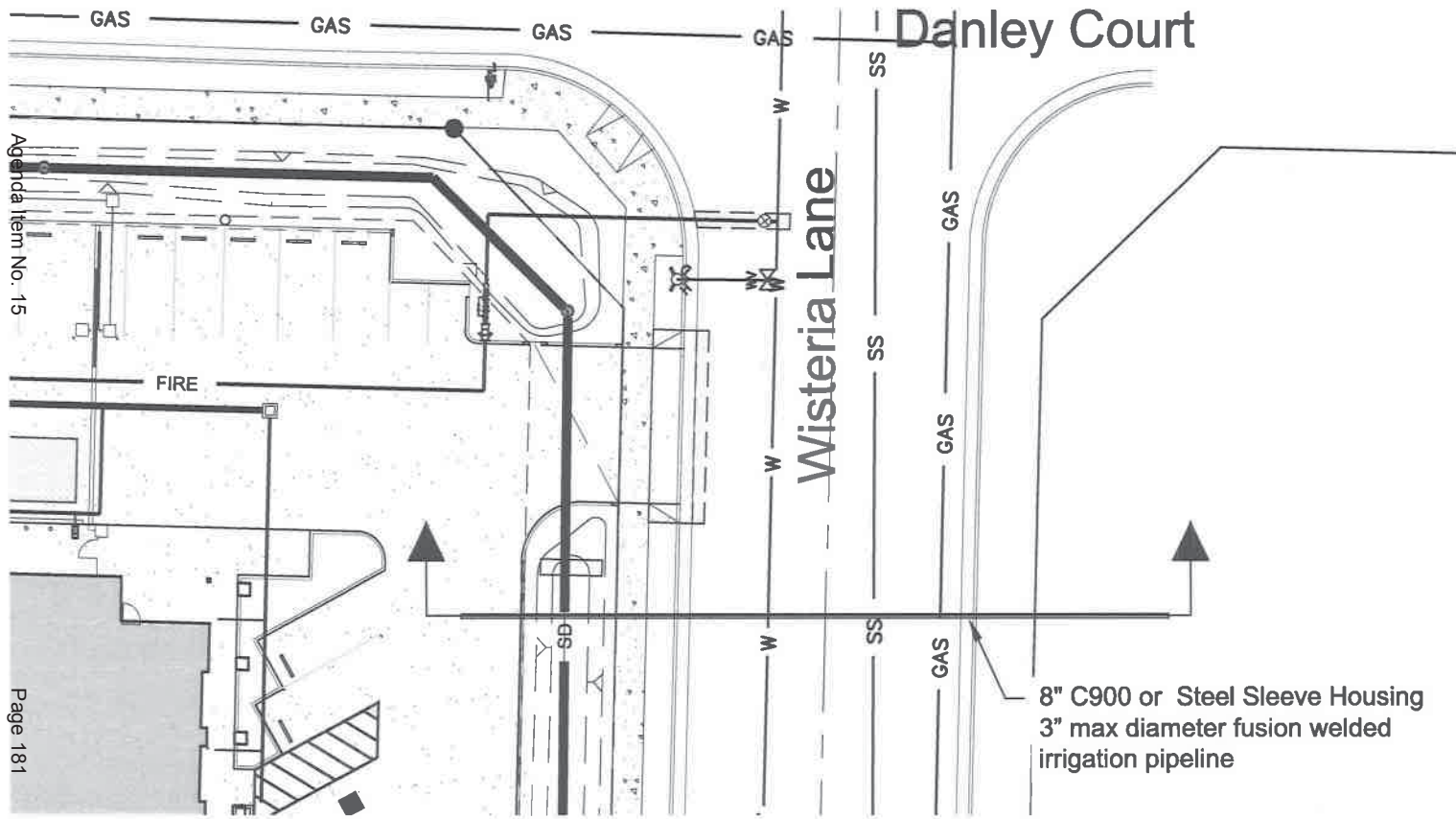
WITNESS my hand and official seal.

Signature Lisa Diane Elzholtz (Seal)



Exhibit A

**Description and Depiction of Improvements
[to be inserted]**



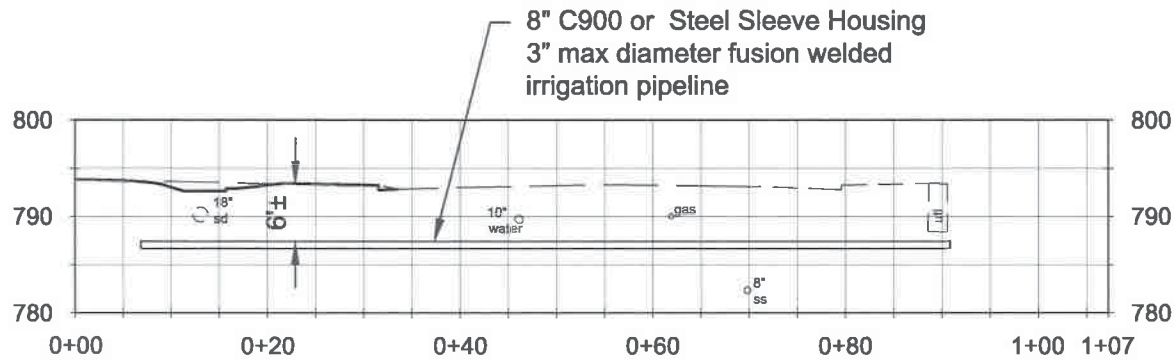
Agenda Item No. 15

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8" C900 or Steel Sleeve Housing
3" max diameter fusion welded
irrigation pipeline

Plan View

Scale: 1" = 30'

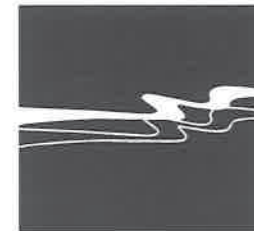


CC Agenda 9-7-17

Wisteria Lane Cross Section

Scale: 1" = 20'

EXHIBIT "A" SLEEVED CROSSING WISTERIA LANE



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SURVEYING / GIS SOLUTIONS
WATER RESOURCES

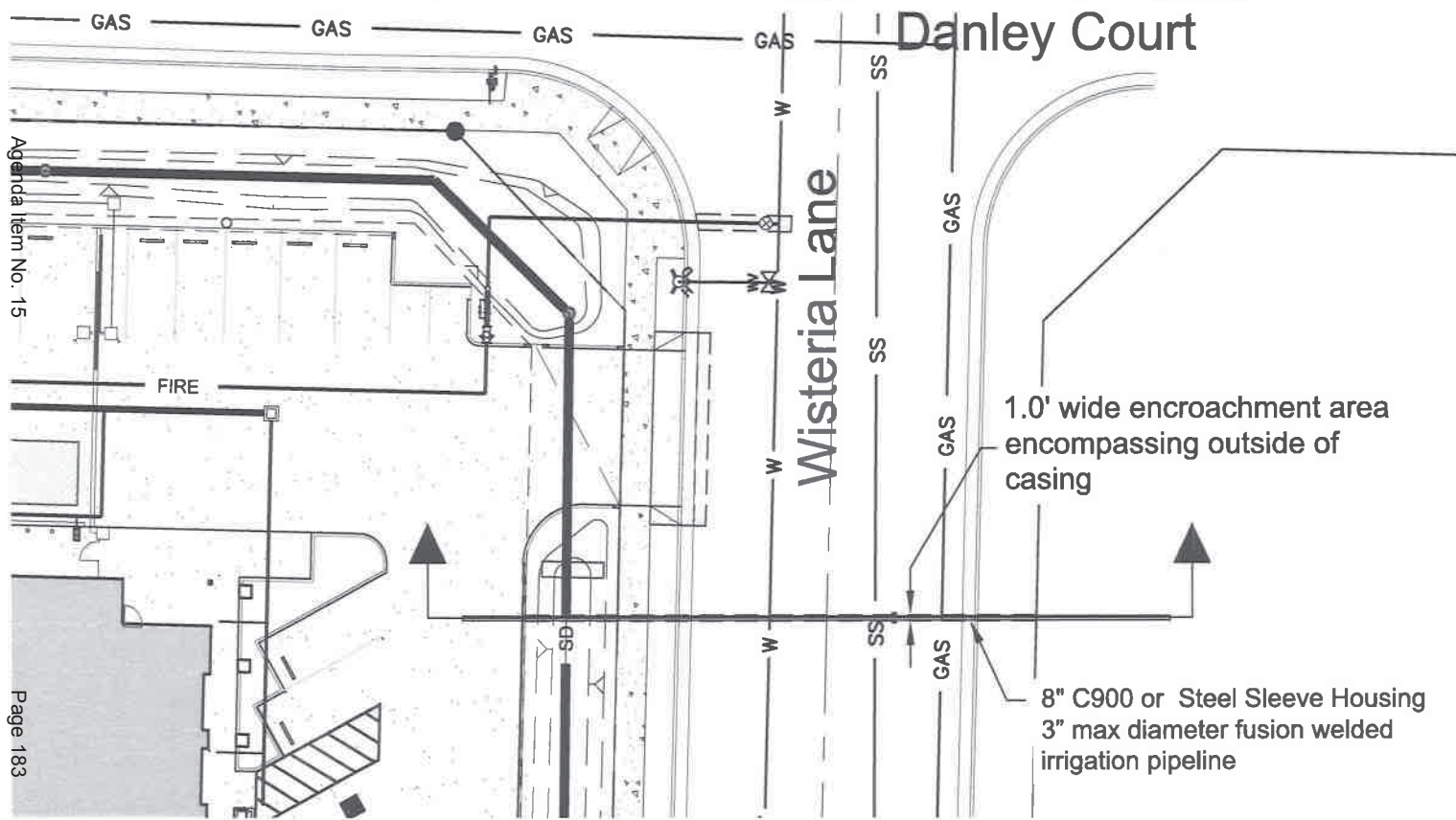
612 CLARION COURT
SAN LUIS OBISPO, CA 93401
T 805 544-4011 F 805 544-4294
www.wallacegroup.us

August 23, 2017

Exhibit B

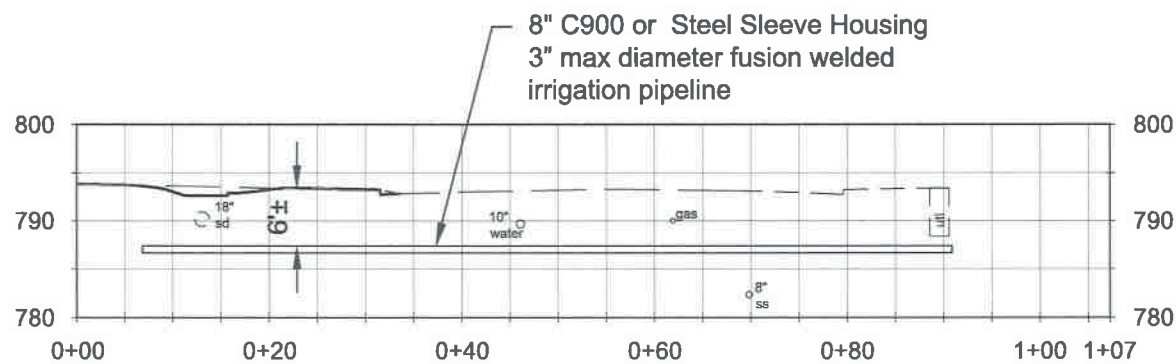
Description of Encroachment Area

[to be inserted]



Plan View

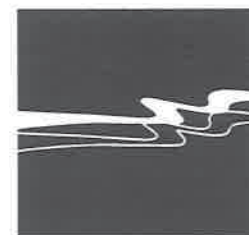
Scale: 1"= 30'



Wisteria Lane Cross Section

Scale: 1"= 20'

EXHIBIT "B" SLEEVED CROSSING WISTERIA LANE



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August 23, 2017

DRAFT RESOLUTION 17-xxx

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL PASO DE ROBLES APPROVING AN ENCROACHMENT
PERMIT AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND
RIBOLI PASO ROBLES, LLC (“OWNER”) AND SAN ANTONIO WINERY
 (“TENANT”)**

WHEREAS, the encroachment is located in the right-of-way adjacent to 2017 Wisteria Lane and 0 Wisteria Lane, which directly across from 2017 Wisteria; and

WHEREAS, the request is to bore an eight inch casing to house a three inch high density polyethylene irrigation pipe in the public right-of-way; and

WHEREAS, the three inch pipe will be used to transfer recycled winery process waste to the 0 Wisteria lane property for use in ornamental landscape irrigation; and

WHEREAS, the temporary use of the public right of way will not interfere with existing City and public Utilities or right-of-way use; and

WHEREAS, a public hearing was conducted by the City Council on September 7, 2017, to consider facts as presented in the staff report prepared for this project, and to accept public testimony regarding this proposed right of way encroachment.

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 - Findings: based upon the facts and analysis presented in the staff report, public testimony received and subject to the conditions listed below, the City Council makes the following findings:

1. The project is consistent with the adopted codes, policies, standards and plans of the City; and
2. The proposed right-of-way encroachment will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the residents and or businesses in the surrounding area, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City; and
3. The proposed right-of-way encroachment accommodates the aesthetic quality of the City as a whole since the eight inch sleeve and three inch irrigation pipe will be installed underground.

Section 3 – Approval: the City Council of the City of El Paso de Robles does hereby approve a **roadway encroachment permit**, subject to exhibits A:

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 7th day of September 2017 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

Exhibits

A Encroachment Permit Agreement Between the City of El Paso de Robles and Riboli Paso Robles, LLC (“Owner”) and San Antonio Winery, Inc (“Tenant”)

**Exhibit A – Encroachment Permit
Agreement Between the City of El Paso de
Robles and Riboli Paso Robles, LLC
 (“Owner”) and San Antonio Winery, Inc
 (“Tenant”)**