

RESOLUTION NO. 15-028

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING A WELL PERMIT APPLICATION AGREEMENT
(FIRESTONE WALKER)

WHEREAS, Firestone Walker, LLC, (“Firestone”) owns and operates the Firestone Walker Brewery and related restaurant, visitor’s center, tasting room, store and other facilities located at 1395 Vendels Circle; and

WHEREAS, Firestone acquired adjacent property (the “Adjacent Property”) on the east side of the railroad that historically has been dry farmed; and

WHEREAS, On or about January 21, 2014, Firestone submitted a Water Well Application and Permit to the Director of Public Works for the development of a well on the Adjacent Property; and

WHEREAS, on February 4, 2014, the City Council adopted City Ordinance No. 1000 N.S., as extended by Ordinance No. 1002 N.S., (collectively, the “City Ordinance”) which prohibits the construction of new wells and the modification, rehabilitation, or reconstruction of existing wells that would increase the amount of groundwater capable of being extracted from the North County Groundwater Basin; and

WHEREAS, The City desires to work with Firestone to ensure that a sufficient and reliable water supply is available to serve the long-term future demands of the Adjacent Property.

WHEREAS, the Adjacent Property is located in an area that is capable of receiving City water service; and

WHEREAS, Firestone and City agree that the processing of the Well Application shall be suspended for a period of time;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

That the City Council of the City of Paso Robles does hereby approve the Well Permit Application Agreement attached hereto as Exhibit “A” and incorporated herein by reference, and authorizes the City Manager to execute said Agreement, subject to any minor technical or clarifying changes as approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 17th day of March, 2015 by the following vote:

AYES: Strong, Hamon, Gregory, Reed, Martin
NOES:
ABSENT:
ABSTAIN:



Steven W. Martin, Mayor

ATTEST:



Caryn Jackson, Deputy City Clerk

Exhibit A

WELL PERMIT APPLICATION AGREEMENT

This Well Permit Application Agreement (“Agreement”) is entered into on this _____ day of _____, 2015 (the “Effective Date”) by the City of El Paso De Robles, a municipal corporation (“City”) and Firestone Walker LLC, a California limited liability company (“Firestone”), referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

- A. The City is a municipal entity located in the County of San Luis Obispo, California.
- B. Firestone owns and operates the Firestone Brewery and related restaurant, visitor’s center, tasting room, store and other facilities (collectively, the “Brewery”) on certain parcels of property that it either owns or leases within the boundaries of the City, as shown on the Map of the Brewery Site, attached hereto as Exhibit A and incorporated herein by reference. Firestone has acquired adjacent undeveloped property (the “Adjacent Property”), which is also located within the boundaries of the City. The Adjacent Property is shown on the Map of the Adjacent Property, attached hereto as Exhibit B and incorporated herein by reference.
- C. The Adjacent Property has been used in the past for dry farming purposes. The Firestone Brewery is a popular and valued business within the City and the greater Central Coast community.
- D. Among other municipal services, the City currently provides potable water service to the Brewery. Firestone desires to use the Adjacent Property to complement and support its activities at the Brewery.
- E. The City’s Water Division relies substantially on both groundwater produced from the Paso Robles Groundwater Basin (the “Basin”) and water produced from underflow of the Salinas River to provide wholesome, sufficient and reliable water supply to residents and businesses throughout the City. The City also is entitled to an allocation of water from the Nacimiento Water Pipeline Project.
- F. Due to a combination of factors, there are indications that Basin water levels have been declining. Widespread debate exists throughout the County regarding water conditions in the Basin. Certain litigation has been filed regarding Basin water supplies.
- G. On or about February 4, 2014, pursuant to authorities held by the City, including but not limited to California Government Code section 65858, the City adopted an Interim Ordinance of the City of El Paso De Robles Adopting a Temporary Moratorium on the Issuance or Approval of Permits for Construction of New Water Wells or Modification/Rehabilitation of Existing Wells to Increase Groundwater Extraction (City Ordinance No. 1000 N.S.), effective for a period of 45 days from its adoption. On or about March 18, 2014, pursuant to authorities held by the City, including but not limited to California Government Code section 65858, the City adopted an Ordinance of the City of Paso De Robles Extending Interim Ordinance No. 1000 N.S. Imposing a Moratorium on the Issuance or Approval of Permits for Construction of New Water Wells or Modification/Rehabilitation of Existing Wells to Increase Groundwater Extraction (City Ordinance No. 1002 N.S.), extending the effective period of City Ordinance No. 1000 N.S. for a period of 22 months and 15 days, to February 5, 2016.

- H. On or about January 21, 2014, Firestone submitted a Water Well Application and Permit form to the City (the "Application"). The Application requests a City permit for the installation of a water production well on the Adjacent Property (specifically, Parcel No. 009-811-008) with a proposed depth of 500 feet and estimated maximum pumping rate of 500 gallons per minute, to be used for agricultural purposes. Firestone's Application was submitted to the City prior to the adoption of City Ordinance No. 1000 N.S. and City Ordinance No. 1002 N.S.
- I. City Municipal Code, Chapter 14.06 (the "City Well Ordinance") provides that no person or entity shall construct, repair, modify or destroy a water well within the City without a valid well permit issued by the City, whereby the City is authorized to condition a permit in any manner necessary to carry out the purposes of the City Well Ordinance. Among other provisions, the City Well Ordinance provides for the City to supply water to all premises within the boundaries of the City, although the City may permit the construction of non-City wells for the supply of irrigation water to areas that currently do not receive water service from the City, provided the construction of such a well does not jeopardize the integrity of the City's groundwater supplies from the Basin, underflow supplies from the Salinas River, existing City wells, or the health and safety of its citizens. Among other concerns, the City must evaluate whether the installation of a well as proposed in the Firestone Application could adversely affect the City's groundwater supplies from the Basin and/or the City's supply of underflow from the Salinas River.
- J. Firestone desires to ensure that a sufficient and reliable water supply is available to serve the future demands of the Adjacent Property but also desires to cooperate with the City in exploring opportunities to reduce demands upon the Basin.
- K. The City desires to work with Firestone to ensure that a sufficient and reliable water supply is available to serve the long-term future demands of the Adjacent Property.

NOW, THEREFORE, pursuant to the Recitals above, and in exchange for valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. **Effective Date.** This Agreement shall become effective on the date on which the Agreement is executed and approved by both of the Parties (the "Effective Date").
- 2. **Incorporation of Recitals.** All of the recitals above are agreed to be true and correct and are incorporated herein by reference.
- 3. **Mutual Understanding of the Parties.**
 - A. The Parties each acknowledge and agree that Firestone's Application was submitted to the City prior to the City's adoption of City Ordinance No. 1000 N.S. and City Ordinance No. 1002 N.S., and that in lieu of finalizing, perfecting or processing the Application, the Parties have entered this Agreement.
 - B. The Parties further acknowledge and agree that for purposes of Section 14.06.132 of the City Well Ordinance, the Adjacent Property is located in an area that receives and is capable of receiving City water service
 - C. The Parties desire to work with each other in good faith to consider and explore water supply and delivery constructs, as alternatives to a private well, to ensure a sufficient

and reliable water supply is available to serve the long-term future demands of the Adjacent Property.

4. Suspension of Application and Provision of Water Service.
 - A. Firestone agrees that any further processing of its Application by the City will be suspended during the term of this Agreement.
 - B. Notwithstanding the provisions and effects of City Ordinance No. 1000 N.S or City Ordinance No. 1002 N.S., in the event the City is unable to provide water to the Adjacent Property as provided in Section 3(C) above, the City agrees to allow Firestone to finalize and perfect its Application and to process the Application in accordance with the City Well Ordinance; provided, however, that nothing in this Section 4(B) or any other provision of this Agreement shall prevent or limit the City's authority to condition or deny a well permit to Firestone or any other applicant in accordance with authorities vested in the City, including but not limited to the City Well Ordinance, as may be amended from time to time.
 - C. Nothing in this Agreement shall prevent or limit Firestone's right to challenge, after expiration or termination of this Agreement, the City's legal authority to condition or deny a well permit to Firestone on the Adjacent Property.
5. Term and Termination: The term of this Agreement shall be for two (2) years from the Effective Date, provided however, that Firestone shall have the option to extend the term for an additional two (2) years upon written notice to the City. The Agreement may be terminated by either Party upon sixty (60) day's written notice to the other Party.
6. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, or partnership or joint venture, or any other special association or relationship between the Parties, nor shall any of the provisions contained in this Agreement or any act of the Parties or either Party hereunder be deemed to create any relationship between the Parties other than as specified in this Agreement.
7. Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and no third party shall have any right or interest in any provision of this Agreement or as a result of any action or inaction of the Parties or either Party in connection with this Agreement.
8. Assignment. This Agreement shall not be assigned by or inure to the successor of either Party without an express written agreement that is signed and approved by both Parties.
9. Modification. This Agreement shall not be modified except by express written agreement that is signed and approved by both Parties.
10. 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:

To Firestone:

Firestone Walker Brewing Company
1400 Ramada Drive
Paso Robles, CA 93446-3993
Attn: Adam Firestone

To the City:

City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Attn: Meg Williamson, Assistant City Manager

A 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.

11. Construction. The section headings, captions and arrangement of this Agreement are solely for the convenience of the Parties and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather shall be construed as if both Parties have jointly prepared the Agreement. The Parties to this Agreement and their respective counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
12. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for any action seeking to challenge, enforce or carry out any term or terms of this Agreement shall be the Superior Court for the County of San Luis Obispo.
13. Counterparts and Signatures. The Parties hereto recognize and agree that separate counterpart signature pages may be used to execute this Agreement, but that all such counterparts shall constitute one and the same Agreement. Each Party agrees that the person executing this Agreement on behalf of that Party is fully authorized to sign this Agreement and to bind that Party to the terms of this Agreement. The Parties agree that facsimile and electronic copies of signatures to this Agreement shall have the same effect as original signatures.

IN WITNESS WHEREOF, the Parties have entered this Agreement as of the Effective Date.

[signatures on following page]

FIRESTONE WALKER LLC, a California limited liability company (“FIRESTONE”)

By: _____

Adam Firestone

Title: _____

Dated: _____

CITY OF EL PASO DE ROBLES (“CITY”)

By: _____

Jim App
City Manager

Dated: _____

Approved as to form:
Best Best & Krieger LLP

By: _____

Iris P. Yang
City Attorney

EXHIBIT A

MAP OF THE BREWERY SITE
[to be inserted]

009-633

631

U. P. R. R.

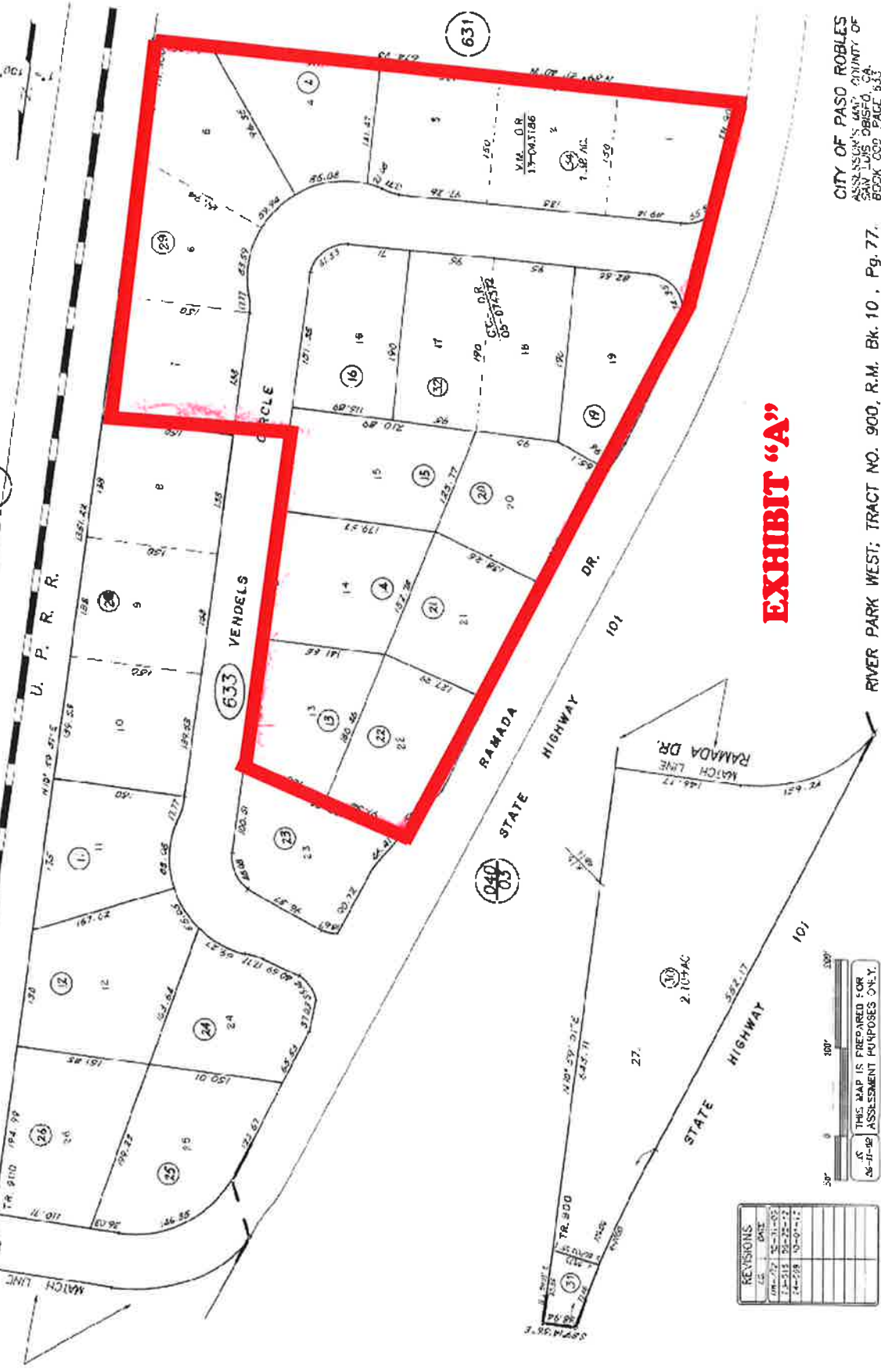


EXHIBIT "A"

CITY OF PASO ROBLES
SAN JUAN COUNTY OF
CALIFORNIA
BOOK 009 PAGE 533

RIVER PARK WEST; TRACT NO. 900, R.M. Bk. 10, Pg. 77.

REVISIONS	
NO.	DATE
1	10-11-05
2	05-25-05
3	03-07-05
4	03-07-05
5	03-07-05
6	03-07-05
7	03-07-05
8	03-07-05
9	03-07-05
10	03-07-05
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25	03-07-05
26	03-07-05

50' 0 100' 200'

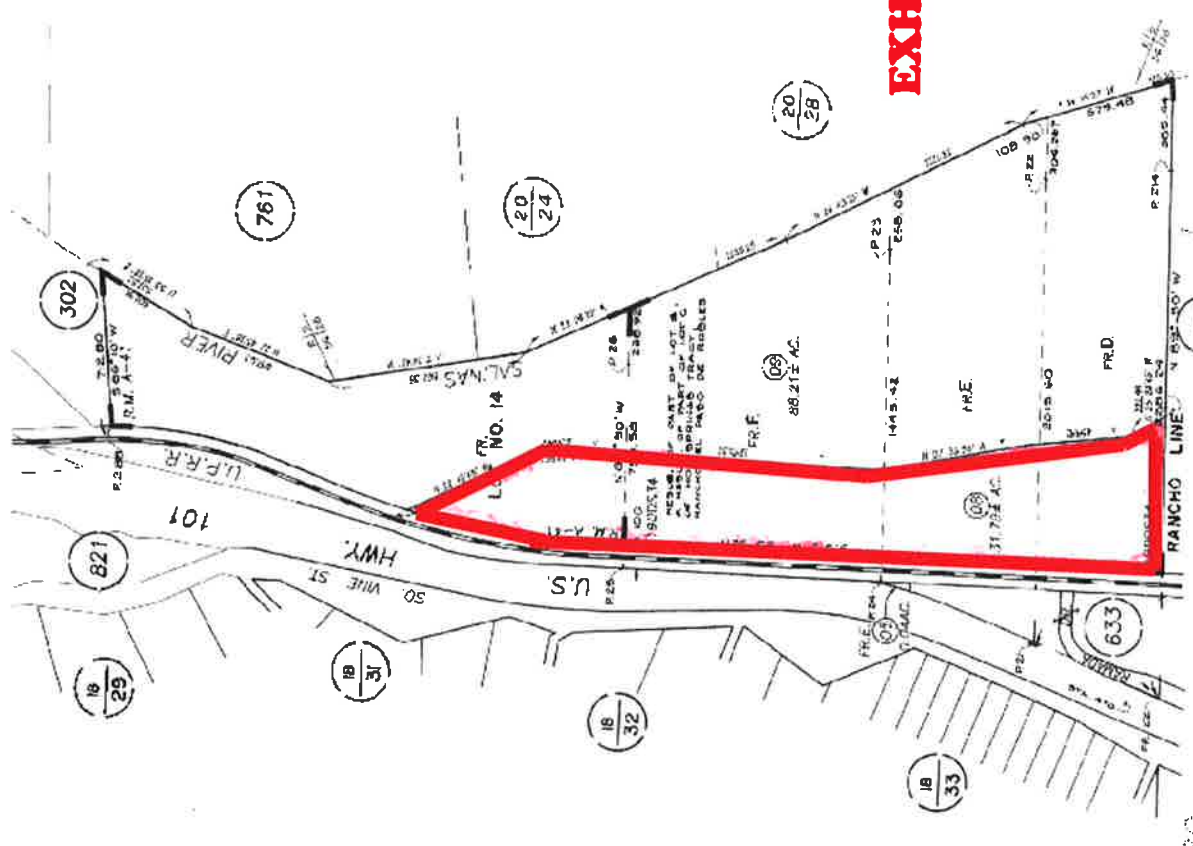
THIS MAP IS PREPARED FOR
AS-IT-IS ASSESSMENT PURPOSES ONLY.

EXHIBIT B
MAP OF THE ADJACENT PROPERTY
[to be inserted]

009-811



EXHIBIT "B"



CITY OF PASO ROBLES
 ASSESSOR'S MAP COUNTY OF
 SAN JUAN PARCEL 009-811
 EGGK 009 1956 811

MAP OF SUB OF VILLA LOTS 16-19 & LOT C
 R.M. Bk. A Pg. 41
 RHO. PASO DE ROBLES SUB LOT C DECREE OF PARTITION, CASE NO. 1564, Dos. Bk. 19 Pg. 34.

REVISIONS	DATE	BY	REASON

MAP VOL. 4/2004 BY: RHO
 DATE: 12/22/04, 2/24/05
 V-S-L-D-28-10
 BY: 5/28/05

20' 0 50' 100'

THIS MAP IS PREPARED FOR
 ASSESSMENT PURPOSES ONLY