

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Planning Research & Development

**AGENDA DATE:** Introduction 05-03-05; Public Hearing 05-17-05

**CONTACT PERSON/PHONE:** Esther Guerrero, Planning Technician III – 541-4720

**DISTRICT(S) AFFECTED:** #4

**SUBJECT:**

An Ordinance extending the term of the Special Privilege License originally granted by Ordinance #012402 as subsequently amended by Ordinance #012928, such Special Privilege License to extend through May 18, 2015, and also to knowledge ONEOK WestTex Transmission, L.P. as successor in interest to AOG Gas Transmission Company L.P. for all rights and duties set forth in Ordinance #012402, as amended, for the construction, maintenance and use of a natural gas pipeline within a portion of Railroad Drive right-of-way. (Annual Fee: \$1,320.00, SP-95044c, **District 4**)

**BACKGROUND / DISCUSSION:**

See attached information.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

See attached general information.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) unanimously recommended approval on November 24, 2004.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** George Sarmiento

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**GENERAL INFORMATION:**

**SUBJECT:** Special Privilege SP95044c

The El Paso City Council approved Ordinance #012402 on May 23, 1995, which granted a Special Privilege to Santanna Ventures, LLC to encroach onto a portion of public right-of-way at Railroad Drive to allow for the construction, maintenance and use of a natural gas pipeline.

Ordinance #012928 approved on September 3, 1996, by the City Council allowed the assignment of the Special Privilege to AOG Gas Transmission Co., L.P.

ONEOK WesTex Transmission, L.P. a successor in interest by virtue of a name change is requesting the assignment of the Special Privilege License and the extension of the term to ten (10) years.

This natural gas pipeline provides service to Dal-Tile, a tile manufacturing plant.

The Development Coordinating Committee has recommended that the term extension and assignment be granted subject to no other amendments to the conditions enumerated in Ordinance #012402.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE EXTENDING THE TERM OF THE SPECIAL PRIVILEGE LICENSE ORIGINALLY GRANTED BY ORDINANCE #012402 AS SUBSEQUENTLY AMENDED BY ORDINANCE #012928, SUCH SPECIAL PRIVILEGE LICENSE TO EXTEND THROUGH MAY 18, 2015, AND ALSO TO ACKNOWLEDGE ONEOK WESTEX TRANSMISSION, L.P. AS SUCCESSOR IN INTEREST TO AOG GAS TRANSMISSION COMPANY L.P. FOR ALL RIGHTS AND DUTIES SET FORTH IN ORDINANCE 012402, AS AMENDED, FOR THE CONSTRUCTION, MAINTENANCE AND USE OF A NATURAL GAS PIPELINE WITHIN A PORTION OF RAILROAD DRIVE RIGHT-OF-WAY.**

**WHEREAS**, on May 23, 1995, the El Paso City Council approved Ordinance No. 012402 which granted SANTANNA VENTURES LLC a Special Privilege License to encroach upon a portion of public right-of-way within Railroad Drive, a copy of which is attached hereto as Exhibit "A," and made a part hereof for all purposes; and

**WHEREAS**, on September 3, 1996, the El Paso City Council approved Ordinance No. 012928 which assigned the Special Privilege License to AOG GAS TRANSMISSION COMPANY, L.P., a copy of Ordinance No. 12928 is attached hereto as Exhibit "B"; and

**WHEREAS**, Ordinance 12402, as amended by Ordinance 12928 authorizes the use of City right-of-way for construction, maintenance and use of a natural gas pipeline; and

**WHEREAS**, AOG GAS TRANSMISSION COMPANY, L.P., maintained, owned and operated such natural gas pipeline; and

**WHEREAS**, ONEOK WesTex Transmission, L.P., a successor in interest to AOG GAS TRANSMISSION COMPANY, L.P. effective September 12, 2001, provided notice to the City on January 7, 2005 that it would like the Special Privilege License in effect to reflect that it is the successor in interest and that it retains valid claim to any and all rights once held by AOG GAS TRANSMISSION COMPANY, L.P.; and

**WHEREAS**, ONEOK WesTex Transmission, L.P. has also provided notice to the City requesting to extend the grant of the Special Privilege for an additional ten (10) years to use this portion of public right-of-way; and

**WHEREAS**, Section 12 of Ordinance No. 012402 states, and the El Paso City Council acknowledges, that assignment of Ord. 12402, as amended, is not necessary when the benefit of the

Special Privilege License inures to a successor entity of AOG GAS TRANSMISSION COMPANY, L.P. which in this instance is ONEOK WesTex Transmission, L.P.; and

**WHEREAS**, as per ONEOK WESTEX TRANSMISSION, L.P. request, the City of El Paso is willing to acknowledge ONEOK WesTex Transmission L.P. as successor in interest to AOG GAS TRANSMISSION COMPANY L.P.'s interest in Ordinance No. 012402, as amended; and

**WHEREAS**, ONEOK WESTEX TRANSMISSION, L.P. hereby agrees, and by acceptance does reaffirm its responsibility for all duties and obligations under the Special Privilege granted by Ordinance No. 012402 as amended hence forth and through May 18, 2015 when the extension proposed herein expires; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

1. That the City of El Paso acknowledges ONEOK WesTex Transmission L.P. as successor in interest to any and all rights and duties of its predecessor, AOG GAS TRANSMISSION COMPANY, L.P., held under Ordinance 12402, as amended.
2. That Section 3 (Term) of Ordinance No. 012402 Exhibit "A", shall be deleted in its entirety and substituted with the following paragraph:

**TERM.** This Special Privilege shall commence on May 23, 1995 and continue through May 23, 2015 at which time it shall expire. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee for additional terms of ten (10) years. If the Grantee wishes the City to renew this Special Privilege for an additional ten (10) year term, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. This Special Privilege shall expire without notice at the end of such expiration period unless a request for renewal is submitted in writing to the City by the Grantee as herein required. Should Grantee fail to submit such request for the renewal of this Special Privilege to the City as herein required, the Special Privilege will expire. Grantee understands, agrees and accepts that the City may require the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public right-of-way as permitted by this Special Privilege."

3. That Section 6.A only (Consideration) of Ordinance No. 012402 Exhibit "A", shall be deleted in its entirety and substituted with the following paragraph:

**CONSIDERATION.** As consideration for the use of the Premises, Grantee shall pay the City One Thousand Three Hundred Twenty and No/100 Dollars (\$1,320.00) per year for the term of this special privilege license. It is acknowledged herein by the City of

El Paso that the first ten (10) annual payments have been received. As such, Grantee shall provide additional annual payments of like amount for the remainder of the term of the Special Privilege, the first such payment to be submitted with thirty days following May 23, 2005 and an annual payment of like amount being due annually, yet no later than June 23<sup>rd</sup> of each year hence forth through the remainder of the term of the Special Privilege, for a total remaining amount due of Thirteen Thousand Two Hundred and No//100 Dollars for the term of this agreement.

The payment shall be in the form of a cashier's check delivered to the City Department of Planning, Research and Development for remittance to the Office of the City Comptroller

4. That this amendment to Ordinance Nos. 012402 and 012928, shall not be effective until grantee submits written acceptance (Exhibit "C") to all conditions contained herein, such acceptance to be submitted within 30 days from approval of the El Paso City Council.
5. Except as herein amended, Ordinance No. 012402 executed on May 23, 1995, shall remain in full force and effect.

**PASSED AND APPROVED this 17<sup>th</sup> day of May, 2005.**

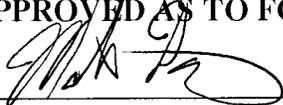
**THE CITY OF EL PASO**

**ATTEST:**

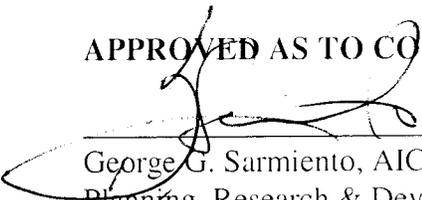
\_\_\_\_\_  
Joe Wardy, Mayor

\_\_\_\_\_  
Richarda Momsen, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Matt Watson  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
George G. Sarmiento, AICP, Director  
Planning, Research & Development  
Department

**ACCEPTANCE**

The above instrument, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**GRANTEE: ONEOK WesTex Transmission Company, L.P. by and through its managing partner ONEOK WesTex Pipeline, Inc., an Oklahoma Corporation**

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

\_\_\_\_\_  
(Printed name/title)

**ACKNOWLEDGMENT**

STATE OF TEXAS     )  
                                  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Larry Fischer, as \_\_\_\_\_, authorized to accept on behalf of ONEOK WesTex Transmission, L.P., as Grantee.

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed or Typed Name:

\_\_\_\_\_  
My Commission Expires:

012402

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO  
SANTANNA VENTURES LLC TO PERMIT AND REGULATE THE  
CONSTRUCTION, MAINTENANCE AND USE OF A NATURAL GAS  
PIPELINE WITHIN A PORTION OF RAILROAD DRIVE RIGHT-OF-WAY.**

WHEREAS, Dal-Tile is the owner of property located at 12001 Railroad Drive in the City of El Paso, El Paso County, Texas, more particularly described as a portion of Section 22, Block 80, Township 1, T&P RR Survey; and

WHEREAS, Dal-Tile operates a facility which manufactures tile and other floor products; and

WHEREAS, Dal-Tile is proposing to lay a natural gas pipeline to service their manufacturing plant from the El Paso Pipeline right-of-way; and

WHEREAS, SANTANNA VENTURES LLC will construct, maintain, own and operate such natural gas pipeline on behalf of Dal-Tile; and

WHEREAS, SANTANNA VENTURES LLC has requested permission from the City to permit such natural gas pipeline onto a portion of public right-of-way along Railroad Drive; and

WHEREAS, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way;

NOW, THEREFORE, in consideration of the mutual covenants and agreement hereinafter set forth, the parties agree and covenant as follows:

**SECTION 1. PURPOSE**

The City of El Paso (hereinafter called "City") hereby grants

to SANTANNA VENTURES LLC (hereinafter called the "Grantee"), a Special Privilege to install, operate, repair and maintain one (1) natural gas pipeline upon, beneath, across and along a portion of Railroad Drive from the El Paso Pipeline right-of-way within Tract 5B, Section 21, Block 80, Township 1, T&P RR Survey, to 12001 Railroad Drive located within a portion of Section 22, Block 80, Township 1, T&P RR Survey City of El Paso, El Paso County, Texas. Said natural gas pipeline shall be allowed along Railroad Drive right-of-way as more particularly described herein and attached as Exhibit "A", which is made a part hereof for all purposes and hereinafter called the "Public Way". The size of the natural gas pipeline within the Public Way is limited to a four-inch (4") nominal diameter natural gas products pipeline, hereinafter referred to as "Pipeline". Use of the Public Way shall be limited to the sole purpose of transporting natural gas within the Pipeline. No other substances shall be transported through the Pipeline. The City shall have the authority to conduct and to order the Grantee to conduct the periodic inspections or testing of the Pipeline and the substances passing through at no cost to the City. The City shall have the right to terminate this Special Privilege as herein provided upon determination that unauthorized substances have been transported through the Pipeline. The only Public Way which Grantee shall use pursuant to this Special Privilege shall be the right-of-way mentioned and shown for the construction and operation of the Pipeline shown within Exhibit "A". Any use of public right-of-way other than the use of Railroad

Drive right-of-way as described in Exhibit "A" is not authorized by this Special Privilege. Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, its assigns or successors in interest who shall not have a cause of action for damages upon revocation or termination of this Special Privilege in accordance with the terms herein.

This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on, below or over the City right-of-way, without the prior written consent of the City.

#### SECTION 2. REGULATION OF CONSTRUCTION

When Grantee shall be ready to commence the construction of the Pipeline as herein provided, Grantee shall submit to the City Engineer and the General Manager of the El Paso Water Utilities engineered drawings showing the design and construction specifications of the Pipeline within the Public Way, and a schedule wherein Grantee proposes to commence and complete such work. When said plans have been approved by the City Engineer, it shall then constitute permission for the Grantee to begin construction within the Public Way. Approval of such plans will not be unreasonably delayed, withheld, or denied by the City Engineer.

As an express condition of this Special Privilege, Grantee shall install and maintain leak prevention and leak detection

systems which will detect the release of any hydrocarbon product throughout the term of this Special Privilege.

The work done by Grantee in placing, constructing, replacing, repairing, reconstructing, or maintaining the Pipeline shall be subject to and governed by all applicable laws, rules and regulations of the City, State of Texas, and the U.S. government that are applicable to insuring that the work done does not unreasonably inconvenience the public in the use of the Public Way including, but not limited to the following:

A. In the event that Grantee desires to reconstruct, repair, maintain, or replace the Pipeline built hereunder which involves excavation or any surface disturbance, Grantee shall submit the plans and specifications that pertain to the rebuilding or repairs of the Public Way and the rebuilding or repairs of any of the public utilities to the City Engineer for approval fourteen days prior to the scheduled work. Approval of such plans will not be unreasonably delayed, withheld, or denied by the City Engineer. In the event that emergency repairs are necessary, Grantee shall immediately notify the City Engineer and provide details of the proposed repair work. On weekends and holidays, the City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions.

B. Grantee covenants and agrees that it will install the Pipeline in accordance with the plans which are approved by the City Engineer as provided in Section 2. After acceptance of this Special Privilege and upon receipt of an overall construction

schedule indicating the location of construction contemplated during the project, the City Engineer will arrange for issuance of any permits for the entire project contemplated in this Special Privilege to be valid during initial construction of the Pipeline.

C. All excavation and other construction in the Public Way shall be so carried out as to interfere as little as practical with the surface use of the public rights-of-way in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the police and regulatory powers necessary to provide for public convenience.

D. Before Grantee commences work on the repair of the Public Way, water lines, sewer lines or any other public utilities, the specifications shall be approved by the City Engineer after consultation with the General Manager of the El Paso Water Utilities. Approval of such specification will not be unreasonably delayed, withheld, or denied by the City Engineer.

E. Grantee covenants and agrees that Grantee shall, at its own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee, its employees, contractors, or its agents or assigns, damage so that such repair of the water lines, storm and sanitary sewer lines and water meters shall comply with the approval of the City Engineer, and such approval shall not be unreasonably delayed, withheld or denied. Grantee shall additionally reimburse El Paso Water Utilities for any costs it incurs as a result of such damage, including loss of water.

F. After completion of initial construction, except in an emergency, Grantee shall not excavate any portion of the Public Way without first securing the prior permission of the City Engineer, but such permission shall not be unreasonably delayed, withheld or denied if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions.

The City shall have the authority at any time to order the Grantee to conduct inspections and testing and to require Grantee to remove and abate the Pipeline if it is dangerous to life or property at no cost to the City. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate same, at the expense of Grantee, all without compensation or liability for damages to Grantee.

Work done in connection with the construction, repair and maintenance of such facility is subject to the continuing police power of the City.

G. Grantee shall submit a copy of its Emergency Response Team Plan, and any modifications, to the City Engineer and the Emergency Response Management Committee upon execution of this Special Privilege. If a leak in the Pipeline is detected, the flow in the Pipeline will be stopped upon detection of such leak and immediate notice shall be given to the City Engineer. Grantee shall provide details of the proposed repair work. If it is necessary to excavate the Public Way to repair the Pipeline, the

Pipeline shall be cleared before repair is begun. Grantee shall use due care and all proper safeguards to prevent pollution and contamination of all public and private property and natural resources. In the event of a leak, Grantee shall use all reasonable means to mitigate environmental impact, and shall clean and repair at Grantee's sole cost all damage to public and private property and natural resources damaged by any leak, spill or rupture of Grantee's Pipeline. In the event of a spill or rupture, all impacted properties must be cleaned in accordance with applicable local, state and federal regulations before Grantee is allowed to continue transporting natural gas through the repaired Pipeline or within a specified time period to be determined by the City Engineer in consultation with Grantee based upon the severity and extent of the spill.

H. As an express condition of this Special Privilege, Grantee shall provide ten (10) feet of horizontal separation between the Pipeline and any existing water or sanitary sewer main and two (2) feet of vertical separation between the Pipeline and any water or sanitary main crossing. The Pipeline shall be centered over any water and sanitary sewer main that it crosses. Grantee shall coordinate the Pipeline construction drawings with the El Paso Water Utilities to assure that these conditions have been met.

I. In the event that the El Paso Water Utilities elects to replace a portion of any of its water or sanitary sewer lines in the vicinity of the Pipeline, Grantee agrees that the City shall

not be liable for any damage to the Pipeline or any loss occasioned by such damage, including any consequential damages that may result from repair or replacement of the water or sewer line, regardless of whose negligence or action causes the damage or loss.

**SECTION 3. TERM**

This Special Privilege shall be for a term of ten (10) years from the effective date hereof, unless terminated earlier as provided herein. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee. If the Grantee wishes the City to renew this Special Privilege, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. Should Grantee fail to submit to the City such request for the renewal of this Special Privilege as herein required, the Special Privilege shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require that the terms, conditions and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege. Nothing herein contained shall be construed as granting an exclusive special privilege of right.

**SECTION 4. WORK DONE BY OTHERS**

The City expressly reserves the right to install, repair, or reconstruct the Public Way used or occupied by Grantee.

The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility

lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any Public Way occupied by Grantee. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee for any damage resulting therefrom, nor shall the City be liable to Grantee for any damages arising out of the performance of any work by the City, or its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to the Grantee's Pipeline. If the City requires Grantee to remove, alter, change, adapt, or conform its Pipeline because of changes in the grade of the Public Way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground structure owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the El Paso City Council without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for the El Paso City Council's consideration. If the City requires Grantee to remove, alter, change, adapt or conform its Pipeline to enable any other entity or person, except the City, to use, or to use with greater convenience, the Public Way, Grantee shall not be required to make

such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of Grantee's Pipeline; provided, however, the City shall not be responsible nor liable for such reimbursement.

SECTION 5. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

The City reserves the right, subject to Section 4., to use the surface or subsurface or airspace above the Public Way covered by this Special Privilege for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Public Way occupied by Grantee; and whenever by reason of said work in connection with said purposes it shall be deemed necessary by the City to alter, change, adapt, conform or relocation portions of Grantee's Pipeline, such alteration or change or relocation shall be made by Grantee when ordered in writing by the City Engineer without any claim for reimbursement or damages against the City, provided, however, that Grantee shall at all times be entitled to receive from appropriate governmental bodies, excluding the City, payment for alteration or relocation of its underground Pipeline to which it may be lawfully entitled under applicable federal or state laws with respect to relocation payments.

SECTION 6. CONSIDERATION

A. As consideration for this Special Privilege, Grantee shall pay to the City the sum of One Thousand Three Hundred Twenty No/100 Dollars (\$1,320.00) per year. The fee shall be due and owing after City Council approval and upon acceptance of this Special Privilege and shall be paid annually to the City of El Paso within thirty (30) days after the anniversary of the effective date of this ordinance. The fee is payable by cashier's check to the "City of El Paso" and shall be delivered to the City Comptroller.

B. Grantee's failure to make the payment within thirty (30) days after the payment is due shall constitute a late payment and Grantee shall pay the City a late charge of five (5) percent. The City does have the right to terminate this Special Privilege for non-payment of the annual fee within a timely manner. The fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes and special taxes and assessments for public improvements except as hereinafter provided as may be enacted during the term of this ordinance or any renewal.

C. The fee established in this Section shall not be affected by any relocation of Grantee's Pipeline required by the City pursuant to this ordinance.

D. The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform with all other applicable City ordinances and regulations.

E. The annual consideration shall remain the same for a

period of one (1) year from the date of execution of this Special Privilege, and may thereafter be amended after each one (1) year the license remains in effect. The Mayor and City Council retains the right to increase or decrease the annual fee specified in this Special Privilege.

SECTION 7. INSURANCE

A. Prior to the commencement of the initial construction and before any future construction, repairs, or maintenance operations during the term of this Special Privilege, Grantee shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the term of this Special Privilege. Grantee agrees to indemnify and hold the City harmless from any claims for injury, death, loss or damage of any kind or character, and by whomsoever suffered or asserted, occasioned by or in connection with the use of the Public Way by Grantee, its agents, servants or employees or any organizations contracted by the Grantee.

Grantee shall promptly, before utilizing the subject property provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of One Million and No/100 Dollars (\$1,000,000.00) per person, and Two Million and No/100 Dollars (\$2,000,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) for property damage growing out of any one accident or other cause. These

amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured. Such policy or certificate shall provide that the insurance cannot be cancelled or the amount of coverage changed without thirty (30) days prior written notice to the City Clerk. Grantee shall file a copy of the policy or certificate of insurance with the City Clerk and the Office of the City Attorney prior to enactment of this Special Privilege by City Council. If the policy is not kept in full force and effect throughout the term of this Special Privilege, the Special Privilege shall automatically become void.

**SECTION 8. RIGHTS IN THE EVENT OF GRANTEE ABANDONMENT**

As an express condition of this Special Privilege, and not as a mere covenant, in the event Grantee abandons the Pipeline or a portion thereof to be constructed hereunder or the Pipeline placed in the Public Way hereby ceases to be used by the Grantee for the purposes enumerated herein for any period of six (6) months or longer, other than the time elapsing between the date hereon and the initiation of construction of the Pipeline to be built hereunder which shall be no greater than six (6) months, the Special Privilege shall automatically revert to the City, its successors or assigns, free and clear of any right, title, or interest in Grantee, without the necessity of any notice to Grantee

or any re-entry by the City.

**SECTION 9. CANCELLATION**

Grantee shall have the option to terminate this agreement at any time upon giving the City written notice sixty (60) days in advance of such termination. In addition, the City shall have the option to cancel and terminate this agreement for failure of Grantee to comply with any material provision or requirement contained in this agreement after sixty (60) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within sixty (60) days, if the breaching party shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

Upon termination of this agreement, prior to the expiration of the original term, Grantee shall remove its Pipeline located in the Public Way at no cost to the City. When said Pipeline is removed from the Public Way, Grantee shall restore the Public Way at Grantee's own cost and expense, as determined by the City Engineer and in accordance with City specifications. The City may, at its option, restore the Public Way, and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs. Any such restoration shall be subject to the reasonable approval of the City.

**SECTION 10. RECORDS**

The El Paso City Council and the City Engineer shall be kept

fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of its rights under this ordinance, including the construction, replacement, reconstruction, maintenance and repair of the Pipeline on the Public Way. Grantee shall keep complete and accurate maps, construction drawings and specifications describing the location of the Pipeline within the Public Way. The City shall have the right, at reasonable times to inspect such maps, construction drawings and specifications. Grantee shall furnish the City Engineer with three sets of "as-built" plans of its Pipeline in the Public Way.

**SECTION 11. NOTICE**

Any notice or communication required in the administration of this ordinance shall be sent as follows:

**CITY:** City of El Paso  
ATTN: Mayor  
#2 Civic Center Plaza  
El Paso, Texas 79999

with copy to:

City Engineer  
#2 Civic Center Plaza  
El Paso, Texas 79999

with copy to:

General Manager  
El Paso Water Utilities  
1154 Hawkins Blvd.  
El Paso, Texas 79925

**GRANTEE:** Santanna Ventures LLC  
6907 Capital of Texas Highway #332  
Austin, Texas 78731

or to such other addresses as Grantee may designate from time to

time by written notice.

**SECTION 12. ASSIGNMENT**

The rights granted by this ordinance inure to the benefit of Grantee, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assignable without the express written consent of the El Paso City Council. A written copy of any such assignment must be filed with the City. Any required consent shall be evidenced by an ordinance or resolution of the El Paso City Council that fully recites the terms and conditions, if any, upon which consent is given.

**SECTION 13. LEASING OR DEDICATION OF FACILITIES**

Grantee, without the consent of the City, shall not lease any of the Public Way it uses in connection with its Pipeline, to any non-grantee person or entity; provided that Grantee shall have the right to lease or dedicate its system or any portion thereof, or otherwise make available facilities of the Pipeline in the ordinary conduct of its business, so long as Grantee retains responsibility for servicing and repairing the facilities of its Pipeline.

**SECTION 14. MISCELLANEOUS**

The City Engineer is the principal City official responsible for the administration of this special privilege and Grantee recognizes that questions regarding the interpretation or application of this ordinance shall be referred to the City Engineer.

**SECTION 15. EFFECTIVE DATE**

This special privilege shall not take effect unless Grantee

shall, within thirty (30) days after its passage and approval, file its written acceptance with the City Clerk.

PASSED AND APPROVED this 25<sup>th</sup> day of May, 1995.  
WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO

  
Mayor

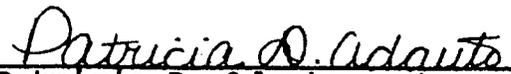
ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
Melissa Winblood  
Asst. City Attorney

APPROVED AS TO CONTENT:

  
Patricia D. Adauto  
Department of Planning,  
Research & Development



012928

**AN ORDINANCE APPROVING THE ASSIGNMENT OF A SPECIAL PRIVILEGE GRANTED BY ORDINANCE NO. 012402, TO SANTANNA VENTURES LLC, PERMITTING AND REGULATING THE CONSTRUCTION, MAINTENANCE AND USE OF A NATURAL GAS PIPELINE WITHIN A PORTION OF RAILROAD DRIVE.**

**WHEREAS**, on May 23, 1995, the El Paso City Council approved Ordinance No. 012402 which granted to SANTANNA VENTURES LLC, a Special Privilege License for the purpose of encroaching upon a portion public right-of-way within Railroad Drive, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes; and

**WHEREAS**, the purpose of the Special Privilege License is associated with the construction, maintenance and use of a natural gas pipeline; and

**WHEREAS**, Dal-Tile operates a facility which manufactures tile and other floor products, and proposed the laying of a natural gas pipeline to service their manufacturing plant; and

**WHEREAS**, SANTANNA VENTURES LLC constructed, maintains, owns and operates such natural gas pipeline on behalf of Dal-Tile; and

**WHEREAS**, SANTANNA VENTURES LLC has provided notice to the City on July 22, 1996 that SANTANNA VENTURES LLC has agreed to sell its' facility delivering natural gas to the Dal-Tile plant to AOG GAS TRANSMISSION COMPANY, L.P., a Texas limited partnership; and

**WHEREAS**, a photocopy of the General Conveyance Agreement between

SANTANNA VENTURES LLP and AOG GAS TRANSMISSION COMPANY, L.P. was provided to the City on July 22, 1996, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes; and

**WHEREAS**, the General Conveyance Agreement conditions the closing on the assignment of the Special Privilege License permitted by Ordinance No. 012402; and

**WHEREAS**, Section 12 of Ordinance No. 012402 requires the written consent of the El Paso City Council for assignment of the Special Privilege; and

**WHEREAS**, SANTANNA VENTURES LLC is requesting that the City approve the assignment of the Special Privilege granted by Ordinance No. 012402 to AOG GAS TRANSMISSION COMPANY, L.P.; and

**WHEREAS**, AOG GAS TRANSMISSION COMPANY, L.P. hereby agrees to be responsible for all duties and obligations under the Special Privilege granted by Ordinance No. 012402; and

**WHEREAS**, the City agrees to the assignment to AOG GAS TRANSMISSION COMPANY, L.P., of rights, duties and obligations in the Special Privilege to SANTANNA VENTURES LLC,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the Mayor be authorized to sign a Consent to Assignment of the Special Privilege granted by Ordinance No. 012402 to AOG GAS TRANSMISSION

COMPANY, L.P., a copy of which is attached hereto as Exhibit "C" and made a part hereof for all purposes.

ADOPTED this 3<sup>rd</sup> day of Sept-, 1996.

THE CITY OF EL PASO

*Val R. Ford*  
Mayor PRO-TEM

ATTEST:

*Carole Hunter*  
Carole Hunter, City Clerk

APPROVED AS TO FORM:

*David Caylor*  
David Caylor, City Attorney

APPROVED AS TO CONTENT:

*Patricia D. Adauto*  
Patricia D. Adauto, Current Planning/Zoning Coordinator  
Department of Planning, Research & Development

EXHIBIT "C"

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )                    Consent to Assignment

**WHEREAS**, on May 23, 1995, the El Paso City Council approved Ordinance No. 012402 which granted to SANTANNA VENTURES LLC a Special Privilege License for the purpose of encroaching upon a portion of public right-of-way within Railroad Drive, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes; and

**WHEREAS**, the purpose of the Special Privilege License is associated with the construction, maintenance and use of a natural gas pipeline; and

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**WHEREAS**, a photocopy of the General Conveyance Agreement between SANTANNA VENTURES LLP and AOG GAS TRANSMISSION COMPANY, L.P. was

provided to the City on July 22, 1996, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes; and

**WHEREAS**, the General Conveyance Agreement conditions the closing on the assignment of the Special Privilege License permitted by Ordinance No. 012402; and

**WHEREAS**, Section 12 of Ordinance No. 012402 requires the written consent of the El Paso City Council for assignment of the Special Privilege; and

**WHEREAS**, SANTANNA VENTURES LLC is requesting that the City approve the assignment of the Special Privilege granted by Ordinance No. 012402 to AOG GAS TRANSMISSION COMPANY, L.P.; and

**WHEREAS**, AOG GAS TRANSMISSION COMPANY, L.P. hereby agrees to be responsible for all duties and obligations under the Special Privilege granted by Ordinance No. 012402; and

**WHEREAS**, the City agrees to the assignment to AOG GAS TRANSMISSION COMPANY, L.P., of rights, duties and obligations in the Special Privilege to SANTANNA VENTURES LLC,

**NOW, THEREBY IS HEREBY AGREED AS FOLLOWS:**

1. The City approves the assignment to AOG GAS TRANSMISSION COMPANY, L.P., of the rights, duties, and obligations of a Special Privilege granted by Ordinance No. 012402.
2. AOG GAS TRANSMISSION COMPANY, L.P., agrees to assume and

perform all duties, obligations and responsibilities of said Special Privilege.

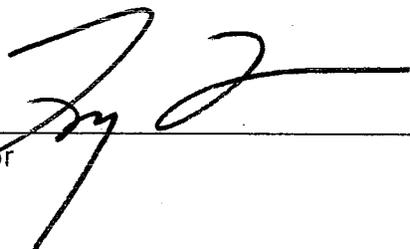
3. All terms and conditions of the Special Privilege shall remain in full force and effect.

4. AOG GAS TRANSMISSION COMPANY, L.P., agrees to indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, court costs, expenses and attorneys fees which are connected with or arising from the assignment of this Special Privilege and the City's acceptance and recognition of the assignment of the Special Privilege.

5. The City does hereby release and discharge SANTANNA VENTURES LLC from the terms, conditions, obligations and liabilities arising under the Special Privilege effective as of enactment of this assignment by the El Paso City Council.

WITNESS the following signatures and seals:

THE CITY OF EL PASO

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Carole Hunter, City Clerk

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

APPROVED AS TO FORM:

David Caylor  
David Caylor, City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto  
Patricia D. Adauto, Current Planning/Zoning Coordinator  
Department of Planning, Research & Development

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby  
accepted this 5<sup>th</sup> day of August, 1996.

GRANTEE:  
AOG GAS TRANSMISSION COMPANY, L.P.

By: [Signature]  
Title: Vice President **RP**

ACKNOWLEDGEMENT

THE STATE OF TEXAS )  
                                  )  
COUNTY OF EL PASO )

This instrument is acknowledged before me on this 5<sup>th</sup> day of August,  
1996, by [Signature], on behalf of AOG GAS TRANSMISSION  
COMPANY, L.P., as Grantee.

Susan Johnson  
Notary Public, State of Texas  
Notary's Printed/Typed Name:

May 30, 1999  
My Commission Expires:

a:\spr9544A  
07/23/96