

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

**DEPARTMENT:** Development Services / Planning Division

**AGENDA DATE:** Introduction 07/22/08: Public Hearing 07/29/08

**CONTACT PERSON/PHONE:** Esther Guerrero, Planner – 541-4720

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

An ordinance granting a Special Privilege to River Elms, L.L.C. permitting the encroachment of six (6) aerial pipelines over a portion of public right-of-way (alley) between Lots 1-8, Block 81, Bassett Addition and Lots 25-32 and the east half of Lot 24, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas. (District 8)

**BACKGROUND / DISCUSSION:**

The applicant is requesting the encroachment of six overhead pipelines for the Supreme Laundry Cleaners located at 2630 E. Yandell Drive and 2631 Wyoming Avenue. The pipelines will cross the alley overhead from roof to roof with a vertical clearance of sixteen feet two inches from the existing facility on Yandell Drive to the new facility on Wyoming Avenue. The pipelines will carry steam, compressed air, hot water, cold water, steam condensate and hot water re-circulating.

If approved, this Special Privilege will authorize a 15 year term with renewal options. The consideration of \$2,420 for the first year includes a flat rate of \$1,100 and a fee of \$1,320 for every subsequent year.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee: Approval Recommendation

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

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:** \_\_\_\_\_

Mathew S. McElroy, Deputy Director of Planning

**APPROVED FOR AGENDA:**

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

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

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

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO RIVER ELMS, L.L.C. PERMITTING THE ENCROACHMENT OF SIX (6) AERIAL PIPELINES OVER A PORTION OF PUBLIC RIGHT-OF-WAY (ALLEY) BETWEEN LOTS 1-8, BLOCK 81, BASSETT ADDITION AND LOTS 25-32 AND THE EAST HALF OF LOT 24, BLOCK 81, BASSETT ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS**

**WHEREAS**, RIVER ELMS, L.L.C. (hereinafter referred to as “Grantee”) owner of the following property: Lots 1-8, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas and more commonly known as 2630 E. Yandell Drive; and Lots 25-32 and the east half of Lot 24, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas and more commonly known as 2631 Wyoming Avenue (hereinafter referred to as “Property”); and

**WHEREAS**, Grantee has requested a special privilege to encroach upon public right of way with six (6) aerial pipelines; and

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

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege to Grantee, upon the following terms.

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A."
2. The Special Privilege is to permit the Grantee to encroach across public right-of-way with a total of six (6) overhead pipelines, as more particularly shown in the attached and incorporated Exhibit "B."
3. As consideration for this Special Privilege, Grantee shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A," subject to the terms and conditions of this ordinance and Special Privilege; and
4. This Special Privilege shall be for a term of fifteen (15) years from the date of execution of this ordinance with renewal options as set forth in Section 2 of Exhibit "A."

**PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2008**

***SIGNATURES ON FOLLOWING PAGE***  
**THE CITY OF EL PASO**

**THE CITY OF EL PASO**

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John F. Cook  
Mayor

**ATTEST:**

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Richarda Duffy-Momsen  
City Clerk

**APPROVED AS TO FORM:**

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Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**



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Mathew McElroy, Deputy Director  
Development Services Department

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08 JUL 14 PM 2:40

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

EXHIBIT "A"  
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by and between the **CITY OF EL PASO**, hereinafter called "City," and **RIVER ELMS, L.L.C.**, hereinafter called "Grantee."

**WITNESSETH:**

**WHEREAS**, the Grantee owns the following property: Lots 1-8, Lots 25-32 and the east half of Lot 24, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas and more commonly known as 2630 E. Yandell Drive and 2631 Wyoming Avenue; and

**WHEREAS**, in order to facilitate steam, domestic water, compressed air and re-circulating water to and from the Property, the Grantee has requested a special privilege to encroach above public right of way with one (1) two inch (2") steam line; one (1) one and one half inch (1 ½") compressed air line; one (1) three inch (3") hot water line; one (1) three inch (3") cold water line; one (1) one and one quarter (1 ¼") hot water re-circulating line; and one (1) one and one half inch (1 ½") steam condensate line, (hereinafter referred to collectively as the "Structure"), as more particularly shown in the attached Exhibit "1"; and

**WHEREAS**, Grantee shall pay the City of El Paso (hereinafter called the "City") in consideration for this special privilege;

**WHEREAS**, the El Paso City Council (hereinafter called "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 agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION.** The City hereby grants a Special Privilege to Grantee to encroach with the "Structure" across a portion of public right-of-way (alley) (hereinafter referred to as the "Premises), as more particularly shown in the attached and incorporated Exhibit "1," attached hereto and made a part hereof for all purposes.

CITY CLERK DEPT.  
08 JUL 14 PM 2:40

2. **TERM.** The term of this Special Privilege shall be for fifteen years (15) from the date of execution of this agreement with the option to renew for additional terms of fifteen (15) years. If the Grantee wishes to renew this Special Privilege for an additional term of fifteen (15) years, Grantee shall submit a request in writing to the Development Services Department/Planning Division of the City (hereinafter, the "Development Services Department"), which shall be received 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 an application for renewal is submitted in writing to the City by the Grantee as herein required. 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.

3. **CONSIDERATION.** As consideration for this Special Privilege, Grantee shall pay to the City One Thousand One Hundred and No/100 Dollars (\$1,100.00) flat rate fee, plus Two Hundred Twenty and No/100 Dollars (\$220.00) annually for each pipeline. The total sum for the first year shall be Two Thousand Four Hundred Twenty and No/100 Dollars (\$2,420.00); and One Thousand Three Hundred Twenty and No/100 Dollars (\$1,320.00) for every subsequent year.

Payment shall be paid in advance and payable to "The City of El Paso" and delivered to the Development Services Department. If the Special Privilege is disapproved by the City Council, a full refund of the advance payment shall be made by the Office of the City Comptroller within fifteen (15) days of the denial action.

Each year, no later than the tenth day of the month in which the Special Privilege was approved by the City Council, the grantee shall remit to the City payment in full of all annual fees. Failure to remit such payment will be cause for termination.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120.D of the El Paso City Code. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which could result from a re-computation or assessment of fees pursuant to enactment of future code amendments. This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with

CITY CLERK DEPT.  
08 JUL 14 PM 2:41

all the encroachments on public rights-of-way as well as all costs for the restoration of the Premises.

4. **USE OF PUBLIC PROPERTY.** This Special Privilege is granted solely for the encroachment of one (1) two inch (2") steam line; one (1) one and one half inch (1 ½") compressed air line; one (1) three inch (3") hot water line; one (1) three inch (3") cold water line; one (1) one and one quarter (1 ¼") hot water re-circulating line; and one (1) one and one half inch (1 ½") steam condensate line above a portion of public right-of-way (alley) between Lots 1-8, Block 81, Bassett Addition and Lots 25-32 and the east half of Lot 24, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas as per attached Exhibit "1".

As an express condition of this Special Privilege, and not as a mere covenant, Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein. Grantee shall coordinate all design and construction plans with the Director of Development Services or his/her designee and coordinate with all applicable public or private utility entities. Grantee shall not commence construction under this Special Privilege until the Development Services Department has approved all plans for the construction of the Structure as appropriate under the applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to waive any permit requirements of the City. Grantee shall be responsible for all maintenance and any damages due to a failure to maintain.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair.

5. **IMPROPER USE.** This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way (hereinafter referred to as "City 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 or over the City right-of-way, without the prior written consent of the City Council.

CITY CLERK DEPT.  
08 JUL 14 PM 2:41

6. **REPAIRS.** Grantee shall keep the property, Structure, and Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. **INSURANCE AND INDEMNIFICATION PROVISIONS.** Grantee acknowledges that its request to use the public right of way is solely for its benefit and not a use which benefits the City taxpayers as a whole. As a result, Grantee agrees to provide the following as a condition of its use of the public right of way:

- a. **LIABILITY INSURANCE:** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. Because the granting of this special privilege is solely for the benefit of Grantee and recognizing that the City taxpayers should not incur any costs associated with Grantee's enjoyment of this Special Privilege, Grantee is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this agreement. Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its

CITY CLERK DEPT.  
08 JUL 14 PM 2:41

officers, agents, servants or employees and Grantee, its officers, agents, servants or employees. No special privilege license shall be granted by City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Development Services Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

- b. **INDEMNITY:** As a condition of the granting of a Special Privilege, Grantee or its insurer will indemnify, defend and hold the city, its officers, agents and employees, harmless from and against any and all claims, causes of action, liability, damages or expense, (including but not limited to attorney fees and costs) for any damage to or loss of any property, or any illness, injury, physical or mental impairment, loss of services, or death to any person arising out of or related to this agreement. without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Grantee every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Grantee will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Grantee may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Grantee will pay all judgments in actions defended by Grantee pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the

CITY CLERK DEPT.  
08 JUL 14 PM 2:41

**date of payment by Grantee, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to Grantee's property from any cause.**

**8. CANCELLATION.** Should the City at any time or for any reason decide that the right-of-way onto which any of the encroachments are situated are needed for public use, the City may, upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty (30) days prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee ceases to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fails to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, all encroachments shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

**9. LIENS AND ENCUMBRANCES.** Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantee's use of the Premises.

**10. ASSIGNMENT.** Grantee shall not assign this Special Privilege without the prior written consent of the City Council.

**11. MISCELLANEOUS.**

- a. **SIGNS:** This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-

CITY CLERK DEPT.  
08 JUL 14 PM 2:41

way as described herein. Permission to erect signage must be obtained by Grantee pursuant to applicable City Code and ordinance provisions and subject to the restrictions and requirements contained therein.

- b. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.
- c. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the Structure, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structures without first having obtained any required building permits from any applicable City Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.
- d. **SUCCESSORS AND ASSIGNS:** All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns. This Special Privilege is a restriction, condition and covenant running with the property known as Lots 1-8, Lots 25-32 and the east half of Lot 24, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas and a charge and servitude thereon, and shall bind the Grantee and their successors in title. Any further lease or conveyance of said property known as Lots 1-8, Lots 25-32 and the east half of Lot 24, Block 81, Bassett Addition, City of El Paso, El Paso County, Texas, shall contain said restriction, condition, and covenant and shall embody this Special Privilege by express reference.
- e. **NOTICES:** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY CLERK DEPT.  
08 JUL 14 PM 2:47

City of El Paso  
Attn: City Manager  
#2 Civic Center Plaza, 10th Floor  
El Paso, Texas 79901-1196

with copy to: City of El Paso  
Attn: City Clerk  
#2 Civic Center Plaza, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-1196

and: River Elms, L.L.C.  
2630 E. Yandell Drive  
El Paso, Texas 79903

CITY CLERK DEPT.  
08 JUL 14 PM 2:41

or to such other address as the parties may designate to each other in writing from time to time.

- f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.
- g. SEVERABILITY: Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.
- h. LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.
- i. The Director of Development Services or his designee 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 Director of Development Services or his designee.

12. **RESTRICTIONS AND RESERVATIONS.** This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege,

or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

**13. EFFECTIVE DATE.** This Special Privilege shall not take effect unless Grantee files his written acceptance with the Development Services Department prior to its passage and approval by the City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS**

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy-Momsen  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Development Services Department

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08 JUL 14 PM 2:41

**ACCEPTANCE**

The attached instrument, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**GRANTEE:  
RIVER ELMS, L.L.C.**

By: Howard Goldberg  
Howard Goldberg owner  
(Printed Name and Title)

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS )  
  )  
COUNTY OF EL PASO )

This instrument is acknowledged before me on this 14 day of July, 2008, by Howard Goldberg on behalf of RIVER ELMS, L.L.C., as Grantee.

Jessica Torres  
Notary Public, State of Texas

Jessica Torres  
Notary's Printed or Typed Name:

July 21, 2009  
My Commission Expires:

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08 JUL 14 PM 2:41

