

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

DEPARTMENT: Development Services Department-Planning Division

AGENDA DATE: Introduction 08-18-09; Public Hearing 08-25-09

CONTACT PERSON/PHONE: Mirian Spencer, Planner, (915) 541-4192, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 3

SUBJECT:

An Ordinance extending the term a special privilege license granted to Shell Oil Company by Ordinance 12055, permitting the encroachment onto a portion of a drainage easement located in Tract 1A5, Block 4, Ascarate Grant, City of El Paso, El Paso County, Texas with a multi-product pipeline and approving the assignment of the license to Magellan Pipeline Company, L.P. Applicant: Magellan Pipeline Company, L.P. SP94034, (District 3).

BACKGROUND / DISCUSSION:

See attached information.

PRIOR COUNCIL ACTION:

City Council approved Ordinance 012055 granting the Special Privilege License to Shell Oil Company on August 16, 1994.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

MEMORANDUM

DATE: August 6, 2009

TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager

FROM: Mirian Spencer, Planner

SUBJECT: SP94034

Magellan Pipeline Company, L.P. has requested the extension of the Special Privilege License agreement granted by the City of El Paso to Shell Oil Company for a term of fifteen (15) additional years. Magellan Pipeline Company, L.P. is successors in Title for Shell Oil Company and has also requested the Special Privilege be assigned to them.

Ordinance 12055 was granted on August 16, 1994 permitting a multi-product pipeline. The Special Privilege License may be extended and/or assigned with the written approval of the Mayor and City Council. All terms of the Special Privilege will remain in force and Magellan Pipeline Company, L.P. will assume all responsibilities granted.

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE TERM OF A SPECIAL PRIVILEGE LICENSE GRANTED TO SHELL OIL COMPANY BY ORDINANCE 12055, WHICH PERMITTED THE ENCROACHMENT ONTO A PORTION OF A DRAINAGE EASEMENT LOCATED IN TRACT 1A5, BLOCK 4, ASCARATE GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS WITH A MULTI-PRODUCT PIPELINE AND APPROVING THE ASSIGNMENT OF THE LICENSE TO MAGELLAN PIPELINE COMPANY L.P.

WHEREAS, the El Paso City Council approved Ordinance No. 12055 on August 16, 1994, a copy of which is attached as Exhibit "A", which granted a Special Privilege to Shell Oil Company, (hereinafter referred to as "Grantees") authorizing the encroachment onto a portion of a drainage easement located in Tract 1A5, Block 4, Ascarate Grant, City of El Paso, El Paso County, Texas (hereinafter referred to as "Premises") for the construction, maintenance and use of a multi-product pipeline; and

WHEREAS, the purpose of the Special Privilege License is solely for the encroachment, installation, maintenance, and operation of the existing multi-product pipeline located within portions of public right-of-way located within the City of El Paso,

WHEREAS, Shell Oil Company desires to assign all duties, obligations and responsibilities of said Special Privilege License for the existing multi-product pipeline to Magellan Pipeline Company, L.P.; and

WHEREAS, Magellan Pipeline Company, L.P. desires to assume all duties, obligations and responsibilities of said Special Privilege License; and

WHEREAS, Section 12 of the Special Privilege License requires the written consent of the El Paso City Council for assignment of the Special Privilege License; and

WHEREAS, both Shell Oil Company and Magellan Pipeline Company, L.P. are requesting the written consent of the El Paso City Council for assignment of the Special Privilege License; and

WHEREAS, Magellan Pipeline Company, L.P. desires to extend the term of the Special Privilege License for an additional fifteen (15) years; and

WHEREAS, the El Paso City Council agrees to assign the Special Privilege License to Magellan Pipeline Company, a Texas Limited Partnership, of rights, duties, obligations, and responsibilities, in the License to Shell Oil Company; and

WHEREAS, the El Paso City Council agrees to grant an additional fifteen (15) year extension to the term of the special privilege license originally provided by Ordinance 12055;

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

That the City Manager be authorized to sign a Consent to Assignment assigning the Special Privilege License granted by Ordinance No. 012055 to Shell Oil Company for

construction, maintenance, and use of a multi-product pipeline within a portion of a drainage easement located in Tract 1A5, Block 4, Ascarate Grant, City of El Paso, El Paso County, Texas to Magellan Pipeline Company, L.P. and that the term be extended for an additional fifteen (15) years under the same terms and conditions.

PASSED AND APPROVED this ____ day of _____ 2009.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Lupe Cuellar
Assistant City Attorney

Mathew McElroy, Deputy Director-Planning
Development Services Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

Consent to Assignment

WHEREAS, on August 16, 1994, the El Paso City Council approved Ordinance No. 12055 which granted to Shell Oil Company, a Special Privilege License for the purpose of encroaching upon portions of public rights-of-way with a multi-product pipeline on a portion of a drainage easement located in Tract 1A5, Block 4, Ascarate Grant, City of El Paso, El Paso County, Texas (hereinafter referred to as "Public Way"), a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes; and

WHEREAS, Shell Oil Company desires to assign all duties, obligations and responsibilities of said Special Privilege License for the existing encroachments to Magellan Pipeline Company, L.P., a Texas Limited Partnership; and

WHEREAS, Section 12 of the Special Privilege License authorizes the City Council to approve the assignment of the Special Privilege License; and

WHEREAS, both Shell Oil Company and Magellan Pipeline Company L.P., are requesting that the City approve the assignment of the Special Privilege License granted by Ordinance No. 12055; and

WHEREAS, Magellan Pipeline Company L.P., hereby agrees to be responsible for all duties, obligations and responsibilities under the Special Privilege License; and

WHEREAS, the City agrees to the assignment to Magellan Pipeline Company L.P., of the rights, duties, obligations and responsibilities encompassed in the Special Privilege License; and

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The City approves the assignment to Magellan Pipeline Company L.P., of the rights, duties, obligations, and responsibilities of the Special Privilege License granted by Ordinance No 12055.

2. Magellan Pipeline Company L.P., agrees to assume and perform all duties, obligations, and responsibilities of said Special Privilege License.

3. Magellan Pipeline 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 License and the City's acceptance and recognition of the assignment of the Special Privilege License.

4. All notices provided shall be sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

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

with copy to: City of El Paso
Attn: City Clerk
2 Civic Center Plaza
El Paso, Texas 79901-1196

and: Magellan Pipeline Company, L.P.
Pipeline Integrity – Real Estate
Attn: Bob Miller
One Williams Center, MD 27-8
Tulsa, OK 74172

5. Except as herein amended Ordinance No. 12055 shall remain in full force and effect.

WITNESS the following signatures and seals:

THE CITY OF EL PASO

Joyce Wilson, City Manager

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy, Deputy Director
Development Services Department

ACCEPTANCE ON FOLLOWING PAGE

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this ___ day of _____, 2009.

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 7th day of AUGUST, 2009.

GRANTEE: PLM
Magellan Pipeline Company

By: [Signature]

Title: VP TECHNICAL SERV.

ACKNOWLEDGEMENT

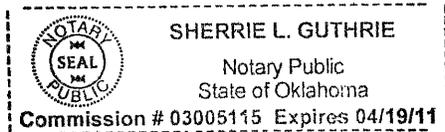
THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 7th day of AUGUST, 2009, by LARRY J. DAVID, on behalf of Magellan Pipeline Company, L.P. as assignee.

[Signature]
Notary Public, State of Oklahoma

Notary's Printed/Typed Name:

SHERRIE L. GUTHRIE



My Commission Expires:

4-19-11

EXHIBIT "A"

012055

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO SHELL OIL COMPANY TO PERMIT AND REGULATE THE CONSTRUCTION, MAINTENANCE AND USE OF A MULTI-PRODUCT PIPELINE WITHIN A PORTION OF A DRAINAGE EASEMENT LOCATED IN TRACT 1A5, BLOCK 4, ASCARATE GRANT.

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

SECTION 1. PURPOSE

The City of El Paso (hereinafter called "City") hereby grants to SHELL OIL COMPANY (hereinafter called the "Grantee"), a Special Privilege to install, operate, repair and maintain one (1) multi-product pipeline including appurtenances as approved by the City Engineer upon, beneath, across and along a portion of a drainage easement located within Tract 1A5, Block 4, Ascarate Grant, City of El Paso, El Paso County, Texas, for the purpose of providing piping and conduit interconnection between the Santa Fe Pacific Pipelines, Inc. diesel pipeline and Grantee's existing terminal. Said multi-product pipeline shall be allowed to cross the City drainage easement 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 multi-product pipeline within the Public Way is limited to a four-inch nominal diameter refined petroleum products pipeline, hereinafter referred to as "Pipeline". Use of the Public Way shall be limited to the purpose of transporting, delivering and selling petroleum hydrocarbons within the Pipeline. No other substances shall be transported, delivered or sold through the Pipeline. The City shall have the authority to conduct and to order the Grantee to

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RY NO. 01
UNTERPART NO. 01

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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, delivered or sold through the Pipeline. The only Public Way which Grantee shall use pursuant to this Special Privilege shall be the drainage easement 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 the drainage easement in connection with the construction and operation of Grantee's facilities 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 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 petroleum hydrocarbons 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 install a full section of pipe across the El Paso Water Utilities twenty-one inch sanitary sewer line so that there are no bends or welds in the Pipeline within a ten foot distance on either side of the sewer line.

I. In the event that El Paso Water Utilities elects to replace a portion of its twenty-one (21) inch sanitary sewer line 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 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 fifteen (15) 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 Two Hundred and No/100 Dollars (\$1,200.00) 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 insureds. 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. 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: Shell Oil Company
c/o Land Department,
Transportation Engineering
P.O. Box 2648
Houston, Texas 77252

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.

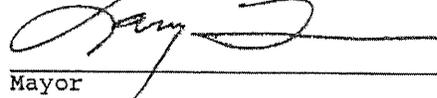
SECTION 15. EFFECTIVE DATE

This special privilege shall not take effect unless Grantee shall, within thirty (30) days after its passage and approval, files its written acceptance with the City Clerk.

PASSED AND APPROVED this 16th day of August, 1994.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO



Mayor

ATTEST:



City Clerk

(SIGNATURES ON FOLLOWING PAGES)

APPROVED AS TO FORM:

Melissa Winblood
Melissa Winblood Franco
Asst. City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto
Patricia D. Adauto
Department of Planning,
Research & Development

2025 RELEASE UNDER E.O. 14176

TRACT 1A5, BLOCK 4, ASCARATE GRANT
PHELPS DODGE CHANNEL
CITY OF EL PASO RIGHT-OF-WAY

PROPOSED PIPELINE EASEMENT

May 6, 1994

Being the description of the centerline of a proposed underground pipeline easement through a portion of Tract 1A5, Block 4, Ascarate Grant, City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds as follows:

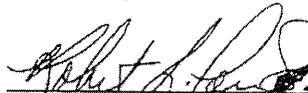
BEGINNING AT A POINT on the Southerly boundary of said Tract 1A5 also the Northerly boundary of adjoining Tract 1A, from which the most Northerly or Northwest corner of said Tract 1A, a Southwesterly corner of Tract 1A5, bears North 58°01'00" West, 709.75 feet;

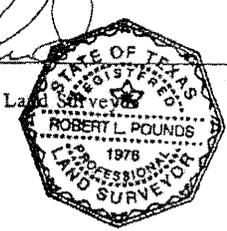
THENCE North 50°09'00" East, 74.85 feet to an angle point to the right located approximately 5 feet Southwest of an existing 21 inch diameter sanitary sewer line;

THENCE South 58°35'00" East, parallel with and 5 feet Southwesterly from said sanitary sewer line, 430.41 feet to an angle point to the left;

THENCE South 72°03'47" East, 307.47 feet to a point on the Northerly boundary of Tract 1A5 and common boundary of Blocks 2 and 4, Ascarate Grant, for the end of this description, from this point, the most Westerly common corner of said Blocks 2 and 4, Ascarate Grant, bears North 58°01'00" West, 1651.32 feet.

THE BEARINGS USED IN THIS DESCRIPTION ARE BASED UPON THE RECORD BEARINGS OF BLOCK 4, ASCARATE GRANT.


Robert L. Pounds
Registered Professional Land Surveyor



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