

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

DEPARTMENT: Financial Services
AGENDA DATE: September 25, 2007
CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074
DISTRICT(S) AFFECTED: 3 & 7



SUBJECT:

That the City Manager be authorized to sign a Right-of-Entry and Temporary Construction Easement granting permission to SFPP, L.P. to use a portion of Tract 4A30F, Block 2, Ascarate Grant, El Paso, El Paso County, Texas, as a staging area to install a 12-inch pipeline under TxDot Highway I-10 Right-of-Way.

BACKGROUND / DISCUSSION:

SFPP, L.P. requests from the City a Temporary Right-of-Entry Permit for sixty (60) days to use City property for construction workspace needed for the bore of a 12-inch pipeline under TxDot Highway I-10 Right-of-Way. SFPP has agreed to pay \$1,600 for the 60 day use of City land.

PRIOR COUNCIL ACTION:

Yes, other cases of Right-of-Entry/Temporary Construction Easements granted by Council

AMOUNT AND SOURCE OF FUNDING:

\$1,600 Revenue

BOARD / COMMISSION ACTION:

N/A

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

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

DEPARTMENT HEAD: Carmen Anueta Candela
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

07 SEP 13 AM 11:42
CITY CLERK DEPT.

RESOLUTION

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

That the City Manager be authorized to sign a Right-of-Entry and Temporary Construction Easement granting permission to SFPP, L.P. to use a portion of Tract 4A30F, Block 2, Ascarate Grant, El Paso, El Paso, El Paso County, Texas, as a staging area to install a 12-inch pipeline under TxDOT Highway I-10 Right-of-Way.

ADOPTED THIS _____ DAY OF _____ 2007.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Gonzalo Cedillos, P.E.
Capital Assets Manager

APPROVED AS TO CONTENT:



Nadia Powell
Consumer Affairs Officer

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JOHN COOK
MAYOR

JOYCE WILSON
CITY MANAGER

CARMEN ARRIETA-CANDELARIA
CHIEF FINANCIAL OFFICER



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
RACHEL QUINTANA, JR., DISTRICT 5
EDDIE HOLGUIN, JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

FINANCIAL SERVICES
TRANSMITTAL MEMO

DATE: September 13, 2007
TO: Municipal Clerk
FROM: Gonzalo Cedillos, P.E.
Financial Services - 541-4074
THRU: Linda V. Roa
Senior Office Assistant - 541-4841

Please place the following item on the CONSENT agenda for the Council Meeting of
SEPTEMBER 25, 2007.

RESOLUTION:

That the City Manager be authorized to sign a Right-of-Entry and Temporary Construction Easement granting permission to SFPP, L.P. to use a portion of Tract 4A30F, Block 2, Ascarate Grant, El Paso, El Paso County, Texas, as a staging area to install a 12-inch pipeline under TxDOT Highway I-10 Right-of-Way.

Contact person: Gonzalo Cedillos, P.E., Financial Services, 541-4074

AGENDA FOR: SEPTEMBER 25, 2007

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CITY CLERK DEPT.

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

**RIGHT-OF-ENTRY AND TEMPORARY
CONSTRUCTION EASEMENT**

KNOW ALL MEN BY THESE PRESENTS:

That the City of El Paso, hereinafter called the "City", for and in consideration of the sum of ONE THOUSAND SIX HUNDRED AND NO/100THS DOLLARS (\$1,600.00) and other good and valuable consideration paid, receipt of which is hereby acknowledged, does hereby grant to SFPP, L.P., hereinafter the "Grantee", a Delaware limited partnership, a Right-of-Entry and Temporary Construction Easement in, upon and across the following described real property, (hereinafter the "Property"), situated in El Paso County, Texas, to-wit:

A portion of Tract 4A30F, Block 2, Ascarate Grant, El Paso, El Paso, El Paso County, Texas, and being more particularly described in Exhibit "A", attached hereto and made a part hereof for all purposes,

together with the right of ingress and egress for all purposes incident to said grant, for the purpose of using and occupying such Property to dig a bore pit for the installation of a 12-inch pipeline under TxDOT Highway I-10 Right-of-Way and for staging of construction equipment for the bore, (hereinafter referred to as the "Project"), including but not limited to 1) the right of workmen to occupy the Property, 2) the right to cross such Property with materials, machinery and equipment and to store the same thereon, 3) the right to borrow and deposit fill, spill, spoil and waste material thereon, 4) the right to erect and remove temporary structures on the Property, 5) the right to trim, cut, fill and remove therefrom all tress, underbrush, obstructions and any other vegetation, structures or obstacles within the limits of the Property, and 6) to perform any other work necessary and incident to the Project.

Upon completion of the Project, the surface of the Property will be restored and cleaned to the condition agreed upon by the City and the Grantee to the full extent reasonably practicable.

This grant of authority shall extend to all contracts let by the Grantee in furtherance of the Project and the objectives herein stated.

This grant shall carry with it the right of ingress and egress, to and from the Property at all reasonable times, with the right to use existing roads for the purpose of the Project.

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The payment of the consideration for the Property conveyed herein shall be considered full compensation for same and for any diminution in value which may result to remaining property owned by the City by virtue of the Project, construction, installation and repair of utility lines and improvements, if any, grade alignment or the alteration of drainage patterns and facilities.

The Right-of-Entry and Temporary Construction Easement and rights herein granted shall begin upon the date of execution hereof and shall terminate within sixty (60) days of the grant hereof. Upon termination of this Right-of-Entry and Temporary Construction Easement and the rights herein granted, the Grantee shall furnish the City with an appropriate recordable instrument releasing the interest of Grantee and its assigns, if any, in the Right-of-Entry and Temporary Construction Easement herein granted.

The Grantee will not have the right to assign all or any part of its rights hereunder to third parties.

The Grantee shall submit for review and approval by the City for issuance of an Excavation Permit, a site plan, excavation/construction plans, and a Storm Water Pollution Prevention Plan. In addition, the Grantee shall submit for review by the City, a copy of the TxDOT Permit for the I-10 bore and if required, a copy of the Traffic Control Plans approved by TxDOT for access to the Property from Gateway Boulevard West.

INSURANCE AND INDEMNIFICATION PROVISIONS.

The Grantee acknowledges that its request to use the Property is solely for its benefit and not a use, which benefits the City taxpayers as a whole. As a result, the Grantee agrees to provide the following as a condition of its use of the Property:

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, it 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.

The 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 officers, agents, servants or employees and Grantees, its officers, agents, servants or employees. All policies shall name the City, its officers, agents, servants and employees as additional insureds to the full amount of the policy limits.

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No rights pursuant to this Right-of-Entry and Temporary Construction Easement shall be granted by the City until the 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 City Capital Assets Manager. 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 this Right-of-Entry and Temporary Construction Easement shall be grounds for cancellation of this Right-of-Entry and Temporary Construction Easement.

B. **INDEMNITY**. As a condition of the Right-of-Entry and Temporary Construction Easement, the Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with the Grantee's use of the Property, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City up to the minimum amounts required for the public liability insurance under this Right-of-Entry and Temporary Construction Easement.

The City reserves the right to full use and enjoyment of the Property encumbered by the Right-of-Entry and Temporary Construction Easement, except as otherwise provided herein, and such use shall not hinder, conflict, or interfere with the exercise of the Grantee's rights hereunder, and no permanent improvements shall be constructed or maintained on the Property without the Grantee's written consent.

(Signatures begin on next page)

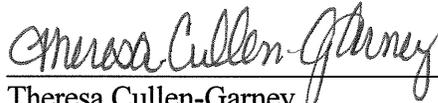
IN WITNESS WHEREOF this instrument is executed on the ____ day of _____, 2007.

CITY:
City of El Paso

City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Theresa Cullen-Garney
Deputy City Attorney



Gonzalo Cedillos, P.E.
Capital Assets Manager

APPROVED AS TO CONTENT:



Nadia Powell
Consumer Affairs Officer

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2007,
by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas**.

Notary Public, State of _____

My Commission Expires:

(Signatures continued on next page)

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ACKNOWLEDGEMENT

State of California }
 } s.s.
County of Orange }

Title of Document RIGHT-OF-WAY AND TEMPORARY CONSTRUCTION
EASEMENT

On August 2, 2007, before me, Martha Niguidula, Notary Public, personally appeared J.D. Reynolds [X] personally known to me - ~~OR - [] proved to me on the basis of satisfactory evidence~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted, executed the instrument.

WITNESS my hand and seal.

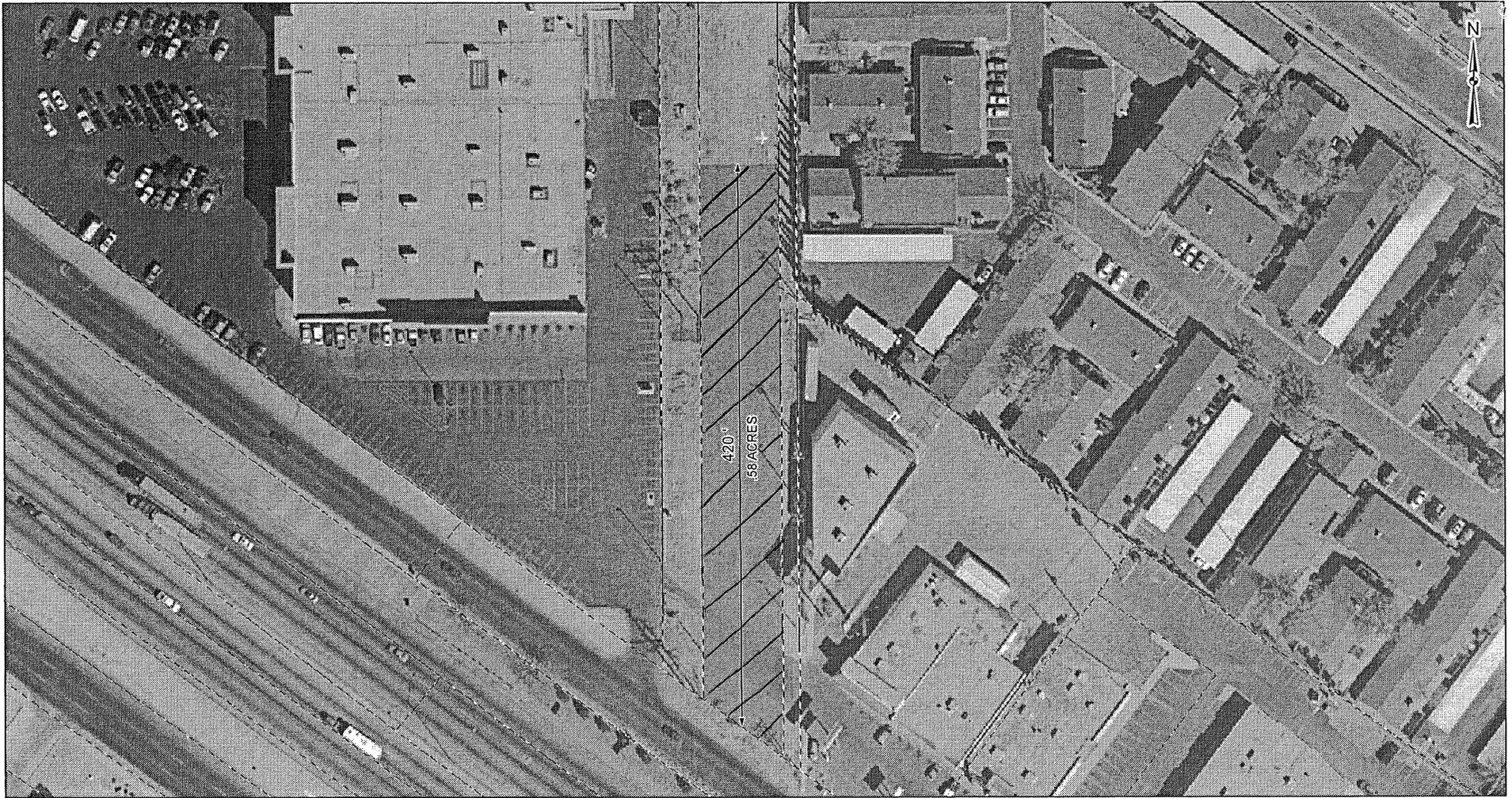


Martha Niguidula

NOTARY PUBLIC, STATE OF CALIFORNIA

(Seal)

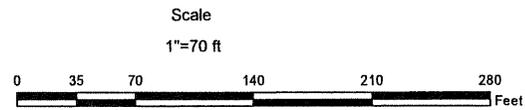
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Legend

-  Temporary Workspace
-  El Paso Parcels

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KINDER MORGAN
ENERGY PARTNERS, L.P.

TEMPORARY WORKSPACE
 REQUIREMENTS ON CITY OF
 EL PASO PROPERTY FOR
 I-10 CROSSING



EXHIBIT A