

IPHTHOLLER FILE No.

EMINITY AGREEMENT with the City
Seattle and Time Oil Company
ed May 1, 1991.

Honorable President:

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May 1, 1991

Norman Brooks, City Comptroller

Margaret Costen

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INDEMNITY AGREEMENT

CF 298361

THIS AGREEMENT is entered into this 1st day of JULY 1991 by and between Time Oil Company, a Washington corporation (herein "Time Oil"), and the City of Seattle (herein "City").

RECITALS

1. Under a permit issued by the City, Time Oil maintains and operates a petroleum pipeline system under and across West Commodore Way approximately 430 feet west of the production north of the west property line of 27th Avenue West (herein "pipeline system").

2. Time Oil's current permit to maintain and operate the pipeline system has expired, and Time Oil desires to extend or renew its permit.

3. The City is willing to extend or renew Time Oil's permit on the condition that Time Oil provide sufficient assurances that the Pipeline System will not result in the City incurring any liability, under environmental laws or otherwise, as a result of the operation of Pipeline System.

In consideration of the above recitals, the parties agree as follows:

TERMS

1. Definitions. "Hazardous Substances" mean any hazardous, toxic or dangerous substance, waste or material that is regulated under any federal, state or local law pertaining to environmental protection, contamination, cleanup, or liability. The term includes, without limitation, a) any substance designated a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C 9601 et seq.), and/or under the Model Toxics Control Act (Ch. 70.105D RCW), as these statutes shall be amended from time-to-time, and b) any substances that, after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through the food chain, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities in humans, plants or animals. "Release" means any intentional or unintentional entry of any Hazardous Substance into the environment, including, without limitation, the abandonment or disposal of containers of hazardous substances.

2. Renewal of Permit. The City shall renew Time Oil's permit to operate and maintain the pipeline system, on the terms set forth in the draft ordinance attached as Exhibit A to this agreement.

3. Warranties. Time Oil represents, warrants and covenants that a) Time Oil has not received any notice of, and is not aware of, any actual or alleged release of any Hazardous Substance from or in the Pipeline System; b) Time Oil has not received any notice of, and is not aware of, any actual or alleged violation with respect to the Pipeline System of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and c) no action or proceeding is pending before or appealable from any court, quasi-judicial body or administrative agency relating to Hazardous Substances emanating from, caused by or affecting the pipeline system.

4. Compliance With Applicable Laws. Time Oil shall not cause or permit the pipeline system to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations. Nor shall Time Oil cause or permit, as a result of any intentional or unintentional act or omission on the part of Time Oil, any assignee or agent of Time Oil, or any third party, a release of Hazardous Substances from the pipeline system onto the property of the City or onto any other property.

5. Indemnification. Time Oil will defend, hold harmless and indemnify the City from and against any claims, demands, penalties, fees, liens, damages, losses, expenses, including all reasonable attorney's fees and costs incurred by the City, or liabilities resulting from (a) any breach of the foregoing representations and warranties; and (b) Hazardous Substances released from the pipeline system onto any properties. Indemnification hereunder excepts such damage as may result from the sole negligence of the City.

6. Monitoring; Notification of Releases. Time Oil shall monitor the pipeline system by making daily visual inspections and by performing annual pressure tests of the pipelines. Within 2-hours of Time Oil becoming aware that the pipeline system has released or threatens to release any Hazardous Substances or caused any contamination of any property, Time Oil shall notify the City orally, by telephoning the Seattle Engineering Department's 24-hour number, 386-1218. Within 24-hours of the oral notice, Time Oil shall follow-up with a written notice, addressed to the Director of Seattle Engineering Department, 910

Municipal Building, 600 Fourth Avenue, Seattle, Washington 98104-1879. Both the oral and written notices shall specify, to the extent possible: the Hazardous Substances involved; the amount of Hazardous Substances involved; the location of the release or contamination; the time and duration of the release or contamination; the steps being taken to stop, limit, or remediate the release or contamination; other government agencies contacted about the release or contamination; and the name and job title of the person completing the notice. Compliance with this provision shall not excuse Time Oil from any other notification requirements under federal, state or local law.

7. Notification of Violation. Time Oil shall notify the City in writing within 72-hours after Time Oil, a) receives any notice of or becomes aware of any actual or alleged violation, with respect to the pipeline system, of any federal, state or local law pertaining to Hazardous Substances, or b) becomes aware of any lien or action with respect to any of the foregoing. Time Oil will, at its sole expense, act, in a manner satisfactory to the City, to comply with all laws, and with all orders, decrees or judgments of governmental authorities or courts that apply to the use, collection, storage, treatment, control removal or cleanup of Hazardous Substances emanating from or related to the pipeline system. Time Oil shall immediately comply with any request or order of the City relative to the operation of the pipeline, including suspension or closure of the pipeline, that the City determines necessary to protect the public health, safety, and welfare. Time Oil shall further pay all cleanup, administrative and enforcement costs of governmental agencies, if obligated to do so by contract or law. The City may, but is not obliged to, take such actions and incur such costs and expenses to effect such compliance as it deems advisable; and whether or not Time Oil has actual knowledge of the existence of Hazardous Substances, in, on, or under the Premises or any adjacent property as of the date hereof, Time Oil shall reimburse the City of demand for the full amount of all costs and expenses the City incurred in connection with such compliance activities.

8. Right-of-Entry. The City is hereby authorized, but not required to enter the premises of Time Oil Company, at reasonable times, to inspect the premises to ascertain the accuracy of all representations and warranties, and compliance with all covenants, in this agreement.

9. Survival. The provisions of this agreement shall be in addition to any and all other obligations and liabilities Time Oil may have to the City at common law, by statute, or by contract, and shall survive the City's permit to Time Oil to use the pipeline system, and any renewals or extensions thereof. Moreover, the provisions of this agreement shall bind Time Oil's assignees or successors in interest.

10. Attorneys' Fees. In the event of litigation or arbitration between the parties regarding this agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs against the other party.

11. Entire Agreement. This document represents the entire agreement of the parties relating to hazardous waste considerations of the pipeline system. There are no other verbal or other agreements that modify or affect this agreement. All modifications or waivers of any condition of this agreement shall be in a writing signed by the appropriate parties.

Signed this 21st day of June, 1991.

TIME OIL COMPANY
By: Terrill L. Henderson

Terrill L. Henderson
~~President or Vice President~~

Signed this 1st day of JULY, 1991.

CITY OF SEATTLE
By: [Signature]

Its DIRECTOR
SEATTLE ENGINEERING DEPARTMENT