

(Drafted by & when filed return to: Magellan Pipeline Company, L.P., P. O. Box 22186, OTC-8 (S. Guthrie), Tulsa, Oklahoma 74121-2186, 918/574-7350.)

ENCROACHMENT AGREEMENT

This Encroachment Agreement ("**Agreement**") is made and entered into by and between Magellan Pipeline Company, L.P., a Delaware limited partnership, whose address is P.O. Box 22186, Tulsa, Oklahoma, 74121-2186, (hereinafter called "**Magellan**"), and City of Shakopee, whose address is 485 Gorman Street, Shakopee, Minnesota 55379, its successors, assigns and grantees (hereinafter called "**City**") and Shakopee Public Utilities Commission, a Minnesota municipal utility, whose mailing address is 255 Sarazin Street, Shakopee, Minnesota 55379, its successors, assigns and grantees (hereinafter called "**SPUC**").

WITNESSETH:

WHEREAS, **City** represents and warrants that **City** owns the right to construct an electrical conduit, sanitary sewer, waterline and street reconstruction across/on all the certain land (hereinafter "**Subject Land**"), described on attached **Exhibit "A"** and made a part hereof; and

WHEREAS, **Magellan** is the owner of certain pipelines, pipeline facilities and appurtenances (hereinafter referred to as the "**Magellan Facilities**") and easement rights therefor, (hereinafter referred to as the "**Easement**", whether or not rights were granted in one or more documents or acquired by operation of law). For purposes of this **Agreement** only, "**Magellan's Easement Tract**" shall be considered to be any area within Fifty (50) feet of any **Magellan Facilities**, unless a different right of way tract width is specifically described in the **Easement**, in which case such specified width shall define **Magellan's Easement Tract**. The land referenced in the **Easement** includes a portion of the Southeast Quarter (SE $\frac{1}{4}$) of Section 12, Township 115 North, Range 22 West, Scott County, Minnesota, pursuant to those certain instruments recorded in the records of said county and state and described as follows:

- 1) A Right of Way Agreement executed by Homer I. Munson and Helen B. Munson, husband and wife, on the 19th day of June, 1954, in favor of Great Lakes Pipe Line Company (**Magellan's** predecessor in title), its successors and assigns, and filed for record in the office of the Register of Deeds of Scott County, Minnesota on the 24th day of July, 1954, in Book 130 of Deeds, Page 439; and,
- 2) A Right of Way Agreement executed by Thomas J. Horarka and Florence E. Horarka, husband and wife, and Anna Stemmer, widow, in favor of Great Lakes Pipe Line Company (**Magellan's** predecessor in title), its successors and assigns, on the 17th day of June, 1954, and filed for record in the office of the Register of Deeds of Scott County, Minnesota on the 24th day of July, 1954, in Book 130 of Deeds, Page 437; and,
- 3) Partial Release of Right of Way dated December 31, 1973 and recorded in the office of Register of Deeds, Scott County, MN as Document # 139252 and Book 130, Page 439, from Williams Brothers Pipe Line Company (**Magellan's** predecessor in title) to Vera M. Stewart, Allen V. Stewart and Farm and City Associates, Inc., releasing a portion of the rights granted in the Right of Way Agreement and Amendments listed above; and
- 4) Partial Release of Right of Way dated March 11, 1958 and recorded in the office of Register of Deeds, Scott County, MN, in Book N Page 207, from Great Lakes Pipe Line (**Magellan's** predecessor in title) to Ed and Barbara Drury, husband and wife and joint tenants, releasing a portion of the rights granted in the Right of Way Agreement and Amendments listed above; and

WHEREAS, for the purposes of this **Agreement** an "**Encroachment**" is defined as any use of the land within **Magellan's Easement Tract** by someone other than **Magellan** which could interfere with **Magellan's Easement** rights or could create safety concerns related to **Magellan's Facilities** as more fully described in **Magellan's General Encroachment Requirements** as set forth in attached **Exhibit "B"** and incorporated herein by reference. **Magellan does not permit or authorize any Encroachments unless specifically approved in a written agreement identifying all "Approved Encroachments";** and

WHEREAS, **City** desires to obtain **Magellan's** consent for one or more **Encroachments** on **Magellan's Easement Tract**;

NOW, THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Magellan**, subject to the following terms and provisions, hereby consents to the **Encroachments** listed below as "**Approved Encroachments**" described and limited pursuant to the following specified plan drawings, which were furnished by **City** to **Magellan** ("**Plan Drawings**") and attached hereto as **Exhibit "C"**:

- 1) Shakopee City Project No. 21-001, WSB Project No. 016155-000, Utility Extension-Maras Street, 13th Avenue East, & Hansen Avenue, Project Plan Sheets 20, 27, 30, 33, 34, 48, 51, 52, 61, dated 1/18/2022 and revised 3/02/2022.

TERMS AND PROVISIONS

1. **Approved Encroachments.** The **Approved Encroachments**, as further identified, described and limited in the **Plan Drawings** as set forth in **Exhibit “C”** are limited to the following:

- a) **2-Inch Electrical Conduit (Maras Street).**

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The **Project** proposes to construct a 2-Inch electrical conduit that will cross the **Magellan Facilities and Magellan Easement**. The electrical conduit will be installed by open trench and will cross over the **Magellan Facility** with 2 feet of clearance.

Magellan finds the proposed 2-Inch electrical conduit acceptable on the condition it maintains a minimum separation of 2 feet and a **Magellan Representative** is onsite during construction activities to verify the required separation distance is achieved.

- b) **Maras Street Reconstruction.**

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The **Project** proposes to reconstruct Maras Street as a 36- Foot- wide (face of curb to face of curb) street with curb and gutter crossing the **Magellan Facilities and Magellan Easement**. The pavement section consists of 5-inch asphalt concrete; over 10- inch aggregate base; over prepared subgrade. The curb and gutter will have 4- inch perforated drain pipe installed as needed to facilitate drainage. There will also be a 5-foot wide concrete sidewalk on the west side of the road. The sidewalk section will generally consist of 4-inches concrete; over 4-inches aggregate base; over approved subgrade. The sidewalk will be 8-inches thick where the new commercial driveway is installed in the **Magellan Easement** on the west side of the road.

An existing tree will be removed from the **Magellan Easement** in the vicinity of the new driveway. A **Magellan Representative** shall be onsite during the tree removal to ensure that the pipeline is not impacted or affected.

The existing depth of cover over the **Magellan Facilities** is approximately 3.7 feet, which will remain approximately the same after roadway reconstruction.

Any roadway signs shall be installed at least 5 feet away from the **Magellan Facilities**.

While the existing and proposed cover over the **Magellan Facilities** is less than the required 4 feet, because it is an existing road **Magellan** finds the proposed street reconstruction acceptable on the condition that the existing cover is not reduced and a **Magellan Representative** is onsite during construction activities to verify the existing depth of cover is maintained.

c) 8-Inch Sanitary Sewer (Maras Street).

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Maras Street – Sanitary Sewer & Watermain Plans	SHEET A

The **Project** proposes to construct a 8-Inch SDR 26 PVC sanitary sewer that will cross under the **Magellan Facilities** with approximately 20 feet of wall-to-wall separation.

Magellan finds the proposed 8-Inch sanitary sewer is acceptable on the condition it maintains a minimum wall-to-wall separation of 2 feet and a **Magellan Representative** is onsite during construction activities. The proposed double trench design as shown on **Sheet A** is approved subject to the following conditions:

1. If 20 feet of pipe span is exposed, additional support mitigations may be required by **Magellan**. The on-site **Magellan Representative** should be consulted.
2. If a girth weld is exposed, it will need to be supported within 5'. The on-site **Magellan Representative** should be consulted.
3. The **Magellan Facilities** should be exposed for as short of time as possible. The day before exposing the pipeline, the Contractor should work up to the edge of the excavation location that will expose the **Magellan Facilities** so the next day they will have a full day to complete the sanitary sewer installation and backfill the **Magellan Facilities**.
4. The **Magellan Representative** will be notified and invited to attend the project preconstruction meetings.

d) 12-Inch Waterline (Maras Street).

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The **SPUC** proposes to construct a 12-Inch CL 52 DIP watermain that will cross under the **Magellan Facilities** with approximately 4 feet of wall-to-wall separation. The 12-Inch

watermain will be zinc coated and will have an enhanced V-Bio encasement throughout the **Magellan Easement** and extending 20 feet each side of the **Magellan Easement**

Magellan finds the proposed 12- Inch watermain and zinc coating acceptable on the condition it maintains a minimum wall-to-wall separation of 2 feet and a **Magellan Representative** is onsite during construction activities.

e) 13th Avenue East Street Reconstruction.

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The **Project** proposes to reconstruct 13th Avenue East as a 44-Foot wide (face of curb to face of curb) street with curb and gutter crossing the **Magellan Facilities and Easement** at the intersection of Stagecoach Road. The pavement section consists of 5-inch asphalt concrete; over 10-inch aggregate base; over prepared subgrade. The existing curb and gutter will be utilized on the north side of the street and the curb and gutter on the south side will have 4-inch perforated drain pipe installed as needed to facilitate drainage.

The existing depth of cover over the **Magellan Facility** is not indicated in the plans; however, based on the plan profile sheet, the existing depth of cover will be maintained.

Any roadway signs shall be installed at least 5 feet away from the **Magellan Facilities**.

Magellan finds the proposed street reconstruction acceptable on the condition that the existing cover is not reduced and a **Magellan Representative** is onsite during construction activities to verify the existing depth of cover is maintained.

f) Heavy Equipment Crossing Requirements:

Although exact construction equipment is not known at this time, pipeline stress calculations have been performed based on an assumed maximum loaded vehicle weight of 80,000 lbs. The stress calculations further assumed that the gross loaded vehicle weight was evenly distributed between two (2) axles resulting in a maximum wheel load of 20,000 lbs. Based upon these assumptions, equipment meeting the aforesaid criteria may safely cross the **Magellan Facilities**; however, a **Magellan field representative will need to be present to verify the pipeline depth of cover prior to allowing equipment to cross. A minimum cover of at least 3.5 feet shall be maintained for all equipment crossings over the Magellan Facilities.**

Tracked equipment and equipment exceeding the maximum wheel load specified above will not be allowed to cross the Magellan Facilities without further evaluation of the pipeline stresses. If equipment exceeding the maximum wheel load specified above will need to cross the pipeline, detailed information will need to be received in order to perform pipe stress calculations. The following information will need to be received to perform a more thorough analysis of wheeled vehicles: loaded vehicle weight, number of

axles on the front and rear, and weight distribution between the front and rear axles. For equipment on tracks, the following information is needed: loaded vehicle weight, length of track in contact with the ground, and track width.

g) **Maximum Unsupported Span Length:**

Certain precautions will need to be implemented to ensure the integrity of the **Magellan Facilities**. **Magellan's** standard practice is to conduct non-destructive evaluations and/or weld on reinforcing sleeves on all girth welds that will be fully exposed when the native supporting soil under the pipeline will be removed for a length greater than or equal to the respective pipeline's safe maximum allowable unsupported span length. **The maximum unsupported active pipeline span is 40-feet.**

If digging within 2 feet of the **Magellan Facilities** hand digging is required as cited in Provision #4 herein.

The **City** and its contractor will need to pay careful attention to the unsupported pipe length of the **Magellan Facilities**. If more than the safe maximum unsupported span length for the pipeline has been exposed, **Magellan** will require non-destructive evaluations of the girth welds and will make repairs as necessary.

h) **Girth Weld Precautions:**

All exposed girth welds shall be supported (supports to be placed on either side of the girth weld not to exceed 5 feet) via sandbags or equivalent settlement resistant supports prior to backfilling.

2. **No Other Encroachments.** Except for the **Approved Encroachments** as defined in the **Agreement**, **City** shall not create, erect, place or construct any other **Encroachment** on, above or below the surface of the ground on **Magellan's Easement Tract**, or change the grade or elevation of the ground surface within **Magellan's Easement Tract** or at any time plant or allow any trees thereon or cause or permit any of these to be done by others, without the express prior written permission of **Magellan**.
3. **Magellan On-Site Representative.** Exclusive of Saturday, Sunday, and legal holidays, **City** shall notify **Magellan** a minimum of 48 hours in advance of any **Encroachment** activities on **Magellan's Easement Tract** so that **Magellan** may arrange to have a representative present. At **Magellan's** option, **Magellan's** representative may be on site during all **Encroachment** activities over or within ten feet (10') of the **Magellan Facilities** to confirm that no damage occurs to the **Magellan Facilities**. The presence of **Magellan's** representative or any verbal instructions given by such representative shall not relieve **City** of any liability under the **Easement** or this **Agreement**, and will not change the terms of the **Easement** or this **Agreement**, which may only be changed by written agreement by authorized representatives of **City** and **Magellan**. If pipeline, coating, cathodic protection and/or any other repair of **Magellan Facilities** is required by **Magellan** or if the safety of the **Magellan Facilities** is

jeopardized, in **Magellan's** sole judgment, **City** shall stop all construction activities on **Magellan's Easement Tract** until said repairs are completed or until any unsafe construction practices are resolved to the satisfaction of **Magellan's** on-site representative. Written notification of such construction activity shall be made to **MAGELLAN PIPELINE CITY, Coordinator of Operations & Maintenance, Heath Biegler, Coordinator of Operations & Maintenance, 2451 W County Road C, Saint Paul, MN 55113, Cell: (612) 723-0107**, or such other representative of **Magellan**, which **Magellan** may from time to time designate.

4. **Protection of Magellan Facilities.** **City** shall protect the **Magellan Facilities** if excavating and backfilling become necessary within **Magellan's Easement Tract**. If excavating within 2 feet of any **Magellan** pipeline or when otherwise deemed necessary by **Magellan's** on-site representative, **City** shall perform any necessary digging or excavation operations by hand digging. **City** shall reimburse **Magellan** for all costs of having a representative of **Magellan** on-site during construction activities related to the **Approved Encroachments**. **City** agrees that if it is determined or if an event arises requiring alternate current mitigation measures, it will be at **City's** expense.
5. **Breach.** If either **City** or **Magellan** breaches this **Agreement** and the non-breaching party commences litigation to enforce any provisions of this **Agreement**, the reasonable cost of attorneys' fees and expenses will be payable to the non-breaching party by the breaching party upon demand, for all claims upon which the non-breaching party prevails.
6. **Insurance.** **City** shall procure or cause its contractors and subcontractors to procure and maintain in force throughout the entire term of this **Agreement** insurance coverage described below with insurance companies acceptable to **Magellan** for work performed related to the construction of the **Approved Encroachments**. All costs and deductible amounts will be for the sole account of the **City** or its contractors and subcontractors. Prior to commencing any activities related to the construction of the **Approved Encroachments**, the **City** must deliver to **Magellan** certificate(s) of insurance naming **Magellan Midstream Partners, L.P.** and its **Affiliates** as an additional insured. Non-renewal or cancellation of policies must be effective only after **Magellan** receives written notice from the insurance company thirty (30) days in advance of such non-renewal or cancellation. The limits set forth below are minimum limits and will not be construed to limit the **City's** liability:
 - (a) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee and Employer's Liability insurance with limits of \$1,000,000.
 - (b) Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$2,000,000 each occurrence and project specific annual aggregates of \$2,000,000. Coverage must include premises/operations, independent contractors, blanket contractual liability, and products/completed operations coverage, broad form property damage, personal injury, and sudden and accidental pollution; such

coverage must be maintained for two (2) years following completion of work activities related to the construction of the **Approved Encroachments**. **Magellan**, its affiliated companies, and its and their respective directors, officers, partners, members, shareholders, employees, agents and contractors shall be included as additional insureds.

The Sudden and Accidental Pollution can be a separate, stand-alone policy, but must still meet the \$2,000,000 minimum limit requirement. If the coverage is written on a claims made policy form, the coverage must be maintained for two (2) years following completion of the work activities related to the **Approved Encroachments**.

- (c) In each of the above policies, the **City** or its contractors and subcontractors agree to waive and will require its insurers to waive any rights of subrogation or recovery either may have against **Magellan** and its affiliated companies.
 - (d) Regardless of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the **City** or its contractors and subcontractors, or the failure of any such insurance company to pay claims that occur, such requirements, insolvency, bankruptcy or failure will not be held to waive any of the provisions hereof.
 - (e) In the event of a loss or claim arising out of or in connection with the construction of the **Approved Encroachments**, the **City** agrees, upon request of **Magellan**, to submit a certified copy of its insurance policies for inspection by **Magellan**.
 - (f) The **City** shall require all of its contractors and subcontractors for work related to the construction of the **Approved Encroachments** to provide adequate insurance coverage, all to be endorsed with the Waiver of Subrogation wording referenced in Section (c) above; any deficiency in the coverage, policy limits, or endorsements of said contractors and subcontractors, shall be the sole responsibility of the **City**.
7. **Indemnification.** **City** will indemnify, save, and hold harmless **Magellan**, its affiliated companies, directors, officers, partners, employees, agents and contractors from any and all environmental and non-environmental liabilities, losses, costs, damages, expenses, fees (including reasonable attorneys' fees), fines, penalties, claims, demands, causes of action, proceedings (including administrative proceedings), judgments, decrees and orders resulting from **City's** breach of this **Agreement** or caused by or as a result of the construction, use, maintenance, existence or removal of the **Approved Encroachments** and **Other Encroachments** located on the **Magellan Easement Tract**. The presence of **Magellan's** representative or any instructions given by such representative will not relieve **City** of any liability under this **Agreement**, except to the extent that such liability results from **Magellan's** or its representative's gross negligence or willful misconduct.

8. **Damage or Loss.** City covenants that:

- (a) If at any time, in the sole opinion of **Magellan**, it becomes necessary for **Magellan**, to cross, occupy, utilize, move or remove all or portions of the **Approved Encroachments** placed on **Magellan's Easement Tract** or constructed pursuant to this **Agreement**, for any purpose, including but not limited to surveying, constructing new facilities, maintaining, inspecting, operating, protecting, repairing, replacing, removing or changing the size of a pipeline(s) and appurtenances on **Magellan's Easement Tract** and such activities by **Magellan** result in damage to or destruction of the **Approved Encroachments**, then repair, replacement or restoration of such **Approved Encroachments** shall be at the sole cost and responsibility of **City**.
- (b) If at any time, any encroachments belonging to or permitted by **City** which are not authorized by this or another written agreement ("**Other Encroachments**") are found to be on **Magellan's Easement Tract**, **Magellan** may at any time request **City** to remove such **Other Encroachments**, and if **City** refuses or fails to do so within a reasonable time, **Magellan** may remove them from **Magellan's Easement Tract** to a location off of **Magellan's Easement Tract** at **City's** expense, unless they are allowed to remain by a written agreement between **Magellan** and **City**. Should such removal activities by **Magellan** result in damage to or destruction of the **Other Encroachments**, then repair, replacement or restoration of such **Other Encroachments** shall be at the sole cost and responsibility of **City**, and such **Other Encroachments** may not be repaired, replaced or rebuilt on **Magellan's Easement Tract** without a written agreement between **Magellan** and **City**.
- (c) **City** agrees that if it is determined or if an event arises requiring alternate current mitigation measures, it will be at **City's** expense.
- (d) If during the exercise of the rights granted by the **Easement** or by this **Agreement**, the **Approved Encroachments** and **Other Encroachments**, if any, are damaged, destroyed or suffer loss of value, **City** agrees to release **Magellan**, its affiliates, and its and their respective directors, officers, members, partners, shareholders, employees, agents and contractors from and against any and all liabilities, and damages or losses which may arise as a result of the damage to or loss of use of the **Approved Encroachments** and **Other Encroachments**, if any, caused by **Magellan**, its employees, agents and contractors.

9. **Magellan Rights.** **Magellan** and **City** and **SPUC** agree that the existence of the **Approved Encroachments** or this **Agreement** does not constitute a waiver of **Magellan's** rights under the **Easement**. **Magellan** hereby reserves and **City** and **SPUC** hereby grant and confirm all of **Magellan's** rights, title and estate as set forth in the **Easement**.

10. The terms and conditions of this **Agreement** will constitute covenants running with the land and be binding upon and inure to the benefit of the parties hereto, their successors, assigns and

grantees. This **Agreement** may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. This **Agreement** shall become effective upon its complete execution by the parties hereto.

11. The parties hereto acknowledge and agree that **SPUC's** role and responsibilities under this **Agreement** are limited to the watermain described in Section 1(d) as an **Approved Encroachment** (the "Watermain"). After installation of the Watermain as an **Approved Encroachment**, **SPUC** shall be the party that owns, operates, maintains, and repairs the Watermain and **SPUC** shall then be the party responsible for the obligations under this **Agreement** with respect to the Watermain. **SPUC** shall have no obligations or responsibilities with respect to any other **Approved Encroachments**.

IN WITNESS WHEREOF, the parties have set their hands on the dates expressed below.

MAGELLAN PIPELINE COMPANY, L.P.

By Its General Partner, Magellan Pipeline GP, LLC

By Its Undersigned Authorized Signatory:

By: _____

Name: _____

Title: Authorized Signatory _____

Date: _____, 2022

CITY OF SHAKOPEE, MN

By: _____

Name: _____

Title: _____

Date: _____, 2022

By: _____

Name: _____

Title: _____

Date: _____, 2022

SHAKOPEE PUBLIC UTILITIES COMMISSION
A Minnesota municipal utility

By: _____

Name: _____

Title: _____

Date: _____, 2022

STATE OF OKLAHOMA)
) SS
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this _____ day of _____, 2022 personally appeared _____, to me personally known to be the Authorized Signatory for **MAGELLAN PIPELINE GP, LLC**, a Delaware limited liability company, who being duly sworn did acknowledge to me that she executed the foregoing instrument on behalf of said limited liability company as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Notary Public

My commission expires:

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Before me, the undersigned, a Notary Public in and for the County aforesaid, on this _____ day of _____, 2022, personally appeared _____ to me known personally to be the _____ of SHAKOPEE PUBLIC UTILITIES COMMISSION, a Minnesota municipal utility, who being duly sworn did acknowledge to me that he/she executed the foregoing instrument on behalf of said entity as the free and voluntary act and deed of said entity, for the uses, purposes and consideration therein set forth.

Notary Public

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