

SHELL DEER PARK REFINING COMPANY

with

CITY OF DEER PARK

DONATION AGREEMENT

DONATION AGREEMENT

THIS AGREEMENT IS MADE BY AND BETWEEN

Shell Deer Park Refining Company, a company formed under the laws of the United States having its main offices at 5900 TX-225, Deer Park, TX 77536 (hereinafter referred to as "SHELL")

AND

City of Deer Park, a company formed under the laws of the United States having its main offices at 710 E. San Augustine, Deer Park, TX 77536 (hereinafter referred to as the "RECIPIENT")

WHEREAS

SHELL wishes to donate to the RECIPIENT seven framed water colour paintings by artist Martha Hayes depicting the City and Shell's history (hereinafter referred to as the "GOODS"), under the terms and conditions of this CONTRACT.

AND WHEREAS

The RECIPIENT is willing to accept such donation on the terms and conditions set out or incorporated herein;

THEREFORE NOW THE PARTIES HEREBY DECLARE AND AGREE AS FOLLOWS:

ARTICLE 1 – DEFINITIONS

The following definitions shall apply to this CONTRACT except where the context otherwise requires.

1.1 AFFILIATE (in respect of SHELL) means

- (a) (i) Royal Dutch Shell plc and (ii) any company (other than SHELL), which is from time to time directly or indirectly controlled by Royal Dutch Shell plc

For this purpose:-

- (1) a company is directly controlled by another company or companies if that latter company owns or those latter companies together own fifty percent (50%) or more of the voting rights attached to the ownership interest of the first mentioned company; and
- (2) a company is indirectly controlled by another company or companies if a series of companies can be specified, beginning with that latter company or companies and ending with the first mentioned company, so related that each company of the series (except the latter company or companies) is directly controlled by one or more of the companies earlier in the series
- (b) any company which is managed or operated by a company as defined in (a) above and/or has a service agreement with SHELL and/or another company as defined under (a) above, pursuant to which it pays on a cost sharing or recovery basis a proportion of certain of the costs of SHELL or such other company.

1.2 CONFIDENTIAL INFORMATION shall mean all knowledge, data or information of whatever nature (including without limitation technical information and/or know-how) at any time disclosed to or acquired by the RECIPIENT directly or indirectly from SHELL or any AFFILIATES of SHELL in writing, in drawings, in computer programs or in any other way.

1.3 CONTRACT shall mean this contract for the donation of GOODS and any Appendices thereto.

- 1.4 GOODS shall mean the goods and/or equipment donated by SHELL to the RECIPIENT, as further described in **Appendix 1**.
- 1.5 INTELLECTUAL PROPERTY RIGHTS shall mean all patents, copyright, database rights, design rights, know-how, trade marks and service marks (all whether registered or not and including all applications for any of them and all equivalent rights in all parts of the world) and all rights of confidence, whenever and however arising for their full term and including all renewals and extensions.
- 1.6 PERSONNEL means all individuals, employees, officers, directors, servants, consultants, agents or sub-contractors acting for or on behalf of the relevant party or otherwise under the relevant party's direction and control with respect to the performance of the CONTRACT. The term PERSONNEL will consist of SHELL PERSONNEL or RECIPIENT PERSONNEL where the context requires.
- 1.7 REMOVAL DATE shall mean the date, specified in **Appendix 2**, for removal of the GOODS from the REMOVAL SITE by RECIPIENT.
- 1.8 REMOVAL SITE shall be the address for the collection and removal of the GOODS by the RECIPIENT, as specified in **Appendix 2**.

ARTICLE 2 – SCOPE OF CONTRACT

- 2.1 This CONTRACT sets forth the terms and conditions for SHELL donating to the RECIPIENT the GOODS described in **Appendix 1**. This transaction does not constitute a sale of the GOODS. No monetary consideration shall be due to SHELL under the terms of this CONTRACT.
- 2.2 Unless otherwise specifically stated in the CONTRACT, SHELL shall have no obligation or responsibility to provide any support or training with respect to the GOODS.
- 2.3 The RECIPIENT shall not assign the CONTRACT or any part of it or any benefit or interest in or under it without the prior written consent of SHELL.

ARTICLE 3 – REMOVAL OF THE GOODS

- 3.1 The RECIPIENT shall collect and remove the GOODS from the REMOVAL SITE on the REMOVAL DATE.
- 3.2 The dismantling (if any), collection and removal of the GOODS from the REMOVAL SITE shall be carried out by the RECIPIENT at its own cost, risk, liability and expense in compliance with the provisions of this CONTRACT. Throughout the dismantling (if any), collection and removal of the GOODS, the RECIPIENT shall operate, and shall cause all RECIPIENT PERSONNEL to operate, with the utmost care for the health and safety of RECIPIENT PERSONNEL, SHELL PERSONNEL and third parties, as well as for the environment, and in accordance with SHELL's Health, Safety, Security and Environment Regulations which shall be provided to the RECIPIENT and its PERSONNEL upon arrival at the REMOVAL SITE.
- 3.3 The RECIPIENT shall be responsible for the transport to and assembly/installation of the GOODS at the RECIPIENT's premises and the costs related thereto. The RECIPIENT shall further be responsible for any modification to its premises and devices for installation of the GOODS at its premises and the costs related thereto.
- 3.4 Failure to remove the GOODS by the REMOVAL DATE may, at SHELL's sole option, result in termination of the CONTRACT, at no cost or liability to SHELL. In such case, SHELL will have the right to remove the (remaining) GOODS and dispose of them in any way it sees fit.

ARTICLE 4 – TITLE AND RISK

- 4.1 Title and risk in the GOODS shall pass to the RECIPIENT upon the commencement of the dismantling (if any), collection or removal of the GOODS, whichever is the earliest.

ARTICLE 5 – DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- 5.1 The GOODS are donated to the RECIPIENT on an “as is” basis, and SHELL makes no warranties or representations, either express or implied, including, without limitation, warranties of quality, performance, non-infringement, merchantability or fitness for any particular purpose.
- 5.2 UNDER NO CIRCUMSTANCES WILL SHELL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING AS A RESULT OF OR RELATED TO THIS CONTRACT OR THE DONATION OR USE OF THE GOODS, INCLUDING THE EFFECTS OF ANY RESULTS OR PRODUCTS THAT MAY BE DERIVED BY THE RECIPIENT BY SUCH USE.

ARTICLE 6 – RECIPIENT’S RESPONSIBILITIES AND INDEMNITIES

- 6.1 AS FROM THE MOMENT OF TRANSFER OF TITLE AND RISK IN THE GOODS TO THE RECIPIENT, THE RECIPIENT SHALL SAVE, INDEMNIFY, DEFEND AND HOLD HARMLESS SHELL, SHELL PERSONNEL, AFFILIATES OF SHELL AND PERSONNEL OF SAID AFFILIATES AGAINST ALL CLAIMS, PROCEEDINGS, LIABILITIES, LOSSES, DAMAGES, COSTS (INCLUDING LEGAL COSTS) AND EXPENSES WHATSOEVER AND HOWSOEVER ARISING OUT OF OR RESULTING FROM OR IN CONNECTION WITH THE USE, POSSESSION OR TRANSFER OF THE GOODS BY THE RECIPIENT, WHETHER OR NOT THE NEGLIGENCE OF SHELL AND/OR SHELL PERSONNEL CAUSED OR CONTRIBUTED TO SUCH LOSS OR DAMAGE.

ARTICLE 7 – COMPLIANCE WITH LAWS

- 7.1 The RECIPIENT hereby certifies that in carrying out its obligations under the CONTRACT, it is familiar with and shall comply with all applicable laws, rules and regulations, including regulations governing the export and re-export of goods, technology, software, information and/or services.

- 7.2 Without prejudice to the generality of **Article 7.1**, the RECIPIENT is put on notice that the GOODS and any CONFIDENTIAL INFORMATION disclosed to the RECIPIENT hereunder comprise technology and/or software that may be of United States of America origin and are therefore subject to the U.S. Export Administration Regulations (the “Regulations”) issued by the U.S. Department of Commerce.

The RECIPIENT hereby certifies that neither the GOODS and/or any CONFIDENTIAL INFORMATION, nor the direct product of any technology comprised in the GOODS and/or in the CONFIDENTIAL INFORMATION, is intended to be shipped, either directly or indirectly, to any country, company or person or for any end-use as may be prohibited under the Regulations as they now exist or may be amended.

The RECIPIENT undertakes that the GOODS which are the subject of this CONTRACT shall be exclusively for the RECIPIENT’s own use (or shall be disposed of in and for use only in countries for which no embargoes exist and for which no U.S. export licence is required under the Regulations). In the event of disposal, the RECIPIENT is required to obtain a similar undertaking from the subsequent owner.

- 7.3 The RECIPIENT shall, at its own cost, obtain all licences, permits, temporary permits and authorisations required by any applicable laws, rules and regulations for the performance of the CONTRACT, including any recycling or take-back programs applicable to the GOODS.
- 7.4 The RECIPIENT shall be solely responsible and liable for the payment of any and all international and local sales, use, value-added and excise taxes, and any other taxes or duties of any nature whatsoever assessed upon or with respect to the GOODS donated under this CONTRACT or otherwise arising from this CONTRACT.
- 7.5 The RECIPIENT shall defend, indemnify and hold SHELL harmless for all costs and expenses resulting from its failure to comply with its obligations under this **Article 7**.

ARTICLE 8 – CONFIDENTIAL INFORMATION

- 8.1 The RECIPIENT acknowledges that it may receive CONFIDENTIAL INFORMATION in connection with the donation of the GOODS. The RECIPIENT shall not disclose any CONFIDENTIAL INFORMATION to any third party and shall not use any CONFIDENTIAL INFORMATION except for the installation and/or operation of the GOODS for the RECIPIENT's normal business practices.
- 8.2 The RECIPIENT acknowledges and agrees that any CONFIDENTIAL INFORMATION disclosed to the RECIPIENT shall be disclosed on an "as is" basis, and neither SHELL nor any AFFILIATE of SHELL makes any representation or gives any warranty as to the accuracy of CONFIDENTIAL INFORMATION or as to its satisfactory quality, fitness or suitability for the RECIPIENT's purpose. The RECIPIENT receives and uses CONFIDENTIAL INFORMATION at its own risk.

ARTICLE 9 – INTELLECTUAL PROPERTY

- 9.1 SHELL does not hereby transfer any INTELLECTUAL PROPERTY RIGHTS relating to the GOODS or the use thereof and does not hereby transfer any rights in the CONFIDENTIAL INFORMATION and/or the use thereof save as set out in **Article 8** above.
- 9.2 The RECIPIENT shall save, indemnify, defend and hold harmless SHELL and any AFFILIATES of SHELL from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any INTELLECTUAL PROPERTY RIGHTS, arising out of or in connection with the use, possession or transfer of the GOODS and/or CONFIDENTIAL INFORMATION by the RECIPIENT.

ARTICLE 10 – INVALIDITY AND SEVERABILITY

- 10.1 If any provision of this CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this CONTRACT and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

ARTICLE 11 – ENTIRE AGREEMENT

- 11.1 The CONTRACT constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements related to the CONTRACT, either written or oral. No amendments to the CONTRACT shall be effective unless evidenced in writing and signed by the parties to the CONTRACT.

ARTICLE 12 – APPLICABLE LAW AND JURISDICTION

- 12.1 The substantive laws of the State of Texas, without regard to conflicts of laws principles that would require application of any other law, shall govern all matters arising out of, or relating to, this CONTRACT.
- 12.2 2 Any dispute arising out of or relating to this Agreement, including without limitation its validity, interpretation, formation, construction, breach, performance, termination and enforcement ("Dispute") shall be resolved in accordance with this Clause, which provides the sole and exclusive procedures for resolution, except if either or both parties are sued by a third party (not bound by this Agreement) in a court proceeding, each party can assert any indemnity claim or any other claim against the other arising out of or relating to this Agreement in the court proceeding.
- 12.3 The parties shall endeavor to resolve any Dispute by mediation under the International Institute for Conflict Prevention and Resolution ("CPR") Mediation Procedure in effect on the date of this Agreement ("CPR Mediation Procedure"), except as modified herein, by one party serving a written request on the other. The mediation shall be held in Houston, Texas. If the Dispute is not resolved within 60 days of the initial written request for mediation, or sooner if the mediation

is terminated under the CPR Mediation Procedure before such time, there shall be no further obligation to mediate.

- 12.4 Any Dispute that remains unresolved 60 days after a written request for mediation, or sooner if the mediation is terminated under the CPR Mediation Procedure before such time, shall be finally resolved by arbitration under the CPR Rules for Non-Administered Arbitration in effect on the date of this Agreement ("Rules"), which are incorporated except as modified herein. Arbitration shall be commenced within two years of the date of the underlying activities giving rise to the dispute except that this period of limitations shall be tolled during the mediation phase specified above. The parties hereby waive their right to arbitrate or contest in any forum disputes arising outside this two-year period, notwithstanding any longer periods generally available under any otherwise applicable statute, common law or other authority.

If no party has demanded damages greater than U.S. \$5.0 million, and no party has demanded non-monetary relief, there shall be one arbitrator chosen in accordance with Rule 6.4 of the Rules. Otherwise, there shall be three arbitrators, of whom each party shall select one arbitrator and thereafter those two arbitrators shall together select the third arbitrator. If the party-appointed arbitrators fail to agree on the third arbitrator within 30 days of the selection of the last party-appointed arbitrator, the third arbitrator shall be appointed in accordance with the Rules. Hereinafter, "arbitrator(s)" will be referred to as "Tribunal."

Discovery shall be permitted only to the extent, if any, expressly authorized by the Tribunal upon a showing of substantial need by the party seeking discovery. In resolving any discovery dispute, the Tribunal shall require a requesting party to justify the time and expense that its request may involve, and may condition granting a request on payment of part or all of the cost by the party seeking the information. The parties agree that the decisions of the Tribunal with respect to discovery are final and binding and waive any right to later challenge an arbitral award on that basis under the Federal Arbitration Act or other applicable law.

The place of arbitration shall be Houston, Texas. The Tribunal shall be bound by the Governing Law Clause 12.1. There shall be no right or authority for any claims to be arbitrated on a class action basis. The Tribunal shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability or formation of Clause 12.4, including but not limited to any claim that all or any part of the Clause is void or voidable. Hearings shall be held on consecutive days without interruption, absent unusual circumstances. The Tribunal shall endeavor to issue an award within eight (8) months of the appointment of the last arbitrator, but failure to meet that timetable shall not affect the validity of the award. Judgment upon the award rendered by the Tribunal may be entered by any court having jurisdiction.

IN WITNESS WHEREOF

The parties have caused this CONTRACT to be signed in duplicate original by duly authorised representatives and on the dates indicated below.

For and on behalf of the City of Deer Park

.....(Date)

Signature:

Name (print):

Title:

For and on behalf of Shell Deer Park Refining Company

.....(Date)

Signature:

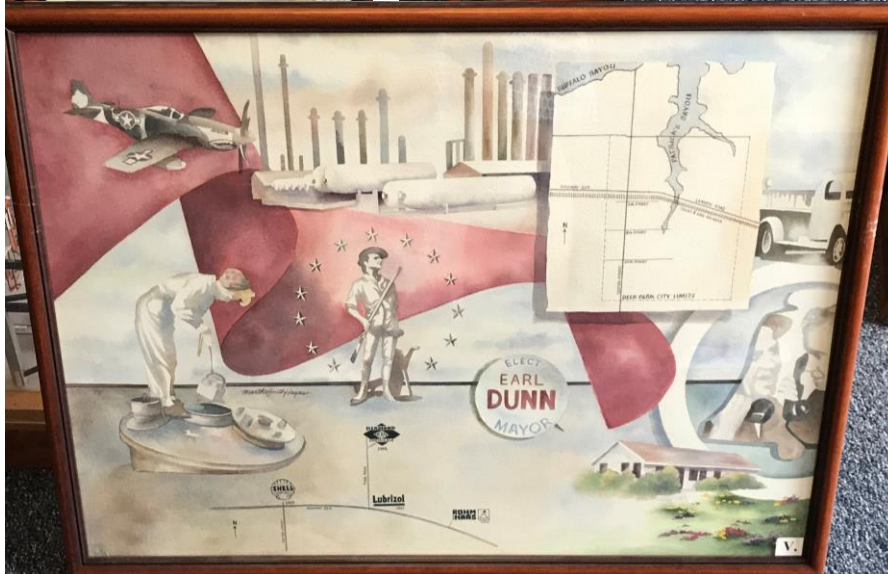
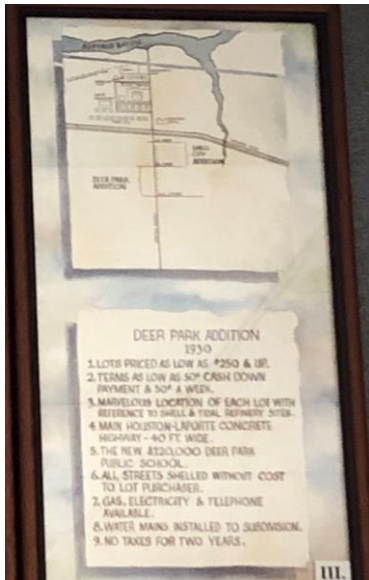
Name (print):

Title:

APPENDIX 1

DESCRIPTION OF THE GOODS





APPENDIX 2

COLLECTION AND REMOVAL OF THE GOODS

1. The REMOVAL DATE shall be the week of May 21, 2019
2. The REMOVAL SITE shall be City of Deer Park, City Hall