

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: AIRPORT
AGENDA DATE: January 9, 2007
CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E. – 780-4724
DISTRICT(S) AFFECTED: 03

SUBJECT:

Authorize the City Manager to sign an Easement Agreement by and between the City of El Paso as Grantor and SFPP, L.P. (a Kinder Morgan subsidiary) as Grantee, and such Easement Agreement shall be for a period of fifteen (15) years.

BACKGROUND / DISCUSSION:

SFPP, L.P. currently has two (2) active liquid petroleum products pipelines located in an easement across portions of the Airport. SFPP desires to reestablish and update those rights, and also seeks to increase the easement to construct, operate and maintain up to two (2) additional pipelines throughout certain areas of Airport property.

The original easement was granted to Southern Pacific Pipelines Inc. in 1955 by the Secretary of the Army. Subsequently, the City of El Paso took title to the land, which was subject to the easement, and Southern Pacific Pipeline (through acquisition and assignment) later became SFPP, L.P. The proposed easement has a fifteen-year term, with annual rental fees of \$0.12/Sq Ft in Area-1 consisting of 271,014 Sq Ft, and \$0.20/Sq Ft in Area-2 consisting of 365,111 Sq Ft providing a total of \$105,543.88 in annual revenue. There are also CPI rental fee adjustments scheduled every fifth year. The proposed easement also permits a Temporary Construction Easement for use in the first year, which will produce additional monthly revenues of \$5,057.31 in Area-1 and \$11,005.41 in Area-2, when in use by SFPP, L.P. The pipeline traverses through EPIA property, and will continue through Ft. Bliss to a petroleum tank farm in Northeast El Paso.

PRIOR COUNCIL ACTION:

Similar easements for other pipelines (e.g. Chevron, El Paso Natural Gas, El Paso Water Utilities) have been approved.

AMOUNT AND SOURCE OF FUNDING:

N.A., this is a Revenue Easement.

BOARD / COMMISSION ACTION:

N.A.

COUNCIL ACTION REQUIRED: City Council did not delegate the authority to sign airport leases, concession agreements or operating agreements.

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

LEGAL: (if required) Raymond L. Telles. **FINANCE:** (if required) _____
Raymond L. Telles, Asst. City Attorney

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation _____
(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:** _____

06 DEC 29 AM 10:23
CITY CLERK DEPT.

RESOLUTION

WHEREAS, SFPP, L.P. (Grantee) currently operates two (2) liquid petroleum products pipelines through portions of the El Paso International Airport (Airport), which is owned and operated by the City of El Paso (Grantor);

WHEREAS, Grantee desires to continue operating the existing pipelines and also desires to place and operate up to two (2) additional pipelines adjacent to said existing pipelines through the Grantor's Airport property; and

WHEREAS, Grantor agrees to update and expand the easement through which Grantee has authorization to place and operate pipelines at the Airport, and that such updated easement shall be for a period of fifteen (15) years.

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

That the City Manager be authorized to sign an Easement Agreement by and between the City of El Paso as Grantor and SFPP, L.P. (a Kinder Morgan subsidiary) as Grantee, and such Easement Agreement shall be for a period of fifteen (15) years.

ADOPTED THIS 9TH DAY OF JANUARY 2007.

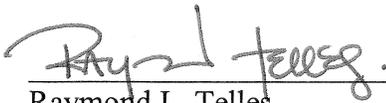
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
Municipal Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A.A.E.
Aviation Director

06 DEC 29 AM 10:23
CITY CLERK DEPT.

EASEMENT AGREEMENT

El Paso International Airport
City of El Paso, Texas
Grantor

SFPP, L.P.
Grantee

Effective Date

06 DEC 29 AM 10:23
CITY CLERK DEPT.

**EASEMENT AGREEMENT
TABLE OF CONTENTS**

		<u>Page</u>
ARTICLE I	PREMISES, PRIVILEGES, AND RESTRICTIONS.....	1
1.01	Easement.....	1
	A. Grant of Easement.....	1
	B. Description of Easement.....	1
	C. Specific Privileges, Uses and Rights.....	2
	D. Maintenance.....	3
1.02	Temporary Construction Easement.....	3
	A. Grant of Temporary Construction Easement.....	3
	B. Description of Temporary Construction Easement.....	3
1.03	Restrictions on Privileges, Uses and Rights.....	3
1.04	Restrictions on Surface Installations.....	3
1.05	Signs.....	4
1.06	Authorization to Enter Airport Restricted Areas.....	4
1.07	Placement and Movement of Pipelines.....	4
1.08	Restoration of the Premises.....	4
1.09	Inspection of the Premises.....	5
ARTICLE II	OBLIGATIONS OF GRANTEE.....	5
2.01	General.....	5
2.02	Condition of Premises.....	5
2.03	Compliance With Laws.....	5
	A. Definitions.....	5
	B. Compliance.....	6
2.04	Maintenance and Repair.....	8
2.05	Utilities.....	8
2.06	Trash, Garbage, and Other Refuse.....	8
2.07	Security.....	9
2.08	Penalties Assessed by Federal Agencies.....	9
2.09	Taxes.....	9
2.10	Governmental Filings.....	9
ARTICLE III	TERM OF EASEMENT.....	9
3.01	Term.....	9
	A. Term of Easement.....	9
	B. Term of TCE.....	9
ARTICLE IV	EASEMENT FEES.....	10
4.01	Easement Fees.....	10
	A. Computation of Easement Fees.....	10
	B. Initial Annual Fees.....	10
	C. Easement Fee Increases.....	10

TABLE OF CONTENTS (Continued)

	D. Easement Fees for Pipelines Abandoned In-Place.....	10
4.02	Temporary Construction Easement Fees	11
4.03	Grantor’s Lost Revenue	11
4.04	Failure to Timely Complete Construction in Area 2	11
4.05	Place of Payment.....	12
4.06	Unpaid Fees and Charges.....	12
ARTICLE V	INSURANCE AND INDEMNIFICATION	12
5.01	Liability Insurance	12
5.02	Security	12
5.03	Authorized Insurance and Surety Companies.....	12
5.04	Indemnification	13
ARTICLE VI	DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY	14
6.01	Obligations of Grantee Upon Destruction of Improvements	14
6.02	Insurance Proceeds.....	14
6.03	Repair by Grantee	14
6.04	Removal of Improvements and Restoration of Premises.....	14
6.05	Immediate Repair.....	14
ARTICLE VII	EXPIRATION, TERMINATION, ASSIGNMENT AND TRANSFER	15
7.01	Expiration.....	15
7.02	Termination.....	15
7.03	Repossessing and Re-granting	16
7.04	Assignment and Transfer	16
7.05	Rights Upon Expiration or Early Termination.....	16
ARTICLE VIII	GENERAL PROVISIONS	17
8.01	Right of Flight.....	17
8.02	Time is of the Essence	17
8.03	Notices	17
8.04	Attorney’s Fees	17
8.05	Agreement Made in Texas	18
8.06	Nondiscrimination Covenant	18
8.07	Affirmative Action.....	19
8.08	Cumulative Rights and Remedies	19
8.09	Interpretation.....	19
8.10	Agreement Made in Writing	19
8.11	Paragraph Headings	19
8.12	Severability	19

TABLE OF CONTENTS (Continued)

8.13	Survival of Certain Provisions	20
8.14	Successors and Assigns.....	20
8.15	Taxes and Other Charges	20
8.16	Restrictions and Reservations.....	20
8.17	Subordination of Agreement.....	20
8.18	Authorization To Enter Agreement	20
8.19	Effective Date	21
SIGNATURES		21
ACKNOWLEDGMENTS		22

EXHIBIT A – DESCRIPTION OF EASEMENT PREMISES

EXHIBIT B – DEPICTION OF EASEMENT PREMISES

(includes Exhibits B-1, B-2 and B-3)

**EXHIBIT C – DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT
PREMISES**

**EXHIBIT D – DEPICTION OF TEMPORARY CONSTRUCTION EASEMENT
PREMISES (includes Exhibits D-1, D-2 and D-3)**

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 200_, by and between the **CITY OF EL PASO, TEXAS** (“Grantor”) and **SFPP, L.P.** (“Grantee”). Grantor and Grantee are referred to herein collectively as the “Parties” or individually as a “Party”.

WITNESSETH:

WHEREAS, the Grantor owns and operates the El Paso International Airport (the “Airport”, which is inclusive of such other Grantor owned property that is managed by the El Paso International Airport) located in the County of El Paso, State of Texas, said Airport being managed by the Director of Aviation (the “Director”); and

WHEREAS, the Grantee currently has two (2) active liquid petroleum products pipelines located within a portion of the Airport, for which Grantee’s right to operate and maintain these pipelines has expired and the Parties now desire to reestablish and update those rights; and

WHEREAS, the Grantee seeks to acquire from Grantor an easement to construct, operate and maintain up to two (2) additional pipelines throughout certain areas of the Airport;

NOW, THEREFORE, for and in consideration of the foregoing recitals and of the mutual promises and covenants of the parties contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I – PREMISES, PRIVILEGES, AND RESTRICTIONS

1.01 Easement.

- A. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive easement in, on, under and through the premises (the “Easement”) identified as Area 1 and Area 2 within Paragraph 1.01(B) below and legally described in **Exhibit A** and shown on **Exhibit B**, which are attached hereto and incorporated herein for all purposes (the “Premises”), except for those rights retained for the benefit of Grantor. The rights, privileges, and uses granted are limited strictly to those rights, privileges, and uses granted by this Easement.
- B. Description of Easement. For the purposes of this Agreement, the Parties agree that the Easement shall consist of two (2) distinct areas, which are located within the City of El Paso, El Paso County, Texas, as more fully described in **Exhibit A** and shown on **Exhibit B**, and as set forth below:
 1. Area 1: A thirty-five (35) foot wide easement running through the Airport Movement Area and Air Operations area from the southern boundary of the Airport to Global Reach Drive; and

2. Area 2: A thirty-five (35) foot wide easement running from Global Reach Drive through the Airport's Outer Perimeter Area to the northern boundary of the Airport.

C. Specific Privileges, Uses, and Rights. It is Grantee's current intent to operate and maintain the two (2) existing pipelines (the "Existing Pipelines") within the Premises and to construct, operate, and maintain up to two (2) new pipelines within the Premises (collectively referred to as the "New Pipelines") during the Term of this Agreement together with certain rights of ingress to and egress from the Premises over those roadways, drives and walkways designated from time to time by the Director for construction, operation, and maintenance purposes. Grantee intends to construct one (1) New Pipeline soon after the execution of this Agreement, pursuant to the terms set forth in Section 1.02(A)(1) below (the "First New Pipeline"). Grantee shall utilize the temporary construction easement granted under Paragraph 1.02 herein for the construction of the First New Pipeline. Grantee intends to construct a second New Pipeline within the Premises (the "Second New Pipeline"), but has not yet established a construction schedule for its completion. A temporary construction easement for the Second New Pipeline may be established by mutual agreement of the Parties at the time it is needed. However, Grantee's rights to construct such Second New Pipeline shall be limited as set forth in Section 1.02(A)(2), below. (Existing, New, First New, and Second New Pipelines shall sometimes be collectively referred to herein as the "Pipelines".) Grantee's rights of ingress and egress are limited by this Agreement and those applicable rules and regulations of the Airport. The Pipelines shall be used only for the transportation of liquid petroleum products.

1. Existing Pipelines. Grantee confirms that it currently operates two (2) existing pipelines within Area 1 and Area 2. Pursuant to this Agreement, Grantee is authorized to maintain, operate, repair, replace, relocate, reconstruct, and remove the Existing Pipelines, attachments and other property, equipment and conduits and other appurtenances located within the Premises, as such boundaries may be amended from time to time during the Term of this Agreement, pursuant to the approvals required herein (referred to hereinafter as the "Maintenance activities"); and

2. New Pipelines. Grantee intends to construct and operate two (2) new pipelines within Area 1 and Area 2. Pursuant to this Agreement, Grantee is authorized to design locate, construct, maintain, operate, repair, replace, relocate, reconstruct, and remove the New Pipelines, attachments and other property, equipment and conduits and other appurtenances to be located within the Premises, as such boundaries may be amended from time to time, during the Term of this Agreement, as may be necessary and appurtenant to the operation of the New Pipelines pursuant to the approvals required herein (referred to hereinafter as the "Construction activities").

- D. Maintenance. Upon execution of this Agreement by Grantor, Grantee shall have the right and privilege to conduct Maintenance activities on the Existing Pipelines within the Premises. Upon Grantee's completion of the Construction activities on the New Pipelines, Grantee shall have the right and privilege to conduct Maintenance activities on the New Pipelines within the Premises. All Maintenance activities of Grantee shall require prior written approval, with regard to scheduling, security clearance, and related processes required of the Airport.

1.02 Temporary Construction Easement.

- A. Grant of Temporary Construction Easement. Grantor hereby grants to Grantee such rights and privileges under a temporary construction easement in, on, under, and adjacent to the Premises (the "TCE") identified generally in Paragraph 1.02(B) below and legally described in **Exhibit C** and shown on **Exhibit D**, which are attached hereto and incorporated herein for all purposes, as may be necessary to construct and install:

1. The First New Pipeline, which is designed to be twelve (12) inches in diameter, within Area 1 and Area 2 of the Premises; and
2. A segment of the Second New Pipeline, which is designed to be twelve (12) inches in diameter, within Area 2 of the Premises.

- B. Description of Temporary Construction Easement.

1. Area A: A sixty-five (65) foot wide TCE running generally along the west side of the Premises in Area 1;
2. Area B: A sixty-five (65) foot wide TCE running generally along the west side of the Premises in Area 2.

1.03 Restrictions on Privileges, Uses and Rights. Grantee covenants and agrees that in no event will it enter into any business activity on the Airport other than the Construction and Maintenance activities on the Existing and New Pipelines and such other activities explicitly permitted herein. Grantee shall not engage in operations during the Term of this Agreement for any purpose other than as set forth herein, except with the prior written consent of Grantor, nor for any purpose in violation of any present or future laws, ordinances, rules or regulations at any time applicable thereto of any federal, state or local or other governmental bodies or agencies, departments or offices, including without limitation Grantor.

1.04 Restriction on Surface Installations. Grantee agrees that no drips or valves are in place on the Existing Pipelines, nor shall any drips or valves be placed on the Pipelines located on the Premises in the future. Further, and unless explicitly permitted in writing by Grantor, Grantee shall have no right to place any surface installation on any part of the Premises.

1.05 Signs. The placement, size, and location of Grantee's signage or other notice of pipelines or other improvements in or upon the Easement shall require the approval of the Director, subject to all laws and other applicable U.S. Department of Transportation rules and regulations.

1.06 Authorization to Enter Airport Restricted Areas. Grantee understands that the Easement is located within a restricted area of the Airport and that Grantee and its agents, employees, servants or independent contractors must be authorized by the Grantor to enter restricted areas of the Airport prior to their entry thereon. The authorization to enter restricted areas of the Airport is not granted by this Agreement, but shall be granted to Grantee upon Grantee's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport. As Grantee is required to comply with all applicable Rules and Regulations, any violation of this provision or those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Agreement and grounds for termination.

1.07 Placement and Movement of Pipelines. Grantee agrees to bury New Pipelines to a depth that is sufficient to avoid any interference with any present or future Airport operations of Grantor, including existing drainage patterns. Grantee further agrees to pay any and all damages to Grantor that may arise by the construction, maintenance, and operation of the pipelines authorized pursuant to this Easement. The appropriate depth of the New Pipelines will be determined by mutual agreement of the Parties. Grantor reserves the right to full use and enjoyment of the Airport property, including, but not limited to, the ability to lay out, construct and maintain runways, taxiways and other structures, improvements, and appurtenances throughout Airport property (the "Airport Improvements"). If future development of the Airport is extended to and in the vicinity of the Premises, the Grantee, its successors and assigns hereby agree that after receipt of written notification by Grantor, Grantee will either completely relocate all Pipelines or other improvements to the nearest alternative location provided by Grantor on Grantor's property, and/or lower the Pipelines or other improvements to an appropriate depth under the Airport Improvements, and/or to properly encase those Pipelines or other improvements where they pass under the Airport Improvements, including but not limited to runways, taxiways or roadways in a manner sufficient to withstand the weight and pressure of aircraft and airport related equipment using those Airport Improvements. Grantee shall also be responsible for restoring, to the extent practicable, the Premises to its original condition upon the relocation, lowering and/or encasing of such Pipelines and improvements. The relocation, lowering and/or encasing of the Pipelines and improvements will be accomplished at the sole cost of Grantee, its successors and assigns.

1.08 Restoration of the Premises. Upon completion of the construction, installation, removal, relocation, lowering or encasing of the Pipelines, Grantee shall remove all unused equipment, materials, and pipe remaining in, on, or under the surface of the Premises and the TCE during construction phase and other property placed on the Premises by or for Grantee, as well as fill and level all ditches, ruts, depressions or other disturbances to the topography caused by the construction or removal operations, remove all debris and stakes or posts and generally restore the Premises and the TCE to its original condition, as soon as reasonably possible. Such restoration activities shall include the replacement of any grass, landscaping, drainage or irrigation systems, and other damage caused to the Premises. Should the Grantee fail to comply with these requirements, Grantor shall provide Grantee a written notice of its failure to comply with the requirements of this Article and a

thirty (30) calendar day opportunity to cure and restore the Premises, and if Grantee fails to do so, Grantor may assume these responsibilities at Grantee's risk and expense, and Grantee agrees to reimburse Grantor for the cost of such activities plus ten percent (10%) for administrative and overhead costs.

1.09 Inspection of the Premises. Grantee's inspections of any developed portions of the Premises shall only be accomplished by foot or by air. However, Grantee may inspect developed areas which may be accessed through dedicated streets; provided that such inspection by vehicle is limited to such dedicated streets. It is the intent of this section to maintain those developed areas of the Premises in the condition to which they have been developed. Such developed areas shall include, by way of example and not limitation, any Airport golf courses or parks.

ARTICLE II - OBLIGATIONS OF GRANTEE

2.01 General. This Easement, in every sense, shall be without cost to Grantor. It shall be the sole responsibility of Grantee to keep, maintain, repair and operate the Pipelines and related improvements and facilities existing or placed in, on or under the Premises or otherwise owned by Grantee at Grantee's sole cost and expense.

2.02 Condition of Premises. Grantee accepts the Premises in "AS IS" condition. Grantor has no responsibility or obligation to cause any work to be performed or to provide utilities or other services to the Premises.

2.03 Compliance with Laws. Grantee, at Grantee's expense, expressly agrees that it will locate, install, construct, operate, maintain, use and remove the Pipelines and the related improvements and facilities located on the Premises as may be necessary from time to time in a safe and secure manner and in accordance with the requirements of this Agreement and in accordance with all present and future laws.

Grantee, at Grantee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Grantee shall, at Grantee's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Grantee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental

Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including, but not limited to, the ambient air, ground water, surface water, and land use, including sub-strata land.

- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment in quantities of such that are regulated under any Environmental Laws.

B. Compliance.

- (1) **Grantee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises in violation of any Environmental Law, or transported to and from the Premises, by Grantee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Without limiting the generality of any other indemnity clauses contained in this Agreement, Grantee shall indemnify, defend and hold harmless Grantor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises,**

improvements, land, soil, underground or surface water as required under the law. Grantee's obligations and liabilities under this paragraph shall continue so long as Grantor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Grantor by Grantee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material located on the Premises or any improvements thereon, or present in the soil or groundwater on, under or about the Premises. The parties agree that Grantor's right to enforce Grantee's promise to indemnify is not an adequate remedy at law for Grantee's violation of any provision of this Section. Grantor shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon results in any contamination of the Premises or any improvements thereon or any surrounding property, Grantee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or any surrounding property to the condition existing prior to the introduction of any such hazardous material to the Premises or in any improvements thereon; provided that Grantor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Grantee shall, at Grantee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Grantee shall, at Grantee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Grantor, Grantee shall promptly provide all information requested by Grantor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.
- (4) Grantee shall immediately notify Grantor of any of the following: (a) any correspondence or communication from any governmental entity

regarding the application of Environmental Laws to the Premises or Grantee's operation on the Premises, and (b) any change in Grantee's operation on the Premises that will change or has the potential to change Grantee's or Grantor's obligations or liabilities under the Environmental Laws.

- (5) Grantee shall insert the provisions of this Section in any contract by which it grants a right or privilege to any person, firm or corporation under this Easement.

Notwithstanding any other provision in this Agreement to the contrary, Grantor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises.

Grantee's failure or the failure of its agents, employees, contractors, invitees, sublessees, or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Agreement and shall permit Grantor to pursue the remedies as set forth herein, in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, to which Grantor may resort cumulatively, or in the alternative.

2.04 Maintenance and Repair. Grantee shall, at its sole cost and expense, maintain and repair the Premises, the Pipelines and Grantee's improvements and appurtenances thereto, in good condition consistent with good business practice. Grantee shall repair all damages to Grantor's property and equipment located on and within the Premises, including any landscaping, irrigation or drainage installations, paving, curbs, islands, buildings or other improvements. Grantor's property and equipment shall include the property and equipment of Grantor, Grantor's lessees, sublessees and those other parties with authority to use Grantor's property within the Premises.

Grantor shall be the sole judge of the quality of Grantee's repairs to the referenced property and equipment and, upon written notice by Grantor to Grantee, Grantee shall be required to perform whatever repair Grantor deems necessary. If said repairs are not undertaken by Grantee within ten (10) days after receipt of written notice, Grantor shall have the right to enter the Premises and perform the necessary repair work, the cost of which, plus ten percent (10%) for administrative and overhead costs, shall be borne by Grantee.

Grantee agrees not to paint, erect, or in any manner install any advertising or other signage on the exterior of any improvements or anywhere on the Premises, except as may be authorized in advance by the Director in writing.

2.05 Utilities. Grantee shall assume and pay for all costs or charges for utility services furnished to Grantee during the Term hereof.

2.06 Trash, Garbage, and other Refuse. Grantee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises and the

Airport, of all trash, garbage and other refuse caused as a result of the Grantee's activities in a timely manner so as no accumulation of such trash, garbage, or other refuse shall occur.

2.07 Security. Grantee is familiar with the restrictions imposed by 49 CFR 1540.105 and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Premises.

2.08 Penalties Assessed by Federal Agencies. Grantee understands and agrees that in the event any federal agency assesses a civil penalty against the Grantor or the Airport for any security violation as a result of or related to any act or failure to act on the part of Grantee, its agents, employees or independent contractors, Grantee shall reimburse the Grantor in the amount of the civil penalty assessed. Failure to reimburse the Grantor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

2.09 Taxes. The Grantee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Grantee or the Grantor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Grantee's use and/or occupancy of the Premises, or any improvements thereon, during the Term of this Agreement including any extensions granted thereto. Grantor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from the Grantee's use of the property or possession of the Premises.

The Grantee in good faith may contest any tax or governmental charge, provided that the Grantee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the Grantor, such action will not adversely affect any right or interest of the Grantor.

2.10 Governmental Filings. In the event that Grantee submits any filing or response pertaining to its property, operations or presence at the Airport with any governmental entity (other than the Internal Revenue Service), by way of example and not in limitation the FAA, the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ) or any successor agencies, Grantee shall provide duplicate copies to Grantor of such filing(s) or response(s) made at the time same are made.

ARTICLE III - TERM OF EASEMENT

3.01. Term.

- A. Term of Easement. The term of this Easement shall be for the period of fifteen (15) years commencing on the date this Agreement is executed by the City (the "Commencement Date") and ending on the 9th day of January, 2022 (the "Term").
- B. Term of the TCE. The term of the TCE shall commence upon Grantor's receipt of written request by Grantee to commence construction, respectively, of each Pipeline. Grantee's TCE rights, as enumerated within Article I herein for:
 - (i) Area A, shall expire upon the earlier of: (a) January 15, 2008; (b) Grantor's receipt of written notice by Grantee's registered engineer that it has

completed all required construction; or (c) the termination of this Agreement;

(ii) Area B, shall expire upon the earlier of: (a) April 15, 2007; (b) Grantor's receipt of written notice by Grantee's registered engineer that it has completed all required construction; or (c) the termination of this Agreement.

ARTICLE IV – EASEMENT FEES

4.01 Easement Fees.

- A. Computation of Easement Fees. During the Term of this Agreement, Grantee agrees to pay Grantor the fees enumerated below, for the rights and privileges herein granted. As set forth in Paragraph 1.01(B), the Premises consist of two (2) distinct areas, as more fully described in **Exhibit A** and shown on **Exhibit B**. The fees applicable to Area 1 shall be **twelve cents (\$0.12) per square foot per annum**, while the fees applicable to Area 2 shall be **twenty cents (\$0.20) per square foot per annum** (each fee amount set forth herein shall individually be referred to as the "Annual Fee" or collectively as the "Annual Fees"). The Easement Annual Fees shall be due annually in advance on or before the anniversary of the Commencement Date during the Term of this Agreement and shall be subject to any applicable increases as noted below.
- B. Initial Annual Fees. Upon the execution of this Agreement, Grantee shall pay to Grantor an Annual Fee for the Easement area. For the purpose of computing the Annual Fee for each segment of the Easement areas, Area 1 is comprised of approximately TWO HUNDRED SEVENTY ONE THOUSAND FOURTEEN SQUARE FEET (271,014 sq. ft.) of land and Area 2 is comprised of approximately THREE HUNDRED SIXTY FIVE THOUSAND ONE HUNDRED ELEVEN SQUARE FEET (365,111 sq. ft.) of land, as more clearly identified within **Exhibit A** and shown on **Exhibit B**. The initial total Easement Annual Fee for Area 1 and Area 2 shall be ONE HUNDRED FIVE THOUSAND FIVE HUNDRED FORTY THREE AND 88/100 DOLLARS (\$105,543.88) per year.
- C. Easement Fee Increases. The Easement Annual Fees shall be adjusted every fifth (5th) year anniversary of the Commencement Date of this Agreement by the cumulative percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), issued by the Bureau of Labor Statistics of the United States Department of Labor for that preceding five (5) year period; provided, however, that the adjustment of such Easement Annual Fees shall never result in a fee that is less than the immediately preceding applicable Easement Annual Fees
- D. Easement Fees for Pipelines Abandoned In-Place. Notwithstanding any provision of this Agreement to the contrary, Grantor hereby grants Grantee the right to abandon, in-place, all or any portion of the Pipelines without the obligation to otherwise remove the abandoned Pipelines or restore the Premises to its original

condition without the Pipelines during the Term of this Agreement. However, in the event Grantee abandons any Pipelines during the Term, Grantee shall be responsible for continued payment to Grantor of all applicable fees. If Grantor provides written authorization to Grantee allowing any portion of the abandoned Pipelines to remain during the Term, the fees required herein shall no longer be applicable to the remaining portions identified in such authorization and applicable pre-paid fees shall be credited to Grantor's applicable fees for the following year. Upon the expiration or early termination of this Agreement, Grantee shall be responsible for the complete removal of all Pipelines, including those previously abandoned in-place. In the event Grantor elects to waive this required removal of all or any portion of the Pipelines, Grantor shall provide written notice to Grantee of its election prior to the expiration or early termination of this Agreement. In such event, Grantee shall not be responsible for the payment of any additional fees associated with any portion of Pipelines permitted by Grantee to remain.

4.02 Temporary Construction Easement Fees. Grantee agrees to pay Grantor the fees enumerated below for the rights and privileges herein granted. As set forth in herein, the TCE consists of two (2) distinct areas, as more fully described in **Exhibit C** and shown on **Exhibit D**. The fees applicable to Area A shall be FIVE THOUSAND FIFTY SEVEN AND 31/100 DOLLARS (\$5,057.31) per month while the fees applicable to Area B shall be ELEVEN THOUSAND FIVE AND 00/100 DOLLARS (\$11,005.41) per month (each fee set forth herein shall individually be referred to as the "Monthly Fee" or collectively as the "Monthly Fees"). The TCE Monthly Fees shall be due monthly in advance on or before the first (1st) day of each month.

4.03 Grantor's Lost Revenue. Grantee agrees to reimburse the owners and operators of the Airport golf courses or other existing or future developments operated by or through the Airport located over or adjacent to the Easement Premises (the "Developers") for any Pipeline Construction or Maintenance activities that adversely affect those developments at one hundred ten percent (110%) of the development's lost revenue. Relative to the Airport's golf courses, this calculation will be based for the Butterfield Trail Golf Course, having no previous revenue as follows: losses shall be based on budgeted revenue versus actual revenue generated for the period of any claimed loss of revenue.

4.04 Failure to Timely Complete Construction In Area 2. All Construction activities required within Area 2 and Area B must be completed by Grantee as soon as reasonably possible, in order to avoid any potential conflicts with or losses related to the scheduled opening of Grantor's new golf course and related developments. In the event Grantee's Construction activities within Area 2 and Area B are not completed by March 15, 2007, the TCE Monthly Fees for Area B shall increase to an amount equal to one hundred fifty percent (150%) of the TCE Monthly Fee for Area B as set forth above. In the event Grantee's Construction activities within Area 2 and Area B are not completed by April 1, 2007, the TCE Monthly Fee for Area B shall increase to an amount equal to two hundred percent (200%) of the TCE Monthly Fee for Area B as set forth above. These fee increases shall be assessed in addition to any other remedies available to Grantor under this Agreement or applicable law. Further, failure to complete all activities within

Area 2 and Area B by April 15, 2007 shall be deemed a material default of this Agreement, subject to termination by Grantor.

4.05 Place of Payment. All payments provided herein shall be paid to Grantor at the following address as may be amended from time to time by the Director in writing:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278.

4.06 Unpaid Fees and Charges. Any installment of any Annual Easement Fees, Monthly TCE Fees, or other charges or monies accruing under any provisions of this Agreement that are not received by the tenth (10th) day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Agreement until paid by Grantee.

ARTICLE V - INSURANCE AND INDEMNIFICATION

5.01 Liability Insurance. Grantee, at its sole cost and expense shall, throughout the Term of this Agreement, provide and keep in force for the benefit of Grantee with the Grantor as an additional insured, commercial general liability insurance in amounts as reasonably set from time to time by Grantor, but not less than Ten Million Dollars (\$10,000,000.00) for bodily injury to one person for each occurrence, Ten Million Dollars (\$10,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

In addition, Grantee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force with Grantor as an additional insured, commercial pollution liability insurance in amounts as reasonably set from time to time by Grantor, but not less than Three Million Dollars (\$3,000,000.00). Grantee, in its sole discretion, reserves the right to self-insure.

5.02 Security. Grantee, at its sole cost and expense, shall cause to be made, executed, and delivered to Grantor a Payment Bond, a letter of credit or such other form of security acceptable to Grantor, to cover any potential claims related to the construction of any improvements to the Easement. Evidence of said security shall be provided to the Director prior to the date of commencement of any such construction. Said security shall be in an amount no less than the cost of all construction services to be incurred by Grantee relative to this Easement. The security shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of any construction contract for any improvements to be constructed on the Premises.

5.03 Authorized Insurance and Surety Companies. All such policies of insurance and payment bonds shall be written by insurance and surety companies authorized to do business in the State of Texas and shall be written by companies with an AMBest Rating of A-VII or better.

Certificates of insurance shall be delivered to Grantor at least ten (10) days prior to the Effective Date of this Agreement. Each such insurance certificate shall contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying the Grantor to be listed as an additional insured in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to Grantor.

5.04 Indemnification. WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF GRANTEE'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST GRANTOR BY REASON OF ANY SUCH CLAIM, GRANTEE, UPON RECEIPT OF WRITTEN NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.

Without limiting the generality of any other indemnity contained in this Agreement, and in addition thereto (and not in satisfaction thereof), Grantee agrees that whenever Grantee shall contract for or receive the benefit of any arrangement under which any third party may indemnify Grantee with regard to any matter the subject of which Grantee has agreed to indemnify Grantor under this Agreement, the indemnification which Grantee shall or may receive from the third party (the "third-party indemnification") shall be considered to be for the benefit of Grantor hereunder, as well as for the benefit of Grantee; and Grantor may enforce the third-party indemnification in a court of competent jurisdiction. Grantee agrees to: (a) include Grantor as a third-party beneficiary in all contracts providing for such third-party indemnification, with provision for Grantor to give formal notification to the contracting parties of its acceptance of the benefits as a third party beneficiary; (b) provide Grantor with copies of each contract under which Grantee shall or may receive third-party indemnification; and, (c)

perform such other acts as reasonably requested by Grantor to allow Grantor to avail itself of the third-party indemnification.

ARTICLE VI - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

6.01 Obligations of Grantee Upon Destruction of Improvements. During the Term hereof, except as may be provided within this Article, should the Pipelines or related improvements in, on, or under the Premises be damaged or destroyed, in whole or in part, by fire, explosion, or other casualty, Grantee shall give prompt notice thereof to Grantor, and Grantee, at its own cost and expense, shall either: (i) promptly repair, replace and rebuild the same, as nearly as practical to the character of the improvements existing immediately prior to such time; or, (ii) remove the damaged or destroyed improvements and return the Premises to their original condition. Any damage or destruction of the Premises that affects the operation of the Airport functions of the Grantor shall be immediately remedied by Grantee at Grantee's sole expense.

6.02 Insurance Proceeds. Upon receipt by Grantee of the proceeds of any insurance policy or policies, Grantee shall deposit same in an escrow account to be held in trust to pay for the cost of repair or removal. Such proceeds shall be disbursed by Grantee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair or removal, Grantee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Grantee only after the completion of all work required of Grantee and approval of Grantor.

6.03 Repair by Grantee. In the event Grantee elects to repair the damaged or destroyed improvements, such repairs, replacements or rebuilding shall be made by Grantee as soon as reasonably possible. Prior to commencing construction of such repairs or replacements, Grantee shall furnish security in conformance with the security requirements as noted herein. Upon settlement with the insurance company or companies and issuance of proceeds of such insurance policy or policies shall have been paid to Grantee, Grantee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

6.04 Removal of Improvements and Restoration of Premises. In the event Grantee elects not to repair, rebuild or replace the improvements, Grantee shall remove all remaining improvements from the Premises, whether damaged or not, and shall restore the Premises to its condition prior to the granting of this Easement. Upon such event, this Agreement and Grantee's obligation to pay applicable Easement Annual Fees and TCE Monthly Fees will terminate. Security, as referenced in Section 5.02 herein, is required for all removal activities required herein.

6.05 Immediate Repair. Grantee understands and agrees that the Grantor is providing an Easement across property that is within an operating Airport. Grantee further understands and agrees that in granting this Easement, Grantor does not anticipate nor approve of any disruption in Grantor's provision of Airport services. Grantee understands and agrees that none of its activities relative to this Easement, shall interfere with Grantor's operation of the Airport, except as may be explicitly granted in advance by Grantor in writing.

ARTICLE VII - EXPIRATION, TERMINATION, ASSIGNMENT AND TRANSFER

7.01 Expiration. This Agreement shall expire at the end of the Term or any extension thereof.

7.02 Termination. This Agreement shall be subject to termination by Grantor in the event Grantee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Grantor has notified Grantee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Grantee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Easement, which shall be conclusively presumed following non-use by Grantee for one (1) year and with use not being resumed within thirty (30) days following receipt of written notice of abandonment from Grantor to Grantee;
- E. Default in the performance of any of the covenants and conditions required herein (except required payments) to be kept and performed by Grantee, and such default continues for a period of thirty (30) days after receipt of written notice from Grantor to cure such default, unless during such thirty (30) day period, Grantee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged a bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Grantee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default hereunder, Grantor may take immediate possession of the Premises including any and all improvements thereon and remove Grantee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Grantor to declare this Agreement canceled upon the default of Grantee for any of the reasons set out shall not operate to bar or destroy the right of Grantor to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Grantor from Grantee after the expiration or termination of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Grantor's consent is required or operate as a waiver of any right of the Grantor

to retake and resume possession of the Premises.

7.03 Repossessing and Re-granting. In the event of default by Grantee hereunder that shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Grantor may at once thereafter, or at any time subsequent to such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Grantee and all personal property of Grantee (which property may be removed and stored at the cost of and for the account of Grantee), using such force as may be necessary; and
- B. Either terminate this Agreement by notice or without terminating this Agreement, re-grant the use of the Premises or any part thereof upon such terms and conditions as shall appear advisable to Grantor. If Grantor shall proceed to re-grant the use of the Premises and the amounts received from such re-granting of the Premises during any month or part thereof be less than the fees due and owing from Grantee during such month or part thereof under the terms of this Agreement, Grantee shall pay such deficiency to Grantor immediately upon calculation thereof, providing Grantor has exercised good faith in the terms and conditions of re-granting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

7.04 Assignment and Transfer. Grantee may not assign or transfer this Agreement without the prior written approval of Grantor.

7.05 Rights Upon Expiration or Early Termination. At the expiration or early termination of this Agreement, Grantor shall be entitled to have the Premises returned to Grantor clear of all improvements, including but not limited to the Pipelines and related improvements in, on, or under the Premises, subject to the provisions of Section 4.01 (D) herein. Grantee shall have one hundred and eighty (180) days after expiration in which to remove such improvements; provided that any occupancy by Grantee for the purposes of removal shall be subject to the fees due hereunder and provided further that Grantee shall continue to be bound by the terms and conditions of this Agreement; provided, however, that in no event shall any continued occupancy be construed as an extension or renewal of the Agreement Term for other than the aforementioned one hundred and eighty (180) days. If Grantee fails to so remove said improvements, Grantor may remove same at Grantee's expense.

ARTICLE VIII – GENERAL PROVISIONS

8.01 Right of Flight. Grantor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Grantor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Grantor reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

8.02 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

8.03 Notices. All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

GRANTOR:	City Clerk City of El Paso 2 Civic Center Plaza El Paso, Texas 79999	Copy to:	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1091
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GRANTEE:	SFPP, L.P. Attn.: Manager – Lands & Right of Way 1100 Town & Country Road Orange, CA 92868
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Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

8.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs.

8.05 Agreement Made in Texas. This Agreement is made in the State of Texas and the laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

8.06 Nondiscrimination Covenant. Grantee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for the purpose for which Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Grantee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Grantee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Grantee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Nondiscrimination. To the extent that, under this Agreement, Grantee furnishes goods or services to the public at the Airport, Grantee agrees that it shall:
 - 1. furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport; and
 - 2. charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Grantee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.

F. That, in the event of breach of any of the above nondiscrimination covenants, Grantor shall have the right to terminate this Agreement and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Easement had never been made or issued.

8.07 Affirmative Action. Grantee assures that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statues or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons granted use of any premises of the City of El Paso. Grantee assures that it will require that its covered sub-organizations or otherwise provide assurances to Grantor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assistance from their sub-organizations (sub-Grantees) to the same effect.

8.08 Cumulative Rights and Remedies. All rights and remedies of Grantor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Grantor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

8.09 Interpretation. Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Grantee and Grantor agree that this Agreement has been freely negotiated by both parties and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

8.10 Agreement Made in Writing. This Agreement contains all of the agreements and conditions made between the Parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the Parties hereto or their respective successors in interest.

8.11 Paragraph Headings. The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

8.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

8.13 Survival of Certain Provisions. All provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration, cessation or termination of this Agreement, whether by default, the passage of time or otherwise, shall survive such expiration or termination of this Agreement, including specifically but without limitation the indemnification provisions found herein.

8.14 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Grantor and Grantee and their successors, assigns, legal representatives, heirs, executors and administrators.

8.15 Taxes and Other Charges. The Grantee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Grantee or the Grantor, with respect to the Premises or any improvements thereon, during the Term of this Agreement including any extensions or option periods granted thereto.

8.16 Restrictions and Reservations. This Agreement is subject to all other rights-of-way, easements, dedications, restrictions, and other encumbrances of record and running with the land. Grantor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Grantee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances.

Grantor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of improvements or structures thereon are in compliance with the all Environmental Laws and for the purpose of showing the Premises or other Airport property; Grantor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

8.17 Subordination of Agreement. All rights granted in this Agreement shall be subordinate to the rights in any deed from the United States to Grantor. This Agreement shall further be subordinate to the provisions of any existing or future agreements between Grantor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Agreement, Grantee may cancel this Agreement in its entirety.

8.18 Authorization To Enter Agreement. The Parties represent and warrant to each other that each Party and the persons signing this Agreement have authority to enter into this Agreement and bind their respective organizations thereto. Further, all persons entering into this Agreement represent that their respective entity is a duly authorized and existing entity qualified to do business in Texas. Upon either Party's request, the other Party will provide evidence satisfactory to requesting Party confirming these representations.

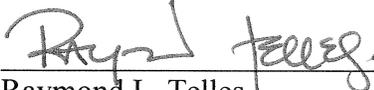
8.19 Effective Date. This Agreement shall be effective as of the date executed by the Grantor.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first noted above.

GRANTOR:
THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A. A. E.
Director of Aviation

GRANTEE:
SFPP, L.P., a Delaware limited partnership

By: Kinder Morgan Operating L.P. "D",
its general partner
By: Kinder Morgan G.P. Inc.,
its general partner
By: Kinder Morgan Management, LLC,
the delegate of Kinder Morgan G.P., Inc.

By: 

Name: J. D. Reynolds

Title: Manager, Lands & Right of Way

(ACKNOWLEDGMENTS ON FOLLOWING PAGE)

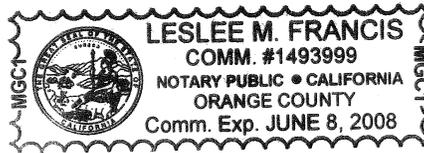
ACKNOWLEDGMENT

State of California)
County of Orange)

On December 28, 2006, before me, LESLEE M. FRANCIS, Notary Public, personally appeared J.D. REYNOLDS ~~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 person(s) acted, executed the instrument.

Witness my hand and official seal.

Leslee M. Francis
LESLEE M. FRANCIS



(Notary Seal)

EXHIBIT "A"

Area 1

35' WIDE SFPP, L.P. EASEMENT

A tract of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Sections 27, 33, 34 and 40, Block 80, Township 2, Texas and Pacific Railway Company Surveys and a portion of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two and being more particularly described as follows, to wit:

COMMENCING for reference at a city monument located at the intersection of Shell Street and Mayflower Avenue; **THENCE, North 36°46'54" East, 458.86 feet**, to the southerly boundary line of the El Paso International Airport for the **POINT OF BEGINNING** of the easement herein described;

THENCE, leaving the southerly boundary line of the El Paso International Airport, **North 00°41'58" West, 133.69 feet** to the most westerly corner of the easement herein described;

THENCE, North 33°52'30" East, 90.17 feet to an angle point of the easement herein described;

THENCE, North 36°31'21" East, 96.77 feet to an angle point of the easement herein described;

THENCE, North 36°34'24" East, 387.24 feet to an angle point of the easement herein described;

THENCE, North 36°32'31" East, 3,545.40 feet to an angle point of the easement herein described;

THENCE, North 36°33'39" East, 2,266.14 feet to an angle point of the easement herein described;

THENCE, North 35°20'10" East, 790.06 feet to an angle point of the easement herein described;

THENCE, North 37°02'40" East, at 5.71 feet intersecting the southwesterly boundary line of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two and continuing for a total distance of **446.81 feet** to the southwesterly right-of-way line of Global Reach Drive for the most northerly corner of the easement herein described;

THENCE, along the southwesterly right-of-way line of Global Reach Drive, **South 44°31'32" East, 35.38 feet** to the northwesterly line of a 50 feet wide Chevron Pipeline right-of-way for the most easterly corner of the easement herein described;

THENCE, leaving the southwesterly right-of-way line of Global Reach Drive and following the northwesterly line of the 50 feet wide Chevron Pipeline right-of-way, **South 37°02'40" West, 441.10 feet** to the most southerly corner of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two for an angle point of the easement herein described;

THENCE, leaving the northwesterly line of the 50 feet wide Chevron Pipeline right-of-way and the southwesterly line of said Lot 1, **South 35°20'10" West, 789.92 feet** to an angle point of the easement herein described;

THENCE, **South 36°33'39" West, 2,266.51 feet** to an angle point of the easement herein described;

THENCE, **South 36°32'31" West, 3,545.41 feet** to an angle point of the easement herein described;

THENCE, **South 36°34'24" West, 387.23 feet** to an angle point of the easement herein described;

THENCE, **South 36°31'21" West, 95.94 feet** to an angle point of the easement herein described;

THENCE, **South 33°52'30" West, 78.47 feet** to an angle point of the easement herein described;

THENCE, **South 00°41'58" East, 125.66 feet** to the southerly line of the El Paso International Airport;

THENCE, following the southerly line of the El Paso International Airport, **North 86°01'54" West, 35.12 feet** to the **POINT OF BEGINNING**;

Said easement containing **6.2216 acres (271,014.0 square feet)**, more or less and being subject to easements, restrictions and covenants of record.

Bearings are based on the U.T.M. (Universal Transverse Mercator System) Zone 13, NAD 83, for the State of Texas. Distances were scaled up to surface.

Area 2

35' WIDE SFPP, L.P. EASEMENT

A tract of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Sections 22, 23, 26 and 27, Block 80, Township 2, Texas and Pacific Railway Company Surveys and a portion of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two and being more particularly described as follows, to wit:

BEGINNING at the intersection of the northeasterly right-of-way line of Global Reach Drive and the northwesterly line of a 50 feet wide Chevron Pipeline right-of-way, for the **POINT OF BEGINNING** of the easement herein described, identical to the southeasterly corner of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two, whence a city monument located at the Global Reach monument line point of curvature bears, South 44°00'30" East, 4985.22 feet;

THENCE, leaving the northwesterly line of a 50 feet Chevron Pipeline right-of-way and following the northeasterly right-of-way line of Global Reach Drive, **North 44°31'32" West, 35.38 feet**

THENCE, leaving the northwesterly right-of-way line of Global Reach Drive, **North 37°02'40" East, 945.39 feet**, to an angle point of the easement herein described;

THENCE, **North 38°06'33" East**, 4.85 feet to the northeasterly line of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two and continuing for a total distance of **137.76 feet** to an angle point of the easement herein described;

THENCE, **North 36°37'36" East, 157.43 feet** to an angle point of the easement herein described;

THENCE, **North 36°15'31" East, 237.67 feet** to an angle point of the easement herein described;

THENCE, **North 36°40'03" East, 665.41 feet** to an angle point of the easement herein described;

THENCE, **North 36°31'45" East, 1465.25 feet** to an angle point of the easement herein described;

THENCE, **North 36°32'49" East, 1683.24 feet** to an angle point of the easement herein described;

THENCE, **North 33°51'52" East, 71.63 feet** to an angle point of the easement herein described;

THENCE, North 03°16'34" East, 61.79 feet to an angle point of the easement herein described;

THENCE, North 00°06'25" West, 768.96 feet to an angle point of the easement herein described;

THENCE, North 00°17'51" West, 1359.94 feet to an angle point of the easement herein described;

THENCE, North 01°23'54" West, 80.12 feet to an angle point of the easement herein described;

THENCE, North 00°14'05" West, 835.21 feet to an angle point of the easement herein described;

THENCE, North 00°21'50" West, 1092.45 feet to an angle point of the easement herein described;

THENCE, North 00°17'19" West, 641.98 to the proposed south right-of-way line, Sta. 455+92.69, 113.79 feet Right, Inner Loop Spur, CSJ No. 0924-06-258, and continuing for a total distance of **855.26 feet** to the north boundary line of El Paso International Airport for the northwesterly corner of the easement herein described;

THENCE, following the north boundary line of El Paso International Airport, **North 89°41'34" East, 35.00 feet** to the northeasterly corner of the easement herein described, whence an aluminum cap stamped "SAM" found along the proposed south right-of-way line, Sta. 478+27.11, 100.00 feet Right, Inner Loop Spur, CSJ No. 0924-06-258, bears South 84°35'20" East, 2,009.35 feet;

THENCE, leaving the north boundary line of El Paso International Airport, **South 00°17'19" East, 212.72 feet** to the proposed south-right-of-way line, Sta. 456+27.69, 113.22 feet Right, Inner Loop Spur, CSJ No. 0924-06-258, and continuing for a total distance of **855.25 feet** to an angle point of the easement herein described;

THENCE, South 00°21'50" East, 1092.46 feet to an angle point of the easement herein described;

THENCE, South 00°14'05" East, 834.89 feet to an angle point of the easement herein described;

THENCE, South 01°23'54" East, 80.10 feet to an angle point of the easement herein described;

THENCE, South 00°17'51" East, 1360.33 feet to an angle point of the easement herein described;

THENCE, South 00°06'25" East, 770.05 feet to an angle point of the easement herein described;

THENCE, South 03°16'34" West, 72.39 feet to an angle point of the easement herein described;

THENCE, South 33°51'52" West, 82.02 feet to an angle point of the easement herein described;

THENCE, South 36°32'49" West, 1684.05 feet to an angle point of the easement herein described;

THENCE, South 36°31'45" West, 1465.28 feet to an angle point of the easement herein described;

THENCE, South 36°40'03" West, 665.32 feet to an angle point of the easement herein described;

THENCE, South 36°15'31" West, 237.66 feet to an angle point of the easement herein described;

THENCE, South 36°37'36" West, 158.00 feet to an angle point of the easement herein described;

THENCE, South 38°06'33" West, 137.89 feet to intersection of the northeasterly boundary of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two and the northwesterly line of a 50 feet wide Chevron Pipeline right-of-way, for an angle point of the easement herein described;

THENCE, leaving the boundary line of said Lot 1, Block 2 and following the northwesterly line of the 50 feet wide Chevron Pipeline right-of-way, South 37°02'40" West, 950.26 feet to the POINT OF BEGINNING;

Said easement containing **8.3818 acres (365,110.8 square feet)**, more or less and being subject to easements, restrictions and covenants of record.

Bearings are based on the U.T.M. (Universal Transverse Mercator System) Zone 13, NAD 83, for the State of Texas. Distances were scaled up to surface.

Descriptions prepared by:
Isaac Camacho, TX RPLS No. 5337
Brock & Bustillos Inc.
417 Executive Center Blvd.
El Paso, TX 79902
915-542-4900



PORTION OF SECTION 28, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO INTERNATIONAL AIRPORT

TO FIND CITY MONUMENT AT THE INTERSECTION OF GLOBAL REACH DRIVE AND GEORGE PERRY DRIVE.

PORTION OF SECTION 27, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO INTERNATIONAL AIRPORT

SECTION 28
SECTION 33

SECTION 27
SECTION 34

LINE	DIRECTION	DISTANCE
L1	N00°41'58" W	133.69'
L2	N33°52'30" E	90.17'
L3	N36°31'21" E	96.77'
L4	N36°34'24" E	387.24'
L5	N35°20'10" E	790.08'
L6	N37°02'40" E	446.81'
L7	S44°31'32" E	35.38'
L8	S37°02'40" W	441.10'
L9	S35°20'10" W	789.92'
L10	S36°34'24" W	387.23'
L11	S36°31'21" W	95.94'
L12	S33°52'30" W	78.47'
L13	S00°41'58" E	125.66'
L14	N86°01'54" W	35.12'
L15	N36°46'54" E	458.86'

PORTION OF SECTION 33, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO INTERNATIONAL AIRPORT

PORTION OF SECTION 34, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO INTERNATIONAL AIRPORT

35' WIDE SFPP, L.P. EASEMENT 6.2218 ACRES

PORTION OF SECTION 33, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO INTERNATIONAL AIRPORT

PORTION OF SECTION 40, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, FT. BLISS U.S.A. MILITARY RESERVATION

BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, BOOK 73, PAGE 50, LOT 2, BLOCK 1

(P.O.B.)
MAYFLOWER AVE.
(P.O.C.)
SHELL ST.
FOUND CITY MONUMENT

(P.O.C.)
SHELL ST.
FOUND CITY MONUMENT

NOTES:

1. SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, EASEMENTS MAY EXIST WHERE NONE ARE SHOWN.
2. NO CORNERS WERE SET FOR THE 35' WIDE SFPP, L.P. EASEMENT.
3. BEARINGS ARE BASED ON U.T.M. (UNIVERSAL TRANSVERSE MERCATOR SYSTEM) ZONE 13, NAD 83, FOR THE STATE OF TEXAS. DISTANCES SHOWN WERE SCALED UP TO SURFACE.

REFERENCE DOCUMENTS:

1. PLAT OF A SURVEY OF SECTIONS 2, 4, 6, 8, 10, 14, 26, 18, 22, 20, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY S.A. CALDWELL, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
2. PLAT OF A RESURVEY OF BLOCKS 76, 77, 78, TOWNSHIP 3, PARTS OF BLOCK 75, 76, 77, TOWNSHIP 5, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY R.W. BAKER, DATED JULY 1 THRU DECEMBER 15, 1973, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
3. PLAT OF SURVEY OF BLOCKS 80 AND 81, TOWNSHIPS 1 AND 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY JACOB KUECHLER, DATED JANUARY, 1906, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
4. BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, RECORDED IN BOOK 78, PAGES 87 AND 87A, EL PASO COUNTY PLAT RECORDS.

35' SFPP, L.P. EASEMENT

EXHIBIT B-1

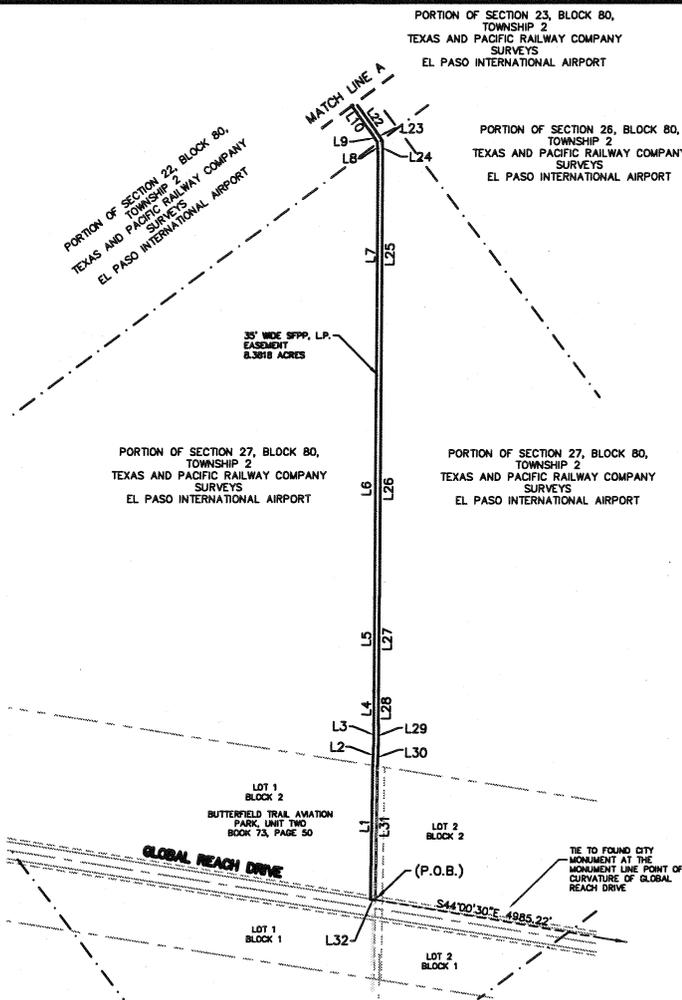
DRAWN BY: A.A. CHECKED BY: I.C. DATE: 09/29/06 SCALE: N.T.S.

A PORTION OF SECTIONS 27, 33, 34 AND 40, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, AND A PORTION OF LOT 1, BLOCK 1, BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

BROCK & BUSTILLOS INC.
CONSULTING CIVIL ENGINEERS
LAND SURVEYORS

FILE NO: S-6645-01

417 EXECUTIVE CENTER-EL PASO, TX 79902-PH (915) 542-4800
FAX (915) 542-2867-WWW.BROCKBUSTILLOS.COM



NOTES:

1. SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, EASEMENTS MAY EXIST WHERE NONE ARE SHOWN.
2. NO CORNERS WERE SET FOR THE 35' WIDE SFPPLP, L.P. EASEMENT.
3. BEARINGS ARE BASED ON U.T.M. (UNIVERSAL TRANSVERSE MERCATOR SYSTEM) ZONE 13, NAD 83, FOR THE STATE OF TEXAS. DISTANCES SHOWN WERE SCALED UP TO SURFACE.

LINE	DIRECTION	DISTANCE
L1	N37°02'40"E	945.39'
L2	N38°06'33"E	137.76'
L3	N36°37'36"E	157.43'
L4	N36°15'31"E	237.67'
L5	N36°40'03"E	665.41'
L6	N36°31'45"E	1465.25'
L7	N36°32'49"E	1683.24'
L8	N33°51'52"E	71.63'
L9	N03°16'34"E	61.79'
L10	N00°06'25"W	768.96'
L11	N00°17'51"W	1359.94'
L12	N01°23'54"W	80.12'
L13	N00°14'05"W	835.21'
L14	N00°21'50"W	1092.45'
L15	N00°17'19"W	855.26'
L16	N89°41'34"E	35.00'
L17	S00°17'19"E	855.25'
L18	S00°21'50"E	1092.46'
L19	S00°14'05"E	834.69'
L20	S01°23'54"E	80.10'
L21	S00°17'51"E	1360.33'
L22	S00°06'25"E	770.05'
L23	S03°16'34"W	72.39'
L24	S33°51'52"W	82.02'
L25	S36°32'49"W	1684.05'
L26	S36°31'45"W	1465.28'
L27	S36°40'03"W	665.32'
L28	S36°15'31"W	237.66'
L29	S36°37'36"W	158.00'
L30	S38°06'33"W	137.89'
L31	S37°02'40"W	950.26'
L32	N44°31'32"W	35.38'

REV:10-27-06
 REV:10-20-06
 SHEET 1 OF 2

35' SFPPLP, L.P. EASEMENT

EXHIBIT B-2

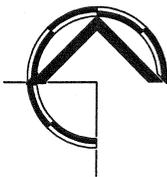
DRAWN BY: A.A. CHECKED BY: I.C. DATE: 09/29/06 SCALE: N.T.S.

A PORTION OF SECTION 22, 23, 26 AND 27, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, AND A PORTION OF LOT 1, BLOCK 2, BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

B BROCK & BUSTILLOS INC.
 CONSULTING CIVIL ENGINEERS
 LAND SURVEYORS

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FILE NO: S-6645-01

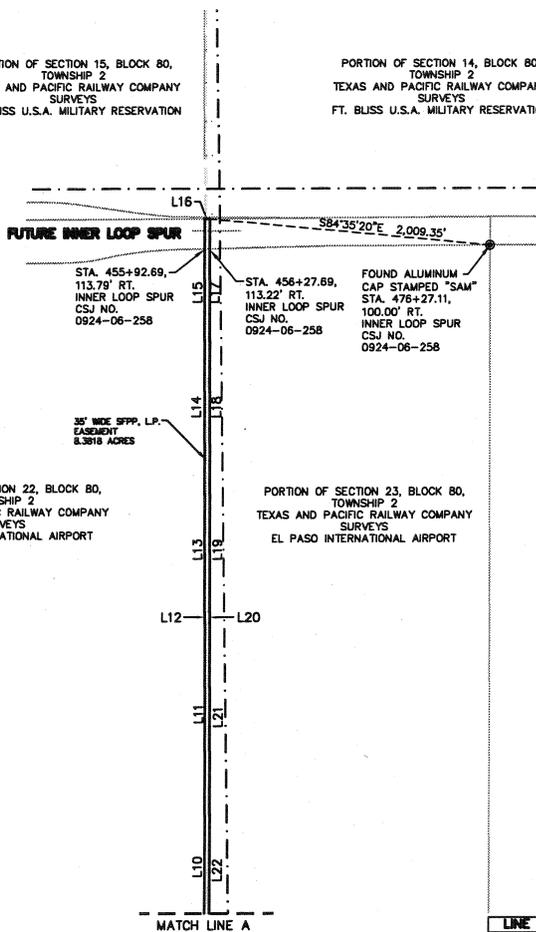


PORTION OF SECTION 15, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
FT. BLISS U.S.A. MILITARY RESERVATION

PORTION OF SECTION 14, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
FT. BLISS U.S.A. MILITARY RESERVATION

PORTION OF SECTION 22, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
EL PASO INTERNATIONAL AIRPORT

PORTION OF SECTION 23, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
EL PASO INTERNATIONAL AIRPORT



LINE	DIRECTION	DISTANCE
L1	N37°02'40"E	945.39'
L2	N38°06'33"E	137.76'
L3	N36°37'36"E	157.43'
L4	N36°15'31"E	237.67'
L5	N36°40'03"E	665.41'
L6	N36°31'45"E	1465.25'
L7	N36°32'49"E	1683.24'
L8	N33°51'52"E	71.63'
L9	N03°16'34"E	61.79'
L10	N00°06'25"W	768.96'
L11	N00°17'51"W	1359.94'
L12	N01°23'54"W	80.12'
L13	N00°14'05"W	835.21'
L14	N00°21'50"W	1092.45'
L15	N00°17'19"W	855.26'
L16	N89°41'34"E	35.00'
L17	S00°17'19"E	855.25'
L18	S00°21'50"E	1092.46'
L19	S00°14'05"E	834.89'
L20	S01°23'54"E	80.10'
L21	S00°17'51"E	1360.33'
L22	S00°06'25"E	770.05'
L23	S03°16'34"W	72.39'
L24	S33°51'52"W	82.02'
L25	S36°32'49"W	1684.05'
L26	S36°31'45"W	1465.28'
L27	S36°40'03"W	665.32'
L28	S36°15'31"W	237.66'
L29	S36°37'36"W	158.00'
L30	S38°06'33"W	137.89'
L31	S37°02'40"W	950.26'
L32	N44°31'32"W	35.38'

REFERENCE DOCUMENTS:

1. PLAT OF A SURVEY OF SECTIONS 2, 4, 6, 8, 10, 14, 26, 18, 22, 20, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY S.A. CALDWELL, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
2. PLAT OF A RESURVEY OF BLOCKS 76, 77, 78, TOWNSHIP 3, PARTS OF BLOCK 75, 76, 77, TOWNSHIP 5, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY R.W. BAKER, DATED JULY 1 THRU DECEMBER 15, 1973, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
3. PLAT OF SURVEY OF BLOCKS 80 AND 81, TOWNSHIPS 1 AND 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY JACOB KUECHLER, DATED JANUARY, 1906, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
4. BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, RECORDED IN BOOK 78, PAGES 87 AND 87A, EL PASO COUNTY PLAT RECORDS.

REV:10-27-06
REV:10-20-06
SHEET 2 OF 2

35' SFPP, L.P. EASEMENT

EXHIBIT B-3

DRAWN BY: A.A. CHECKED BY: I.C. DATE: 09/29/06 SCALE: N.T.S.

A PORTION OF SECTION 22, 23, 26 AND 27, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, AND A PORTION OF LOT 1, BLOCK 2, BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, CITY OF EL PASO, EL PASO COUNTY, TEXAS.



BROCK & BUSTILLOS INC.

CONSULTING CIVIL ENGINEERS
LAND SURVEYORS

417 EXECUTIVE CENTER-EL PASO, TX 79902-PH (915) 542-4800
FAX (915) 542-2867-WWW.BROCK&BUSTILLOS.COM

FILE NO: S-6645-01

EXHIBIT "C"

Area A

65' WIDE SFPP, L.P. TEMPORARY EASEMENT

A tract of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Sections 27, 33, 34 and 40, Block 80, Township 2, Texas and Pacific Railway Company Surveys and a portion of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two and being more particularly described as follows, to wit:

COMMENCING for reference at a city monument located at the intersection of Shell Street and Mayflower Avenue; **THENCE, North 29°24'27" East, 427.06 feet**, to the southerly boundary line of the El Paso International Airport for the **POINT OF BEGINNING** of the easement herein described;

THENCE, leaving the southerly boundary line of the El Paso International Airport, **North 00°41'58" West, 148.61 feet** to the most westerly corner of the easement herein described;

THENCE, North 33°52'30" East, 111.91 feet to an angle point of the easement herein described;

THENCE, North 36°31'21" East, 98.30 feet to an angle point of the easement herein described;

THENCE, North 36°34'24" East, 387.25 feet to an angle point of the easement herein described;

THENCE, North 36°32'31" East, 3,545.39 feet to an angle point of the easement herein described;

THENCE, North 36°33'39" East, 2,265.46 feet to an angle point of the easement herein described;

THENCE, North 35°20'10" East, 790.34 feet to an angle point of the easement herein described;

THENCE, North 37°02'40" East, at 16.31 feet intersecting the southwesterly boundary line of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two and continuing for a total distance of **457.41 feet** to the southwesterly right-of-way line of Global Reach Drive for the most northerly corner of the easement herein described;

THENCE, along the southwesterly right-of-way line of Global Reach Drive, **South 44°31'32" East, 65.71 feet** to the northwesterly line of a proposed 35 feet wide SFPP, L.P. easement for the most easterly corner of the easement herein described;

THENCE, leaving the southwesterly right-of-way line of Global Reach Drive and following the northwesterly line of the proposed 35 feet wide SFPP, L.P. easement, **South 37°02'40" West, 441.10 feet** to the southwesterly boundary of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two and continuing for a total distance of **446.81 feet** for an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 35°20'10" West, 790.06 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 36°33'39" West, 2,266.14 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 36°32'31" West, 3,545.40 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 36°34'24" West, 387.24 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 36°31'21" West, 96.77 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 33°52'30" West, 90.17 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of said SFPP, L.P., **South 00°41'58" East, 133.69 feet** to the southerly line of the El Paso International Airport;

THENCE, leaving the northwesterly line of said SFPP, L.P. easement and following the southerly line of the El Paso International Airport, **North 86°01'54" West, 65.22 feet** to the **POINT OF BEGINNING**;

Said easement containing **11.6100 acres (505,730.7 square feet)**, more or less and being subject to easements, restrictions and covenants of record.

Bearings are based on the U.T.M. (Universal Transverse Mercator System) Zone 13, NAD 83, for the State of Texas. Distances were scaled up to surface.

Area B

65' WIDE SFPP, L.P. TEMPORARY EASEMENT

A tract of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Sections 22, 23, 26 and 27, Block 80, Township 2, Texas and Pacific Railway Company Surveys and a portion of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two and being more particularly described as follows, to wit:

BEGINNING at the intersection of the northeasterly right-of-way line of Global Reach Drive and the northwesterly line of the proposed 35 feet wide SFPP, L.P. Easement, for the **POINT OF BEGINNING** of the easement herein described, whence a city monument located at the monument line point of curvature bears, South 44°00'43" East, 5020.60 feet;

THENCE, leaving the northwesterly line of the proposed SFPP, L.P. Easement and following the northeasterly right-of-way line of Global Reach Drive, **North 44°31'32" West, 65.71 feet**

THENCE, leaving the northwesterly right-of-way line of Global Reach Drive, **North 37°02'40" East, 936.37 feet**, to an angle point of the easement herein described;

THENCE, **North 38°06'33" East, 13.86 feet** to the northeasterly line of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two and continuing for a total distance of **137.52 feet** to an angle point of the easement herein described;

THENCE, **North 36°37'36" East, 156.39 feet** to an angle point of the easement herein described;

THENCE, **North 36°15'31" East, 237.70 feet** to an angle point of the easement herein described;

THENCE, **North 36°40'03" East, 665.56 feet** to an angle point of the easement herein described;

THENCE, **North 36°31'45" East, 1,465.18 feet** to an angle point of the easement herein described;

THENCE, **North 36°32'49" East, 356.21 feet** to an angle point of the easement herein described;

THENCE, **North 47°51'25" East, 50.99 feet** to an angle point of the easement herein described;

THENCE, North 36°32'49" East, 1,275.76 feet to an angle point of the easement herein described;

THENCE, North 33°51'52" East, 55.30 feet to an angle point of the easement herein described;

THENCE, North 03°16'34" East, 45.12 feet to an angle point of the easement herein described;

THENCE, North 00°06'25" West, 86.65 feet to an angle point of the easement herein described;

THENCE, North 11°25'01" West, 50.99 feet to an angle point of the easement herein described;

THENCE, North 00°06'25" West, 630.58 feet to an angle point of the easement herein described;

THENCE, North 00°17'51" West, 1,359.21 feet to an angle point of the easement herein described;

THENCE, North 01°23'54" West, 80.16 feet to an angle point of the easement herein described;

THENCE, North 00°14'05" West, 835.80 feet to an angle point of the easement herein described;

THENCE, North 00°21'50" West, 1,092.42 feet to an angle point of the easement herein described;

THENCE, North 00°17'19" West, 640.97 to the proposed south right-of-way line, Sta. 455+27.69, 114.85 feet Right, Inner Loop Spur, CSJ No. 0924-06-258, and continuing for a total distance of **855.28 feet** to the north line of El Paso International Airport for the northwesterly corner of the easement herein described;

THENCE, following the north line of El Paso International Airport, North 89°41'34" East, 65.00 feet to the northeasterly corner of the easement herein described, identical to northwesterly corner of proposed 35 feet wide SFPP, L.P. Easement, whence an aluminum cap stamped "SAM" found along the proposed south right-of-way line, Sta. 478+27.11, 100.00 feet Right, Inner Loop Spur, CSJ No. 0924-06-258, bears South 84°41'12" East, 2,044.18 feet;

THENCE, leaving the north line of El Paso International Airport and following the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 00°17'19" East**, 213.28 feet to the proposed south-right-of-way line, Sta. 456+92.69, 113.79 feet Right, Inner Loop Spur, CSJ No. 0924-06-258, and continuing for a total distance of **855.26 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 00°21'50" East**, **1,092.45 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 00°14'05" East**, **835.21 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 01°23'54" East**, **80.12 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 00°17'51" East**, **1,359.94 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 00°06'25" East**, **768.96 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 03°16'34" West**, **61.79 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 33°51'52" West**, **71.63 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 36°32'49" West**, **1,683.24 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 36°31'45" West**, **1,465.25 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 36°40'03" West**, **665.41 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 36°15'31" West, 237.67 feet** to an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 36°37'36" West, 157.43 feet** to an angle point of the easement herein described;

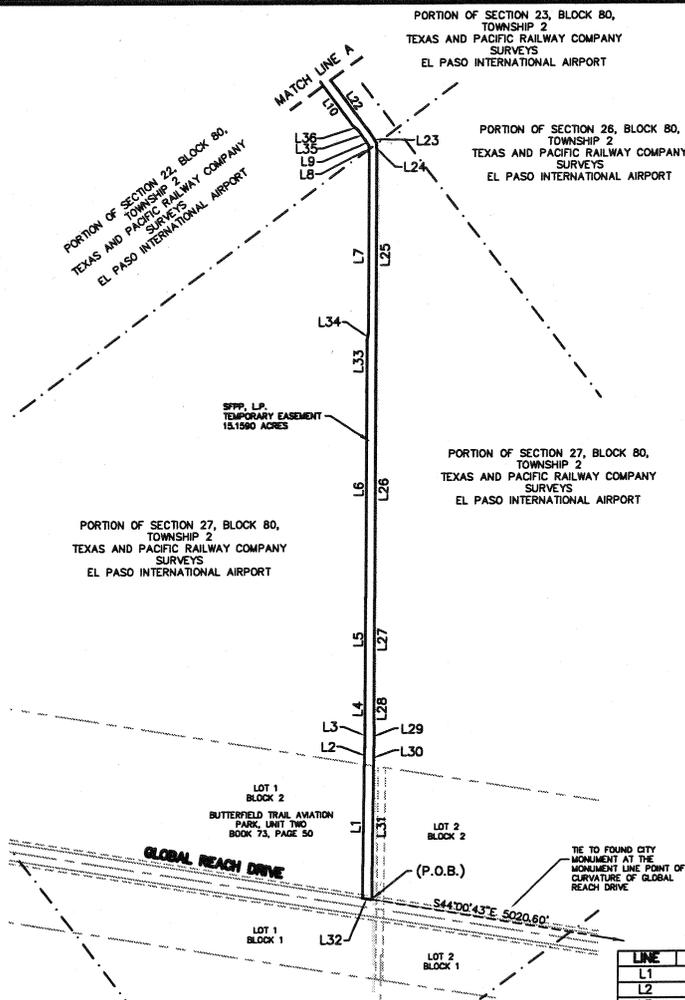
THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 38°06'33" West, 132.91 feet** to the intersection of the northeasterly boundary of Lot 1, Block 2, Butterfield Trail Aviation Park, Unit Two and continuing for a total distance of **137.76 feet**, for an angle point of the easement herein described;

THENCE, continuing along the northwesterly line of a proposed 35 feet wide SFPP, L.P. Easement, **South 37°02'40" West, 945.39 feet** to the **POINT OF BEGINNING**;

Said easement containing **15.1590 acres (660,324.4 square feet)**, more or less and being subject to easements, restrictions and covenants of record.

Bearings are based on the U.T.M. (Universal Transverse Mercator System) Zone 13, NAD 83, for the State of Texas. Distances were scaled up to surface.

Descriptions prepared by:
Isaac Camacho, TX RPLS No. 5337
Brock & Bustillos Inc.
417 Executive Center Blvd.
El Paso, TX 79902
915-542-4900



NOTES:

1. SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS MAY EXIST WHERE NONE ARE SHOWN.
2. NO CORNERS WERE SET FOR THE SFPP, L.P. TEMPORARY EASEMENT.
3. BEARINGS ARE BASED ON U.T.M. (UNIVERSAL TRANSVERSE MERCATOR SYSTEM) ZONE 13, NAD 83, FOR THE STATE OF TEXAS. DISTANCES SHOWN WERE SCALED UP TO SURFACE.

LINE	DIRECTION	DISTANCE
L1	N37°02'40\"E	936.37'
L2	N38°06'33\"E	137.52'
L3	N36°37'36\"E	156.39'
L4	N36°15'31\"E	237.70'
L5	N36°40'03\"E	665.56'
L6	N36°31'45\"E	1465.18'
L7	N36°32'49\"E	1275.76'
L8	N33°51'52\"E	55.30'
L9	N03°16'34\"E	45.12'
L10	N00°06'25\"W	630.58'
L11	N00°17'51\"W	1359.21'
L12	N01°23'54\"W	80.16'
L13	N00°14'05\"W	835.80'
L14	N00°21'50\"W	1092.42'
L15	N00°17'19\"W	855.28'
L16	N89°41'34\"E	65.00'
L17	S00°17'19\"E	855.26'
L18	S00°21'50\"E	1092.45'
L19	S00°14'05\"E	835.21'
L20	S01°23'54\"E	80.12'
L21	S00°17'51\"E	1359.94'
L22	S00°06'25\"E	758.96'
L23	S03°16'34\"W	61.79'
L24	S33°51'52\"W	71.63'
L25	S36°32'49\"W	1683.24'
L26	S36°31'45\"W	1465.25'
L27	S36°40'03\"W	665.41'
L28	S36°15'31\"W	237.67'
L29	S36°37'36\"W	157.43'
L30	S38°06'33\"W	137.76'
L31	S37°02'40\"W	945.39'
L32	N44°31'32\"W	65.71'
L33	N36°32'49\"E	356.21'
L34	N47°51'25\"E	50.99'
L35	N00°06'25\"W	86.65'
L36	N11°25'01\"W	50.99'

REV:11-14-06
 REV:10-27-06
 SHEET 1 OF 2

EXHIBIT D-2

SFPP, L.P. TEMPORARY EASEMENT

DRAWN BY: A.A. CHECKED BY: I.C. DATE: 10/20/06 SCALE: N.T.S.

A PORTION OF SECTION 22, 23, 26 AND 27, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, AND A PORTION OF LOT 1, BLOCK 2, BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

B BROCK & BUSTILLOS INC.
 CONSULTING CIVIL ENGINEERS
 LAND SURVEYORS

417 EXECUTIVE CENTER-EL PASO, TX 79902-PH (915) 542-4800
 FAX (915) 542-2867-WWW.BROCKBUSTILLOS.COM

FILE NO: S-6645-01

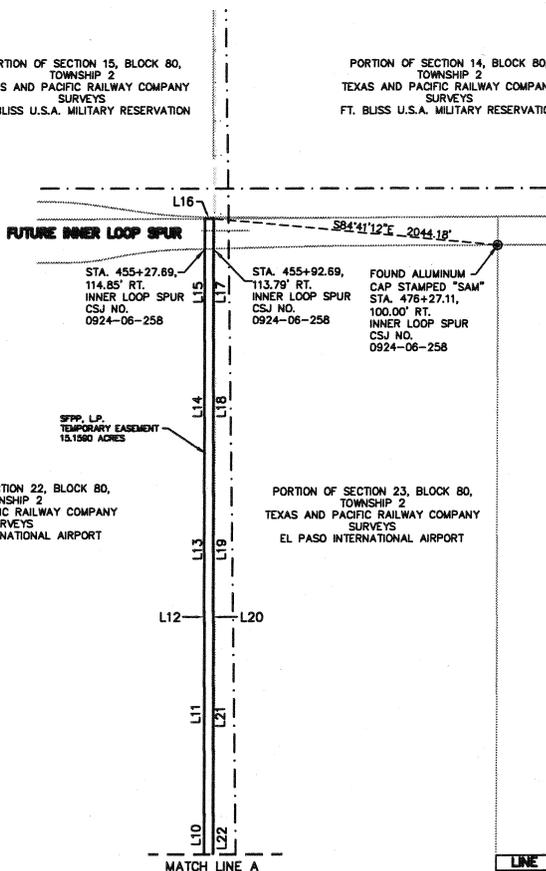


PORTION OF SECTION 15, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
FT. BLISS U.S.A. MILITARY RESERVATION

PORTION OF SECTION 14, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
FT. BLISS U.S.A. MILITARY RESERVATION

PORTION OF SECTION 22, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
EL PASO INTERNATIONAL AIRPORT

PORTION OF SECTION 23, BLOCK 80,
TOWNSHIP 2
TEXAS AND PACIFIC RAILWAY COMPANY
SURVEYS
EL PASO INTERNATIONAL AIRPORT



LINE	DIRECTION	DISTANCE
L1	N37°02'40\"	936.37'
L2	N38°06'33\"	137.52'
L3	N36°37'36\"	156.39'
L4	N36°15'31\"	237.70'
L5	N36°40'03\"	665.56'
L6	N36°31'45\"	1465.18'
L7	N36°32'49\"	1275.76'
L8	N33°51'52\"	55.30'
L9	N03°16'34\"	45.12'
L10	N00°06'25\"	630.58'
L11	N00°17'51\"	1359.21'
L12	N01°23'54\"	80.16'
L13	N00°14'05\"	835.80'
L14	N00°21'50\"	1092.42'
L15	N00°17'19\"	855.28'
L16	N89°41'34\"	65.00'
L17	S00°17'19\"	855.26'
L18	S00°21'50\"	1092.45'
L19	S00°14'05\"	835.21'
L20	S01°23'54\"	80.12'
L21	S00°17'51\"	1359.94'
L22	S00°06'25\"	768.96'
L23	S03°16'34\"	61.79'
L24	S33°51'52\"	71.63'
L25	S36°32'49\"	1683.24'
L26	S36°31'45\"	1465.25'
L27	S36°40'03\"	665.41'
L28	S36°15'31\"	237.67'
L29	S36°37'36\"	157.43'
L30	S38°06'33\"	137.76'
L31	S37°02'40\"	945.39'
L32	N44°31'32\"	65.71'
L33	N36°32'49\"	356.21'
L34	N47°51'25\"	50.99'
L35	N00°06'25\"	86.65'
L36	N11°25'01\"	50.99'

REFERENCE DOCUMENTS:

1. PLAT OF A SURVEY OF SECTIONS 2, 4, 6, 8, 10, 14, 26, 18, 22, 20, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY S.A. CALDWELL, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
2. PLAT OF A RESURVEY OF BLOCKS 76, 77, 78, TOWNSHIP 3, PARTS OF BLOCK 75, 76, 77, TOWNSHIP 5, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY R.W. BAKER, DATED JULY 1 THRU DECEMBER 15, 1973, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
3. PLAT OF SURVEY OF BLOCKS 80 AND 81, TOWNSHIPS 1 AND 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, PREPARED BY JACOB KUECHLER, DATED JANUARY, 1906, PROVIDED BY THE TEXAS GENERAL LAND OFFICE HOLDINGS, AUSTIN, TEXAS.
4. BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, RECORDED IN BOOK 78, PAGES 87 AND 87A, EL PASO COUNTY PLAT RECORDS.

REV:11-14-06
REV:10-27-06
SHEET 2 OF 2

EXHIBIT D-3

SFPP, L.P. TEMPORARY EASEMENT

DRAWN BY: A.A. CHECKED BY: I.C. DATE: 10/20/06 SCALE: N.T.S.

A PORTION OF SECTION 22, 23, 26 AND 27, BLOCK 80, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, AND A PORTION OF LOT 1, BLOCK 2, BUTTERFIELD TRAIL AVIATION PARK, UNIT TWO, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

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FILE NO: S-6645-01