

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

DEPARTMENT: AIRPORT
AGENDA DATE: January 29, 2008
CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E. - 780-4724
DISTRICT(S) AFFECTED: Third (3)

SUBJECT:

AUTHORIZE the City Manager to sign a Lease Agreement by and between the City of El Paso (City), and the El Paso Electric Company (EPE), with respect to the City's use of EPE property in exchange for EPE's use of the City's property, both of which are located near Lone Star Golf Club.

BACKGROUND / DISCUSSION:

An original lease dated July 22, 1976 between El Paso Electric (EPE) and the City provided the City surface use of a strip of land to the east side of the public Golf Course, now named Lone Star Golf Club. Consideration provided EPE, by the Golf Club, for the use of the land, was landscaping and weed control. This agreement allowed a golfer to retrieve or play errant shots from EPE property. Recently EPE requested the surface use of a strip of land owned by the City to provide a second entry point to the Scottsdale Substation. In granting EPE use of the land, the City and EPE agreed on a mutual land use lease, with each party maintaining the respective parcels. In the process, the 1976 lease was terminated and its provisions were incorporated into the new lease.

PRIOR COUNCIL ACTION:

Council approved the July 22, 1976 lease

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N.A., consideration is non-monetary

BOARD / COMMISSION ACTION:

Approved by the Airport Board at the January 17, 2008 board meeting

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

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

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

RESOLUTION

WHEREAS, the City of El Paso ("City") and the El Paso Electric Company ("EPE") entered into a Lease Agreement dated July 22, 1976 (the "1976 Lease") whereby EPE granted the City certain rights of use on a portion of EPE property adjacent to the City's property, now known as Lone Star Golf Club, in exchange for the City's maintenance of such EPE property;

WHEREAS, EPE desires to use a portion of the City's property, which is also adjacent to the Lone Star Golf Club in order to create a secondary ingress/egress point for EPE Scottsdale Substation;

WHEREAS the Parties desire to terminate the 1976 Lease and enter into a new agreement whereby the City's access to and use of EPE's referenced property is granted in exchange for EPE's access to and use of the City's referenced property;

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

THAT the City Manager be authorized to sign the Lease Agreement by and between the City of El Paso ("City") and the El Paso Electric Company ("EPE") with respect to the City's use of EPE property in exchange for EPE's use of the City's property, both of which are located near the Lone Star Golf Club.

ADOPTED THIS _____ DAY OF _____, 2008.

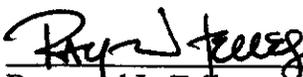
CITY OF EL PASO

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, Director
Department of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LEASE AGREEMENT

This Agreement is entered into this ____ day of _____, 2008, by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "the City" and the **EL PASO ELECTRIC COMPANY**, a Texas electric utility company, hereinafter referred to as "EPE".

WITNESSETH

WHEREAS, the City and EPE (collectively referred to as the "Parties") entered into a Lease Agreement dated July 22, 1976 (the "1976 Lease") whereby EPE granted the City certain rights of use on a portion of EPE property adjacent to the City's property, now known as Lone Star Golf Club, in exchange for the City's maintenance of such EPE property;

WHEREAS, EPE desires to use a portion of the City's property, which is also adjacent to the Lone Star Golf Club in order to create a secondary ingress/egress point for EPE Scottsdale Substation;

WHEREAS the Parties desire to terminate the 1976 Lease and enter into a new agreement whereby the City's access to and use of EPE's referenced property is granted in exchange for EPE's access to and use of the City's referenced property;

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do mutually agree as follows:

1. **PREMISES.**
City hereby leases to EPE the portion of City-owned property identified as **Area 1** within **EXHIBIT "A"** to provide a secondary ingress and egress point to the EPE Scottsdale Substation. **EXHIBIT "A"** is attached hereto and fully incorporated herein by this reference. The parties expressly agree and understand that the El Paso Water Utilities has a water line located within **Area 1**. Nothing within this Agreement affects the right of the El Paso Water Utility to continue use of such line.

EPE hereby leases to City the portion of EPE-owned property identified as **Area 2** within **EXHIBIT "A"** to provide for maintenance of the adjacent golf course as required by the City or its tenant golf course operator of the Lone Star Golf Club.

2. **TERM AND TERMINATION.**
This Agreement shall become effective upon the final execution of all parties and shall be in full force and effect for one (1) year. Upon the passage of the initial one (1) year term, this

Agreement shall automatically renew for consecutive one (1) year terms unless otherwise terminated as provided herein. Either party may terminate this Agreement upon provision of written notice to the other, at least one hundred and eighty (180) days in advance of such termination date.

3. DUTIES AND RIGHTS OF THE PARTIES.

As consideration for the lease of each of the respective leased premises and the use and occupancy of such leased premises, the respective lessee shall be responsible for maintenance and up-keep of the premises it has leased. Maintenance shall include, but not be limited to, keeping the leased premises free and clear of weeds, trash, and other refuse. EPE is permitted to pave and place such security gates as desired on Area 1 in furtherance of EPE's proposed use for ingress and egress. City, or its tenant golf course operator, is permitted to landscape Area 2 in furtherance of City's proposed use as a golf course overrun area.

Other than as expressly noted herein, neither party may construct any buildings or other structures on the respective leased premises without the prior written authorization from the respective lessor. The respective lessor shall retain the right at all times to enter upon the leased premises to inspect, repair or maintain its property, to conduct its business, and to ensure the continued operation of its adjacent facilities.

4. LEGAL RELATIONSHIP.

Nothing herein shall be construed as creating the relationship of employer/employee, principal/agent or other license or joint venture between the parties. Neither party has, nor will attempt to assert, the authority to make commitments for or bind the other to any obligation, except as may be expressly permitted herein.

5. CITY OR EPE TENANTS OR AGENTS.

EPE shall require any of its tenants or agents to be aware of this Agreement and abide by its terms, when such tenant or agent conducts business in, on, or near Area 1. Similarly, the City shall require any of its tenants or agents, including the operator of the Lone Star Golf Club, to be aware of this Agreement and abide by its terms, when such tenant or agent conducts business in, on, or near Area 2.

6. LAWS AND LIENS.

All activities conducted by or on behalf of each lessee on the premises it has leased shall be performed in a good and workmanlike manner and in accordance with all applicable federal, state, and local laws and regulations.

In no event shall any lessee or any of its contractors, suppliers, or materialmen, or any subcontractor, supplier, or materialman of any of lessee's contractors, file or assert any lien on any real or personal property of the lessor. In the event that any such lien shall nevertheless be filed or asserted, such lessee shall take all steps necessary and proper for the prompt release and discharge of such lien in the manner prescribed by Texas law.

7. NOTICES.

All notices and communications made pursuant to this Agreement shall be in writing and shall be either hand-delivered or sent by certified mail, return receipt, to the respective Parties at the respective addresses shown below, unless and until the parties are otherwise notified in writing:

CITY: Mayor
City of El Paso
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901

COPY TO: Director of Aviation
El Paso International Airport
6701 Convair Rd.
El Paso, Texas 79925-1091

EPE: El Paso Electric Company
100 N. Stanton
El Paso, Texas 79901

8. SEVERABILITY.

Every provision of this Agreement is intended to be severable. If any term or provision hereof is found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect, to the extent practicable, the validity of the remainder of the Agreement.

9. 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.

10. AUTHORIZATION TO ENTER AGREEMENT.

The signatories represent and warrant that they 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.

11. 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.

12. ASSIGNMENT.

Neither lessee shall assign this Agreement or any part of any rights granted herein to any person or entity. Any such attempt to assign in violation of this Section shall be null and void.

13. **ENTIRE AGREEMENT.**

This Agreement constitutes and expresses the entire agreement between the parties with respect to the subject matter referenced herein, and supersedes all prior negotiations, representations or agreements, either written or oral.

14 **TERMINATION OF THE 1976 LEASE.**

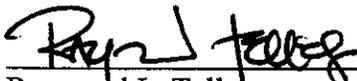
Upon full execution of this Agreement, the 1976 Lease shall be terminated and the City's use and occupancy of Area 2 shall be governed in all respects by this Agreement.

IN WITNESS WHEREOF, the parties have approved this Agreement on the date first noted above.

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. Abel, A.A.E., Director
Department of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2008, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

EL PASO ELECTRIC COMPANY

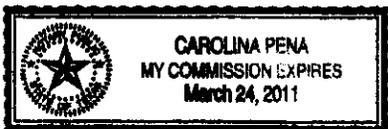
Kerry Lore
By: Kerry Lore
Title: Vice-President
Date: 1/3/08

APPROVED AS TO FORM 12-28-07
BY THE GENERAL COUNSEL SEP

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 3 day of January, 2008,
by Kerry Lore as VP. Admin of El Paso Electric Company.



Carolina Pena
Notary Public, State of Texas

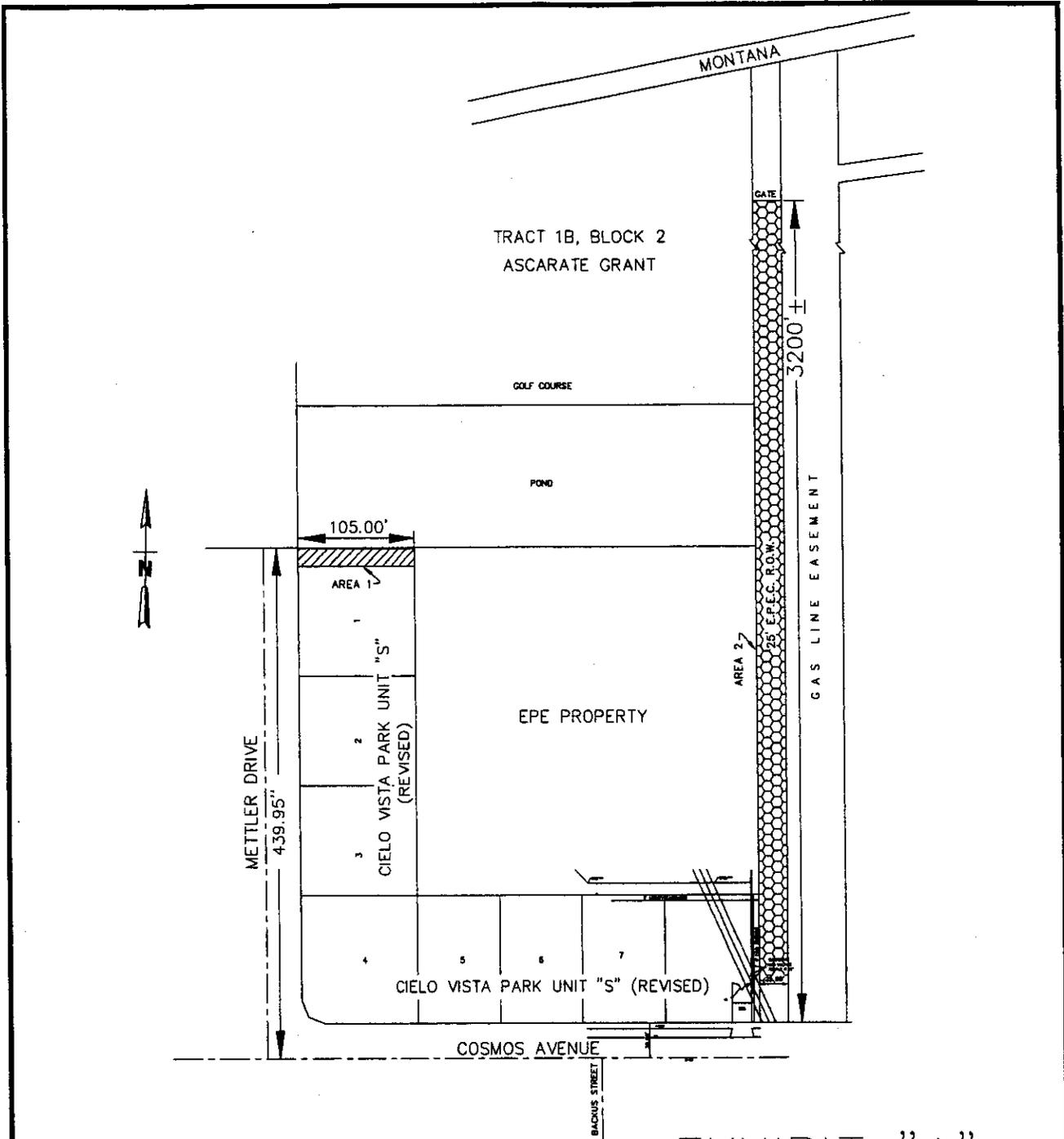


EXHIBIT "A"

LEGEND

-  AREA 1 - EPEC 16 FT. INGRESS EGRESS
-  AREA 2 - CITY OF EL PASO 25 FT. INGRESS EGRESS

GRANTORS INITIALS _____

Return to:
 El Paso Electric Co.
 P.O. Box 982-Loc 501
 El Paso, TX. 79960

IN A PORTION OF		
TRACT 1B, BLOCK 2 ASCARATE GRANT EL PASO COUNTY, TEXAS		
EL PASO ELECTRIC CO. R.O.W.		
DATE	11/14/07	EST. NO.
SCALE	NONE	