

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Engineering Department

AGENDA DATE: March 24, 2008

CONTACT PERSON/PHONE: R. Alan Shubert, P.E. - ext. 4423

DISTRICT(S) AFFECTED: 1

SUBJECT:

El Paso Electric Company is requesting an overhead electrical easement to provide electrical service to the McCutcheon Basin Pump Station at 146 Redd Road, El Paso, Texas.

BACKGROUND / DISCUSSION:

The overhead electrical easement is required to provide electrical service to the McCutcheon Basin Pump Station.

PRIOR COUNCIL ACTION:

City council has not previously considered this item.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(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

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an agreement for electric service and payment of construction costs of Four Thousand One Hundred Fifty Five and 84/100 Dollars (\$4,155.84) to the El Paso Electric Company and granting an overhead electrical easement to the El Paso Electric Company for the purpose of providing electrical service to the McCutcheon Basin Pump Station at 146 Redd Road, El Paso, Texas. Said property being more particularly described as a portion Lot 1, Block 2, La Paz Estates, El Paso, El Paso County, Texas.

ADOPTED THIS _____ DAY OF _____, 2009.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E., C.B.O.
City Engineer



El Paso Electric Company
P.O. Box 982
El Paso, Texas 79960

January 28, 2008

Mr. Sam Rodriguez
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Dear Sam Rodriguez:

**OVERHEAD ELECTRIC SERVICE TO McCUTCHEON BASIN PUMP STATION
LOCATED AT 146 REDD ROAD, EL PASO, TEXAS 79932.**

This Letter of Agreement, hereinafter called the "Agreement" summarizes the terms under which El Paso Electric Company agrees to provide overhead electric service to your **Pump Station** located at **146 Redd Road, El Paso Texas** by way of an overhead line extension, hereinafter called the "Overhead System."

I. Parties and Term

In consideration of the promises hereinafter contained and other good and valuable consideration, this Agreement is entered into by and between El Paso Electric Company, hereinafter called the "Company," and the **City of El Paso,** hereinafter called the "Customer," conjunctively known as the "Parties."

The term of this Agreement shall be from the date of execution until four (4) years after the completion of the installation of all facilities required to provide the requested service as hereinafter specified.

II. Location

The Customer has requested the Company to install an overhead line extension to provide electric service to the location(s) as shown on the attached Company drawings marked Exhibit "A" and incorporated herein the same as if fully set out herein.

This Agreement covers only the area shown on Exhibit A. Any future extension of service to additional lots or to any other commercial property not reflected in Exhibit A attached hereto will be negotiated by a separate agreement, if applicable.

III. Type of Service

1. The Company agrees to install, own, operate, and maintain the Overhead System to serve the location(s) designated in Exhibit A. The Overhead System will be a **three phase, 13,800 volt**, primary line extension with secondary transformation installed as follows: **3-10 kva transformer (s)** to provide **277/480 volt, three phase, 4 wire** service to the Customer's property described above.
2. The Company will designate the point of service and meter location on the Customer's property and specify the type of metering to be installed. The Customer or Customer's electrical contractor shall contact the Company's Planner for this information prior to installing the service entrance.
3. The size and maximum distance of the secondary service drop will vary depending on the Customer's electrical load. The Customer or Customer's electrical contractor shall contact the Company's Planner for this information prior to installing the service entrance.
4. The Customer's service attachment height must be adequate to meet all applicable codes and ordinances for ground and building clearances.
5. All areas where the Company's Overhead System and related facilities are to be installed shall be to final grade prior to the start of the work by the Company.
6. The Customer agrees to pay the cost of (1) relocation or modification of any installed electrical facilities due to grade changes, replat, or to meet other requirements of the Customer, and (2) repair or replacement, or both, as the case may be, of any Company facilities covered in this Agreement should such facilities be damaged during property development or building construction, or both, as the case may be, if the need for such an action is shown to have been caused by the Customer or its agents.
7. The Company will not construct a line extension for the Customer until the Company has secured all required firm rights-of-way and permits. All line extensions shall be constructed on private rights-of-way, except that within incorporated municipalities where they are not available, such lines may be constructed on existing public roads, streets, alleys or easements. The Customer shall furnish such rights-of-way as required, without charge to the Company, over property owned or leased by the Customer and, if possible, will assist the Company in securing other rights-of-way necessary to provide service. The Customer shall have all of his property corners surveyed and necessary property irons installed by licensed

surveyors to permit the Company to properly install the Company's electrical facilities within said rights-of-way.

IV. Cost and Security Terms and Conditions

In consideration for the Company providing such service, the Customer hereby agrees to the following express terms and conditions:

1. The following definition is accepted as a part of this Agreement:

"Revenue - The total amount billed to a customer for electric service, determined by the metered monthly kilowatt demand and kilowatt-hour usage, applied to the appropriate tariff schedule, **LESS THE FIXED FUEL FACTOR COSTS AND TAXES.**"

2. The Company's cost to provide and install all of the facilities in the Overhead System is **\$4,155.84**.
3. The Customer shall make a refundable Cash Advance for Construction in the amount of **\$4,155.84**. All or a portion of this Cash Advance will be refunded to the Customer or retained by the Company as follows:
4. For the term of this Agreement on each annual anniversary date of completion of the facilities of the Overhead System, the Company will compute the actual annual revenues received from the previous twelve months' billings for the service provided to all users of the Overhead System designated in this Agreement. Users of the Overhead System are interpreted to be those customers who require no additional investment on the part of the Company other than the normal meter and secondary service conductor. If a request is received during the term of this Agreement to provide additional facilities other than our normal meter and secondary service conductor, another Agreement covering the additional installation cost required by the Company, if necessary, will be negotiated separately with the prospective customer requesting service. This other Agreement, which will include provisions for a refundable Cash Advance or Revenue Guarantee, will be necessary if the estimated four (4) year Revenue is less than the Company's additional installation costs to provide the requested service. In order to obtain an estimated Revenue credit, a prospective customer must be considered a permanent customer by constructing a permanent house, or if living in a mobile home must meet the following requirements as stated in the Company's filed Line Extension Policy:
 - a. A permanent customer is one whose installed electrical equipment is used in a manner that provides the Company a reasonable return on the capital investment required to serve the customer.

- b. A mobile home customer who owns or is buying the land on which the mobile home is located and has a permanent source of domestic water and sewer facilities is considered a permanent customer.
 - c. Revenue received by the Company from a customer during the term of this Agreement, must exceed the cost of providing any additional facilities to said customer before said Revenue will apply to this Agreement as stated in the following paragraphs of this Article IV.
5. Each year after the actual annual revenue has been computed, the Company will refund to the Customer the amount of the actual revenue, as described in paragraph IV.4 above, less the fixed fuel factor costs and taxes as defined in paragraph IV.1. above. It is again emphasized that no Revenue received from customers who have required the installation of additional facilities will be credited toward this Agreement until the Company has recovered the cost of the additional facilities through said Revenue during the term of this Agreement.
 6. All or a portion of this Cash Advance may be refunded to the Customer from revenue received from other customers served when additional line extensions are constructed. If additional line extensions are constructed to serve other customers or additional customers are served from this line extension within forty-eight (48) months of the date the line extension is completed, the Company, if notified, will make one-time refunds to the Customer for each such new customer served. The one-time refund under this Agreement will be calculated in the following manner:

$$R = \frac{E - C}{48} \times (48 - M)$$

Where:

R = The amount of the refund,

E = Estimated 48-month revenue from permanent customers served from the additional line extensions,

C = Estimated cost of the additional extensions, and

M = Number of months since the Customer's line extension covered in this Agreement was completed.

In order for the one-time refund credit to be applied, the new facilities must be for a permanent customer.

7. The Company on an annual basis following the payment of a Cash Advance for Construction will reconcile refund balances. The interest rate that will be applied to balances subject to refund will be the annual interest rate for Customer Deposits approved by the Public Utility Commission of Texas.
8. In no case will refunds from electric bills and one-time refunds exceed the Customer's Cash Advance for Construction.
9. If a balance from the Customer's Cash Advance for Construction remains after forty-eight (48) months from the date the facilities of the Overhead System were completed, this balance will revert to the Company as a nonrefundable Customer Contribution in aid of Construction.

V. Other Conditions

1. The Customer shall meet all other rules, requirements, policies, codes, standard procedures and regulations as set forth and practiced by the Company.
2. The Customer shall prohibit the installation or construction of any structure or building that will create an impaired clearance to the Company's existing or future electrical conductors under the applicable codes or ordinances as observed and enforced by the Company or the proper regulatory authority, or both as the case may be. If such an impaired clearance is created or will be created by any construction or installation by the Customer, the Customer hereby agrees to pay to the Company the entire cost incurred to correct said impaired clearance.
3. In the event any term or provision of this Agreement is found to be invalid or unenforceable, such findings shall not affect the validity or enforceability of the remainder of this Agreement unless the affected portion is determined by the Company to be material to this Agreement, in which event such findings shall terminate the entire Agreement. No waiver by the Company of any term or condition of this Agreement or any breach thereof shall be construed as a waiver of any other term or subsequent breach of that or any other term or condition hereof.
4. To the extent allowed by State law, the Customer agrees to indemnify and save Company, its directors, officers, agents, representatives, employees, contractors or subcontractors from such liability, loss, cost or expense, including, but not limited to, attorney's fees, resulting from any injury to persons (including death) or damages or destruction of property resulting from the acts or omissions of the Customer, its agents, representatives, employees, contractors or subcontractors associated with Customer's

presence on the premises of the subdivision development except to the extent such liability, loss, cost or expense is attributable to the negligence of Company, its directors, officers, agents, representatives, employees, contractors or subcontractors.

5. To the extent allowed by State law, should any person make a claim or institute suit for any damage to property or injury to persons (including death at any time resulting therefrom) as a result of the acts or omissions of the Customer, its agents, representatives, employees, contractors or subcontractors associated with Customer's presence on the premises of the subdivision development except to the proportional extent such claim or suit has its basis in the negligence of Company, its directors, officers, agents, representatives, employees, contractors, or subcontractors, the Customer agrees to assume the defense of any action at law or in equity which may be brought against Customer, Company, the directors, officers, agents, representatives, employees, contractors or subcontractors of same, and to pay all costs, expenses (to include attorney's fees and indirect or consequential damages) and judgments that may be rendered in any such claim or suit.
6. This Agreement shall be available for execution only for sixty (60) days from the date of this Agreement. After sixty days, the Company reserves the right to renegotiate the terms and costs stated herein.
7. This Agreement is not assignable by the Customer without the Company's prior written approval. This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement is not to be considered as a precedent or course of dealing to which the parties will be bound in the future.
8. The Planner in charge of this project is **Mr. Sergio Lozano** and can be contacted at **915 474-5804**.
9. Please sign and return the original and one copy of this Agreement. The refundable Cash Advance for Construction must also accompany this Agreement.

Sergio Lozano
Assistant Territorial Planner

Accepted: **City of El Paso**

By: _____

Title: _____

Date: _____

Accepted: **El Paso Electric Company**

By: _____
Francisco Melendez

Title: Supervisor, Distribution Design

Date: _____

Agreement with the El Paso Electric Company for overhead electric service to McCutcheon Basin Pump Station at 146 Redd Road, El Paso, Texas.

THE CITY OF EL PASO

Joyce A. Wilson, City Manager

APPROVED AS TO FORM:



Mark Shoemith
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E. C.B.O.
City Engineer

