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

DEPARTMENT: Airport

AGENDA DATE: July 5, 2006

CONTACT PERSON/PHONE: Patrick T. Abeln-780-4724

DISTRICT(S) AFFECTED: 3

SUBJECT:
APPROVE a resolution that the City Manager be authorized to sign a Temporary Right of Entry by the City of El Paso ("Grantor") to the El Paso Electric Company ("Grantee") granting access to specific portions of the El Paso International Airport in order to conduct surveys and related preliminary work necessary for the possible placement of an electric substation, including transmission and distribution overhead and underground facilities on and through Airport property.

BACKGROUND / DISCUSSION:
El Paso Electric Company has proposed construction of a substation on El Paso International Airport property, off of Global Reach Drive to the East and just North of Montana Avenue. This proposed substation will provide electrical power for Airport development, including future hotel and commercial/industrial development, as well as for development off of Airport property, including Fort Bliss and the desalination plant.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one? If so, when?
Yes. Temporary Right of Entry granted to SFPP, L.P. on February 28, 2006.

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

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A
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, Asst. City Attorney **FINANCE:** (if required) _____

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:** _____

RESOLUTION

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

That the City Manager be authorized to sign a Temporary Right of Entry by the City of El Paso ("Grantor") to the El Paso Electric Company ("Grantee") granting access to specific portions of the El Paso International Airport in order to conduct surveys and related preliminary work necessary for the possible placement of an electric substation, including transmission and distribution overhead and underground facilities on and through Airport property.

ADOPTED this the _____ day of _____ 2006.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Raymond L. Telles
Assistant City Attorney

Doc. No.: 21404 v4
Doc. Name: EPEC Substation ROE
Doc. Author: RTEL

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

This Temporary Right of Entry is granted on this _____ day of _____ 2006, by the CITY OF EL PASO (the "GRANTOR") to the EL PASO ELECTRIC COMPANY (the "GRANTEE").

WHEREAS, GRANTOR owns and operates the El Paso International Airport ("Airport") and GRANTEE has requested access to specific portions of the Airport (the "Proposed Site") in order to conduct surveys and related preliminary work necessary for the possible placement of an electric substation, including transmission and distribution overhead and underground facilities on and through said Airport property; and,

WHEREAS, GRANTOR consents to and approves of the entry by GRANTEE and its contractors and subcontractors onto the Proposed Site, subject to the provisions noted herein, for the completion of survey and related preliminary work necessary for the possible construction and placement of such electric substation and transmission and distribution facilities on and through the Airport property;

NOW THEREFORE, KNOW ALL BY THESE PRESENTS:

That GRANTOR as the lawful owner of the Airport property described more fully in **ATTACHMENT 1** (the "Airport Property"), which is attached hereto and incorporated herein for all purposes, for and in consideration of the sum of TEN AND 00/100 DOLLARS ($10.00) paid by GRANTEE, the receipt and sufficiency of which are hereby acknowledged, hereby grants a temporary right of entry upon, over, and through the Proposed Site portion of the Airport Property identified in **ATTACHMENT 1** as necessary to perform the referenced surveys and related work described herein.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. Access provided by this instrument for GRANTEE to the Airport Property shall be strictly limited to the Proposed Site. Further, access to the Proposed Site shall be granted solely to allow for surveying and related work (including material and equipment delivery) that is limited to non-invasive environmental, cultural, and engineering surveys, as well as any archeological data recovery required by state and federal laws. Except as noted herein, no construction or excavation is permitted through this instrument. GRANTEE shall bear all costs and expenses for its work contemplated herein. All surveys and related work to be performed for or by GRANTEE on the Proposed Site shall be completed in a good, workmanlike manner and in accordance with all applicable federal, state, and local laws, rules, and regulations, including but not limited to those associated with a fully operational airport. GRANTEE shall obtain all necessary, applicable

permits required to complete its work contemplated herein. To the extent practicable, GRANTEE shall leave the Proposed Site and the Airport Property in the same condition as found, normal wear and tear excepted. All work to be performed by or for GRANTEE shall be completed in a manner to ensure that no damage shall be done to the Proposed Site or Airport Property. In the event GRANTEE proximately causes any damage to the Proposed Site or the Airport Property, GRANTEE shall be fully responsible for the repair of such damage.

2. Except for the temporary rights expressly granted by execution of this instrument and reasonable access, and/or ingress and egress to the Proposed Site, GRANTOR does not convey any other right, title, or interest in the property herein.

3. Unless extended by written instrument signed by the parties, the rights granted herein shall expire **four (4) months** after the date first noted above, without regard to whether the referenced survey or related work has begun or been completed.

4. GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING REASONABLE, DOCUMENTED INVESTIGATION EXPENSES AND ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS (CLAIMS), ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO: (i) THE OPERATION, CONDUCT, OR MANAGEMENT OF GRANTEE'S ACTIVITIES ON THE AIRPORT PROPERTY, (ii) ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS TEMPORARY RIGHT OF ENTRY, OR (iii) ANY ACT BY OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES ON OR ABOUT THE AIRPORT PROPERTY INCLUDING CLAIMS 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 INDEMNIFIABLE CLAIM, GRANTEE, UPON PRIOR REASONABLE NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING WITH COUNSEL ACCEPTABLE TO GRANTOR AND GRANTEE.

5. GRANTEE understands and agrees that in the event the Federal Aviation Administration, Transportation Security Administration, or any other regulatory agency assesses a civil penalty against the GRANTOR or the Airport for any violation of applicable security regulations, including but not limited to 49 CFR 1540, and 49 CFR 1542, as identified by GRANTOR within the training required of GRANTEE, its contractors and subcontractors by Section 6 below, and the assessment of such civil penalty is proximately caused by any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will promptly reimburse GRANTOR the amount of such civil penalty as finally assessed following the appropriate process.

6. All persons requiring access to the Proposed Site on behalf of GRANTEE shall be subject to the security clearance and identification badge requirements required of all persons entering the secured areas of the Airport Property. All persons seeking authority to drive on Airport Property shall require additional training. Failure to fully comply with such requirements may result in the GRANTOR's termination of this Temporary Right of Entry. Upon GRANTEE's successful completion of the required security clearance and badge requirements, GRANTOR shall provide each person requiring access the appropriate identification badge. Issuance of such badges shall also require payment of a refundable fee by GRANTEE of THIRTY-FIVE AND 00/100 DOLLARS ($35.00) per badge. Upon termination or cancellation of this Temporary Right of Entry for whatever reason or upon completion of GRANTEE's work contemplated herein, GRANTEE shall immediately return all identification badges to the Director of Aviation. Upon receipt of such badges, GRANTOR shall reimburse GRANTEE for each returned badge. GRANTEE shall immediately notify GRANTOR of the loss of any badge. Further, in order to replace any lost badge, GRANTEE shall be required to complete the application and badge process again, including payment of the refundable application fee noted above and completion of the security clearance and badge issuance process.

7. In completing the referenced survey and related work, GRANTEE anticipates the use of various contractors and subcontractors. Upon GRANTEE's selection of such contractors and subcontractors, GRANTEE shall provide written notice of each contractor and subcontractor to GRANTOR. Due to the secure nature of the Proposed Site, only those contractors or subcontractors that have successfully completed the security clearance and badge requirements noted within this Temporary Right of Entry shall be granted access to the Proposed Site.

8. GRANTEE, its contractors and subcontractors shall coordinate their work in advance with the Department of Aviation, so as to minimize any potential interference with the performance of GRANTOR's use of the Airport Property. GRANTEE shall provide a daily work schedule to the Director of Aviation, identifying the location of the GRANTEE, its contractors, and subcontractors each day for which access is required. GRANTEE's activities on the Proposed Site shall be limited to the period between sunrise and sunset, Monday through Friday. GRANTEE shall request and receive written approval from the Director of Aviation for any deviation to these set work periods. Specific access points to be utilized by GRANTEE for the Proposed Site shall be determined by GRANTOR. GRANTOR shall not unreasonably restrain the work of the GRANTEE. It is expressly understood and agreed, however, that the Proposed Site is located within an operating airport and the daily operations of the Airport are not to be disrupted in any way by any work contemplated by this instrument.

9. GRANTEE agrees to abide by all security precautions and procedures established by GRANTOR. Upon completion of the applicable badging requirements for drivers within the Airport Property, no escort will be necessary for GRANTEE's

activities within the Proposed Site, other than the presence of the badged driver. However, access to the Proposed Site shall require all other appropriate security clearance and badge requirements noted herein. GRANTEE's access and movement within the Airport Property shall be strictly limited to the Proposed Site. In the event GRANTEE, its contractors, or subcontractors access Airport Property outside of the Proposed Site, GRANTOR may immediately terminate this Temporary Right of Entry.

10. This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas, without regard to its choice of laws or conflicts of law provisions. Any process to address a controversy arising out of or connected with this Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.

11. Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.

12. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent that any permission for an easement, a lease, or other right shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of performing a survey and related work referenced herein. The parties expressly understand and agree that the granting of any related easement, lease, or other such rights required for construction purposes shall require the execution of additional instruments and/or proper legal actions.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

EXECUTED THIS _____ DAY OF _____ 2006.

GRANTOR:
CITY OF EL PASO, TEXAS

_____
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

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2006, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso**.

_____
Notary Public, State of Texas

EXECUTED THIS 16th **DAY OF** June **2006.**

GRANTEE:
EL PASO ELECTRIC COMPANY

By: _____

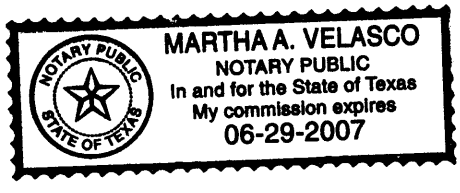
Name: Hector R. Puente

Title: Vice President - Transmission & Distribution

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this 16th day of June 2006, by Hector R. Puente as Vice President of the El Paso Electric Company.



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Notary Public, State of Texas

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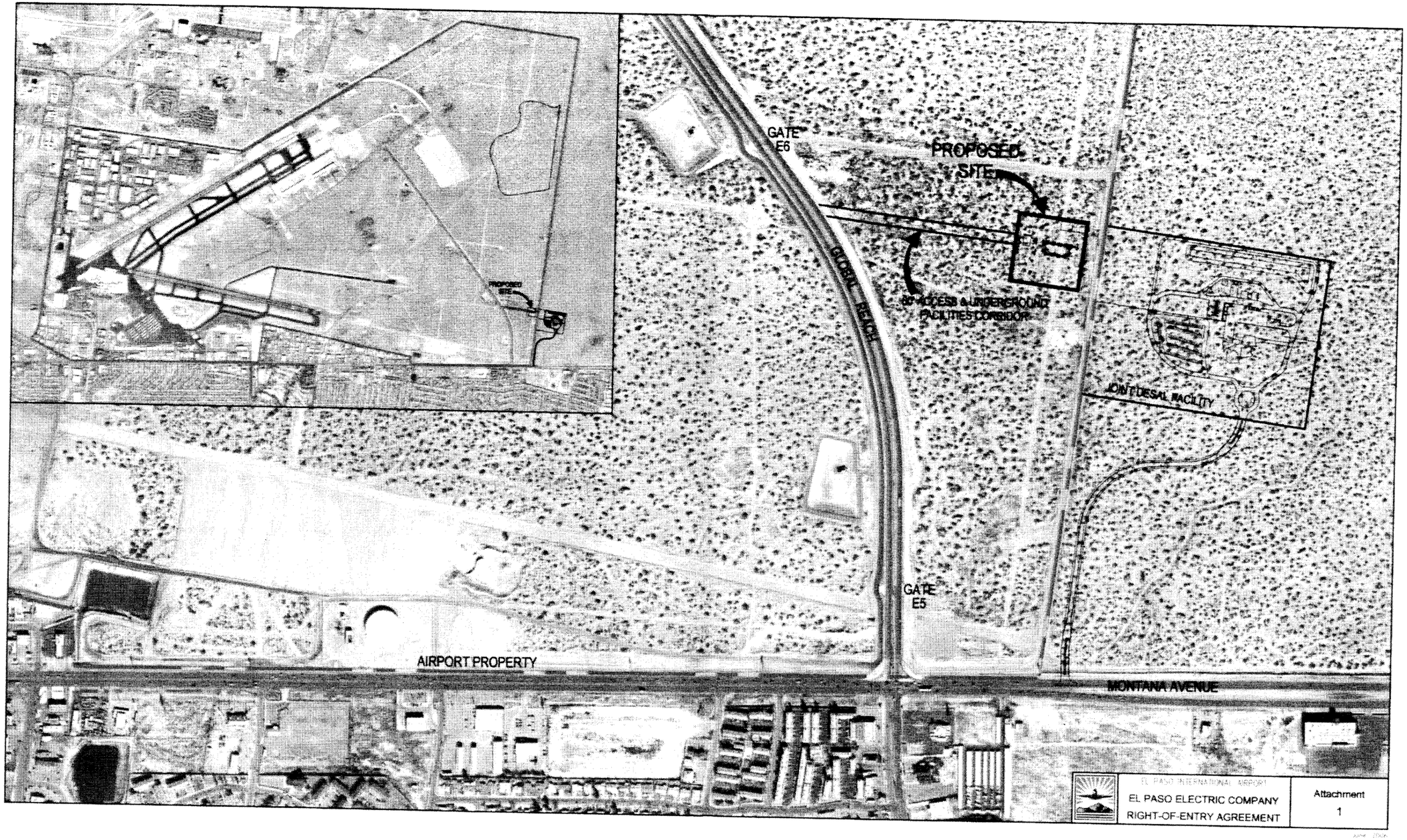
GATE
E6
PROPOSED
SITE
GLOBAL REACH
30' ACCESS & UNDERGROUND
FACILITIES CORRIDOR
JOINT USE AIL FACILITY
GATE
E5
AIRPORT PROPERTY
MONTANA AVENUE
EL PASO INTERNATIONAL AIRPORT
EL PASO ELECTRIC COMPANY
RIGHT-OF-ENTRY AGREEMENT
Attachment
1