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

DEPARTMENT: **Aviation**

AGENDA DATE: **November 16, 2010**

CONTACT PERSON/PHONE: **Monica Lombraña, A.A.E. - 780-4793**

DISTRICT(S) AFFECTED: **All**

SUBJECT:
Request City Council approval of a Temporary Right of Entry allowing, Plains Pipeline, to recoat an existing pipeline currently located on Airport property and to install a Cathodic Protection system to increase pipeline safety.

BACKGROUND / DISCUSSION:
On December 1, 2010, the Airport will start construction on the extension of Runway 8R-26L, which was previously approved by Council. Plains Pipeline is requesting entry onto airport property to expose and recoat their underground petroleum pipeline, which will run under the extended portion of the runway, and install a Cathodic Protection system to improve pipeline safety prior to the start of the runway extension project.

PRIOR COUNCIL ACTION:
Council has approved previous Temp ROE requests for various projects concerning Airport property

AMOUNT AND SOURCE OF FUNDING:
N/A – This is a Plains Pipeline project, and does not require City/Airport funding.

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD: Monica Lombraña

Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, Plains Pipeline, L.P. has requested access to portions of the El Paso International Airport in order to conduct a Pipeline Recoating and Cathodic Protection Construction Project of its existing pipeline prior to the start of construction of the extension of Runway 8R-26L at the El Paso International Airport.

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 for Pipeline Recoating and Cathodic Protection Construction by and between the City of El Paso and Plains Pipeline, L.P.

ADOPTED this _____ day of _____ 2010.

THE CITY OF EL PASO

_____
John. F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

Document Name:RESO-10-Temp ROE Plains Pipeline
Document #: 60344

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY FOR PIPELINE RECOATING & CATHODIC PROTECTION CONSTRUCTION

This Temporary Right of Entry for Pipeline Recoating and Cathodic Protection Construction is granted on this _____ day of _____ 2010, by the CITY OF EL PASO (the "GRANTOR") to PLAINS PIPELINE, L.P. (the "GRANTEE").

WHEREAS, GRANTEE has requested access to portions of the El Paso International Airport (the "Premises"), which is owned by GRANTOR, in order to conduct a Pipeline Recoating and Cathodic Protection Construction Project of its pipeline prior to the start of construction of the extension of Runway 8R-26L at the El Paso International Airport; and

WHEREAS, GRANTOR consents to and approves of the entry onto the Premises by GRANTEE and its contractors and subcontractors, subject to the provisions noted herein, for the completion of the referenced Pipeline Recoating and Cathodic Protection Construction Project on the Premises;

NOW THEREFORE, KNOW ALL BY THESE PRESENTS:

That GRANTOR as the lawful owner of the Premises described more fully in **ATTACHMENT 1**, 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) the receipt and sufficiency of which is hereby acknowledged, paid by GRANTEE, hereby grants a temporary right of entry upon, over, and through the Premises described in **ATTACHMENT 1** as necessary to perform the identified Pipeline Recoating and Cathodic Protection Construction Project described herein.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. Access to the Premises shall be granted solely to allow for the Pipeline Recoating and Cathodic Protection Construction Project ("Project"), described in **ATTACHMENT 2** as related to GRANTEE'S pipeline prior to the start of construction of the extension of Runway 8R-26L at the El Paso International Airport. Any construction or excavation which is not directly related to the Project is prohibited. GRANTEE shall bear all costs and expenses associated with its Project. All Project work to be performed on the Premises 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 applicable permits required for the completion of the Project. After the Project is completed, GRANTEE shall restore the Premises to substantially the same condition as found prior to commencement of said work, normal wear and tear excepted, and shall immediately remove its equipment or other property from the Premises. Further, all work shall be completed in a manner to ensure that no damage shall be done to the Premises. Should any damage occur, 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 property, GRANTOR does not convey any other right, title, or interest in the Premises herein.

3. Unless extended by written instrument, the rights granted herein shall be from November 16, 2010 through Jan. 2, 2011, without regard to whether the Project has begun or been completed. However, this Temporary Right of Entry may be extended or amended in writing, upon execution of both parties.

4. GRANTEE acknowledges that its request to use the Premises is solely for its benefit and not a use, which benefits the City taxpayers as a whole. As a result, GRANTEE agrees to provide the following as a condition of its use of the Premises:

   A. 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 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.

   B. Commercial Pollution Liability Insurance. 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).

   C. 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 Project. Evidence of said security shall be provided to the Director of Aviation prior to the date of commencement of the Project. Said security shall be in an amount no less than the cost of all construction services to be incurred by GRANTEE relative to the Project. 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 to be completed on the Premises.

   D. 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:

1. A statement of the coverage provided by the policy;

2. A statement certifying the GRANTOR to be listed as an additional insured in the policy;

3. A statement of the period during which the policy is in effect;

4. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and

5. 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.

E. **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 ATTORNEYS' 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 ("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.

F. Compliance with 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.

1. Definitions.

a) "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.

b) "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 Laws and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.

c) "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.

2. Compliance.

a) **Except for the use of liquefied petroleum products and other usual and ordinary Hazardous Material that may be used during Grantee's construction, maintenance and repair operations of the Pipelines granted herein, 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 Laws, or transported to and from the Premises, by GRANTEE, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Laws. 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 Laws 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 Section 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.**

GRANTEE agrees that all such other usual and ordinary Hazardous Material used during the construction, maintenance and repair operations of the Project shall be removed from the Premises upon completion of such activities.

b). Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or any improvements thereon arises in connection with GRANTEE'S operation of the Pipelines 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 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 any improvements thereon.

c) To the extent that the presence of any Hazardous Material on, under, adjacent to, or about the Premises or any improvements thereon arises in connection with GRANTEE'S ownership or operation of the Pipelines, 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 ("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 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.

d) 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.

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.

5. GRANTEE understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the GRANTOR for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.

6. 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 El Paso International Airport for any violation of applicable security regulations, including but not limited to 49 CFR 1540 and 49 CFR 1542, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.

7. In completing the referenced Pipeline Recoating and Cathodic Protection Construction 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. GRANTEE is responsible for the acts and omissions of its contractors and subcontractors.

8. GRANTEE and its contractors or subcontractors shall coordinate and schedule its Project work with the Department of Aviation in advance, so as to minimize any potential interference with the performance of GRANTOR's use of the property. GRANTEE shall provide a daily work schedule to the Director of Aviation, identifying the location of the GRANTEE, its contractors, and its subcontractors each day for which access to the Premises is required. GRANTEE shall request and receive written approval in advance from the Director of Aviation, or Director's designee, for any deviation to the submitted work schedules. Specific access points to be utilized by GRANTEE for the Premises shall be determined by GRANTOR. GRANTOR shall not unreasonably restrain the work of the GRANTEE. It is expressly understood and agreed, however, such daily operations are not to be disrupted by any work contemplated by this Agreement.

9. GRANTEE agrees to abide by all security precautions and procedures established by GRANTOR and applicable regulatory agencies.

10. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any 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 Agreement 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 or other right shall be granted to GRANTEE. This Agreement merely grants a temporary right of entry for the sole purpose of the Project. The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions.

13. All notices provided to be given under this Temporary Right of Entry shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

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

GRANTEE: Plains Pipeline, L.P.
333 Clay Street, Suite 1600
Houston, Texas 77002
Attn: Joe Richards, Manager - Pipeline Commercial Operations

Copy to: Plains Pipeline, L.P.
333 Clay Street, Suite 1600
Houston, Texas 77002
Attn: Lawrence J. Dreyfus, Vice President

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

14. GRANTEE shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of GRANTOR. Any attempt to transfer or assign without the prior written consent of GRANTOR shall be void and may result in the termination of this instrument.

[SIGNATURES BEING ON THE FOLLOWING PAGE]

EXECUTED THIS _____ DAY OF _____ 2010.

GRANTOR:
CITY OF EL PASO, TEXAS

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

_____
Monica Lombraña
Director of Aviation

ACKNOWLEDGMENT
GRANTOR

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of 2010, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso** (GRANTOR).

_____
Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

GRANTEE:
Plains Pipeline, L.P.
By: Plains Marketing GP Inc.,
Its General Partner

By: _____
Name: Lawrence J. Dreyfuss
Title: Vice President

ALH

ACKNOWLEDGMENT
GRANTEE

STATE OF TEXAS)
)
COUNTY OF HARRIS)

This instrument was acknowledged before me this 3rd day of November 2010, by **Lawrence J. Dreyfuss** as **Vice President** of Plains Marketing GP Inc., the General Partner of **Plains Pipeline, L.P.** (**GRANTEE**).

_____
Notary Public, State of Texas

ATTACHMENT 1

ATTACHMENT 2

Acosta Drilling
LAMESA, TX.

CATHODIC PROTECTION SERVICES

June 7, 2010

Plains Pipeline, L.P.
6325 Trowbridge Drive
El Paso, TX 79905

RE: MP 7 Global Reach

To Whom It May Concern:

Acosta Drilling, Inc. is planning to drill a Cathodic Protection deep ground bed well for Plains Pipeline, L.P. At the following coordinates Longitude -106.34553 Latitude 31.81696, north of Global Reach on Plains Pipeline Right of Way. Acosta Drilling, Inc. will be drilling one, four hundred foot by ten-inch deep well. We will have the following equipment on site;

- Midway drilling rig mounted on a 2003 Peterbilt Truck
- 2008 CAT backhoe
- 1993 Freightliner 3,000 Gallon Water Truck
- 2010 Ford 350 Pickup Truck
- 2002 Ford 350 Pickup Truck
- 2008 BigTex Trailer

There will be six pieces of equipment on this project. The first one will be a drilling rig that has a height of forty-two feet with an airport flag on top of the derrick. The second piece of equipment will be a backhoe with the height of it being thirteen feet with the airport safety flag on the top of it. The last piece of equipment will be a water truck that has a height of thirteen feet with the airport safety flag on top of it. We are planning to have a four man work crew on site;

- Brian Acosta - Foreman
- Armando Solis – Driller
- Domingo Rendon- Floor Hand
- Ramiro Gaona – Derrick Hand

The project should take from start to finish is six business working days.

Thank You,

Victor M Acosta Jr.

ATTACHMENT 2

Reycon Construction Solutions LP.

3621 Lee Blvd., El Paso, Tx. 79936 Phone: (915)633-1600 Fax: (915)633-1601

March 18, 2010

Attn.: To Whom It May Concern

Ref.: Plains Pipeline Line Maintenance Inside Airport Property

In reference to your request for information to the scope of work necessary to prepare pipe line for 26 Left Runway and Taxi Way extension.

At the location noted in the following information we plan the following:

1. Locate pipe line North and South of proposed Airport extension
2. Excavate pipe line, (Estimated 1100 Lft)
3. Remove pipe coating and grit blast pipe line
4. Examine and note the pipe line condition
5. Repair any areas in question, per company specifications
6. Grit blast and recoat the entire length exposed
7. Back fill the affected area to existing elevation
8. Clean up area affected by work

The equipment on this project:

1. Tool trucks and trailers
2. Backhoes, excavators, loaders (depth is approximately 12' feet)
3. Dump trucks and water trucks
4. Shoring Boxes and trench safety equipment
5. Maximum height of equipment operation will be 20' feet

Request of Project Coordination

This project is critical to the integrity of the pipe line. We must insure that depth and load bearing during construction doesn't affect pipe line integrity. Also accessibility to perform maintenance on this portion of the pipe line in the future will be nearly impossible after Runway extension is complete.

We estimate 30 to 45 days to complete this project.

Trusting the foregoing meets with your approval.

Sincerely,
Reycon Construction Solutions LP

C. A. Waterbury
G/M