

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

CITY CLERK DEPT.  
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**DEPARTMENT:** Aviation  
**AGENDA DATE:** December 11, 2007  
**CONTACT PERSON/PHONE:** Patrick T. Abeln, A.A.E. - 780-4724  
**DISTRICT(S) AFFECTED:** 2

**SUBJECT:**

That the City Manager be authorized to sign a Temporary Easement for Construction to grant J.D. Abrams, L.P. access to property managed by the El Paso International Airport for the construction of the Spur 601 Project.

**BACKGROUND / DISCUSSION:**

The Spur 601 Project (also known as the Inner Loop Project) is being designed and constructed by J.D. Abrams, L.P., under contract with the Texas Department of Transportation (TxDOT). Portions of the Inner Loop traverse Airport property - this Temporary Easement will grant J.D. Abrams the right to enter Airport property for the purpose of constructing the roadway.

**PRIOR COUNCIL ACTION:**

February 27, 2007 - Local Project Advance Funding Agreement (LPAFA) by and between the City of El Paso ("City") and the State of Texas, acting by and through the Texas Department of Transportation, for the Inner Loop project (Spur 601).

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Airport Board is briefed on Airport Projects at every board meeting.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) *Ray J. [Signature]* **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** *[Signature]*

(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 Easement for Construction to grant J.D. Abrams, L.P. access to property managed by the El Paso International Airport for the construction of the Spur 601 Project.

PASSED AND APPROVED on this \_\_\_\_ day of \_\_\_\_\_, 2007.

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

APPROVED AS TO CONTENT:

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

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STATE OF TEXAS           §  
                                  §           **TEMPORARY EASEMENT FOR CONSTRUCTION**  
COUNTY OF EL PASO   §           **EL PASO INTERNATIONAL AIRPORT PROPERTY**

This Temporary Easement for Construction (the "Easement") is made by and between the CITY OF EL PASO, a Texas municipal corporation, hereinafter "Grantor" and J.D. ABRAMS, L.P., a Texas limited partnership, hereinafter "Grantee" on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**WHEREAS**, Grantee has been charged with the design and construction of the Spur 601 Project on behalf of the Texas Department of Transportation, and that upon completion, portions of the Spur 601 Project will become a State highway and portions will become City of El Paso dedicated streets;

**WHEREAS**, the construction of the Spur 601 Project will benefit the community, as evidenced by the contribution of \$10,000,000.00 to the project by the El Paso International Airport, as the Department of Aviation for the City of El Paso; and

**WHEREAS**, portions of the Spur 601 Project are to be constructed through portions of property owned by the City of El Paso that are managed by the El Paso International Airport;

**NOW, THEREFORE**, the Grantor and the Grantee, for the consideration and under the conditions hereinafter set forth, do hereby agree as follows:

**I. GRANT OF EASEMENT.**

For and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration paid, receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant to Grantee a Temporary Easement for Construction in, upon and across the real property more fully described within **EXHIBIT "A"**, which is hereby incorporated herein for all purposes. This grant is being made together with the right of ingress and egress for all purposes incident to the project identified within this Easement, subject to the requirements and restrictions noted within this Easement. The real property identified within **EXHIBIT "A"**, which is the subject of this Easement, shall be referred to herein as the "Property".

Grantee is required to construct fencing in those portions of the Property identified within **EXHIBIT "A"** in accordance with all requirements of the Federal Aviation Administration in order to insure: (i) a secure construction site; and (ii) that the remaining portions of the airport remain segregated and secure from the construction site and access by unauthorized individuals. Grantee shall retain control over the areas fenced by Grantee, but shall provide access at all times to Grantor. Grantee's access to the secured areas of the Property shall be provided pursuant to the security requirements noted herein.

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## II. PURPOSE OF EASEMENT.

This Easement, with its rights and privileges, is hereby granted to Grantee for the purpose of using and occupying such Property during construction and installation of the Spur 601 Project, hereinafter referred to as the "Project". This grant of authority shall extend to all contracts let by the Grantee in furtherance of the Project and the objectives stated herein. This grant shall carry with it the right of ingress and egress, to and from the Property at all reasonable times, subject to the safety restrictions and requirements of an operating airport, including those noted herein, and shall also include the right to use existing roads for the purpose of completing the Project.

Grantee shall bear all costs and expenses associated with the work contemplated by this Easement. All work to be performed on the Property 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. Further, Grantee shall complete all work in accordance with the requirements of the Texas Department of Transportation. Grantee shall obtain all applicable permits required for the completion of the Project. After the Project is completed, Grantee shall restore the remaining property to substantially the same condition as found prior to commencement of the Project, normal wear and tear excepted, and shall immediately remove its equipment or other property from the Property. Further, all work shall be completed in a manner to ensure that no damage shall be done to the Property that would prohibit the transfer of the respective portions to the State of Texas as State highway right of way or acceptance by the Grantor of those portions intended to become dedicated City streets.

## III. DURATION OF EASEMENT.

This Easement and the rights herein granted shall begin upon the final execution of this Easement by Grantor and shall terminate upon completion of construction and acceptance of the respective portions of said Project by the Texas Department of Transportation and the City of El Paso.

## IV. ENCROACHMENTS.

Grantee shall have the right to cut and trim trees, shrubbery, underbrush, obstructions and any other vegetation, structures or obstacles that may encroach upon the Property from other property owned by the Grantor.

## V. INDEMNIFICATION.

GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, 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 PROPERTY, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS EASEMENT, OR FROM ANY ACT, OMISSION OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE PROPERTY 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 NOTICE FROM

GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.

#### VI. CIVIL PENALTIES.

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.

#### VII. SECURITY REQUIREMENTS.

Grantee agrees to abide by all security precautions and procedures established by Grantor and all applicable regulatory agencies. Failure to fully comply with all security procedures and requirements may result in the termination of this Easement. All persons requiring access to the Property shall be subject to the security clearance, identification badge and escort requirements as required by the El Paso International Airport and as referenced within **EXHIBIT "A"**.

Upon completion of the security clearance and badge requirements, Grantor shall provide each person requiring access an 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 Easement for whatever reason or upon completion of the 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.

While in those portions of the Property requiring escorts, Grantee shall be responsible for providing such escort through a private security service approved in advance by the Director of Aviation. This private security service shall be responsible for escorting Grantee and its contractors and subcontractors at all times, while in the referenced areas of the Property. All costs related to such private security service shall be the sole responsibility of Grantee.

Prior to Grantee's construction of the security fence referenced within **EXHIBIT "A"**, Grantee's operations in the area are considered within a secured/restricted area of the airport. Security badging and/or escorts as enumerated within **EXHIBIT "A"** shall therefore be required. Once the construction of the referenced fence is completed in accordance with all Federal Aviation Administration and El Paso International Airport requirements, those fenced areas outside of the Airport Operations Area (AOA) will no longer be considered a secured area of the airport. Accordingly, Grantee shall no longer require any escort or badges while in such fenced area outside of the AOA. However, escorts will continue to be required for any activities within the AOA. Further, any breaches in the fence to be constructed by Grantee shall result in the fenced area being deemed a secured area, with all security requirements thereafter becoming applicable.

**VIII. CONTRACTORS AND SUBCONTRACTORS.**

In completing the work contemplated herein, 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 Property, only those contractors or subcontractors that have successfully completed the security clearance and badge requirements noted within this Easement shall be granted access to the secured portions of the Property. GRANTEE IS RESPONSIBLE FOR THE ACTS AND OMISSIONS OF ITS CONTRACTORS AND SUBCONTRACTORS ON THE PROPERTY.

**IX. RIGHTS RESERVED.**

The Parties recognize that the Property is located within an operating airport. Accordingly, Grantor reserves the right to full use and enjoyment of the Property, except as otherwise referenced herein; provided, however, that such use shall not hinder, conflict, or interfere with the exercise of Grantee's rights hereunder. Grantor represents and warrants to Grantee that the City of El Paso is the owner of record of the Property and that the undersigned has the full power and authority to grant this Easement.

**X. GENERAL PROVISIONS.**

Except for the temporary construction 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 Property herein. Grantor, by granting this Easement, does not warrant or represent that any ownership or other right shall be granted to Grantee. This instrument merely grants a temporary easement for construction for the sole purpose of performing the construction services referenced herein. The parties expressly understand and agree that the granting of any ownership or other such rights shall require the execution of additional instruments and/or proper legal actions.

This Easement 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 Easement or the underlying construction shall be instituted and maintained in the courts of the State of Texas, County of El Paso.

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

All notices to be given under this Easement 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: J.D. Abrams, L.P.  
111 Congress Avenue, Suite 2400  
Austin, Texas 78701-4083  
ATTN: William G. Burnett, P.E.

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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 herein.

Grantee shall not assign, sublet, sell, convey, or transfer all or any part of this Easement 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.

**IN WITNESS WHEREOF**, this Easement was approved on the date first noted above.

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

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**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas** (Grantor).

\_\_\_\_\_  
Notary Public, State of Texas

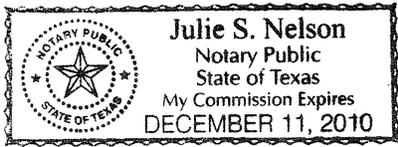
GRANTEE:  
J.D. ABRAMS, L.P.

By: *William G. Burnett*  
Name: William G. Burnett, P.E.  
Title: Vice President - Project Development

**ACKNOWLEDGMENT**

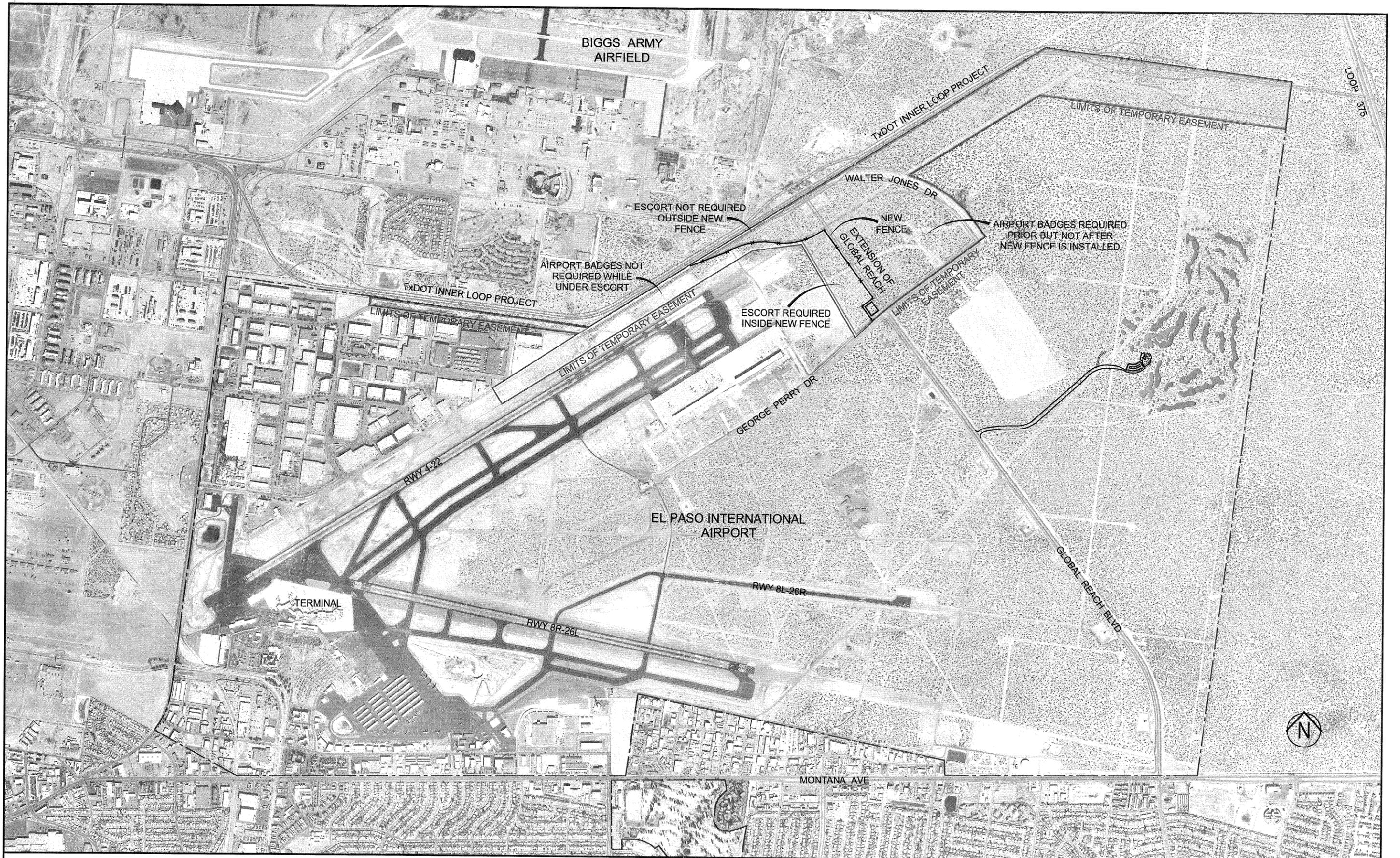
STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the 20 day of November, 2007,  
by **William G. Burnett**, as **Vice President – Project Development** of **J.D. Abrams, L.P.**  
(Grantee).



*Julie S. Nelson*  
Notary Public, State of Texas

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LEGEND:	---	AIRPORT PROPERTY LINE	—	LIMITS OF TEMPORARY EASEMENT	▨	AREA OF EASEMENT REQUIRING ESCORT
	—	TXDOT INNER LOOP PROJECT	✕	NEW FENCE	▤	AREA OF EASEMENT NOT REQUIRING ESCORT



EL PASO INTERNATIONAL AIRPORT  
 Spur 601 Inner Loop Project  
 Temporary Easement for Construction

Exhibit  
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