

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

DEPARTMENT: Airport
AGENDA DATE: December 13, 2011
CONTACT PERSON: Monica Lombraña 780-4724
DISTRICTS AFFECTED: All Districts

SUBJECT:

Approve a resolution authorizing the City Manager to sign an Easement Agreement between the City of El Paso (Lessor) and Plains Pipeline, L.P. (Lessee) for an area commencing on the airports southern boundary and extending to its northern boundary.

BACKGROUND / DISCUSSION:

Plains Pipeline is the successor in interest to Chevron Pipeline with an effective date of September 1, 2006. Both Plains Pipeline and the City have been negotiating an underground easement agreement since that time, and Plains wishes to enter into a new thirty (30) year Easement Agreement for the demised premises.

- Annual Easement Fee, \$116,243.39 (\$9,686.95 per Month) per September 1, 2011 adjustment
- Satisfaction of Prior Easement Fee: \$561,190.00
- 5-Year incremental rental rate increases based on the Consumer Price Index

PRIOR COUNCIL ACTION:

May 1955 – Council approved a lease agreement with Salt Lake Pipeline Company, for the demised premises, which was later assigned to Chevron Pipeline Company

AMOUNT AND SOURCE OF FUNDING: N.A., this is a revenue generating Lease

BOARD / COMMISSION ACTION: N.A.

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

DEPARTMENT HEAD:



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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign an Easement Agreement by and between the City of El Paso ("Grantor") and Plains Pipeline, L.P. ("Grantee") for the following described property:

1. Area 1: An easement running through the Airport Movement Area and Air Operations area from the southern boundary of the Airport to the southerly right-of-way line of Global Reach Drive that varies in width from thirty-five (35) to fifty (50) feet; and
2. Area 2: An easement running from the northerly right-of-way line of Global Reach Drive through the Airport's Outer Perimeter Area to the northern boundary of the Airport that varies in width from thirty-five (35) to fifty (50) feet.

Approved this ____ day of December, 2011.

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, A.A.E.
Director of Aviation

EASEMENT AGREEMENT

**El Paso International Airport
City of El Paso, Texas
Grantor**

**Plains Pipeline, L.P.
Grantee**

**September 1, 2006
Effective Date**

**EASEMENT AGREEMENT
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EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is made and entered into this _____ day of December 2011, effective as of September 1, 2006, by and between the **CITY OF EL PASO, TEXAS** ("Grantor") and **PLAINS PIPELINE, L.P.**, a Texas limited partnership ("Grantee"). Grantor and Grantee are referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, Grantor owns and operates the El Paso International Airport ("Airport", which is inclusive of such other Grantor owned property that is managed by the El Paso International Airport) located in the City of El Paso, County of El Paso, State of Texas, with said Airport being managed by the Director of Aviation ("Director");

WHEREAS, Grantee assumed the pipeline ownership and operations of the El Paso to Albuquerque Pipeline as successor in interest to Chevron Pipe Line Company on September 1, 2006, which included the operation and maintenance of a pipeline through portions of the Airport;

WHEREAS, Grantee currently has one (1) active liquid petroleum products pipeline located within a portion of the Airport and rights to lay one (1) additional pipeline, for which Grantee's right to construct, operate and maintain the pipelines have expired and the Parties now desire to reestablish and update those rights; and

WHEREAS, Grantee seeks to acquire from Grantor an easement to construct, operate, and maintain the existing pipeline and the rights to construct additional pipelines throughout certain areas of the Airport.

NOW, THEREFORE, for and in consideration of the foregoing recitals and of the mutual promises and covenants of the Parties contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I – EASEMENT, PRIVILEGES AND RESTRICTIONS

1.01 Easement.

- A. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive easement in, on, under and through the Airport identified as Area 1 and Area 2 in Section 1.01(B) below and legally described in Exhibit A and shown in Exhibit B, which are attached hereto and incorporated herein for all purposes ("Easement"), except for those rights retained for the benefit of Grantor. The rights, privileges, and uses granted are limited strictly to those rights, privileges, and uses granted by this Easement.
- B. Description of Easement. For the purposes of this Agreement, the Parties agree that the Easement shall consist of two (2) distinct areas, which are located within the City of El Paso, County of El Paso, State of Texas, as more fully described in Exhibit A and shown on Exhibit B, and as set forth below:

1. Area 1: An easement running through the Airport Movement Area and Air Operations area from the southern boundary of the Airport to the southerly right-of-way line of Global Reach Drive that varies in width from thirty-five (35) to fifty (50) feet (herein designated as a "restricted area"); and
 2. Area 2: An easement running from the northerly right-of-way line of Global Reach Drive through the Airport's Outer Perimeter Area to the northern boundary of the Airport that varies in width from thirty-five (35) to fifty (50) feet (herein designated as a "non-restricted area").
- C. Specific Privileges, Uses and Rights. It is Grantee's current intent to operate and maintain the one (1) existing pipeline ("Existing Pipeline") within the Easement and the right to construct, operate, and maintain additional pipelines within the Easement ("New Pipelines") during the Term of this Agreement together with certain rights of ingress to and egress from the Easement over those roadways, drives and walkways designated from time to time by the Director for construction, operation and maintenance purposes. Grantee's rights of ingress and egress are limited by this Agreement and those applicable rules and regulations of the Airport. The Existing Pipeline shall be used only for the transportation of liquefied petroleum products. The Existing Pipeline explicitly includes all currently existing surface and subsurface appurtenances and facilities as are enumerated in Exhibit C, which is attached hereto and incorporated herein for all purposes. The placement of any new surface and subsurface appurtenances and facilities shall be subject to Section 1.04 below.

Grantee may construct the New Pipelines after the execution of this Agreement, pursuant to the terms set forth in Section 1.01(C)(2) below. Grantee shall utilize the temporary construction easement granted under Section 1.02 herein for the construction of the New Pipelines. (Existing Pipeline and New Pipelines shall sometimes be collectively referred to herein as "Pipelines.")

1. Existing Pipeline. Grantee confirms that it currently operates the Existing Pipeline within Area 1 and Area 2. Pursuant to this Agreement, Grantee is further authorized to design, locate, construct, maintain, operate, inspect, repair, alter, replace, relocate, reconstruct, and remove the Existing Pipeline, attachments and other property, equipment, conduits and appurtenances located within the Easement, as such boundaries may be amended from time to time during the Term of this Agreement, as may be necessary and appurtenant to the operation of the Existing Pipeline pursuant to the approvals required herein ("Maintenance Activities"); and
2. New Pipelines. With Grantor's prior written approval of the construction plans, Grantee may construct and operate the New Pipelines within Area 1 and Area 2. Pursuant to this Agreement, Grantee is authorized to design, locate, construct, maintain, operate, inspect, repair, alter, replace, relocate, reconstruct, remove, and commission the New Pipelines, attachments and other property, equipment, conduits and appurtenances to be located within the Easement, as such boundaries may be amended from time to time during the Term of this Agreement, as may be

necessary and appurtenant to the operation of the New Pipelines pursuant to the approvals required herein ("Construction Activities"). Grantee will provide a copy of "As-Built" plans to Grantor upon completion of the New Pipelines construction.

- D. Maintenance. Upon execution of this Agreement by Grantor, Grantee shall have the right and privilege to conduct Maintenance Activities on the Existing Pipeline within the Easement. Upon Grantee's completion of the Construction Activities on the New Pipelines, Grantee shall have the right and privilege to conduct Maintenance Activities on the New Pipelines within the Easement. Except in emergency, all Maintenance Activities of Grantee shall require prior notification, with regard to scheduling, security clearance, and related processes required by the Airport. In cases of emergency, Grantee shall notify Grantor as soon as reasonably possible.

1.02 Temporary Construction Easement.

- A. Grant of Temporary Construction Easement. Grantor hereby grants to Grantee such rights and privileges under a Temporary Construction Easement ("TCE") in, on, under, and adjacent to the Easement identified generally in Section 1.02(B) below, as may be necessary to construct and install the New Pipelines within Area 1 and Area 2 of the Easement.
- B. Description of Temporary Construction Easement.
1. Area A: A TCE, not to exceed sixty-five (65) feet in width, running generally along the east side of the Easement in Area 1; and
 2. Area B: A TCE, not to exceed sixty-five (65) feet in width, running generally along the east side of the Easement in Area 2.

1.03 Restrictions on Privileges, Uses and Rights. Grantee covenants and agrees that in no event will it enter into any unauthorized activity on the Airport. Grantee shall not engage in operations during the Term of this Agreement for any purpose other than as set forth herein, except with the prior written consent of Grantor, nor for any purpose in violation of any present or future laws, ordinances, rules or regulations at any time applicable thereto of any federal, state, city, local or other governmental bodies or agencies, departments or offices.

1.04 Restrictions on Surface and Subsurface Installations. The Parties agree that certain surface and subsurface installations are in place on the Existing Pipeline, as more fully enumerated within Exhibit C. Grantee agrees that no meters or valves are in place on the Existing Pipeline, nor shall any meters or valves be placed on the Pipelines located on the Easement in the future. Further, and unless explicitly permitted in advance and in writing by the Director, Grantee shall have no right to place any additional surface or subsurface installation on any part of the Easement except in an emergency. In case of emergency, Grantee shall coordinate with Grantor as soon as reasonably possible.

1.05 Signs, Future or Proposed. The placement, size and location of Grantee's signage or other notice of the Pipelines or other improvements in or upon the Easement shall require the approval of the Director, subject to all laws and other applicable United States Department of Transportation rules and regulations.

1.06 Authorization to Enter Airport Restricted Areas. Grantee understands that a portion of the Easement is located within a restricted area of the Airport and that Grantee and its agents, employees, servants or independent contractors must be authorized by Grantor to enter restricted areas of the Airport. The authorization to enter restricted areas of the Airport is not granted by this Agreement, but shall be granted to Grantee upon Grantee's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport by access method approved by the Airport. As Grantee is required to comply with all applicable rules and regulations, any violation of this provision of those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Agreement and grounds for termination.

1.07 Placement and Movement of the Pipelines. The Parties agree that the majority of the Existing Pipeline is buried to a depth that is currently sufficient to avoid any interference with any present or future Airport operations of Grantor, including existing drainage patterns. Grantee's Pipelines must be at least six feet (6') deep under all parts of Grantor's runways and taxiways, and Grantor has agreed in Letter Agreement dated April 22, 2010 to additional grading in connection with the Airport's Runway and Taxiway Extension Project to ensure proper depth of the Existing Pipeline impacted by the project. Grantee agrees to bury the New Pipelines to a depth that is sufficient to avoid any interference with any present or future Airport operations of Grantor, including existing drainage patterns. Grantee further agrees to pay any and all damages to Grantor that may arise by the construction, maintenance, and operation of the Pipelines authorized pursuant to this Easement. The appropriate depth of the New Pipelines will be determined by mutual agreement of the Parties. Grantor reserves the right to full use and enjoyment of the Airport property, including, but not limited to, the ability to lay out, construct and maintain runways, taxiways and other structures, improvements and appurtenances throughout Airport property ("Airport Improvements"). If future development of the Airport is extended to and in the vicinity of the Easement, the Grantee, its successors and assigns hereby agree that after the receipt of written notification by Grantor, Grantee will either completely relocate the Pipelines and other improvements to the nearest alternative location provided by Grantor on Grantor's property, and/or lower the Pipelines to an appropriate depth under the Airport Improvements, and/or to properly encase the Pipelines where they pass under the Airport Improvements, including but not limited to runways, taxiways or roadways in a manner sufficient to withstand the weight and pressure of aircraft and airport related equipment using those Airport Improvements. Grantee shall also be responsible for restoring, to the extent practicable, the Easement to its original condition upon the relocation, lowering and/or encasing of such Pipelines and improvements. The relocation, lowering and/or encasing of the Pipelines will be accomplished at the sole cost of Grantee, its successors and assigns.

1.08 Restoration of the Easement. Upon completion of any construction, installation, removal, relocation, lowering or encasing of the Pipelines, Grantee shall remove all unused equipment, materials and pipe remaining in, on or under the surface of the Easement and the TCE during construction phase and other property placed on the Easement by or for Grantee, as well as fill and level all ditches, ruts, depressions or other disturbances to the topography caused by the construction or removal operations, remove all debris and stakes or posts and generally restore the Easement and the TCE as near as practicable to its original condition, as soon as reasonably possible. Such restoration activities shall include the replacement of any grass, landscaping, drainage or irrigation systems, and other damage caused to the Easement and the TCE. Should the Grantee fail to comply with these requirements, Grantor shall provide Grantee a written notice of its failure to comply with the requirements of this section and a thirty (30) calendar day opportunity to cure and restore the Easement and the TCE, and if Grantee fails to do so, Grantor may assume these responsibilities at Grantee's risk and expense, and

Grantee agrees to reimburse Grantor for the cost of such activities plus ten percent (10%) for administrative and overhead costs.

1.09 Inspection of the Easement. Unless authorized by Grantor, Grantee's inspections of its Pipelines in any non-restricted area of the Easement shall be accomplished by foot or by air. Grantor will review Grantee's request to access the non-restricted area by truck on a case-by-case basis. Additionally, Grantee may inspect the Pipelines located in non-restricted areas that may be accessed through dedicated streets; provided that such inspection by vehicle is limited to such dedicated streets. It is the intent of this section to maintain those non-restricted areas of the Easement in the condition to which they have been developed. Such non-restricted areas shall include, by way of example and not limitation, the Butterfield Trail Golf Club. Grantee shall give Grantor prior notice of any inspections.

ARTICLE II – OBLIGATIONS OF GRANTEE

2.01 General. This Easement, in every sense, shall be without cost to Grantor. It shall be the sole responsibility of Grantee to design, locate, construct, maintain, operate, inspect, repair, alter, replace, relocate, reconstruct, remove, and commission the Pipelines and related improvements and facilities existing or placed in, on or under the Easement or otherwise owned by Grantee at Grantee's sole cost and expense.

2.02 Condition of Easement. Grantee accepts the Easement in "AS IS" condition. Grantor has no responsibility or obligation to cause any work to be performed or to provide utilities or other services to the Grantee. Grantee accepts full responsibility for all activities associated with the Pipeline as successor in interest since September 1, 2006.

2.03 Compliance with Laws. Grantee, at Grantee's expense, expressly agrees that it will design, locate, construct, maintain, operate, inspect, repair, alter, replace, relocate, reconstruct, remove, and commission the Pipelines and related improvements and facilities located on the Easement owned by Grantee as may be necessary from time to time in a safe and secure manner and in accordance with the requirements of this Agreement and in accordance with all present and future laws. Grantee accepts full responsibility for all activities associated with the Pipeline as successor in interest since September 1, 2006.

Grantee, at Grantee's expense, specifically agrees to make or cause to be made all such alterations to the Easement, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act, as amended, and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county, city and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Easement and any improvements thereon by disabled persons ("Disabilities 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 Easement including any improvements thereon.

A. Definitions.

1. "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.
2. "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.
3. "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.

B. Compliance.

1. **Except for the use of liquefied petroleum products and other usual and ordinary Hazardous Material that may be used during Grantee's construction, operation, and maintenance 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 Easement in violation of any Environmental Laws, or transported to and from the Easement, 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 officers, directors, 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 Easement or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses**

related to cleaning up the Easement, 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 Easement 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 Easement or any improvements thereon, or present in the soil or groundwater on, under or about the Easement. 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, operation, and maintenance of the Pipelines shall be removed from the Airport property upon completion of such activities.

2. Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Easement or any improvements thereon arises in connection with Grantee's operation of the Pipelines results in any contamination of the Easement 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 Easement or any improvements thereon or any surrounding property to the condition existing prior to the introduction of any such Hazardous Material to the Easement 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 Easement or any improvements thereon.
3. To the extent that the presence of any Hazardous Material on, under, adjacent to, or about the Easement 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 Easement 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 Easement or

to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.

4. 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 Easement or Grantee's operation on the Easement and (b) any change in Grantee's operation on the Easement that will change or has the potential to change Grantee's or Grantor's obligations or liabilities under the Environmental Laws.
5. Grantee shall insert the provisions of this section in any contract by which it grants a right or privilege to any person, firm or corporation under this Easement.

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.

Grantee's failure or the failure of its agents, employees, contractors, invitees, sublessees or the failure of a third party to comply with any of the requirements and obligations of this section shall constitute a material default of this Agreement and shall permit Grantor to pursue the remedies as set forth herein, in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, to which Grantor may resort cumulatively or in the alternative.

2.04 Maintenance and Repair. Grantee shall, at its sole cost and expense, maintain and repair the Easement, the Pipelines and Grantee's improvements and appurtenances thereto, in good condition consistent with good business practice. Grantee shall repair all damages caused by Grantee, its agents, employees, contractors, invitees or sublessees, to Grantor's property and equipment located on and within the Easement that is caused by or results from Grantee's use of the Easement, including Airport Improvements and any landscaping, irrigation or drainage installations, paving, curbs, islands, buildings or other improvements. Grantor's property and equipment shall include the property and equipment of Grantor, Grantor's lessees, sublessees and those other parties with authority to use Grantor's property within the Easement.

Grantor shall be the sole judge of the quality of Grantee's repairs to Grantor's property and equipment and, upon written notice by Grantor to Grantee, Grantee shall be required to perform whatever reasonable repair Grantor deems necessary. If said repairs are not undertaken by Grantee within ten (10) days after receipt of written notice, Grantor shall have the right to enter the Easement and perform the necessary repair work, the cost of which, plus ten percent (10%) for administrative and overhead costs, shall be borne by Grantee.

Except as set forth in Section 1.05, Grantee agrees not to paint, erect, or in any manner install any signage on the exterior of any improvements or anywhere on the Easement, except as may be authorized in advance by the Director in writing.

2.05 Utilities. Grantee shall assume and pay for all costs or charges for utility services furnished to Grantee during the Term hereof.

2.06 Trash, Garbage and Other Refuse. Grantee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Easement and the Airport, of all trash, garbage and other refuse caused as a result of Grantee's activities in a timely manner so as no accumulation of such trash, garbage, or other refuse shall occur.

2.07 Security. Grantee is familiar with the restrictions imposed by 49 C.F.R. 1540.105 and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Easement.

2.08 Penalties Assessed by Federal Agencies. Grantee understands and agrees that in the event any federal agency assesses a civil penalty against Grantor for any security violation as a result of or related to any act or failure to act on the part of Grantee, its agents, employees, contractors, invitees or sublessees, Grantee shall reimburse the Grantor in the amount of the civil penalty assessed. Failure to reimburse the Grantor within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

2.09 Taxes. The Grantee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Grantee or Grantor, with respect to the Pipelines, any of Grantee's improvements, equipment, personal property or inventory thereon or Grantee's use and/or occupancy of the Easement, or any improvements owned by Grantee thereon, during the Term of this Agreement including any extensions granted thereto. Grantor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Grantee's use of the property, Pipelines or possession of the Easement.

The Grantee in good faith may contest any tax or governmental charge, provided that the Grantee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the Grantor, such action will not adversely affect any right or interest of the Grantor.

2.10 Governmental Filings. In the event that Grantee submits any filing or response pertaining to Grantee's property, operations or presence at the Airport with any governmental entity (other than the Internal Revenue Service), by way of example and not in limitation the Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ) or any successor agencies, Grantee shall provide documents upon request to Grantor of such filing(s) or response(s) made at the time same are made.

ARTICLE III – TERM OF EASEMENT

3.01 Term. The term of this Agreement shall be for the period of thirty (30) years ("Term") commencing on the Effective Date of this Agreement.

ARTICLE IV – EASEMENT FEES

4.01 Easement Fees.

- A. **Computation of Easement Fees.** During the Term of this Agreement, Grantee agrees to pay Grantor the fees enumerated below, for the rights and privileges

herein granted. As set forth in Section 1.01(B), the Easement consist of two (2) distinct areas, as more fully described in Exhibit A and shown on Exhibit B. The fees applicable to Area 1 shall be twelve cents (\$0.12) per square foot per annum, while the fees applicable to Area 2 shall be twenty cents (\$0.20) per square foot per annum (each fee amount set forth herein shall individually be referred to as the "Annual Fee" or collectively as the "Annual Fees"). The Easement Annual Fees shall be due annually in advance on or before the anniversary of the Commencement Date during the Term of this Agreement and shall be subject to any applicable increases as noted below.

- B. Initial Annual Fees. Upon the execution of this Agreement, Grantee shall pay to Grantor an Annual Fee for the Easement. For the purpose of computing the Annual Fee for each segment of the Easement, Area 1 is comprised of approximately TWO HUNDRED SIXTY SIX THOUSAND SIX HUNDRED FIFTY SEVEN SQUARE FEET (266,657 sq. ft.) of land and Area 2 is comprised of approximately THREE HUNDRED SIXTY TWO THOUSAND FOUR HUNDRED FORTY EIGHT SQUARE FEET (362,448 sq. ft.) of land, as more clearly identified within Exhibit A and shown on Exhibit B. Therefore, the initial total Easement Annual Fee for Area 1 and Area 2 shall be ONE HUNDRED FOUR THOUSAND FOUR HUNDRED EIGHTY-EIGHT AND 44/100 DOLLARS (\$104,488.44) per year.
- C. Easement Fee Increases. The Easement Annual Fees shall be adjusted every fifth (5th) year anniversary of the Commencement Date of this Agreement by the cumulative percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), issued by the Bureau of Labor Statistics of the United States Department of Labor for that preceding five (5) year period; provided, however, that the adjustment of such Easement Annual Fees shall never result in a fee that is less than the immediately preceding applicable Easement Annual Fees.
- D. Easement Fees for Pipelines Abandoned In-Place. Notwithstanding any provision of this Agreement to the contrary, Grantor hereby grants Grantee the right to abandon, in-place, all or any portion of the Pipelines without the obligation to otherwise remove all or any portion of the abandoned Pipelines or restore the Easement to its original condition without the Pipelines during the Term of this Agreement. However, in the event Grantee abandons all or any portion of the Pipelines during the Term, Grantee shall be responsible for continued payment to Grantor of all applicable fees. If Grantor provides written authorization to Grantee allowing any portion of the abandoned Pipelines to remain during the Term, the fees required herein shall no longer be applicable to the remaining portions identified in such authorization and applicable pre-paid fees shall be credited to Grantor's applicable fees for the following year. Upon the expiration or early termination of this Agreement, Grantee shall be responsible for the complete removal of the Pipelines, including any portions previously abandoned in-place. In the event Grantor elects to waive this required removal of all or any portion of the Pipelines, Grantor shall provide written notice to Grantee of its election prior to the expiration or early termination of this Agreement. In such event, Grantee shall not be responsible for the payment of any additional fees associated with any portion of Pipelines permitted by Grantor to remain.

- E. **Satisfaction of Prior Easement Fees.** As referenced within the recitals, Grantee assumed the operation of an Existing Pipeline on September 1, 2006. Since assumption, Grantee has had access to and enjoyed the rights of the prior grantee in the operation of such Existing Pipeline. However, Grantee has not made any payments for such rights. Upon execution of this Easement Agreement, Grantee shall pay Grantor a one-time payment of FIVE HUNDRED SIXTY-ONE THOUSAND ONE HUNDRED NINETY AND 00/100 DOLLARS (\$561,190.00) for all uses of the Easement prior to the execution of this Easement Agreement.

4.02 Temporary Construction Easement Fees. Grantee agrees to pay Grantor the fees enumerated below for the rights and privileges herein granted. As set forth herein, the TCE consists of two (2) distinct areas, as more fully described in Exhibit A and shown on Exhibit B. The fees applicable to Area A shall be twelve cents (\$0.12) per square foot per annum invoiced monthly while the fees applicable to Area B shall be twenty cents (\$0.20) per square foot per annum invoiced monthly (each fee set forth herein shall individually be referred to as the "Monthly Fee" or collectively as the "Monthly Fees"). The TCE Monthly Fees shall be due monthly in advance on or before the first (1st) day of each month.

4.03 Grantor's Lost Revenue. Grantee agrees to reimburse the owners and operators of the Butterfield Trail Golf Club or other existing or future developments operated by or through the Airport located over or adjacent to the Easement ("Developers") for any Maintenance Activities or Construction Activities of the Pipelines that adversely affect those developments at one hundred ten percent (110%) of the development's lost revenue.

4.04 Place of Payment. All payments required herein shall be paid to Grantor at the following address as may be amended from time to time by the Director in writing:

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

4.05 Unpaid Fees and Charges. Any installment of any Annual Easement Fees or other charges or monies accruing under any provisions of this Agreement that are not received by the tenth (10th) day of the month after which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Agreement until paid by Grantee.

ARTICLE V - INSURANCE AND INDEMNIFICATION

5.01 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.

In addition, 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). Grantee, in its sole discretion, reserves the right to self-insure.

5.02 Security. Grantee, at its sole cost and expense, shall cause to be made, executed, and delivered to Grantor a Payment Bond or such other form of security acceptable to Grantor, to cover any potential claims related to the construction or maintenance of any improvements to the Easement. Evidence of said security shall be provided to the Director prior to the date of commencement of any such construction. Said security shall be in an amount no less than the cost of all construction services to be incurred by Grantee relative to this Easement. 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.

5.03 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:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying the Grantor, its officers, directors, employees and agents to be listed as an additional insureds in the policy;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. 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.

5.04 Indemnification. **WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS 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 EASEMENT, ITS USE OF THE EASEMENT, 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 EASEMENT INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND**

AGENTS. 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.

ARTICLE VI - DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

6.01 Obligations of Grantee Upon Destruction of Improvements. During the Term hereof, except as may be provided within this Article, should the Pipelines or related improvements in, on, or under the Easement be damaged or destroyed, in whole or in part, by fire, explosion, or other casualty, Grantee shall give prompt notice thereof to Grantor, and Grantee, at its own cost and expense, shall either: (i) promptly repair, replace and rebuild the same, as near as practicable to the character of the improvements existing immediately prior to such time; or, (ii) remove the damaged or destroyed improvements and return the Easement as near as practicable to their original condition. Any damage or destruction of the Easement that affects the operation of the Airport functions of the Grantor shall be immediately remedied by Grantee at Grantee's sole expense.

6.02 Insurance Proceeds. Upon receipt by Grantee of the proceeds of any insurance policy or policies, Grantee shall deposit same in an escrow account to be held in trust to pay for the cost of repair or removal, such proceeds shall be disbursed by Grantee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair or removal, Grantee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Grantee only after the completion of all work required of Grantee and approval of Grantor.

6.03 Repair by Grantee. In the event Grantee elects to repair the damaged or destroyed improvements, such repairs, replacements or rebuilding shall be made by Grantee as soon as commercially reasonably practicable. Prior to commencing construction of such repairs or replacements, Grantee shall furnish security in conformance with the security requirements as noted in section 5.02 herein. Upon settlement with the insurance company or companies and issuance of proceeds of such insurance policy or policies shall have been paid to Grantee, Grantee shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

6.04 Removal of Improvements and Restoration of Easement. In the event Grantee elects not to repair, rebuild or replace the improvements, Grantee shall remove all remaining improvements from the Easement, whether damaged or not, and shall restore the Easement as near as possible to its condition prior to the granting of this Easement. Upon such event, this Agreement and Grantee's obligation to pay applicable Easement Annual Fees will terminate. Security, as referenced in section 5.02 herein, is required for all removal activities required herein.

6.05 Immediate Repair. Grantee understands and agrees that Grantor is providing an Easement across property that is within an operating Airport. Grantee further understands and agrees that in granting this Easement, Grantor does not anticipate nor approve of any disruption in Grantor's provision of Airport services. Grantee understands and agrees that none of its activities relative to this Easement shall interfere with Grantor's operation of the Airport, except as may be explicitly granted in advance by Grantor in writing.

ARTICLE VII - EXPIRATION, TERMINATION, ASSIGNMENT AND TRANSFER

7.01 Expiration. This Agreement shall expire at the end of the Term or any extension thereof.

7.02 Termination. This Agreement shall be subject to termination by Grantor in the event Grantee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Grantor has notified Grantee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Grantee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Default in the performance of any of the covenants and conditions required herein (except required payments) to be kept and performed by Grantee, and such default continues for a period of thirty (30) days after receipt of written notice from Grantor to cure such default, unless during such thirty (30) day period, Grantee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- E. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- F. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Grantee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, which shall be events of default hereunder, Grantor may take immediate possession of the Easement including any and all improvements thereon and remove Grantee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Grantor to declare this Agreement canceled upon the default of Grantee for any of the reasons set out above shall not operate to bar or destroy the right of Grantor to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Grantor from Grantee after the expiration or termination of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Easement, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Grantor's consent is required or operate as a waiver of any right of the Grantor to retake and resume possession of the Easement.

7.03 Repossessing and Re-granting. In the event of default by Grantee hereunder that shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Grantor may at once thereafter, or at any time subsequent to such breach or default:

- A. Enter into and upon the Easement or any part thereof and repossess the same, expelling therefrom Grantee and all improvements, equipment and personal property of Grantee (which property may be removed and stored at the cost of and for the account of Grantee), using such force as may be necessary; and
- B. Either terminate this Agreement by notice or without terminating this Agreement, re-grant the use of the Easement or any part thereof upon such terms and conditions as shall appear advisable to Grantor. If Grantor shall proceed to re-grant the use of the Easement and the amounts received from such re-granting of the Easement during any month or part thereof be less than the fees due and owing from Grantee during such month or part thereof under the terms of this Agreement, Grantee shall pay such deficiency to Grantor immediately upon calculation thereof, providing Grantor has exercised good faith in the terms and conditions of re-granting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

7.04 Assignment and Transfer. Neither Party may transfer or assign this Agreement or any rights, duties or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Grantee may assign this Agreement without such consent to a successor in interest by reason of merger, consolidation, reorganization, conversion or sale of all or substantially all of its assets or to its parent corporation or its subsidiaries, general partner or affiliates. In all cases the assignee shall assume by written instrument, in form and substance satisfactory to Grantor, all obligations of the assignor under this Agreement. No assignment or consent hereunder shall operate to release the Grantee from its obligations under this Agreement unless the Grantor agrees in writing to such release. This Agreement shall extend to and be binding upon such successors and assigns of the Parties.

7.05 Rights Upon Expiration or Early Termination. At the expiration or early termination of this Agreement, Grantor shall be entitled to have the Easement returned to Grantor clear of all improvements, including but not limited to the Pipelines and related improvements in, on, or under the Easement, subject to the provisions of Section 4.01 (D) herein. Grantee shall have one hundred and eighty (180) days after expiration in which to remove such improvements; provided that any occupancy by Grantee for the purposes of removal shall be subject to the fees due hereunder and provided further that Grantee shall continue to be bound by the terms and

conditions of this Agreement; provided, however, that in no event shall any such continued occupancy be construed as an extension or renewal of the Term for other than the aforementioned one hundred and eighty (180) days. If Grantee fails to so remove said improvements, Grantor may remove same at Grantee's expense.

ARTICLE VIII – GENERAL PROVISIONS

8.01 Right of Flight. Grantor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Easement, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the Airport.

Grantor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Easement to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations, as may be amended.

Grantor reserves for itself, its successors and assigns the right to prevent any use of the Easement which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Easement which would constitute an airport hazard.

8.02 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

8.03 Notices. All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper Party at the following addresses:

GRANTOR: City Clerk
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Copy to: 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. Dreyfuss, Vice President

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

8.04 Attorneys' Fees. If either Party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and court costs.

8.05 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.

8.06 Nondiscrimination Covenant. Grantee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Grantee shall maintain and operate such facilities and services in compliance with any requirements that apply directly to Grantee pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Grantee shall use the Premises in compliance with all requirements imposed upon Grantee by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Grantee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 C.F.R. Part 27.
- E. Economic Nondiscrimination. To the extent that, under this Agreement, Grantee furnishes goods or services to the public at the Airport, Grantee agrees that it shall:
 1. furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport; and

2. charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Grantee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Grantor shall have the right to terminate this Agreement and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Easement had never been made or issued.

8.07 Affirmative Action. To the extent required under federal law, Grantee assures that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any program or activity covered by 14 C.F.R. Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons granted use of any premises of the City of El Paso. Grantee assures that, to the extent required under federal law, it will require that its covered sub-organizations or otherwise provide assurances to Grantor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assistance from their sub-organizations (sub-Grantees) to the same effect.

8.08 Cumulative Rights and Remedies. All rights and remedies of Grantor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Grantor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

8.09 Interpretation. Any words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Grantee and Grantor agree that this Agreement has been freely negotiated by both Parties and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either Party by virtue of that Party having drafted this Agreement or any portion thereof.

8.10 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.

8.11 Section Headings. The Table of Contents and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

8.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable,

there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

8.13 Survival of Certain Provisions. All provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration, cessation or termination of this Agreement, whether by default, the passage of time or otherwise, shall survive such expiration or termination of this Agreement, including specifically but without limitation the indemnification provisions found herein.

8.14 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Grantor and Grantee and their successors, assigns, legal representatives, heirs, executors and administrators.

8.15 Taxes and Other Charges. The Grantee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Grantee or Grantor, with respect to Grantee's use of the Pipelines or any of Grantee's improvements thereon, during the Term of this Agreement including any extensions or option periods granted thereto.

8.16 Restrictions and Reservations. This Agreement is subject to all other rights-of-way, easements, dedications, restrictions and other encumbrances of record and running with the land. Grantor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations or encumbrances and Grantee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations or encumbrances, so long as such grants do not materially interfere with the rights herein granted to Grantee.

Grantor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Easement for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of the Easement and the maintenance, construction, or alteration of the Pipelines, improvements or structures thereon are in compliance with all Environmental Laws and for the purpose of showing the Easement or other Airport property; Grantor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

8.17 Subordination of Agreement. All rights granted in this Agreement shall be subordinate to the rights in any deed from the United States to Grantor. This Agreement shall further be subordinate to the provisions of any existing or future agreements between Grantor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should an agreement with the United States Government substantially destroy the commercial value of the Agreement, Grantee may cancel this Agreement in its entirety.

8.18 Authorization To Enter Agreement. The Parties represent and warrant to each other that each Party and the persons signing this Agreement 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.

8.19 Effective Date. This Agreement shall be effective as of September 1, 2006, the date first noted on the Title Page.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date first noted above.

GRANTOR:

THE CITY OF EL PASO, TEXAS

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen
Deputy City Attorney

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

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2011, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas (Grantor).

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

GRANTEE:

PLAINS PIPELINE, L.P.

By: Plains Marketing GP Inc., Its General Partner

ALH
[Signature]
MS

By: *Harry N Pefanis*

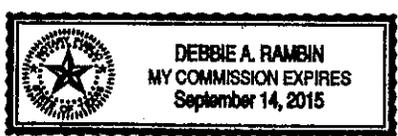
Name: Harry N. Pefanis *[Signature]*

Title: President and Chief Operating Officer

ACKNOWLEDGMENT

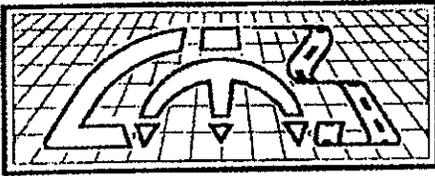
THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

This instrument was acknowledged before me on this 6th day of December 2011, by Harry N. Pefanis as President and Chief Operating Officer of Plains Marketing GP Inc., the General Partner of Plains Pipeline, L.P. (Grantee).



Debbie Rambin
Notary Public, State of Texas

My Commission Expires:
9-14-2015



Land - Mark Professional Surveying Inc.

"Serving Texas, New Mexico and Arizona"

METES AND BOUNDS DESCRIPTION

"PLAINS PIPELINE – El Paso International Airport" *EXHIBIT A - AREA 1*

A 6.1216 acre portion of Section Nos. 27, 33, 34 and 40, Block 80, Township 2, T. & P. R.R. Co. Surveys, El Paso County, Texas, and being more particularly described by metes and bounds as follows.

COMMENCING for reference at a N.G.S. Station "Bliss 2 RM 5", with a coordinate value of X=406,492.44 feet and Y= 10,673,602.61 feet, in the Central Zone of the Texas Coordinate System (NAD-83); **THENCE**, North 38°06'34" East, a distance of 7871.06 feet to a point; *whence* an existing 2-inch iron pipe lying at the westerly section corner of Section Nos. 6 and 7, Block 80, Township 2, Texas and Pacific Railroad Company Surveys; bears North 01°08'00" West, a distance of 15903.10 feet; **THENCE**, North 88°52'00" East, a distance of 21230.58 feet to a point; **THENCE**, South 01°00'11" East, a distance of 138.53 feet to a point; **THENCE**, South 35°52'53" West, a distance of 4448.72 feet to a point lying in the northeasterly boundary line of Lot 1, Block 2, Butterfield Trail Aviation Park Unit Two, as recorded in Volume 78, Pages 87 and 87A, Plat Records of El Paso County, Texas; **THENCE**, South 36°20'06" West (South 36°21'18" West ~ Plat call), with the southeasterly boundary line of said Lot 1, Block 2, a distance of 1071.58 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the southwesterly right-of-way line of Global Reach Drive, for the **POINT OF BEGINNING** of this parcel description; *whence* an existing city monument lying at a PI on an offset line (15 feet northeast) bears the following 2 courses:

North 36°20'06" East, a distance of 75.82 feet;
South 45°14'05" East, a distance of 85.27 feet;

THENCE, South 36°20'06" West, a distance of 441.06 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, South 34°51'24" West, a distance of 784.27 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, South 35°49'17" West, a distance of 5025.24 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, South 35°57'53" West, a distance of 1402.46 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, South 01°00'21" East, a distance of 60.45 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the southerly boundary line of the El Paso International Airport, for a corner of this parcel;

THENCE, North 86°41'43" West, with said southerly boundary line, a distance of 50.14 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel; *whence* an existing city monument lying at the centerline intersection of Buckner Street and Mayflower Drive, bears South

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EXHIBIT A - AREA 1
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72°01'13" West, a distance of 1274.41 feet:

THENCE, North 01°00'21" West, a distance of 48.45 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 40°01'25" East, a distance of 91.04 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the southeasterly boundary line of a 35 feet wide SFPP, L.P. Easement, for a corner of this parcel;

THENCE, North 33°09'54" East (North 33°52'30" East ~ SFPP, L.P. Easement call), with said southeasterly boundary line, a distance of 78.47 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°48'45" East (North 36°31'21" East ~ SFPP, L.P. Easement call), continuing with said southeasterly boundary line, a distance of 95.94 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°51'48" East (North 36°34'24" East ~ SFPP, L.P. Easement call), continuing with said southeasterly boundary line, a distance of 387.23 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°49'55" East (North 36°32'31" East ~ SFPP, L.P. Easement call), continuing with said southeasterly boundary line, a distance of 3545.41 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°51'03" East (North 36°33'39" East ~ SFPP, L.P. Easement call), continuing with said southeasterly boundary line, a distance of 2266.51 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 34°37'34" East (North 35°20'10" East ~ SFPP, L.P. Easement call), continuing with said southeasterly boundary line, a distance of 790.10 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the southwesterly boundary line of Lot 1, Block 1, Butterfield Trail Aviation Park Unit Two, for a corner of this parcel;

THENCE, South 45°14'05" East (South 45°12'53" East ~ Plat call), a distance of 1.83 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set at the southerly corner of Lot 1, Block 1, Butterfield Trail Aviation Park Unit Two, for a corner of this parcel;

THENCE, North 36°20'06" East, with the southeasterly boundary line of said Lot 1, Block 1, a distance of 441.06 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set at the easterly boundary corner of Lot 1, Block 1, Butterfield Trail Aviation Park Unit Two and in the southwesterly right-of-way line of Global Reach Drive, for a corner of this parcel;

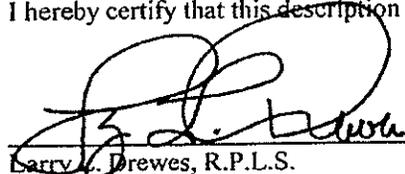
"PLAINS PIPELINE ...
El Paso International Airport"
EXHIBIT A - AREA 1
Page 3 of 3

THENCE, South 45°14'05" East (South 45°12'53" East ~ Plat call), with said southwesterly right-of-way, a distance of 35.38 feet to the **POINT OF BEGINNING** of this parcel description;

Said parcel contains 6.1216 acres (266,657 square feet) more or less and being subject to easements, restrictions and covenants of record.

Note: A plat with the same date, accompanies this Metes and Bounds Description, as shown on Exhibit "B - Area 1".

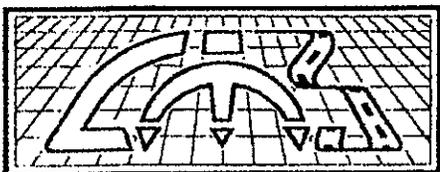
I hereby certify that this description was prepared by me or under my supervision.



Larry L. Drewes, R.P.L.S.
Texas License No. 4869

Date: September 25, 2008
Job No. 07-03-24217B2





Land - Mark Professional Surveying Inc.

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METES AND BOUNDS DESCRIPTION ***"PLAINS PIPELINE – El Paso International Airport"*** **EXHIBIT A - AREA 2**

A 8.3207 acre portion of Section Nos. 22, 23, 26, and 27, Block 80, Township 2, T. & P. R.R. Co. Surveys, El Paso County, Texas, and being more particularly described by metes and bounds as follows.

COMMENCING for reference at a N.G.S. Station "Bliss 2 RM 5", with a coordinate value of X=406,492.44 feet and Y= 10,673,602.61 feet, in the Central Zone of the Texas Coordinate System (NAD-83); **THENCE**, North 38°06'34" East, a distance of 7871.06 feet to a point; *whence* an existing 2-inch iron pipe lying at the westerly section corner of Section Nos. 6 and 7, Block 80, Township 2, Texas and Pacific Railroad Company Surveys; bears North 01°08'00" West, a distance of 15903.10 feet; **THENCE**, North 88°52'00" East, a distance of 21195.04 feet to a point lying in the easterly boundary line of a 35 feet wide SFPP, L.P. Easement, for the **POINT OF BEGINNING** of this parcel description;

THENCE, North 00°49'01" West (North 00°06'25" West ~ SFPP, L.P. Easement call), with said easterly boundary line, a distance of 717.53 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", for a corner of this parcel;

THENCE, North 01°00'27" West (North 00°17'51" West ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 1360.33 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", for a corner of this parcel;

THENCE, North 02°06'30" West (North 01°23'54" West ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 80.10 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", for a corner of this parcel;

THENCE, North 00°56'41" West (North 00°14'05" West ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 834.89 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", for a corner of this parcel;

THENCE, North 01°04'26" West (North 00°21'50" West ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 1092.46 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", for a corner of this parcel;

THENCE, North 00°59'55" West (North 00°17'19" West ~ SFPP, L.P. Easement call), a distance of 855.18 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the northerly boundary line of the El Paso International Airport, for a corner of this parcel;

THENCE, North 89°00'19" East, with said northerly boundary line, a distance of 35.28 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, South 01°00'11" East, a distance of 5078.91 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

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*"PLAINS PIPELINE –
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EXHIBIT A - AREA 2
Page 2 of 3*

THENCE, South 35°52'53" West, a distance of 4448.72 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, South 36°20'06" West (South 36°21'18" West ~ Plat call), a distance of 950.27 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the northeasterly right-of-way line of Global Reach Drive (120 feet wide) for a corner of this parcel; *whence* an existing city monument lying at a PI on an offset line (15 feet northeast) bears the following two courses:

South 36°20'06" West, a distance of 45.49 feet;
South 45°14'05" East, a distance of 85.27 feet;

THENCE, North 45°14'05" West, with said northeasterly right-of-way, a distance of 35.38 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 36°20'06" East (North 36°21'18" East ~ Plat call), with the southeasterly boundary line of Lot 1, Block 2, Butterfield Trail Aviation Park Unit Two, a distance of 950.27 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the easterly boundary corner of said Lot 1, Block 2, for a corner of this parcel;

THENCE, North 45°14'05" West (North 45°12'53" West ~ Plat call), a distance of 1.88 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set in the easterly boundary line of a 35 feet wide SFPP, L.P. Easement, for a corner of this parcel;

THENCE, North 37°23'57" East (North 38°06'33" East ~ SFPP, L.P. Easement call), with said easterly boundary line, a distance of 137.59 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°55'00" East (North 36°37'36" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 158.00 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°32'55" East (North 36°15'31" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 237.66 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°57'27" East (North 36°40'03" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 665.32 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 35°49'09" East (North 36°31'45" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 1465.28 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

"PLAINS PIPELINE --
El Paso International Airport"
EXHIBIT A - AREA 2
Page 3 of 3

THENCE, North 35°50'13" East (North 36°32'49" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 1684.05 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 33°09'16" East (North 33°51'52" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 82.02 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

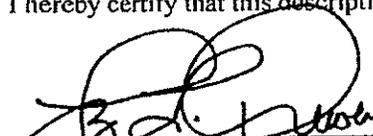
THENCE, North 02°33'58" East (North 03°16'34" East ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 72.39 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402", set for a corner of this parcel;

THENCE, North 00°49'01" West (North 00°06'25" West ~ SFPP, L.P. Easement call), continuing with said easterly boundary line, a distance of 52.52 feet to the **POINT OF BEGINNING** of this parcel description;

Said parcel contains 8.3207 acres (362,448 square feet) more or less and being subject to easements, restrictions and covenants of record.

Note: A plat with the same date, accompanies this Metes and Bounds Description, as shown on Exhibit "B - Area 2".

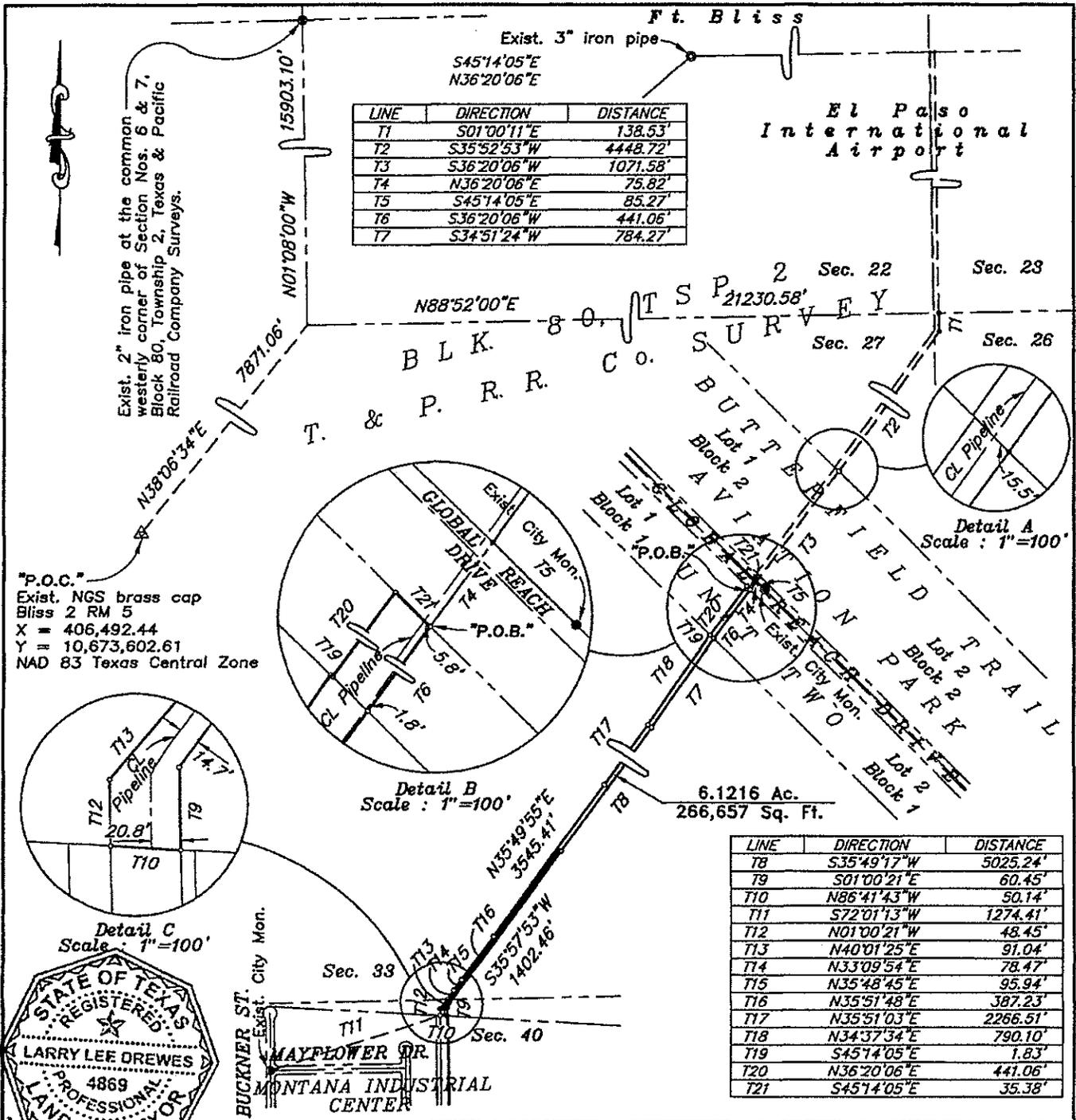
I hereby certify that this description was prepared by me or under my supervision.



Larry L. Drewes, R.P.L.S.
Texas License No. 4869



Date: September 25, 2008
Job No. 07-03-24217B1



I hereby certify that the foregoing boundary survey was made by me or under my supervision.

Larry L. Drewes
 Larry L. Drewes, R.P.L.S.
 Texas 4869 N.M. 11402

Plat of Survey

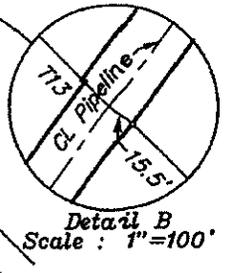
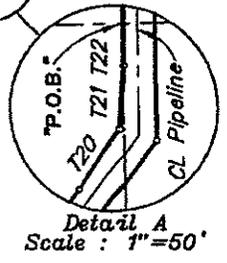
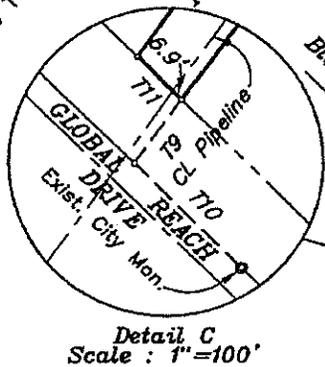
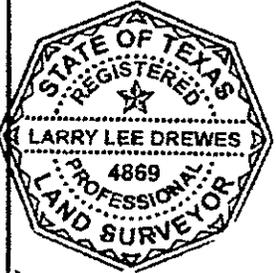
EXHIBIT B - AREA 1
 SECTIONS 27, 33, 34 & 40,
 BLOCK 80, TOWNSHIP 2,
 T. & P. R.R. Co. SURVEYS,
 EL PASO COUNTY, TEXAS.

Job No. 07-03-24217B2 Scale: 1" = 1000' Date: SEPTEMBER 25, 2008

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LINE	DIRECTION	DISTANCE
T1	N00°49'01"W	717.53'
T2	N01°00'27"W	1360.33'
T3	N02°06'30"W	80.10'
T4	N00°56'41"W	834.89'
T5	N01°04'26"W	1092.46'
T6	N00°59'55"W	855.18'
T7	N89°00'19"E	35.28'
T8	S36°20'06"W	950.27'
T9	S36°20'06"W	45.49'
T10	S45°14'05"E	85.27'

LINE	DIRECTION	DISTANCE
T11	N45°14'05"W	35.38'
T12	N36°20'06"E	950.27'
T13	N45°14'05"W	1.88'
T14	N37°23'57"E	137.59'
T15	N35°55'00"E	158.00'
T16	N35°32'55"E	237.66'
T17	N35°57'27"E	665.32'
T18	N35°49'09"E	1465.28'
T19	N35°50'13"E	1684.05'
T20	N33°09'16"E	82.02'
T21	N02°33'58"E	72.39'
T22	N00°49'01"W	52.52'



I hereby certify that the foregoing boundary survey was made by me or under my supervision.

Larry L. Drewes
 Larry L. Drewes, R.P.L.S.
 Texas 4869 N.M. 11402

Plat of Survey

EXHIBIT B - AREA 2
SECTIONS 22, 23, 26 & 27,
BLOCK 80, TOWNSHIP 2,
T. & P. R.R. Co. SURVEYS,
EL PASO COUNTY, TEXAS.

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EXHIBIT C

EXISTING SURFACE AND SUBSURFACE APPURTENANCES AND FACILITIES

- Approximately 18,325 linear feet of 8.625-in O.D. x 0.277-in W.T., 24.70#/ft., X-42 pipeline
- Approximately 300 feet of 10-in casing
- One (1) active deep well (cathodic protection)
- One (1) inactive deep well
- Three (3) aerial markers
- Approximately sixty (60) pipeline markers
- Nine (9) test stations
- One (1) solar rectifier
- One (1) AC rectifier