

CITY OF EL PASO, TEXAS

DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Airport

AGENDA DATE: December 18, 2007

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

DISTRICT(S) AFFECTED: 2 & 3

SUBJECT:

AUTHORIZE the City Manager to sign an Easement Agreement by and between the City of El Paso as Grantor and Texas Gas Service, a Division of ONEOK, Inc. as Grantee, and such Easement Agreement shall be for an initial period of forty (40) years, with an option to extend for an additional period of ten (10) years.

BACKGROUND / DISCUSSION:

Texas Gas Service, a Division of ONEOK, Inc., (Grantee) desires to place and operate a new natural gas pipeline through portions of the El Paso International Airport (Airport), which is owned and operated by the City of El Paso (Grantor); and Grantor desires to permit such placement of the new pipeline, as the Airport and its developments, including the Butterfield Trail Golf Club and proposed business park, shall be recipients of such natural gas.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? If so, when?
Yes. Jan. 9, 2007 easement granted to SFPP to install a pipeline.

AMOUNT AND SOURCE OF FUNDING:

N/A. This is a revenue generating contract.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A
N/A

COUNCIL ACTION REQUIRED: City Council did not delegate the authority to sign airport leases, concession agreements or operating agreements.

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

LEGAL: (if required) Raymond L. Telles
Raymond L. Telles, Asst. City Attorney

FINANCE: (if required) Patrick T. Abeln

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

07 DEC 10 PM 3:33
CITY CLERK DEPT.

RESOLUTION

WHEREAS, Texas Gas Service, a Division of ONEOK, Inc., (Grantee) desires to place and operate a new natural gas pipeline through portions of the El Paso International Airport (Airport), which is owned and operated by the City of El Paso (Grantor); and

WHEREAS, Grantor desires to permit such placement of the new pipeline, as the Airport and its developments, including the Butterfield Trail Golf Club and proposed business park, shall be recipients of such natural gas;

NOW THEREFORE, 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 as Grantor and Texas Gas Service, a Division of ONEOK, Inc. as Grantee, and such Easement Agreement shall be for an initial period of forty (40) years, with an option to extend for an additional period of ten (10) years.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER, 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

EASEMENT AGREEMENT

El Paso International Airport
City of El Paso, Texas
Grantor

Texas Gas Service, a Division of ONEOK, Inc.
Grantee

Effective Date

CITY CLERK DEPT.
07DEC 13 PM 1:16

**EASEMENT AGREEMENT
TABLE OF CONTENTS**

Page

ARTICLE I	PREMISES, PRIVILEGES, AND RESTRICTIONS	1
1.01	Easement.....	1
	A. Grant of Easement.....	1
	B. Description of Easement	1
	C. Specific Privileges, Uses and Rights.....	2
	D. Construction.....	2
	E. Maintenance	2
	F. Emergency Access.....	2
1.02	Restrictions on Privileges, Uses and Rights	3
1.03	Restriction on Surface Installations	3
1.04	Signs.....	3
1.05	Authorization to Enter Airport Restricted Areas	3
1.06	Placement and Movement of Pipeline	3
1.07	Restoration of the Premises	4
1.08	Inspection of the Premises	4
ARTICLE II	OBLIGATIONS OF GRANTEE.....	4
2.01	General.....	4
2.02	Condition of Premises.....	4
2.03	Compliance With Laws.....	4
	A. Definitions.....	5
	B. Compliance.....	5
2.04	Maintenance and Repair	7
2.05	Utilities.....	8
2.06	Trash, Garbage, and Other Refuse.....	8
2.07	Security	8
2.08	Penalties Assessed by Federal Agencies.....	8
2.09	Taxes.....	8
2.10	Governmental Filings.....	8
ARTICLE III	TERM OF EASEMENT.....	9
3.01	Initial Term	9
3.02	Option to Extend.....	9
3.03	Holding Over	9
ARTICLE IV	EASEMENT FEE	9
4.01	Easement Fee, Option Period Easement Fee and Grantor Reimbursements.....	9
	A. Calculation of Easement Fee for the Initial Term.....	9
	B. Calculation of Option Term Easement Fee.....	10
	C. Payment of Easement Fee and Option Period Easement Fee.....	10
	D. Construction Costs and Reimbursements to Grantor.....	10

TABLE OF CONTENTS (Continued)

4.02	Grantor's Lost Revenue	10
4.03	Place of Payment.....	10
4.04	Unpaid Fees and Charges.....	11
ARTICLE V	INSURANCE AND INDEMNIFICATION.....	11
5.01	Liability Insurance	11
5.02	Security	11
5.03	Authorized Insurance and Surety Companies.....	11
5.04	Indemnification	12
ARTICLE VI	DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY.....	12
6.01	Obligations of Grantee Upon Destruction of Improvements	12
6.02	Insurance Proceeds.....	13
6.03	Repair by Grantee	13
6.04	Removal of Improvements and Restoration of Premises.....	13
6.05	Immediate Repair	13
ARTICLE VII	EXPIRATION, TERMINATION, ASSIGNMENT AND TRANSFER.....	13
7.01	Expiration.....	13
7.02	Termination.....	13
7.03	Repossessing and Re-granting	14
7.04	Assignment and Transfer	15
7.05	Rights Upon Expiration or Early Termination.....	15
ARTICLE VIII	GENERAL PROVISIONS.....	15
8.01	Right of Flight.....	15
8.02	Time is of the Essence	16
8.03	Notices	16
8.04	Attorney's Fees	16
8.05	Agreement Made in Texas	16
8.06	Nondiscrimination Covenant	16
8.07	Affirmative Action.....	17
8.08	Cumulative Rights and Remedies.....	18
8.09	Interpretation.....	18
8.10	Agreement Made in Writing	18
8.11	Paragraph Headings	18
8.12	Severability	18
8.13	Survival of Certain Provisions	18
8.14	Successors and Assigns.....	18
8.15	Taxes and Other Charges	19
8.16	Restrictions and Reservations	19

TABLE OF CONTENTS (Continued)

8.17	Subordination of Agreement.....	19
8.18	Authorization To Enter Agreement	19
8.19	Effective Date	19
GRANTOR SIGNATURE and ACKNOWLEDGMENT.....		20
GRANTEE SIGNATURE and ACKNOWLEDGMENT		21
EXHIBIT A – METES & BOUNDS OF EASEMENT PREMISES		
EXHIBIT B – DEPICTION OF EASEMENT PREMISES		
EXHIBIT C – CALCULATION OF EASEMENT FEE		

CITY CLERK DEPT.
07 DEC 13 PM 1:17

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2007, by and between the **CITY OF EL PASO, TEXAS** ("Grantor") and **TEXAS GAS SERVICE, a Division of ONEOK, Inc.** ("Grantee"). Grantor and Grantee are referred to herein collectively as the "Parties" or individually as a "Party".

WITNESSETH:

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

WHEREAS, the Parties desire that a natural gas pipeline be constructed, operated and maintained on certain portions of Airport property by Grantee;

WHEREAS, Grantor desires to grant Grantee an easement in order to construct, operate and maintain such natural gas pipeline; and

WHEREAS, Grantee has a Franchise with the Grantor that provides for the construction, operation, and maintenance of a system to provide natural gas;

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 – PREMISES, 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 premises identified within Paragraph 1.01(B) below (the "Premises"), except for those rights retained for the benefit of Grantor (the "Easement"). The rights, privileges, and uses granted are limited strictly to those rights, privileges, and uses granted by this Agreement.
- B. Description of Easement. For the purposes of this Agreement, the Parties agree that the Easement shall consist of three (3) distinct areas, which are located within the City of El Paso, El Paso County, Texas, as more fully described in **Exhibit A**, shown in **Exhibit B** (both of which are attached hereto and incorporated herein for all purposes) and as more fully set forth below:

07 DEC 13 PM 1:17
CITY CLERK DEPT.

CITY CLERK DEPT.
07 DEC 13 PM 1:17

1. Area 1: A fifteen (15) foot wide easement running through the Air Operations Area from the southern boundary of the Airport to the northern boundary of the Airport, in order to construct, operate and maintain a twelve (12) inch natural gas pipeline;
 2. Area 2: A one thousand (1,000) foot long, fifteen (15) foot wide easement running from the easement referenced in Area 1 above to Global Reach Drive, in order to construct, operate and maintain a six (6) inch natural gas pipeline; and
 3. Area 3: A twenty (20) foot by thirty (30) foot easement for an above ground natural gas regulator station and related appurtenances located at the intersection of easement Area 1 and Area 2.
- C. Specific Privileges, Uses, and Rights. It is Grantee's intent to construct, operate, and maintain the pipelines referenced in Section 1.01B above (hereinafter collectively referred to as the "Pipeline" or the "New Pipeline") during the Term of this Agreement together with certain rights of ingress to and egress from the Premises over those roadways, drives and walkways designated from time to time by the Director for construction, operation, and maintenance purposes. Grantee intends to construct the New Pipeline soon after the execution of this Agreement. Grantee's rights of ingress and egress are limited by this Agreement and those applicable rules and regulations of the Airport. The New Pipeline shall be used only for the transportation of natural gas.
- D. Construction. Grantee intends to construct, operate and maintain the New Pipeline within the Premises. Pursuant to this Agreement, Grantee is authorized to design locate, construct, maintain, operate, repair, replace, relocate, reconstruct, and remove the New Pipeline, attachments and other property, equipment and conduits and other appurtenances to be located within the Premises, 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 Pipeline pursuant to the approvals required herein (referred to hereinafter as the "Construction activities").
- E. Maintenance. Upon Grantee's completion of the Construction activities on the New Pipeline, Grantee shall have the right and privilege to conduct those maintenance activities required to insure proper operation of the New Pipeline (referred to hereinafter as the "Maintenance activities"). All Maintenance activities of Grantee shall require prior written approval, with regard to scheduling, security clearance, and related processes as required by the Airport.
- F. Emergency Access. It is understood by the Parties that in the event of a situation requiring immediate emergency access to the Premises by Grantee's trained professionals in order to ensure the public safety, the prior written approvals normally required herein may be waived by the Parties for such emergency situation.

1.02 Restrictions on Privileges, Uses and Rights. Grantee covenants and agrees that in no event will it enter into any business activity on the Airport other than the Construction and Maintenance activities on the New Pipeline and such other activities explicitly permitted herein. 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 or local or other governmental bodies or agencies, departments or offices, including without limitation Grantor.

1.03 Restriction on Surface Installations. Grantee shall place a regulator station and a 12-inch valve near the regulator station site. Other than those installations, and unless explicitly permitted in writing by the Director, Grantee shall have no right to place any additional surface installation on any part of the Premises.

1.04 Signs. The placement, size, and location of Grantee's signage or other notice of pipelines or other improvements in or upon the Easement shall require the prior written approval of the Director, and shall be subject to all laws and other applicable rules and regulations, including but not limited to those rules and regulations of the U.S. Department of Transportation.

1.05 Authorization to Enter Airport Restricted Areas. Grantee understands that portions of the Easement are located within a restricted area of the Airport and that Grantee and its agents, employees, servants or independent contractors must be authorized by the Grantor to enter restricted areas of the Airport prior to their entry thereon. 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. As Grantee is required to comply with all applicable rules and regulations, any violation of this provision or 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.

1.06 Placement and Movement of Pipeline. Grantee agrees to bury the New Pipeline 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, or operation of the Pipeline authorized pursuant to this Easement. The appropriate depth of the New Pipeline 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 (the "Airport Improvements"). If future development of the Airport is extended to and in the vicinity of the Premises, the Grantee, its successors and assigns hereby agree that after receipt of written notification by Grantor, Grantee will either completely relocate the Pipeline or other improvements to the nearest alternative location provided by Grantor on Grantor's property, and/or lower the Pipeline or other improvements to an appropriate depth under the Airport Improvements, and/or to properly encase the Pipeline or other improvements 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 Premises to its original condition upon the relocation, lowering and/or encasing of such Pipeline and improvements. The relocation, lowering and/or encasing of the Pipeline and improvements will be accomplished at the sole cost of Grantee, its successors and assigns.

1.07 Restoration of the Premises. Upon completion of the construction, installation, removal, relocation, lowering or encasing of the Pipeline, Grantee shall remove all unused equipment, materials, and pipe remaining in, on, or under the surface of the Premises during the construction phase and any other property placed on the Premises 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 Premises 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 Premises. 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 Premises, 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.

1.08 Inspection of the Premises. Grantee's inspections of any developed portions of the Premises shall only be accomplished by foot or by air. However, Grantee may inspect developed areas, which may be accessed through dedicated streets; provided that such inspection by vehicle is limited to such dedicated streets. Such developed areas shall include, by way of example and not limitation, any Airport golf courses or parks. It is the intent of this section to maintain those developed areas of the Premises in the condition to which they have been developed.

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 keep, maintain, repair and operate the Pipeline and related improvements and facilities existing or placed in, on or under the Premises or otherwise owned by Grantee at Grantee's sole cost and expense.

2.02 Condition of Premises. Grantee accepts the Premises 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 Premises.

2.03 Compliance with Laws. Grantee, at Grantee's expense, expressly agrees that it will locate, install, construct, operate, maintain, use and remove the Pipeline and the related improvements and facilities located on the Premises 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, at Grantee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, 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 and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises 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 Premises 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 Law 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) **Grantee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises in violation of any Environmental Law, or transported to and from the Premises, by Grantee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Without limiting the generality of any other indemnity clauses contained in this**

CITY CLERK DEPT.
07 DEC 13 PM 1:17

CITY CLERK DEPT.
07 DEC 13 PM 1:17

Agreement, Grantee shall indemnify, defend and hold harmless Grantor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Grantee's obligations and liabilities under this paragraph shall continue so long as Grantor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Grantor by Grantee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material located on the Premises or any improvements thereon, or present in the soil or groundwater on, under or about the Premises. The parties agree that Grantor's right to enforce Grantee's promise to indemnify is not an adequate remedy at law for Grantee's violation of any provision of this Section. Grantor shall also have all other rights and remedies provided by law or otherwise provided in this Agreement.

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon results in any contamination of the Premises or any improvements thereon or any surrounding property, Grantee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or any surrounding property to the condition existing prior to the introduction of any such hazardous material to the Premises or in any improvements thereon; provided that Grantor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Grantee shall, at Grantee's own cost and expense, make all submissions to,

CITY CLERK DEPT.
07DEC 13 PM 1:18

provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Grantee shall, at Grantee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Grantor, Grantee shall promptly provide all information requested by Grantor to determine the applicability of the Environmental Laws to the Premises or to respond to any governmental investigation or to respond to any claim of liability by third parties, which is related to environmental contamination.

- (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 Premises or Grantee's operation on the Premises, and (b) any change in Grantee's operation on the Premises that will change or has the potential to change Grantee's or Grantor's obligations or liabilities under the Environmental Laws.
- (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 Premises, the Pipeline and Grantee's improvements and appurtenances thereto, in good condition consistent with good business practice. Grantee shall repair all damages to Grantor's property and equipment located on or within the Premises, including 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 Premises.

Grantor shall be the sole judge of the quality of Grantee's repairs to the referenced property and equipment and, upon written notice by Grantor to Grantee, Grantee shall be required to perform whatever 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 Premises and perform the necessary repair work, the cost of which, plus ten percent (10%) for administrative and overhead costs, shall be borne by Grantee.

Grantee agrees not to paint, erect, or in any manner install any advertising or other signage on the exterior of any improvements or anywhere on the Premises, 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 Premises and the Airport, of all trash, garbage and other refuse caused as a result of the 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 CFR 1540.105 and agrees to assume responsibility for compliance with said regulations as they relate to security procedures on the Premises.

2.08 Penalties Assessed by Federal Agencies. Grantee understands and agrees that in the event any federal agency assesses a civil penalty against the Grantor or the Airport 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 or independent contractors, 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. Grantor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from the Grantee's use of the property or possession of the Premises. The Grantee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Grantee or the Grantor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Grantee's use and/or occupancy of the Premises, or any improvements thereon, during the Term of this Agreement including any extensions granted thereto.

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 its 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), the Texas Commission on

Environmental Quality (TCEQ) or any successor agencies, Grantee shall provide duplicate copies to Grantor of such filing(s) or response(s) made at the time same are made.

ARTICLE III - TERM OF EASEMENT

3.01. Initial Term. The initial term of this Easement (the "Initial Term") shall be for the period of forty (40) years commencing on the date this Agreement is executed by the City (the "Commencement Date").

3.02 Option to Extend. In the event Grantee is not in default of any terms of this Agreement, Grantee shall have the option to extend this Agreement for an additional term of ten (10) years by notifying Grantor in writing of Grantee's election at least one hundred and twenty (120) days prior to the expiration of the initial term. In the event the election is so exercised, the Agreement shall be extended for this additional ten (10) years (the "Option Period") on the same terms and conditions. The fees accruing during the Option Period shall be adjusted as more fully described herein.

3.03 Holding Over. It is agreed and understood that any holding over by Grantee of the Premises at the expiration or termination of this Agreement shall operate and be construed as a tenancy from month to month at a fee to be established as one and one-half (1.5) times the Easement Fee or Option Period Easement Fee established for the month immediately preceding such expiration or termination. In such event, Grantee shall be liable to Grantor for all loss or damage on account of any holding over against Grantor's will after the expiration or termination of this Agreement, whether such loss or damage may be contemplated at this time or not. 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 Premises, 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 Premises.

ARTICLE IV – EASEMENT FEE

4.01 Easement Fee, Option Period Easement Fee and Grantor Reimbursements.

CITY CLERK DEPT.
07DEC13 PM 1:18

A. Calculation of Easement Fee for the Initial Term. Grantee agrees to pay Grantor ONE MILLION TWENTY FIVE THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 01/100 DOLLARS (\$1,025,887.01) for the rights and privileges granted herein through the Initial Term of this Agreement (the "Easement Fee"). For the purpose of calculating the Easement Fee, the total Easement area, which is inclusive of Area 1, Area 2 and Area 3, is comprised of TWO HUNDRED FORTY TWO THOUSAND EIGHT HUNDRED FIFTEEN (242,815) square feet. The current applicable utility easement rate for such areas within the Airport is twelve cents (\$0.12) per square foot. Incorporation of Consumer Price Index (CPI) adjustments at each fifth (5th) year anniversary, as is customary for similar easements granted on the Airport, in addition to the net present value discount of

four percent (4%), results in the easement fee enumerated above. The calculation of this easement fee is more fully described within **EXHIBIT "C"**, which is attached hereto and incorporated herein for all purposes.

- B. Calculation of Easement Fee for the Option Period. Grantee agrees to pay Grantor ONE MILLION FOUR HUNDRED THIRTY THREE THOUSAND TWO HUNDRED EIGHTY FIVE AND 64/100 DOLLARS (\$1,433,285.64) for the rights and privileges granted herein for the continued use of the Easement through the Option Period (the "Option Period Easement Fee"). For the purpose of calculating the Option Period Easement Fee, the easement rate the utility easement rate of \$0.516 per square foot shall be used, with a Consumer Price Index adjustment at the fifth (5th) year anniversary of the commencement of such Option Period.
- C. Payment of Easement Fee and Option Period Easement Fee. Grantee agrees to pay Grantor SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$700,000.00) prior to January 1, 2008. Grantee further agrees to pay Grantor THREE HUNDRED TWENTY FIVE THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 01/100 DOLLARS (\$325,887.01) as the remaining portion of the Easement Fee prior to February 1, 2008. Upon the exercise of the Option Period, Grantee agrees to pay Grantor the entire Option Period Easement Fee of ONE MILLION FOUR HUNDRED THIRTY THREE THOUSAND TWO HUNDRED EIGHTY FIVE AND 64/100 DOLLARS (\$1,433,285.64) for the continued use of the Easement through the Option Period.
- D. Construction Costs and Reimbursements to Grantor. The Parties expressly agree and understand that Grantor shall be responsible for payment to Grantee of a portion of the construction costs for the New Pipeline; provided, however, that any such payments by Grantor shall be eligible for reimbursement over a ten (10) year period in accordance with the applicable line extension tariff in place on the Effective Date. The parties agree to execute any additional instruments necessary to effectuate the intent of this section.

4.02 Grantor's Lost Revenue. Grantee agrees to reimburse the owners and operators of any future developments operated by or through the Airport located over or adjacent to the Easement Premises (the "Developers") for any Pipeline Construction or Maintenance activities that adversely affect those developments at one hundred ten percent (110%) of the development's lost revenue.

4.03 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.

07 DEC 13 PM 1:18
CITY CLERK DEPT.

4.04 Unpaid Fees and Charges. Any installment of any Annual 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 in 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 actually 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 the 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).

5.02 Security. Grantee, at its sole cost and expense, shall cause to be made, executed, and delivered to Grantor a Payment Bond, a letter of credit or such other form of security acceptable to Grantor, to cover any potential claims related to the construction of any improvements in, on, or under the Premises pursuant to this Agreement. 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 contract for any improvements to be constructed 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 identifying the Grantor as an additional insured 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

CITY CLERK DEPT.
07 DEC 13 PM 1:18

policy has been paid in advance; and

CITY CLERK DEPT.

07 DEC 13 PM 1:19

- 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 HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES 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 PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST GRANTOR BY REASON OF ANY SUCH CLAIM, GRANTEE, UPON RECEIPT OF WRITTEN NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.

Without limiting the generality of any other indemnity contained in this Agreement, and in addition thereto (and not in satisfaction thereof), Grantee agrees that whenever Grantee shall contract for or receive the benefit of any arrangement under which any third party may indemnify Grantee with regard to any matter the subject of which Grantee has agreed to indemnify Grantor under this Agreement, the indemnification which Grantee shall or may receive from the third party (the "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 Pipeline or related improvements in, on, or under the Premises 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: (a) promptly repair, replace and rebuild the same, as nearly as practical

to the character of the improvements existing immediately prior to such time; or, (b) remove the damaged or destroyed improvements and return the Premises to their original condition. Any damage or destruction of the Premises 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 reasonably possible. Prior to commencing construction of such repairs or replacements, Grantee shall furnish security in conformance with the security requirements as noted 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 Premises. In the event Grantee elects not to repair, rebuild or replace the Pipeline or related improvements, Grantee shall remove all remaining Pipeline or related improvements from the Premises, whether damaged or not, and shall restore the Premises to its condition prior to the granting of this Easement. Upon such event, this Agreement and Grantee's obligation to pay applicable 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 the 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 approved in advance by the Director 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 ten (10) 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. Abandon the Easement, which shall be conclusively presumed following non-use by Grantee for one (1) year and with use not being resumed within thirty (30) days following receipt of written notice of abandonment from Grantor to Grantee;
- E. 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;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. 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.

CITY CLERK DEPT.

07 DEC 13 PM 1:19

In any of the aforesaid events, which shall be deemed events of default hereunder, Grantor may take immediate possession of the Premises 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 terminated upon the default of Grantee for any of the reasons set out shall not operate to bar or destroy the right of Grantor to terminate 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 Premises, 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 Premises.

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

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Grantee and all personal property of Grantee, including the

Pipeline and related improvements (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 Premises 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 Premises and the amounts received from such re-granting of the Premises 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. Grantee may not assign or transfer this Agreement without the prior written approval of Grantor.

7.05 Rights Upon Expiration or Early Termination. At the expiration or early termination of this Agreement, Grantor shall be entitled to have the Premises returned to Grantor clear of all improvements, including but not limited to the Pipeline and related improvements in, on, or under the Premises. Grantee shall have one hundred and eighty (180) days after expiration or early termination of this Agreement 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 that Grantee shall continue to be bound by the terms and conditions of this Agreement; provided further, however, that in no event shall any continued occupancy be construed as an extension or renewal of the Agreement 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 Premises, 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 Premises 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 Premises which would interfere with aircraft landing on or taking off from the Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

8.02 Time is of the Essence. Time is and shall be deemed of the essence with 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 79999

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

GRANTEE: Texas Gas Service, a Division of ONEOK, Inc.

Attn: _____

CITY CLERK DEPT.
07 DEC 19 PM 1:19

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 all other parties in the manner set forth in this Section.

8.04 Attorney's 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 attorney's 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 Premises for the purpose for which 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 all other requirements imposed pursuant to 49 CFR 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 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 CFR 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.

CITY CLERK DEPT.
07DEC 13 PM 1:19

8.07 Affirmative Action. 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 of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statues 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 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. 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 Paragraph 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.

07 DEC 13 PM 1:19
CITY CLERK DEPT.

8.15 Taxes and Other Charges. The Grantee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Grantee or the Grantor, with respect to the use of the Premises, the Pipeline or any related 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.

Grantor reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of the Premises, and the maintenance, construction, or alteration of improvements or structures thereon are in compliance with the all Environmental Laws and for the purpose of showing the Premises 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 the effect of such agreement with the United States Government be to 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 the date executed by the Grantor.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

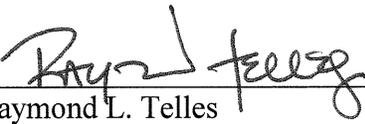
CITY CLERK DEPT.
DEC 13 PM 1:19

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

**GRANTOR:
THE CITY OF EL PASO**

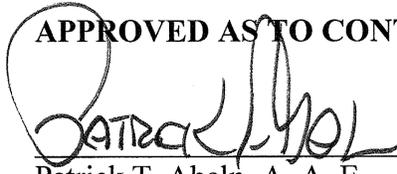
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



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

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2007,
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)

CITY CLERK DEPT
07DEC 13 PM 1:19

CITY CLERK DEPT.
07DEC 10 PM 3:45

BARRAGAN & ASSOCIATES

Land Planning & Land Surveying

10950 Pellicano Drive Space F, El Paso, Texas 79936 Ph.(915) 591-5709 Fax(915) 591-5706

METES AND BOUNDS DESCRIPTION

(AREA #1)

The parcel of land herein described is a proposed 15' wide Easement, being a portion of Sections 27, 28, 34 and 39, Block 80, Tsp 2, Texas and Pacific Railroad Surveys and a portion of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit One, in the City of El Paso, El Paso County, Texas according to the plat thereof on file in Volume 73, Page 50, Plat Records of the El Paso County, Texas, and a portion of Lot 2, Block 1, Butterfield Trail Aviation Park, Unit Two, in the City of El Paso, El Paso County, Texas according to the plat thereof on file in Volume 78, Pages 87 and 87A, Plat Records of the El Paso County, Texas and being more particularly described by this metes and bounds as follows:

Commencing for reference at an existing City Monument located 15.00 feet East from the centerline of Global Reach Drive (120' R.O.W.) and the centerline of George Perry Boulevard (120' R.O.W); **THENCE**, N 59°14'31" W a distance of 3655.16 feet leaving said monument to the **POINT OF BEGINNING** of the herein parcel being described:

THENCE, S 42°08'17" E a distance of 8921.27 feet to a point for a corner of this parcel;

THENCE, S 00°30'07" W a distance of 4803.17 to a point for a corner of this parcel;

THENCE, S 06°19'03" W a distance of 537.40 feet to a point for a corner of this parcel;

THENCE, N 84°17'15" E a distance of 873.25 feet to a point for a corner of this parcel;

THENCE, S 05°56'00" E a distance of 15.00 feet to a point for a corner of this parcel on the Northerly Right-of-Way line of Montana Avenue;

THENCE, S 84°17'15" W along said right-of-way a distance of 891.84 feet to a point for a corner of this parcel;

THENCE, N 06°19'03" E a distance of 555.18 feet to a point for a corner of this parcel;

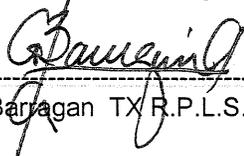
THENCE, N 00°30'07" E a distance of 4796.55 feet to a point for a corner of this parcel;

THENCE, N 42°08'17" W a distance of 8916.77 feet to a point for a corner of this parcel;

THENCE, N 53°02'34" E a distance of 15.06 feet to the **POINT OF BEGINNING** of the herein parcel being described, containing 227,215 sq. ft. or 5.21 acres of land more less.

NOTES:

1. A Plat of Survey of even date accompanies this description.
2. Bearings recited herein are based on GPS RTK Observation (Grid Bearings).
3. Distances shown are ground distances.



Benito Barragan TX R.P.L.S. 5615 , December 7, 2007, Revised December 10, 2007



CITY CLERK DEPT.
07 DEC 13 PM 1:20

BARRAGAN & ASSOCIATES

Land Planning & Land Surveying

10950 Pellicano Drive Space F, El Paso, Texas 79936 Ph.(915) 591-5709 Fax(915) 591-5706

METES AND BOUNDS DESCRIPTION

(AREA #2)

The parcel of land herein described is a proposed 15' wide Easement, being a portion of Sections 27 and 28, Block 80, Tsp 2, Texas and Pacific Railroad Surveys and a portion of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit Two, in the City of El Paso, El Paso County, Texas according to the plat thereof on file in Volume 78, Pages 87 and 87A, Plat Records of the El Paso County, Texas and being more particularly described by this metes and bounds as follows:

Commencing for reference at an existing City Monument located 15.00 feet East from the centerline of Global Reach Drive (120' R.O.W.) and the centerline of George Perry Boulevard (120' R.O.W); **THENCE**, S 42°08'17" E a distance of 2312.50 feet along the monument line (15 feet offset East of Global Reach Drive) to a point; **THENCE**, S 47°51'43" W a distance of 75.00 feet on the Westerly Right-of-way Line of Global Reach Drive to the **POINT OF BEGINNING** of the herein parcel being described:

THENCE, S 47°51'43" W a distance of 1000.00 feet leaving said Right-of-way line to a point for a corner of this parcel;

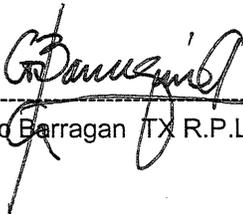
THENCE, N 42°08'17" W a distance of 15.00 feet to a point for a corner of this parcel;

THENCE, N 47°51'43" E a distance of 1000.00 feet to the Westerly Right-of-way line of Global Reach Drive to a point for a corner of this parcel;

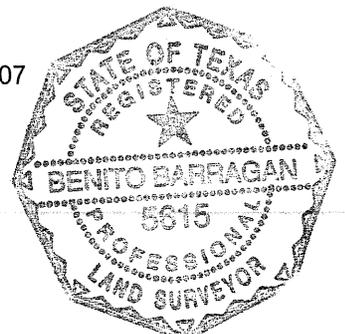
THENCE, S 42°08'17" E a distance of 15.00 feet along said Right-of-way line to the **POINT OF BEGINNING** of the herein parcel being described, containing 15,000 sq. ft. or 0.34 acres of land more less.

NOTES:

1. A Plat of Survey of even date accompanies this description.
2. Bearings recited herein are based on GPS RTK Observation (Grid Bearings).
3. Distances shown are ground distances.



Benito Barragan TX R.P.L.S. 5615 , December 7, 2007.- Revised December 10, 2007



07 DEC 13 PM 1:20
CITY CLERK DEPT.

BARRAGAN & ASSOCIATES

Land Planning & Land Surveying

10950 Pellicano Drive Space F, El Paso, Texas 79936 Ph.(915) 591-5709 Fax(915) 591-5706

METES AND BOUNDS DESCRIPTION

(AREA #3)

The parcel of land herein described is a proposed 20' x 30' wide Easement, being a portion of Section 28, Block 80, Tsp 2, Texas and Pacific Railroad Surveys within El Paso International Airport and being more particularly described by this metes and bounds as follows:

Commencing for reference at an existing City Monument located 15.00 feet East from the centerline of Global Reach Drive (120' R.O.W.) and the centerline of George Perry Boulevard (120' R.O.W); **THENCE**, S 42°08'17" E a distance of 2312.50 feet along the monument line (15 feet offset East of Global Reach Drive) to a point; **THENCE**, S 47°51'43" W a distance of 75.00 feet on the Westerly Right-of-way Line of Global Reach Drive to a point; **THENCE**, S 47°51'43" W a distance of 1000.00 feet leaving said Right-of-way line to a point; **THENCE**, N 42°08'17" W a distance of 15.00 feet to the **POINT OF BEGINNING** of the herein parcel being described:

THENCE, N 42°08'17" W a distance of 20.00 feet to a point for a corner of this parcel;

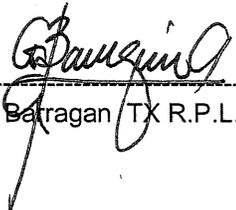
THENCE, N 47°51'43" E a distance of 30.00 feet to a point for a corner of this parcel;

THENCE, S 42°08'17" E a distance of 20.00 feet to a point for a corner of this parcel;

THENCE, S 47°51'43" W a distance of 30.00 feet to the **POINT OF BEGINNING** of the herein parcel being described, containing 600 sq. ft. or 0.01 acres of land more less.

NOTES:

1. A Plat of Survey of even date accompanies this description.
2. Bearings recited herein are based on GPS RTK Observation (Grid Bearings).
3. Distances shown are ground distances.


Benito Barragan TX R.P.L.S. 5615, December 7, 2007, Revised December 10, 2007



07 DEC 13 PM 1:20

CITY CLERK DEPT.

Exhibit C

**Texas Gas Service Easement
High Pressure Gas Line**

Year	Easement Area (In SF)	Easement Fee (Per SF)*	Annual Payment	Subtotal
1	242,815	0.120	\$ 29,137.80	
2	242,815	0.120	\$ 29,137.80	
3	242,815	0.120	\$ 29,137.80	
4	242,815	0.120	\$ 29,137.80	
5	242,815	0.144	\$ 34,965.36	
6	242,815	0.144	\$ 34,965.36	
7	242,815	0.144	\$ 34,965.36	
8	242,815	0.144	\$ 34,965.36	
9	242,815	0.144	\$ 34,965.36	
10	242,815	0.173	\$ 41,958.43	
11	242,815	0.173	\$ 41,958.43	
12	242,815	0.173	\$ 41,958.43	
13	242,815	0.173	\$ 41,958.43	
14	242,815	0.173	\$ 41,958.43	
15	242,815	0.207	\$ 50,350.12	
16	242,815	0.207	\$ 50,350.12	
17	242,815	0.207	\$ 50,350.12	
18	242,815	0.207	\$ 50,350.12	
19	242,815	0.207	\$ 50,350.12	
20	242,815	0.249	\$ 60,420.14	
21	242,815	0.249	\$ 60,420.14	
22	242,815	0.249	\$ 60,420.14	
23	242,815	0.249	\$ 60,420.14	
24	242,815	0.249	\$ 60,420.14	
25	242,815	0.299	\$ 72,504.17	
26	242,815	0.299	\$ 72,504.17	
27	242,815	0.299	\$ 72,504.17	
28	242,815	0.299	\$ 72,504.17	
29	242,815	0.299	\$ 72,504.17	
30	242,815	0.358	\$ 87,005.00	
31	242,815	0.358	\$ 87,005.00	
32	242,815	0.358	\$ 87,005.00	
33	242,815	0.358	\$ 87,005.00	
34	242,815	0.358	\$ 87,005.00	
35	242,815	0.430	\$ 104,406.01	
36	242,815	0.430	\$ 104,406.01	
37	242,815	0.430	\$ 104,406.01	
38	242,815	0.430	\$ 104,406.01	
39	242,815	0.430	\$ 104,406.01	
40	242,815	0.516	\$ 125,287.21	\$ 2,499,884.57
41	242,815	0.516	\$ 125,287.21	
42	242,815	0.516	\$ 125,287.21	
43	242,815	0.516	\$ 125,287.21	
44	242,815	0.516	\$ 125,287.21	
45	242,815	0.619	\$ 150,344.65	
46	242,815	0.619	\$ 150,344.65	
47	242,815	0.619	\$ 150,344.65	
48	242,815	0.619	\$ 150,344.65	
49	242,815	0.619	\$ 150,344.65	
50	242,815	0.743	\$ 180,413.58	\$ 3,933,170.22 \$ 1,433,285.64
Total			\$ 3,933,170.22	

CITY CLERK DEPT.
07 DEC 13 PM 1:20

* Accounts for a 20% CPI adjustment every fifth year

Discount NPV - 40 Yrs
4% \$1,025,887.01