

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

DEPARTMENT: Capital Improvement

AGENDA DATE: May 1, 2018

CONTACT PERSON/PHONE: Samuel Rodriguez, Capital Improvement City Engineer, 212-1845

DISTRICT(S) AFFECTED: 2

STRATEGIC GOAL: Enhance and Sustain El Paso's Infrastructure Network

SUBJECT:

That the City Manager be authorized to sign an Underground Electrical and Transformer Pad Easement, granting an easement to the El Paso Electric Company to provide electrical power to the UPS Facility located on Airport property, said easement more particularly described as a portion of Lot 9, Block 13, Butterfield Trail Industrial Park Unit Three, Replat B, City of El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

A private project from UPS requesting the installation of underground electric infrastructure to accommodate for expansion. UPS facility is located on at the intersection of Leigh Fisher and Walter Jones Boulevard.

SELECTION SUMMARY:

PROTEST

☒ No protest received for this requirement.

☐ Protest received.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? ☐ Yes or ☒ Not Applicable (Routine)
If yes, select the applicable districts.

- ☐ District 1
- ☐ District 2
- ☐ District 3
- ☐ District 4
- ☐ District 5

- ☐ District 7
- ☐ District 8
- ☐ All Districts

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

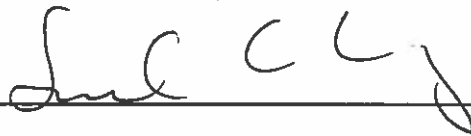
Funding by UPS

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



RESOLUTION

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

That the City Manager be authorized to sign an Underground Electrical and Transformer Pad Easement, granting an easement to the El Paso Electric Company to provide electrical power to the UPS facility located on Airport property, said easement more particularly described as a portion of Lot 9, Block 13, Butterfield Trail Industrial Park Unit Three, Replat B, City of El Paso, El Paso County, Texas.

ADOPTED THIS _____ DAY OF _____, 2018.

THE CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Sol M. Cortez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E. City Engineer
Capital Improvement Department

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

**UNDERGROUND ELECTRICAL AND
TRANSFORMER PAD EASEMENT**

For and in consideration of the sum of One Dollar and No/100 (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the City of El Paso (Grantor) grants unto El Paso Electric Company (Grantee), its successors and assigns, the right and privilege to enter and erect, relocate, construct, operate, remove, inspect, access, and maintain an underground electric system consisting of transformers (conventional or pad mount), ducts, conduits, fixtures, manholes, handholes, vaults, and any other usual appurtenances pertaining thereto, and underground crossings with all necessary cables, lines, conduit, wires pertaining thereto, with the right of access, ingress, and egress, thereto for the installation, construction, operation, inspection, repair, maintenance, replacement, renewal or removal thereof, for the distribution of electricity, for any and all purposes for which same is or may hereafter be used, over or under, upon, and along the areas identified in Exhibit "A" attached hereto and incorporated herein for all purposes, said areas being in the following described premises in El Paso, El Paso County, Texas, to wit:

**A portion of Lot 9, Block 13, Butterfield Trail Industrial Park Unit Three, Replat B, City of El Paso,
El Paso County, Texas**

The easement is as depicted in Exhibit "A".

With the right to trim any trees and flora around said electrical facilities so as to keep the electrical facilities cleared and to do anything proper and necessary to operate and maintain same.

This easement shall be for the term of Grantee's franchise and any extension and renewal thereof by the Grantor. In accepting this easement, Grantee agrees that Grantor shall have the power at any time to require Grantee to remove and abate, at Grantee's expense, any installation or structure that is dangerous to life or property and that Grantor shall have the power at any time to require Grantee to change the route and position of its poles, lines, conduits or other construction at Grantee's expense when the El Paso City Council (the "City Council") shall find, by resolution, that such change is necessary in the closing, opening or relocation of streets or alleys, or water or sewer lines, the changing of grade of streets or alleys, the construction and maintenance of public improvements, the construction of private buildings, the construction or use of driveways or under other conditions which the City Council shall find necessary. Provided, however, that Grantee shall be entitled to be paid for its costs and expense of any relocation, raising or lowering of its wires or cables required by Grantor if such expenses or costs are reimbursable or payable to Grantee or Grantor by the State of Texas, the United States, or any agency or subdivision of either whether directly or indirectly. Grantor shall use its best reasonable efforts to consult and confer with Grantee before requiring any such relocation or raising or lowering of its lines or cables, with a view to accomplishing the result reasonably and economically.

In accepting this grant, Grantee agrees that it will replace or repair, as reasonable, landscaping and paving if disturbed by Grantee's construction, maintenance or repairs of or to its facilities in and upon such easement. Grantee shall promptly restore to as good condition as before working thereon, and to the reasonable satisfaction of the Grantor all streets excavated by it. Grantee may, from time to time and as may be required by prudent utility practices in connection with the construction, maintenance, or repair of its facilities, restrict access to or interfere with the use of Grantor's structures(s) or tangible personal property located on or in the vicinity of the easement. In such event, Grantee shall endeavor to provide Grantor reasonable written notice of any such restriction or interference and shall use commercially reasonable efforts to coordinate its activities with Grantor so as to minimize the duration and extent of such restriction or interference. The preceding sentence notwithstanding, certain events or circumstances may occur or arise that require Grantee to take immediate action to address imminent public safety concerns, the integrity of Grantee's facilities or system, or the reliability of service provided by Grantee. Under such or similar exigencies, Grantee shall provide Grantor notice of any restrictions or interference as soon as reasonably practicable, and shall use commercially reasonable efforts to minimize the duration and extent of such restriction or interference. Grantee agrees to call for utility spotting by a third party prior to any excavation by Grantee in the easement.

Grantor reserves the right to full use and enjoyment of said property except for the purposes herein granted. Grantor agrees not to erect permanent structures or obstruct access in, over, or under Grantee's facilities.

Grantor will not be held responsible for any damage to Grantee's underground facilities from excessive erosion due to flood run-off.

Should Grantee abandon the easement, then the easement hereinabove described shall revert to Grantor or its successors and assigns. Such abandonment shall be conclusively presumed following non-use by the Grantee for one year and with use not being resumed within sixty (60) days following receipt of notice of abandonment from Grantor to Grantee, and on such abandonment, Grantee will then execute any and all necessary documents to evidence such abandonment.

Grantee shall maintain the surface over the length and width of the easement to the satisfaction, as reasonable, of Grantor and in accordance with all applicable laws, ordinances, regulations, and City Code provisions.

WITNESS THE FOLLOWING SIGNATURES AND SEAL on the dates entered below.

GRANTOR:
THE CITY OF EL PASO

Tomás González,
City Manager

APPROVED AS TO FORM:

Sol M. Cortez

Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
City Engineer

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the _____ day of _____, 20__ by
Tommy Gonzalez as City Manager of the City of El Paso.

Notary Public in and for
the State of Texas

The above instrument, together with all conditions thereto is hereby accepted on the date entered below.

GRANTEE:
EL PASO ELECTRIC COMPANY

By: _____
Printed Name: Daniel J. Monteros
Title: Manager – Land Management

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the _____ day of _____, 20__ by
Daniel J. Monteros as Manager - Land Management of El Paso Electric Company, on behalf of
the El Paso Electric Company, a Texas corporation.

Notary Public in and for
the State of Texas

EPIA Addendum to EPEC Easement - FAA

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises comprising the easement are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. The Grantee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) in the event facilities are constructed, maintained, or otherwise operated on the property described in this easement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Grantee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the easement, in the event of breach of any of the above nondiscrimination covenants, Grantor will have the right to terminate the easement and to enter or re-enter and repossess said land and the facilities thereon (excepting Grantee's electrical facilities, which shall be removed by Grantee as soon as reasonably practical upon notice by Grantor), and hold the same as if said easement had never been made or issued. [See FAA Order 1400.11, Appendix C of Appendix 4]

2. A. The Grantee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Grantee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the easement, in the event of breach of any of the above nondiscrimination covenants, Grantor will have the right to terminate the easement and to enter or re-enter and repossess said land and the facilities thereon (excepting Grantee's electrical facilities, which shall be removed by Grantee as soon as reasonably practical upon notice by Grantor), and hold the same as if said easement had never been made or issued. [See FAA Order 1400.11, Appendix D of Appendix 4]

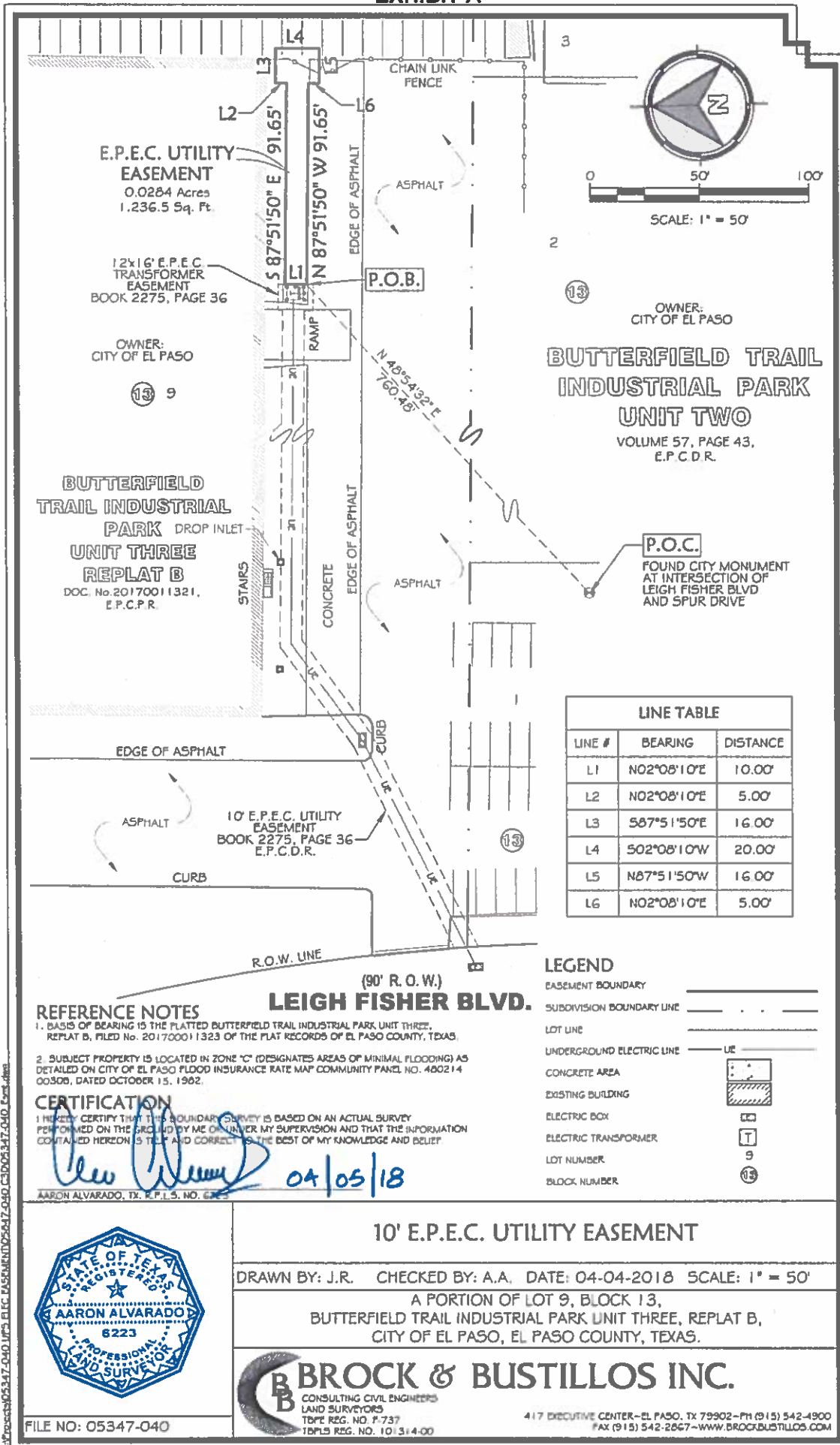
INITIALS _____

3. A. During the term of this easement, Grantee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms —programs or activitiesl to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

B. In the event of breach of any of the covenants in this section 3, Grantor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E of Appendix 4]

EXHIBIT A



Apr 05, 2018 - 4:55pm
S:\Projects\05347-040\UTL ELEC EASEMENT\05347-040_13.DWG J.R. J.R.



BROCK & BUSTILLOS INC.
CIVIL ENGINEERS URBAN DESIGNERS LAND SURVEYORS

EXHIBIT A

ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Executive Vice President
SERGIO J. ADAME, P.E.
Vice President - Engineering
AARON ALVARADO, R.P.L.S.
Vice President - Surveying
ISAAC CAMACHO, R.P.L.S.
Survey Manager
TBPE Reg. No. F. 737
TBPLS Reg. No. 101314-00

METES AND BOUNDS DESCRIPTION "E.P.E.C. UTILITY EASEMENT"

A 0.0284 acre parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Lot 9, Block 13, Butterfield Trail Industrial Park, Unit Three, Replat B as recorded in File No. 20170011323, Plat Records of El Paso County, Texas and being more particularly described by metes and bounds as follows.

COMMENCING for reference at an existing City Monument found at the centerline line intersection of Leigh Fisher Boulevard (90.00 feet wide) and Spur Drive (90.00 feet wide); **WHENCE**, a City Monument found at the center line intersection of said Leigh Fisher Boulevard and Butterfield Trail Boulevard (R.O.W. Varies), bears South 02°12'07" West (South 02°12'07" West-record), a distance of 940.36 feet; **THENCE**, leaving said centerline intersection, North 48°54'32" East, a distance of 760.48 feet to the southwest corner and the **POINT OF BEGINNING** of the parcel herein described;

THENCE, North 02°08'10" East, a distance of 10.00 feet to the northwest corner of the parcel herein described;

THENCE, South 87°51'50" East, a distance of 91.65 feet to an angle point of the parcel herein described;

THENCE, North 02°08'10" East, a distance of 5.00 feet to an angle point of the parcel herein described;

THENCE, South 87°51'50" East, a distance of 16.00 feet to the northeast corner of the parcel herein described;

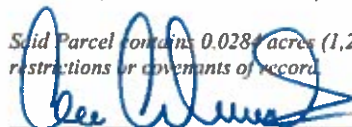
THENCE, South 02°08'10" West, a distance of 20.00 feet to the southeast corner of the parcel herein described;

THENCE, North 87°51'50" West, a distance of 16.00 feet to an angle point of the parcel herein described;

THENCE, North 02°08'10" East, a distance of 5.00 feet to an angle point of the parcel herein described;

THENCE, North 87°51'50" West, a distance of 91.65 feet to the **POINT OF BEGINNING**.

Said Parcel contains 0.0284 acres (1,236.5 square feet) more or less and being subject to easements, restrictions or covenants of record.



Aaron Alvarado, TX R.P.L.S. No. 6223
Date: April 5, 2018
05347-040-EPEC-UPS EPIA-DESC.doc

