

DEPARTMENT OF THE ARMY  
EASEMENT FOR DESALINATION PLANT, WATER PIPELINE AND  
RELATED SUPPORT STRUCTURES  
IN SUPPORT OF A WATER SUPPLY AGREEMENT

LOCATED ON  
FORT BLISS  
EL PASO COUNTY, TEXAS

This easement is made on behalf of **THE UNITED STATES OF AMERICA** (the "United States"), between **THE SECRETARY OF THE ARMY**, acting by and through the Chief, Real Estate Division, U.S. Army Engineer District, Fort Worth, Texas, hereinafter referred to as the "**Grantor**", under and by virtue of the authority vested in Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, and pursuant to Water Service and/or Supply Agreements Numbered, **DA-29-005-ENG-2236**, entered into on 28 August 1959, and **DABD07-69-C-0216-09**, entered into on \_\_\_\_\_, 2009, under Title 10, United States Code, Section 2686, (hereinafter referred to as the "Water Supply Agreements"), and the **City of El Paso, a Texas Home-Rule Municipality (City)**, and **El Paso Water Utilities, Public Service Board (PSB)**, a component unit of the City of El Paso, Texas, the **municipality**, duly organized and existing under and by virtue of the laws of the State of Texas, with its principal office at 1154 Hawkins Blvd, P.O. Box 511, El Paso, Texas 79961-0001, hereinafter referred to as the "**Grantee**."

**NOW THEREFORE:**

The Grantor, for good and valuable consideration set forth below, the receipt and sufficiency of all of which are hereby acknowledged, upon and subject to the terms, covenants and conditions set forth in this easement, does hereby:

Grant and convey to Grantee, an easement for the construction, installation, operation, maintenance, repair and replacement of a Desalination Plant, and supporting structures including water pipelines [raw and brackish water], wells, pipelines, disposal facilities, roads and utilities, hereinafter referred to as the "Facilities", over, across, in and upon lands of the United States as identified in EXHIBIT(S) "A", "B", "B-1", "C" and "C-1", hereinafter referred to as the "Premises", and which are attached hereto and made a part hereof; and

Grant and convey unto the Grantee, its successors and assigns, all of the Grantor's right, title and interest in and to all improvements and fixtures of whatever nature currently located on the Premises.

The Grantor hereby makes no claim of title during the term of this easement to any Facilities of whatever nature located, constructed, or placed on the Premises by the Grantee.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of Fifty (50) years, beginning **June 1, 2009** and ending **May 31, 2059**, so long as the Grantee remains in compliance with any or all of the conditions of this easement and the Water Supply Agreement(s) remain in effect.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation, maintenance, repair and replacement of the facilities on the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth, and the terms and conditions of the Water Service and/or Supply Agreement.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be in writing and addressed, if to the Grantee, to **The City of El Paso, Public Service Board (PSB), as the El Paso Water Utilities, 1154 Hawkins Blvd, P.O. Box 511, El Paso, Texas 79961-0001** and, if to the Grantor, to the U. S. Army Engineer District, Ft Worth District, Attention: Chief, Real Estate Division (CESWF-RE-M), P.O. Box 17300, Ft Worth, Texas 76102-0300, or as may from time to time otherwise be directed by the parties. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery.

**4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Grantor" or "Chief, Real Estate Division" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

**5. SUPERVISION BY THE GRANTOR**

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Grantor. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of the Grantor. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time and the terms and conditions of the Water Service and/or Supply Agreement.

**6. APPLICABLE LAWS AND REGULATIONS**

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

**7. WATER SUPPLY AGREEMENT**

a. The Grantee has entered into the referenced Water Service and/or Supply Agreements with the Ft Bliss Contracting Office which authorizes the Sale, Purchase and withdrawal of water. In accordance with the Water Supply Agreements, the Grantee has acquired rights to withdraw water in and from the Ft Bliss Military Reservation and has agreed to pay the applicable costs for such rights. The Grantee must comply with the terms and conditions of the Water Service and/or Supply Agreements.

b. The Grantee agrees to operate all water wells, pipelines, intakes and other facilities and all electrical equipment will be installed, operated and maintained in compliance with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

c. Any electrical service to submerged motors or those located above water shall be by means of a sealed, water-proof, multiple conductor cable with controls and switches located on land. The location of such motors and the electrical feeders shall be clearly marked to be visible to boaters and swimmers. Additionally, signs warning "DANGER-HIGH VOLTAGE-Unauthorized Access Prohibited" shall be erected to be visible from the land and water approaches to the equipment.

d. The granting of this easement does not, expressly or by implication, authorize withdrawal, or any increase in withdrawal, of water from the Fort Bliss Military Installation. The easement does not represent a water service and/or supply agreement nor grant any future right to usage, storage or withdrawal for water supply purposes.

**8. CONDITION OF PREMISES**

The Grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the Grantor.

**9. INSPECTION AND REPAIRS**

The Grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by the Grantor to repair any such defects.

**10. PROTECTION OF GOVERNMENT PROPERTY**

The Grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to the Grantor, or at the election of the Grantor, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to the Grantor.

**11. RIGHT TO ENTER**

The right is reserved to the Grantor, the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, or to make any other use of the lands as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the Grantor, the United States or any officer, agent, or employee thereof.

**12. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by the Grantor, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in

connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the Grantee.

**13. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**14. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Grantee, and easements will not be granted which will, in the opinion of the Grantor, interfere with the use of the premises by the Grantee.

**15. REQUIRED SERVICES**

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

**16. RELOCATION OF FACILITIES**

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by Grantor. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the Grantor may cause such relocation at the sole expense of the Grantee.

**17. TERMINATION**

a. This easement may be terminated by the Grantor upon Thirty (30) days written notice to the Grantee if the Grantor shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Grantor for failure of the Grantee to comply with any or all of the conditions of this easement; for non-use for a period of two (2) years; or for abandonment.

b. This easement may be terminated if the Grantee fails to comply with the terms and conditions of, or is in default under, the Water Supply Agreement(s). In addition, if the Water Supply Agreement(s) is terminated, expires or becomes void, then this easement may be terminated. This easement may also be terminated for failure of the Grantee to comply with Condition 7, *WATER SERVICE AND/OR SUPPLY AGREEMENT*.

**18. SOIL AND WATER CONSERVATION**

The Grantee shall maintain, in a manner satisfactory to Grantor, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Grantee during the term of this easement, and the Grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by the Grantor.

**19. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The Grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The Grantee must obtain approval in writing from the Grantor before any pesticides or herbicides are applied to the premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

## 20. ENVIRONMENTAL SITE ASSESSMENT

The Final Environmental Impact Statement (FEIS) dated December 2004 and approved on 5 January 2005 documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is incorporated herein by reference. The Record of Decision (ROD) dated March 7, 2005 is attached hereto and made a part hereof as **EXHIBIT "D"**. Upon expiration, revocation or termination of this easement, another environmental site assessment shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the Grantor in determining any environmental restoration requirements. Any such requirements will be completed by the Grantee in accordance with Condition 23, **RESTORATION**.

## 21. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify the Grantor and protect the site and material from further disturbance until the Grantor gives clearance to proceed.

## 22. NON-DISCRIMINATION

a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

**23. RESTORATION**

On or before the expiration or termination of this easement, the Grantee shall, without expense to the United States, and within such time as the Grantor may indicate, remove said facilities and restore the premises to the satisfaction of the Grantor. In the event the Grantee shall fail to remove said facilities and restore the premises, the Grantor shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

**24. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. Section 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

**25. DESCRIPTION**

Upon the completion of construction and satisfactory restoration of the temporary easement area, the Grantee, will provide as-built drawings and description. This easement will be amended to correct the applicable Exhibit's based on the as-built drawings and description.

The right-of-way herein granted shall be limited to the area actually occupied by the pipeline/facilities with rights of ingress and egress for installation, operation and maintenance.

**26. SPECIAL CONDITIONS**

a. Pursuant to Title 10 United States Code Section 2662 this action was reported to the House Committee on Armed Services, Disposal Report No. 851, and approved as evidenced by Letter dated March 10, 2009 signed by the Chairman of the Subcommittee on Readiness.

b. Pursuant to Exhibit "D" attached hereto and made a part hereof the following mitigation measures at the sole expense of the Grantee will be followed:

(1) Pipelines will be buried deep enough to withstand 100 tons of military vehicle use.

(2) No interruptions of military training as a result of the installation, operation and maintenance of the Premises will occur.



(3) Any Archaeological sites exposed during construction, operation and maintenance of the premises will be protected and coordination with the Ft Bliss DOE will be required before any further works will proceed in the impacted area(s).

(4) If Evaporation Ponds are used for disposal of concentrate, all Polder Ponds will be full, with at least two (2) ponds at the two (2) foot level of water and one (1) pond at six (6) inches of depth.

(5) All concentrate ponds will be monitored for impacts to bird population.

THIS EASEMENT has met the requirements of Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, the GRANTOR has caused this easement to be executed in its name by the Chief, Real Estate Division, U.S. Army Engineer District, Ft Worth Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Hyla J. Head  
Chief, Real Estate Division

ACKNOWLEDGEMENT

STATE OF TEXAS)  
                                      ) ss  
COUNTY OF TARRANT)

BEFORE ME, a Notary Public in and for Tarrant County, personally appeared Ms. Hyla J. Head, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the United States.

GIVEN under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

Notary Registration No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

ACCEPTANCE:

WITNESS the signature of the El Paso Water Utilities (EPWU), Public Service Board (PSB), a component unit of the City of El Paso, Texas this 22 day of JULY, 2009 and acceptance and approval of this easement for itself, its successors and assigns, and agrees to all the terms and conditions contained therein.

El Paso Water Utilities (EPWU), Public Service Board (PSB)  
a component unit of the City of El Paso, Texas

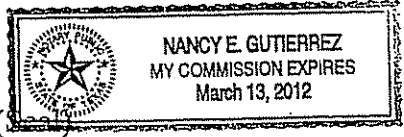
BY: [Signature]  
TITLE: President / CEO

STATE OF TEXAS)  
                                  ) ss  
COUNTY OF EL PASO)

BEFORE ME, a Notary Public in and for El Paso County, personally appeared Edmund G. Archuleta to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the named Grantee.

GIVEN under my hand and seal, this 24th day of July, 2009

[Signature]  
NOTARY PUBLIC



My commission expires: March 13, 2012

**CERTIFICATE OF AUTHORITY**

I Robert D. Anderson (name) certify that I am the General Counsel (title) of **Public Service Board (PSB), El Paso Water Utilities**, that Edmund G. Archuleta (signator of outgrant) who signed the foregoing instrument on behalf of the Grantee was then President/CEO (title of signator of outgrant) of **Public Service Board (PSB), El Paso Water Utilities**. I further certify that the said officer was acting within the scope of powers delegated to this governing body of the Grantee in executing said instrument.

**El Paso Water Utilities (EPWU), Public Service Board (PSB)  
a component unit of the City of El Paso, Texas**

Date: 07/24/09

Robert D. Anderson  
Clerk or Appropriate Official

(AFFIX SEAL)