EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

TO: **Joyce Wilson, City Manager**
City of El Paso, Texas

FROM: **Robert D. Andron, General Counsel**
El Paso Water Utilities Public Service Board

DATE: **May 16, 2005**

SUBJECT: **Request to place Item on City Council Agenda**
Introduction: MAY 24th, 2005: Public Hearing: JUNE 7, 2005

BACKGROUND

Kinder Morgan, G.P., Inc., a common carrier and public utility with the power of eminent domain pursuant to the Texas Natural Resources Code Chapter 111, on behalf of SFPP, L.P., a subsidiary, made a request of the El Paso Water Utilities Public Service Board to purchase 35 acres of land, under the jurisdiction of the Public Service Board, in El Paso, El Paso County, Texas for use as a nine-tank gasoline, diesel and jet fuel storage facility and pipeline transfer station. Upon consideration and review of the request and the suitability of the land for the requested use; and upon recommendation of the General Manager, the Public Service Board, at its regular meeting April 14, 2004, authorized the sale of 35.003 acres of land out of a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys, and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas, near Ashley Road and Dyer Street to SFPP, L.P.

The Public Service Board finds the parcel of land to be inexpedient to the water system and approves the sale of the land at its highest appraised value. SFPP, L.P., a subsidiary of Kinder Morgan, G.P., Inc., and the El Paso Water Utilities Public Service Board entered into a Real Estate Sales Contract January 20, 2005, for the sale of the property to SFPP, L.P., for the amount of $490,000.00.

The City Council approved a Special Permit to allow for the proposed land use for a petroleum storage facility and pipeline transfer station May 3, 2005.

ACTION REQUESTED

Pass the Ordinance authorizing the City Manager to sign a Special Warranty Deed conveying to SFPP, L.P., a subsidiary of Kinder Morgan, G.P., Inc., land totaling approximately 35 acres out of a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys, and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas, located in northeast El Paso near Ashley Road and Dyer Street. **(District 4)** [El Paso Water Utilities, Robert D. Andron, (915) 594-5506]

REQUEST TO PLACE ITEM ON THE CITY COUNCIL AGENDA
INTRODUCTION: May 24TH , 2005; PUBLIC HEARING: JUNE 7, 2005

Attached is a copy of the Ordinance, Special Warranty Deed and associated Real Estate Sales Contract. Once approved, necessary arrangements will be made with the City Clerk's Office for document distribution and recording. . The City Attorney's Office has reviewed the Special Warranty Deed and appropriate revisions have been incorporated into the corresponding documents.

The El Paso Water Utilities is requesting this matter be placed as an INTRODUCTION on the City Council Agenda for May 24th, 2005 and PUBLIC HEARING for June 7, 2005

Please advise this office upon completion of your review and approval of the placement of this item on the City Council Agenda and my secretary will contact the City Clerk and make arrangements to have document packets hand-delivered to the City Clerk's Office and email backup documents as noted to those listed below. If there are any questions, please call me at 594-5607 or email bandron@epwu.org.

I will plan to attend the City Council meetings. Representatives from Kinder Morgan will attend the June 7, 2005, Public Hearing. Thank you for your kind attention to this matter.

Attachments

Cc: The Honorable Mayor Joe Wardy (email)
City Council Representatives (email)
Pat Adauto, Deputy City Manager for Building & Planning Services (email)
Adrian Ocegueda, Executive Assistant to the Mayor (email)
Lisa A. Elizondo, City Attorney (email)
Theresa Cullen-Garney, Deputy City Attorney (email)
Richarda Duffy-Momsen, City Clerk (hard copies & email)
Nicholas J. Costanzo, Assistant General Manager (email)
James Shelton, Land Administration, PSB (email)

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

DEPARTMENT: El Paso Water Utilities: Submitted: May 16th, 2005

AGENDA DATE: MAY 24th, 2005 ~ Introduction: JUNE 7, 2005~Public Hearing
The El Paso Water Utilities is requesting this matter be placed on the City Council Agenda (INTRODUCTION) for May 24th, 2005. The City Attorney's Office has reviewed the Special Warranty Deed and appropriate revisions have been made to the corresponding documents.

CONTACT PERSON/PHONE: Robert D. Andron, General Counsel
El Paso Water Utilities, (915) 594-5607

DISTRICT(S) AFFECTED: District #4

SUBJECT:

An Ordinance authorizing the City Manager to sign a Special Warranty Deed conveying to SFPP, L.P., a subsidiary of Kinder Morgan, G.P., Inc., land totaling approximately 35 acres out of a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys, and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas, located in northeast El Paso near Ashley Road and Dyer Street. **(District 4)** [El Paso Water Utilities, Robert D. Andron, (915) 594-5506]

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Kinder Morgan, G.P., Inc., a common carrier and public utility with the power of eminent domain pursuant to the Texas Natural Resources Code Chapter 111, on behalf of SFPP, L.P., a subsidiary, made a request of the El Paso Water Utilities Public Service Board to purchase 35 acres of land, under the jurisdiction of the Public Service Board, in El Paso, El Paso County, Texas for use as a nine-tank gasoline, diesel and jet fuel storage facility and pipeline transfer station. Upon consideration and review regarding the request and the suitability for the requested use of the parcel of land; and upon recommendation of the General Manager, the Public Service Board, at its regular meeting April 14, 2004, authorized the sale of 35.003 acres of land out of a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys, and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas, near Ashley Road and Dyer Street to SFPP, LP.

The Public Service Board finds the parcel of land to be inexpedient to the water system and approves the sale of the land at its highest appraised value. SFPP, L.P., a subsidiary of Kinder Morgan, G.P., Inc., and the El Paso Water Utilities Public Service Board entered into a Real Estate Sales Contract January 20, 2005, for the sale of the property to SFPP, L.P., for the amount of $490,000.00.

(continued on next page)

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

The City Council approved a Special Permit to allow for the proposed land use for a petroleum storage facility and pipeline transfer station May 3, 2005.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

n/a

BOARD / COMMISSION ACTION:

Authorized the sale of 35.003 acres of land by motion on April 14, 2004, by the El Paso Water Utilities Public Service Board.

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

LEGAL: (if required)_____

FINANCE: (if required)_____

DEPARTMENT HEAD _____

(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:** _____

Attachments

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ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A SPECIAL WARRANTY DEED CONVEYING TO SFPP, L.P., A SUBSIDIARY OF KINDER MORGAN, G.P., INC., LAND TOTALING APPROXIMATELY 35 ACRES OUT OF A PORTION OF TRACT 5D, SECTION 21, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, AND A PORTION OF TRACT 1, SECTION 28, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO, EL PASO COUNTY, TEXAS, LOCATED IN NORTHEAST EL PASO NEAR ASHLEY ROAD AND DYER STREET.

WHEREAS, Kinder Morgan, G.P., Inc., a common carrier and public utility with the power of eminent domain pursuant to the Texas Natural Resources Code Chapter 111, on behalf of SFPP, L.P., a subsidiary, made a request of the El Paso Water Utilities Public Service Board to purchase 35 acres of land, under the jurisdiction of the Public Service Board, in El Paso, El Paso County, Texas for use as a nine-tank gasoline, diesel and jet fuel storage facility and pipeline transfer station; and,

WHEREAS, upon consideration and review regarding the request and the suitability for the requested use of the parcel of land, and, upon recommendation of the General Manager, the Public Service Board, at its regular meeting April 14, 2004, authorized the sale of 35.003 acres of land out of a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys, and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas, near Ashley Road and Dyer Street to SFPP, L.P.; and,

WHEREAS, the Public Service Board finds the parcel of land to be inexpedient to the water system and approves the sale of the land at its highest appraised value; and,

WHEREAS, SFPP, a subsidiary of Kinder Morgan, G.P., Inc., and the El Paso Water Utilities Public Service Board entered into a Real Estate Sales Contract January 20, 2005, for the sale of the property to SFPP for the amount of $490,000.00. **NOW THEREFORE,**

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

That the City Manager is hereby authorized to sign a Special Warranty Deed conveying to SFPP, L.P., a subsidiary of Kinder Morgan, G.P., Inc., land described as being 35.003 acres out of a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys, and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys, El Paso, El Paso County, Texas near Ashley Road and Dyer Street. Said property is located in northeast El Paso. The City Manager is further authorized to sign any and all documents required to accomplish the conveyance of said property.

PASSED AND APPROVED this _____ day of _____, 2005.

THE CITY OF EL PASO

ATTEST:

_____
Joe Wardy, Mayor

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Robert D. Andron

Robert D. Andron, General Counsel EPWU

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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED OF RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY AND DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

DATE: _____, 2005

GRANTOR: The City of El Paso, Texas, a Texas Home Rule municipal corporation on behalf of its El Paso Water Utilities Public Service Board

GRANTOR'S MAILING ADDRESS (including county):

2 Civic Center Plaza
El Paso County
El Paso, Texas 79901-1196

GRANTEE: SFPP, L. P.

GRANTEE'S MAILING ADDRESS (including county):

SFPP, L.P.
1100 Town and Country Road
Orange County
Orange, California 92868

CONSIDERATION: TEN AND NO/100 DOLLARS and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed.

PROPERTY:

A parcel of land consisting of 35.003 acres of land, more or less, situated within the corporate limits of the City of El Paso, El Paso County, Texas, a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof by this reference for all purposes.

RESTRICTIONS, CONDITIONS AND RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. This conveyance is subject to all easements, rights-of-way, and prescriptive rights whether of record or not, all presently recorded instruments other than liens and conveyances, that affect the property.

2. Grantee, its successors or assigns shall not, except as provided for by law, discard, place or store any radioactive material, hazardous waste or other material which could contaminate or otherwise damage the groundwater supply or sources of the City of El Paso.

3. Development of the property shall be governed by all applicable provisions of the El Paso Municipal Code, including, but not limited to, Title 15, Chapter12 Water and Sewer System, and 13 Water Conservation, and turf areas exclusive of non-irrigated or non-maintained landscape areas, shall not exceed 50% of landscaped areas. Turf and/or sprinkler spray heads shall not be installed in the following locations: along street curbs; in areas whose width is less than 8 feet; and in rights-of-way whose slopes are a ratio of 1:3 or greater from the horizontal.

4. Grantor reserves for itself, its successors and assigns, all ground water, water rights or rights to surface water that are in or under the property, or that may be produced from the property, including any right to drill water wells or receive water from appropriate irrigation districts.

5. Property is within the city limits of the city of El Paso, Texas. The Grantee covenants that the design, location and construction of any improvements shall be in accordance the El Paso Municipal Code.

6. The Grantee shall conduct an archeological field survey of the Property. Any mitigation of any archeological site or issue shall be the responsibility of the Grantee.

7. Grantee shall comply with all applicable federal, state and local laws, ordinances or rules.

8. Grantee shall provide to Grantor's El Paso Water Utilities (EPWU) plans and specifications for the overall site, containment system, leak detection systems, vapor monitoring wells, groundwater monitoring wells, and wastewater pretreatment equipment. The design shall be subject to review by EPWU, provide measures for protecting the groundwater supply, and meet EPWU wastewater discharge standards. The design shall comply with all federal, state, and local laws and regulations directly and/or indirectly affecting such tanks and the stored petroleum products.

9. Grantee shall construct the proposed tanks for the Property in accordance with industry standards with welded steel bottoms and placed on top of a concrete slab foundation. The concrete slab will slope toward the low point in the tank. The foundation will have a plastic liner underneath to prevent any liquid from getting into the ground. The top of the slab will have grooves cut that would direct any release material to the liner. A pipe will route any such liquid from the bottom of the liner to a detection well outside the tank. The leak detection system for each tank shall be so constructed as to have remote monitoring.

10. Grantee agrees to remediate all environmental conditions (including but not limited to groundwater contamination) caused by releases from Grantee's facilities on the Property consistent with Texas Commission on Environmental Quality (TCEQ) standards. Grantee shall also be responsible for all costs or judgments associated with groundwater damage caused by releases from Grantee's facilities on the Property.

11. The Grantor's EPWU Environmental Compliance Manager or representative will be granted unconditional access to the site at all reasonable times and upon reasonable notice to perform inspections as may be required by the EPWU with a minimum 24-hour advanced notice.

12. Vapor Monitoring Wells: Grantee shall install at its sole cost two (2) vapor monitoring wells within the Property at the approximate locations shown on attached Exhibit "AA" to provide advance warning of containment system failure and promote quick clean up of hydrocarbons which penetrate into the vadose zone under the liner. The vapor monitoring wells shall be installed by a drilling contractor licensed by the State of Texas and the design shall be subject to approval by Grantor's

EPWU, which approval shall not be unreasonably withheld. Grantee will quarterly monitor the subsurface vapors for hydrocarbons in accordance with all federal, state and local laws and regulations. A report of the results will be provided to Grantor's EPWU Environmental Compliance Manager semi-annually. If monitoring produces a positive result, TCEQ will be notified and monitoring report frequency will be increased to a monthly basis. If, thereafter, monthly monitoring results in three consecutive monthly tests that show negative results, monitoring will return to a quarterly basis.

Any future tanks constructed on site will require the installation of additional vapor monitoring wells by Grantee. Future vapor monitoring wells shall be located down gradient of the proposed tank sites.

13. The cost for plugging of the Sherman Well on the Property is $8,488.50. This cost shall be paid by Grantee upon closing of the Property. Grantor's EPWU will perform all work associated with the plugging of the Sherman Well within 60 days after closing of the property.

14. Grantee shall install, at its sole cost, a 4-inch diameter ground water monitoring well to a depth of 600' and at the approximate location shown on the attached Exhibit "AA". The well shall be installed as specified in the attached Exhibit "BB" by a drilling contractor licensed by the State of Texas. Grantee will annually monitor the groundwater for hydrocarbons in accordance with all federal, state, and local laws and regulations. A report of the results will be provided to Grantor's EPWU Environmental Compliance Manager annually. If monitoring produces a positive result, TCEQ will be notified and monitoring report frequency will be increased to a monthly basis. If, thereafter, monthly monitoring results in three consecutive monthly tests that show negative results, monitoring will return to a quarterly basis.

15. Grantee shall construct a manhole for sampling of industrial process wastewater at a location between the pretreatment facility and connection point to the domestic sanitary sewer system to be constructed on the Property.

16. Property Fire Protection System: The fire protection system for the Property will be designed by Grantee in accordance with National Fire Prevention Association, NFPA, guidelines and will comply with requirements developed in cooperation with the Grantor's El Paso Fire Department. The Grantee's planned fire protection system consists of the following minimum equipment:

Reduced pressure backflow prevention stations installed at the connection points to EPWU pipelines located within Railroad Drive and Dyer Road. A private interconnecting fire line will be installed between the two backflow prevention stations.

A 420,000 gallon fire water storage tank fed from the new interconnecting pipeline at an assumed design rate of 1,000 GPM for two hours at a pressure of 20 PSIG.

A 3,000 GPM diesel engine driven firewater pump with related control panel. The firewater pump will put up a pressure of approximately 135 PSIG.

A firewater loop with associated fire hydrants located strategically around the tank farm and within the facility.

A semi-fixed foam generating system with related piping installed on each product tank.

Two oscillating foam fire monitors covering the main tank manifold area.

A portable foam proportioning trailer, proposed to be donated to Grantor's El Paso Fire Department.

A 2,500 gallon "Hired Gun" portable trailer mounted foam fire monitor proposed to be donated to Grantor's El Paso Fire Department.

A foam transportation trailer proposed to be donated to Grantor's El Paso Fire Department.

3,600 gallons of AFFF foam proposed to be donated to Grantor's El Paso Fire Department.

The preliminary design of the fire protection system at the breakout terminal at the Property will be reviewed with Grantor's El Paso Fire Department. After the final fire protection concept is agreed to between the Grantor's Fire Department and Grantee, detailed design of the system will be completed and issued for plan check and approval to Grantor's El Paso Fire Department.

17. Grantee shall submit a detailed site development plan for review by Grantor's EPWU in parallel to submittal to the City of El Paso, Planning Department.

18. Grantee shall make use of reclaimed water for irrigation for any landscaping on site.

19. Grantee's tanks on site shall be painted "desert sand" in color.

20. Grantee will comply with City codes requiring fencing and/or walls that are applicable to the proposed development and use of the subject property.

GRANT AND CONVEYANCE:

Grantor, for the consideration and subject to the restrictions, conditions, covenants, reservations from and exceptions to conveyance and warranty, GRANTS, SELLS and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, when the claim is by, through, or under Grantor but not otherwise.

EXCEPT AS EXPRESSLY PROVIDED IN THE WARRANTY OF TITLE DELIVERED IN THIS DEED, GRANTEE ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY AS IS, WHERE IS AND WITH ALL FAULTS, WITHOUT ANY OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL.

GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR.

GRANTOR SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON.

THE CITY OF EL PASO

_____
Joyce Wilson, City Manager

APPROVED AS TO FORM:

Robert D. Andron, General Counsel,
El Paso Water Utilities Public Service Board

This Deed is hereby accepted by Grantee under the terms, covenants and conditions stated herein and Grantee agrees to the obligations imposed on it by the terms of this Special Warranty Deed.

SFPP, L.P.
BY: Kinder Morgan Operating L.P. "D",
Its General Partner
BY: Kinder Morgan G.P., Inc.,
Its General Partner
BY: Kinder Morgan Management, LLC,
The delegate of Kinder Morgan GP, Inc.

ATTEST:

_____

_____
Secretary

ACKNOWLEDGMENTS ON FOLLOWING PAGE

ACKNOWLEDGMENTS

STATE OF TEXAS }
}
COUNTY OF EL PASO }

This instrument was acknowledged before me on the _____ day of _____, 2005, by Joyce Wilson, the City Manager of the City of El Paso.

_____
Notary Public, State of Texas

STATE OF }
}
COUNTY OF }

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, the _____of SFPP,L.P.

_____
Notary Public

Exhibit A

LEGAL DESCRIPTION OF A 35.003 ACRE PARCEL

A parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys and being more particularly described as follows, to wit:

COMMENCING for reference at a two inch iron pipe found for the corner common to Sections 20, 21, 28, and 29, Block 80, Township 1, Texas and Pacific Railway Company Surveys; THENCE following the line common to said Sections 21 and 28, North 88°56'07" East, 151.05 feet to a 5/8 inch rebar with survey cap No. TX 2998 found on the easterly right-of-way line of Dyer Street; THENCE, leaving the line common to said Sections 21 and 28 and following the easterly right-of-way line of Dyer Street, North 43°16'00" East, 2,416.62 feet to a ½ inch rebar with survey cap No. TX 5337 found for the **POINT OF BEGINNING** of the tract herein described;

THENCE, continuing along the easterly right-of-way line of Dyer Street, North 43°16'00" East, 40.00 feet to a ½ inch rebar with survey cap No. TX 5337 found for the northwest corner of the tract herein described;

THENCE, leaving the easterly right-of-way line of Dyer Street, South 51°04'00" East, 1,700.48 feet to a ½ inch rebar with survey cap No. TX 5337 found for an angle point;

THENCE South 26°22'16" East, 894.00 feet to a ½ inch rebar with survey cap No. TX 5337 found for an angle point;

THENCE South 61°35'02" East, 257.56 feet to a ½ inch rebar with survey cap No. TX 5337 found on the westerly right-of-way line of Railroad Drive for an angle point;

THENCE, following the westerly right-of-way line of Railroad Drive, South 28°24'58" West, 40.00 feet to a ½ inch rebar with survey cap No. TX 5337 found for an angle point;

THENCE, leaving the westerly right-of-way line of Railroad Drive, North 61°35'02" West, 500.00 feet to a ½ inch rebar with survey cap No. 5337 set for an angle point;

THENCE South 28°24'58" West, 1324.00 feet to a ½ inch rebar with survey cap No. TX 5337 set for the southeast corner of the tract herein described;

THENCE North 61°35'02" West, 800.00 feet to a ½ inch rebar with curvey cap No. TX 5337 set for the southwest corner of the tract herein described;

THENCE North 28°24'58" East, 1,896.85 feet to a ½ inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE North 51°04'00" West, 1,393.54 feet to the **POINT OF BEGINNING**;

Said parcel containing 35.003 acres, more or less, and being subject to easements of record.

EXHIBIT "AA"

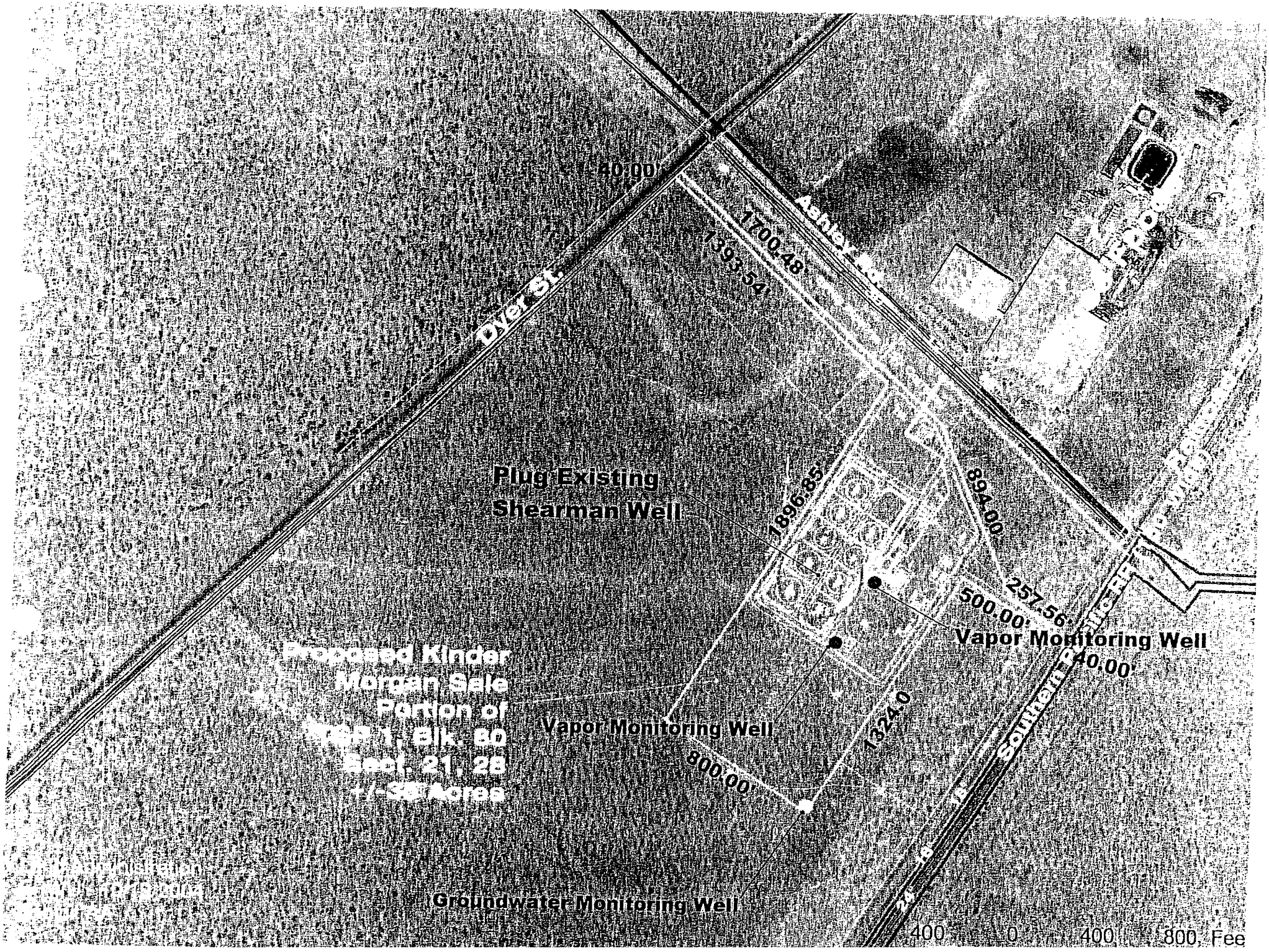
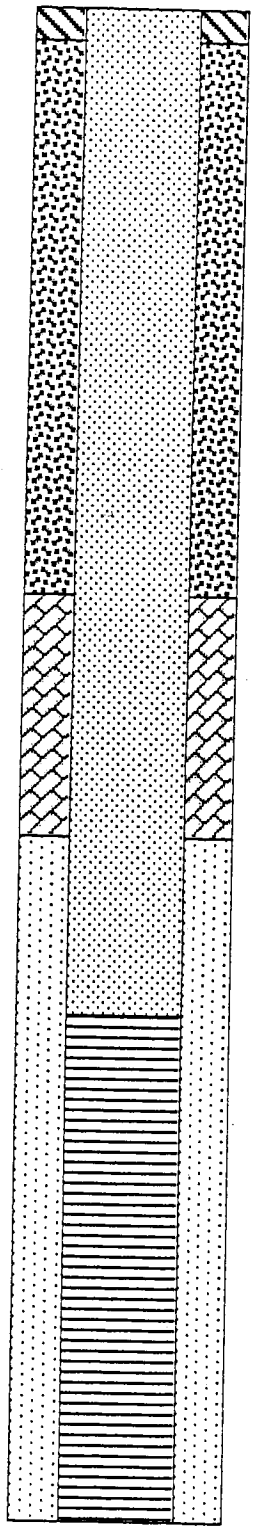

40.00'
1700.48'
1393.54'
Everett
Ashley
Plug Existing
Shearman Well
7896.85'
894.00'
257.56'
500.00'
Vapor Monitoring Well
40.00'
Proposed Kinder
Morgan Sale
Portion of
Vapor Monitoring Well
1324.0
800.00'
Groundwater Monitoring Well
400
0
400
800 Fee

EXHIBIT "BB"

PROPOSED GROUNDWATER MONITORING WELL DESIGN



Annular Fill
Concrete 0-10 Feet

Casing: +2-3 Feet
12-Inch Diameter
Protective Steel
Casing With Locking
Cap.

100 FT

Natural Backfill
10-250 Feet

0-425 Feet.
4-Inch Diameter
Schedule 80 PVC
Blank Casing (Threaded)

200 FT

300 FT

Bentonite
250-350 Feet

400 FT

8-12 Silica Sand
350-600 Feet

425-595 Feet
4-Inch Diameter
Schedule 80 PVC
Slotted Casing
Slot Size 0.02-Inch (Threaded)

500 FT

Borehole Diameter
10-Inches

595-600 Feet
4-Inch Diameter
Schedule 80 PVC
Blank Casing With End Cap

600 FT

REAL ESTATE SALES CONTRACT

WHEREAS, the El Paso Water Utilities owns land in El Paso County it holds in trust for the City of El Paso with such land under the jurisdiction of the El Paso Water Utilities Public Service Board; and

WHEREAS, SFPP, L.P., a Delaware limited partnership and pipeline company which is recognized as a Texas Common Carrier established under the provision of Texas Natural Resources Code Chapter 111, desires to purchase 35.003 acres of land, more or less, in El Paso County for the purpose of a nine-tank gasoline, diesel and jet fuel storage facility and pipeline transfer station; and,

WHEREAS, both the El Paso Water Utilities and SFPP. L.P. have the power of eminent domain under Texas law; and,

WHEREAS, the El Paso Water Utilities Public Service Board by action at its regularly scheduled meeting, April 14, 2004, began the process to sell the property by authorizing the General Manager to obtain an appraisal of the property; and,

WHEREAS, the El Paso Water Utilities and SFPP, L.P have agreed to the sale of 35.003 acres of land, more or less, in El Paso, El Paso County, Texas on the terms and conditions contained herein;

FOR AND IN CONSIDERATION OF $100 AND OTHER GOOD AND VALUABLE CONSIDERATION, WHICH PAYMENT SHALL BE CREDITED AGAINST THE PURCHASE PRICE AT CLOSING, THE PARTIES DESIRE TO ENTER INTO THIS REAL ESTATE SALES CONTRACT;

This contract to buy and sell real estate is between Seller and Buyer as identified below and is effective on the date of the last signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money deadline provided in section A.1., for this contract to be effective. If the Earnest Money is paid by check and payment on presentation is refused, Buyer is in default.

Seller: City of El Paso, on behalf of its El Paso Water Utilities
1154 Hawkins Boulevard
El Paso, El Paso County, Texas 79925
(915) 594-5607
(915) 594-5699 Fax
A Texas Municipal Water Utility

Seller's Attorney:

Robert D. Andron, Attorney at Law
1154 Hawkins Boulevard
El Paso, El Paso County, Texas 79925
(915) 594-5607
(915) 594-5699 Fax

Seller's Broker:

None

Buyer: SFPP, L.P.
1100 Town and Country Road
Orange, CA 92868
(714) 560-4711
(714) 560-4601 Fax

Buyer's Attorney:

Michael B. Schwerdtfeger, Esq.
Kinder Morgan, Inc.
1100 Town and Country Road
Orange, CA 92868
(714) 560-4711
(714) 560-4602 Fax

Buyer's Broker:

None

Property/Land: The land commonly known as a Parcel of land being 35.003 acres, a portion out of TSP 1, Block 80, sections 21 and 28, El Paso, El Paso County, Texas, and more fully described by metes and bounds in Exhibit "A" attached hereto and incorporated herein by this reference for all purposes.

Seller will convey to Buyer the Property free and clear of any and all liens, leases, clouds, or defects in title except those shown in the Title Commitment issued by the Title Company. Buyer is purchasing the above-described property "AS IS".

Title Company:

Land America, Lawyers Title of El Paso
Ron R. Rush, President
301 East Yandell
El Paso, Texas 79902
(915) 543-7600
(915) 543-7699 (Fax)
rrush@landam.com

Purchase Price:

Seller acknowledges and agrees that said purchase price of $490,000.00 is just compensation at fair market value for said Property/Land and includes any and all fixtures and equipment, goodwill and severance.

Earnest Money:

Shall be in the amount of $20,000.00. ($10,000.00 has been previously deposited with Seller for appraisal and other expenses and an additional sum of $10,000.00 as an earnest and liquidated damage fund deposit to be deposited with the title company upon execution of contract.)

Surveyor:

Buyer will obtain a survey of the Property/Land at Buyers expense and deliver a copy of the survey to Seller.

A Texas Registered Professional Land Surveyor must make the survey acceptable to the Title Company.

The survey must at a minimum:

a. Identify the Property/Land by metes and bounds or platted lot description;
b. Show the survey was made and staked on the ground with corners permanently marked,
c. Set forth the dimensions and total area of the Property/Land,
d. Show the location of all improvements, highways, streets, roads, railroads, rivers, creeks or other waterways, fences, easements, and rights-of-way on the Property/Land with all easements and right-of-way referenced to their recording information,
e. Show any discrepancies or conflicts in boundaries, any visible encroachments, and any portion of the Property/Land lying in a special flood hazard area as shown on a current Federal Emergency Management Agency map, and,
f. Contain the surveyor's certificate that the survey is true and correct.

Survey Category: Category 1A, Condition II Survey

Deadlines and Other Dates:

A. All deadlines in this contract expire at 5:00 p.m. local time where the Property is located. If a deadline falls on a Saturday, Sunday or national holiday, the deadlines will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest money to be paid by check: concurrently with opening of Escrow.

2. Delivery of Title Commitment: 15 days after opening of Escrow.

3. A Survey of the property is attached as Exhibit A

4. Delivery of legible copies of instruments referenced in the Title Commitment: 30 days after opening of Escrow

5. Delivery of Title Objections: 30 days after the delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.

6. Delivery of Seller's Records: 30 days from opening of Escrow.

7. Closing Date and Time: 30 days after Buyer's receipt of the approvals set forth in K.1.b. below. The closing date may be extended as mutually agreed.

B. Closing Documents:

1. At closing, Seller will deliver the following items:

Executed Special Warranty Deed in a form acceptable to Buyer

Title Insurance in the amount of the Purchase Price acceptable to Buyer

Possession of the Property/Land

Bill of Sale for any personal property being conveyed (including but not limited to any permits, etc.)

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as agreed

2. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Agreed upon price by wire transfer as directed by Seller

C. Exhibits

The following are attached to and are a part of this contract:

Exhibit "A"–Description of the Property/Land.

Exhibit "B"–Representations; Environmental Matters

Exhibit "AA" – Approximate Groundwater and Vapor Monitoring Well Locations

Exhibit "BB" – Proposed Groundwater Monitoring Well Design

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property/Land to Buyer, and Buyer agrees to buy and pay Seller for the Property/Land. The promises by Buyer and Seller stated in this contract and $100 paid to Seller by Buyer at the time of execution of this contract is the consideration for the formation of this contract.

E. Interest on Earnest Money: Intentionally left blank.

F. Title and Survey:

1. Review of Title: The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that is should either have the abstract covering the Property/Land examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. Title Commitments; Title Policy. "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Property/Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. Survey. "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Property/Land, prepared by Surveyor or another surveyor satisfactory

to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

4. Delivery of Title Commitment, Survey and Legible Copies. Seller must deliver the Title Commitment to Buyer by the deadline state in Section A.2; the Survey by the deadline state in Section A.3; and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in Section A.4.

5. Title Objections. Buyer has until the deadline stated in Section A.5; to review the Survey, Title Commitment and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them. Buyer will be deemed to have approved all matters other than liens of any kind reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions". If Buyer notifies Seller of any Title Objections, Seller has ten days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing. If Seller does not timely give its cure notice or timely gives its cure notice but does not agree to cure all the Title Objections before closing, Buyer may, within ten days after the deadline for the giving of Seller's cure notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the cure notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. Review of Seller's Records. Seller will make available any records for the property/land for Buyer's review if requested.

2. Entry onto the Property/Land. Buyer or its representatives may enter the Property/Land before closing to inspect the Property/Land, subject to the following:

a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverage's in the minimum amount of $250,000 for each person and $500,000 for each occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property.

b. Buyer may not unreasonably interfere with existing operations or occupants of the Property/Land.

c. Buyer must notify Seller a minimum of forty-eight hours in advance of Buyer's plans to conduct inspections or tests of the Property/Land so that Seller may be present during such inspections or tests.

d. If the Property/Land is materially altered due to Buyer's inspections or tests, Buyer must return the Property/Land to its pre-inspection or test condition promptly after such material alteration occurs.

e. Buyer must deliver to Seller copies of all inspection or test reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt.

f. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. Buyer's Right to Terminate. Notwithstanding anything stated herein to the contrary, Buyer may terminate this contract for any reason by notifying Seller in writing before the Close of escrow.

4. Buyer's Indemnity and Release of Seller.

a. Indemnity. Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation or tests of the Property/Land, except for repair or remediation of existing conditions discovered by Buyer's inspection or tests.

b. Release. Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court or other costs) resulting from Buyer's investigation of the Property/Land.

H. Representations

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

I. Condition of the Property/Land until Closing; Cooperation; No Recording of Contract

1. Maintenance and Operation. Until closing, Seller will (a) maintain the Property/Land as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property/Land in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property/Land. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property/Land other than in the ordinary course of operating the Property and will promptly give notice to Buyer of any new, amended, or terminated contract, including a copy of

the contract, in sufficient time so that Buyer may consider the new information before the end of the Inspection Period.

2. Casualty damage. Seller will notify Buyer promptly after discovery of any casualty damage to the Property/Land. Seller will have no obligation to repair or replace the Property/Land if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would affect Buyer's intended use of the Property/Land, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty.

3. Condemnation. Seller will notify Buyer promptly after Seller receives notice that any part of the Property/Land has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would affect Buyer's intended use of the Property/Land by giving notice within fifteen days after receipt of Seller's notice to Buyer. If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property/Land in the condemnation proceedings, (b) any award in condemnation will be assigned to the Buyer, and (c) if the taking occurs before closing, the description of the Property/Land will be revised to delete the portion taken.

4. Claims; Hearing. Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed or initiated before closing that affects the Property/Land. Seller and Buyer have the right to appear at any claim or hearing to assert their respective interest in the Property/Land.

5. Cooperation. Seller will cooperate with Buyer (a) before and after closing, to transfer any applications, permits and licenses held by Seller and used in the operation of the Property/Land and to obtain any consents necessary for Buyer to operate the Property/Land after closing and (b) before closing, with any reasonable evaluation, inspection, audit or study of the Property/Land prepared by, for or at the request of Buyer.

6. Hazardous Waste. Neither Seller nor, to the best of its knowledge, any third party has used, generated, released, discharged, stored or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in or about the Property/Land, or transported any Hazardous Materials to or from the Property/Land. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials from the Property/Land. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Texas, or the United States, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste" or "restricted hazardous waste" under the applicable Texas Health and Safety Codes or Chapter 20, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. S1317), (x) defined as a

"hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. S6901, et.seq., or (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, as amended by Liability Act, 42 U.S.C. S 9601 et seq..

7. Compliance with Environmental Laws. The Property/Land is in compliance with all applicable laws and governmental regulations including, without limitation, all applicable Federal, State and Local laws pertaining to air and water quality, hazardous waste, waste disposal and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the Texas Environmental Quality Act.

J. Termination.

1. Disposition of Earnest Money after Termination.

a. To Buyer. If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller hereby does authorize the Title Company to deliver the Earnest Money to Buyer, less those funds used for the appraisal and actual documented expenses, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract.

b. To Seller. If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within ten days of receipt of Seller's termination notice, authorize the Title Company to pay and deliver the Earnest Money to Seller.

2. Duties after Termination. If this contract is terminated, Buyer will promptly return to Seller all documents related to the Property/Land that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

K. Closing

1. Conditions to Closing. Notwithstanding anything stated herein to the contrary, Buyer's obligations to purchase the Property are conditioned on the following:

a. Seller's Representations contained on Exhibit B are true and correct as of the Closing Date.

b. Buyer's receipt of the final approval of the City of El Paso City Plan Commission Board and the subsequent approval by the El Paso City Council of the "special permit" per

Section 20.46.040.F of the El Paso Municipal Code to allow Buyer to proceed with the stated purpose of construction of a petroleum products storage facility on the Property.

If these conditions are not met prior to January 23 2005, Buyer may terminate this Agreement and it shall have no further binding effect and the Earnest Money shall immediately be returned to Buyer by the Title Company.

2. Closing. This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. Closing documents. The parties will execute and deliver the Closing Documents.

b. Payment of Purchase Price. The Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money less those funds used for the appraisal and actual documented expenses, and any interest thereon will be applied to the Purchase Price.

c. Disbursement of Funds; Recording; Copies. Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute the documents and copies in accordance with the parties' written instructions.

d. Delivery of Originals. Seller will deliver to Buyer the originals of Seller's records.

e. Possession. Seller will deliver possession of the Property/Land to Buyer, subject to the Permitted Exceptions existing at closing.

3. Transaction Costs.

a. Seller will pay the costs to deliver copies of the instruments described in Section A.5., and Seller's expenses and attorney's fees.

b. Buyer's Costs. Buyer will pay the basic charge for the Title Policy and the entire escrow fee charged by the Title Company; the costs to obtain, deliver and record all documents other than those to be recorded at Seller's expense; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this Agreement; the costs to obtain financing of the Purchase Price, including the incremental premium costs of title policies and endorsements and deletions required by Buyer's lender; the cost of obtaining the Survey; and Buyer's expenses and attorney's fees.

c. Ad Valorem Taxes. Ad valorem taxes, if any, for the Property/Land for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date.

Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing. If the Property has been the subject of special valuation and reduced tax assessments pursuant to the provisions of Chapter 23, Subchapter D of the Texas Tax Code with respect to any period before the closing and additional taxes are assessed pursuant to Section 23.55 thereof, the following will apply: If this sale or Buyer's use of the Property/Land results in the assessment of additional taxes for periods before closing, Buyer will pay the additional taxes. All provisions of this Section 3.c. shall survive closing.

d. Postclosing Adjustments. If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make post-closing adjustments to correct the errors within fifteen days of receipt of notice of the errors. This Section 3.d. shall survive Closing.

f. Broker's Commissions. Buyer and Seller each indemnify and agree to defend and hold the other harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by or through or under the indemnitor for a broker's or finder's fee or commission because of this transaction of this contract, whether the claimant is disclosed to the indemnitee or not. At closing, each party will provide the other party with a release of broker or appraiser's liens from all brokers or appraisers for which each party was responsible.

4. Issuance of Title Policy. At Closing, Seller will cause the Title Company to issue the Title Policy to Buyer.

L. Default and Remedies.

1. Seller's Default. If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

a. Termination; Liquidated Damages. Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, less those funds used for the appraisal and actual documented expenses as set forth above, returned to Buyer. If Buyer terminates this contract due to denial of the "special permit" as referenced in K b. above Seller will charge a rental fee of $3,267 per month (i.e., 8% of the purchase price per annum on a monthly basis). The start date of the rental fee to be the date of acceptance of the complete Special Permit application to the City of El Paso. If the Special

Permit is issued the remaining earnest money less those funds used for the appraisal and actual documented expenses will be applied to the purchase of the property.

b. Specific Performance. Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property/Land is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. Buyer's Default. a. If, following the expiration of the Inspection Period, Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may, as its sole and exclusive remedy terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to the Seller.

b. Specific Performance. Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property/Land is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. Liquidated Damages. The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and the amounts provided above are the reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

M. Miscellaneous Provisions.

1. Notices. Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. Entire Contract. This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property/Land by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property/Land by Seller to Buyer not incorporated in writing in this contract.

3. Amendment. This contract may be amended only by an instrument in writing signed by the parties.

4. Prohibition of Assignment. Buyer may not assign this contract or any of Buyer's rights under it without the Seller's prior written consent, and any attempted assignment is void, except that Buyer may assign this Agreement to an affiliate without Seller's consent. This contract binds, benefits, and may be enforced by the parties and their respective successors and permitted assigns.

5. Survival. The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to those matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. Choice of Law; Venue. This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any other jurisdiction. Venue for all matters shall be in the county of location of the Property/Land.

7. Waiver of Default. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to a default.

8. No Third-Party Beneficiaries. There are no third-party beneficiaries of this contract.

9. Severability. The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. Ambiguities Not to Be Construed against the Party Who Drafted the Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. No Special Relationship. The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special legal relationship by entering into this contract.

12. Counterparts. If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

13. Contingency. It is understood and agreed between the parties that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the Buyer's actions by the Buyer's assigns or Board of Directors as well as the approval of the Seller's action by the El Paso City Council.

14. Reliance on Parties. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this contract and the meaning of the provisions contained herein. The provisions of this contract shall be construed as to their fair

meaning, and not for or against any party based upon any attribution to such party as the source of the language in question.

15. Duty to Cooperate. Each party hereby agrees that it shall, upon request of the other, execute and deliver such further documents and do such other acts and things as are reasonably necessary and appropriate to effectuate the terms and conditions of this contract, without cost.

16. Authority to Execute. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective principals to each of the terms of this contract.

17. Incorporation of Exhibits. All Exhibits referenced herein and attached hereto are incorporated herein by this reference for all purposes.

N. Development Site Conditions and Requirements: The following conditions and requirements are hereby established and accepted by the Buyer as a condition of the land sale.

1. SFPP, L.P. shall provide El Paso Water Utilities (EPWU) with plans and specifications for the site, containment system, leak detection systems, vapor monitoring wells, groundwater monitoring wells, and wastewater pretreatment equipment. The design shall be subject to review by EPWU, provide measures for protecting the groundwater supply, and meet EPWU wastewater discharge standards. The design shall comply with all federal, state, and local laws and regulations directly and/or indirectly affecting such tanks and the stored petroleum products.

The proposed tanks for KMEP's El Paso Breakout Station have welded steel bottoms and are placed on top of a concrete slab foundation. The concrete slab slopes toward the low point in the tank. The foundation has a plastic liner underneath that prevents any liquid from getting into the ground. The top of the slab has grooves cut that would direct any release material to the liner. A pipe routes this liquid from the bottom of the liner to a detection well outside the tank. The leak detection system for each tank shall be so constructed as to have remote monitoring.

Buyer agrees to remediate all environmental conditions (including but not limited to groundwater contamination) caused by releases from Buyer's facilities on the Property consistent with Texas Commission on Environmental Quality standards. Buyer shall also be responsible for all costs or judgments associated with groundwater damage caused by releases from Buyer's facilities on the Property.

The EPWU's Environmental Compliance Manager or his representative will be granted unconditional access to the site at all reasonable times and upon reasonable notice to perform inspections as may be required by the Utility with a minimum 24 hour advanced notice.

2. Vapor Monitoring Wells: SFPP, L.P. shall install at their sole cost two (2) vapor monitoring wells within the property at the approximate locations shown on the attached Exhibit "AA" to provide advance warning of containment system failure and promote quick clean up of hydrocarbons which penetrate into the vadose zone under the liner. The vapor monitoring wells shall be installed by a drilling contractor licensed by the State of Texas and the design shall be subject to approval by EPWU, which approval shall not be unreasonably withheld. SFPP, L.P. will quarterly monitor the subsurface vapors for hydrocarbons in accordance with all federal, state, and local laws and regulations. A report of the results will be provided to the EPWU's Environmental Compliance Manager semi-annually. If monitoring produces a positive result, TCEQ will be notified and monitoring report frequency will be increased to a monthly basis. If, thereafter, monthly monitoring results in three consecutive monthly tests that show negative results, monitoring will return to a quarterly basis.

Future tanks on site will require the installation of additional vapor monitoring wells by SFPP, L.P. Future vapor monitoring wells shall be located down gradient of the proposed tank sites.

3. The cost for plugging of the Sherman Well is $8,488.50. This cost shall be paid by SFPP, L.P. upon closing of the property. El Paso Water Utilities will perform all work associated with the plugging of the Sherman Well within 60 days after closing of the property.

4. SFPP, L.P. shall install at their sole cost a 4-inch diameter ground water monitoring well to a depth of 600' and at the approximate location shown on the attached Exhibit "AA". The well shall be installed as specified in the attached Exhibit "BB" by a drilling contractor licensed by the State of Texas. SFPP, L.P. will annually monitor the groundwater for hydrocarbons in accordance with all federal, state, and local laws and regulations. A report of the results will be provided to the EPWU's Environmental Compliance Manager annually. If monitoring produces a positive result, TCEQ will be notified and monitoring report frequency will be increased to a monthly basis. . If, thereafter, monthly monitoring results in three consecutive monthly tests that show negative results, monitoring will return to a quarterly basis.

5. SFPP, L.P. shall provide a manhole for sampling of industrial process wastewater at a location between the pretreatment facility and connection point to the domestic sanitary sewer system to be constructed on the Property.

6. Fire Protection System: The fire protection system will be designed by Buyer in accordance with NFPA guidelines and will comply with requirements developed in cooperation with the El Paso Fire Department. At this time, the Buyer's planned fire protection system consists of the following equipment:

- Reduced pressure backflow prevention stations installed at the connection points to El Paso Water Utility Board pipelines located within Railroad Drive and Dyer Road.

A private interconnecting fire line will be installed between the two backflow prevention stations.

- A 420,000 gallon fire water storage tank fed from the new interconnecting pipeline at an assumed design rate of 1,000 GPM for two hours at a pressure of 20 PSIG.
- A 3,000 GPM diesel engine driven firewater pump with related control panel. The firewater pump will put up a pressure of approximately 135 PSIG.
- A firewater loop with associated fire hydrants located strategically around the tank farm and within the facility.
- A semi-fixed foam generating system with related piping installed on each product tank.
- Two oscillating foam fire monitors covering the main tank manifold area.
- A portable foam proportioning trailer, proposed to be donated to the El Paso Fire Department.
- A 2,500 gallon "Hired Gun" portable trailer mounted foam fire monitor proposed to be donated to the El Paso Fire Department.
- A foam transportation trailer proposed to be donated to the El Paso Fire Department.
- 3,600 gallons of AFFF foam proposed to be donated to the El Paso Fire Department.

The preliminary design of the fire protection system at the El Paso Breakout Terminal will be reviewed with the El Paso Fire Department. After the fire protection concept is agreed to between the Fire Department and KMEP, detailed design of the system will be completed and issued for plan check and approval to the Fire Department.

7. A detailed site development shall be submitted for review by EPWU in parallel to submittal to the City of El Paso.

8. Any landscaping on site shall make use reclaimed water for irrigation.

9. Tanks on site shall be painted "desert sand" in color.

10. SFPP will comply with City codes requiring fencing and or walls that are applicable to the proposed development and use of the subject property.

THE PARTIES HAVE EXECUTED THIS CONTRACT AS OF THE LAST DATE WRITTEN BELOW:

SIGNATURES, ATTESTATIONS AND APPROVALS ON NEXT PAGE

SELLER:

El Paso Water Utilities
Public Service Board

Edmund G. Archuleta, P.E., General Manager
DATE: 1/20/05

APPROVED AS TO FORM:

General Counsel

BUYER:

SFPP, L.P.
By: Kinder Morgan Operating L.P. "D",
Its general partner
By: Kinder Morgan G.P., Inc.
Its general partner
By: Kinder Morgan Management, LLC,
The delegate of Kinder Morgan G.P., Inc.

BY: EDUARDO E FERRER (printed name)
ITS: ENGINEERING DIRECTOR
SPECIAL PROJECTS.

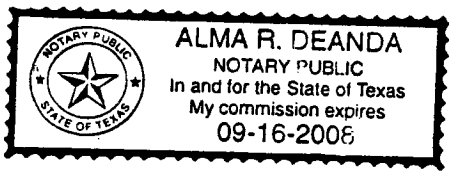
ATTEST:
Assistant Secretary

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the 20th day of January, 2005 by Edmund G. Archuleta, P. E., General Manager of the El Paso Water Utilities.



Alma R. DeAnda
Notary Public, State of Texas

[SFPP Acknowledgement Page to Follow]

ACKNOWLEDGEMENT

State of California }
} s.s.
County of Orange }

Title of Document **Real Estate Sales Contract**

On **January 13, 2005**, before me, **Martha Niguidula**, Notary Public, personally appeared **Eduardo E. Ferrer** [X] personally known to me ~~OR [ ] proved to me on the basis of~~ satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the persons(~~s~~) acted, executed the instrument.

WITNESS my hand and seal.

MARTHA NIGUIDULA
Commission # 1510266
Notary Public - California
Orange County
My Comm. Expires Aug 28, 2008

SIGNATURE OF NOTARY

(Seal)

EXHIBIT B
REPRESENTATIONS

Seller's Representations and Warranties.

Seller hereby represents and warrants to Buyer, which representations and warranties shall be true and correct as of the date of this Agreement and as of the date of Close of Escrow, and shall survive the Close of Escrow for a period of one (1) year, as follows:

(a) Seller has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Seller pursuant to this Agreement, and to consummate the transactions contemplated hereby.

(b) The individuals executing this Agreement and the instruments to be executed by Seller pursuant to this Agreement, on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement and such instruments.

(c) To the best of Seller's knowledge, the Property is not in violation, nor has been or is currently under investigation for violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, worker health and safety or to the environmental conditions in, at, on, under or about the Real Property including, but not limited to, soil and groundwater conditions.

(d) Neither the execution and delivery of this Agreement and the documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement or the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Seller is a party or affecting the Property.

(e) To the best of Seller's knowledge, the Property is not now in violation of any applicable laws, statute or ordinance.

(f) To the best of Seller's knowledge, there is no litigation or legal proceeding pending and served on Seller, or to the best of Seller's knowledge, threatened against Seller or the Property which would materially and adversely affect Seller's or Buyer's ability to perform their respective obligations hereunder or Buyer's proposed development of the Property. To the best of Seller's knowledge, there is no suit, action or arbitration, or legal, administrative, or other proceeding or governmental investigation, formal or informal, including but not limited to eminent domain, condemnation, assessment district or zoning change proceeding, pending or threatened, which materially adversely affects Buyer's proposed project or which adversely affects Seller's ability to perform hereunder.

(g) To the best of Seller's knowledge, there are no endangered species or protected natural habitat, flora or fauna located on the Property, nor is any portion of the Property located in what is or may be designated as a wetland.

(h) Any and all reports, documents, writings and other materials made available or delivered to Buyer by Seller are, to the best of Seller's knowledge, in all respects true, accurate and complete.

(i) Except as set forth in the Title Commitment, to the best of Seller's knowledge, Seller has not made any written commitment or written representation to any government authority, or any adjoining or surrounding property owner, which would in any way be binding on Buyer or would materially adversely interfere with Buyer's ability to develop the and improve the Property as a petroleum storage facility, and will not make any such commitment or representation which would affect the Property or any portion thereof prior to Close of Escrow, without Buyer's written consent.

Buyer's Representations and Warranties.

Buyer hereby represents and warrants to Seller, which representations and warranties shall be true and correct as of the date of this Agreement and as of the date of Close of Escrow, and shall survive the Close of Escrow, as follows:

(a) Buyer has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Buyer pursuant to this Agreement, and to consummate the transactions contemplated hereby.

(b) All requisite action has been taken by Buyer in connection with Buyer's execution of this Agreement and the instruments to be executed by Buyer pursuant to this Agreement, and the consummation of the transactions contemplated hereby.

(c) The individuals executing this Agreement and the instruments to be executed by Buyer pursuant to this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement and such instruments.

(d) Neither the execution and delivery of this Agreement and the documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

Exhibit A

LEGAL DESCRIPTION OF A 35.003 ACRE PARCEL

A parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Tract 5D, Section 21, Block 80, Township 1, Texas and Pacific Railway Company Surveys and a portion of Tract 1, Section 28, Block 80, Township 1, Texas and Pacific Railway Company Surveys and being more particularly described as follows, to wit:

COMMENCING for reference at a two inch iron pipe found for the corner common to Sections 20, 21, 28, and 29, Block 80, Township 1, Texas and Pacific Railway Company Surveys; THENCE following the line common to said Sections 21 and 28, North 88°56'07" East, 151.05 feet to a 5/8 inch rebar with survey cap No. TX 2998 found on the easterly right-of-way line of Dyer Street; THENCE, leaving the line common to said Sections 21 and 28 and following the easterly right-of-way line of Dyer Street, North 43°16'00" East, 2,416.62 feet to a ½ inch rebar with survey cap No. TX 5337 found for the **POINT OF BEGINNING** of the tract herein described;

THENCE, continuing along the easterly right-of-way line of Dyer Street, North 43°16'00" East, 40.00 feet to a ½ inch rebar with survey cap No. TX 5337 found for the northwest corner of the tract herein described;

THENCE, leaving the easterly right-of-way line of Dyer Street, South 51°04'00" East, 1,700.48 feet to a ½ inch rebar with survey cap No. TX 5337 found for an angle point;

THENCE South 26°22'16" East, 894.00 feet to a ½ inch rebar with survey cap No. TX 5337 found for an angle point;

THENCE South 61°35'02" East, 257.56 feet to a ½ inch rebar with survey cap No. TX 5337 found on the westerly right-of-way line of Railroad Drive for an angle point;

THENCE, following the westerly right-of-way line of Railroad Drive, South 28°24'58" West, 40.00 feet to a ½ inch rebar with survey cap No. TX 5337 found for an angle point;

THENCE, leaving the westerly right-of-way line of Railroad Drive, North 61°35'02" West, 500.00 feet to a ½ inch rebar with survey cap No. 5337 set for an angle point;

THENCE South 28°24'58" West, 1324.00 feet to a ½ inch rebar with survey cap No. TX 5337 set for the southeast corner of the tract herein described;

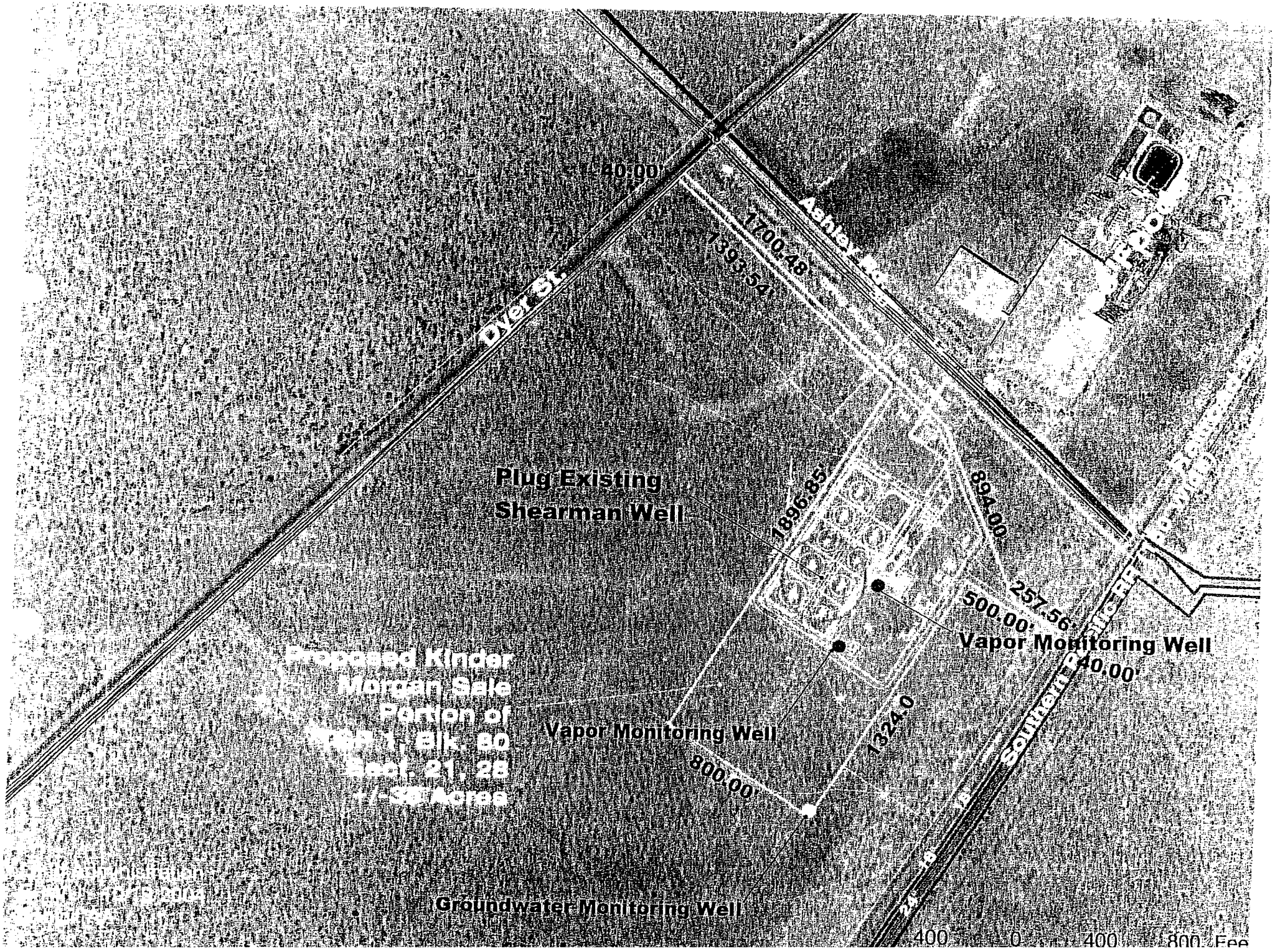
THENCE North 61°35'02" West, 800.00 feet to a ½ inch rebar with curvey cap No. TX 5337 set for the southwest corner of the tract herein described;

THENCE North 28°24'58" East, 1,896.85 feet to a ½ inch rebar with survey cap No. TX 5337 set for an angle point;

THENCE North 51°04'00" West, 1,393.54 feet to the **POINT OF BEGINNING**;

Said parcel containing 35.003 acres, more or less, and being subject to easements of record.

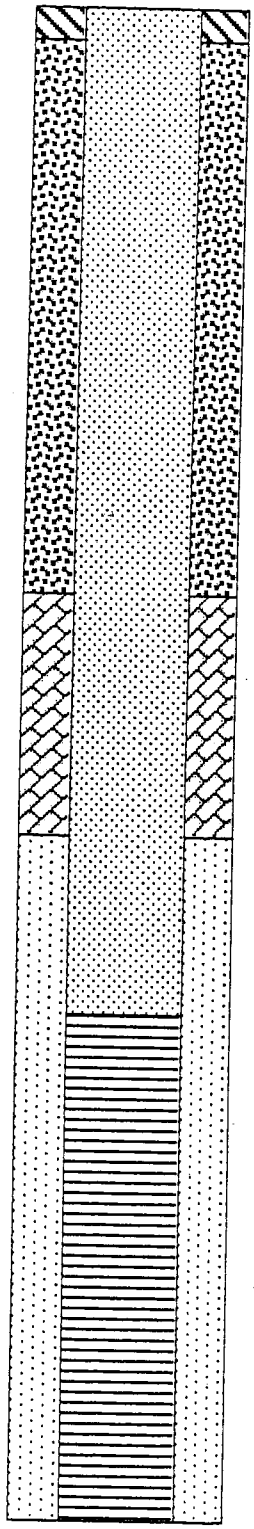
EXHIBIT "AA"



40.00'
Ashley Rd
1700.48'
1393.54'
Dyer St.
Plug Existing
Shearman Well
1896.85'
894.00'
257.56'
500.00'
Vapor Monitoring Well
40.00'
Proposed Kinder
Morgan Sale
Portion of
Blk. 80
Sect. 21, 28
Vapor Monitoring Well
1324.0
800.00'
Groundwater Monitoring Well
400
0
400
800 Feet

EXHIBIT "BB"

PROPOSED GROUNDWATER MONITORING WELL DESIGN



Annular Fill
Concrete 0-10 Feet

Casing: +2-3 Feet
12-Inch Diameter
Protective Steel
Casing With Locking
Cap.

100 FT

Natural Backfill
10-250 Feet

0-425 Feet.
4-Inch Diameter
Schedule 80 PVC
Blank Casing (Threaded)

200 FT

300 FT

Bentonite
250-350 Feet

400 FT

8-12 Silica Sand
350-600 Feet

425-595 Feet
4-Inch Diameter
Schedule 80 PVC
Slotted Casing
Slot Size 0.02-Inch (Threaded)

500 FT

Borehole Diameter
10-Inches

595-600 Feet
4-Inch Diameter
Schedule 80 PVC
Blank Casing With End Cap

600 FT