

THE CITY OF AMARILLO, TEXAS
Final Distribution Memorandum

Planning Department, City of Amarillo, Texas
P.O. Box 1971, Amarillo, Texas 79105-1971

July 7, 2010

TO: Final Distribution List

FROM: Planning Department

SUBJECT: D-09-35 Planned easement for a proposed 48-inch Water Transmission Main.

GRANTOR: LX Cattle Company

The City Commission approved the above item on March 1, 2010. The dedication instrument was filed of record in Official Public Records, Potter County in Volume Rcpt# 140697. Copies of the instrument and vicinity sketch are attached. Please post your records accordingly.



Kelley Shaw, Planning Director

STATE OF TEXAS §
POTTER COUNTY §

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
On: Mar 01, 2010 at 04:13P

Document Number: 01168755

Receipt# - 140697

Amount 100.00

Julie Smith
County Clerk, Potter County

By lae Deputy

TRANSMISSION PIPELINE EASEMENT

Effective Date: February 25, 2010

GRANTOR: LX Cattle Company, a Texas corporation

GRANTOR'S Mailing Address: P.O. Box 708, Amarillo, Potter County, Texas 79105

GRANTEE: City of Amarillo, Texas

GRANTEE'S Mailing Address: P.O. Box 1971, Amarillo, Potter County, Texas 79105-1971

REAL PROPERTY: Sections 13, 14, 19, Block 1, SK&K, Survey, Potter County, Texas

GROUNDWATER: All of the underground water, percolating water, artesian water, and any other water from any and all depths and reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel and excluding any water located below the lower limits of the Ogallala Formation. For purposes of this Easement, the "Ogallala Formation" means a heterogeneous geologic water bearing formation containing the Ogallala Aquifer.

EASEMENT PURPOSES: This Easement is a non-exclusive easement consisting of a permanent easement area and temporary construction easement area, as shown on the survey attached hereto and incorporated herein as Exhibit "A" on, over, in, under, along, across and through the Real Property for the installation, construction, inspection, operation, maintenance, repair, removal and replacement of a transmission pipeline to transport Groundwater and water produced from other properties, and all other necessary and desirable appurtenances, facilities, and structures (collectively, the "Facilities") as may be reasonably necessary in connection with the transmission of Groundwater on and from the Real Property and/or water on and from wells located on other property, together with the non-exclusive right of ingress and egress over, upon, and across the Real Property to engage in such activities as may be reasonably necessary, requisite, convenient or appropriate in connection with the foregoing.

This Easement does not convey any rights to hunt or fish on the Real Property. GRANTEE shall not have the right to excavate, extract, or mine any caliche or gravel from the Real Property for building or road construction without a separate written agreement from GRANTOR.

CONSIDERATION: TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor and constitute full payment and sufficient consideration for this Easement granted herein, including payment for surface damage.

Copies Not Compared to
Original Filed of Record

STATE OF TEXAS §
POTTER COUNTY §

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CONSIDERATION: TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor and constitute full payment and sufficient consideration for this Easement granted herein, including payment for surface damage.

GRANTOR for the Consideration and subject to all existing matters of record, hereby grants, sells, and conveys to GRANTEE and GRANTEE'S successors, assigns a non-exclusive easement, as shown on the survey attached hereto and incorporated herein as Exhibit "A", in, over, under, on, along, through and across the Real Property for the Easement Purposes and for the benefit of GRANTEE, together with the right of ingress and egress at all times over, upon and across the Real Property to engage in such activities as may be necessary, requisite, convenient or appropriate in connection with the Easement Purposes ("Easement") to have and to hold, together with all and singular the rights and appurtenances thereto in any way belonging, unto GRANTEE and GRANTEE'S successors, assigns forever. GRANTOR binds GRANTOR and GRANTOR'S heirs, successors, and assigns to warrant and forever defend all and singular the Easement to GRANTEE and GRANTEE'S successors, assigns and the parties with whom it contracts against any person lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under GRANTOR but not otherwise, except as to the Reservations from Conveyance and Conditions of Conveyance, as well as the Exceptions to Conveyance and Warranty, as described in that certain Water Rights Warranty Deed dated of even date herewith from GRANTOR to GRANTEE.

The following terms and conditions shall apply to the Easement:

1) *Character of Easement.* The Easement is for the benefit of GRANTEE and GRANTEE'S successors and assigns. The covenants in this Easement are for the benefit of GRANTOR and GRANTOR'S successors and assigns and the following real property: Sections 3 and 4, Block 2, B&B Survey, Potter County, Texas; Sections 7, 8, 13, 14, 19, 20, 21, 24, 25, 26, Block 1, SK&K Survey, Potter County, Texas. This Easement is a contract for the provision of services under Section 271.151(2) of the Texas Local Government Code.

2) *Duration of Easement.* The duration of this Easement is perpetual and irrevocable.

3) *Reservation of Rights.* GRANTOR reserves for GRANTOR and GRANTOR'S heirs, successors and assigns, the right to continue to use and enjoy the surface of the Real Property in conjunction with GRANTEE for all purposes that do not in any way interfere with or interrupt the use or enjoyment of the Real Property by GRANTEE for the Easement Purposes, or endanger any of GRANTEE'S property located on the Real Property.

4) *Use of the Real Property/Construction and Maintenance of Facilities.* GRANTEE will not construct any of the Facilities within one hundred fifty (150) feet of any residence constructed on the Real Property after the date of this Easement. GRANTEE shall not construct any of the Facilities within 1,000 feet of any residence located on the Real Property prior to the date of this Easement without the written consent of the GRANTOR or its successors or assigns. For purposes of this paragraph, a "residence" means a structure, together with barns, sheds, and other outbuildings found on farms or ranches in Potter County, Texas.

5) *Defined Terms.* The capitalized terms listed in this paragraph have the meaning stated in this paragraph whenever the terms appear in this Easement.

a) Abandon or Abandonment when used in the context of GRANTEE'S Facilities or the Easement means the affirmative, intentional act of GRANTEE, as evidenced by a written declaration by GRANTEE, to permanently cease operation and use of the Easement or the

identified Facility or Facilities. Mere non-use of the Easement or a Facility by GRANTEE will not constitute abandonment.

b) **Applicable Law** means all laws, statutes, regulations, rules, treaties, ordinances, judgments, directives, permits, licenses, decrees, approvals, interpretations, injunctions, writs, orders, or other similar legal requirements of any Governmental Authority having competent jurisdiction which are applicable to the GRANTOR or the GRANTEE, respectively, or to the Real Property or to GRANTOR'S or GRANTEE'S operations on the Real Property, that may be in effect from time to time.

c) **Governmental Authority** means, collectively, the United States of America and all other national, state, provincial, county, municipal, regional, environmental, or other governmental bodies, agencies, or authorities, or any instrumentality or agency of any of these entities, or any court, arbitrator, or other authority or body having jurisdiction.

d) **Section**, when referring to a portion of the Real Property, means a tract of land containing 640 contiguous acres, more or less.

e) **TESS** means the Texas Excavation Safety System administered by Texas Excavation Safety System, Inc.

6) **Roads**. As a part of this Easement, GRANTEE is to be granted the right of non-exclusive ingress and egress over and across the Real Property. This right shall be subject to the following terms and conditions:

a) **Use of Established Entrances and Roads**. GRANTEE will, whenever possible, access the Real Property from State Highway 136, and will use reasonable efforts to use existing roads on the Real Property where feasible for ingress and egress to GRANTEE'S infrastructure. If necessary, access other than from State Highway 136 shall be within existing roads with GRANTOR'S prior written consent. GRANTEE will require its agents and contractors accessing the Real Property to obtain commercially reasonable insurance naming GRANTOR as an additional insured prior to being granted such access.

If there are several alternative routes to GRANTEE'S Facilities, GRANTEE shall confer with GRANTOR to select the route to and from these Facilities that will best serve the needs of the Parties. GRANTEE shall cooperate in the maintenance of existing roads to be used by GRANTEE on the Real Property.

b) **Location of New Roads**. If necessary, GRANTEE may construct additional roads on the Real Property to access GRANTEE'S Facilities; however, GRANTEE shall use reasonable efforts to accommodate GRANTOR with regard to location of any additional roads as long as (i) GRANTEE'S costs are not materially increased by such location and (ii) GRANTEE'S access and proximity to its existing and planned Facilities is not materially adversely affected. GRANTEE shall use reasonable efforts to place roads at grades and elevations that avoid erosion and avoid unnecessary crushing of grass and growing crops.

(c) **Specifications for New Roads**. Any new roads constructed by GRANTEE on the Real Property shall be constructed according to the following specifications:

- i) Widths. GRANTEE shall build all new roads approximately 15 feet wide.
- ii) Construction Specifications. GRANTEE shall construct all new roads with caliche and in a manner so that they are all-weather roads. Specifically, the road base will be constructed from dirt graded from each side of the road so that a shallow ditch (bar ditch) will be formed on each side of the road. The dirt thus graded to form the roadbed will be of sufficient quantity to raise the roadbed above the immediately surrounding terrain by approximately four inches. The center of the roadbed will be raised (crowned) with respect to the edges so that rain falling on the road will immediately run off the road into one or both bar ditches. GRANTEE shall add (and maintain) a top course of crushed caliche that covers the entire length and width (to a compacted depth of 6 inches) of new roads constructed by GRANTEE and any existing roads on the Real Property regularly used by GRANTEE.
- iii) Erosion Prevention. New roads shall be aligned and graded to permit drainage by longitudinal and transverse drainage systems (both natural and artificial wherever needed or required) sufficiently to prevent serious impairment of the road by normal surface water. Drainage control shall be ensured through the use of drainage dips, out sloping, in sloping, natural rolling topography, ditch turnouts, or culverts. Spacing of dips, broad-based drainage dips, culverts, and turnout ditches will depend on cross slope, road grade, and soil type. Drainages will be constructed as necessary to prevent head cuts or other forms of accelerated erosion or damage on adjacent areas.
- iv) Culverts and Water Flow. If a new road crosses ditches, gullies, or small arroyos, culverts shall be used where practicable to prevent cross flow of water and washing of road material. For flows crossing broad shallow washes where the construction of a culvert is not practical or desirable, the road may be dipped to allow the entire flow to cross the road in a broad flow to lessen cutting erosion. Where the road crosses large gullies and arroyos, or live water, the crossing shall be bottomed in concrete in the bottom and up each side to a sufficient elevation above high water flow to prevent undercutting the concrete. All culverts shall be placed in the natural flow line and channel whenever possible and culverts shall have a minimum of one foot of fill cover beneath the road surface.

d) Repair and Maintenance of Roads. GRANTEE must repair any damage done by GRANTEE (or GRANTEE'S agents, invitees, employees, contractors, or subcontractors) to GRANTOR'S existing roads and any new roads constructed by GRANTEE. GRANTEE shall blade all roads and add caliche when necessary to repair damage to the roads unless such damage was clearly caused by a person or entity other than GRANTEE. All roads shall be maintained in a condition that allows reasonable access, and with regard to existing roads, shall be maintained in at least the condition that existed prior to GRANTEE'S use.

e) Ownership of Roads. GRANTOR is and shall remain the owner of all existing and new roads on the Real Property, subject to GRANTEE'S easement rights.

7) *Pipeline and Other Facilities.* The Pipeline and other Facilities on and across the Real Property shall be subject to the following specifications:

a) *Location of Facilities.* GRANTEE shall use reasonable efforts to accommodate GRANTOR with regard to location of any Facilities as long as (i) GRANTEE'S costs are not materially increased by such location and (ii) GRANTEE'S access and use of the Facilities is not materially adversely affected. GRANTEE shall use reasonable efforts to minimize interference with GRANTOR'S surface use. The Pipeline may be adjacent to but, shall not be located under a road, except to pass under a road.

b) *Prior Notification.* At least thirty days prior to the beginning of any construction activity by GRANTEE on the Real Property, GRANTEE shall provide the GRANTOR with a copy of all plans for the activity, including, without limitation, the construction of the Pipeline, fences, gates, cattle guards or other Facilities. This provision shall not apply to GRANTEE'S repair, maintenance or operation activities.

c) *Depth of Pipeline.* The Pipeline shall be buried at least thirty-six inches below existing grade on rangeland and cultivated land. These measurements are to be from the top of the Pipeline to the surface of the Real Property, as it exists at the time the engineering plans for the Pipeline are prepared.

d) *Width of Pipeline Area.* During construction of Pipeline, GRANTEE shall have right to use that part of the Real Property designated for construction purposes as shown on the survey attached hereto and incorporated herein as Exhibit "A". After construction is complete, GRANTEE shall have the right to use that part of the Real Property lying parallel to and fifteen (15) feet on either side of the center of the Pipeline for maintenance and patrolling of the Pipeline.

e) *Ditches.* In digging ditches for the Pipeline, GRANTEE shall "double ditch." This means that GRANTEE will separate the lesser of (i) the available topsoil, or (ii) eighteen inches of the topsoil from any underlying clay, caliche, or other subsoil and when refilling the ditch shall place these materials in the ditch as they were removed, with the topsoil on the top. GRANTEE will fill all ruts and holes and restore the grade as closely as reasonably possible to its original grade. GRANTEE shall leave no condition that would be likely to cause erosion. GRANTEE shall leave the Real Property in substantially the same condition it was in prior to entry and construction by GRANTEE. The same rules shall apply each time GRANTEE reopens a ditch for repair, maintenance, removal, reinstallation, or any other purpose.

f) *Access by GRANTOR.* During construction of the Pipeline, when a ditch is open or when pipe is placed along a ditch, upon the request of the GRANTOR, GRANTEE will provide crossovers for GRANTOR to access the Real Property and other property of GRANTOR.

g) *No Additional Cuts.* No cuts in the surface of the ground leading to or away from the Pipeline shall be made.

h) *Crossing Water.* Where the Pipeline crosses rivers, creeks, or other channels of water, GRANTEE shall construct the Pipeline so as not to interfere with the natural flow of these channels.

i) Removal of Obstructions. GRANTEE shall have the right to remove obstructions that may injure, endanger, or unreasonably interfere with GRANTEE'S use of the Real Property. However, GRANTEE shall not remove or alter any improvements located on the Real Property other than fences and roads unless constructed over GRANTEE'S Facilities, constructed at a proximity to GRANTEE'S Facilities that unreasonably interferes with GRANTEE'S access to or use of its Facilities or easement rights, or constructed in violation of the provisions of this Easement. GRANTEE shall have the right to trim, cut down, and clear away any brush now or later located on the Real Property, provided that the brush is unreasonably interfering with GRANTEE'S use of the surface of the Real Property. GRANTEE shall exercise reasonable care in removing any brush from the Real Property. GRANTEE shall lawfully dispose of all removed brush off of the Real Property.

j) Above Ground Appurtenances. Except as required by Applicable Law or required to operate the Pipeline in a reasonably prudent manner, no above ground appurtenances relating to Pipeline shall be permitted. All appurtenances above ground shall be marked with a sign indicating their nature and location. GRANTEE shall use reasonable efforts to accommodate GRANTOR with regard to location of any above ground appurtenances as long as (i) GRANTEE'S costs are not materially increased by such location and (ii) GRANTEE'S access or use is not materially adversely affected.

k) Location of Facilities. GRANTEE shall use reasonable efforts to accommodate GRANTOR with regard to location of any Facilities as long as (i) GRANTEE'S costs are not materially increased by such location and (ii) GRANTEE'S access and use is not materially adversely affected. GRANTEE shall comply with all requirements of TESS as they may be changed from time to time. GRANTOR and GRANTEE shall utilize TESS prior to any construction on the Real Property. GRANTEE shall from time to time provide to GRANTOR upon GRANTOR'S request, during GRANTEE'S normal business hours, the opportunity to examine, at GRANTEE'S offices, maps or surveys available to GRANTEE indicating the location of all Facilities, including, without limitation, the underground Pipeline.

l) Abandonment of Pipeline. Upon GRANTEE'S abandonment of the Pipeline, GRANTEE shall have a period of one year or such longer period as the parties may agree to in writing, in which to remove the Pipeline and all equipment appurtenant to the Pipeline. If the Pipeline and related equipment are not removed within this time, title to them shall automatically transfer to GRANTOR.

8) *Fences, Gates, and Cattle Guards.* If GRANTEE is required to cut or otherwise disturb any of GRANTOR'S fences in GRANTEE'S operations on the Real Property, prior to cutting any fences, GRANTEE shall H-frame the fence on either side of the proposed cut. If GRANTEE elects to maintain an opening in any of GRANTOR'S fences in GRANTEE'S operations on the Real Property, GRANTEE shall, at GRANTEE'S sole expense, install in the opening a good and substantial metal gate capable of turning livestock. For an opening in any interior fence, GRANTEE shall have the option, at GRANTEE'S sole expense, to install a cattle guard sufficient to handle oil field traffic and normal ranch traffic at the opening (not smaller than 6 feet by 15 feet), instead of a gate, provided that GRANTEE maintains the cattle guard (including, without limitation, the removal of trash, brush, and silt deposits). Adjacent to every cattle guard placed on the Real Property by GRANTEE there will be installed by GRANTEE, at

GRANTEE'S sole expense and at GRANTOR'S option, a swinging (or hinged) metal gate with pipe corners through which livestock may be moved. All fence repair and construction shall be substantially similar to the construction of existing fences on the Real Property, except that pipe corners shall always be used. Fence corners and gate supports shall be set in concrete in a good and workman like manner. Notwithstanding anything to the contrary herein, GRANTEE shall be responsible for any loss of livestock or damages caused by livestock because of GRANTEE'S failure to properly close gates or to properly contain livestock when working on gates, cattle guards, or fences. All gates and cattle guards installed on the Real Property shall be considered permanent improvements and shall remain as permanent fixtures. Any new fencing shall be constructed using steel posts set no farther apart than twelve feet.

9) *Gate Protocols.* All gates on the Real Property shall remain "as is" and unaffected by ingress and egress; that is, if interior or exterior gates are found open, they shall be left open after passage, and if interior or exterior gates are found closed, they shall be closed after passage. If GRANTEE is unable to reasonably comply with this requirement and see to it that its agents, invitees, employees, contractors, or subcontractors keep gates open or closed as found by those using the gates, GRANTOR shall have the right to require any or all of the following measures: (a) prior notice before entry, (b) the installation and maintenance of cattle guards with gates or pole barriers adequate to handle anticipated truck traffic at all fence crossings utilized by GRANTEE, whether or not these crossings existed prior to the date of this Easement, (c) any other measure that insures compliance with the gate requirements of access.

10) *General Operations.* GRANTEE shall observe the following rules in its operations on the Real Property:

a) *Clean Up.* During installation of the Facilities, GRANTEE shall clean up the area around the installation and remove all debris. Upon completion of any construction or maintenance activities by GRANTEE on the Real Property, (i) GRANTEE shall remove all trash and debris caused by GRANTEE; (ii) GRANTEE shall fill or plug all holes drilled or dug by GRANTEE; and (iii) all Facilities locations of GRANTEE will be smoothed and neat, and no condition that would cause erosion will be left uncorrected by GRANTEE if that condition was caused by GRANTEE'S operation.

b) *Maintenance.* GRANTEE shall at all times maintain the Facilities in accordance with Applicable Law. GRANTEE shall promptly rebury all parts of the Pipeline that become exposed by erosion after discovery by GRANTEE or notice to GRANTEE unless such condition was clearly caused by a person or entity other than GRANTEE. GRANTEE shall promptly correct any erosion problem in the area of the Pipeline caused by the Pipeline or GRANTEE'S activities after discovery by GRANTEE or notice to GRANTEE. GRANTEE will keep and maintain, or cause to be kept and maintained, all Facilities in a good state of appearance and repair (except for reasonable wear and tear) at GRANTEE'S expense. If any Facility is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, GRANTEE shall repair, reconstruct, replace, or remove any damaged or destroyed Facility.

c) *Treatment of Spills.* All spills on the Real Property shall be immediately remediated in accordance with Applicable Law.

d) No Cutting of Trees. GRANTEE shall avoid cutting, damaging, or destroying trees, unless GRANTEE determines it is reasonably necessary to do so.

e) Removal of Unused Equipment. Upon completion of any stage of any operation on the Real Property, GRANTEE shall collect, carry off, and remove all trash, junk, unused or unusable equipment, containers, or fixtures, and any other personalty not necessary for the Facilities. After final completion of construction, repair, maintenance removal or replacement activities, GRANTEE shall not store any equipment on the Real Property that is not currently in use or which GRANTEE does not intend to use within the following six-month period. If GRANTOR determines that GRANTEE is storing equipment (including, without limitation, pipe and general junk) on the Real Property in violation of this Section 10, GRANTOR shall give GRANTEE thirty days written notice of the violation. If within 30 days after its actual receipt of such notice, GRANTEE disputes that the equipment is being stored in violation of this provision, the parties shall have the rights and obligations set out in Section 12(a). Any equipment that remains on the Real Property for a period in excess of thirty days after the notice to GRANTEE and which is not disputed by GRANTEE as described above in this paragraph, at GRANTOR'S option, (i) will automatically become the property of GRANTOR or (ii) GRANTOR may have it removed and GRANTOR may charge GRANTEE 150% for the actual reasonable cost of removal.

f) Trash. GRANTEE shall provide on the Real Property trash containers capable of holding (without blowing out) all trash produced by GRANTEE'S operations on the Real Property. Trash shall never be buried on the Real Property but shall be removed from the Real Property. Old fence posts and wire removed or replaced shall be disposed of off the Real Property. GRANTEE shall instruct all employees and subcontractors to place their trash into these containers and not to litter the Real Property at any time.

g) Noise. GRANTEE shall place sound muffling equipment on all equipment used on the Real Property to keep sound emissions at a minimum.

h) Lights. GRANTEE shall not place any strobe lights, beacon lights, or other continuously lighted night lights on the Real Property unless such are required by law, regulation, or are necessary for prudent operation.

i) No Pollution. GRANTEE shall, at all times, use reasonable efforts to perform its work in such a manner as to (i) not pollute the streams, creeks, and underground water located on the Real Property and (ii) substantially minimize the possibility of polluting the air, land, or bodies of water. GRANTOR shall, at all times while GRANTOR owns the Real Property, use reasonable efforts to use (and to cause the Grantor's tenants, licensees, agents, and invitees to use) the Real Property in such a manner as to (iii) not pollute the streams, creeks, and underground water located on the Real Property and (iv) substantially minimize the possibility of polluting the air, land, or bodies of water.

j) Employee Conduct. GRANTEE shall impose upon its agents, invitees, employees, contractors, or subcontractors and on the agents, invitees, and employees of its contractors and subcontractors, (i) 20 MPH speed limits on the Real Property, (ii) prohibitions against hunting or fishing, (iii) prohibitions against possession or discharge of firearms of any kind, and (iv) prohibitions against any other use of the Real Property for recreational purposes. No alcohol shall ever be possessed or consumed on the Real Property. GRANTEE shall be responsible for

assuring compliance by its agents, invitees, employees, contractors, and subcontractors and the agents, invitees, and employees of its contractors and subcontractors with all of the terms and conditions stated in this Easement.

k) **Mud Holes.** GRANTEE shall use reasonable efforts to repair, as soon as possible, all mud holes that develop on roads on the Real Property (unless such condition was clearly caused by a person or entity other than GRANTEE) so that persons using the roads do not drive around the mud holes, thus creating new roads. GRANTEE shall also instruct its agents, invitees, employees, contractors, or subcontractors to avoid driving around these mud holes. If a mud hole is not repaired within 30 days after written notice to GRANTEE of the existence of the mud hole, weather permitting, (and unless such condition was clearly caused by a person or entity other than GRANTEE), GRANTOR may have the mud hole repaired and GRANTEE shall reimburse GRANTOR the actual cost of repairs, which amount, plus \$500.00 per occurrence, shall be paid by GRANTEE to GRANTOR within 30 days.

l) **No Liens.** The Real Property must at all times be kept free of mechanics' and materialmen's liens for labor, services, supplies, equipment, or materials purchased by GRANTEE.

m) **Compliance with Applicable Law.** In their respective operations on the Real Property, GRANTEE and GRANTOR shall take all necessary precautions and measures at all times to ensure compliance with all Applicable Laws and each shall ensure that its agents, invitees, employees, contractors, or subcontractors also comply.

n) **Payment of Taxes by GRANTEE and GRANTOR.** GRANTEE shall timely pay to the appropriate taxing authority all rollback taxes and other increases in ad valorem real property taxes that are due because of a change in classification of any portion of the Real Property from its existing classification (which is agricultural), when the rollback tax assessment or increases are caused solely by activities of GRANTEE. GRANTOR shall be liable for the payment of all rollback taxes that are assessed against the Real Property due to a change in ownership of the Real Property or a change in use of the Real Property by GRANTOR, its successors or assigns (other than GRANTEE or GRANTEE'S successors and assigns). GRANTEE will timely pay to the appropriate taxing authority any ad valorem real property taxes or personal property taxes (and other charges levied on or assessed) against the GRANTEE'S easement estate or against GRANTEE'S equipment or fixtures placed on the Real Property by GRANTEE. GRANTEE will timely pay all these taxes, charges, and assessments due by GRANTEE directly to the public officer charged with their collection, and GRANTEE will, to the extent not prohibited by Applicable Law, indemnify the GRANTOR and hold the GRANTOR harmless from all of these taxes, charges, and assessments. GRANTEE may, in good faith, at its own expense (in its own name or in that of the GRANTOR, or both, as GRANTEE may determine appropriate), contest any of these taxes, charges, and assessments and must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due. GRANTOR shall timely pay all taxes owed against the Real Property except for any taxes which are GRANTEE'S obligation as stated herein. In the event GRANTOR fails to do so, GRANTEE may, but shall not be obligated to, pay such taxes and shall be subrogated to all rights of the taxing authority in connection with the taxes so paid.

11) **Surface Restoration.** Within 90 days after installation of each of the Facilities has been completed, and within 90 days after any additional disturbance of the surface of the Real

Property by GRANTEE or within the time period otherwise indicated below, GRANTEE shall restore the surface of the Real Property in accordance with the following terms:

a) Removal of Materials. If requested by GRANTOR and unless otherwise agreed by the GRANTOR and GRANTEE, GRANTEE shall remove and dispose of (off the Real Property) excess construction material used for roads on the Real Property.

b) Re-Vegetation. All areas of the Real Property disturbed by GRANTEE shall be re-vegetated with a sufficient quantity of native grass to assure substantial grass conformity with the surrounding vegetation and to the approximate condition existing prior to GRANTEE'S commencement of work. This re-vegetation shall be accomplished at a time of the year most likely to achieve successful coverage and growth of the replacement vegetation. If successful re-vegetation is not accomplished on the first attempt, due to conditions other than disturbance of the area through GRANTOR'S use, GRANTEE shall repeat this to the extent reasonably determined by GRANTEE to be required to restore the Real Property as nearly as possible to its condition prior to disturbance by the GRANTEE.

c) Repair of Area. As to the area of land under which a Pipeline or other Facility is placed, or upon which machinery is used, regardless of whether Pipeline ditches are dug in the area, hardpan of packed lands shall be broken up, and terraces or roads shall be reconstructed and restored.

12) *Miscellaneous.*

a) Dispute Resolution. In the event a dispute arises between the Parties with regard to the Easement or the Real Property, or the rights or obligations of the parties as set forth in this Easement, the aggrieved party shall provide written notice of its complaint or claim to the other party, with sufficient specificity to enable the recipient to determine the cause and nature of the complaint. Upon receipt of such notice, the receiving party will have a reasonable period of time, not to exceed 30 days, in which to respond in writing to the other party. If the Parties are not able to resolve the issues to their mutual satisfaction through negotiation within 30 days after the commencement of negotiations, or within such longer period of time as the parties may agree upon, then the parties agree to mediate the matter in good faith prior to instituting a suit for damages.

b) Indemnity. GRANTEE shall indemnify, defend, and hold GRANTOR harmless, to the extent not prohibited by Applicable Law, from and against any and all claims, liabilities, losses, costs, and expenses (including, without limitation, court costs, investigation fees, reasonable attorneys' fees, and related expenses) of any nature which may be asserted against or incurred by GRANTOR arising out of or in any manner occasioned by the negligent acts or omissions of GRANTEE, its employees, invitees, agents, representatives or persons with whom it contracts for:

- i) Damage to or loss of property owned or used by the GRANTEE or the GRANTEE'S agents, contractors, subcontractors, employees, invitees, licensees, or any other person or entity whose presence on the Real Property is related directly to GRANTEE'S presence on the Real Property; and/or

- ii) Injury to or death of any of the GRANTEE'S agents, contractors, subcontractors, employees, invitees, licensees, or any other person whose presence on the Real Property is related directly to GRANTEE'S presence on the Real Property.

GRANTEE'S indemnity under this paragraph shall not extend to any claims, liabilities, losses, costs, or expenses arising out of the negligence or willful or reckless act of GRANTOR, its agents, representatives, employees, invitees, or anyone with whom it contracts.

c) **Covenant Regarding Hazardous Materials by GRANTEE.** GRANTEE shall not violate any environmental law relating to the Real Property. GRANTEE shall, at GRANTEE'S sole cost and expense, remove or take remedial action with regard to any hazardous materials brought onto the Real Property by GRANTEE or its employees, agents, or contractors for which any removal or remedial action is required pursuant to any Applicable Law. GRANTEE shall take reasonable steps to conduct such removal or remedial action in a manner that minimizes any impact on the GRANTOR'S activities conducted at the Real Property. The GRANTOR shall cooperate with GRANTEE with regard to any scheduling or access to the Real Property in connection with any action required under this paragraph. If GRANTEE fails or refuses to take promptly any action required under this paragraph after the GRANTOR'S request, the GRANTOR may, but shall have no obligation to, perform or arrange for the performance of such action and GRANTEE shall, promptly upon demand therefore, reimburse the GRANTOR for all costs. If GRANTEE disputes its obligations or liability, the parties shall have the right to resolve the dispute as provided in Section 12(a).

d) **Title.** Upon GRANTEE'S abandonment of this Easement, the GRANTEE shall execute and deliver to the GRANTOR all documents reasonably necessary to indicate that the Easement, and all of GRANTEE'S Facilities, as well as all communications lines, electric power lines, and poles (and appurtenances) owned by GRANTEE and serving the abandoned Facilities, have been abandoned and title thereto has reverted to GRANTOR.

e) **Removal upon Abandonment.** GRANTEE shall remove all Facilities (excluding underground pipe and underground communications or power lines) that are abandoned and restore the Real Property to its approximate original condition to the extent reasonably practicable within twelve months after the date of such abandonment unless otherwise agreed to in writing by GRANTEE and GRANTOR. Upon abandonment of a Facility by GRANTEE, GRANTEE shall remove and dispose of (off of the Real Property) all concrete foundations and other concrete structures associated with such abandoned Facilities in a manner mutually acceptable to GRANTOR and GRANTEE.

f) **Electricity Use.** GRANTEE plans to construct or have constructed electric power lines on the Real Property to provide electric power and energy to Facilities placed on the Real Property by GRANTEE. If allowed by law and if permitted by GRANTEE'S electricity supplier, GRANTEE shall allow GRANTOR, at GRANTOR'S sole cost and risk, the opportunity to use electricity from these lines. GRANTOR must pay all costs for connecting to these lines. GRANTOR shall provide sub-meters to measure the amount of electricity used by GRANTOR. GRANTOR shall pay GRANTEE for GRANTEE'S cost of this electricity on a monthly basis. Monthly, GRANTOR shall read these meters, report to GRANTEE the amount of electricity consumed by GRANTOR, and pay GRANTEE for this electricity at the rates provided by GRANTEE to GRANTOR (rates indicating GRANTEE'S actual cost).

g) Covenants and Conditions to Run with the Land. The covenants and conditions stated in this Easement shall run with the land and be binding upon and inure to the benefit of the successors and assigns of GRANTOR and GRANTEE. Such covenants benefit the Real Property and both benefit and burden the groundwater estate reserved to GRANTEE by GRANTOR. The GRANTOR and GRANTEE agree that the provisions of this Easement relating to the rights and obligations of the parties with regard to the use of the Real Property shall be recorded in the real property records of the county or counties in which the Real Property is located.

h) Assignment. GRANTEE has the right (from time to time without the consent of the GRANTOR, but upon written notice to the GRANTOR) to assign this Easement, in whole or in part, including any obligation, right, title, or interest of GRANTEE under this Easement, in connection with the conveyance of the Groundwater. Each assignment shall be in writing executed by GRANTEE and the assignee and shall obligate the assignee to be bound by this Easement to the extent this Easement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to GRANTOR within 15 days after execution. From and after such assignment, GRANTOR agrees to look solely to the assignee for the performance of all obligations assigned to the assignee and agrees that GRANTEE shall be released from subsequently performing the assigned obligations and from any liability that results from the assignee's failure to perform the assigned obligations; provided, however, GRANTEE shall not be released until GRANTOR receives such assignment. No assignment by GRANTEE shall release GRANTEE from any liability that resulted from an act or omission by GRANTEE that occurred prior to the effective date of the assignment unless GRANTOR approves the release in writing.

[SIGNATURE PAGES TO FOLLOW]

Executed by the parties to be effective as of the Effective Date.

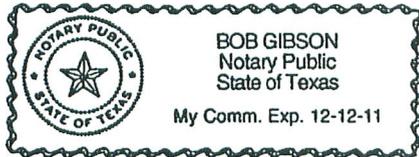
GRANTOR:

LX Cattle Company,
a Texas corporation

By: Miles B. Childers
Miles Childers, President

STATE OF TEXAS §
 §
COUNTY OF POTTER §

This instrument was acknowledged before me on the 25th day of February, 2010, by Miles Childers, President of LX Cattle Company, a Texas corporation, on behalf of said corporation.



Bob Gibson
Notary Public in and for the State of Texas

GRANTEE:

City of Amarillo, Texas

By: Alan M Taylor
Alan M. Taylor, City Manager

THE STATE OF TEXAS

§
§
§

COUNTY OF POTTER

This instrument was acknowledged before me on the 1 day of March,
20 by Alan M. Taylor, City Manager of the City of Amarillo, Texas, on behalf of said
Authority.



Frances Hibbs
Notary Public, State of Texas

My Commission Expires : 8/19/2011

After Recording Return to:
City of Amarillo
c/o Francis Hibbs
P.O. Box 1971
Amarillo, Texas 79105-19710

Exhibit "A"
Survey

[Attached]