

ORDINANCE 2023-01-26-0034

**APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT WITH HOOKS GAS PIPELINE, LLC, FOR USE OF CITY RIGHT-OF-WAY FOR THE PURPOSE OF INSTALLING AND MAINTAINING FACILITIES TO TRANSPORT NATURAL GAS THROUGH CITY LIMITS FOR END USE OUTSIDE OF CITY LIMITS.**

\* \* \* \* \*

**WHEREAS**, Hooks Gas Pipeline, LLC (Hooks), headquartered in Montgomery County, Texas, builds and operates natural gas pipelines in five Texas counties, namely Bexar, Comal, Denton, Harris and Montgomery; and

**WHEREAS**, Hooks requested a license agreement from the City to construct a natural gas pipeline through City limits to supply natural gas to other entities who will provide retail natural gas service outside of City limits; and

**WHEREAS**, the license agreement does not grant Hooks the authority or permission to provide, directly or indirectly, natural gas sales or distribution services to end users or retail customers within City limits; and

**WHEREAS**, the installation, maintenance, and repair of the facilities over or under the public right-of-way will be done in a manner consistent with all City of San Antonio regulations, including the Right-of-Way Management Ordinance and Utility Excavation Criteria Manual. **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The License Agreement between the City of San Antonio and Hooks Gas Pipeline, LLC is approved in substantially the same form as it appears in Exhibit A.

**SECTION 2.** The City Manager or designee is hereby authorized to execute the License Agreement and any and all documents necessary to fulfill the purpose and intent of this Ordinance.

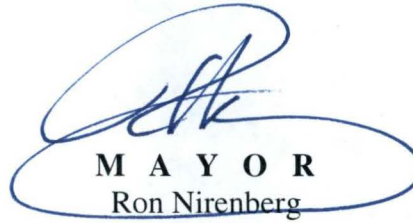
**SECTION 3.** Funds received for this ordinance will be deposited in Fund 11001000, Internal Order 207000000300 and General Ledger 4103130.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance is effective immediately upon the receipt of eight affirmative votes, or in the event eight affirmative votes are not received, on the tenth day after passage.

SZ  
01/26/23  
Item No. 25

**PASSED AND APPROVED** this 26<sup>th</sup> day of January, 2023.




**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



## City of San Antonio

### City Council Meeting January 26, 2023

25.

2023-01-26-0034

Ordinance approving a non-exclusive license agreement with Hooks Gas Pipeline, LLC, to use certain City rights-of-way for the purpose of installing, maintaining and operating natural gas transportation pipeline facilities, for an initial term of ten years. Revenue is estimated to be \$117,693.34 in FY 2023 and will be deposited into the General Fund.[Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer]

Councilmember Courage moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry



# **EXHIBIT A**

**(ROW License Agreement)**

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF SAN  
ANTONIO AND HOOKS GAS PIPELINE, LLC FOR USE OF PUBLIC RIGHT-OF-  
WAY**

This License Agreement ("License Agreement") is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "CITY" or "Licensor"), a Texas Municipal Corporation and Home-Rule Municipality, acting by and through its City Manager, or designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved by the City Council on \_\_\_\_\_, 2022; and Hooks Gas Pipeline, LLC, (referred to as "Hooks" or "Licensee"). CITY and Hooks may hereinafter be referred to collectively as the "Parties".

**WHEREAS**, Hooks desires the use of certain public right-of-way within the CITY as described in **Exhibit A** for the purpose of installing and maintaining and operating natural gas transportation pipeline Facilities as defined by this License Agreement; and

**WHEREAS**, the installation, maintenance, and repair of natural gas transportation pipeline facilities on and/or under the public right-of-way will be done in a manner consistent with all City of San Antonio regulations, including the City's Right-of-Way Management Ordinance and Utility Excavation Criteria Manual; and

**WHEREAS**, the fee schedule for use of the City's Right-of-Way is set forth in **Exhibit B**.

**NOW THEREFORE THE ABOVE PARTIES AGREE TO THE FOLLOWING:**

**SECTION 1. DEFINITIONS**

For purposes of this License Agreement the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- (a) "CITY" means the City of San Antonio, Texas, a home-rule municipality.
- (b) "Supervisor of Public Utilities" means the Supervisor of Public Utilities and Chief Financial Officer of the City of San Antonio.
- (c) "Director" means the Director of the City's Public Works Department.
- (d) "Excavation Manual" means the Utility Excavation Criteria Manual approved by the Director of Public Works on April 2, 2001 (as amended from time to time) pursuant to the authority granted to City Staff by the Right-of-Way Management Ordinance.
- (e) "Facilities" means any and all of Hooks' natural gas transportation pipeline system, and related equipment necessary for the installation and operation of natural gas lines and related equipment on and/or under the Right-of-Way as identified and described in this License Agreement.

RECEIVED  
JUN 29 2022  
CITY OF SAN ANTONIO, TEXAS



- (f) "Right-of-Way" or "Public Right-of-Way" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the CITY or over which the CITY exercises any rights of management control.
- (g) "Right-of-Way Management Ordinance" means the San Antonio Right-of-Way Management Ordinance passed by the San Antonio City Council on January 25, 2001 as Ordinance No. 93319, as codified in Chapter 29 of the CITY's Municipal Codes, and as amended.
- (h) "Right-of-Way Manager" means the Manager of the Right-of-Way Management Division of the Public Works Department.

## **SECTION 2. GRANTING CLAUSE**

- (a) The CITY hereby grants Hooks, a non-exclusive license to use and occupy the space on and/or below those portions of the CITY's Right-of-Way as particularly described in Exhibit A to this License Agreement in order to install, construct, replace, operate and maintain all necessary Facilities as that term is defined herein. The locations are generally described with particularity in Exhibit A, which is attached to this License Agreement and made a part hereof for all purposes. Within sixty (60) days of the effective date of this Agreement, Hooks, at its sole expense, shall supplement and clarify the locations by providing the CITY with a survey containing accurate metes and bounds descriptions for each location prepared by a registered professional land surveyor licensed by the State of Texas.
- (b) Hooks' use of the Right-of-Way shall be subject to the terms of the CITY's Right-of-Way Management Ordinance, the CITY's Utility Excavation Manual, the laws of the State of Texas, and the CITY's charter and ordinances, as they exist now or may be amended from time to time.
- (c) This license does not grant Hooks the authority to directly or indirectly engage in natural gas sales with or provide distribution services to end users or retail customers within the CITY'S municipal boundaries. Hooks shall not sell or distribute natural gas to end users or retail customers within the CITY's municipal boundaries. Additionally, Hooks shall not sell or transport natural gas to an affiliated entity that intends to sell or distribute natural gas to retail customers within the CITY's municipal boundaries that has not received a franchise or license agreement from the CITY for such purpose or that otherwise does not have the lawful authority to do so.

## **SECTION 3. TERM**

The License term and the rights, privilege and authority hereby granted shall be in full force and effect beginning upon final execution of this License Agreement, and shall continue in effect for an Initial Term of ten (10) years.



#### **SECTION 4. LICENSE RENEWAL PROCEDURES**

- (a) Upon application by Hooks this License Agreement may be renewed by the CITY for up to three (3) separate five (5) year Renewal Terms pursuant to the procedures established in this Section, and in accordance with the applicable laws, regulations, and rules of the State of Texas and the City of San Antonio.
- (b) At least six (6) months prior to the expiration of the then-current term of the License Agreement, Hooks shall inform the Office of the Supervisor of Public Utilities in writing of its intent to seek renewal of the License Agreement. During this time period, the Supervisor of Public Utilities may order a new appraisal of the Right-of-Way used by Hooks and adjust the fee schedules set out in Exhibit B, but no other terms of this License Agreement may be altered unless expressly authorized herein or unless mandated by ordinance or other law. The fee schedules set out in Exhibit B shall be adjusted to reflect actual measurements upon receipt of the surveys required by Section 2(a) above. Processing fees will apply to a renewal of the License Agreement for each location described in Exhibit A.

#### **SECTION 5. INDEMNITY**

- (a) **GENERAL INDEMNITY CLAUSE - LICENSEE COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of resulting from or related to the Licensee's activities under this Agreement, including any acts or omissions of the Licensee, any agent, officer, director, representative, employee, vendor or subcontractor of the Licensee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this section shall not apply to any liability resulting from the negligence of the CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IF THE LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The Licensee shall advise the CITY in writing within 24 hours of



any claim or demand against the CITY or the Licensee known to the Licensee related to, or arising out of the Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at the Licensee's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving the Licensee(s) of any of its obligations under this paragraph.

**Defense Counsel** - CITY shall have the right to select or to approve defense counsel to be retained by the Licensee in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. The Licensee shall retain CITY approved defense counsel within ten (10) business days of CITY'S written notice that CITY is invoking its right to indemnification under this License Agreement. If the Licensee fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and the Licensee shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

**Employee Litigation** - In any and all claims against any party indemnified hereunder by any employee of Licensee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Licensee or any subcontractor under worker's compensation or other employee benefit acts.

- (b) Licensee shall be liable for the acts and omissions of its own employees, officers, directors, and any contractors, subcontractors, representatives, agents, or any parties involved directly or indirectly in the construction, installation, maintenance of Licensee's Facilities and proprietary poles. Any act or omission of non-employees, officers, and directors shall be considered an act or omission of the Licensee.
- (c) **Duty to Indemnify Licensor Against Claims Arising from License Agreement.** Licensee shall defend, indemnify and hold the City and its officers, employees, and appointed and elected officials harmless against all damages, cost, loss or expense arising out of, incident to, directly or proximately resulting from the negligence or willful misconduct of Licensee, its employees, officers, directors, contractors, subcontractors, agents, or representatives in the performance of activities under this License Agreement for:
  - (1) the repair, replacement, or restoration of City property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective;



- (2) damage to or loss of the property of any person including, but not limited to Licensee, its agents, officers, employees and subcontractors, the City's agents, officers and employees, and third-parties; and
  - (3) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person no matter how, or to whom, the loss may occur.
- (d) **Licensor's Duty to Notify Licensee of Claims** – CITY shall give prompt written notice to Licensee of any claim for which the CITY seeks indemnification. Licensee shall have the right to investigate, defend, and compromise these claims subject to the City Attorney's prior approval. Said approval shall not be unreasonably withheld.
- (e) **Licensor's Consent to Settle Claims** – Licensee may not settle any claim subject to this Section without the consent of CITY, unless (1) the settlement will be fully funded by Licensee, and (2) the proposed settlement does not contain an admission of liability or wrongdoing by any elected officials, employees, officers, directors, volunteers or representatives of CITY. The CITY's withholding its consent as allowed in the preceding sentence does not release or impair Licensee of any obligations under this Section. Licensee must give CITY at least twenty (20) days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind CITY must first be approved by City Council.
- (f) **EXCLUSION OF DAMAGES - LICENSOR SHALL NOT BE LIABLE TO LICENSEE, OR ITS CUSTOMERS, AGENTS, REPRESENTATIVES, OR EMPLOYEES FOR ANY CLAIMS ARISING FROM THIS LICENSE AGREEMENT FOR LOST REVENUE, LOST PROFITS, LOSS OF EQUIPMENT, INTERRUPTION OR LOSS OF SERVICE, LOSS OF DATA; OR FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.**

## **SECTION 6. INSURANCE REQUIREMENTS**

- (a) Prior to the commencement of any work under this License Agreement, the Licensee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the Supervisor of Public Utilities, which shall be clearly labeled "*Hooks License Agreement for Use of Public Right-of-Way*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly



from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the Supervisor of Public Utilities, Finance Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

- (b) CITY reserves the right to review the insurance requirements of this Section during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY allow modification whereupon the CITY may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years.
- (c) The Licensee's financial integrity is of interest to the CITY; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage written on an occurrence basis, through self-insurance, or by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-, in the following types and for an amount not less than the amount listed below:

TYPE		AMOUNTS
1.	Workers' Compensation	Statutory
2.	Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3.	Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to property rented to you	For Bodily Injury and Property Damage of \$2,000,000 per occurrence; \$4,000,000 General Aggregate \$2,000,000 Products & Completed Operations or its equivalent in Umbrella or Excess Liability Coverage
4.	Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5.	Professional Liability (Claims-made basis)	See Attached Waiver
6.	Environmental Insurance – (Contractor's Pollution Liability (Claims – made coverage)	See Attached Waiver



TYPE		AMOUNTS
7.	Explosion, Collapse, Underground Property Hazard Liability	\$2,000,000 per claim
8.	Umbrella or Excess Liability Coverage	\$2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage. (per occurrence limit depends on scope of operation)

- (d) Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the CITY. The CITY shall have the option to suspend the Licensee's performance should there be a lapse in coverage at any time during this License Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this License Agreement.
- (e) In addition to any other remedies the CITY may have upon the Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the Licensee to stop work hereunder, and/or withhold any payment(s) which become due to the Licensee hereunder until the Licensee demonstrates compliance with the requirements hereof.
- (f) Nothing herein contained shall be construed as limiting in any way the extent to which the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee's or its subcontractors' performance of the work covered under this License Agreement.
- (g) It is agreed that the Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this License Agreement.
- (h) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License Agreement.
- (i) The Licensee and any subcontractors are responsible for all damage they cause to their own equipment and/or property.

#### **SECTION 7. ADMINISTRATION OF LICENSE**

- (a) The City Manager or her designee is the principal CITY officer responsible for the administration of this License Agreement. The Right-of-Way Manager shall review the operations of Hooks in the Right-of-Way under this License Agreement.
- (b) Hooks shall remit payment of all fees associated with this License Agreement to the address indicated below:



City of San Antonio  
Revenue Collections  
PO BOX 839975  
San Antonio, TX 78283

- (c) Hooks shall communicate with the Right-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of Hooks' Facilities in the Right-of-Way and report any material changes regarding Hooks' Facilities in the Right-of-Way.
- (d) Notices required by this License Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Notices given in this manner shall be effective as of the date of deposit thereof in the United States Mail. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to CITY shall be delivered as follows:

Finance Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
(210) 207-4229  
Attn: Public Utilities Division

City Clerk's Office  
City of San Antonio  
P.O. Box 839933  
San Antonio, Texas 78283-3933  
(210) 207-7253

Until any such change is made, notices to Hooks shall be delivered as follows:

Hooks Gas Pipeline, LLC  
Attn: Richard Bard  
9750 FM 1488 Rd  
Magnolia, TX 77354

Copies of petitions, applications, communications and reports submitted by Hooks to the Railroad Commission of Texas concerning or affecting this License Agreement shall be provided to the CITY concurrently with the filing of such documents.

## **SECTION 8. RECORDS**

- (a) Hooks shall keep complete and accurate maps and records of its Facilities. The CITY may require the keeping of additional records or maps that are reasonably necessary for purposes of identifying, accounting for, and reporting changes in Facilities.
- (b) The CITY may, at reasonable times and for reasonable purposes, examine, verify and review the documents, maps, plans and other records of Hooks pertaining to the Facilities installed in the Right-of-Way. Hooks shall make the above records



available to the CITY for review within ten (10) working days after requested by the Director or Right-of-Way Manager.

## **SECTION 9. COMPENSATION FOR USE OF RIGHT-OF-WAY**

In exchange for the use and occupancy of the Public Right-of-Way, Hooks shall be required to pay the fees as set forth in this **Section 9** and as shown in **Exhibit B**, that includes fees accruing before the date of this Agreement, which is attached to this License Agreement and made a part hereof for all purposes:

- (a) **Processing Fee.** Hooks shall remit to the CITY a one-time processing fee of twelve thousand, two hundred twenty-five dollars (\$12,225.00), which is comprised of a one-time processing fee of eight hundred fifteen dollars (\$815.00) for each road or Right-of-Way identified in **Exhibit A**, prior to final approval of this License Agreement by the City Council.
- (b) **Right-of-Way Access Fees.**
  - (1) The annual consideration amount for use of public Right-of-Way for the purpose of installing natural gas transportation pipelines and related Facilities is based on the fair market value of the Right-of-Way used by Hooks ("Right of Way Access Fee"). The licensed area must be as wide as Hooks will reasonably need to maintain the licensed Facilities but not more 20 feet. Once during the initial term of this agreement, the Supervisor of Public Utilities in his discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the Right-of-Way subject to this License Agreement. Hooks will be responsible for paying the Right-of-Way appraisal separate from the processing fee. The Supervisor of Public Utilities has determined an initial fair market value based on a per-linear-foot basis of the Right-of-Way area associated with the Hooks pipeline footprint as shown in **Exhibit B**. The fair market value and per-linear-foot compensation in this agreement is subject to change based on the appraisal once in the initial term of the agreement, at the sole discretion of the Supervisor of Public Utilities. An annual escalation factor of four (4) percent has been applied to the consideration amount for year one in order to derive the consideration amount for years two (2) to ten (10) of the license term. The Right-of-Way Access Fee has been determined according to the process above and is shown in **Exhibit B**. The Right-of-Way Access Fee established herein is the sole and exclusive charge to Hooks for use of the Right-of-Way for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of its Facilities.
  - (2) The licensing fee will authorize Hooks to install Facilities on CITY Right-of-Way, but does not grant authority to use poles or other infrastructure of the CITY or utility agencies. The Right-of-Way Manager or Director of Public Works may require Hooks to sign and deliver an agreement setting



out the applicable license fee and conditions imposed by CITY departments and utility agencies. When reasonably conducive to the efficient use of the property on which Facilities are located, the Right-of-Way Manager or Director of Public Works may require Hooks to relocate the Facilities, including all related equipment, at Hooks' expense.

- (3) Following termination of this License Agreement for any reason, Hooks must remove or otherwise dispose of all Facilities at its own expense within one hundred eighty (180) days, unless otherwise agreed to by Hooks and the CITY. Hooks shall also be responsible for expenses incurred by the CITY to remove or otherwise dispose of abandoned Facilities authorized by this Agreement.

- (c) **Right-of-Way Access Fees Due quarterly.** Hooks shall remit the Right-of-Way Access Fees on a quarterly basis. Payments must be delivered no later than the fifteenth day after the end of each quarter after the date of execution of this Agreement by both parties. Each payment shall be accompanied by a statement explaining that the payment is made pursuant to this License Agreement.

#### **SECTION 10. ASSIGNMENT OF LICENSE AGREEMENT**

The rights granted by this License Agreement inure to the benefit of Hooks and this License Agreement shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the expressed written consent of the CITY, which may be administratively approved by the Supervisor of Public Utilities. Any such consent by the CITY shall not be unreasonably withheld. For the purposes of this Section, CITY consent is not required when an assignment, transfer, sale, disposal, merger or consolidation is between entities that control, are controlled by, or are under common control with Hooks.

#### **SECTION 11. CHANGE IN LAW**

Notwithstanding anything contained in this License Agreement to the contrary, in the event that this License Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, Hooks and the CITY shall meet and negotiate an amended License Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended License Agreement shall provide the CITY with a level of compensation comparable to that set forth in this License Agreement.

#### **SECTION 12. VENUE AND GOVERNING LAW**

- (a) **VENUE OF ANY COURT ACTION BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS. THE PROVISIONS OF THE LICENSE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND**



**ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN BEXAR COUNTY, TEXAS.**

- (b) This License Agreement shall be construed in accordance with the CITY Charter and Municipal Code(s) in effect on the date of passage of this License Agreement, and as may be subsequently amended, to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

**SECTION 13. LICENSE AGREEMENT VIOLATIONS AND TERMINATION**

The Supervisor of Public Utilities shall have the right to declare this License Agreement terminated at any time for failure of Hooks to comply with any term, condition, or provision of the License Agreement, including a challenge of this License Agreement, as further provided below.

- (a) If Hooks initiates a challenge, legal or otherwise, to the validity of any part of this License Agreement, the entire agreement, all permits and permit applications to use Public Right-of-Way or a municipal facility is declared null and void as of the challenge date.
- (b) Hooks shall inform the CITY no later than the second day after initiating such a challenge. Failure to provide the CITY with notice constitutes a material breach of the License Agreement.
- (c) Hooks shall remove all Facilities installed in Public Right-of-Way wherever located by no later than the 180th day after initiating the challenge, unless otherwise agreed to by Hooks and the CITY.
- (d) At its election, the CITY may remove any of Hooks' Facility that remains in or around Public Right-of-Way or CITY facility or property on or after the 181st day following Hooks' challenge without incurring liability for the removal. Hooks shall reimburse the CITY for all reasonable costs associated with the removal of the Facilities and restoration of the Right-of-Way.
- (e) As to violations, other than a challenge of the License Agreement, Hooks will have an opportunity to cure following notice from the CITY. If Hooks fails to cure a violation within thirty (30) days after receiving written notice, then the CITY may pursue termination of this License Agreement. Any termination shall be provided to Hooks in writing by the Director.
- (f) Notwithstanding any other provision in this Agreement, Hooks shall not have an opportunity to cure a violation of Section 2(c). Upon the occurrence of a violation of Section 2(c), the CITY shall have the option to terminate this Agreement by providing notice to Hooks. Upon termination hereunder, the parties shall follow the processes set forth in subparts (c) and (d) of this Section 13.



#### **SECTION 14. NON-BINDING MEDIATION**

- (a) Prior to filing suit, the parties to this License Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under the License Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License Agreement or the preemptive effect of federal law.
- (b) To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator shall be designated by JAMS at the request of a Party. Any mediator so designated shall be acceptable to both Parties. The mediation will be conducted as specified by the mediator and agreed to by the Parties.
- (c) The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code § 154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (d) Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties.

#### **SECTION 15. WAIVER**

None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by Hooks and CITY, as authorized by City Council by passage of an ordinance. Failure of either Party to require the performance of any term in this License Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

#### **SECTION 16. SEVERABILITY**

If any clause or provision of the License Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this License Agreement, it is the intention of the Parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this License Agreement that is illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

#### **SECTION 17. CAPTIONS**

The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.



#### **SECTION 18. EXTENT OF LICENSE AGREEMENT**

This License Agreement, together with any attached exhibits and the authorizing ordinance, embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to this Agreement.

#### **SECTION 19. MODIFICATION**

This License Agreement may not be changed orally and no modification, amendment, or waiver of any provision contained in this License Agreement, or any future representation, promise or condition in connection with the subject matter of this License Agreement shall be binding upon either Party unless made in writing, approved by the City Council, and signed by both Parties.

The City Manager, his designee, or the Supervisor of Public Utilities shall have the authority to enter into an amendment of this License Agreement without further action by the City Council in order to: (a) make additions, expansions or other similar adjustments to the locations lines identified in **Exhibit A** hereto and to recalculate the Right-of-Way Access Fee in accordance with such additions, expansions adjustments or appraisals; and (b) renew this License Agreement in accordance with the license renewal procedures provided herein.

#### **SECTION 20. AUTHORITY**

The signer of this License Agreement for Hooks hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of Hooks.

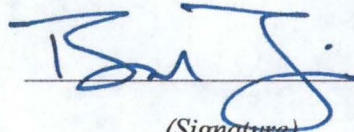
[Signature Page Follows]

**EXECUTED** and **AGREED** to as of the dates indicated below to be effective the date of the ordinance authorizing this Agreement.

**CITY OF SAN ANTONIO**

**HOOKS GAS PIPELINE, LLC**

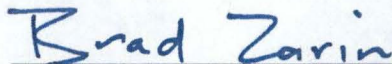
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

Printed Name:

Printed Name:

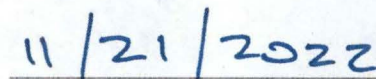
\_\_\_\_\_  
Title:

  
\_\_\_\_\_  
Title:

Date:

Date:

\_\_\_\_\_

  
\_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



# **EXHIBIT A**



City of San Antonio / Hooks Gas Pipeline ROW User Agreement  
ROW Access Locations

Exhibit A

<u>ROW Access Locations</u>	<u>Linear Feet</u> <u>(Approximate)</u>	<u>Approx. Begin Point</u>	<u>Approx. End Point</u>	<u>Hooks Gas Notes</u>
Southton Road	4,385	-98.386468°, 29.278212°	-98.400072°, 29.283565°	Constructed 08/2020
Green Road	5,172	-98.278561°, 29.452531°	-98.267382°, 29.456567°	Constructed 08/2021
Watson Road	15,292	-98.574655°, 29.272449°	-98.604095°, 29.294702°	
S Zarzamora Road	14,083	-98.557446°, 29.292325°	-98.532298°, 29.319644°	
E Chavaneaux Road	5,211	-98.494167°, 29.320860°	-98.477666°, 29.320898°	
Fischer Road	6,612	-98.604186°, 29.294788°	-98.615768°, 29.309372°	
Southton Road	3,018	-98.386468°, 29.278212°	-98.378759°, 29.273672°	
Green Road	3,813	-98.278647°, 29.452344°	-98.289161°, 29.457538°	
Weichold Road	4,058	-98.293775°, 29.465815°	-98.306113°, 29.468841°	
S WW White Road	1,747	-98.399666°, 29.325018°	-98.399731°, 29.329826°	
New Sulphur Springs Road	6,700	-98.341173°, 29.358447°	-98.320616°, 29.353996°	
Streich Road	3,807	-98.378759°, 29.273672°	-98.370026°, 29.280803°	
Old Corpus Christi Road	5,995	-98.370026°, 29.280803°	-98.359168°, 29.267682°	
N Graytown Road	4,047	-98.267382°, 29.456567°	-98.261025°, 29.466265°	
S Pfell Road	4,351	-98.261025°, 29.466265°	-98.253966°, 29.476988°	
Total	88,291			



# **EXHIBIT B**



City of San Antonio / Hooks Gas Pipeline ROW User Agreement  
Fee Calculation

Exhibit B

Annual Fee per Linear Foot	\$1.63
Minimum Muni Code Sec 37-9	\$8,150.00
One-Time Application Fee	\$815.00
Escalation	4.0%

<u>ROW Access Locations</u>	<u>Linear Feet</u> <u>(Approximate)</u>	<u>Application</u> <u>Fee</u>	<u>Annual LF</u> <u>Access Fee</u>	<u>Application of</u> <u>Minimum</u>	<u>Fees in</u> <u>Arrears</u>	<u>Hooks Gas Notes</u>
Southton Road	4,385	\$ 815.00	\$ 7,147.55	\$ 8,150.00	\$ 16,300.00	Constructed 08/2020; 2 years' prior ROW fees to be added...)
Green Road	5,172	\$ 815.00	\$ 8,430.36	\$ 8,430.36	\$ 8,430.36	Constructed 08/2021; 1 year's prior ROW fees to be added...)
Watson Road	15,292	\$ 815.00	\$ 24,925.96	\$ 24,925.96		
S Zarzamora Road	14,083	\$ 815.00	\$ 22,955.29	\$ 22,955.29		
E Chavaneaux Road	5,211	\$ 815.00	\$ 8,493.93	\$ 8,493.93		
Fischer Road	6,612	\$ 815.00	\$ 10,777.56	\$ 10,777.56		
Southton Road	3,018	\$ 815.00	\$ 4,919.34	\$ 8,150.00		
Green Road	3,813	\$ 815.00	\$ 6,215.19	\$ 8,150.00		
Weichold Road	4,058	\$ 815.00	\$ 6,614.54	\$ 8,150.00		
S WW White Road	1,747	\$ 815.00	\$ 2,847.61	\$ 8,150.00		
New Sulphur Springs Road	6,700	\$ 815.00	\$ 10,921.00	\$ 10,921.00		
Streich Road	3,807	\$ 815.00	\$ 6,205.41	\$ 8,150.00		
Old Corpus Christi Road	5,995	\$ 815.00	\$ 9,771.85	\$ 9,771.85		
N Graytown Road	4,047	\$ 815.00	\$ 6,596.61	\$ 8,150.00		
S Pfell Road	4,351	\$ 815.00	\$ 7,092.13	\$ 8,150.00		
Total	88,291	\$ 12,225.00		\$ 161,475.95	\$ 24,730.36	

Year 2	\$167,934.99
Year 3	\$174,652.39
Year 4	\$181,638.48
Year 5	\$188,904.02
Year 6	\$196,460.18
Year 7	\$204,318.59
Year 8	\$212,491.33
Year 9	\$220,990.99
Year 10	\$229,830.63