

ORDINANCE 2021 - 01 - 21 - 0031

APPROVING A NON-EXCLUSIVE TWENTY-FIVE YEAR LICENSE AGREEMENT WITH WEST TEXAS GAS INC. FOR USE OF CITY RIGHT-OF-WAY FOR THE INSTALLATION AND OPERATION OF FACILITIES TO SELL AND TRANSPORT NATURAL GAS; WEST TEXAS GAS, INC. WILL PAY THE CITY 3% OF GROSS REVENUES FROM SALES WITHIN THE LICENSED AREA.

* * * * *

WHEREAS, West Texas Gas, Inc. (“WTG”) is a natural gas distribution utility regulated by the Railroad Commission of Texas and provides services to residential and commercial locations in Oklahoma and Texas; and

WHEREAS, under state law natural gas distribution companies such as WTG have the right to access municipal right-of-way subject to consent from the City and an agreement to abide with City regulations; and

WHEREAS, WTG has provided service to communities south and west of San Antonio since 1999, and because of annexation, WTG now has facilities located within the City limits in the southwest and west side of San Antonio and providing service to two schools south of Loop 410 and east of Somerset road; and

WHEREAS, this action authorizes a twenty-five year License that defines a Licensed Area in which WTG may operate, on the condition that WTG pay the City 3% of gross revenues derived from the operation of its natural gas facilities within the Licensed Area; and

WHEREAS, the installation, maintenance, and repair of natural gas 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. A twenty-five year License Agreement with West Texas Gas Inc. (WTG) to allow WTG to use the City’s rights-of-way to operate its gas distribution facilities within a Licensed Area in consideration of 3% of gross revenues that are derived from the gas system within the Licensed Area to be paid to the City, is hereby approved. The License Agreement, in substantially final form, including a map of the Licensed Area, is attached hereto and incorporated herein as **EXHIBIT “A”**.

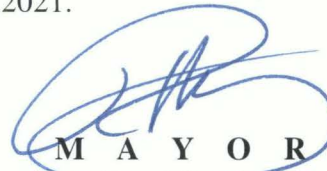
SECTION 2. The City Manager or designee is hereby authorized to execute the License Agreement and all documents necessary to fulfill the purpose and intent of this Ordinance.

SECTION 3. Funds generated by this Ordinance will be deposited into the General Fund in accordance with the FY 2021 Adopted Budget.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance 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 becomes 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.

PASSED AND APPROVED, this 21st day of January, 2021.

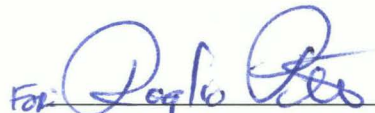

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:



Tina J. Flores, City Clerk



For: Andrew Segovia, City Attorney



City of San Antonio

City Council

January 21, 2021

Item: 16

File Number: 20-6889

Enactment Number:

2021-01-21-0031

Ordinance approving a non-exclusive twenty five year license agreement with West Texas Gas, Inc. for use of the City right-of-way for the installation and operation of facilities to sell and transport natural gas. West Texas Gas, Inc. will pay the City 3% of gross revenues from sales within the licensed area. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer]

Councilmember Roberto C. Treviño made a motion to approve. Councilmember Melissa Cabello Havrda seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

EXHIBIT A

License Agreement Between The City of San Antonio And West Texas Gas, Inc.

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LICENSE AGREEMENT

This License Agreement ("License") is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation and Home Rule municipality, acting herein through its City Manager, as Licensor (herein referred to as the **CITY**) and West Texas Gas, Inc. (herein referred to as **LICENSEE**).

WHEREAS, LICENSEE acquired a natural gas distribution system in 1999 from Hudson Natural Gas Company outside the corporate limits of the **CITY** to serve surrounding areas of Bexar County; and

WHEREAS, LICENSEE has made major capital investments in the system to serve the areas in which its lines are located; and

WHEREAS, the CITY has annexed some areas in which **LICENSEE'S** gas lines exist and may annex other areas in which **LICENSEE'S** lines may lay in the future; and

WHEREAS, this License is intended to resolve any and all past consideration that may be received by the **CITY** for the benefit of past use of its right-of-way already enjoyed by **LICENSEE**; and

WHEREAS, the CITY recognizes that **LICENSEE** has historically provided a valuable utility service to areas outside municipal boundaries and not generally served by the **CITY'S** municipally owned utility, City Public Service (CPS Energy); and

WHEREAS, it is the ultimate wish of both the CITY and the LICENSEE to establish and set forth the rights and obligations of **LICENSEE** within the **CITY**, to license and authorize continuance of **LICENSEE'S** utility system within the **CITY**, and to establish procedures (as set forth herein) for determining whether, in consideration of the public health, safety, and interest, further service within the **CITY** and further use of **CITY'S** streets, alleys, highways or public ways by future extensions of **LICENSEE'S** system within the **CITY** should be licensed, consistent with the **CITY'S** and CPS' bond covenants; and

WHEREAS, it is the CITY'S position that the **CITY** has issued billions of dollars of revenue bonds for improvements in its municipally owned electric and gas systems serving the **CITY** and its environs subject to a covenant included in its bond ordinances under which the **CITY** has agreed with its bondholders that, to the extent it legally may,

it covenants that "no franchise shall be granted for the installation or operation of any competing electric or gas system other than that owned by the City," and that "the operation of such systems by anyone other than the City is hereby prohibited;" and

WHEREAS, the **CITY** construes the covenants of its bond ordinances to require that its power to grant any franchise, or license having the effect of a franchise, for a competing gas system is limited to the minimum grant that would be required by law consistent with its police power obligations to its citizens and its contractual obligations to its bondholders; and

WHEREAS, consistent with the foregoing, the interests of both parties are served by an agreement recognizing those areas within the **CITY'S** corporate boundaries where facilities of the **LICENSEE** already exist, authorizing service by **LICENSEE** in such areas and providing for the payment for such service rights and for the use of the public rights-of-ways of the **CITY** by the **LICENSEE** for the **LICENSEE'S** natural gas lines, as provided for in this License; and

WHEREAS, the **CITY** and **LICENSEE** wish to resolve in advance potential disputes or conflicts arising from future annexations in areas served by **LICENSEE** by establishing a process to include future annexed areas within the terms of this License and the associated Licensed Area;

WHEREAS, unless modified by this License, pursuant to § 181.026 of the Texas Utilities Code **LICENSEE** is statutorily exempted from the **CITY'S** consent to use **CITY** rights-of-way within newly annexed areas to operate its existing facilities for a ten-year period of time following annexation;

WHEREAS, after careful consideration, the City Council of the City of San Antonio finds that it is consistent with the public health, safety, and interest that natural gas service be provided to areas of the **CITY** as specified in this License and the accompanying enabling ordinance providing authorization for the **LICENSEE** to utilize the **CITY'S** rights-of-ways as allowed by law in the specified area in return for the compensation provided for herein; **NOW THEREFORE, THE ABOVE PARTIES AGREE TO THE FOLLOWING:**

I. DEFINITIONS

1.1 "Licensed Area" means the area within the **CITY** corporate limits in which Public Rights-of-Way may be used by **LICENSEE** for the location of natural gas transmission, distribution, service mains, pipes, regulators, meters, and related service devices and other natural gas facilities (collectively, the "Natural Gas Facilities") under the authority and subject to the terms and conditions contained in this License. The outlined areas depicted in the maps attached hereto and incorporated herein as Exhibit A (West Texas Gas – South Area) and Exhibit A-1 (West Texas Gas – West Area) collectively constitute the Licensed Areas. The boundaries of the "South Area" begin at the intersection of Southwest Loop 410 and Interstate 35; then proceed in a southwesterly direction along the eastern boundary of Interstate 35 until reaching Fischer Road; then proceed in a southeastern direction along the northern boundary of Fischer Road until reaching Somerset Road; then proceeding in a southwestern direction along the western boundary of Somerset Road until reaching Old Somerset Road; then proceeding to the eastern boundary of Somerset Road; then proceeding in a northeasterly direction along the eastern boundary of Somerset Road until reaching Watson Road; then proceeding in a westerly direction along the northern boundary of Watson Road until reaching a private property line at 29°16'28.12"N, 98°35'1.08"W. From that point, the boundary proceeds North a distance of 326', thence East 325', thence South 143', thence East 398' to a point at 29°16'29.54"N, 98°34'52.81"W, thence proceeding North a distance of 2615', thence East 2293', thence North 95', thence East 373', thence South 158' to a point at 29°16'49.16"N, 98°34'18.83"W, thence proceeding in an Easterly direction a distance of 974', until reaching Palo Alto Road, all depicted in the South Area map; then proceeding in a northerly direction on the western boundary of Palo Alto Road until reaching Leon Creek; then proceeding along the western boundary of Leon Creek in a northerly direction until reaching Southwest Loop 410; then proceeding in a westerly direction along the southern boundary of Southwest Loop 410 until reaching Interstate 35.

The boundaries of the "West Area" begin at the intersection of Ray Ellison Blvd. and U.S. Highway 90 West; then proceeds in a southwesterly direction along the northern boundary of U.S. Highway 90 West past F.M. 1604 South until reaching Grosenbacher Road; then proceeding across U.S. Highway 90 West until reaching the southern boundary of U.S. Highway 90 West and then moving in a northeasterly direction along the southern boundary of U.S. Highway 90 West until reaching Ray Ellison Blvd.

1.2 "Public Rights-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 located inside the San Antonio corporate limits now or hereafter held by the **CITY** and over which the **CITY** exercises rights of management and control within the **CITY'S** corporate limits, and shall include other easements and rights-of-way as shall now be held or hereafter held by the **CITY** within **City's** corporate limits.

II. GRANTING CLAUSE

2.1 There is hereby granted by the **CITY** to **LICENSEE**, a nonexclusive license to provide natural gas service to the public within the Licensed Area and for the location of Natural Gas Facilities in conjunction with **LICENSEE'S** sale of natural gas in any and all Public Rights-of-Way located within the Licensed Area, as depicted on the attached maps, subject to the laws of the United States, State of Texas and the City Charter and the applicable laws of the City of San Antonio, as may be amended, and subject to the conditions outlined in this License.

2.2 **LICENSEE** may construct, erect, operate, access, improve, cathodically protect, repair, replace, inspect, and maintain in, upon, along, over, under, and across the present and future Public Rights-of-Ways within the Licensed Area its Natural Gas Facilities **LICENSEE** deems reasonably necessary for the provision of safe, reliable, and economical natural gas service. All of Licensee's operations within the Licensed Area must conform with any and all of the City's right-of-way rules, policies and regulations, including, but not limited to, Ordinance No. 93319, which was passed and approved on January 25, 2001 and became effective on May 1, 2001, and any future amendments thereto.

2.3 The right to use and occupy said streets for the purposes herein set forth shall not be exclusive, and the **CITY** reserves the right to grant a similar use of said streets to itself or to any person or entity at any time during the period of this License.

III. TERM

3.1 Term. Upon the final approval and execution by both parties, this License shall be deemed effective on _____, 2020 and shall expire twenty-five (25) years thereafter at 11:59 P.M. on _____, 2045.

3.2 Acceptance. This License shall be effective and in full force upon execution by both parties. By execution of this License, **LICENSEE** accepts without qualification, and **CITY** acknowledges and agrees to, the rights and privileges granted by this License, subject to the included terms and conditions expressly set forth herein.

IV. COMPENSATION TO CITY

4.1 Compensation to City. The **LICENSEE** shall pay the **CITY** a quarterly License Fee equal to 3% of the gross revenues received during the immediately preceding quarter from gas service provided by **LICENSEE** within the Licensed Area. "Gross revenues" for purposes of this License shall be all revenues from the sale of natural gas to all classes of customers served by **LICENSEE** and only exclude revenue from public schools, line extension charges, sales tax or other taxes which **LICENSEE** is required to collect under applicable state or federal law or regulation, and bad debt write-off. **LICENSEE** shall be responsible for providing sufficient proof of such exclusions with each payment. This payment shall include 3% of all gross revenues generated within areas that are annexed by the **CITY** in the future upon final annexation. **LICENSEE** agrees to waive its rights under Section 181.026 of the Texas Utilities Code and pay the 3% to the City immediately.

4.2 Payments that are required to be paid pursuant to Section 4.1 above are due to the **CITY** on the forty-fifth (45th) day following the last day of the preceding quarter. **LICENSEE** shall send a statement with the quarterly check that shows gross revenues by customer class by month and deductions from gross revenues allowed pursuant to Section 4.1 above to arrive at gross revenues that are subject to License Fee.

4.3 **LICENSEE** shall, unless otherwise directed in writing by **CITY**, send all payments and accounting reports to:

City of San Antonio
Office of Public Utilities, Finance Department
P. O. Box 839966
San Antonio, Texas 78283-3966

4.4 **LICENSEE** shall be assessed a late payment fee of six percent (6%) per annum on any outstanding balance past the date specified for payment until paid, unless prior written approval by the **CITY** has been granted for payment extension.

4.5 Other Assessments. The License fee charge is in addition to those fees that apply to other utilities that use the **CITY'S** rights-of-way and are required by **CITY** Ordinance, presently in force or hereafter enacted, including, Ordinance No. 93319, as may be amended, or if repealed, its successor ordinance.

4.6 Payment for the quarter in which this License becomes effective will be prorated from the Effective Date to the end of the quarter.

V. CONDITIONS AND LIMITATIONS OF GRANT

5.1 CITY expressly reserves the right to adopt, from time to time, in addition to these provisions, ordinances, rules and regulations that it may deem necessary in the exercise of CITY'S governmental powers.

5.2 CITY expressly reserves the right to enforce reasonable regulations concerning LICENSEE'S access to or use of streets and other public ways or property, including requirements for permit applications. Except for the procedures set forth in the Future Annexations provision below, during the term of this License, LICENSEE shall not apply for, or be granted, permits for natural gas facilities outside of the Licensed Area and within the corporate limits of the CITY. Nothing herein prohibits LICENSEE from applying with the Supervisor of Public Utilities, or his successor, to extend its system into other areas of the corporate limits of the CITY and consistent with Article 17 below; however, such extensions must be in writing and approved by ordinance. It is understood and agreed that LICENSEE is responsible for obtaining all necessary permits and licenses from regulatory authorities other than the CITY.

5.3 LICENSEE shall promptly and fully comply with all applicable statutes, ordinances, judgments, decrees, orders, rules and regulations of any governmental authority having jurisdiction over LICENSEE'S activities.

VI. CIVIC IMPROVEMENTS

6.1 The LICENSEE shall, upon the written request of the CITY, relocate its facilities situated within any street, at no expense to the CITY, where reasonable and necessary to accommodate street construction, or widening, or other public improvement projects of the CITY. LICENSEE shall have the right to present to the CITY alternative proposals to the proposed relocation. The CITY shall give due and reasonable consideration to such alternative proposals.

VII. APPLICABLE LAW AND VENUE

7.1 This License will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this

License shall be in Bexar County, Texas. This License is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

VIII. INSURANCE REQUIREMENTS

8.1 A) Prior to the commencement of any work under this License, **LICENSEE** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the **CITY'S** Finance Department, which shall be clearly labeled "West Texas Gas License" in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 until such certificate and endorsements have been received and approved by the **CITY'S** Finance Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

B) The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this License and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this License. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.

(C) **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this License, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), 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)	\$1,000,000 per occurrence \$ 2,000,000 general aggregate for claims associated with hazardous materials, to include spill and mitigation
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) As they apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon written request and without expense, to receive copies of the policies, declaration page, and all required endorsements. **LICENSEE** shall be required to comply with any such requests and shall submit requested documents to **CITY** at the address provided below within 10 days of such written request. **LICENSEE** shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

E) **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.
- Provide advance written notice directly to **CITY** of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this License.

G) In addition to any other remedies the **CITY** may have upon **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 **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

H) Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this License.

I) It is agreed that **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.

J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.

IX. EXCAVATIONS

9.1 All of **LICENSEE'S** excavations and operations within the Licensed Area must conform to any and all of the **CITY'S** right-of-way rules, policies, fees and regulations, including, but not limited to, those contained in Ordinance No. 93319, which was passed and approved on January 25, 2001 and became effective on May 1, 2001, and any future amendments thereto.

X. LEGAL CONSTRUCTION

10.1 With the exception of provisions in Section 4 and Subsection 16.4 below, in case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof and this License shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If **LICENSEE'S** waiver of its rights pursuant to Section 181.026 of the Texas Utilities Code is construed as invalid, illegal or unenforceable in any respect, then the **CITY** has not waived any claim that it may have against **LICENSEE** for past consideration and the **CITY'S** Supervisor of Public Utilities may require **LICENSEE** to pay an amount equal to the value of the remaining waiver, based upon the Supervisor's determination.

XI. ENTIRE AGREEMENT

11.1 Unless otherwise authorized pursuant to terms specified in this License, it is understood and agreed that this instrument, together with the authorizing ordinance, contains the entire agreement between **CITY** and **LICENSEE** hereto and may not be altered, amended, or modified except by an instrument in writing signed by the parties hereto with the same formality as this License, including approval by San Antonio's City Council. It is further understood and agreed by **LICENSEE** that **CITY** and **CITY'S** agents have made no representations or promises with respect to this License or the making or entry into this License, except as in this License expressly set forth, and **CITY** shall not be liable for reason of the breach of any representations or promises not expressly stated in this License. However, nothing in this License operates to diminish **CITY'S** waiver of its immunity from liability by virtue of entering into this License, and nothing

in this License changes or modifies any statutory or legislative consent to suit to which this License may apply, including but not limited to consent to suit under Section 271.152 of the Texas Local Government Code.

XII. RECORDS AND REPORTS

12.1 Method of Accounting. The **LICENSEE** shall maintain its books and a system of accounts in accordance with methods of accounting applicable to the gas distribution industry.

12.2 Books, Records and Inspections. **LICENSEE** shall keep accurate books and accounts of the matters upon the basis of which payments are calculated herein. This includes all applicable books, records, and accounts which serve as supporting documentation for payments to the **CITY**. The **CITY** may audit **LICENSEE'S** books and accounts to ensure compensation in accordance with Section IV (Compensation to City) of this License. The **LICENSEE'S** books and records will be made available to the **CITY** for review electronically in a format acceptable to the **CITY**.

12.3 Notification. Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. 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** and **LICENSEE** shall be delivered as follows:

If to CITY:

**Supervisor of Public Utilities
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(210) 207-8620**

**City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966**

**If to LICENSEE;
Vice President Gas Marketing
West Texas Gas, Inc.
211 N. Colorado
Midland, Texas 79701
(431) 682-4349**

12.4 CITY agrees that it will not initiate and conduct more than one (1) audit per annum, however, nothing in this Article 12 shall be deemed as limiting the duration or scope of an audit. If the **CITY** requests information, books and records for the purposes of conducting an audit pursuant to Section 12.2 above, then any subsequent requests for information, books and records that the **CITY** determines is necessary to complete that audit shall not be construed as additional audits.

XIII. DEFAULT

13.1 Without prejudice to any right, **CITY** shall have the right to terminate this License at any time upon written notice to **LICENSEE** if **LICENSEE** shall fail to perform any material term or condition of this License and fails to cure such breach within ninety (90) days from the date of written notification. **LICENSEE** can contact the **CITY** and request an extension.

13.2 In the event that performance by **LICENSEE** of any of its obligations under the terms of this License shall be interrupted or delayed by an act of God, by acts of war, riot, terrorism, or civil commotion, by an act of State, or other local or federal governmental unit, by strikes, fire, flood, or other natural catastrophes, or by epidemic, pandemic, quarantine, or by any other unforeseen event outside the control of **LICENSEE**, then **LICENSEE** shall be excused from such performance for the same amount of time as such occurrence shall have lasted. So long as **LICENSEE** is providing gas service to customers located within the corporate **CITY** limits and is generating revenues from that service, then **LICENSEE'S** obligation to pay the amounts due under Article IV shall not be relieved by this provision.

XIV. WAIVER

14.1 Other than certain modifications authorized pursuant to the specific terms of this License, no provision of this License may be waived or modified except expressly in writing signed by both parties, and approved by San Antonio's City Council and **Licensee**, respectively. Failure of either party to require the performance of any term in this License or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

XV. PUBLIC PROPERTY

15.1 The ownership, right of control and use of streets, highways, alleys, parks, public places and all other real property of the **CITY** is hereby declared to be inalienable by the **CITY**.

15.2 LICENSEE shall maintain sufficient depreciation as required by applicable law, if any, governing the finance of municipal utilities or the issuance of bonds.

XVI. MISCELLANEOUS

16.1 The attached Exhibit A and Exhibit A-1 are an integral part of this License. Further, any Exhibits demonstrating additions to Licensed Area pursuant to procedures established in this License shall become an integral part of this License.

16.2 Transfer of Rights. This Agreement and any rights herein are personal to **LICENSEE** and shall not be assigned, transferred, sublicensed, leased, subleased or encumbered (other than for bonding or borrowing) without **CITY'S** written consent evidenced by a resolution or ordinance, and such consent may not be unreasonably withheld, or delayed.

16.3 The individuals executing this License warrant that they have full authority to execute this License on behalf of the entity for whom they are acting herein.

XVII. ANNEXATIONS AND ADDITIONS TO LICENSED AREA

17.1 The parties acknowledge that as of the effective date of this License a portion of the **LICENSEE'S** gas system lies outside of the **CITY'S** current corporate limits, but within the **CITY'S** extra-territorial jurisdiction (ETJ). For purposes of this License, the **CITY** and **LICENSEE** acknowledge that the ETJ may change if the **CITY** annexes territory in the future.

17.2 Once the City has given notice as provided by law of a planned annexation within an area inside its ETJ, **LICENSEE** shall have 180 days to provide written verification, with supporting documentation, to the **CITY** specifying whether or not the **LICENSEE** has facility components or customers within the area and demonstrating the relevant physical connection of the components or service facilities to the remainder of the **LICENSEE'S** system. **LICENSEE** may file an amended verification up to the date of annexation if the **LICENSEE** constructs contiguous components or acquires and serves customers within the planned annexation after the date of its initial verification but before the date of annexation. Failure to notify the **CITY** within 180 days shall not constitute a waiver by

LICENSEE so long as the **LICENSEE** provides sufficient information pursuant to 17.3 below.

17.3 If after the 180 day period the **CITY** has not received sufficient information related to the **LICENSEE'S** presence within or near the planned annexation, then, upon request of the **CITY**, the **LICENSEE** shall submit appropriate documentation evidencing the existence and location of the **LICENSEE'S** components or customers within the newly annexed area within 45 days of such request. Failure to provide sufficient information pursuant to Sections 17.2 and 17.3 shall not constitute a waiver of **LICENSEE'S** duty to pay the Licensee fee for revenues generated within the newly annexed areas upon the date of final annexation.

17.4 Upon receipt of sufficient information by the **LICENSEE** regarding the status of its system within or near the planned annexation accompanied by any and all appropriate documentation that may support the existence or location of **LICENSEE'S** components or customers within or near the planned annexed area, the **CITY** will, within 90 days, do one of the following:

A. Notify **LICENSEE** in writing that the newly annexed area requested by **LICENSEE** will be included within the Licensed Area because **LICENSEE** has satisfied the requirements of 17.2 above;

B. Notify the **LICENSEE** in writing that portions of the newly annexed area, based on a request by the **LICENSEE** pursuant to Section 17.2 or Section 17.3 above, will be included in the Licensed Area; or,

C. Notify **LICENSEE** that no portion of the newly annexed area will be included in the permanent license agreement because **LICENSEE** has failed to meet the requirements of Section 17.2 and 17.3 and, if requested by **LICENSEE**, a statement setting forth specific facts demonstrating that CPS Energy provides natural gas to customers, or has natural gas components in or within the specified proximity to, the newly annexed area or is able to serve the area or any other factors relied upon by the **CITY** in denying **LICENSEE'S** request.

17.5 If the **CITY** gives notice of the proposed annexation of an area within the ETJ where neither the **LICENSEE** nor CPS Energy has plant or natural gas customers, and **LICENSEE** requests that the area be added to its licensed area, CPS Energy will have the right of first refusal to provide natural gas service to the area. If CPS Energy declines to serve the area, then the area shall be included in the **LICENSEE'S** service area.

XVIII. APPEAL AND MEDIATION

18.1 Prior to filing suit, the parties to this License shall use non-binding mediation in an attempt to resolve any denials pursuant to Section 17.8 B. or C. above, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License or the preemptive effect of federal law. If any of the provisions of this section are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

18.2 To initiate non-binding mediation, a party shall give written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, JAMS/Endispute shall designate a mediator at the request of a party. Any mediator so designated must be acceptable to all parties.

18.3 The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.

18.4 So long as it is consistent with applicable open government laws, 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.

18.5 Each party will bear its own costs in the mediation. The parties will share the fees and expenses of the mediator equally.

18.6 Any other disputed provision of the License may be mediated upon the mutual agreement of the parties.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

WEST TEXAS GAS, INC.

(Signature)

(Signature)

Printed Name

J.J. KING
Printed Name

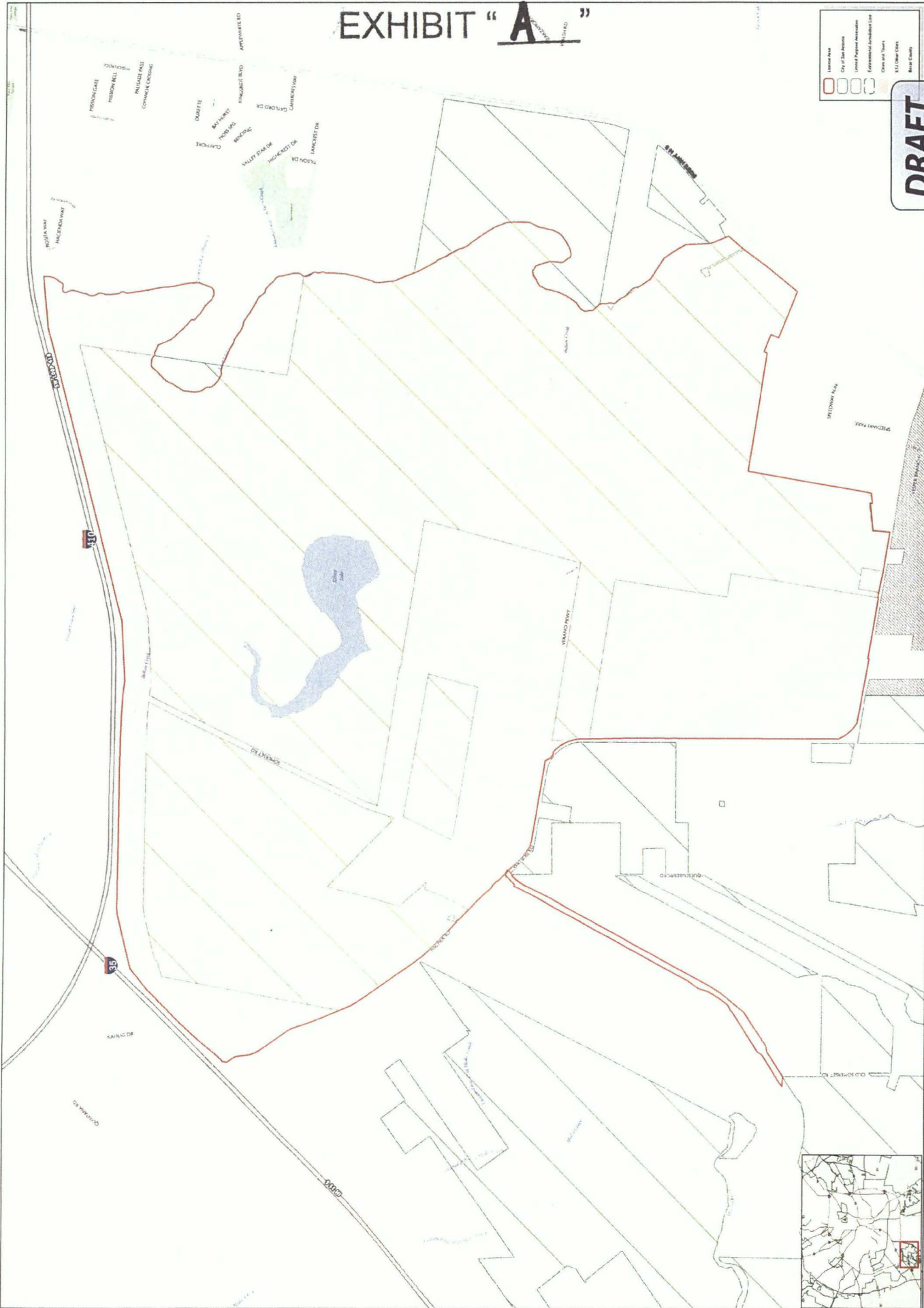
Title

VICE PRESIDENT, Gas Marketing
Title

Date: _____

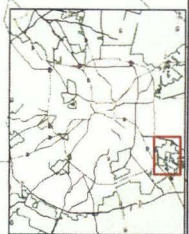
Date: 11-9-20

EXHIBIT "A"



DRAFT

City of San Antonio West Texas Gas License for South Area

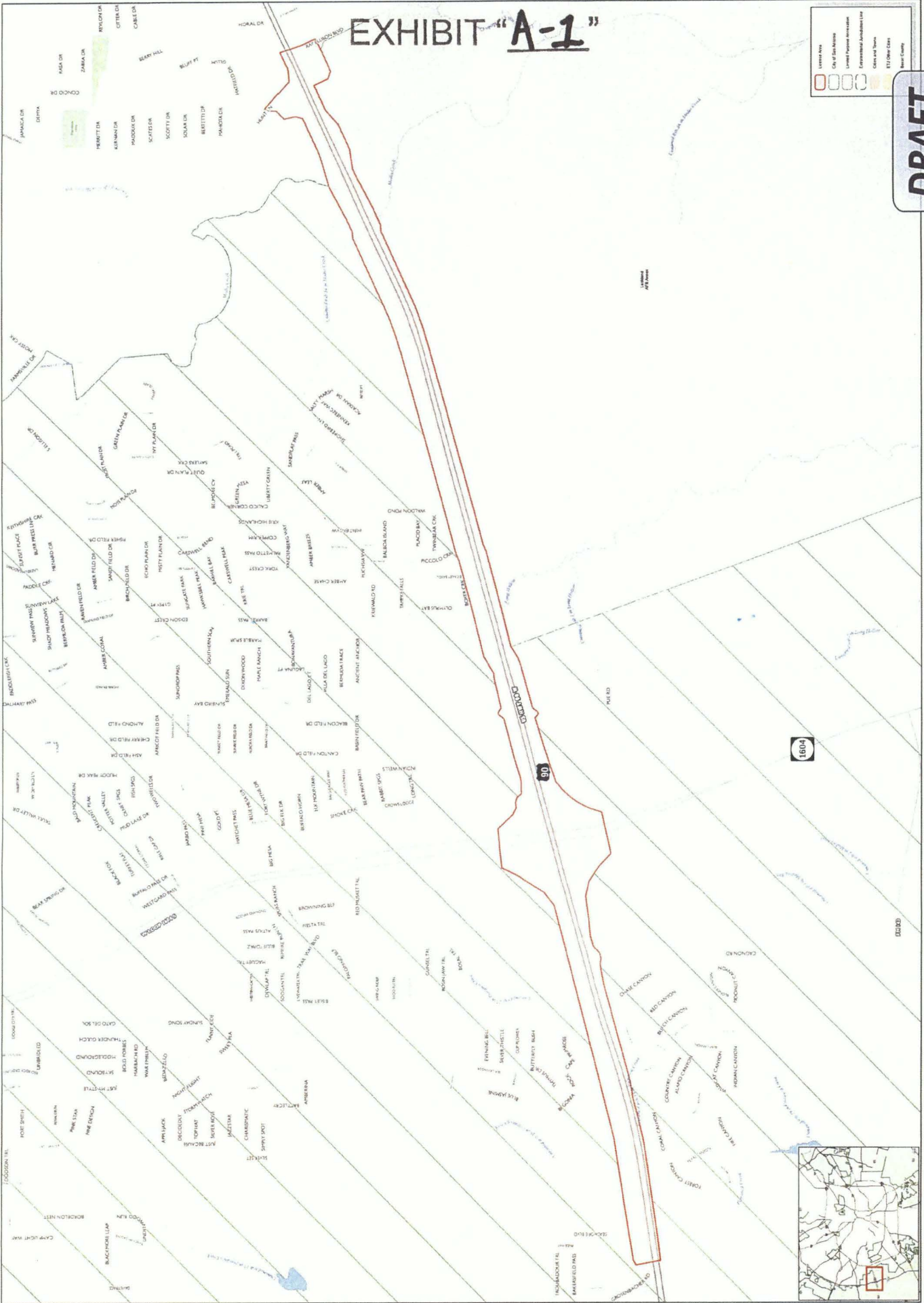


Map of the City of San Antonio, Texas, showing the West Texas Gas License for the South Area. The map is a draft and is not to be used for legal purposes. The map is prepared by the City of San Antonio, Texas, and is subject to change without notice. The map is prepared by the City of San Antonio, Texas, and is subject to change without notice. The map is prepared by the City of San Antonio, Texas, and is subject to change without notice.

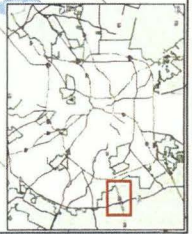
EXHIBIT "A-1"

Legend Key
City of San Antonio
United Parcel Service
Continental Junction Line
City and Town
ETL Outer Limit
Area Change

DRAFT



City of San Antonio
West Texas Gas License for West Area



Small text at the bottom right corner, likely containing metadata or a disclaimer.



CITY OF SAN ANTONIO
Request for Insurance Coverage Waiver or Reduction

Please attach a copy of the complete contract

Requestor Contact Information		Third Party Contact Information	
Name	<u> Matt Wallace </u>	Name	<u> Jerrick Robbins </u>
Title	<u> Director of Property and Risk Management </u>	Title	<u> Attorney </u>
Phone	<u> 432-682-6311 </u>	Phone	<u> 201-249-3225 </u>
Email	<u> MWallace@westtexasgas.com </u>	Email	<u> jrobbins@rmolawfirm.com </u>
Department	<u> Property and Risk Management </u>	Department	<u> Outside Counsel </u>

Name and Contact with highest authority level directly overseeing contract

Name J J King
Title Vice President
Phone 432-682-6311
Email jking@westtexasgas.com
Department Operations

Contract type: Construction * Lease **X** Event Professional Services

Contract Value: <\$ 50,000 >\$ 50,000 <\$250,000 >\$250,000 <\$500,000 >\$500,000

Requires Front Line Supervisor Approval
 Requires Division Manager Approval
 Requires Asst. Department Director Approval
 Requires Department Director Approval

Which provision(s) of the recommended insurance are the subject(s) of the request?

Example: Insurance table, General Liability Insurance requirement for XCU coverage.

Insurance table, Professional Liability requirement (number 5)

Please describe the request in as much detail as possible.

Example: The Contractor requests that the requirement for XCU coverage be removed.

West Texas Gas requests that the requirement for Professional Liability be removed.

Please describe the rationale for the request.

Example: This is a personal service contract for consulting that will not require XCU coverage.

West Texas Gas does not employ any professionals who would require professional liability coverage.

Does the contractor propose an alternative coverage, language or limit? If so please describe?

Rather than require Professional Liability coverage at all times, West Texas Gas suggests adding language that only requires such coverage if West Texas Gas employs professionals who would be covered under a Professional Liability policy.

Risk Analyst that offered original insurance recommendation	City Attorney who assisted in creation of the contract document
Risk Analyst _____	Asst. City Attorney _____
Date of Recommendation _____	Date of Recommendation _____

Section Reserved for Risk Management

Date Request Received

Risk Management Remarks

Risk Value Assigned:

High

Medium

Low

Waiver:

Approved

Disapproved

By:

Matthew Nielsen Matthew Nielsen Claims Administrator October 9, 2020

Instructions

Risk Management provides the departments recommended insurance requirements tailored to the specification of the scope provided. As such any request for changes need to be done in writing.

Contact information for the Requester (the primary City Contact for the contract) and the highest level manager with knowledge are needed to direct any questions and/or a decision.

The contract value is requested so that if the request is not approved, the manager at the appropriate level can be informed of the decision by Risk Management. That manager can subsequently render a business decision to override the recommendation of Risk Management.

* Please note that Section 406.096 of the Local Government Code mandates that municipalities require contractors on public projects for building or construction obtain workers' compensation coverage for their employees. As such the City **is not authorized** to waive the requirement for workers compensation coverage for contractors on public projects for building or construction contracts.