

ORDINANCE 2020-08-13-0526

**APPROVING A NON-EXCLUSIVE 10-YEAR LICENSE AGREEMENT
WITH ENERTEX NB, LLC FOR USE OF CITY RIGHT-OF-WAY FOR THE
PURPOSE OF INSTALLING AND MAINTAINING FACILITIES TO
TRANSPORT NATURAL GAS.**

* * * * *

WHEREAS, Enertex NB, LLC (“Enertex”) is a natural gas distribution utility regulated by the Railroad Commission of Texas and provides services to residential and commercial locations in Comal County, Texas; and

WHEREAS, under state law natural gas distribution companies such as Enertex have the right to access municipal right-of-way subject to consent from the City; and

WHEREAS, Enertex will install and operate facilities to transport natural gas through a small section of right-of-way within the City limits to serve retail customers in a new neighborhood just outside the City limits near I-37 off Southton Road; 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. The License Agreement between the City of San Antonio and Enertex NB, 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 generated by this Ordinance will be deposited into the General Fund in accordance with the FY 2020 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 its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then the Ordinance shall be effective ten (10) day after passage.

PASSED AND APPROVED, this 13th day of August, 2020.



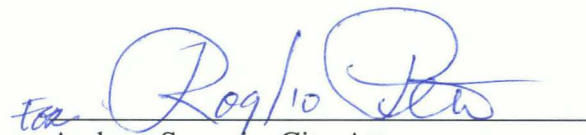
M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, Acting City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council
August 13, 2020

Item: 23

Enactment Number:
2020-08-13-0526

NAME	MOTION	SECOND	ABSTAIN	AYE	NAY	ABSENT
Ron Nirenberg Mayor				√		
Roberto Treviño Council District 1				√		
Jada Andrews-Sullivan Council District 2				√		
Rebecca Viagran Council District 3				√		
Adriana Rocha Garcia Council District 4				√		
Shirley Gonzales Council District 5				√		
Melissa Cabello Havrda Council District 6				√		
Ana Sandoval Council District 7				√		
Manny Pelaez Council District 8				√		
John Courage Council District 9		√		√		
Clayton Perry Council District 10	√			√		

Comments:

Office of the City Clerk

EXHIBIT A

NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND ENERTEX NB, 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 _____, 2020; and Enertex NB, LLC, referred to as "Enertex" or "Licensee"). The CITY and Enertex may hereinafter be referred to collectively as the "Parties".

WHEREAS, Enertex 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 distribution Facilities as defined by this License Agreement; and

WHEREAS, the installation, maintenance, and repair of natural gas distribution 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 Enertex's natural gas distribution 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.
- (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 Enertex, 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 (1-2)** to this License Agreement in order to install, construct, replace, operate and maintain all necessary Facilities as that term is defined herein. The location is described with particularity in **EXHIBIT A**, which is attached to this License Agreement and made a part hereof for all purposes. This license does not grant Enertex the authority to provide natural gas services to end users or customers within the CITY'S municipal boundaries.
- (b) Enertex's 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.

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 Enertex 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, Enertex 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 Enertex 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. A processing fee will apply to a renewal of the License Agreement.

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 (i) the settlement will be fully funded by Licensee, and (ii) 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 "*Enertex 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- (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)	See Attached Waiver
7. Explosion, Collapse, Undergroud 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)

- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License Agreement.
- (j) 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 Enertex in the Right-of-Way under this License Agreement.
- (b) Enertex 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) Enertex shall communicate with the Right-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of Enertex's Facilities in the Right-of-Way and report any material changes regarding Enertex's 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-_____
Attn: _____

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 Enertex shall be delivered as follows:

9750 FM 1488 Rd
Magnolia, TX 77354

Copy To: Richard Bard

Copies of petitions, applications, communications and reports submitted by Enertex 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) Enertex 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 Enertex pertaining to the Facilities installed in the Right-of-Way. Enertex 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, Enertex shall be required to pay the fees as set forth in this Sectionn 9 and as shown in **EXHIBIT B**, which is attached to this License Agreement and made a part hereof for all purposes:

- (a) **Processing Fee.** Enertex shall remit to the CITY a one-time processing fee of three thousand five hundred dollars (\$3,500.00) 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 distribution lines and related facilities is based on the fair market value of the Right-of-Way used by Enertex ("Right of Way Access Fee"). The licensed area must be as wide as Enertex will reasonably need to maintain the licensed Facilities but not more 20 feet. 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, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. Enertex will be responsible for paying the Right-of-Way appraisal separate from the processing fee. The Supervisor of Public Utilities has determined the fair market value based on a per-linear-foot basis of the Right-of-Way area associated with the Enertex's pipeline footprint. 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

Enertex 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 Enertex 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 Enertex 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 Enertex to relocate the Facilities, including all related equipment, at Enertex's expense.

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

- (c) **Right-of-Way Access Fees Due quarterly.** Enertex 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 Enertex 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, approved by passage of an ordinance. 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 Enertex.

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, Enertex 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 Director shall have the right to declare this License Agreement terminated at any time for failure of Enertex 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 Enertex 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) Enertex 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) Enertex must 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 Enertex and the CITY.
- (c) The CITY may remove any of Enertex's Facility that remain in or around Public Right-of-Way or CITY facility or property on or after the 181st day following Enertex's challenge without incurring liability for the removal.
- (d) As to violations, other than a challenge of the License Agreement, Enertex will

have an opportunity to cure following notice from the CITY. If Enertex 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 Enertex in writing by the Director.

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 Enertex 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: 1) make adjustments to the location and length of the natural gas lines identified herein and to recalculate the Right-of-Way Access Fee in accordance with such adjustments; and 2) renew this License Agreement in accordance with the license renewal procedures provided herein.

SECTION 20. AUTHORITY

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


[Signature Page Follows]

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

Enertex NB, LLC.

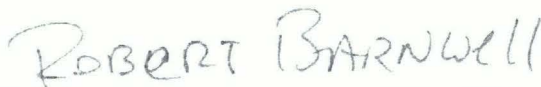
(Signature)



(Signature)

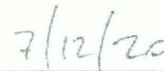
Printed Name:

Printed Name:



Title:

Title: 



Date:

Date:

APPROVED AS TO FORM:

City Attorney



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

April 29, 2020
Job No. S0650000
Exhibit "A"

Page 1 of 3

DESCRIPTION OF 2 PARCELS

PARCEL 1

BEING 5.564 OF AN ACRE (242,367.85 SQUARE FEET) TRACT OF LAND SITUATED IN THE JUAN MONTES SURVEY NO. 6, ABSTRACT NO. 11, COUNTY BLOCK 4007, BEXAR COUNTY, TEXAS, SAID 5.564 OF AN ACRE OF LAND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the Northwest corner of said Parcel 1, being South 58° 41' 44" East, 108.44 feet from a ½" iron rod found in the southwest right-of-way (ROW) of Southton Road (90' ROW) said point also being the Northeast corner of a called 0.920 acre tract recorded in Volume 7375, Page 1131, of the Deed Records (D.R.) of Bexar County, Texas,

THENCE crossing said Southton Road N 35° 57' 24" E for a distance of 90.00 feet to a point on the Northeast ROW of Southton Rd., said point being S 83° 24' 30" W a distance of 146.78 feet to a ½" iron rod found in the southwest right-of-way (ROW) of Southton Road (90' ROW) said point also being the Northeast corner of said 0.920 acre tract,

THENCE generally along with the Northeast right-of-way line of Southton Road as shown in said ROW Exhibit for the following bearings and distances:

S54°02'36" E for a distance of 1355.49 feet to a point;
S 35°40'42" W for a distance of 30.00 feet to a point;
S 54°02'36" E for a distance of 75.03 feet to a point;
S 35°49'22" W for a distance of 13.29 feet to a point;
S 54°20'47" E for a distance of 468.96 feet to a point;
N 35°49'03" E for a distance of 18.00 feet to a point;
S 54°20'47" E for a distance of 125.70 feet to a point;
S 35°50'47" W for a distance of 18.00 feet to a point;
S 54°20'47" E for a distance of 122.65 feet to a point;
S 54°20'47" E for a distance of 122.00 feet to a point;
S 54°20'47" E for a distance of 132.75 feet to a point;
S 54°20'47" E for a distance of 166.62 feet to a point;
S 54°14'58" E for a distance of 650.54 feet to a point;
S 80°28'48" E for a distance of 83.61 feet to a point;
S 87°42'41" E for a distance of 42.69 feet to a point;
S 87°46'27" E for a distance of 74.92 feet to a point;
N 47°15'12" E for a distance of 70.93 feet to a point in the Northeast ROW of Southton Rd., said point also being in the West ROW line of Interstate Highway 37 South;

THENCE along with the West right-of-way line of Interstate Highway 37 South, S 02°14'14" W for a distance of 200.13 feet to a point being the intersection of said Interstate



Highway 37 South's west ROW and the Southwest ROW of Southton Rd., being the southeast corner for said Parcel 1, and also being N 88°24'15" W a distance of 545.20 feet from the Point of Beginning of Parcel 2;

THENCE generally along with the Southwest right-of-way line of Southton Road as shown in said ROW Exhibit for the following bearings and distances:

N 42°20'52" W for a distance of 71.03 feet to a point;
N 88°21'52" W for a distance of 90.02 feet to a point;
N 60°41'08" W for a distance of 156.81 feet to a point
N 54°20'47" W for a distance of 977.46 feet to a point;
N 54°12'06" W for a distance of 308.18 feet to a point;
N 54°12'06" W for a distance of 50.00 feet to a point;

THENCE N 54°02'36" W for a total distance of 1882.14 feet to the Point of Beginning of Parcel 1 in the Southwest ROW line of Southton Road, and containing 5.564 acres of land, more or less.

PARCEL 2

BEING 7.091 OF AN ACRE (308,899.51 SQUARE FEET) TRACT OF LAND SITUATED IN THE JUAN MONTES SURVEY NO. 6, ABSTRACT NO. 11, COUNTY BLOCK 4007, BEXAR COUNTY, TEXAS, SAID 7.091 OF AN ACRE OF LAND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the westerly most Southwest corner of said Parcel 2, being South 88°24'15" E, 545.20 feet from said southeast corner of Parcel 1, also being in the east right-of-way (ROW) of Interstate Highway 37 South,

THENCE along with the East right-of-way line of Interstate Highway 37 South, N 02°04'44" E for a distance of 186.45 feet to a point being the intersection of said East Interstate Highway 37 South ROW and the Northeast ROW of Southton Rd.;

THENCE continuing generally along with the Northeast right-of-way line of Southton Road as shown in said ROW Exhibit for the following bearings and distances:

S 42°57'24" E for a distance of 70.23 feet to a point;
S 87°43'38" E for a distance of 127.52 feet to a point being the beginning of a curve to the right, with a radius of 1287.94 feet and a central angle of 2°33'57", the chord bears S 86°51'09" E – 57.67, for an arc distance of 57.68 feet to a point;

THENCE continuing along a curve to the right, with a radius of 1287.94 feet and a central angle of 24°32'44", the chord bears S 73°17'49" E – 547.55, for an arc distance of 551.76 feet to a point;



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

Page 3 of 3

S 60°58'37" E for a distance of 259.70 feet to a point;
S 60°58'37" E for a distance of 59.74 feet to a point;
S 60°58'37" E for a distance of 448.24 feet to a point;

THENCE continuing S60°58'37"E for a distance of 2037.13 feet to a point on the Northeast ROW of Southton Rd. said point being N 38°45'55" E a distance of 87.26 feet from a ½" iron rod found in the south right-of-way (ROW) of Southton Road (86' ROW) said point also being the Northeast corner of a called 9.34 acre tract recorded in Volume 103, Page 865, of the Deed Records (D.R.) of Bexar County, Texas,

THENCE crossing said Southton Road the following bearings and distances:

S 41°25'47" W for a distance of 65.36 feet to a point;
S 30°53'31" W for a distance of 22.18 feet to a point on the Southwest ROW of Southton Rd. said point also being said Northeast corner of said 9.34 acre tract;

THENCE continuing the Southwest ROW of Southton Rd. as shown in said ROW Exhibit for the following bearings and distances:

N 60°58'37" W for a distance of 1919.09 feet to a point;
N 60°58'37" W for a distance of 108.82 feet to a point
N 60°58'37" W for a distance of 762.11 feet to a point being the beginning of a curve to the left, with a radius of 1201.94 feet and a central angle of 27°06'35", the chord bears N 74°34'50" W – 563.41 feet, for an arc distance of 568.70 feet to a point;

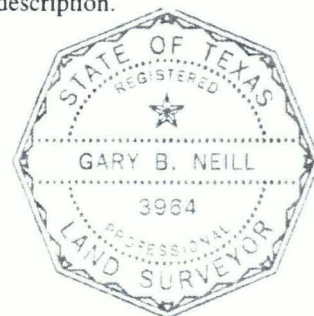
THENCE N 87°53'10" W for a distance of 127.27 feet to the point;

THENCE S 46°57'31" W, for a total distance of 71.22 feet to the Point of Beginning of Parcel 2, being in the East ROW of Interstate Highway 37 South, also being in the Southwest ROW line of Southton Road, and containing 7.091 acres of land, more or less.

Notes:

All coordinates and bearings are based on the Texas State Plane Coordinate System, South Central Zone (4204)-Surface Coordinates, NAD 83. (2011)

An Exhibit labeled "EXHIBIT A" was prepared in conjunction with this Easement description.



Gary B Neill
04-29-2020

LAREDO • SAN ANTONIO • BRYAN/COLLEGE STATION

Exhibit B

Right-of-Way-Access-Fee

Linear feet used by Enertex	4,650
Annual charge per linear foot	\$1.51
Total 1 st Year Compensation due	\$7,021.50

Annual compensation due with 4 % escalation factor :

Year

2	\$7,302.36
3	\$7,594.45
4	\$7,898.23
5	\$8,214.16
6	\$8,542.73
7	\$8,884.44
8	\$9,239.82
9	\$9,609.41
10	\$9,993.79