

By: Deshotel

H.B. No. 2730

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of real property by an entity with eminent domain authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. LANDOWNER'S BILL OF RIGHTS

SECTION 1.01. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.032 to read as follows:

Sec. 402.032. LANDOWNER'S BILL OF RIGHTS. The attorney general shall provide notice by publication to all counties in the State of Texas and shall make available on the attorney general's Internet website a landowner's bill of rights that is written in plain language designated to be easily understood by the average property owner and to read as follows:

TEXAS LANDOWNER'S BILL OF RIGHTS

The Texas Constitution gives state and local governments and some private entities, such as utility or pipeline entities, the legal authority to acquire private property, or a partial interest in private property, for public use. This authority is called the power of eminent domain.

In most instances, the power of eminent domain is used to acquire property to build large infrastructure projects that benefit all Texans, such as highways and roads, power lines, water, oil and other common carrier pipelines, and gas utility pipelines, and flood control projects. The Texas Constitution does not allow

1 an entity to use the power of eminent domain exclusively, for
2 private purposes, such as for real estate development or other
3 economic purposes. Entities authorized by law to exercise the power
4 of eminent domain must do so by following detailed procedures found
5 in Chapter 21 of the Texas Property Code or other Texas law. An
6 entity that wants to acquire your property for public use must
7 compensate you for it.

8 Private property rights are cherished by all Texas
9 landowners, and your rights are protected by the Texas Constitution
10 and the laws that govern the use of the power of eminent domain. If
11 you are approached by a public or private entity interested in
12 acquiring your property or an interest in your property for public
13 use, you should be aware not only of your legal rights, but also of
14 certain practical considerations that will help guide you in your
15 negotiations.

16 YOU HAVE A RIGHT TO ASK QUESTIONS. Who exactly wants the
17 property and what does that entity want to do with it? You have a
18 right to know the identity of the entity that wants to acquire all
19 or part of your property and what the entity plans to do with the
20 property.

21 DO NOT SIGN A DOCUMENT YOU DON'T UNDERSTAND. If you don't
22 understand what is in the document you are being asked to sign, seek
23 advice from a trusted source, such as a family member, a fellow
24 property owner who has dealt with a similar situation, a real estate
25 professional who can help evaluate the property being sought, or an
26 attorney who can help you navigate the eminent domain process, if
27 that becomes necessary.

1 KNOW YOUR LEGAL RIGHTS AND FAMILIARIZE YOURSELF WITH THE
2 PROCESS. An entity cannot acquire an interest in your property
3 without first providing you with a written offer to buy the
4 interest. You can expect to be given the financial basis for the
5 offer. You may also request an in-person, remote or telephonic
6 meeting with the acquiring entity to discuss the project. You
7 should receive the name and contact information of an employee of
8 the acquiring entity so you can ask questions.

9 NEGOTIATE WITH THE ACQUIRING ENTITY. In the vast majority of
10 property acquisitions, the property owner and the acquiring entity
11 come to a voluntary agreement on the amount of compensation to be
12 paid and, if only part of the property is acquired (most often as an
13 easement), on the terms under which the entity may use the property.
14 Keep in mind that an entity taking an easement or other partial
15 interest in the property will want to maintain a good long-term
16 relationship with you, so it is beneficial for both parties to talk
17 about all the concerns and come to a mutual understanding before
18 signing the agreement.

19 WHAT HAPPENS IF YOU CANNOT REACH AN AGREEMENT? In some cases,
20 the property owner and the acquiring entity simply can't come to an
21 agreement on the amount of compensation for the acquisition or the
22 terms of the instrument that grants the acquiring entity the
23 property rights it seeks to acquire. In any such case, a panel of
24 three local landowners (called "special commissioners") will be
25 appointed by a judge to decide how much compensation you are owed
26 for the property interest sought. The hearing is informal and does
27 not require you to have a lawyer or other expert, such as an

1 appraiser, but you are free to have one or both. The panel also
2 determines the amount of compensation for the reduction in value,
3 if any, to your remaining property as a result of the property
4 interest sought.

5 WHAT HAPPENS IF YOU STILL AREN'T SATISFIED? If you don't
6 believe the compensation awarded by the special commissioners is
7 adequate, or if you don't think the acquiring entity has the legal
8 authority to acquire the property, you may request a trial before a
9 judge or a jury of your peers. If you get to this point, it is
10 recommended that you engage a lawyer and probably an expert
11 appraiser to make your case. In a very small number of cases, there
12 may be a question about the acquiring entity's right to use eminent
13 domain in the first place. In that event, a court has to verify the
14 entity's authority to use eminent domain and determine whether the
15 project is for a "public use." If you disagree with the outcome in
16 the trial court, you can appeal the court's decision to a court of
17 appeals.

18 STILL HAVE QUESTIONS ABOUT THE EMINENT DOMAIN PROCESS? The
19 Office of the Attorney General has an Internet website at [insert
20 Internet website address] and a toll-free number [insert telephone
21 number] where you can learn more.

22 SECTION 1.02. Section 402.031, Government Code, is
23 repealed.

24 SECTION 1.03. Not later than January 1, 2022, the office of
25 the attorney general shall make the landowner's bill of rights
26 statement provided by Section 402.032, Government Code, as added by
27 this Act, available on the attorney general's Internet website.

ARTICLE 2. OMBUDSMAN OFFICE FOR LANDOWNERS; ELIGIBILITY

REQUIREMENTS FOR RIGHT-OF-WAY AGENT CERTIFICATION

SECTION 2.01. Subchapter E, Chapter 1101, Occupations Code is amended by adding 1101.207 to read as follows:

Sec. 1101.207. OMBUDSMAN OFFICE FOR LANDOWNERS.

(a) The commission shall establish an ombudsman office for the purpose of providing information to landowners whose real property may be acquired by a governmental or private entity through the use of the entity's eminent domain authority. The executive director of the commission shall select the ombudsman.

(b) The ombudsman shall provide information to and answer questions from landowners described by Subsection (a), through the commission's Internet website and a toll-free telephone number established by the ombudsman, regarding:

(1) the landowner's bill of rights prescribed by 402.032, Government Code; and

(2) the procedures for acquiring real property through the use of eminent domain authority under Chapter 21, Property Code, or other law.

(c) Personal information obtained by the office of the ombudsman shall be treated in the same manner as information obtained under Sec. 1101.2051.

SECTION 2.02. Section 1101.502(a), Occupations Code, is amended to read as follows:

Sec. 1101.502. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE.

(a) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a person must ~~be~~:

1 (1) be at least 18 years of age; [~~and~~]

2 (2) be a citizen of the United States or a lawfully
3 admitted alien; and

4 (3) successfully complete the required courses of
5 study, including qualifying or continuing education requirements,
6 prescribed by this subchapter.

7 SECTION 2.03. Section 1101.508, Occupations Code, is added
8 to read as follows:

9 Sec. 1101.508. PROBATIONARY CERTIFICATE. (a) The
10 commission may issue a probationary certificate.

11 (b) The commission by rule shall adopt reasonable terms for
12 issuing a probationary certificate.

13 SECTION 2.04. Section 1101.509, Occupations Code, is added
14 to read as follows:

15 Sec. 1101.509. QUALIFYING AND CONTINUING EDUCATION
16 REQUIREMENTS. (a) The commission by rule shall approve coursework
17 that an applicant must successfully complete to be eligible for a
18 certification or renewal certification under this subchapter.

19 (b) An applicant for a certification or renewal
20 certification shall submit evidence satisfactory to the commission
21 that the applicant has successfully completed at least 16 classroom
22 hours of coursework every two years approved by the commission in:

23 (1) the law of eminent domain, including the rights of
24 property owners;

25 (2) appropriate standards of professionalism in
26 contacting and conducting negotiations with property owners; and

27 (3) ethical considerations in the performance of

1 right-of-way acquisition services.

2 SECTION 2.05. Section 1101.653, Occupations Code, is
3 amended to read as follows:

4 Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF
5 CERTIFICATE. The commission may suspend or revoke a certificate of
6 registration issued under this chapter if the certificate holder:

7 (1) engages in dishonest dealing, fraud, unlawful
8 discrimination, or a deceptive act;

9 (2) makes a misrepresentation;

10 (3) acts in bad faith;

11 (4) demonstrates untrustworthiness;

12 (5) fails to honor, within a reasonable time, a check
13 issued to the commission after the commission has mailed a request
14 for payment to the certificate holder's last known address
15 according to the commission's records;

16 (6) fails to provide to a party to a transaction a
17 written notice prescribed by the commission that:

18 (A) must be given before the party is obligated
19 to sell, buy, lease, or transfer a right-of-way or easement; and

20 (B) contains:

21 (i) the name of the certificate holder;

22 (ii) the certificate number;

23 (iii) the name of the person the
24 certificate holder represents;

25 (iv) a statement advising the party that
26 the party may seek representation from a lawyer or broker in the
27 transaction; and

1 (v) a statement generally advising the
2 party that the right-of-way or easement may affect the value of the
3 property;

4 (7) directly or indirectly, takes a financial
5 incentive to make an initial offer that the certificate holder
6 knows or should have known is lower than the just and reasonable
7 compensation required under the Texas Constitution; or

8 ~~(7)~~ (8) disregards or violates this chapter or a
9 commission rule relating to certificate holders.

10 SECTION 2.06. Not later than December 1, 2021, the Texas
11 Real Estate Commission shall adopt rules necessary to implement the
12 changes in law made by this Act to Chapters 1101, Occupations Code
13 and establish an ombudsman office for landowners as required by
14 1101.207, Occupations Code, as added by this Act.

15 SECTION 2.07. Chapter 1101, Occupations Code, as amended by
16 this Act, applies only to an original or renewal certificate of
17 registration as an easement or right-of-way agent for which an
18 application was submitted on or after January 1, 2022. An original
19 or renewal certificate of registration as an easement or
20 right-of-way agent for which an application was submitted before
21 January 1, 2022, is governed by the law in effect on the date the
22 application was submitted, and the former law is continued in
23 effect for that purpose. An applicant for an original easement or
24 right of way agent certificate of registration submitted on or
25 after January 1, 2022 will have until January 1, 2024 to complete
26 the educational requirements under Chapter 1101.

27 ARTICLE 3. EXERCISE OF EMINENT DOMAIN AUTHORITY

1 SECTION 3.01. Section 21.0112(a), Property Code, is amended
2 to read as follows:

3 (a) An [~~Not later than the seventh day before the date a~~
4 ~~governmental or private entity with eminent domain authority makes~~
5 ~~a final offer to a property owner to acquire real property, the~~
6 ~~entity must send by first-class mail or otherwise provide a~~
7 ~~landowner's bill of rights statement provided by Section 402.031,~~
8 ~~Government Code, to the last known address of the person in whose~~
9 ~~name the property is listed on the most recent tax roll of any~~
10 ~~appropriate taxing unit authorized by law to levy property taxes~~
11 ~~against the property. In addition to the other requirements of~~
12 ~~this subsection, an]~~ entity with eminent domain authority shall
13 provide a copy of the landowner's bill of rights statement
14 prescribed by Section 402.032, Government Code, to a landowner at
15 or before the first in-person contact unless the entity expressly
16 states, at that time, it will not seek to file a petition under this
17 chapter before or at the same time as the entity first represents in
18 any manner to the landowner that the entity asserts, intends to
19 assert, or possesses eminent domain authority to acquire the
20 landowner's property for public use. For purposes of this
21 subsection, in-person contract does not include contract conducted
22 by telephonic or video-conferencing.

23 SECTION 3.02. Section 21.0113, Property Code, is amended by
24 amending Subsection (b) to read as follows:

25 (b) An entity with eminent domain authority has made a bona
26 fide offer if:

27 (1) an initial offer is made in writing to a property

1 owner that includes:

2 (A) a copy of the landowner's bill of rights
3 statement prescribed by Section 402.032, Government Code, unless
4 the entity has previously provided a copy of the statement to the
5 property owner;

6 (B) an offer of compensation in an amount equal
7 to or greater than one of the following:

8 (i) the market value of the property rights
9 sought to be acquired, based on an appraisal of the property
10 prepared by a certified general appraiser licensed under Chapter
11 1103, Occupations Code;

12 (ii) the estimated price or market value of
13 the property rights sought to be acquired based on data for at least
14 three comparable arm's-length sales of a property;

15 (iii) the estimated price or market value
16 of the property rights sought to be acquired based on a comparative
17 market analysis prepared by a real estate broker licensed under
18 Chapter 1101, Occupations Code, or a certified general appraiser
19 licensed under Chapter 1103, Occupations Code;

20 (iv) the estimated price of the property
21 rights sought to be acquired based on a broker price opinion
22 prepared by a real estate broker licensed under Chapter 1101,
23 Occupations Code;

24 (v) the estimated price or market value of
25 the property rights sought to be acquired based on a market study
26 prepared by a real estate broker licensed under Chapter 1101,
27 Occupations Code, or a certified general appraiser licensed under

1 Chapter 1103, Occupations Code; or

2 (vi) 150 percent of the per acre value for
3 each acre or part of an acre sought to be acquired, based on the
4 total land value for the whole property out of which the property
5 rights are sought to be acquired, as reflected in the most recent
6 tax rolls of the central appraisal district in which the property is
7 located;

8 (C) as applicable, the complete written report,
9 as prepared by the certified appraiser or real estate broker, that
10 forms the basis for the amount of the offer of compensation under
11 Paragraph(B)(i), (iii), or (iv) or a brief written summary that
12 forms the basis for the amount of the offer of compensation under
13 Paragraph(B)(ii), (v), or (vi);

14 (D) an instrument of conveyance in accordance
15 with Section 21.0114, as applicable; and

16 (E) the name and telephone number of a
17 representative of the entity. Representative is defined as:

18 (i) an employee of the entity;

19 (ii) an employee of an affiliate providing
20 services on behalf of the entity;

21 (iii) the legal representative; or

22 (iv) in the case of an entity without
23 employees, an individual designated to represent the day-to-day
24 operations of the entity;

25 (2) the entity satisfies the requirements of
26 Subchapter B-1, as applicable;

27 (3) [~~2~~] a final offer is made in writing to the

1 property owner;

2 (4) [~~(3)~~] the final offer is made on or after the 30th
3 day after the date on which the entity makes a written initial offer
4 to the property owner;

5 (5) [~~(4)~~] before making a final offer, the entity
6 obtains a written appraisal report from a certified appraiser of
7 the value of the property rights being acquired and the damages, if
8 any, to any of the property owner's remaining property;

9 (6) [~~(5)~~] the final offer is equal to or greater than
10 the amount of the written appraisal report obtained by the entity;

11 (7) [~~(6)~~] the following items are included with the
12 final offer or have been previously provided to the owner by the
13 entity:

14 (A) a copy of the written appraisal report;

15 (B) a copy of the deed, easement, or other
16 instrument conveying the property sought to be acquired; and

17 (C) the landowner's bill of rights statement
18 required [~~prescribed~~] by Section 21.0112; and

19 (8) [~~(7)~~] the entity provides the property owner with
20 at least 14 days to respond to the final offer and the property
21 owner does not agree to the terms of the final offer within that
22 period.

23 SECTION 3.03. Subchapter B, Chapter 21, Property Code, is
24 amended by adding Section 21.0114 to read as follows:

25 Sec. 21.0114. TERMS REQUIRED FOR INSTRUMENT OF CONVEYANCE
26 OF EASEMENT. (a) Except as provided by Subsection (b), an
27 instrument of conveyance of an easement, that does not relate to an

1 oil, natural gas, oil product, or liquidified mineral pipeline,
2 provided to a property owner under Section 21.0113 must include the
3 following terms:

4 (1) the name of the grantor;

5 (2) the name of grantee;

6 (3) a description of the purpose of the easement;

7 (4) a description or illustration of the location of
8 the easement, including a metes and bounds or centerline
9 description, plat, or aerial or other map-based depiction of the
10 location of the easement on the property;

11 (5) a description of the types of improvements that
12 may be placed by the grantee within the easement, including whether
13 the type of improvement would be above or below the existing surface
14 of the land;

15 (6) a provision regarding the grantee's right, if any,
16 to install future improvements within the easement and to
17 reconstruct, remove, replace, or repair any grantee improvements;

18 (7) a provision regarding the grantor's retained
19 rights to use the land, if any;

20 (8) a provision regarding the grantor's right, if any,
21 to actual monetary damages for claims arising from the construction
22 and installation of each improvement to be installed in, on, or
23 under the easement, or a statement that the consideration for the
24 easement includes any monetary damages arising from the
25 construction and installation of each improvement to be installed
26 in, on, or under the easement;

27 (9) a provision regarding the grantor's right after

1 initial construction and installation of each improvement to be
2 installed in, on, or under the easement to actual monetary damages
3 arising from the repair, maintenance, inspection, replacement,
4 operation, or removal of each improvement to be installed in, on, or
5 under the easement or a statement that the consideration for the
6 easement includes any monetary damages arising from the repair,
7 maintenance, inspection, replacement, operation, or removal of
8 each improvement to be installed in, on, or under the easement;

9 (10) a provision regarding:

10 (A) the repair and restoration, to the extent
11 reasonably practicable, of areas used or damaged by the grantee
12 outside the easement area to substantially the same condition as
13 the original condition or better; or

14 (B) the payment of actual monetary damages for
15 areas not restored; and

16 (11) a provision describing the grantee's rights of
17 ingress, egress, entry, and access on, to, over, and across the
18 easement and the grantor's adjoining property.

19 (b) An instrument of conveyance of an easement provided to a
20 property owner under Section 21.0113, that relates to an oil,
21 natural gas, oil product, or liquidified mineral pipeline, must
22 include the following, in substantial form and content:

23 NOTICE OF CONFIDENTIALITY RIGHTS: YOU MAY REMOVE OR STRIKE
24 ANY OR ALL OF YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE
25 NUMBER FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE
26 PUBLIC RECORDS.

27 PERMANENT EASEMENT AGREEMENT

1 This Permanent Easement Agreement (the "Agreement") is by and
2 between [Name in Bold], whose address is
3 [insert Address NO Abbreviations], (hereinafter referred to as
4 "Grantor", whether one or more) and , with offices at
5 _____ , and its successors and assigns (such entity and its
6 successors and assigns are collectively referred to as the
7 "Grantee"). For the consideration of TEN AND NO/100 Dollars
8 (\$10.00) and other good and valuable consideration, the receipt and
9 sufficiency of which are hereby acknowledged, Grantor does hereby
10 GRANT, BARGAIN, SELL, and CONVEY unto Grantee a perpetual
11 non-exclusive free and unobstructed permanent pipeline easement
12 _____ feet in width [or if it varies, describe], in order to, among
13 other rights described below, construct, operate, and maintain one
14 (1) pipeline [or if permanent pipeline easement is sought for more
15 than one pipeline, specify in the instrument the number of
16 pipelines sought] not to exceed _____ inches in nominal diameter
17 (whether one or more, the "Pipeline") and any appurtenant
18 facilities in, over, through, across, under, and along land owned
19 by the Grantor, said easement being described on the exhibit(s)
20 attached hereto and made part hereof (the "Permanent Pipeline
21 Easement"), and if described on the exhibit(s) attached hereto (i)
22 a permanent exclusive surface site easement as described on the
23 exhibit(s) attached hereto for the purpose of erecting, laying,
24 constructing, maintaining, fencing, operating, repairing,
25 inspecting, replacing, protecting, altering, and removing [specify
26 in the instrument one or more of the following facilities sought to
27 be installed] both above and below the surface, pipelines, pipeline

1 gate valve(s), by-passes, cross-overs, loops, risers, vents,
2 cables, meters, valves, cathodic protection, conduits,
3 launching-receiving equipment/in-line pigging facilities,
4 alternating current mitigation equipment, electrical supply
5 facilities, wires and poles, solar power facilities, generators,
6 treating and dehydration facilities, monitoring cameras, slug
7 catchers, compressors, pumps, radio and communications equipment
8 and facilities, measuring equipment and meter runs, and any other
9 appurtenances that may be necessary or desirable in connection
10 therewith (the "Surface Site Easement"), (ii) a temporary or
11 permanent access easement as identified on the exhibit(s) hereto
12 on, over, through, across, and along Grantor's property, as more
13 particularly described on the exhibit(s) hereto, for ingress and
14 egress by Grantee and its employees, designees, contractors,
15 successors, and assigns, and all those acting by or on behalf of it,
16 for the unobstructed passage of persons, vehicles, equipment,
17 and/or machinery, together with the non-exclusive right to use any
18 existing roadway and/or to construct, protect, inspect, repair,
19 alter, reconstruct, restore, improve, maintain, and use a road,
20 including ditches, culverts, drains, and such other appurtenant
21 facilities (the "Access Easement"), and (iii) a perpetual
22 non-exclusive free and unobstructed permanent easement feet
23 in width, for the purpose of erecting, laying, constructing,
24 maintaining, operating, repairing, inspecting, replacing,
25 protecting, altering, and removing power lines, poles and related
26 appurtenances to serve the Pipeline or appurtenances thereto (the
27 "Electric Line Easement").

1 Grantor does also hereby GRANT, BARGAIN, SELL, and CONVEY
2 unto Grantee temporary workspace and extra/additional temporary
3 workspace, if any, as generally described in the exhibit(s)
4 attached hereto, in order to construct the Pipeline and any
5 appurtenant facilities in, over, through, across, under, and along
6 the property and to restore the property as required under this
7 Agreement (the "Temporary Construction Easement") (The Permanent
8 Pipeline Easement and Temporary Construction Easement, together
9 with the Surface Site Easement, the Access Easement and the Electric
10 Line Easement (to the extent described in the exhibit(s) hereto),
11 are collectively referred to as the "Easements"). The term of the
12 Temporary Construction Easement and Access Easement (if identified
13 as temporary on the exhibit(s) hereto) shall be for a period to
14 extend twenty-four (24) months from the date of construction
15 commencement on Grantor's property. However, if Grantee has
16 completed its use of the Temporary Construction Easement or Access
17 Easement (if identified as temporary) prior to the expiration of
18 said period, then the Temporary Construction Easement and such
19 Access Easement shall immediately terminate. All rights, duties,
20 and/or obligations arising by or under this Agreement shall only
21 apply to the Temporary Construction Easement and Access Easement
22 (if identified as temporary) while same are in effect.

23 It is further agreed as follows:

24 1. Permanent Pipeline Easement. The right to use the
25 Easements shall belong to the Grantee and its agents, employees,
26 designees, contractors, guests, invitees, successors, and assigns,
27 and all those acting by or on behalf of it, or to any of them, for

1 the purposes of establishing, laying, constructing,
2 reconstructing, installing, realigning, modifying, replacing,
3 improving, adding, altering, substituting, operating, maintaining,
4 accessing, inspecting, patrolling, protecting, repairing, changing
5 the size of, relocating, and changing the route or routes of the
6 Pipeline within the Permanent Easement and abandoning in place and
7 removing at will, in whole or in part, the Pipeline, for the
8 transportation of [the instrument to specify one or more of the
9 following] oil, gas, oil products, liquefied minerals (including
10 without limitation, condensate, whether obtained from oil or gas
11 wells, ethane, ethylene, propane, butane, isobutene, pentane,
12 natural gasoline, and other products derived from hydrocarbons),
13 crude petroleum, hydrocarbon gas liquids, or other mineral
14 solutions, together with above and below ground appurtenances as
15 may be necessary or desirable for the operation of the Pipeline
16 over, across, under, and upon the Permanent Easement.

17 2. Minimum Burial Depth. At the time of initial
18 construction, Grantee shall bury the Pipeline to a minimum depth of
19 thirty-six inches (36") below the surface of the ground and any then
20 existing drainage ditches, creeks, and roads, provided however at
21 those locations where rock is encountered, the Pipeline may be
22 buried at a lesser depth. If the Pipeline crosses a river or other
23 large drainage feature or is intended to be placed above ground, the
24 Pipeline can be installed, where permitted by law, along a bridge,
25 or in above ground pipe racks or upon the surface, as permitted by
26 law.

27 3. Ingress and Egress. Grantee shall have the right of

1 ingress, egress, entry, and access in, to, through, on, over,
2 under, and across the Easements and where same intersect any public
3 road or public right-of-way or other easement to which Grantee has
4 the right to access and along any roads designated by Grantor and
5 any roads or routes as needed during an emergency, for any and all
6 purposes necessary and/or incident to the exercise by the Grantee
7 of the rights granted to it by this Agreement. Grantee shall
8 promptly repair any damage to Grantor's roads caused by Grantee in
9 the exercise of any rights granted in as good a condition as existed
10 prior to use by Grantee.

11 4. Lateral Support. Grantee shall have the right to select
12 the exact location of the Pipeline within the Permanent Easement.
13 Further, Grantee shall have the right to construct, maintain, and
14 change slopes of cuts and fills to ensure proper lateral and
15 subjacent support for and drainage for the Pipeline and appurtenant
16 facilities.

17 5. Damages. The consideration paid by Grantee in this
18 Agreement includes the market value of the Easements and including
19 without limitation any and all (i) damages resulting from the
20 removal or clearing of any trees, shrubs, and other improvements or
21 obstructions within the Easements, (ii) damages resulting from
22 Grantee's digging and trenching operations within the Easements,
23 (iii) crop damages in connection with any farm lands located within
24 the Easements, (iv) damages to the remaining property, if any, as a
25 result of the granting of the Easements and the installation of the
26 Pipeline, including any diminution in value, if any, (v) damages to
27 the Easements themselves by reason of the operation, maintenance,

1 repair, alteration, and/or servicing of the Pipeline after initial
2 pipeline construction and remediation is completed, and (vi)
3 damages or claims resulting from the remediation performed by
4 Grantee on Grantor's lands following initial construction, and
5 (vii) damages resulting from routine clearing of the permanent
6 Easements of obstructions and maintaining a line of sight along the
7 Easements. The initial consideration does not cover any damages
8 which may accrue from time to time to Grantor's other lands outside
9 the Easements and Grantee shall pay Grantor for any and all other
10 such reasonable and actual damages promptly as they may accrue.

11 6. Fences. Grantee shall have the right to remove any fence
12 that now crosses or may cross the Easements during initial
13 construction of the Pipeline or thereafter. Prior to cutting any
14 fence, however, Grantee shall brace the existing fence to be cut
15 adequately on both sides of the proposed cut by suitable H-braces to
16 prevent the remainder of the fence from sagging and shall promptly
17 install wire gaps or gates in any fence opening created by Grantee.
18 Each such wire gap or gate is to be reinforced so as to be strong
19 enough to prevent livestock from passing through same, where
20 livestock is present. Upon completion of initial construction
21 operations, each wire gap will be removed and at Grantee's sole
22 option replaced with (i) fencing of the same or better grade and
23 condition as existed before Grantee cut and gapped same or (ii) a
24 permanent gate, which gate shall, to the extent reasonably
25 practicable, be constructed out of similar or better grade
26 materials than already used for existing gates on the property.
27 Each entry and exit gate shall be securely closed and locked, except

1 when Grantee or its authorized personnel are actually passing
2 through same, and Grantor and Grantee shall each be entitled to
3 maintain their own lock in any such gate, such that Grantor and
4 Grantee shall each have the right of free passage through any such
5 gates. If Grantee fails to restore any fences or gates disturbed by
6 Grantee to the same or better grade and condition as existed before
7 Grantee disturbed same, Grantee shall pay Grantor the reasonable
8 costs to restore any such fences or gates to the same or better
9 grade and condition as existed before Grantee disturbed same.

10 7. Crossing Rights and Surface Limitations. Grantor may use
11 the Easements for any and all purposes not inconsistent with the
12 purposes set forth in this Agreement; provided, however, that
13 Grantor may not use any part of the Easements if such use may
14 damage, destroy, injure, and/or interfere with Grantee's use of the
15 Easements for the purposes for which the Easements are being sought
16 by Grantee. Notwithstanding anything herein to the contrary,
17 Grantor is not permitted to conduct any of the following activities
18 on the Easements: (1) construct any temporary or permanent building
19 or site improvements; (2) drill or operate any well on the
20 Easements; provided that a well can be directionally drilled under
21 the Easements subject to the terms for drilling set forth in
22 Paragraph 9 below; (3) remove soil or change the grade or slope; (4)
23 impound surface water; or (5) plant trees or landscaping. Grantor
24 further agrees it may not cause above- or below-ground obstruction
25 to interfere with the purposes for which this Agreement is being
26 acquired may be placed, erected, installed, or permitted upon the
27 Easements without the prior written permission of Grantee. Grantor

1 and Grantor's heirs, successors, and assigns shall have the right,
2 after prior written notice to Grantee and review and approval by
3 Grantee thereof, to construct, reconstruct, and maintain streets,
4 sidewalks, roads or drives, road ditches, drainage ditches, and
5 utilities, near perpendicular but in no event at any angle of not
6 less than forty-five (45) degrees to Grantee's Pipeline over and
7 across the Permanent Easement, provided that all of Grantee's
8 required and applicable spacing and crossing guidelines,
9 including, without limitation, horizontal and vertical separation
10 limits and other protective requirements, are met by Grantor at
11 Grantor's cost. In the event the terms of this paragraph are
12 violated, such violation shall immediately be corrected or
13 eliminated by Grantor upon receipt of written notice from Grantee
14 or Grantee shall have the immediate right to correct or eliminate
15 such violation at the sole risk and expense of Grantor. Grantor
16 shall promptly reimburse Grantee for any expenses or costs related
17 thereto. Further, Grantor will not hereafter interfere in any
18 manner with the purposes for which the Easements are conveyed, and
19 Grantee shall have the right to remove any improvement, facility,
20 or structure that interferes with the purposes for which the
21 Easements are granted or which may endanger or interfere with the
22 efficiency, safety, or convenient operation and maintenance of the
23 Pipeline and appurtenant facilities and which is installed by
24 Grantor subsequent to the date that Grantee acquires possession of
25 the Easements, without liability for damages and at Grantor's cost.
26 Grantor agrees that Grantee will not be liable to repair, replace or
27 be liable for the cost of repair or replacement of any of Grantor's

1 above or below ground obstructions installed by virtue of this
2 paragraph as a result of Grantee's use of the Easements.

3 8. Mowing/Clearing. Grantee has the right, from time to time
4 without paying any damages to Grantor, to mow the Permanent
5 Easement and to trim or cut down or eliminate from the Easements
6 trees or shrubbery, in the sole judgment of Grantee and its
7 successors and assigns, as may be necessary to install the Pipeline
8 and thereafter on the Permanent Easement to prevent possible
9 interference with the operation and maintenance of the Pipeline and
10 to remove possible hazard thereto. All trees and brush removed
11 during construction and other debris generated during construction
12 shall be burned and/or chipped and spread on the Easements or
13 removed to an appropriate disposal site. The method of disposal
14 shall be selected by Grantee.

15 9. Oil and Gas. To the extent of its authority over the
16 mineral estate, Grantor shall retain all the oil, gas, and other
17 minerals in, on, and under the Easements; provided, however, that
18 Grantor, to the extent of its authority over the mineral estate,
19 shall not be permitted to drill or operate equipment for the
20 production or development of minerals on the Easements, but it will
21 be permitted to extract the oil and other minerals from and under
22 the Easements by directional drilling and other means, provided the
23 drill bit enters the Easements at a subsurface depth of one hundred
24 feet (100') or deeper and so long as such activities do not damage,
25 destroy, injure, and/or interfere with the Grantee's use of the
26 Easements for the purposes for which the Easements are being sought
27 by Grantee.

1 10. Pipeline Installation and Grading. Grantee will,
2 insofar as reasonably practicable, level, re-grade, and reseed the
3 ground disturbed by Grantee's use of the Easements and will
4 maintain the Easements clean of all litter and trash generated by
5 Grantee during periods of construction, operation, maintenance,
6 repair, or removal. All construction debris shall be cleaned up and
7 removed from Grantor's lands upon completion of installation and
8 construction of the Pipeline, associated equipment, and
9 appurtenances thereto. During the initial construction, the
10 trenching (but not installation by horizontal directional drilling
11 or underground boring) in areas of Grantor's lands that are
12 currently being used for growing commercial crops or purposefully
13 fallowed for a period of time not to exceed the lesser of five years
14 or the number of consecutive years such land was used for growing
15 commercial crops prior to being fallow, shall be done in such a
16 manner so that at least twelve inches (12") of top soil (or the
17 amount of top soil present if less than twelve inches (12") exists)
18 will be separated from the balance of the dirt removed in making the
19 ditch or trench for installation of the Pipeline. In backfilling
20 after installation of the Pipeline, the topsoil so first removed
21 and segregated shall be used as cover soil in such a manner so as to
22 result in it being returned to the top of the ditch as topsoil.

23 11. Use Limitations. Grantee shall use the Easements solely
24 for the purposes specified in this Agreement. There shall be no
25 hunting or fishing on the Easements or any of Grantor's lands by
26 Grantee or its officers, agents, employees, contractors, invitees,
27 guests, or representatives at any time. No firearms or fishing

1 equipment shall be taken on the Easements by Grantee or its
2 officers, agents, employees, contractors, invitees, guests, or
3 representatives at any time.

4 12. Above Ground Appurtenances. Except for facilities
5 located on the Surface Site Easement and Electric Line Easement (if
6 identified and included in the exhibit(s) hereto), Grantee shall
7 not place any above ground appurtenances on the Permanent Pipeline
8 Easement except for pipeline markers and cathodic protection units,
9 cathodic test leads, alternating current mitigation equipment,
10 and/or other cathodic protection appurtenances, necessary to
11 monitor and control potential corrosion, including, without
12 limitation, decouplers, pedestals, rectifiers, electric lines,
13 electrical facilities, electric meters, junction boxes, anodes,
14 wires, poles, ground beds, fencing, bollards, grounding systems,
15 and any other appurtenances necessary for cathodic protection or
16 corrosion control, if necessary for the operation of the Pipeline,
17 as determined by Grantee in its sole discretion, and except for
18 [describe other above ground appurtenances, if any, which will be
19 installed within the Permanent Pipeline Easement]. Grantee shall
20 use reasonable efforts to place such above ground signage and
21 cathodic protection facilities at the junction of the Permanent
22 Pipeline Easement and fence lines, property lines, pipeline
23 crossings, river or creek crossings, or road crossings, provided
24 however, Grantee shall have the right to place same at any other
25 location required by applicable law, regulation, or rule on
26 Grantor's property.

27 13. Indemnity. GRANTEE SHALL DEFEND WITH COUNSEL OF

1 GRANTEE'S CHOICE, INDEMNIFY, PROTECT, AND HOLD HARMLESS GRANTOR,
2 GRANTOR'S HEIRS, SUCCESSORS, ASSIGNS AND RELATED OR AFFILIATED
3 ENTITIES (THE "INDEMNIFIED PARTIES"), FROM ANY AND ALL LIENS,
4 CLAIMS, DEMANDS, COSTS (INCLUDING BUT NOT LIMITED TO REASONABLE
5 ATTORNEYS' FEES), EXPENSES, DAMAGES, LOSSES, AND CAUSES OF ACTION
6 FOR DAMAGES ASSERTED BY PERSONS OR ENTITIES UNAFFILIATED WITH THE
7 INDEMNIFIED PARTIES BECAUSE OF INJURY TO PERSONS (INCLUDING DEATH)
8 AND INJURY OR DAMAGE TO OR LOSS OF ANY PROPERTY OR IMPROVEMENTS TO
9 THE EXTENT CAUSED BY GRANTEE'S NEGLIGENCE, GROSS NEGLIGENCE,
10 WILLFUL MISCONDUCT, OR STRICT LIABILITY.

11 14. Tenants. Grantor hereby identifies the following as
12 people or entities having a lease, sublease, or other possessory
13 interest in Grantor's property:

14 _____
15 _____
16 _____
17 _____

18 (If this paragraph is left blank, then Grantor represents
19 there are no such persons or entities.)

20 15. Counterparts. This Agreement may be executed in several
21 counterparts, each of which shall be an original of this Agreement
22 but all of which, when delivered and taken together, shall
23 constitute one and the same Agreement and be binding upon the
24 parties who executed any counterpart, regardless of whether it is
25 executed by all parties named herein.

26 16. Assignability. Grantee shall have the right to assign
27 this grant in whole or in part, in which event Grantor acknowledges

1 and agrees that the assignee shall succeed to the rights and
2 obligations of Grantee to the extent conveyed in such assignment,
3 and Grantee shall be relieved of obligations with respect to the
4 assigned interest which accrue after the date of assignment.

5 17. Integration Clause. This Agreement constitutes the
6 entire agreement and supersedes any and all prior oral
7 understandings and agreements, if any, concerning the subject of
8 this Agreement. Grantor confirms and agrees that Grantor has been
9 made no promise or agreement by Grantee or any agent of Grantee
10 (which is not expressed or referenced specifically within this
11 Agreement) in executing this Agreement, that Grantor is not relying
12 upon any statement or representation of Grantee or any agent of
13 Grantee and that Grantor's execution of this Agreement is free and
14 voluntary. This Agreement may not be modified or amended except on
15 or after the date hereof except by a writing signed by the party
16 against whom said modification or amendment is to be enforced and no
17 party shall be liable or bound to any other party in any manner
18 except as specifically set forth herein.

19 18. Disclaimer. NEITHER PARTY HAS RELIED UPON AND HEREBY
20 EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS,
21 INFORMATION, OR MATERIALS PROVIDED, SUPPLIED, OR FURNISHED BY THE
22 OTHER PARTY OR OTHERWISE MADE AVAILABLE BY EITHER PARTY IN THE
23 PUBLIC DOMAIN OR OTHERWISE (OTHER THAN THOSE MADE IN THIS
24 AGREEMENT).

25 TO HAVE AND TO HOLD, subject to all matters of record which
26 are valid and subsisting and affect Grantor's property burdened by
27 this Permanent Easement Agreement, the rights, privileges, and

1 authority hereby granted unto the Grantee and its successors and
2 assigns, forever, and Grantor does hereby agree to warrant and
3 defend said Easements unto Grantee and its successors and assigns,
4 by, through, or under Grantor, but not otherwise. This Agreement
5 and all of its terms, provisions, and obligations shall be
6 covenants running with the land affected thereby and shall inure to
7 the benefit of and be binding upon Grantor and Grantee and their
8 respective heirs, executors, administrators, successors, and
9 assigns.

10 EXECUTED and effective as of the _____ day of _____ 20__ .

11 GRANTOR(S):

12 By: _____

13 ACKNOWLEDGEMENT

14 STATE OF TEXAS

15 COUNTY OF _____

16 BEFORE ME, the undersigned authority, on this day personally
17 appeared _____, known to me to be the person whose name is
18 subscribed to the foregoing instrument and acknowledged to me that
19 he/she executed the same for the purposes and consideration therein
20 expressed.

21 GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of
22 _____ 20__ .

23 _____

24 Notary Public in and for the State of Texas

25 _____ (Print Name of Notary Public Here)

26 (c) A property owner may negotiate for terms not required
27 under Subsection (a) for an easement agreement or provided under

1 Subsection (b) for a pipeline easement agreement. An entity and a
2 property owner may, at any time:

3 (1) agree to alter or omit a term required under
4 Subsection (a) for an easement agreement or provided by Subsection
5 (b) for a pipeline easement agreement; or

6 (2) execute an instrument of conveyance that is
7 different in some or all aspects than the pipeline easement
8 agreement form provided by Subsection (b).

9 SECTION 3.04. Section 21.014, Property Code, is amended by
10 amending Subsection (a) and adding Subsection (d) to read as
11 follows:

12 (a) The judge of a court in which a condemnation petition is
13 filed or to which an eminent domain case is assigned shall, not
14 later than the 15th calendar day after the date the petition is
15 filed, appoint three disinterested real property owners who reside
16 in the county as special commissioners to assess the damages of the
17 owner of the property being condemned and appoint two disinterested
18 real property owners who reside in the county as alternate special
19 commissioners. The judge appointing the special commissioners
20 shall give preference to persons agreed on by the parties before the
21 court appoints the special commissioners. The judge shall provide
22 the names and contact information of the special commissioner and
23 alternate special commissions to the parties. Each party shall have
24 seven calendar days after the date of the order appointing the
25 special commissioners [~~The judge shall provide each party a~~
26 ~~reasonable period~~] to strike one of the three special commissioners
27 [~~appointed by the judge~~]. If a person fails to serve as a special

1 commissioner or is struck by a party to the suit in accordance with
2 this subsection, an alternate special commissioner shall serve as a
3 replacement for the special commissioner based on the order that
4 the alternate special commissioners are listed in the initial order
5 of appointment [~~, the judge shall appoint a replacement~~].

6 (d) In this section, "disinterested real property owner"
7 means a real property owner who:

8 (1) is not related to a party or the representative of
9 a party by affinity within the second degree or by consanguinity
10 within the third degree, as determined under Chapter 573,
11 Government Code;

12 (2) does not own property that an entity with eminent
13 domain authority is currently attempting to acquire for public use;
14 and

15 (3) is not related by affinity within the second
16 degree or by consanguinity within the third degree, as determined
17 under Chapter 573, Government Code, to a person who has owned or
18 currently owns property described by Subdivision (2).

19 SECTION 3.05. Section 21.015(a), Property Code, is amended
20 to read as follows:

21 (a) The special commissioners in an eminent domain
22 proceeding shall [~~promptly~~] schedule a hearing to occur not earlier
23 than [~~for the parties at the earliest practical time but may not~~
24 ~~schedule a hearing to assess damages before~~] the 20th day or later
25 than the 40th day after the date the special commissioners were
26 appointed, unless otherwise agreed to by the parties. The special
27 commissioners shall schedule a hearing for the parties at a place

1 that is as near as practical to the property being condemned, ~~or~~ at
2 the county seat of the county in which the proceeding is being held,
3 or at the request of either party, by video-conferencing.

4 SECTION 3.06. Section 21.016(d), Property Code, is amended
5 to read as follows:

6 (d) Notice may be served[+
7 [~~(1)~~] by delivering a copy of the notice to the party
8 or to the party's agent or attorney or in any other manner provided
9 by the Texas Rules of Civil Procedure for service of citation[+]

10 [~~(2) if the property being condemned belongs to a~~
11 ~~deceased's estate or to a minor or other legally disabled person and~~
12 ~~the person or estate has a legal representative, by delivering a~~
13 ~~copy of the notice to the legal representative; or~~

14 [~~(3) if the property being condemned belongs to a~~
15 ~~nonresident of this state and there has been no personal service on~~
16 ~~the owner, if the identity or the residence of the property owner is~~
17 ~~unknown, or if the property owner avoids service of notice by~~
18 ~~hiding, by publication in the same manner as service of citation by~~
19 ~~publication in other civil cases in the district courts or county~~
20 ~~courts at law].~~

21 SECTION 3.07. Chapter 21, Property Code, is amended by
22 adding Subchapter B-1 to read as follows:

23 SUBCHAPTER B-1. IN-PERSON MEETING

24 Sec. 21.0301. DEFINITION. In this subchapter, "in-person
25 meeting" includes a meeting conducted by telephonic or video
26 conferencing at the option of either the entity or landowner.

27 Sec. 21.0302. APPLICABILITY TO CERTAIN ENTITIES. This

1 subchapter does not apply to an entity that is required by law to
2 participate or voluntarily participates in a public meeting or
3 hearing regarding the exercise of the entity's eminent domain
4 authority at the Public Utility Commission of Texas or to an entity
5 that holds a public meeting as part of the entity's regulatory or
6 condemnation process.

7 Sec. 21.0303. METHOD OF NOTICE. Notice may be given under
8 this subchapter by:

9 (1) mailing the notice to the property owner listed
10 for the property on the most recent tax roll for a taxing unit with
11 authority to impose an ad valorem tax on the property, at the
12 address for the property owner listed on the tax roll; or

13 (2) any method authorized by Section 21.016(d).

14 Sec. 21.0304. NOTICE TO PROPERTY OWNER. Before or at the
15 time an entity with eminent domain authority makes an initial offer
16 to a property owner to acquire a property interest for a project,
17 the entity shall provide notice to the property owner of the
18 property owner's right to request an in-person meeting with the
19 entity to discuss the project.

20 Sec. 21.0305. PROPERTY OWNER REQUEST FOR IN-PERSON MEETING.
21 A property owner who receives notice from an entity under Section
22 21.0304 may request an in-person meeting with the entity. The
23 property owner's request must be in writing and received by the
24 entity not later than the seventh day after the date the property
25 owner received the notice.

26 Sec. 21.0306. SCHEDULING OF IN-PERSON MEETING. (a) On
27 receipt of a request from a property owner under Section 21.0305 the

1 entity shall propose not fewer than three different meeting times
2 on three different meeting dates for the in-person meeting.

3 (b) A meeting time proposed under Subsection (a) may not be
4 earlier than the seventh day or later than the 30th day after the
5 date the entity received the property owner's request.

6 (c) A property owner who wishes to accept a proposed meeting
7 time under this section must confirm acceptance in writing of the
8 meeting time not later than the earlier of the:

9 (1) third day before the proposed meeting time; or

10 (2) seventh day after the date the property owner
11 receives proposed meeting times from the entity.

12 Sec. 21.0307. SATISFACTION OF BONA FIDE OFFER REQUIREMENT
13 GENERALLY. An entity satisfies the requirements of this subchapter
14 for purposes of Section 21.0113(b)(2) with respect to a property
15 owner if the entity:

16 (1) provides notice to the property owner as required
17 by Section 21.0304 and the property owner does not timely request an
18 in-person meeting under Section 21.0305;

19 (2) proposes meeting times to the property owner as
20 required by Section 21.0306 and the property owner:

21 (A) does not timely confirm the property owner's
22 preferred meeting time under that section; or

23 (B) rejects the proposed meeting times; or

24 (3) schedules a meeting with a property owner as
25 required under Section 21.0306, whether or not the property owner
26 participates in the meeting.

27 Sec. 21.0308. SATISFACTION OF BONA FIDE OFFER REQUIREMENT:

1 VOLUNTARY MEETING. Notwithstanding any other provision of this
2 subchapter, an entity satisfies the requirements of this subchapter
3 for purposes of Section 21.0113(b)(2) with respect to a property
4 owner if:

5 (1) the entity voluntarily initiates an in-person
6 meeting with the property owner or with a group of affected property
7 owners;

8 (2) provides notice of the meeting to the property
9 owner at least 14 days before the meeting; and

10 (3) the meeting is held before a final offer is made to
11 the property owner.

12 Sec. 21.0309. EFFECT OF IN-PERSON MEETING ON TIMING OF
13 FINAL OFFER. Notwithstanding any other provision of this
14 subchapter, an entity that participates in an in-person meeting
15 with a property owner may not make a final offer to the property
16 owner earlier than the third day after the date of the in-person
17 meeting unless the property owner agrees to an earlier date.

18 SECTION 3.08. (a) Sections 21.0112 and 21.0113, Property
19 Code, as amended by this Act, and Section 21.0114 and Subchapter
20 B-1, Chapter 21, Property Code, as added by this Act, apply only to
21 the acquisition of real property in connection with an initial
22 offer made on or after the effective date of this Act. An
23 acquisition of real property in connection with an initial offer
24 made before the effective date of this Act is governed by the law
25 applicable to the acquisition immediately before that date, and
26 that law is continued in effect for that purpose.

27 (b) Sections 21.014, 21.015, and 21.016, Property Code, as

1 amended by this Act, apply only to a condemnation proceeding
2 commenced on or after the effective date of this Act. A condemnation
3 proceeding commenced before the effective date of this Act is
4 governed by the law applicable to the condemnation proceeding
5 immediately before the effective date of this Act, and that law is
6 continued in effect for that purpose.

7 ARTICLE 4. EFFECTIVE DATE

8 SECTION 4.01. (a) Except as provided by Subsection (b) of
9 this section, this Act takes effect January 1, 2022.

10 (b) Sections 1.03 and 2.30 of this Act take effect September
11 1, 2021.