

**NON-EXCLUSIVE LICENSE AND FACILITIES INSTALLATION AND
MAINTENANCE AGREEMENT BETWEEN THE
CITY OF LEWISVILLE AND THE UPPER TRINITY REGIONAL WATER
DISTRICT
FOR USE OF PUBLIC RIGHTS-OF-WAY**

THIS AGREEMENT (“Agreement”) is made by and between the City of Lewisville, Texas, a municipal corporation and home rule municipality of the State of Texas with its principal offices located at 151 West Church Street, Lewisville, Texas 75057 (“City”) and Upper Trinity Regional Water District, a conservation and reclamation district of the State of Texas with its principal offices located at 900 North Kealy Avenue, PO Box 305) Lewisville, Texas 75067 (“UTRWD”) (jointly, “Parties”).

WHEREAS, UTRWD desires the use of certain Public Rights-of-Way within the City for the purpose of installing, maintaining and operating a 72-inch water transmission main and up to two (2) associated fiber optic lines and other appurtenances (“Utility”) as defined by this Agreement; and

WHEREAS, UTRWD currently uses certain Public Rights-of-Way within the City for the purpose of installing, maintaining and operating an existing 48-inch water main, including associated appurtenances, between UTRWD’s Taylor Regional Water Treatment Plant located at 300 E. Valley Ridge Parkway, Lewisville, Texas 75067 and its Stonehill Pump Station located at 6250 Stone Hill Farms Pkwy, Flower Mound, TX 75028 (“Existing Utility”); and

WHEREAS, based on continued growth and need for additional water, UTRWD has determined that an additional water transmission main is needed parallel to the Existing Utility to transport additional treated water between UTRWD’s Taylor Regional Water Treatment Plant located at 300 E. Valley Ridge Parkway, Lewisville, Texas 75067 and its Stonehill Pump Station located at 6250 Stone Hill Farms Pkwy, Flower Mound, TX 75028; and

WHEREAS, the Parties wish to ensure that all UTRWD Facilities, as hereinafter defined, are operating under the conditions and requirements outlined in this Agreement; and

WHEREAS, the installation of UTRWD’s Utility and the maintenance and operation of the UTRWD Facilities within the Public Rights-of-Way will be done in a manner consistent with this Agreement; and

WHEREAS, the installation, maintenance, and operation of the UTRWD Utility and Existing Utility is in the public’s best interest;

NOW, THEREFORE, in consideration of the sum of Ten Dollars and No/100 and the

covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions.

For purposes of this 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 Lewisville, Texas.
- (b) “Utility” has the meaning given in the recitals to this Agreement.
- (c) “Existing Utility” has the meaning given in the recitals to this Agreement.
- (d) “Director” means the Department Director designated by the City Manager or designee to administer this Agreement.
- (e) “Effective Date” means the latest date on which this Agreement is signed by both Parties.
- (f) “Facilities” means any and all of the Licensee’s pipelines and appurtenances including manholes, blow offs, air vacuum/release valves, and similar appurtenances, communication facilities such as fiber optic cables, wiring and appurtenances located within the Public Rights-of-Way, including, but not limited to, the Utility and Existing Utility.
- (g) “License” means the authority granted by this Agreement, as provided herein.
- (h) “Licensee” or “UTRWD” means Upper Trinity Regional Water District.
- (i) “Rights-of-Way” or “Public Rights-of-Way” mean all present and future public property, streets, public thoroughfares, highways and alleys owned by City, and all present and future utility easements owned by City that allow the use of Licensee’s Facilities. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or agency.

Section 2. Grant of License

- (a) The City hereby grants Licensee a non-exclusive License to use and occupy the Rights-of-Way listed and shown in Exhibit “A” to erect, install, construct, replace, reconstruct, maintain and operate its Utility and Existing Utility in, across, or under the Rights-of-Way shown in Exhibit “A”, subject to the laws of the State of Texas and the City’s charter and laws as they exist now or may be amended from time to time, and subject to the conditions outlined

in this Agreement.

(b) Any additions to or extensions of Licensee's Existing Utility or Utility beyond the extent of what is shown on Exhibit "A" shall require the filing of an updated Exhibit "A" with the City at least ten (10) business days before the initiation of installation of such addition or extension.

(c) The Licensee's right to use and occupy the Public Rights-of-Way shall not be exclusive and the City reserves the right to grant a similar use of same to itself or any person or entity at any time during the period of this Agreement.

(d) The License granted herein does not grant to Licensee the right, privilege, or authority to engage in any other business within the City requiring the grant of a right, privilege, or authority by the City, or to use the Rights-of-Way for any purpose other than the purpose stated herein.

(e) By this Agreement, Licensee obtains only the right to use the Public Rights-of-Way that is expressly granted herein. Licensee acknowledges and accepts at its own risk that City may make use of the Public Rights-of-Way in a manner that is inconsistent with Licensee's placement and use of its Facilities located in the Public Rights-of-Way, and in that event Licensee shall not be entitled to compensation from City.

Section 3. Compliance with City Requirements

(a) Licensee's Facilities shall be installed, operated and maintained in such a manner so as not to unreasonably interfere with vehicular and pedestrian use of Public Rights-of-Way, or with any existing publicly-owned or publicly-franchised water and wastewater lines, gas lines, electric lines, storm sewer lines, open drainage areas, cable, fiber optic cable, roadways, sidewalks, alleys, traffic control devices, public signs, or any other publicly-owned or publicly-franchised facilities. The City shall have the right at any time to order and require Licensee to remove and abate any part of its Facilities that is unreasonably dangerous to life or property. In case Licensee, after notice, fails or refuses to act within a reasonable time, the City shall have the power to remove or abate the same at the expense of Licensee, all without compensation or liability for damages to Licensee or any third party.

(b) All of Licensee's activities in the Public Rights-of-Way shall be subject to the provisions of Chapter 13, Lewisville City Code, including the requirement that Licensee seek and obtain a permit for all construction work in the Right-of-Way, which permit by the City shall not be unreasonably delayed or denied. Where this Agreement outlines more stringent standards or requirements which are in conflict with Chapter 13, this Agreement shall control.

Licensee shall not be required to submit a permit application for the placement of Facilities outside of the Public Rights-of-Way; however, Licensee shall provide detailed drawings reflecting Licensee's installations on private property within the corporate boundaries of the City so that City may verify compliance with City ordinances related to zoning, development, building regulations, and setbacks, and for easement verification.

(c) Upon the Licensee's failure to commence or complete any construction, maintenance or restoration work required by this Agreement with due diligence and dispatch, the City may cause such work to be done after written notice to the Licensee, given so as to afford the Licensee an opportunity to commence and complete such work within such time as designated in the notice. The cost of such construction, maintenance or restoration incurred by the City upon the Licensee's failure shall then be charged and collected from the Licensee. Such costs shall be paid within thirty (30) days of notice to the Licensee, or all rights and privileges granted to the Licensee by this Agreement shall be revoked and this Agreement shall be terminated.

(d) The City reserves the right to make and enforce reasonable regulations concerning the construction, operation, and maintenance of Licensee's Facilities located within the Public Rights-of-Way and to reasonably designate where the Utility shall be placed as outlined in the attached Exhibit A.

(e) The Licensee shall keep and maintain at its principal offices a complete and accurate set of maps, construction drawings and specifications describing the exact location of its Facilities within the Public Rights-of-Way. The Licensee shall also keep a complete and accurate set of such maps, drawings and specifications on file with the City Engineer's office.

Section 4. Construction and Maintenance Specifications

Licensee's construction and maintenance work in the Public Rights-of-Way shall conform to the following minimum specifications:

(1) Prior to any boring, Licensee shall identify and verify the elevation of all existing utilities and adjust the bore to avoid contact by a minimum of 12 inches below existing utilities.

(2) The depth of conduit, measured from the top of the conduit to the surface of the ground, shall be a minimum of 60 inches.

(3) Within the Public Right-of-Way, 1 x 72-inch water transmission main and up to two (2) fiber optic lines (parallel to an existing 48-inch water transmission main) will be installed by boring, or horizontal direction drilling maintaining a depth

as specified in this Section 2.

(4) Trenching shall be promptly backfilled with earth and tamped with a mechanical tamper at six-inch lifts, so that the earth is restored to original grade to assure no hazard to vehicular, animal or pedestrian traffic. Compaction shall be to 95 percent standard proctor and test results shall be furnished directly from the laboratory to the City Engineer. All open trenches will be properly guarded or barricaded to prevent damage or injury.

(5) The Utility where practical, shall be located parallel to the Existing Utility. No Utility shall be placed at any culvert or within five feet of the closed point of same.

(6) In areas of potential erosion, the area shall comply with City Storm Water Pollution Prevention Ordinance.

(7) Operations along roadways, walkways, and sidewalks shall be kept clear of excavated material or other obstructions at all times. Barricades, warning signs and lights, and flagmen, when necessary, shall be provided by the contractor or the Licensee. Operations involving traffic control shall be in accordance with the latest Texas Manual on Uniform Traffic Control Devices (MUTCD) and an approved traffic control plan, which shall be submitted to City Engineer's office.

(8) Damage to banks, any public utilities, ditches, roads, fences, lawns, shrubbery, drives and any other property, public or private, caused from the equipment and installation of the Utility shall be immediately reported and repaired to the satisfaction of the public authorities having jurisdiction over the Right-of-Way involved, at the cost of the Licensee. Damage to any public or private utilities shall be repaired by a contractor that is acceptable to the City.

(9) All bores shall be accomplished by the dry-bore method or horizontal directional drilling or other approved methods.

(10) No appurtenances shall be located in existing or planned sidewalks.

Section 5. Duty to Move or Alter Facilities

(a) The City reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines, and to do or permit to be done any underground work deemed necessary and proper by the City, along, across, over or under the Public Rights-of-Way. In permitting such work to be done, the City shall not be liable to the Licensee for any damages occasioned, nor shall the City in doing such work be liable to the Licensee for any

damages.

(b) Whenever, by reason of establishing a grade or changes in the grade of any street or in the location or manner of construction of any public way, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by the City to alter, change, adapt or conform, or relocate the Facilities of the Licensee, such alterations or changes shall be made within a reasonable time by the Licensee, as ordered in writing by the City, without claim for reimbursement or compensation for damages against the City, or its franchise holders. The Licensee shall not be entitled to compensation for damages of any nature occasioned by the City's use of the Public Rights-of-Way for any purpose.

(c) If a Public Right-of-Way in which Licensee has Facilities is proposed to be vacated, eliminated, discontinued, or closed, Licensee shall be notified of same at least sixty (60) days prior to such event, and all rights of Licensee under this Agreement to use same shall terminate. Licensee shall, as soon as reasonably possible, remove its Facilities from such Public Right-of-Way unless Licensee obtains any necessary easements from the affected property owner to use the former Public Right-of-Way, or a court orders the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of utility Facilities in the former Public Right-of-Way, City shall reserve easements for Licensee to continue to use the former Public Right-of-Way. Licensee shall bear the cost of any removal or relocation of its Facilities unless the vacation, elimination, discontinuance or closure is primarily for the benefit of a private party, in which case the private party shall bear such costs.

Section 6. Restoration of Right-of-Way

(a) Any and all excavations and obstructions in and upon the Public Rights-of-Way and other public places in the City caused by the Licensee's operations under this Agreement shall be repaired and removed as quickly as is reasonably possible under the circumstances but not more than thirty (30) days after the completion of the work by Licensee. The City shall have ninety (90) days from the date of such restoration to determine whether the restored surface requires additional work to place it in as good a condition as before the commencement of the work. If the City determines that additional restoration work is necessary, Licensee shall perform all additional restoration work to the satisfaction of the City. No Right-of-Way shall be encumbered for a period longer than necessary to complete all work. All excavations shall be repaired in a good and workmanlike manner and restored to at least the condition that existed prior to the excavation. All utilities, irrigation equipment, utility equipment, and any other improvements located in the Public Rights-of-Way and disturbed by the Licensee shall likewise

be restored within a reasonable time to as good a condition as existed before the commencement of the work to the satisfaction of the City. Replacement of sod is to be of like kind, smoothed, shaped, rolled and compacted for proper landscape maintenance. Licensee warrants that any such restoration work performed in the Public Rights-of-Way shall be in satisfactory condition for a period of two (2) years after completion of restoration, to the extent that such restoration work has not been disturbed by others. In the event that the Licensee fails to repair or restore an excavation site within fourteen (14) calendar days after receipt of written notice from the City of a deficiency, the City may, at its option, perform the needed repair or restoration and the Licensee shall promptly reimburse the City for the cost of such repair or restoration.

(b) Licensee shall warrant any restoration work performed in the Rights-of-Way for two years from the date of final completion and acceptance by the City or, if additional restoration work is required, from the date of acceptance of the additional restoration work by the Director as meeting City's standards, whichever date is later. This warranty shall include all repairs and actions needed as a result of:

- (1) Defects in workmanship;
- (2) Settling of fills or excavations;
- (3) Any unauthorized deviations from the approved plans and specifications;
- (4) Failure to barricade;
- (5) Failure to clean up during and after performance of the work;
- (6) Restoration of improvements including, but not limited to, landscaping and irrigation; or
- (7) Any other violation of the ordinances of the City.

(c) If repairs are required during the two-year warranty period, those repairs need only be warranted until the end of the initial two-year period. It is not necessary that a new two-year warranty be provided for subsequent repairs after acceptance.

(d) At any time prior to completion of the two-year warranty period, the City may notify the Licensee of any needed repairs. Such repairs shall be completed within twenty-four (24) hours if the City determines the defects are an imminent danger to the public health, safety, or welfare. Non-emergency repairs shall be completed within fifteen (15) calendar days after notice is sent by the City.

Section 7. Indemnification of City

(a) In consideration of the License granted herein, Licensee shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents, and employees (the "Indemnitees") harmless against any and all liability arising from any claim, lawsuit, judgments, or action brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Licensee's or any of its officers, agents, or employees, intentional and/or negligent acts or omissions in connection with Licensee's construction, maintenance and operation of Licensee's Facilities in the Public Rights-of-Way, including any court costs, expenses and defenses thereof.

(b) This indemnity shall only apply to the extent that the loss, damage, or injury is attributable to the negligence or wrongful act or omission of the Licensee, its officers, agents or employees, and does not apply the extent such loss, damage, or injury is attributable to the negligence or wrongful act or omission of the City, or the City's agents, representatives or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the Licensee and the City.

(c) In the event of joint and concurrent negligence or fault of both the Licensee and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both the Licensee and the City, responsibility for all costs of defense shall be apportioned between the City and Licensee based upon the comparative fault of each.

(d) In fulfilling its obligations to defend and indemnify City, Licensee shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Licensee shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Licensee fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Licensee shall be liable for all reasonable defense costs incurred by City.

Section 8. Liability Insurance

(a) UTRWD shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of the License granted herein, insurance in the amounts, types

and coverages set forth below, and in compliance with Lewisville City Code Section 13-52, as it exists or may be amended. Where this Agreement and Section 13-52 are in conflict, the more stringent requirement shall apply. Such insurance may be in the form of self-insurance to the extent not precluded by applicable law or by obtaining insurance, as follows:

(1) Commercial general or excess liability on an occurrence form with minimum limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) aggregate. This coverage shall include the following:

(A) Products/completed operations to be maintained for the warranty period specified in Lewisville City Code Section 13-49, as it exists or may be amended, provided however that no bond shall be required.

(B) Personal and advertising injury.

(C) Contractual liability.

(D) Explosion, collapse, or underground (XCU) hazards.

(2) Automobile liability coverage with a minimum policy limit of not less than one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.

(3) Statutory workers' compensation benefits in accordance with the statutes and regulations of the State of Texas. UTRWD must provide the City with a waiver of subrogation for workers compensation claims.

(4) UTRWD must name the City, which includes all authorities, commissions, divisions, and departments, as well as elected and appointed officials, agents, and volunteers, as additional insureds under the coverage required herein, except workers' compensation coverage. The certificate of insurance must state that the City is an additional insured and provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy.

(b) UTRWD will require its contractors and subcontractors performing work within the Premises to maintain, at their sole cost and expense, commercial general or excess liability on an occurrence form with minimum limits of not less than one million dollars (\$1,000,000) per occurrence and not less than two million dollars (\$2,000,000) aggregate. Such insurance shall be required under the same conditions as specified herein for UTRWD. UTRWD will maintain at all times, and will provide to City upon request, proof of its contractors' and subcontractors'

compliance with this requirement.

(c) UTRWD will provide proof of insurance in accordance with this Agreement within thirty (30) days of the effective date hereof and annually thereafter. UTRWD will not be required to furnish separate proof when applying for permits.

(d) All policies shall be endorsed to read: "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED."

(e) Within ten (10) calendar days of a suspension, cancellation, or non-renewal of coverage, the UTRWD shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend the UTRWD's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

(f) In addition to any other remedies the City may have upon the UTRWD'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 UTRWD to stop work hereunder.

(g) Nothing herein contained shall be construed as limiting in any way the extent to which the UTRWD may be held responsible for payments of damages to persons or property resulting from the UTRWD's or its subcontractors' performance of the work covered under this Agreement.

(h) It is agreed that the UTRWD's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this Agreement. The insurance required is in addition to and separate from any other obligation contained in this Agreement.

(i) The UTRWD and any subcontractors are responsible for all damage to their own equipment and/or property.

Section 9. Term

This Agreement, including the License granted by the City to the Licensee herein, shall continue and remain in full force for a period of 25 years from the Effective Date hereof, unless terminated earlier as provided in Section 11. The Agreement, including the License, shall

automatically renew for subsequent terms of twenty five (25) years each, unless either Party provides written notice to the other no later than sixty (60) days before the end of the then-existing term, of the Party's intent to not renew the Agreement.

Section 10. Default, Remedies, and Termination

(a) In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to terminate this Agreement and all rights and privileges of Licensee hereunder in the event of substantial breach of its terms and conditions, subject to reasonable notice and opportunity to cure, as provided herein.

(b) Events of Default. The occurrence, at any time during the term of the License granted herein, of any one or more of the following events, shall constitute an Event of Default by Licensee under this Agreement:

(1) Licensee's breach or violation of any of terms, covenants, representations or warranties contained herein or Licensee's failure to perform any material obligation contained herein.

(c) Uncured Events of Default

(1) Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City, Licensee shall have ten (10) calendar days after receipt of written notice from City of an occurrence of such Event of Default (or such longer time as the City may specify in such notice) to cure same before City may exercise any of its rights or remedies pursuant to Section 11(d).

(2) Upon the occurrence of an Event of Default by Licensee that cannot be cured by the immediate payment of money to City, Licensee shall have thirty (30) calendar days (or such additional time as may be agreed to by the City) after receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies pursuant to Section 11(d).

(3) If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies pursuant to Section 11(d).

(d) Remedies. Upon receipt of a notice of an alleged Uncured Event of Default as described in Section 11(c), which notice shall specify the alleged failure with reasonable particularity, the Licensee shall, within the time periods specified in Section 11(c) or such longer period of time as the City may specify in such notice, either cure such alleged failure or in a written response to the City either present facts and arguments in refuting or defending such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming or the City determines that an unexcused Uncured Event of Default has occurred, City shall be entitled to exercise any and all of the following cumulative remedies;

- (1) The commencement of an action against Licensee at law for monetary damages.
- (2) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, which as a matter of equity, are specifically enforceable.
- (3) The termination of the License.

(e) Remedies Not Exclusive. The rights and remedies of City and Licensee set forth in this Agreement shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Licensee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Agreement, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Agreement.

(f) Termination. The Agreement may be terminated only in accordance with the provisions of this Section 11. City shall notify Licensee in writing at least thirty (30) business days in advance of the City Council meeting at which the questions of termination shall be considered, and Licensee shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Licensee may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Licensee of the City Council's decision terminating the License, the effective date of such termination shall be either when such appeal is withdrawn or a court order upholding the termination becomes final and non-appealable. If no appeal is filed, the effective date of such termination shall be the

thirtieth (30th) day following the date of the final termination decision of the City Council. Until the termination becomes effective the provisions of the License shall remain in effect for all purposes.

(g) The failure of the City to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City unless said waiver or relinquishment is in writing and signed by the City.

(h) Force Majeure. In the event Licensee's performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented or impaired due to a force majeure event beyond Licensee's reasonable control, such inability to perform will be deemed to be excused and no penalties or sanctions will be imposed as a result thereof, provided Licensee took steps to mitigate damages and accepts responsibility to cure the performance breach. For purposes of this section, "force majeure" means an act of God, a natural disaster or an act of war (including terrorism), civil emergencies and labor unrest or strikes, untimely delivery of equipment, and unavailability of essential equipment, services and/or materials. It also includes an explosion, fire or other casualty or accident, which is not the result of gross negligence, an intentional act or misconduct on the part of the Licensee. In addition to relief expressly granted in this Agreement, the City may grant relief from performance of this Agreement if the Licensee is unable to comply or perform due to an event of Force Majeure. The burden of proof for the need for such relief shall rest upon the Licensee. To obtain release based upon this section, Licensee must file a written request with the City for consideration and approval by the City in its sole reasonable discretion.

Section 11. Abandonment of Facilities

Whenever Licensee intends to abandon any of its Facilities within a Right-of-Way, it shall submit to the City an application describing the Facilities to be abandoned and the date of the proposed abandonment. City may require Licensee, at Licensee's expense: (a) to remove the Facilities from the Public Right-of-Way; or (b) to modify the Facilities in order to protect the public health and safety or otherwise serve the public interest. If the Licensee fails to respond to the City's request within sixty (60) days, the abandoned Facilities shall be considered the property of the City. Alternatively, the Licensee may choose to remove the Facilities.

Section 12. Supervision by City of Location of Facilities

The location and route of all Facilities placed and constructed by the Licensee in the installation, construction and maintenance of its Facilities shall be subject to the lawful, reasonable and proper control, direction and/or approval of the City.

Section 13. Notices

(a) Notices required by this 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. 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:

City Manager
City of Lewisville
151 West Church Street
Lewisville, Texas 75057

City Attorney
City of Lewisville
151 West Church Street
Lewisville, Texas 75057

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

Upper Trinity Regional Water District
Attn: Executive Director
PO Box 305
900 North Kealy Avenue
Lewisville, Texas 75067

Section 14. Assignment of License

(a) The rights granted by this Agreement inure to the benefit of Licensee and 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.

(b) Licensee may mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees or holders of security interest, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees' interests in this Agreement are subordinate to the City's interests and the Mortgagees are subject to all of the terms and provisions of this Agreement. In such event, City shall execute such consent to financing as may reasonably be required by Mortgagees.

Section 15. Future Contingency

Notwithstanding anything contained in this Agreement to the contrary, in the event that

this 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, the Licensee and the City shall meet and negotiate an amended Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended Agreement shall provide the City with a level of compensation comparable to that set forth in this Agreement.

Section 16. Protection of Resident Workers

Protection of Resident Workers: The City of Lewisville actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Licensee shall establish appropriate procedures and controls so no services under this Agreement will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Licensee's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at the City's expense.

Section 17. Immigration Reform and Control Act

Immigration Reform and Control Act (8 U.S.C. §1324a): The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Licensee shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Licensee shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Licensee and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Licensee if

the City determines that (a) the Licensee or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Licensee fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Licensee or its Subcontractors fail to timely notify the City of an IRCA violation.

Section 18. Venue and Governing Law

(a) Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Denton County, Texas. The provisions of the 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 Denton County, Texas.

(b) This Agreement shall be construed in accordance with the City Charter and ordinances, as they exist or may be subsequently amended.

Section 19. Waiver

None of the material provisions of this Agreement may be waived or modified except expressly in writing signed by the Licensee and City. Failure of either party to require the performance of any term in this 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. Neither party by execution of this agreement waives its sovereign, judicial; and governmental immunity and all indemnifications are in accordance with existing law.

Section 20. Severability

If any clause or provision of the Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this 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 Agreement that is illegal, invalid, or unenforceable, there be added as part of this 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 21. Captions

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

Section 22. Authority

The signers of this Agreement for the Licensee and the City hereby represent and

warrant that he or she has full authority to execute this Agreement on behalf of the Licensee or the City, respectively.

Section 23. Foreclosure, Receivership, and Bankruptcy

Licensee shall notify the City within thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of Licensee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, whether voluntary or involuntary, such notice to include where applicable the cause number and court involved.

EXECUTED and AGREED.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective from the last date signed and marked on this Agreement by a participating Party.

LICENSOR

City of Lewisville, Texas

Donna Barron, City Manager

Date

LICENSEE

Upper Trinity Regional Water District



Larry N. Patterson, Executive Director



Date

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me this 11 day of July, 2019, by Larry N. Patterson, Executive Director of Upper Trinity Regional Water District on behalf of said District in his capacity as Executive Director.



Notary Public in and for the State of
Texas

(NOTARY SEAL)

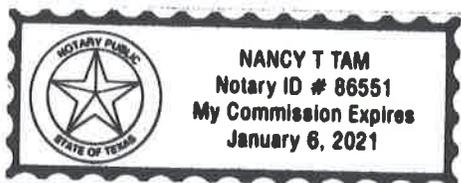


Exhibit A
(showing location of 72" Pipeline and 48" Pipeline)



Upper Trinity Regional Water District Parallel Pipeline from TTRWTP to SHPS Prop. Permits

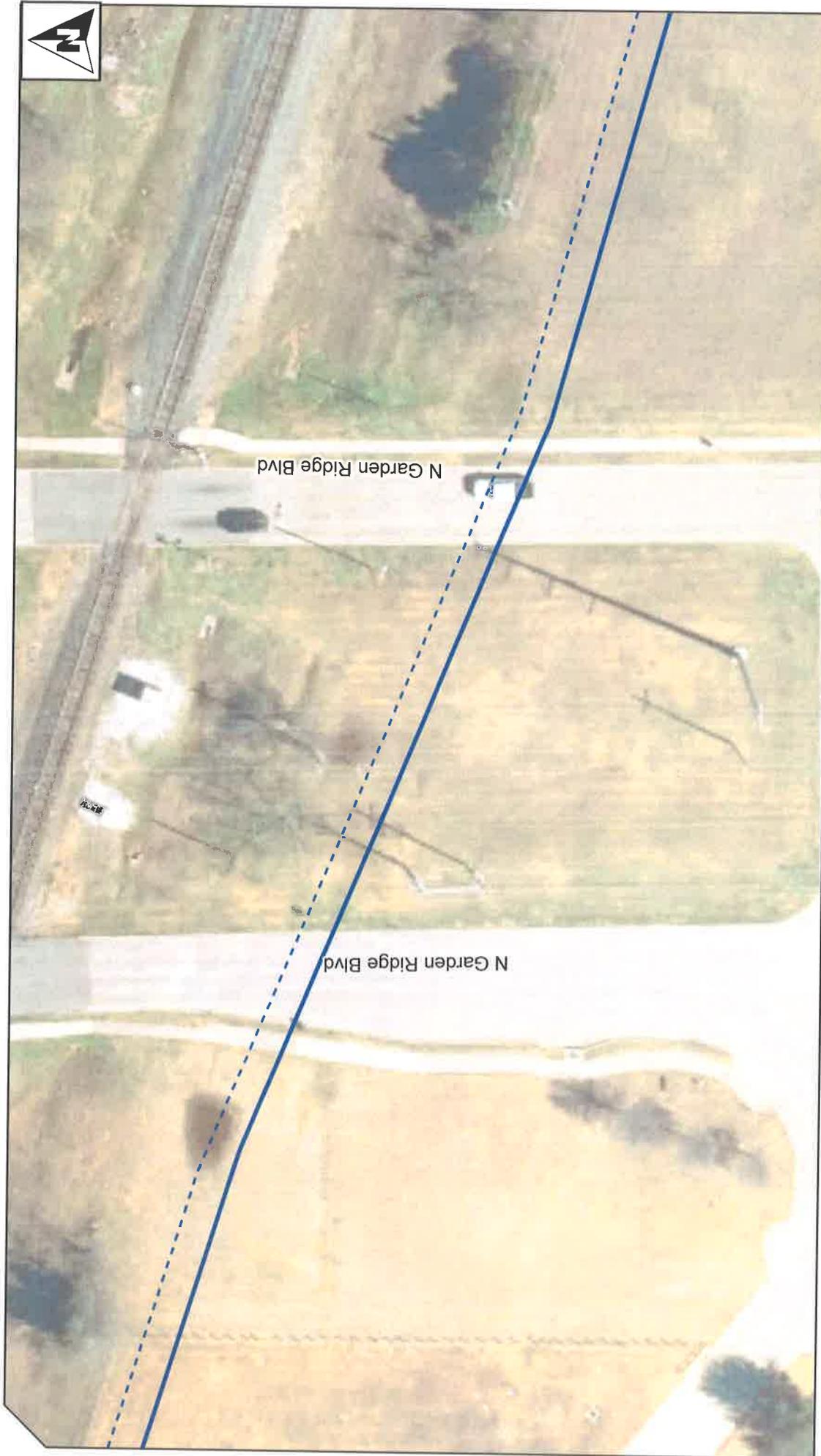
- Legend**
- Prop. 72" Pipeline
 - - - Ex. 48" Pipeline



EPSCG 2276
Updated: 5/3/2019




14755 Preston Rd., Suite 420
Dallas, TX 75254
(214) 631-6100
www.epalenv.com



N Garden Ridge Blvd

N Garden Ridge Blvd


 UPPER TRINITY REGIONAL WATER DISTRICT
 14755 Preston Rd., Suite 420
 Dallas, TX 75254
 (214) 631-6100
 www.uptwd.com

EPSS 2276
 Updated: 5/3/2019
Permit 1 of 8
 0 10 20 30 40 Feet



Legend
 — Prop. 72" Pipeline
 - - - Ex. 48" Pipeline

Upper Trinity Regional Water District
Parallel Pipeline from TTRWTP to SHPS
Prop. Permit for N Garden Ridge Blvd



EPSC 2276
 Updated: 5/3/2019

Permit 2 of 8

0 10 20 30 40 Feet



Legend

- Prop. 72" Pipeline
- Ex. 48" Pipeline

Upper Trinity Regional Water District
 Parallel Pipeline from TTRWTP to SHPS
 Prop. Permit for Daffodil Park

14755 Preston Rd., Suite 420
 Dallas, TX 75254
 (214) 631-6100
 www.apalenv.com



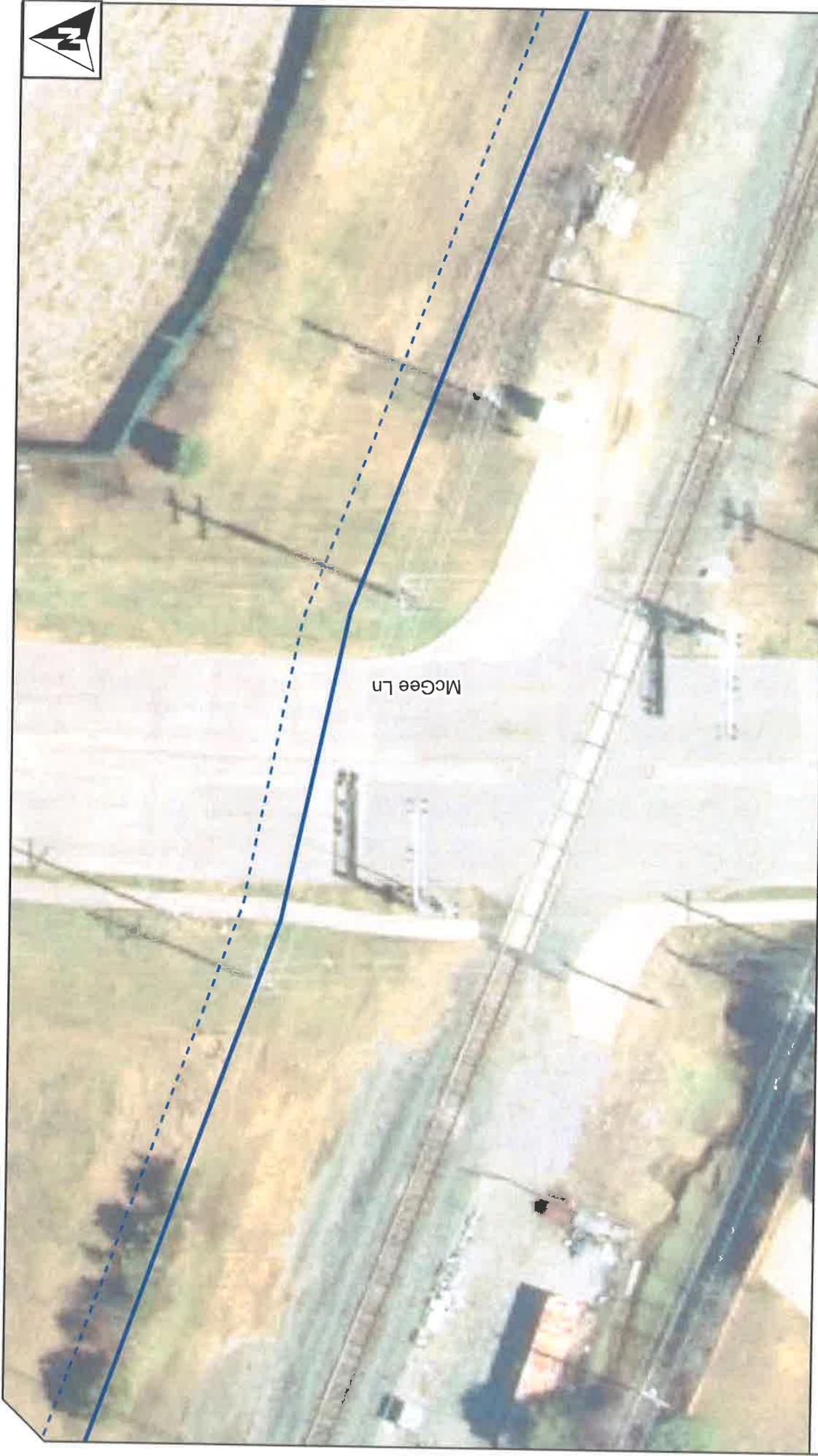
Upper Trinity Regional Water District
 Parallel Pipeline from TTRWTP to SHPS
 Prop. Permit for Crutchfield Ln Alley

Legend
 — Prop. 72" Pipeline
 - - - Ex. 48" Pipeline



EPSSG 2276
 Updated: 5/3/2019
Permit 3 of 8
 0 30 60 90 120 Feet

14756 Preston Rd., Suite 420
 Dallas, TX 75254
 (214) 651-4100
 www.apalonv.com



McGee Ln

**Upper Trinity Regional Water District
Parallel Pipeline from TTRWTP to SHPS
Prop. Permit for McGee Ln**

- Legend**
- Prop. 72" Pipeline
 - - - Ex. 48" Pipeline

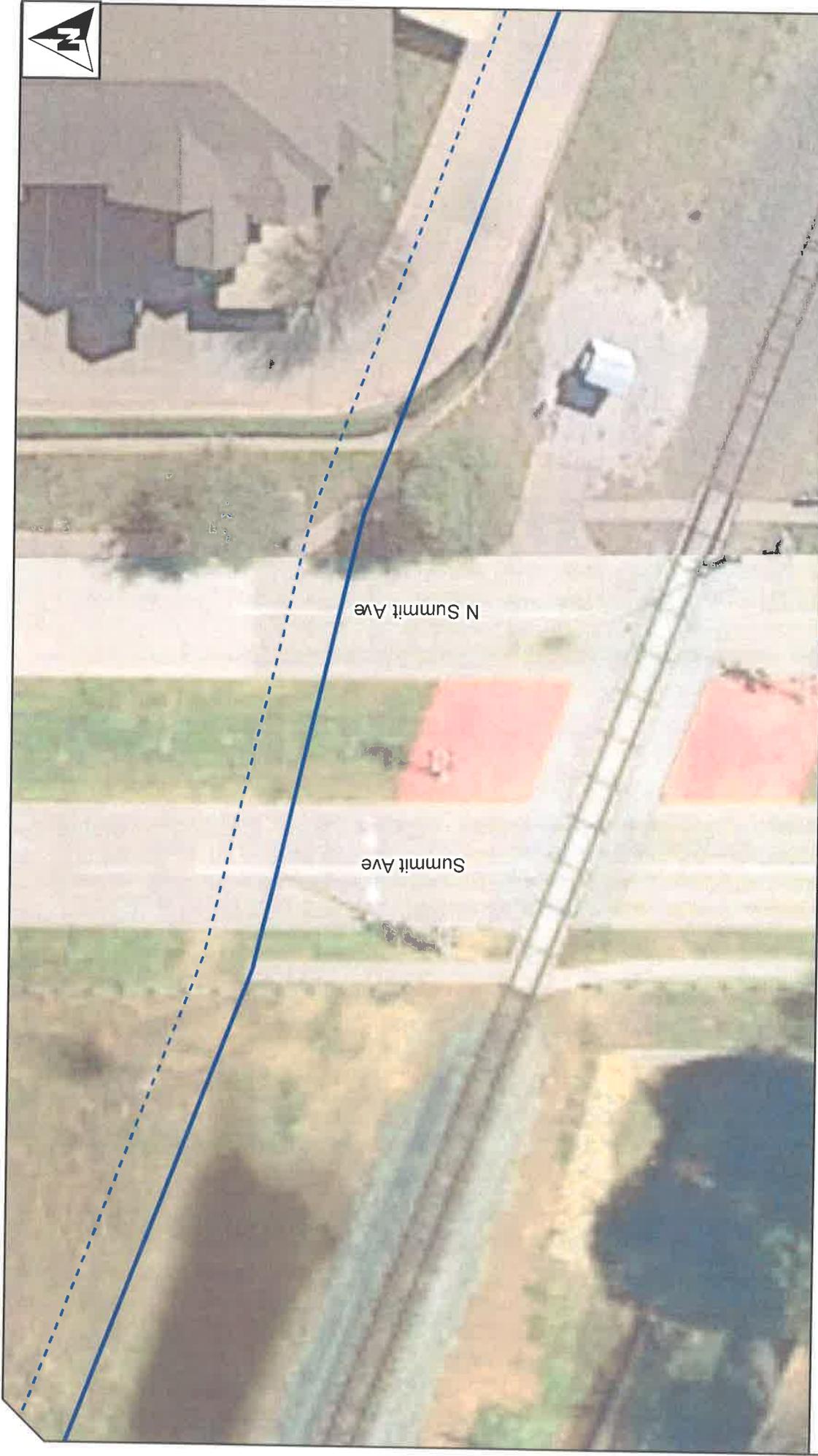


EPSC 2276
Updated: 5/3/2019

Permit 4 of 8



APAL Environmental Services, Inc.
14755 Preston Rd., Suite 420
Dallas, TX 75254
(214) 631-6100
www.apalenv.com



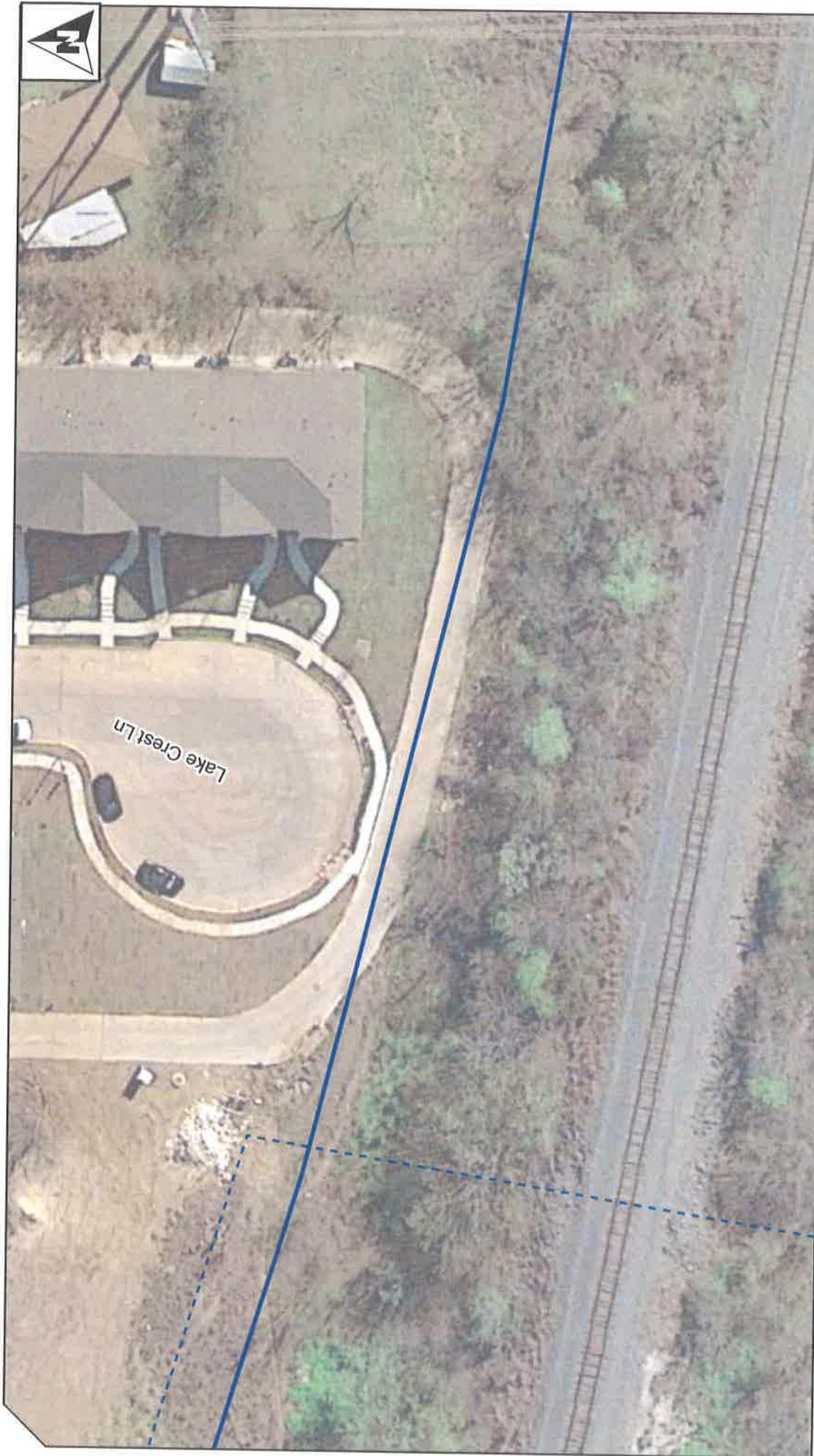

 14755 Preston Rd., Suite 400
 Dallas, TX 75254
 (214) 831-6100
 www.uptwd.com

EPSG 2276
 Updated: 5/3/2019
Permit 5 of 8
 0 7 14 21 28 Feet



Legend
 — Prop. 72" Pipeline
 - - - Ex. 48" Pipeline

Upper Trinity Regional Water District
Parallel Pipeline from TTRWTP to SHPS
Prop. Permit for N Summit Ave



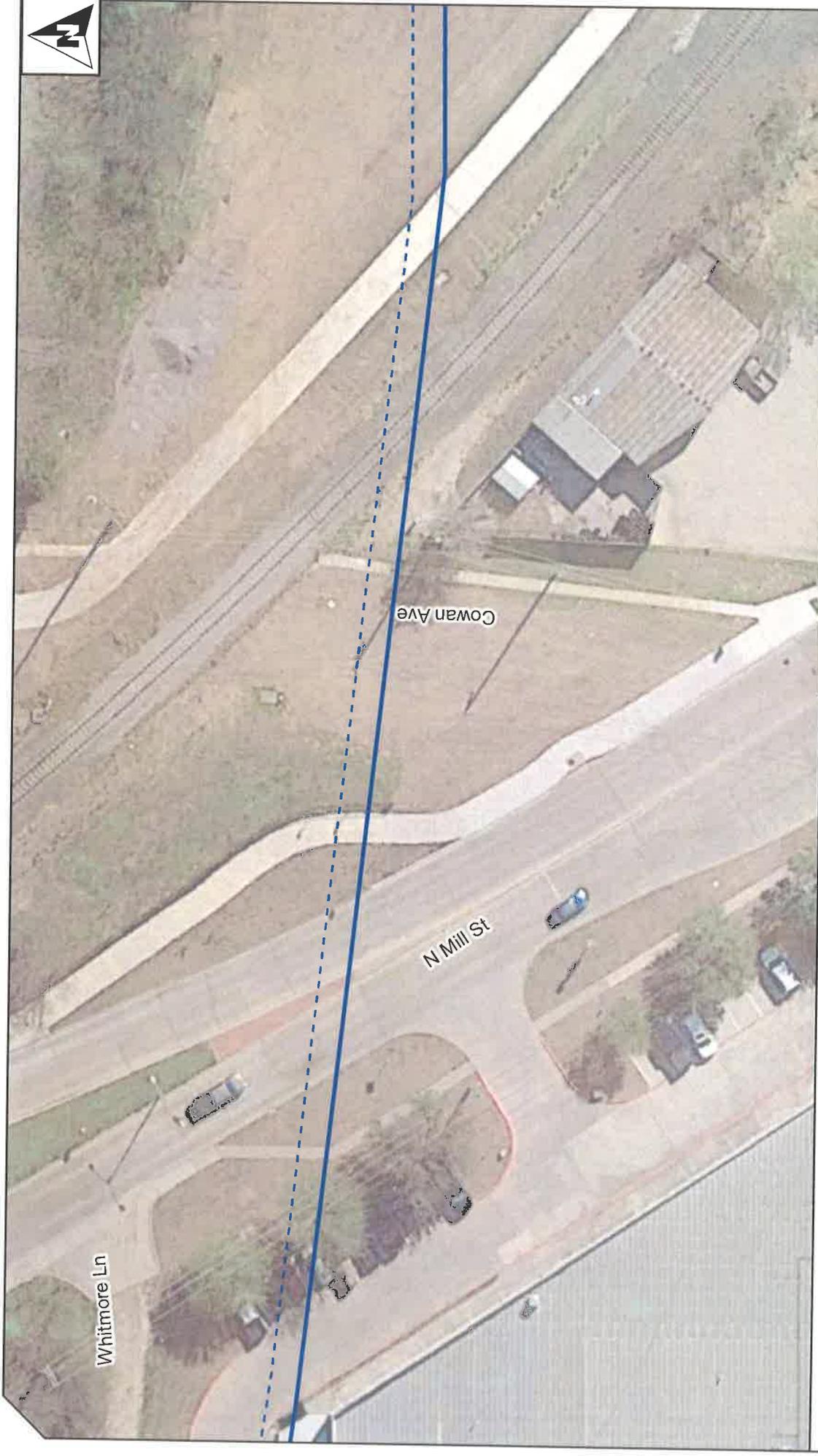
**Upper Trinity Regional Water District
 Parallel Pipeline from TTRWTP to SHPS
 Prop. Permit for Lake Crest Ln**

- Legend**
- Prop. 72" Pipeline
 - - - Ex. 48" Pipeline



EPSC 2276
 Updated: 5/3/2019
Permit 6 of 8
 0 10 20 30 40 Feet

APAL Environmental Services, Inc.
 14755 Preston Rd., Suite 420
 Dallas, TX 75254
 (214) 831-4100
 www.apalenv.com



EPSCG 2276
Updated: 5/3/2019

Permit 7 of 8
0 10 20 30 40 Feet



Legend
— Prop. 72" Pipeline
- - - Ex. 48" Pipeline

**Upper Trinity Regional Water District
Parallel Pipeline from TTRWTP to SHPS
Prop. Permit for N Mill St and DART Railroad**

14755 Preston Rd., Suite 420
Dallas, TX 75224
(214) 631-6100
www.wapalenv.com



Sewage Treatment Plant Rd

N Kealy Ave

Valley Ridge Blvd



EPSSG 2276
Updated: 5/3/2019

Permit 8 of 8



14755 Preston Rd., Suite 420
Dallas, TX 75254
(214) 631-6100
www.uptwr.com

Legend

- Prop. 72" Pipeline
- - - Ex. 48" Pipeline

**Upper Trinity Regional Water District
Parallel Pipeline from TTRWTP to SHPS
Prop. Permit for Valley Ridge Blvd and N Kealy Ave**