

**WATER USE AND LICENSE AGREEMENT
BY AND BETWEEN
CHESAPEAKE OPERATING, INC.
AND
THE CITY OF EULESS, TEXAS**

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Water Use and License Agreement (the "Agreement") is made and entered into on the ____ day of _____, 2012 (the "Effective Date") by and between the City of Eules (hereinafter "City") 201 N. Ector Dr. Eules, TX 76039 and Chesapeake Operating, Inc., an Oklahoma Corporation (hereinafter "COI") with offices at 6100 Western Ave. P.O. Box 18496, Oklahoma City, Oklahoma 73154. City and COI are sometimes hereafter referred to individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, City owns 50.906 acres of land, more or less, being part of the TEXAS STAR ADDITION, Block B, Lot 1, & House, Kitty Survey, A 678 TR 3D, Tarrant County, Texas, as more particularly described on the attached Exhibit A (hereinafter the "Property"); and

WHEREAS, COI owns and/or operates gas wells on 11.74 acres of land, more or less, being a part of the John A. Groves & Kitty House Surveys, Abstract 599, Tracts 2C & 2C1 and Abstract 679, Tracts 2A1 & 2B, known as the Mims Pad Site, as more particularly described on the attached Exhibit B (hereinafter the "Site"); and

WHEREAS, COI desires to purchase and transport water from the existing irrigation holding pond (hereinafter the "Pond") located on the Property for frack operations (hereinafter the "Frack Operations") on gas wells located at the Site; and

WHEREAS, the Parties desire to enter into an agreement whereby City will sell water to COI for Frack Operations; and

WHEREAS, City desires to allow and govern the installation, operation and maintenance of necessary equipment and infrastructure on the Property for Frack Operations by COI;

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

1. **Grant of License.** City hereby grants a license for the purpose of using the Pond and for the installation and operation of waterlines and other necessary equipment on the Property. This Agreement and all rights granted to COI herein are nonexclusive. City reserves the right to grant other and future licenses for use of the Pond and the Property.

2. **License Purpose.**
 - a. COI shall, at its sole cost and under the direction of City, be allowed to install up to four (4), eight inch (8") temporary above ground Certa-Lock (or City approved equal) PVC pipe waterlines ("Temporary Waterlines") on and across the Property, in a mutually agreed upon location, to have minimal impact on the golf course, as shown more particularly on Exhibit C, attached hereto and made a part hereof.

 - b. The Temporary Waterlines will be used solely for Frack Operations on gas wells located at the Site. The Temporary Waterlines will be installed prior to each Frack Operation and removed within five (5) days of completion of each Frack Operation ("Use") on the Site.

 - c. City agrees that COI shall, at its sole cost and under the direction of City, be allowed to install a permanent waterline ("Permanent Waterline") in a mutually agreed upon location, to have minimal impact on the golf course, as shown more particularly on Exhibit C, as follows:
 - i. COI may utilize an existing underground twenty inch (20") culvert ("Culvert") to cross under the driving range, located on the Property:

 - ii. The Permanent Waterline must be made of high density poly pipe ("HDPE pipe"); and

 - iii. The HDPE pipe will be installed through the Culvert; however, if the Culvert cannot be used then COI shall install the HDPE pipe parallel to the Culvert to cross under the driving range.

 - d. COI agrees that the installation of the Permanent Waterline shall be at COI's sole cost and constructed under the direction and approval of City. Direction and approval of City includes, but is not limited to date, time, location and manner of construction and/or installation.

 - e. Prior to COI's utilization of the Permanent Waterline, City shall inspect, approve and accept the improvement. At time of acceptance, COI agrees that the Permanent Waterline shall become the property of City and shall be defined as the "Point of Delivery".

- f. COI agrees to install and mark the Temporary Waterlines and Permanent Waterline in accordance with applicable laws, including, without limitation, Section 210.25 (Special Design Criteria for Reclaimed Water Systems) of Title 30 of the Texas Administrative Code.
 - g. City agrees that COI shall, at its sole cost and under the direction of City, be allowed to locate, operate, repair, maintain and remove temporary portable water pumps (“Pumps”) for the purpose of delivering water from the Pond to the Site. The Pumps shall be located in a thirty foot by thirty foot (30’ x 30’) mutually agreed upon area (“Pump Equipment Area”), to have minimal impact on golf course operations, as shown more particularly on Exhibit D, attached hereto and made a part hereof.
3. **Restoration.** Following completion of its Frack Operations, COI shall remove all Temporary Waterlines and equipment and restore the area after each Use to its original ~~condition~~, condition; as such condition existed prior to each Use.
4. **Use of Pond/Water Rights.** Subject to the terms and conditions of this Agreement, COI shall have the right to draw water from the Pond for Frack Operations on the Site. COI acknowledges that City has a superior right to use water from the Pond for its uses and may restrict COI’s ability to draw water if City’s operational demands require. COI understands the right to draw water from the Pond for Frack Operations during months of July, August and September is strictly prohibited, in its entirety, unless authorization is granted in writing by the City Manager for use during those months.
5. **Water Rate.** COI agrees that the ~~water rate~~ cost for the water –sold to COI will ~~shall be as set forth in Chapter 30, Fees, Section 30-35, Water Service, (3) Fire Hydrant and Gas Well Meters, of the City of Euless Code of Ordinances, the rate~~ in effect for the type of water sold at the time of actual water delivery, ~~less 9%~~.
6. **Use of Property.** COI shall be entitled to use only those portions of the Property depicted on Exhibits C and D. It is specifically understood and agreed that no surface use shall be allowed of the area depicted as “60” culvert” on Exhibit C.
7. **Consideration.** In consideration for the use of the Property, COI agrees to pay to City a fee totaling \$60,000 for the Initial Term (“License Consideration Fee”). COI shall pay the License Consideration Fee on prorated basis of \$10,000 per well drilled. The License Consideration Fee will be due within 30 days of the commencement of drilling operations for an individual well. Notwithstanding the above, the entire License Consideration Fee shall be paid by COI to City prior to the end of the Initial Term of this Agreement.

8. **Maintenance.** COI shall be responsible for the repair and maintenance of the Temporary Waterlines, Permanent Waterline and Pump Equipment Area during the term of this Agreement.
9. **Screening and Noise Attenuation.** COI agrees to install sound wall blankets around the Pump Equipment Area, as depicted on Exhibit D. COI assumes responsibility for maintenance of the sound wall blankets around the Pump Equipment Area at its sole cost and expense.
10. **Term.** The term (“Initial Term”) of this Agreement shall commence on the Effective Date and terminate on the earlier of:
- a. Five (5) years from the Effective Date of this Agreement; or
 - b. the written agreement of both Parties.
- The Initial Term of this Agreement may be extended for an additional five (5) years with the written agreement of both Parties (“Renewal Term”).
11. **Ingress and Egress.** COI shall have right of ingress and egress to, over, and across the Property during each Use, with minimal impact of golf operations. Right of ingress and egress shall be limited to the Pond, Temporary Waterlines, Permanent Waterlines, Pump(s) and Pump Equipment Area, as shown more particularly on Exhibit C and Exhibit D.
12. **Regulatory Requirements.** This Agreement is subject to all applicable federal, state and local laws and any applicable ordinances, statutes, rules, orders, and regulations of any local, state or federal governmental body. COI agrees to comply with all applicable statutes, laws, rules, regulations, standards and ordinances in effect during the Term of this Agreement. In addition, COI will abide by TCEQ requirements for reuse water.
13. **Responsibility.** City shall not be liable for injuries sustained by COI personnel while on the Property. COI assumes the risk of use of the Pond and the Property with or without knowledge of any and all faults in the condition of the Property.
14. **Assignment.** Neither Party may assign its rights and duties under this Agreement without the other Party’s written consent. Such consent may not be unreasonably withheld.
15. **Insurance.** COI covenants and agrees that during the Initial Term and any Renewal Term of this Agreement, COI will furnish to City, at COI’s sole cost and expense, a certificate of insurance as proof that it has secured and paid for policies providing general liability insurance covering all risks related to the construction, use, maintenance, existence or condition of the Property and COI’s operations on

the Property. The amounts of such insurance shall not be less than \$1,000,000.00 for personal injury or death, each occurrence.

City shall be named as an additional insured under the above-described policies, and each such policy shall contain endorsements waiving subrogation rights against City and providing that such policies may not be cancelled unless City is provided with written notice of such intent to cancel at least thirty (30) days prior to any such cancellation. Each such insurance policy shall be procured from a company authorized to do business in the State of Texas and shall be satisfactory to City. COI shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the Initial Term and any Renewal Term.

16. Indemnification. COI SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS CITY AND ANY OFFICER, AGENT, EMPLOYEE, OR OFFICIAL OF THE CITY (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF COI, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH COI'S OPERATION, CONSTRUCTION, INSTALLATION, OR OPERATION ON, OR MAINTENANCE, USE OR CONDITION OF, THE PROPERTY OR COI'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.

17. Termination.

- a. ~~For Convenience. With the written agreement of both Parties, Either Party may terminate this Agreement at any time, for and for any reason, upon giving thirty (30) days written notice.~~
- b. For Cause. Notwithstanding subsection (a), if COI fails to fulfill any obligation under this Agreement, COI shall be considered to be in default. If COI fails to cure such default within ten (10) days after written notice and request to cure from City, City may terminate this Agreement.

Formatted: Font color: Red

c. Unpaid Fees. Upon termination, all fees owed by COI under this Agreement shall be immediately paid to City.

18. Notices. All notices and other communications hereunder shall be in writing and shall be deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier or by registered or certified United States Mail to the person to be notified, with receipt obtained, or (ii) sent by telecopy, telefax or other facsimile or electronic transmission, with “answer back” or other “evidence of receipt” obtained, in each case to the appropriate address or number as set forth below (or at such other address or number for a Party as shall be specified by like notice). Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by telex, telecopy, telefax or other facsimile or electronic transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt. Until changed pursuant to this Section 14, notices to the Parties shall be addressed as follows:

If to City:

City Manager
City of Euless
201 N. Ector Dr.
Euless, Texas 76039

With a copy to:

City Attorney – City of Euless
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

If to COI:

General Counsel
Chesapeake Operating, Inc.
6100 Western Ave.
P.O. Box 18496
Oklahoma City, Oklahoma 73154

With a copy to:

Chesapeake Operating, Inc.
c/o CT Corporation
350 North St. Paul Street, Suite 2900
Dallas, Texas 75201

19. **Invalid Provision.** In the event any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.
20. **Construction and Definition.**
- a. Whenever used herein the singular number shall include the plural and the plural number shall include the singular. Whenever used herein the masculine gender shall include the feminine and neuter genders and the neuter gender shall refer to any gender.
 - b. Section headings used in this Agreement are intended for convenience only and not necessarily to describe the intent of a particular section and therefore shall not be construed as limiting the effect of any provision of this Agreement.
 - c. This Agreement shall be construed to require good faith and fair dealing between the Parties.
21. **Governing Law; Attorneys' Fees and Expenses.** This Agreement and all controversies relating to the subject matter herein, including tort claims, shall be governed by the laws of the State of Texas. If any action at law or in equity is necessary to enforce or construe this Agreement, to the extent permitted by law, the prevailing Party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and other disbursements reasonably incurred in such action in addition to all other relief to which the prevailing Party may be entitled. Venue for any action brought to interpret or enforce this Agreement shall lie in Tarrant County, Texas.
22. **Force Majeure.** In the event that either Party is delayed, hindered, or prevented from performing any action required herein, either Party shall not be liable or responsible if the delay is due to strike, riot, act of God, shortage of labor or materials, war, governmental laws, regulations, or other restrictions or any other causes of any kind which are beyond the reasonable control of either Party, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.
23. **Binding Effect.** This Agreement shall extend to and be binding upon the Parties hereto and their respective successors and permitted assigns.
24. **Amendment.** This Agreement may be waived, altered, amended or repealed, in whole or in part, only by written consent of the Parties.
25. **Entire Agreement.** This Agreement contains the entire understanding between the Parties hereto concerning the subject matter contained herein. There are no

representations, agreements, arrangements or understandings, oral or written, between or among the Parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

26. **Advice of Counsel.** Each of the Parties hereto agrees and represents that such person has been represented by its own counsel with regard to the execution of this Agreement or that, if acting without counsel, that the respective Party has had adequate opportunity and has been encouraged to take the advice of his or her own counsel prior to the execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

CITY OF EULESS:

By: _____
Gary McKamie
City Manager

Date: _____

CHESAPEAKE OPERATING, INC.:

By: _____
Name: Henry J. Hood
Title: Senior Vice President, Land and Legal and General Counsel

Date: _____

THE STATE OF TEXAS §
COUNTY OF TARRANT §

Before me on this day personally appeared Gary McKamie, who acknowledged that he is the City Manager of the City of Euleess and further acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2012.

(SEAL)

Notary Public, State of Texas

Notary's Name Printed

DRAFT

THE STATE OF OKLAHOMA §
COUNTY OF _____ §

Before me on this day personally appeared Henry J. Hood, who acknowledged that he is the Senior Vice President, Land and Legal and General Counsel of Chesapeake Operating, Inc. and further acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2012.

(SEAL)

Notary Public, State of Oklahoma

Notary's Name Printed

DRAFT

EXHIBIT A



EXHIBIT B

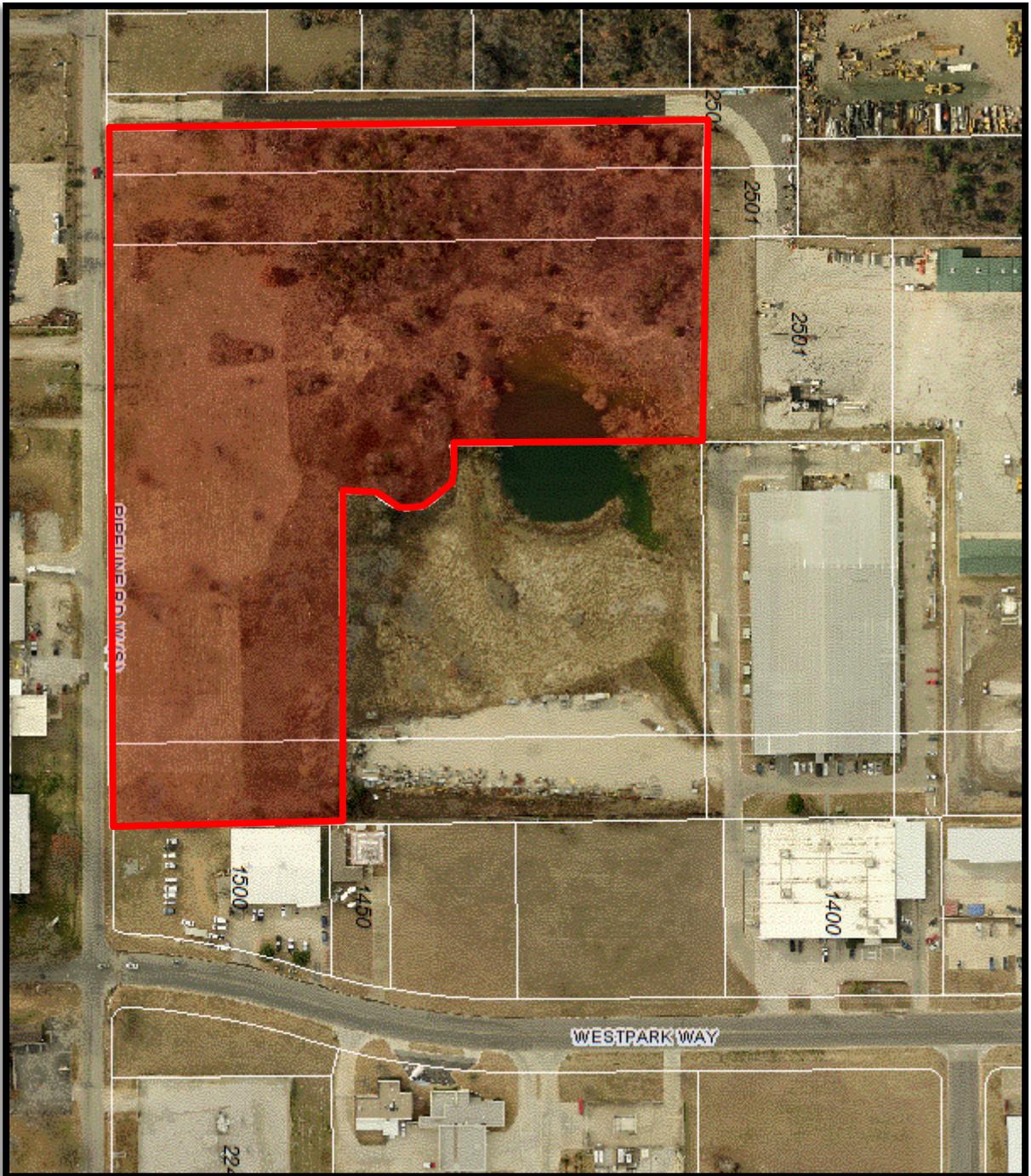


EXHIBIT C

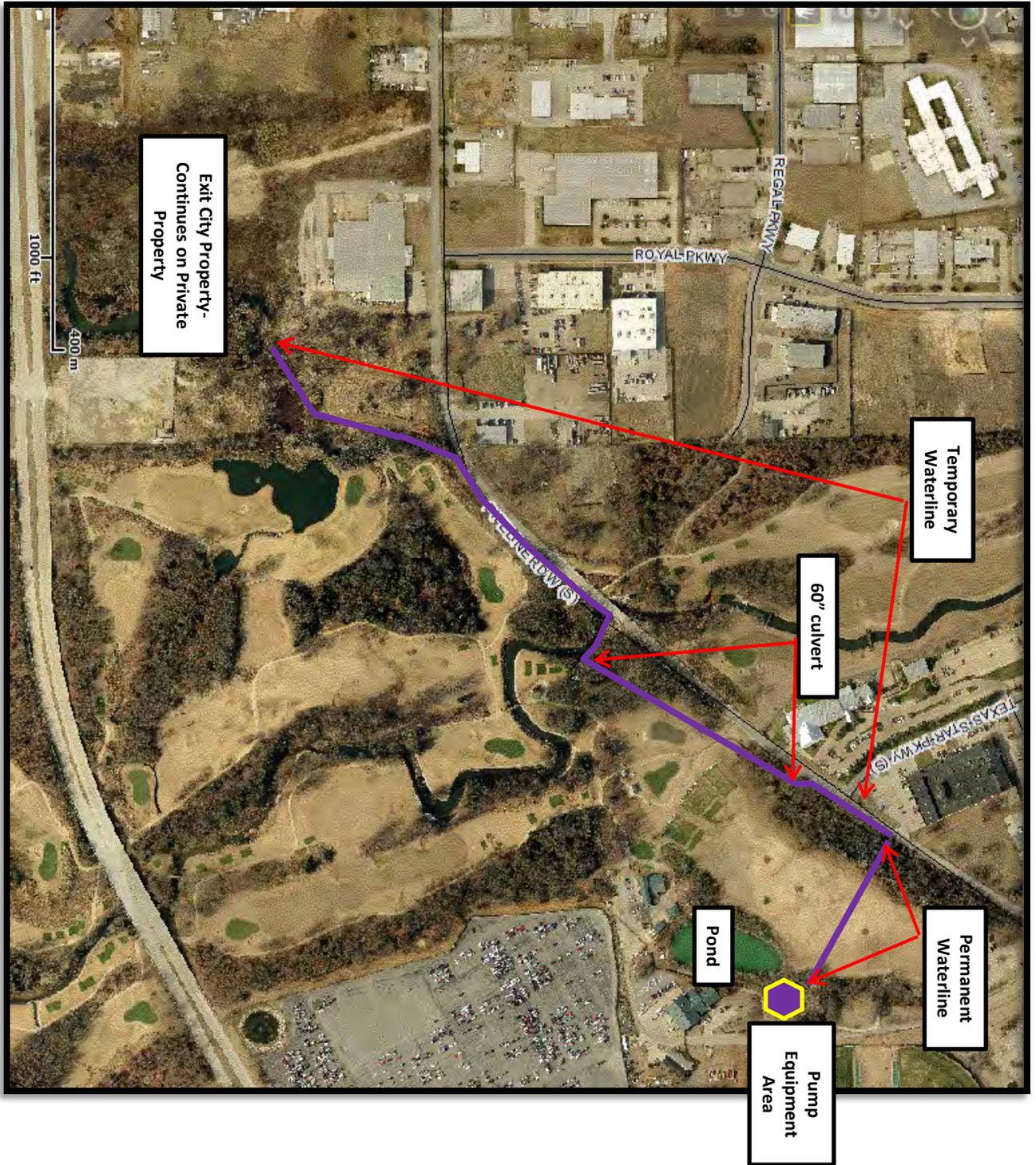


EXHIBIT D

