

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “**Agreement**”), made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Lee’s Summit, Missouri (hereinafter called “**City**”), and the Lee’s Summit R-7 School District, a Missouri school district (hereinafter called “**District**”).

WITNESSETH:

WHEREAS, the City presently owns real property described in paragraph 1 below (“**Licensed Premises**”);

WHEREAS, the City desires to license to District and District desires to license from City the Licensed Premises for the purpose of constructing and maintaining a low-pressure sanitary sewer main running within City right-of-way for Smart Road to the Woodland Elementary School property (the “**School Property**”) in a location to be approved by the City pursuant to this Agreement (the “**Sewer Improvements**”), which will provide sanitary sewer service to the School Property, which has been annexed into the City by ordinance; and

WHEREAS, the City is granting this license based upon the District’s agreement to assume all maintenance responsibilities of the Improvement.

NOW, THEREFORE, City, in consideration of the obligations hereby assumed by District, hereby licenses and authorizes District, its officers, members, contractors, agents, and guests, to enter and go upon the Licensed Premises, at all times during the continuance of this Agreement, and there to use and enjoy the Licensed Premises for the construction, operation and maintenance of the Sewer Improvements, subject to the following terms and conditions about the License and such usage:

1. LICENSED PREMISES. The “Licensed Premises” as referenced in this Agreement are legally described as:

The right-of-way for Smart Road from the southern right-of-way line for Highway 50 to a point adjacent to the northern boundary of the property which contains the Woodland Elementary School.

The precise location of the sewer line within the Smart Road right-of-way, including the connection to a lateral line from Smart Road to the District school facility, shall be located as constructed and will comply with Section 4. The approximate location of the entire sewer line is depicted in **Exhibit A** by the green dashed line. The District acknowledges that a portion of the location of the sewer line is intended to be placed within State of Missouri right-of-way and the City does not control the State right-of-way and the City cannot provide permission for the placement of the sewer line in State right-of-way. The District shall be responsible for obtaining the required approvals and permissions to place the sewer line within State right-of-way.

2. USE OF LICENSED PREMISES. District, its officers, members, contractors, agents and guests shall have the right to use the Licensed Premises solely for the construction, operation and maintenance of the Sewer Improvements. The Sewer Improvements on the Licensed Premises shall comply with all ordinances of the City and are subject to approval of the City.

3. RESTRICTION ON MODIFICATIONS AND IMPROVEMENTS. Except as specifically allowed by paragraph 2, District, its officers, members, contractors, agents, and guests are prohibited from making any addition, modification or improvement to any part of the Licensed Premises, and are prohibited from placing, affixing or constructing any structure, utility, signage or markings on the Licensed Premises. All requirements of the City Code pertaining to the use, operation and maintenance of sewerage lines shall apply to the Sewer Improvements.

4. MAINTENANCE AND CONDITIONS OF OPERATION.

A. District agrees to maintain, at its sole cost, the Sewer Improvements on the Licensed Premises at all times during the effective period of this Agreement. The City will not treat the Sewer Improvements as City-owned or City-maintained improvements. In the event District fails to maintain the Licensed Premises and the Sewer Improvements as set forth herein after notice and a reasonable opportunity to cure, City reserves the right to revoke this Agreement pursuant to paragraph 8 hereof and remove, at the City's option and at the expense of the District, the Sewer Improvements from the Licensed Premises.

B. The District shall provide as-built plans to the City after the Sewer Improvements are installed.

C. The District shall take the steps required to incorporate the Sewer Improvements into the Missouri One-Call program so that the location of the Sewer Improvements will be known upon inquiry of underground facilities. The District shall provide proof to the City that this requirement has been satisfied prior to the Sewer Improvements being placed in service for the school facility.

D. Placement of the Sewer Improvements shall not impede or interfere with the flow of water in any water mains that may be placed in the road right-of-way now or in the future, and the placement of the Sewer Improvements shall also be in a location that does not pose a health hazard to the transmission of water in the right-of-way.

E. The District shall promptly fix all breaks or leaks in the Sewer Improvements upon the receipt of notice from the City that conditions exist which, in the City's judgment, warrants repairs, or as soon as the need for repairs shall become known to the District from any other party.

F. In the event that all or a portion of the Sewer Improvements need to be moved, in the City's sole judgment, to accommodate road expansion or any public or private development, the City will provide reasonable advance notice to the District that such relocation is necessary. Thereafter, the District will coordinate with the City to establish the schedule for such relocation, and the relocation shall be performed by or funded by the District. The City and the District will cooperate, as necessary, with any third parties that create the need for such relocation.

5. RESTRICTION AS TO WASTE. District shall not, except so far as may be reasonably necessary for the maintenance of the Sewer Improvements on the Licensed Premises, commit or permit any waste thereon. District shall be liable for any damage done to the Licensed Premises, except as is permitted by this Agreement, by any persons entering upon the Licensed Premises on behalf of District pursuant to the terms of this Agreement.

6. GENERAL INDEMNITY.

A. GENERAL. To the extent permitted by law, District shall indemnify, release, defend, become responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, subject to the provisions set forth in the Missouri Sovereign Immunity Statute, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property, or fines or clean-up actions imposed by the State or Federal government, to the extent arising out of or resulting from any negligent act, error or omission of District or its agents, employees, or subcontractors, arising out of or in any way connected with the operations expressly authorized herein; provided, however, that District need not save harmless the City from claims, demands, losses and expenses (A) to the extent arising out of the sole negligence or misconduct of the City, its employees, agents, or contractors or (B) to the extent the claim, demand, loss, or expense is actually paid by insurance proceeds received by or for the City from its insurance coverages, which coverages shall match the coverages required of District herein.

B. NO LIMITATIONS OR WAIVER. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for District under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by District. The City does not, and shall not, waive any rights against District which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by District, of any of the insurance policies described in this Agreement. Except as otherwise provided in this Agreement, this indemnification by District shall apply regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

C. NOTIFICATION OF CLAIMS. With respect to any claims which are subject to indemnity hereunder, each party shall immediately notify the other of any and all claims filed against District, the City, or District and the City jointly, and shall provide the other party with a copy of the same.

D. USE OF INDEPENDENT CONTRACTORS. The fact that District carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, District's duty of defense and indemnification under this section.

7. INSURANCE.

A. GENERAL PROVISIONS. District shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri. At all times while this Agreement remains in effect, and in recognition and subject to the indemnification provisions set forth in this Agreement, District shall, at its own cost and expense, maintain a program of commercial general liability insurance and/or self-insurance in the amounts specified below to protect District and the City, its officers,

agents, employees, elected officials, and attorneys, each in their official and individual capacities, from any liability for bodily injury, death and property damage occasioned by the activities of District, or any person acting on their behalf, under this Agreement, including, but not limited to, District's operations, products, services or use of automobiles or construction equipment. As proof of this compliance, District shall, during the term of this Agreement, keep on file with the Clerk of the City a certificate of insurance with an insurance company licensed to do business in the State of Missouri and/or affidavit of self-insurance which shall show the types and amounts of coverage. Any affidavit of self-insurance shall be signed by District, or an employee or officer of District who has knowledge of District's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations. The City shall maintain insurance of types of coverages and at levels consistent with what is required of the District herein. The City shall provide to District a certificate of insurance evidencing said insurance coverages and levels.

B. LIMITS AND COVERAGE. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:

**Combined Single Limit –**

General Aggregate:	\$3,000,000
Products-Completed Operations Aggregate:	\$3,000,000
Personal & Advertising Injury:	\$3,000,000
Each Occurrence:	\$3,000,000

**Automobile Liability:** \$3,000,000 for Each Accident for All Owned, Non-Owned & Hired Vehicles

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence.

C. USE OF CONTRACTORS AND SUBCONTRACTORS. District shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this paragraph. Said insurance shall be maintained in full force and effect until the completion of the work performed, and approval thereof by the City.

D. WORKERS' COMPENSATION. District shall ensure that all contractors or subcontractors performing work for District obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, District shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims of such employees arising out of occurrences during work performed hereunder. District hereby indemnifies the City for any damage resulting to it from failure of either District or any contractor or subcontractor to obtain and maintain such insurance. District further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. District shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Sewer Improvements.

E. Notwithstanding the foregoing or any other contrary provision in this Agreement, the District does not have – and nothing in this Agreement shall be interpreted to require – coverage for claims to which the District would otherwise be immune under state or federal statutory or case law, including but not limited to, claims that are barred by sovereign immunity, official immunity, or any other immunity available to the District under state or federal law. Accordingly, nothing in this Agreement shall be interpreted to waive sovereign immunity, official immunity, or any other immunity available to the District.

8. REVOCATION. Notwithstanding any provision of this Agreement to the contrary, City may cancel this Agreement and revoke the license hereby granted as to all or any part of the Licensed Premises after following the procedures in this paragraph. If the City encounters a condition that could lead to revocation, the City shall provide written notice of such condition to the School District. The School District shall thereafter have seven (7) days to commence corrective action and remedy such condition. If the School District fails to act within such time period, or if the School District otherwise fails to correct such condition, then the City may cancel this Agreement and revoke the license. District may cancel this Agreement at any time upon sixty (60) days advance notice in writing. No such termination by District shall negate any rights or obligations of the parties accrued through the date of such termination.

9. TERMINATION. This Agreement shall terminate in one of the following ways:

A. If gravity sewer service becomes available within 1870 feet of the School Property, the District shall tie into such service on a schedule established between the City and the District, and upon the commencement of gravity sewer service the Sewer Improvements shall be deemed abandoned and this Agreement shall terminate. The City will provided notice to the School District if the City learns of the intention by a landowner or developer to construct gravity sewer service within such distance of the School Property, or if the City intends to construct such service within such distance, for the purpose of facilitating communications between the School District and such landowner or developer, or directly with the City, so that the School District can plan to tie into such gravity sewer line during the construction period of such line.

B. The District may elect to abandon the Sewer Improvements. Upon such election, the District shall provide written notice of such intention and the date on which the abandonment and the termination of this Agreement will become effective. Upon such abandonment and termination, The City may elect to retain the Sewer Improvements in the Licenses Premises, and the Sewer Improvements shall thereafter be owned and maintained by the City at the City's sole cost, expense and risk. If the City does not elect to use the Sewer Improvements, then the Sewer Improvements shall be deemed abandoned and the School District shall pay such incidental costs as necessary to cap and close such improvements.

C. This Agreement may be terminated pursuant to **Section 8** (Revocation).

10. CONSTRUCTION OF AGREEMENT.

A. SIMPLE LICENSE. The license created by this Agreement shall be construed as a simple license (sometimes referred to as a "bare," "mere" or "naked" license) revocable at the will of the City, subject only to any advance written notice of revocation required by paragraph 8.

B. HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

C. NON-WAIVER. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

D. JOINTLY DRAFTED. This Agreement shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.

E. APPLICABLE LAW. This instrument shall be construed in accordance with the laws of the State of Missouri.

11. UNASSIGNABLE. The license created by this Agreement is solely for District, its officers, members, servants, agents and guests and no others. Neither the license nor this Agreement, in whole or part, is assignable.

12. NON-SEVERABLE. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be deemed invalid and unenforceable, provided, however, that the terms and provisions of paragraph 8 shall not be affected thereby and each term and provision of said paragraph 10 shall be valid and enforced to the fullest extent permitted by law.

13. NOTICE. Whenever any notice is required by this Agreement to be made, given or transmitted to the City, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, addressed to:

City Manager  
City of Lee's Summit  
220 SE Green Street  
Lee's Summit, Missouri 64063

and notices to District shall be addressed to:

Lee's Summit R-7 School District  
Attn: Superintendent  
301 NE Tudor Road  
Lee's Summit, Missouri 64086

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the item shall be considered received the third day after the date of mailing.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties hereunder and all other representations of statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned at Lee's Summit, Missouri.

[Remainder of this page intentionally left blank]

**CITY OF LEE'S SUMMIT, MISSOURI**

\_\_\_\_\_  
Mayor William A. Baird

ATTEST:

\_\_\_\_\_  
Trisha Fowler Arcuri, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian Head, City Attorney

**LEE'S SUMMIT R-7 SCHOOL DISTRICT**

By: \_\_\_\_\_  
Dr. Emily Miller,  
Interim Superintendent

**EXHIBIT A**  
**MAP OF APPROXIMATE SEWER LINE LOCATION**

*[Attached]*

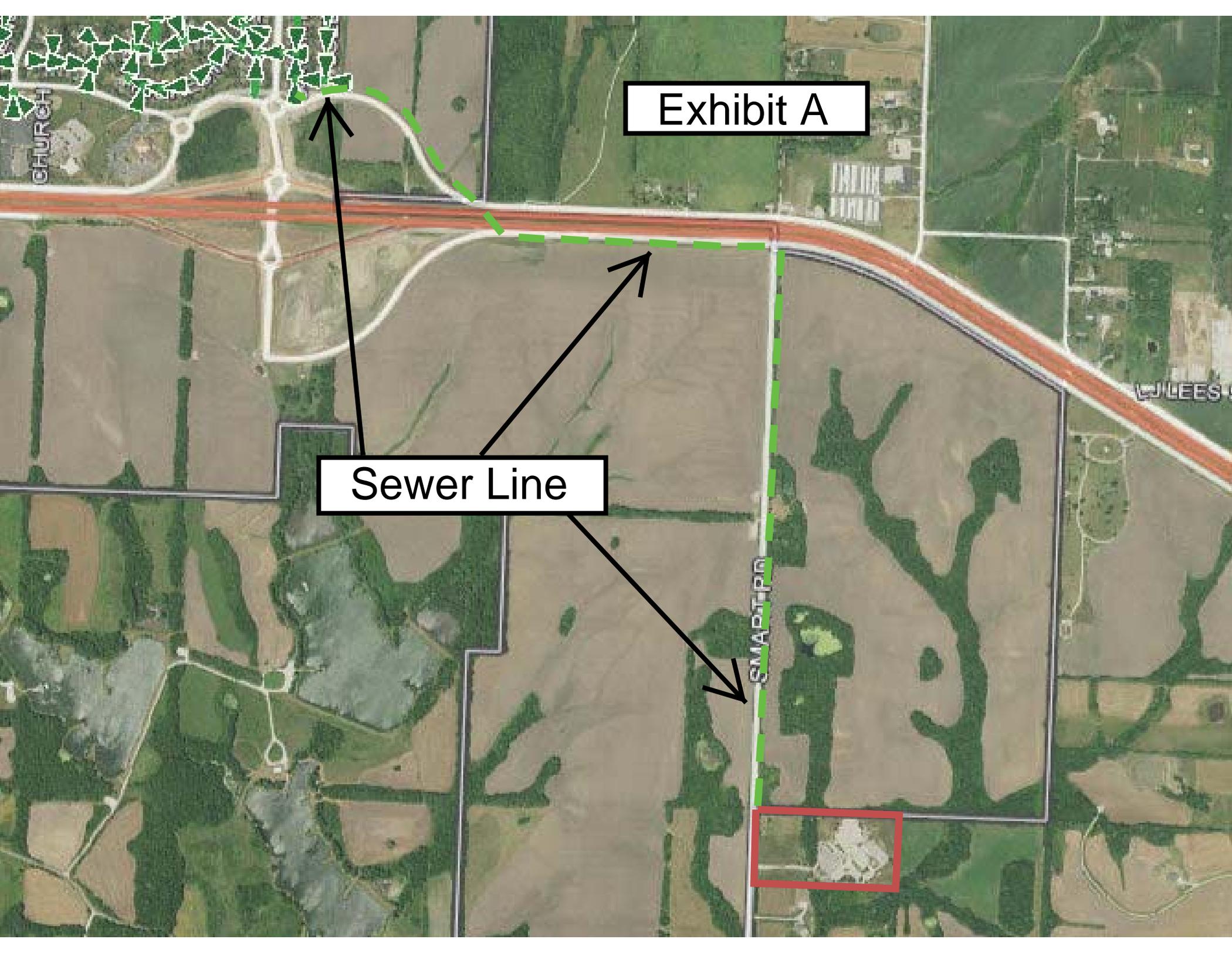


Exhibit A

Sewer Line

SMART POND

CHURCH

LEES

