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DOCKET NO. 48935

PETITION BY AIRW 2017-7, LP., TO §
AMEND THE CITY OF MCKINNEY'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COLLIN §
COUNTY BY EXPEDITED RELEASE §

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS
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PUBLIC UTILITY COMMISSION
TRAINING CLERK

**CITY OF MCKINNEY'S MOTION TO INTERVENE IN THE
PETITION OF AIRW 2017-17, LP FOR EXPEDITED RELEASE**

TO THE HONORABLE JUDGE MAYSON PEARSON:

COMES NOW, the City of McKinney (City) and files this Motion to Intervene in relation to the Petition of AIRW 2017-17, LP for Expedited Release from the City's Certificate of Convenience and Necessity No. 20071 filed on November 30, 2018 (Petition). The City would respectfully show that it should be permitted to intervene in this proceeding.

MOTION TO INTERVENE

1. The City is the certified retail public utility from which AIRW 2017-17, LP seeks release, and the holder of the subject CCN No. 20071.
2. This Motion to Intervene is timely filed because it is being submitted by the deadline set out in Commission Order No. 1.
3. The City seeks to participate in this proceeding as an Intervenor.¹ Pursuant 16 Tex. Admin. Code § 22.103(b), a person has standing to intervene if that person (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding. The City satisfies both tests.

¹ 16 Tex. Admin. Code § 24.3(31).

4. First, the City has a right to participate in this proceeding because the Public Utility Commission's (Commission) rules provide that the "CCN holder may submit a response to the petition within a timeframe specified by the presiding officer." 16 Tex. Admin. Code § 24.245(1)(5).

5. Second, the City has a justiciable interest that will be adversely affected by the outcome of this proceeding. The City is an "affected person" because it is a "retail public utility affected by any action of the regulatory authority" pursuant to 16 Tex. Admin. Code § 24.3(5). The Petition asks the Commission to decertify the City's CCN No. 20071, thereby depriving the City of its exclusive right to provide sewer utility service to the area. The City is currently capable of providing service. The statutory and regulatory definition of "service" includes having facilities or lines that are "committed" to providing such service to the property and performing acts to make service available.² The City has performed acts and committed facilities that are in close proximity to the area in question and has therefore made service available to the property. A map evidencing the close proximity of the facilities that the City has made available for use in relation to the property is attached as Exhibit A.

6. Additionally, if the Commission grants the Petition and decertifies the property, the City is entitled to compensation for the investment it has made to have facilities available to serve the property because the City's property will have been rendered useless and valueless by the decertification. 16 Tex. Admin. Code § 24.245(n). As the current CCN holder, the City has a right to intervene in a proceeding for this reason under subsection (n) and a right to a determination by the Commission of useless or valueless property. *Id.* § 24.245(n)(2).

² See *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied); Texas Water Code § 13.002(21); 16 Tex. Admin. Code § 24.3(62).

Conclusion

For the foregoing reasons, the City requests that the Honorable Administrative Law Judge designate the City as a party to this proceeding. In the event the Petition is determined to be administratively complete, the City further requests an opportunity to participate in the establishment of a procedural schedule at a prehearing conference scheduled pursuant to 16 Tex. Admin. Code § 22.121 and to participate in this proceeding.

Respectfully submitted,

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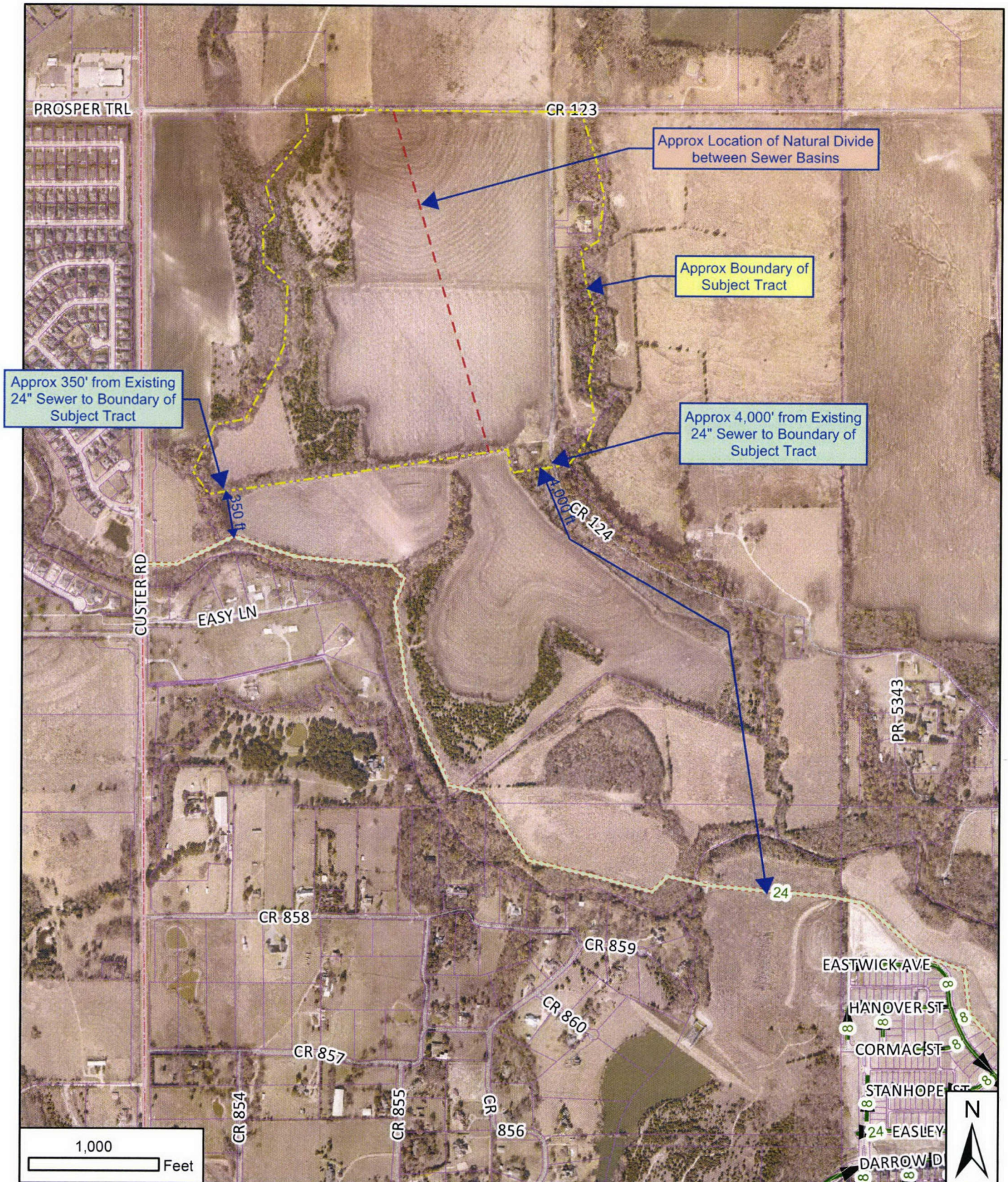
CERTIFICATE OF SERVICE

I hereby certify by my signature below that on the 2nd day of January, 2019, a true and correct copy of the above and foregoing document was forwarded via email or First Class Mail to following:

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Sewer Map Mansions Addition



Date: 12/11/2018

DISCLAIMER: This map and information contained within it were developed exclusively for use by the City of McKinney. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of McKinney, its officials or employees, for any discrepancies, errors, or variances which may exist.