



Filing Receipt

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February 23, 2022

Via Interchange E-File

Public Utility Commission of Texas
Central Records Division
1701 N. Congress Avenue, Room 8-100
Austin, Texas 78701

Re: Docket No. 53148 - Supplement to Application of the City of Lindale for Approval of a Service Area Agreement Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Smith County (Crook Rose)

To the Public Utility Commission of Texas:

On behalf of the City of Lindale ("Lindale"), please accept this supplement to the application filed in Docket No. 53148 on January 25, 2022, under Texas Water Code §13.248 and 16 Tex. Admin. Code §24.253 for approval of a service area agreement and to partially transfer a portion of Lindale Rural Water Supply Corporation's ("LRWSC's") CCN No. 10758 in Smith County, Texas to Lindale's CCN No. 12795.

An incomplete version of the Service Area Agreement between Lindale and LRWSC was attached as Exhibit A. That version did not include the effective date of the agreement. Attached is a revised Exhibit A that includes the effective date.

Please let me know if you need any additional information to allow the Commission to incorporate this agreement into the respective CCNs of Lindale and LRWSC.

Sincerely,



C. Joe Freeland
Attorney for City of Lindale

cc: Geoffrey Kirshbaum, Attorney for Lindale Rural Water Supply Corporation

Exhibit A

**TWC §13.248 Agreement between
Lindale and LRWSC**

SERVICE AREA AGREEMENT

This Service Area Agreement (the "Agreement") is by and between the City of Lindale, Texas, (the "City"), and Lindale Rural Water Supply Corporation ("LRWSC") (all the above are also sometimes referred to herein collectively as the "Parties" or individually as a "Party").

RECITALS

WHEREAS, the City is a municipal corporation in Smith County, Texas, owning a retail public water utility operating under water CCN No. 12795 in Smith County;

WHEREAS, LRWSC is a water supply corporation, operating under Chapter 67 of the Texas Water Code, owning a retail public water utility operating under water CCN No. 10758 in Smith County;

WHEREAS, Crook Rose, Inc. ("Crook Rose") owns a tract of land located inside LRWSC's CCN, and immediately adjacent to the City's CCN, and inside the City's corporate boundaries, (shown as the "Proposed Partial Transfer Area" on Exhibit A) and has requested retail water utility service from the City;

WHEREAS, Crook Rose, the Lindale Economic Development Corporation ("LEDC"), and the City approached LRWSC seeking LRWSC's agreement to allow the City to provide retail water utility service to the Proposed Partial Transfer Area;

WHEREAS, Crook Rose, LEDC, and LRWSC have reached an agreement to compensate LRWSC for allowing the City to provide retail water utility service to the Proposed Partial Transfer Area ("CCN Partial Transfer Compensation Agreement") pursuant to which LRWSC will be compensated in annual payments over a five-year period;

WHEREAS, LRWSC consents, pursuant to the terms of this Agreement, to allowing the City to provide retail water utility service to the Proposed Partial Transfer Area as a dual CCN holder;

WHEREAS, pursuant to Texas Water Code § 13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission of Texas ("PUC"), are valid and enforceable and are incorporated into the appropriate CCNs; and

WHEREAS, the City and LRWSC mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which they will designate areas and customers to be served and to request the PUC to incorporate such designations into the CCNs held by the City and LRWSC;

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and LRWSC hereby contract and agree as follows:

ARTICLE I

TERMS

1.1 Term. This Agreement shall remain valid and enforceable unless and until superseded by a subsequent written agreement.

1.2 Property Subject to the Agreement. The property subject to this Agreement is the property identified as “Proposed Partial Transfer Area” as shown on Exhibit A.

1.3 Designation of Water Utility Service Area. LRWSC consents and agrees to allowing the City to provide retail water utility service to the Proposed Partial Transfer Area as a dual certificate holder provided the following conditions are satisfied:

- A. Upon LRWSC’s request after execution of this Agreement and the CCN Partial Transfer Compensation Agreement, whichever is later, the City shall grant to LRWSC, without cost to LRWSC, a utility easement that is approximately ten (10) feet wide and located across the edge of a tract fronting County Road 463 as generally depicted in Exhibit B. The tract is owned by the City and identified as Smith County Appraisal District Parcel PIN 031885, located at 13853 County Road 463, Lindale, TX 75771. The easement shall be sufficient to allow LRWSC to maintain its existing treated water lines in its current location. The easement will be for the existing water lines only. LRWSC shall be responsible for recording the easement.
- B. Within 30 days of the execution of this Agreement and the CCN Partial Transfer Compensation Agreement, whichever is later, the City shall prepare, file, and diligently prosecute, at the City’s expense, an application pursuant to Texas Water Code § 13.248 (“Application”) with the PUC to have the Proposed Partial Transfer Area incorporated into CCN No. 12795. LRWSC shall support the Application and will not object or otherwise attempt to defeat the City’s Application to include the Proposed Partial Transfer Area in the City’s water CCN.
- C. If LRWSC does not receive the Down Payment or an Annual Payment as defined in the CCN Compensation Agreement, LRWSC shall notify the City in writing of the default. If the default is not cured within 90 days after notice is given the City, the City shall not connect any additional meters within the Proposed Partial Transfer Area until all such past due payments are received by LRWSC.

1.4 LRWSC Dual Service Rights. LRWSC will retain its certificate and its ability to provide retail water utility service to residential buildings constructed inside the Proposed Partial Transfer Area. A “residential building” shall mean a structure subject to the International Residential Code, as adopted by the City. The City shall give written notice to LRWSC when a residential building permit application is filed with the City for a structure to be located inside the Proposed Partial Transfer Area. Within 30 days of receiving notice of the application, LRWSC shall provide notice to the City of its intent to provide service to the residential building. LRWSC shall make any payments required by the CCN Partial Transfer Compensation Agreement at the

time it notifies the City of its intent to serve the structure. The City shall not be responsible for the cost of connecting the residential building to LRWSC's water distribution system. LRWSC shall be responsible for any easements necessary for the connection. If LRWSC does not provide notice of its intent to provide service to the residential building within 30 days of receiving notice of the application, or fails to make any payment required by the CCN Partial Transfer Compensation Agreement at the time it notifies the City of its intent to serve the structure, the City may provide retail water utility service to the structure.

1.5 Alternative Administrative Approach. If the PUC denies the § 13.248 Application for any reason, the City and LRWSC shall work in good faith to implement a reasonable alternative administrative approach providing the City with the necessary authority to provide retail water service to the Proposed Partial Transfer Area.

1.6 Retail Service. LRWSC hereby consents to the City providing retail water service to the Proposed Partial Transfer Area beginning on the date of execution of this Agreement and during the pendency of the § 13.248 Application.

ARTICLE II **MISCELLANEOUS**

2.1 No agreements other than this Agreement now exist between the City and LRWSC concerning the subject matter of this Agreement.

2.3 This Agreement shall be binding on the City and LRWSC and shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.

2.4 This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force or effect, whatsoever, except as by subsequent modification in writing signed by the Parties.

2.5 The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Smith County, Texas, except to the extent the PUC is made party to such action in which event venue may be in Travis County, Texas.

2.6 The individuals executing this Agreement on behalf of the respective parties below represent that all necessary and appropriate action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing, and that each individual affixing his or her signature is authorized to do so, and such authorization is valid and effective on the date hereof. If the authority of the individual executing this Agreement is subsequently challenged, the party for which the individual was acting shall take all steps necessary to ratify the authority of the individual.

2.7 This Agreement may be executed in multiple originals, either copy of which shall be considered an original.

2.8 This Agreement shall be effective on the date of execution below.

2.9 No Party will be penalized for alleged authorship of a particular provision upon judicial construction of this Agreement.

2.10 No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

EXECUTED AND AGREED TO by the Parties hereto this 14th day of January, 2022.

LINDALE RURAL WATER SUPPLY CORPORATION

By: 

Printed Name:

Jamie Darlin

Title:

General Manager

CITY OF LINDALE, TEXAS

By: 

Printed Name:

Carolyn Caldwell

Title:

City Manager
Council Approved

EXHIBIT A

Proposed Partial Transfer Area

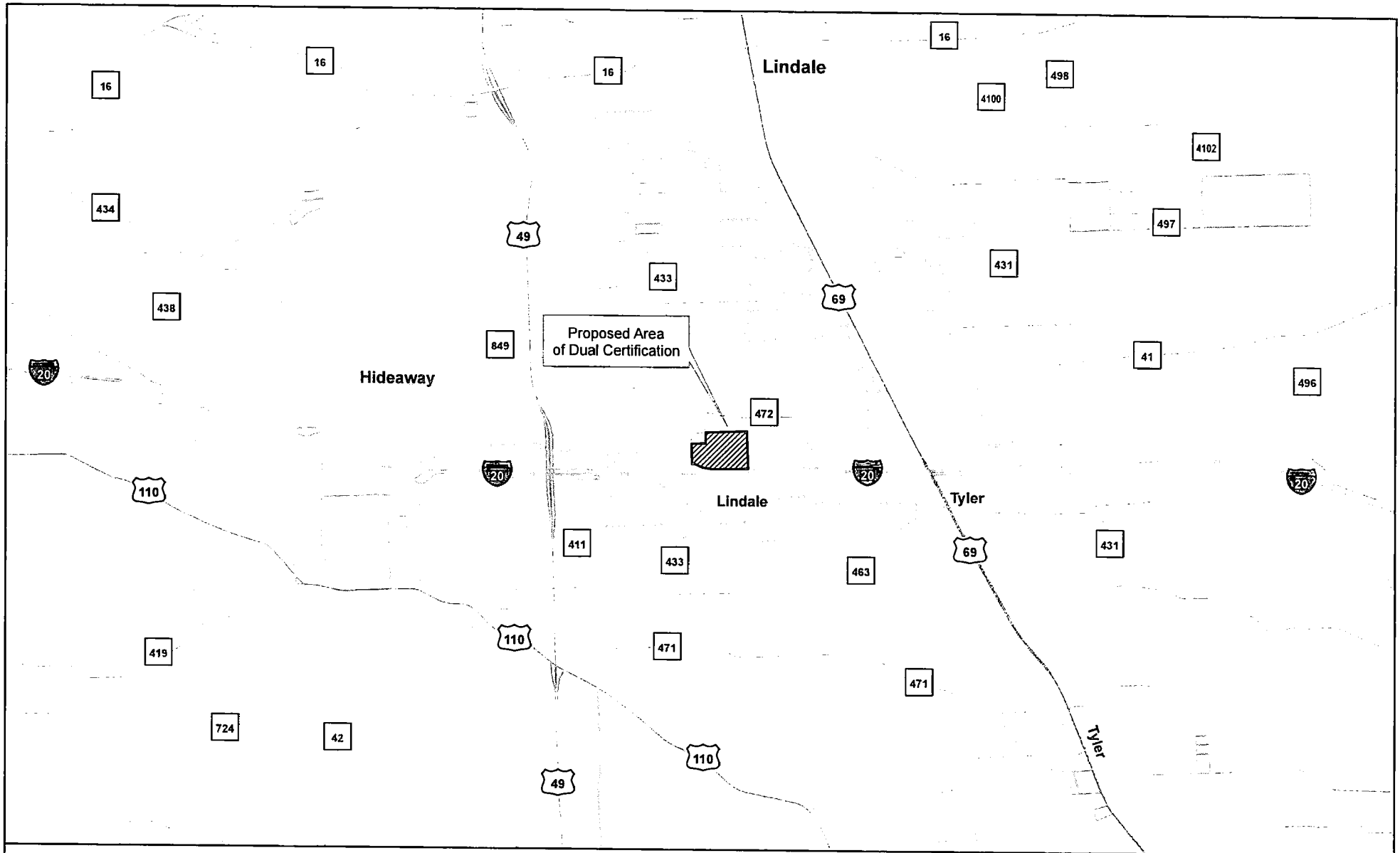



Exhibit A
Service Area Agreement - City of Lindale and Lindale Rural Water Supply Corporation
Partial Transfer Area in Smith County

Proposed Partial Transfer Area


Area of Dual Certification- City of Lindale, CCN 12795 & Lindale Rural WSC, CCN 10758 - 69.197 acres



0 0.25 0.5 1 Miles

Map by: S. Burt, ASBG
 Date: Nov. 30, 2021
 Base: TxDOT Roadways 2019
 City Limits - Smith CAD
 Project: General Location



Exhibit A
Service Area Agreement - City of Lindale and Lindale Rural Water Supply Corporation
Partial Transfer Area in Smith County

Proposed Partial Transfer Area



Area of Dual Certification - City of Lindale, CCN 12795 & Lindale WSC, CCN 10758 - 69.197 acres

Map by: S. Burt, ASBGI
Date: Nov. 30, 2021
Base: ESRI World Imagery
Project: Detail Map

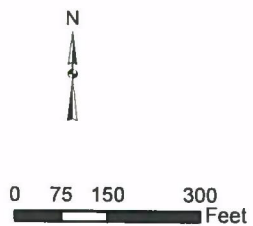
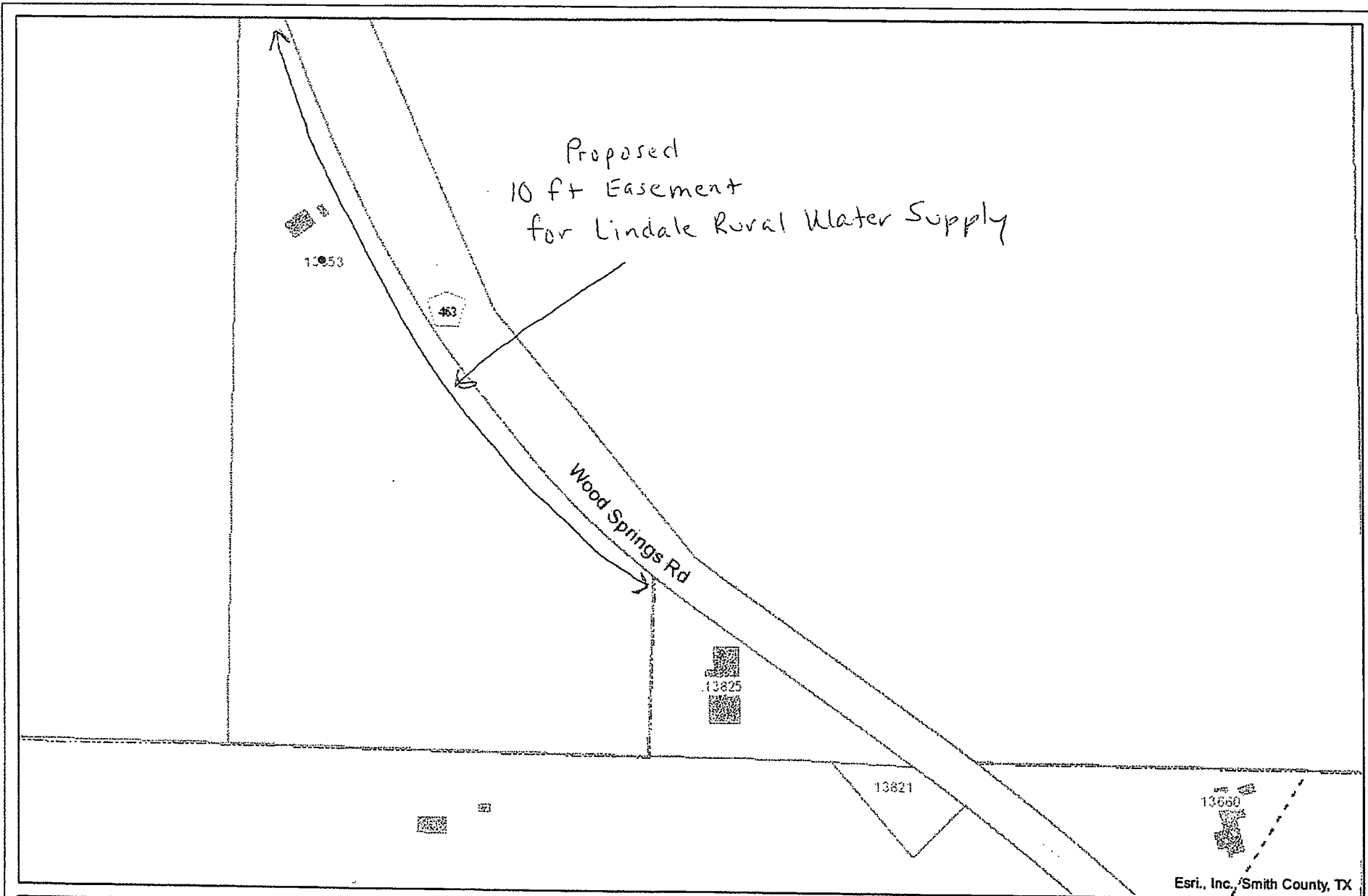


EXHIBIT B

Easement Location



9/23/2021, 7:12:30 AM

Web AppBuilder for ArcGIS

Web AppBuilder for ArcGIS

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

<http://www.smithcountymapsite.org>

- AddressPoints
- Additional Accounts
 - Tax Parcels

