

After recording, return to:

City Secretary  
City of McKinney  
P.O. Box 517  
222 N. Tennessee Street  
McKinney, Texas 75069

**NONEXCLUSIVE REVOCABLE LICENSE AGREEMENT**

THIS NONEXCLUSIVE REVOCABLE LICENSE AGREEMENT (this "Agreement"), is made as of the 29<sup>th</sup> day of May, 2014, by and between the **CITY OF MCKINNEY, TEXAS** (the "City") and **BOB TOMES FORD, INC.**, ("Applicant") witnesseth that:

WHEREAS, Applicant occupies certain real property situated in McKinney, Collin County, Texas, North Brook Subdivision, Block P, Lot 1R2 (hereinafter called the "Northern Property") as recorded in 2008-400 of the Deed Records of Collin County, Texas, as more particularly described on Exhibit "A" attached hereto and incorporated by reference herein;

WHEREAS, Applicant also occupies certain real property situated in McKinney, Collin County, Texas, North Brook Subdivision, Block R, Lot 1BR (hereinafter called the "Southern Property") as recorded in 2012-107 of the Deed Records of Collin County, Texas, as more particularly described on Exhibit "B" attached hereto and incorporated by reference herein;

WHEREAS, the City has a public roadway known as North Brook Drive situated within a 100-foot wide right-of-way (the "Right-of-Way") abutting and separating the Northern Property from the Southern Property (the "Easement Area");

WHEREAS, Applicant has requested permission to construct and install two underground multi-strand communication lines encased in protective conduits between the Northern Property and the Southern Property (the "Improvements") that encroach into the Right-of-Way; and

WHEREAS, this License Agreement allows the Improvements to encroach into the City's Right-of-Way provided that such Improvements strictly conform with all provisions of the City's Code of Ordinances and Applicant obtains all such permits and variances as may be required to place the Improvements at the location specified in Exhibit "C" attached hereto and incorporated by reference herein; and

WHEREAS, City Staff has reviewed Applicant's request and recommends approval thereof, subject to Applicant's agreement to be solely responsible for the construction, maintenance, removal and replacement of the Improvements as set forth herein, and Applicant's further agreement to hold the City

harmless with respect to any damage to, or necessary removal or relocation of, the Improvements and to indemnify the City from and against any and all claims or causes of action arising out of or related to Applicant's installation, use, maintenance and operation of the Improvements in said Easement Area.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and the mutual covenants herein contained, and for other valuable and good consideration in hand paid by Applicant to the City at or before the sealing of these presents, the sufficiency and receipt of which are hereby expressly acknowledged and confirmed, the parties hereby agree as follows:

1. **Installation and Maintenance of Improvements; Permitted Encroachment.** The City does hereby agree that, notwithstanding any contrary provision in any document granting or conveying the Easement Area to the City, Applicant may install and maintain at Applicant's sole cost and expense the Improvements in the Easement Area as specifically described and depicted in Exhibit "C," subject to the terms of Paragraph 2, below. In connection with the foregoing, the City specifically consents to the encroachment of the Improvements upon the Easement Area. It is specifically agreed and understood that it is Applicant's duty and obligation hereunder to avoid damaging and/or conflicting with any and all other uses, equipment, facilities and infrastructure presently situated within the Easement Area. In the event the City grants any rights in the Easement Area to third parties (provided the City is permitted to do so pursuant to the terms of the Right-of-Way), any such third parties shall enjoy the same rights and benefits to the Easement Area as enjoyed by the City hereunder.
2. **City Ordinances.** This Agreement is not intended to and it does not waive or grant a variance from any requirements of the City's Code of Ordinances that must be met for the Improvements to be constructed and installed in the Easement Area as specifically described and depicted in Exhibit "C." Applicant expressly acknowledges that by entering into this Agreement, Applicant, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any exhibits as waiving any of the requirements of the City's Zoning Ordinance or Subdivision Ordinance or any other ordinance of the City, as applicable. **Applicant shall strictly conform to all provisions of the City's Code of Ordinances and Applicant shall obtain all such permits and variances as may be required to place the Improvements at the location specified within the Easement Area BEFORE constructing and installing such Improvements.**
3. **Hold Harmless; Relocation.** Applicant agrees to hold the City harmless from and against (a) any financial responsibility for removing or relocating the Improvements, if the City determines, in its sole discretion, that the then-current location of the Improvements will unreasonably prevent the City's use and enjoyment of the Easement Area for the purposes contemplated therefor, and (b) any damage to the Improvements. In the event the City determines that the Improvements must be

removed or relocated from the position described and depicted in Exhibit "C" to allow the City full use and enjoyment of the Easement Area for its intended purpose(s), the City agrees that, if requested by Applicant, the City will allow the Improvements to be relocated (at Applicant's sole cost and expense) within the Easement Area if reasonably practicable and to the extent only that such relocation strictly conforms with all provisions of the City's Code of Ordinances and Applicant obtains all such additional permits and variances as may be required to remove and relocate the Improvements in a location acceptable to and approved by the City Engineer.

In the absence of an emergency, the City will provide Applicant ten (10) days written notice of the need to remove the Improvements from the Easement Area. Applicant shall have thirty (30) days from the date it is provided such written notice to remove the Improvements from the Easement Area. However, in case of an emergency, which necessitates the immediate removal of the Improvements for access to such public improvements, the City shall have the right to remove the Improvements and any associated appurtenances thereto and shall not be responsible for any damages incurred to such Improvements and associated appurtenances.

4. **Indemnification.** Applicant hereby assumes all liability and responsibility for and agrees to fully indemnify, hold harmless and defend the City and its officers, agents, servants and employees from and against any and all claims, suits, judgments, demands, damages, losses and expenses, including but not limited to attorney's fees, for injury to or death of a person or damage to property, arising out of or in connection with, directly or indirectly, Applicant's use of the Easement Area that forms the basis of this License specifically including but not limited to the construction, maintenance, operation and use of the Improvements in the Easement Area. In this regard, Applicant specifically understands and agrees that the Improvements may be damaged from time to time by the City and/or third parties performing work in and about the Easement Property in that the existence and location of the Improvements will not be something that is identified when a request for statutory "line locates" in the Easement Area is requested. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

5. **Notices.** All notices or requests required or authorized hereunder shall be in writing and shall be deemed effective upon receipt (or refusal thereof) when (i) delivered in person, (ii) sent by U.S. Postal Service, postage prepaid, as overnight mail or certified mail, return receipt requested, (iii) delivered by a nationally recognized delivery service for same-day or overnight delivery, or (iv) transmitted by facsimile (with proof of confirmed transmission) to the respective parties hereto as follows:

To Applicant: Bob Tomes Ford, Inc.  
950 South Central Expressway  
McKinney, Texas 75070

Attention: \_\_\_\_\_  
Fax No. \_\_\_\_\_

To the City: City Manager  
222 N. Tennessee  
P.O. Box 517  
McKinney, Texas 75070

6. **Binding Effect.** The benefits and burdens of this Agreement shall be exclusive to Applicant and shall benefit and bind Applicant and the City and their respective successors, successors-in-title, legal representatives and assigns as provided herein.
7. **Assignability.** This Agreement shall not be assignable by Applicant without the prior written consent of the City, and such consent shall not be unreasonably withheld, conditioned or delayed.
8. **Waiver.** The failure of the City or Applicant to exercise any right given hereunder or to insist upon strict compliance with any term, condition or agreement specified herein, shall not constitute a waiver of either party's right to exercise such right or to demand strict compliance with any such term, condition or agreement under this Agreement.
9. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Texas. Venue shall be exclusive in Collin County, Texas.
10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

***CITY OF MCKINNEY***

By: \_\_\_\_\_  
TOM MUEHLENBECK  
Interim City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE  
Assistant City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

**BOB TOMES FORD, INC.**

By: Ernest G. Smith  
Name: Ernest G. Smith  
Title: Controller

Date Signed: 05/29/2014

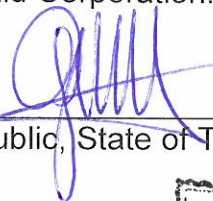
STATE OF TEXAS  
COUNTY OF COLLIN

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 by **TOM MUEHLENBECK**, Interim City Manager of the **CITY OF MCKINNEY**, a Texas municipal corporation, on behalf of said municipal corporation.

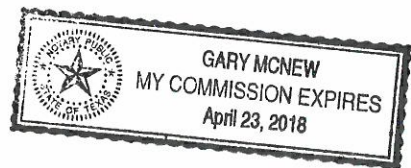
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on this 29<sup>th</sup> day of May, 2014, by Ernest G. Smith, in his capacity as Controller of **BOB TOMES FORD, INC.**, a Texas Corporation, on behalf of said Corporation.

  
\_\_\_\_\_  
Notary Public, State of Texas

4-23-2018



PREPARED IN THE OFFICES OF:

*BROWN & HOFMEISTER, L.L.P.*  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

EXHIBIT "A"

Northern Property Description

**EXHIBIT A**

BEGINNING at a TXDOT CAP found for the northwest corner of a 0.0931 acre right- of-way dedication for U.S. Highway No. 75 (variable width) recorded in Clerk File #2005-0148323 (DRCCT) and being located North 87°45'40" West, a distance of 9.14 feet from the northeast corner of said Lot 1R;

THENCE along the west line of said right-of-way dedication, SOUTH 02°30'24" WEST a distance of 524.94 feet to a TXDOT CAP found in the north line of North Brook Drive (variable width);

THENCE departing the west line of said U.S. Highway No. 75 and following the north line of North Brook Drive as follows:

NORTH 87°45'40" WEST a distance of 351.19 feet to a 5/8 inch iron rod set for corner;

SOUTH 79°58'27" WEST a distance of 94.15 feet to a 5/8 inch iron rod set for corner;

NORTH 87°45'40" WEST a distance of 27.26 feet to a 5/8 inch iron rod set for the southwest corner of said Lot 1R;

THENCE departing the north line of said North Brook Drive and following the west line of said Lot 1R, NORTH 11°03'14" WEST a distance of 101.83 feet to a 5/8 inch iron rod set for corner;

THENCE continuing with said west line of Lot 1R, NORTH 02°03'08" EAST a distance of 445.84 feet to the northwest corner of said Lot 1R and being the southwest corner of Lot 2R of said Block P of North Brook Addition;

THENCE departing said west line, SOUTH 87°45'40" EAST a distance of 497.77 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 5.991 acres or 260,989 square feet of land more or less.



EXHIBIT "B"

Southern Property Description

## EXHIBIT B

### Property Description

BEGINNING at a 5/8 inch iron rod set for the northeast corner of said Lot 1B and being located at the point of intersection of the west line of U.S. Highway No. 75 (variable width) with the south line of North Brook Drive (100' wide at this point);

THENCE along the west line of said U.S. Highway No. 75, SOUTH 04°35'00" WEST a distance of 145.25 feet to an aluminum disc in concrete found for corner;

THENCE continuing with said west line, SOUTH 08°23'00" WEST a distance of 100.50 feet to an aluminum disc in concrete found for corner;

THENCE continuing with said west line, SOUTH 02°40'00" WEST a distance of 86.30 feet to an "x" cut in concrete found for the southeast corner of said Lot 1B and being the northeast corner of Lot 1A of said North Brook Addition;

THENCE departing the west line of said U.S. Highway No. 75, NORTH 87°56'52" WEST a distance of 288.48 feet to a 5/8 inch iron rod set for the southwest corner of said Lot 1B and being the northwest corner of said Lot 1A and being located in the east line of Lot 2, Block R of North Brook Addition according to the plat recorded in Cabinet J, Page 812 of the Plat Records of Collin County, Texas;

THENCE NORTH 02°03'08" EAST a distance of 332.29 feet to a 5/8 inch iron rod with cap found for the northwest corner of said Lot 1B and being located in the south line of said North Brook Drive;

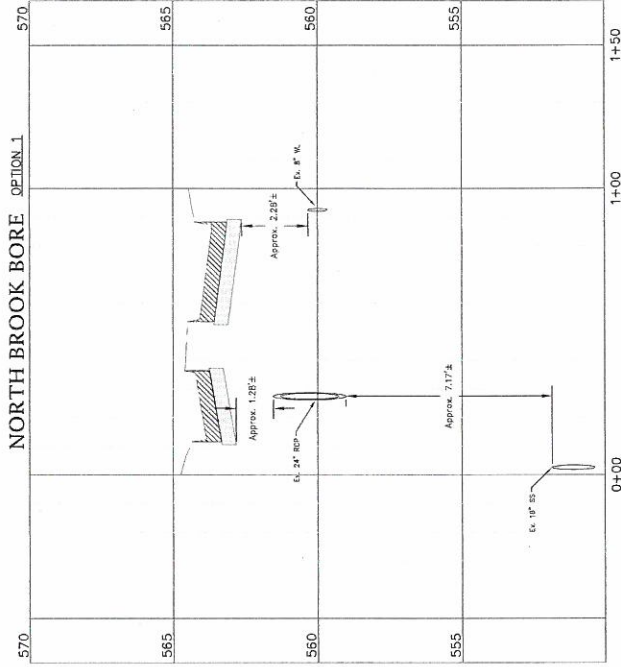
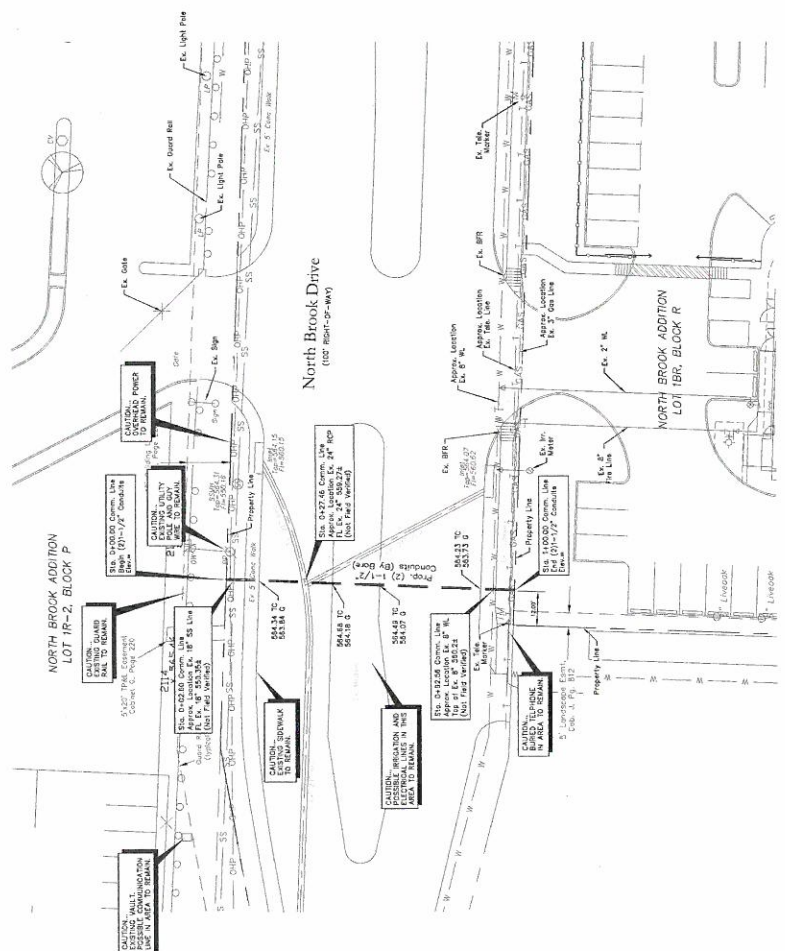
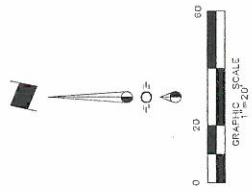
THENCE along the south line of said North Brook Drive, SOUTH 87°45'40" EAST a distance of 306.90 feet to the POINT OF BEGINNING;

CONTAINING 2.264 acres or 98,616 square feet of land more or less.

EXHIBIT "C"

Map Depicting Location of Encroaching Improvements  
(To Scale with Engineering Certainty)

EXHIBIT C



**NOTE:**  
ALL EXISTING UTILITIES IN AND ALONG NORTH BROOK DRIVE SHALL REMAIN.

**NOTE:**  
CONTRACTOR SHALL CONTACT AND COORDINATE WITH ALL FRANCHISE UTILITY COMPANIES PRIOR TO AND DURING CONSTRUCTION.

**NOTE:**  
EXISTING UTILITIES SHOWN PER AS-BUILT DOCUMENTS. CONTRACTOR TO FIELD UTILITIES PRIOR TO CONSTRUCTION AND NOTIFY ENGINEER OF ANY DISCREPANCIES AND CITY OF MCKINNEY FOR UTILITY LOCATE.

**CAUTION!**  
Existing Utilities in Area. Contractor to determine location and elevation of all utilities prior to construction. Contractor to inform Engineer of any conflicts prior to construction.



Issue Number	Revised	Date
1		
2		
3		
4		
5		
6		

**CROSS ENGINEERING CONSULTANTS**  
 311 S. STEWART ST.  
 DALLAS, TEXAS 75201  
 972.362.2465

Drawn By: C.M.C.L.  
 Checked By: C.M.C.L.  
 Scale: P=20'

Sheet No: EX  
 Project No: 14007

North Brook Drive Crossing Exhibit  
 COMMUNICATION LINE  
 BOB TOMES FORD  
 CITY OF MCKINNEY, TEXAS