

ESCROW AND UTILITY IMPACT FEE CREDIT AGREEMENT

HRC WCD PARTNERS, L.P.
for the
Stover Creek Sewer Interceptor

STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF COLLIN §

The **CITY OF MCKINNEY** ("City"), a home rule municipal corporation situated in Collin County, Texas, and **HRC WCD PARTNERS, L.P.**, a Texas limited partnership, whose address is 4601 Langland, Suite 107, Dallas, Texas 75244, ("OWNER"), make and enter into this Utility Impact Fee Credit Agreement ("Agreement"), dated as of the date of execution and effective as of the Effective Date (defined herein).

RECITALS

WHEREAS, the City's Water and/or Wastewater Improvement Plans (hereinafter referred to singly and collectively as the "Master Plan") require the construction of the Stover Creek Sewer Interceptor and all necessary appurtenances related thereto (the "SCS Interceptor") to extend to and serve OWNER's property that is identified as the Highland Lakes Addition, which property is located on the south side of FM 1461, on the north side of Bloomdale Road along and between Ridge Road and Stonebridge Drive, containing approximately six hundred forty-one (641) acres of land, more fully described in Exhibit A, which exhibit is attached hereto and incorporated herein by reference for all purposes allowed by law, (the "Property") to serve future development in the area specifically including the Property; and

WHEREAS, City and OWNER have previously agreed, in that certain Facilities Agreement filed in the Deed Records of Collin County, Texas on December 14, 2005, being identified as Clerk's Document No. 20051214001749490 (the "2005 Facilities Agreement"), that the OWNER would obtain all easements for the extension of and construct the SCS Interceptor to connect the Property to the City's off-site existing sanitary sewer system in exchange for City's reimbursement of (1) the actual costs of any sewer line in excess of the cost of a twelve-inch (12") diameter line and for any other costs of oversizing determined to be necessary by the City Engineer through the grant or award of impact fee credits to the extent the SCS Interceptor was on the Impact Fee Capital Improvement Plan ("IFCIP") at the time of construction or alternatively the payment of funds specifically designated for the lines in question to the extent that any funds are then available for such purpose within twenty-four (24) months

of City's final acceptance of such oversized line, and (2) pro-rata charges paid to City by third parties using the off-site sewer lines constructed by OWNER, limited to the cost of the off-site portion of such lines within ninety (90) days after City's receipt of such payment; and

WHEREAS, City and OWNER now desire to supersede, replace and repeal the provisions of the 2005 Facilities Agreement as it applies to the SCS Interceptor with this Agreement; and

WHEREAS, the SCS Interceptor is included in the City's Impact Fee Capital Improvements Plan ("IFCIP"); and

WHEREAS, City has previously agreed to place the SCS Interceptor on the City's Capital Improvements Plan ("CIP"); and

WHEREAS, OWNER has agreed to pay all costs and expenses for the acquisition of all easements required for the construction of the SCS Interceptor; and

WHEREAS, OWNER has agreed to fund the design and construction costs of the SCS Interceptor in the general location reflected in Exhibit B and as such SCS Interceptor is more specifically described in detail in Exhibit C, which exhibits are attached hereto and incorporated herein by reference for all purposes allowed by law, in exchange for impact fee credits that shall be applied to the single-family residential development on the Property and the City's contribution of a not-to-exceed amount of One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00) for the construction of the SCS Interceptor; and

WHEREAS, City has agreed that City will competitively bid the construction of the SCS Interceptor and make all payments associated therewith in accordance with the mandates of the Texas Competitive Bid Statutes subject to OWNER's payment of the escrow amount set forth herein below; and

WHEREAS, the OWNER has agreed to perform, or cause to be provided, construction management services, including payment recommendations for the construction of the SCS Interceptor at OWNER's sole cost and expense; and

WHEREAS, OWNER shall dedicate to the City all onsite easements and/or right-of-way necessary to the extension of the SCS Interceptor upon, across and through the Property in the area generally depicted on Exhibit D; and

WHEREAS, OWNER shall receive impact fee credits for OWNER's contributions to the construction of the SCS Interceptor, calculated in accordance with the Ordinance, which shall attach to the Property,

NOW THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and OWNER agree as follows:

ARTICLE I

DEFINITIONS

A. Definitions.

1. *City* means the City of McKinney, a Texas home-rule city and municipal corporation situated in Collin County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.
2. *OWNER* means HRC WCD Partners, L.P., and/or its assignees.
3. *Effective Date* means the date on which City accepts the construction of the Project and all related appurtenances thereto.
4. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.
5. *Ordinance* means the “McKinney Utility Impact Fees Article” as set forth in Section 130-19, *et seq.*, of the Code of Ordinances, City of McKinney, Texas, as amended by Ordinance No. 2017-02-021 and as it may further be amended, including any schedules or exhibits attached thereto.
6. *Oversize Line* means a water or wastewater line that is larger than the City’s minimum standard diameter water or wastewater mains, and which is also larger than the water or wastewater main required to serve the subdivision in question, as determined by the City.
7. *Parties* means the City and OWNER.
8. *Property* means OWNER’s property known as Highland Lakes Addition, a depiction of which is attached hereto as Exhibit A.
9. *SCS Interceptor* means the Stover Creek Sewer Interceptor and all necessary appurtenances thereto required to be constructed by the City’s Master Plan in the general location depicted in Exhibit B and as such SCS Interceptor is more specifically described in detail in Exhibit C, which such Oversize Line is eligible for impact fee credits and as approved by the CITY Engineer.
10. *Service Unit* means the applicable standard unit of measure that serves as the standardized measure of consumption, use or generation attributable to the new unit of development. The service unit for water and wastewater is a simple

¾-inch water meter which is the typical water meter used for a single-family detached living unit and is commonly referred to as the single family living unit equivalent (SFLUE). The number of service units used for water and wastewater by a particular land use is determined by the water meter size and water meter type employed by such land use.

11. Utility Improvements means storm water permitting, erosion control, easement preparation, excavation, trench safety, construction of water / wastewater lines, backfill, compaction, re-establishment of ground cover, and any other improvements necessary for a complete water / wastewater system, and all engineering, surveying, inspection and permit fees for the construction of the SCS Interceptor which includes an Oversize Line, together with all related appurtenances thereto, that is the subject of this Agreement in accordance with all City, state and federal standards.

B. *Interpretation of Terms, and Incorporation of Exhibits.*

Except where the context otherwise clearly requires, in this Agreement: words imparting the singular will include the plural and vice versa;

1. all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length; and
2. references to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns.

ARTICLE II

2005 FACILITIES AGREEMENT

A. From and after the date this Agreement is signed by the last party to sign the Agreement, the OWNER's obligations to obtain the easements for and to design and construct the SCS Interceptor shall be governed and controlled solely by this Agreement.

B. From and after the date this Agreement is signed by the last party to sign the Agreement, the City's obligations to reimburse OWNER for any costs associated in any way with the SCS Interceptor shall be governed and controlled solely by this Agreement.

C. From and after the date this Agreement is signed by the last party to sign the Agreement, the 2005 Facilities Agreement is hereby superseded, replaced and repealed to the extent only that it addresses or relates to the SCS Interceptor and the OWNER's and City's obligations regarding the SCS Interceptor.

D. From and after the date this Agreement is signed by the last party to sign the Agreement, the OWNER hereby releases its right to obtain pro rata payments that might otherwise be available for those portions of the SCS Interceptor which are situated off-site from the Property.

ARTICLE III

OWNER ESCROW AND CONTRIBUTION TO SCS INTERCEPTOR IMPROVEMENTS

A. *SCS Interceptor Improvements*

1. OWNER shall, at OWNER's sole cost and expense, obtain all of the off-site easements necessary for the construction of the SCS Interceptor in the general location depicted on the attached Exhibit B and as such SCS Interceptor is more specifically described in Exhibit C.
2. OWNER shall, at no cost to City, dedicate to City all of the on-site easements necessary to extend the SCS Interceptor through the Highland Lakes Addition in or about the approximate location generally depicted on the attached Exhibit D.
3. OWNER shall, at OWNER's sole cost and expense, cause the SCS Interceptor and all Utility Improvements appurtenant thereto to be designed in accordance with all applicable City, state and federal ordinances, design standards, statutes, rules and regulations and as may be required to obtain approval of such design from the City's Engineer. OWNER shall cause such design plans to be provided to City in the number and format requested by City to enable City to competitively bid and construct the SCS Interceptor.
4. OWNER shall, at OWNER's sole cost and expense, perform, or cause to be provided to City, construction management services, including payment recommendations for the construction of the SCS Interceptor. If OWNER fails or refuses to timely and consistently perform or cause construction management services to be provided for the SCS Interceptor, OWNER shall be responsible for the cost incurred by the City in performing or contracting with a third party for the provision of construction management services.

B. *Escrow for Construction Costs*

1. At the time of execution of this Agreement OWNER shall escrow a cash deposit with City in the amount of at least one hundred twenty percent (120%) of the total estimated difference between the costs associated with the construction of the SCS Interceptor and the not-to-exceed amount of the City's contribution of One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00) for the construction of the SCS Interceptor ("Initial Escrow Deposit"). The City shall hold

these funds in an interest-bearing escrow account in accordance with this Agreement. The escrow account interest rate shall be established in the City's discretion, and may vary. The additional twenty percent (20%) over and above the projected cost to construct the SCS Interceptor, together with any interest on the escrow account, may be used by the City in the City's sole discretion to cover unexpected or incidental costs of completion, including the City's administrative expenses.

2. The cost estimate for the construction of the SCS Interceptor shall be prepared by a professional engineer licensed by the State of Texas in the form of an "Opinion of Probable Cost" ("OPC"). Said OPC shall include a projected cost of purchasing a payment bond and performance bond, which meet the requirements of Chapter 252 of the Texas Local Government Code and Chapter 2253 of the Texas Government Code, in the full amount of the SCS Interceptor. The OPC shall also include a projected cost of purchasing a maintenance bond in the amount of fifteen percent (15%) of the estimated cost of the SCS Interceptor from a reputable and solvent corporate surety, in favor of City, to indemnify City against any repairs arising from defective workmanship or materials used in any part of the construction of SCS Interceptor, for a period of two (2) years from the date of final acceptance of such improvements. Said OPC shall be subject to the review and approval of the City Engineer. In the event of a dispute the City Engineer's determination shall control. The approved OPC shall be attached hereto as Exhibit E.

3. At such time as the City obtains bids for construction of the SCS Interceptor, and prior to the award of the bid to the presumptive qualified low-bidder ("Contractor"), the City shall inform OWNER of the amount bid for the construction of the SCS Interceptor. If the amount of the bid exceeds the Initial Escrow Deposit, the OWNER shall increase the amount of the Initial Escrow Deposit such that the Initial Escrow Deposit is equal to the amount of one hundred twenty-five percent (125%) of the amount bid by the Contractor. In the alternative, if the amount of the bid is less than the Initial Escrow Deposit, the amount of the Initial Escrow Deposit shall be reduced by City such that the Initial Escrow Deposit is equal to the amount of one hundred twenty-five percent (125%) of the amount bid by the Contractor, and any excess amount of the Initial Escrow Deposit returned to OWNER. The Initial Escrow Amount after it is established at the amount of one hundred twenty-five percent (125%) of the amount bid by the Contractor is hereafter referred to as the "Final Escrow Deposit."

4. OWNER agrees and understands that the City makes no assurances or representations that the SCS Interceptor will be bid, constructed and accepted prior to any date certain or in conjunction with the completion or acceptance of any particular phase of the **Highland Lakes Addition** subdivision. Notwithstanding the foregoing, it is specifically understood and agreed that it is City's intent to seek competitive bids for the SCS Interceptor within ninety (90)

days of OWNER's payment of the Initial Escrow Deposit; and, to issue a notice to proceed to the successful bidder within ninety (90) days of OWNER's payment of the Final Escrow Deposit.

5. OWNER agrees that the City shall have the right to enter upon the off-site easements acquired by OWNER for the SCS Interceptor to survey, stake, bore, construct and install the Required Improvements at such time as the City deems necessary. The City may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to design and/or construct the SCS Interceptor and enter upon such easements to survey, stake, bore, construct and install the SCS Interceptor at the City's direction.
6. OWNER further agrees that City, or someone acting on City's behalf, shall have the future right to enter upon the Property to survey, stake, bore, construct and install an extension of the SCS Interceptor upon, across and through the Property in the area generally depicted on Exhibit D upon agreement with OWNER regarding the specific location of the easements necessary to such extension.
7. OWNER specifically authorizes the City to utilize the Final Escrow Deposit escrowed with the City pursuant to this Agreement to pay for the construction of the SCS Interceptor and all necessary appurtenances to the SCS Interceptor as City receives payment applications from the Contractor or any successor contractor. Upon acceptance of the SCS Interceptor and the payment of any and all costs and expenses associated with the SCS Interceptor, any unused amount of the Final Escrow Deposit held by City shall be returned to OWNER.
8. If the Final Escrow Deposit is less than the actual cost and expense of constructing the SCS Interceptor including, but not limited to, all necessary related costs such as acquiring payment bonds, performance bonds, maintenance bonds, insurance coverage and construction management services for the construction of the SCS Interceptor OWNER shall reimburse the City for any and all additional costs and expenses ("Underpayment"). OWNER shall reimburse the City the total amount of any Underpayment within thirty (30) days after the City provides OWNER notice of Underpayment. If OWNER fails to timely reimburse the City for any Underpayment, City shall be authorized to revoke certificates of occupancy previously issued for the Property and shall further be entitled to issue stop work orders and withhold the issuance of any further permits and certificates of occupancy until OWNER or OWNER's successor-in-interest reimburses City for the Underpayment.
9. At this time, the SCS Interceptor is included in the City's Master Plan. The SCS Interceptor is therefore eligible for impact fee credits as calculated under the Ordinance.

ARTICLE IV

CITY CONSTRUCTION OF SCS INTERCEPTOR IMPROVEMENTS

A. City hereby agrees that City shall, subject to OWNER's payment of the Initial Escrow Deposit, competitively bid the construction of the SCS Interceptor in accordance with the requirements of Texas law; and, that such competitive bid process will include: (1) the provision of insurance coverage, in the types and amounts of coverage determined in the sole discretion of the City, that names the OWNER as an additional insured on the commercial general liability, automobile liability and excess liability insurance coverages and further provides OWNER with a waiver of subrogation on the workers' compensation and employer's liability insurance coverages; and (2) the provision of statutorily required performance and payment bonds for the construction of the SCS Interceptor as well as a two-year maintenance bond assuring the proper operation of the SCS Interceptor for a period of two years.

B. City hereby agrees that City shall, subject to OWNER's payment of the Final Escrow Deposit, award the bid for the construction of the SCS Interceptor and monitor and supervise, based on OWNER's provision of construction management services, the construction of the SCS Interceptor.

C. City shall review and pay Contractor for the construction of the SCS Interceptor as payment applications are submitted based on OWNER's recommendations through its obligation to provide construction management services. In the event that City disagrees with OWNER's recommendations regarding any payment application, City shall have the final decision-making authority to make such payments as City believes are required under the construction contract with the Contractor.

D. If OWNER fails to timely, and consistently, provide construction management services for the construction of the SCS Interceptor City shall have the right to perform or retain a third party to provide any necessary construction management services and deduct the cost of such construction management services from the Final Escrow Deposit.

ARTICLE V

REFUND OF BALANCE OF FINAL ESCROW DEPOSIT

Upon receipt of written request from OWNER, City shall within ninety (90) days following (a) City's final acceptance of the SCS Interceptor, (b) City's payment of all sums due and owing to the Contractor and (c) City's deduction of costs for the provision of construction management services by City or a third-party provider refund to OWNER any balance remaining in the Final Escrow Deposit after all such deductions and payments therefrom have been made.

ARTICLE VI

IMPACT FEE CREDITS

A. *Assignment and Expiration of Utility Impact Fee Credits*

1. City agrees to grant OWNER impact fee credits in conjunction with the acceptance of the SCS Interceptor. The impact fee credits shall vest and attach to the Property upon the City's acceptance of the SCS Interceptor.

2. The Impact Fee Credits granted under this agreement may be assigned one time from OWNER to OWNER's successor-in-interest of the entirety of the Property upon OWNER's written notice to City of OWNER's assignment of the Impact Fee Credits and conveyance of the Property to such successor-in-interest. Any and all other assignments shall only be effectuated with the City's consent pursuant to Section 130-29 of the Ordinance. The impact fee credits shall have no expiration; but in any event, the impact fee credits shall only be applied to the Property. Application of the impact fee credits to future developed lots and any reimbursement for unused impact fee credits shall be governed by the Ordinance.

B. *Value of Utility Improvements*

1. The City has agreed to reimburse the OWNER the actual cost associated with oversizing the SCS Interceptor to a size greater than twelve-inches (12") in diameter to serve the Property as required by the City's Master Plan as described in detail in Exhibit C.

2. OWNER shall provide appropriate cost documentation, as approved by the City Engineer, reflecting the actual expenditures for oversizing the SCS Interceptor. The reimbursement costs shall include all items pertinent to construction of the Oversize Line segments of the SCS Interceptor but excluding easements dedicated for the construction of the SCS Interceptor. The City Engineer shall review the cost documentation and make a final determination regarding those costs that are necessary and attributable solely to the oversizing of the SCS Interceptor. Said cost documentation shall be attached hereto as Exhibit F and is hereby incorporated herein for all purposes allowed by law.

3. Reimbursement for the cost of oversizing the SCS Interceptor shall be made through the grant or award of utility impact fee credits for the Property. Credits shall be calculated and applied based on the Ordinance. Credits shall vest and attach to the Property upon the City's final acceptance of the SCS Interceptor.

4. OWNER and City agree that the value of the Oversize Lines shall be expressed in Service Unit Equivalents. The utility impact fee credits which shall

attach to the Property under this Agreement shall be determined upon City's final acceptance of the SCS Interceptor.

C. *Use of Impact Fee Credits*

Impact fee credits shall be used only for the Property. Service Unit calculations for proposed uses on the Property shall be in accordance with then existing tables of the Ordinance. Unused impact fee credits shall not be transferable to any other tract or parcel of land and cannot be applied to other fees, or used on other tracts; however, impact fee credits shall be subject to any reimbursements allowed by then existing ordinances after City's final acceptance of the SCS Interceptor as impact fee funds may be available for that purpose. Upon the exhaustion of the impact fee credits by OWNER on the Property, any additional development on the Property (such as the creation of additional lots) shall pay then existing utility impact fees or receive credits for construction of additional utility improvements under then existing ordinances.

D. *OWNER Responsibilities under Development Ordinances*

Nothing herein shall relieve the OWNER from its responsibilities for construction of public improvements under applicable development ordinances upon development of the Property. OWNER shall not be entitled to utility impact fee credits for any line that is not actually constructed or which is not constructed in accordance with the City's Master Plan and development ordinances.

ARTICLE VII

AGREEMENT MAY NOT BE PLEDGED AS COLLATERAL

OWNER may not pledge this Agreement, or any credits granted hereunder, as collateral for purposes of securing financing for development of the Property.

ARTICLE VIII

GENERAL PROVISIONS

A. *Notice of Default; Opportunity to Cure; Remedies*

1. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.
2. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms

and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.

3. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

4. The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by OWNER under this Agreement, should OWNER fail to comply with the Subdivision Ordinance or any City development regulation, the City may terminate this Agreement. Upon termination pursuant to this subsection, all impact fee credits shall terminate.

B. *Entire Agreement; Interpretation of this Agreement*

1. This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein. If there is a conflict between this Agreement and prior written or verbal representations, this Agreement shall control.

2. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

C. *Amendment*

No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

D. *No Amendment of Other Agreements*

Unless otherwise expressly stipulated herein, this Agreement is separate from and will not constitute an amendment or modification of any other agreement between the Parties.

E. *Other Instruments, Actions*

The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

F. No Third Party Beneficiaries

Except as otherwise expressly provided herein to the contrary, nothing contained in this Agreement shall be construed to confer upon any person other than the Parties hereto any rights, benefits or remedies by, through, under or because of this Agreement.

G. Applicable Law; Venue

This Agreement shall be construed under and according to the laws of the State of Texas. Personal jurisdiction and venue for any suit arising hereunder shall be in Collin County, Texas.

H. Severability

The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

I. Counterparts

The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

J. Notices

For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

OWNER:

HRC WCD Partners, L.P.
4601 Langland, Suite 107
Dallas, Texas 75244

CITY OF MCKINNEY:

Office of the City Manager
222 N. Tennessee Street
McKinney, Texas 75069

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

K. *No Waiver of Development Ordinances*

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of OWNER under applicable ordinances, including but not limited to the subdivision ordinance, the sewer and water impact fee ordinance, or the roadway impact fee ordinance.

L. *Attorney's Fees*

Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

M. *Governmental Authority*

Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and utility improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

N. *Assignability*

This Agreement may be fully assigned one (1) time by OWNER, as a matter of right, to OWNER's successor-in-title to the entirety of the Property, only. OWNER and OWNER's assignee shall be jointly responsible for notifying City of any such assignment and providing to City updated information contained in Article VIII, Paragraph J, above. Failure to so notify City will not relieve OWNER or OWNER's assignee of responsibility under this Agreement.

Any other assignment of this Agreement shall require the City's prior written consent, and such consent shall not be unreasonably withheld, conditioned or delayed.

It is specifically understood and agreed that any reference to "OWNER" in this Agreement shall mean and include the OWNER and OWNER's assignees.

O. **Binding Obligation**

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

P. **Waiver of Claims.**

OWNER has voluntarily agreed to participate in the construction of the Utility Improvements for the SCS Interceptor, as described herein, in exchange for City's participation in the cost of constructing the SCS Interceptor and award of impact fee credits to be applied to the Property. OWNER waives any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Tex. Loc. Gov't. Code and any federal constitutional claims. OWNER further releases City from any and all claims based on excessive or illegal exactions. OWNER acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. OWNER shall indemnify and hold harmless City from any claims and suits of third parties, including but not limited to OWNER's successors, assigns, grantees, vendors, trustees or representatives, arising as a result of, and to the extent of any material breach of OWNER's duties and obligations under brought pursuant to this Agreement or the claims or types of claims described in this paragraph.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

HRC WCD PARTNERS, L.P., a Texas limited partnership, acting by and through its General Partner,

By: _____
Name: Darrell J. Mueller
Title: Manager of Bridge Creek GP LLC
Date Signed: 10/13/2017

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 2017.

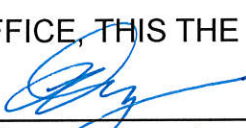
Notary Public _____ County, Texas
My commission expires _____

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

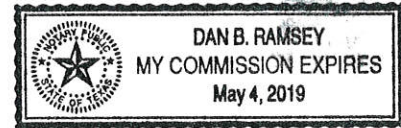
BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Darrell J. Mueller in his capacity as Manager of Bridge Creek GP LLC, a Texas LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Bridge Creek GP LLC is the General Partner of **HRC**

WCD PARTNERS, L.P., a Texas Limited Partnership, and that he executed the same on behalf of and as the act of the Texas Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 13th DAY OF October, 2017.



Notary Public DALLAS County, Texas
My commission expires MAY 4, 2019



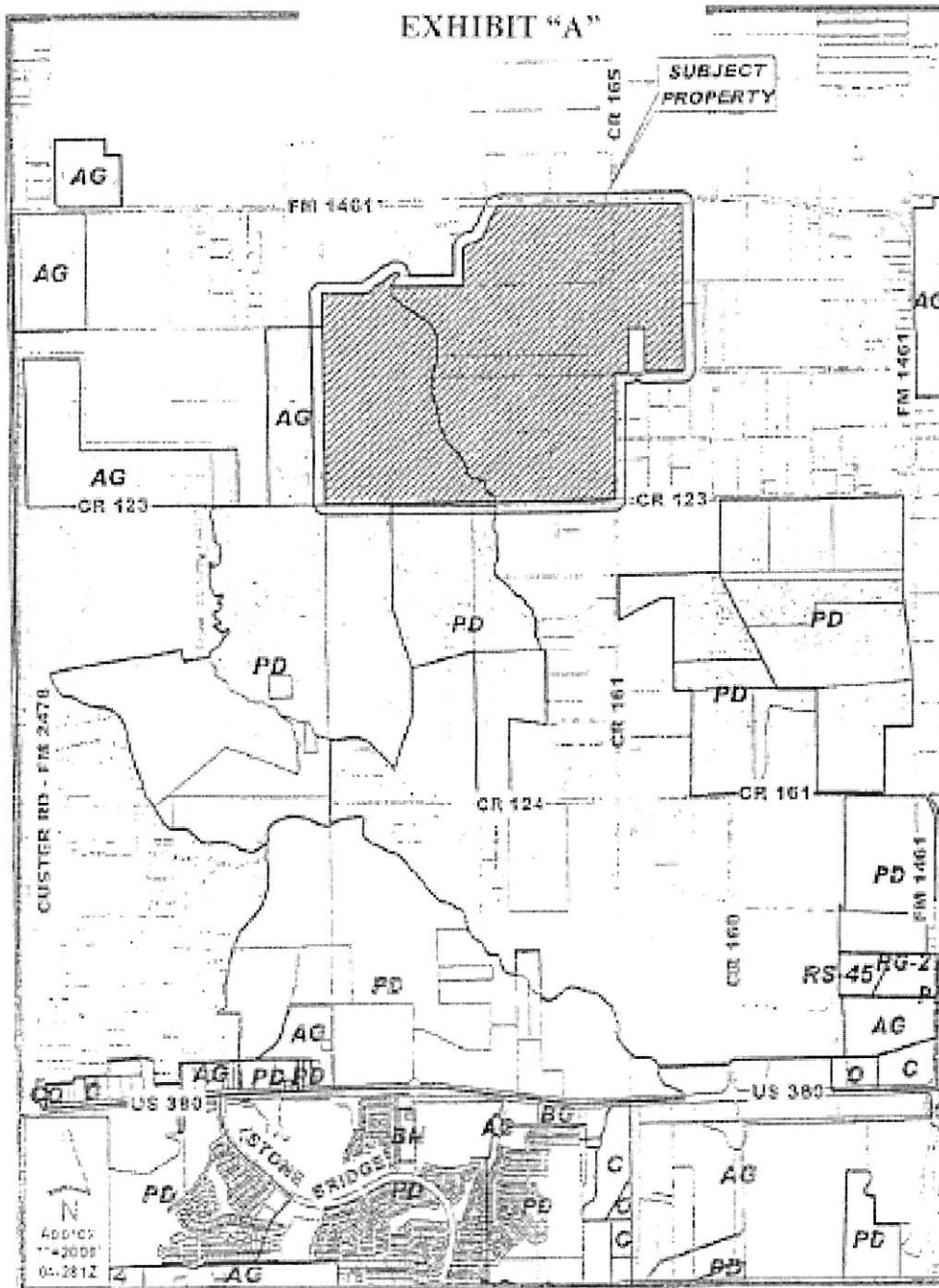
PREPARED IN THE OFFICES OF:

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

Exhibit A

PROPERTY

DESCRIPTION OF PROPERTY



LEGAL DESCRIPTION

BEGINS a tract of land situated in the 7 Straloup Survey, Abstrad No. 846, Collin County, Texas, and also be all of a 194.18 acre tract conveyed to Edward F. Scobon and Debra J. Scobon as referred in County Clerk No. 94-0063641 of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINS at a 1/2 inch iron rod found (controlling monument) far corner of the southwest corner of said 194.18 acre tract and at the southeast corner of a 73.4819 acre tract as recorded in County Clerk No. 22-0053214, Collin County, Texas, said iron rod being in County Road No. 208.

THENCE North 00 degrees 34 minutes 29 seconds East following the east line of said 73.4819 acre tract a distance of 376.78 feet to a 1 inch iron pipe found (controlling monument) far corner.

THENCE South 85 degrees 13 minutes 55 seconds East following the general course of a barberry fence a distance of 603.21 feet to a point in a small creek branch.

THENCE down said said small creek branch

- N 43°42'58" E 38.23'
- N 60°11'58" E 31.06'
- N 75°32'34" E 55.27'
- N 81°28'35" E 46.04'
- N 41°45'03" E 72.49'
- S 63°45'33" E 79.25'
- N 59°03'00" E 39.62'
- S 77°21'32" E 45.92'
- N 84°17'31" E 37.00'
- N 84°08'21" E 40.40'
- N 49°08'02" E 49.84'
- N 43°18'08" E 20.40'
- N 13°09'19" E 23.42'
- N 47°45'20" E 53.73'
- N 66°38'20" E 27.18'
- N 39°05'20" E 26.91'
- S 68°05'45" E 23.79'
- N 56°54'40" E 41.44'
- N 49°02'34" E 66.56'
- N 79°13'04" E 62.08'
- S 62°56'35" E 47.69'
- S 27°38'01" E 197.00'

To a point in Stover Creek;
THENCE down Stover Creek on the a Soil Conservation Service Line

- S 32°20'58" W 24.27'
- S 39°24'58" W 53.03'
- S 00°53'58" W 103.27'
- S 49°59'01" E 1067.50'
- S 05°38'59" W 458.00'
- S 00°22'01" E 478.00'
- S 53°57'59" W 157.00'
- S 27°53'01" E 505.00'
- S 15°06'59" W 177.00'
- S 07°38'01" E 275.00'
- S 71°54'01" E 192.00'
- S 54°36'01" E 382.00'
- S 09°06'01" E 67.00'
- S 37°45'51" W 52.61'
- S 14°56'13" E 262.86' to 1/2" iron rod found
- S 67°06'43" E 328.66'
- S 38°47'06" E 283.12'
- S 29°55'47" E 159.50'

to a "X" cut set in the concrete bridge over Stover Creek, said "X" cut being in County Road No. 123.
THENCE North 89 degrees 05 minutes 26 seconds West following C.R. No. 123 a distance of 2078.01 feet to a 1/2 inch iron rod found (controlling monument) far corner.

THENCE North 89 degrees 15 minutes 46 seconds West a distance of 1173.12 feet to the POINT OF BEGINNING and containing 8,652,249 square feet of 194.033 acres of land.

C:\Documents and Settings\jph\My Documents\Legal\Surveying\Mapalot\Mapalot\1004\1004.DWG, 10/20/04 11:31:30 AM, 10/20/04

Exhibit B

SCS INTERCEPTOR MAP



Exhibit B

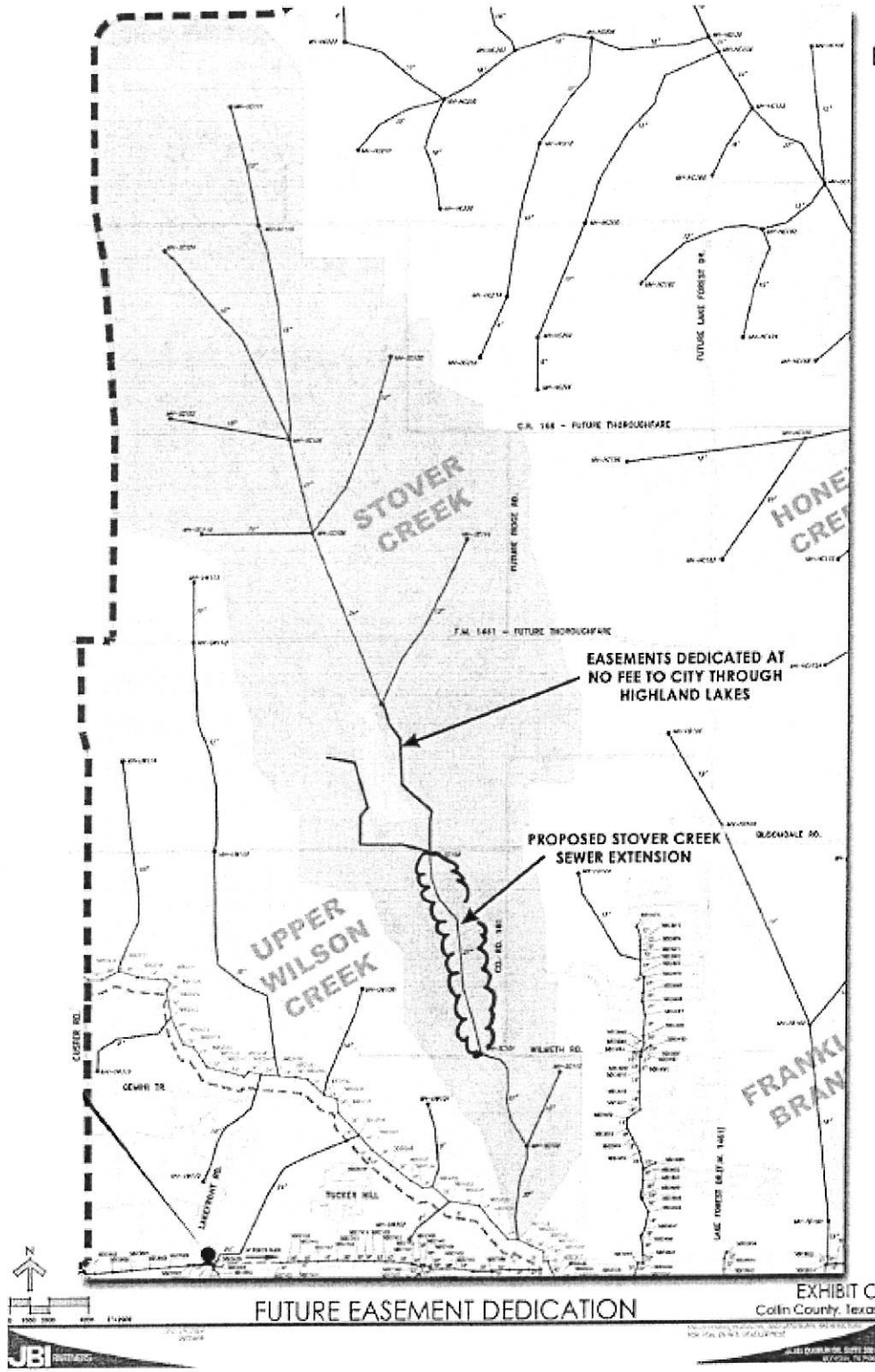


Exhibit C

IMPACT FEE CREDIT ELIGIBLE UTILITY IMPROVEMENTS

HRC WCD PARTNERS, L.P. (“OWNER”), shall design and construct approximately 7,222 linear feet of 27” diameter SDR 26 PVC sanitary sewer line and approximately 202 linear feet of 30” diameter SDR 26 PVC sanitary sewer line, rather than a 12” diameter sanitary sewer line, together with all related appurtenances including, but not limited to, all necessary fittings and connectors, steel casing, concrete encasement, piers and manholes, in strict accordance with the Master Plan and all applicable requirements of the City of McKinney’s Code of Ordinances and Engineering Design Standards and criteria all upon, over, under and across the Property and certain off-site properties for which OWNER has obtained an easement therefor in or about the location identified in Exhibit B, all in accordance with and subject to the final approval and acceptance of the City Engineer.

Exhibit D

DEPICTION OF SCS INTERCEPTOR EXTENSION
THROUGH THE HIGHLAND LAKES ADDITION

EXHIBIT D

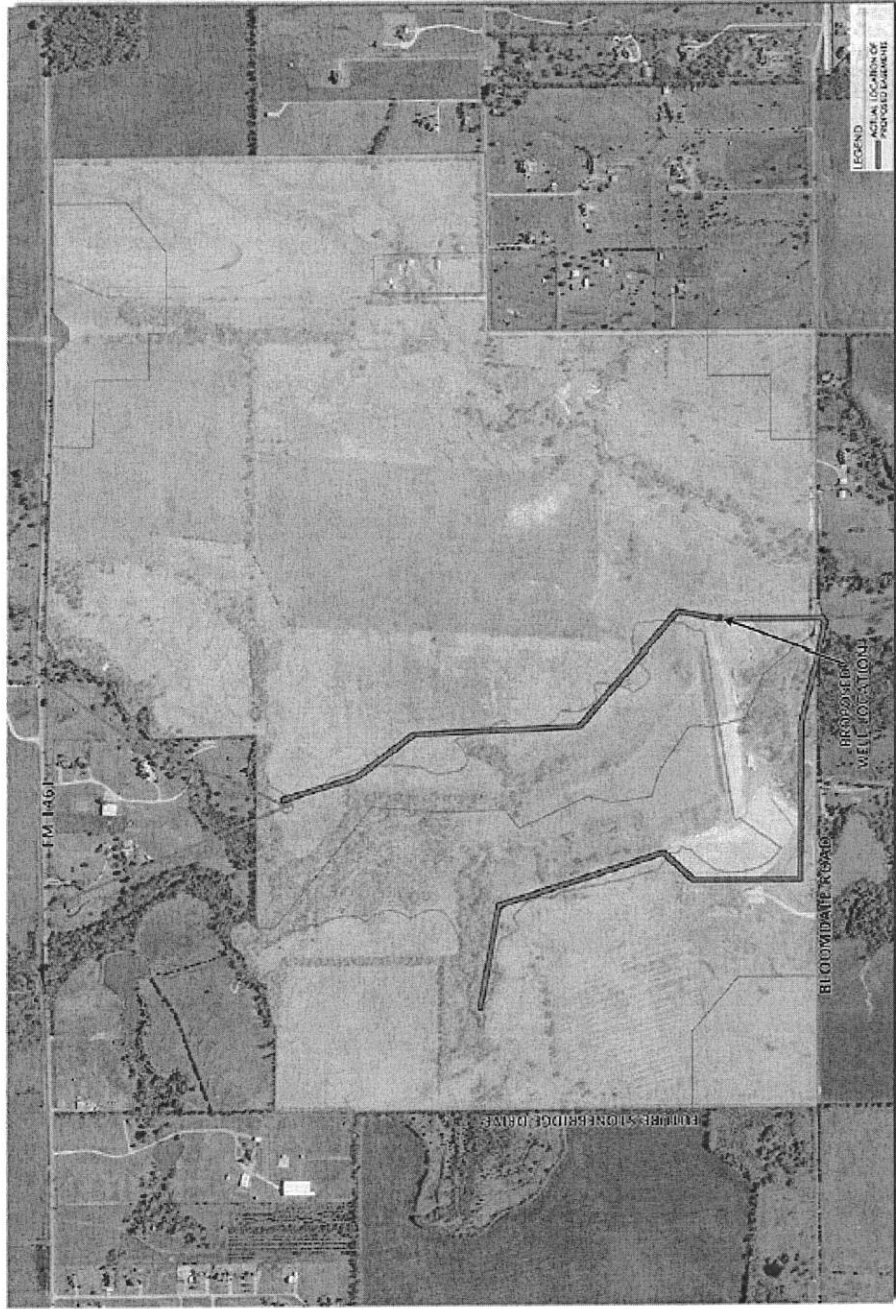


EXHIBIT D
McKinney, Texas
WATER UTILITY DEPARTMENT

STOVER CREEK SEWER
(ON SITE)



Exhibit E

ENGINEER'S OPINION OF PROBABLE COSTS FOR CONSTRUCTION OF THE SCS INTERCEPTOR

EXHIBIT E

ENGINEER'S OPINION OF PROBABLE COSTS FOR CONSTRUCTION OF SCS INTERCEPTOR
STOVER CREEK OFFSITE SEWER
MCKINNEY, TEXAS
JBI PROJECT NO. WCD004
JUNE 30, 2017
REVISED OCTOBER 10, 2017

APPROXIMATE ACRES: 7.00
APPROXIMATE LENGTH OF SEWER (lf): 7,424

I. OFFSITE SANITARY SEWER HARD COSTS

	Units	Cost	Quantity	Total
1 Silt fence (prior work)	LF	\$2.00	6,180	12,360.00
2 Construction entrance	EA	\$2,750.00	3	8,250.00
3 Clearing & grubbing (trees)	AC	\$11,000.00	7.00	77,000.00
4 Tree protection	LF	\$5.50	1,000	5,500.00
5 30" SDR 26 PVC Pipe gravity main	LF	\$148.00	202	29,896.00
6 27" SDR 26 PVC Pipe gravity main	LF	\$127.00	7,222	917,194.00
7 42" steel casing 5/8" thick (open cut)	LF	\$251.00	168	42,168.00
8 42" steel casing 5/8" thick (bore)	LF	\$921.00	277	255,117.00
9 38" steel casing 5/8" thick (open cut)	EA	\$214.00	142	30,388.00
10 6' vented manhole	EA	\$14,133.00	1	14,133.00
11 6' sealed manhole	EA	\$12,259.00	9	110,331.00
12 5' vented manhole	EA	\$12,403.00	1	12,403.00
13 5' sealed manhole	EA	\$10,821.00	2	21,642.00
14 5' manhole	EA	\$10,892.00	13	138,996.00
15 Connect to existing 30" PVC	EA	\$4,469.00	1	4,469.00
16 24" drilled piers	EA	\$13,750.00	4	55,000.00
17 Concrete encasement	LF	\$101.00	140	14,140.00
18 Concrete collar	EA	\$75.00	4	300.00
19 12" - 24" rock rip rap	SY	\$94.00	260	24,440.00
20 Remove & replace wood fence	LF	\$61.00	100	6,100.00
21 Construction material testing - allowance	LS	\$16,500.00	1	16,500.00
22 Testing	LF	\$1.00	7,424	7,424.00
23 Trench safety	LF	\$1.00	7,424	7,424.00
24 Seeding	SY	\$0.16	20,625	3,289.14
SUBTOTAL HARD COSTS				\$1,814,444.14

OFFSITE SANITARY SEWER SOFT COSTS

1 Performance & Payment bonds (Private)	LS		1	N/A
2 PP & 2 Yr 100% Maintenance bonds (Public Only)	LS	\$23,346.00	1	\$23,346.00
3 City inspection fees	%		3.50%	\$59,782.28
4 Engineering & Surveying (12%)				\$220,534.82
5 15% Contingency				<u>\$275,688.52</u>
SUBTOTAL SOFT COSTS				\$579,331.61

TOTAL COMBINED OFFSITE SANITARY SEWER COST **\$2,393,775.75**

Exhibit F

ENGINEER'S OPINION OF PROBABLE COST TO OVERSIZE THE SCS INTERCEPTOR

EXHIBIT F

ENGINEER'S OPINION OF PROBABLE COSTS FOR CONSTRUCTION OF SCS INTERCEPTOR
STOVER CREEK OFFSITE SEWER
MCKINNEY, TEXAS
JBI PROJECT NO. WCD004
JUNE 30, 2017
REVISED OCTOBER 10, 2017

APPROXIMATE ACRES: 7.00
APPROXIMATE LENGTH OF SEWER (lf): 7,424

II. 12" OFFSITE PVC SANITARY SEWER IN LIEU OF 27" PVC SANITARY SEWER

	Units	Cost	Quantity	Total
1 Silt fence (prior work)	LF	\$2.00	6,180	12,360.00
2 Construction entrance	EA	\$2,750.00	3	8,250.00
3 Clearing & grubbing (trees)	AC	\$11,000.00	7.00	77,000.00
4 Tree protection	LF	\$5.50	1,000	5,500.00
5 30" SDR 26 PVC Pipe gravity main	LF	\$148.00	202	29,896.00
6 12" SDR 26 PVC Pipe gravity main	LF	\$74.00	7,222	534,428.00
7 24" steel casing 5/8" thick (open cut)	EA	\$80.05	310	24,816.00
8 24" steel casing 5/8" thick (bore)	EA	\$591.00	277	163,707.00
9 5' vented manhole	EA	\$11,903.00	1	11,903.00
10 5' sealed manhole	EA	\$10,462.00	9	94,158.00
11 4' vented manhole	EA	\$8,495.00	1	8,495.00
12 4' sealed manhole	EA	\$7,096.00	2	14,172.00
13 4' manhole	EA	\$7,028.00	13	91,364.00
14 Connect to existing 30" PVC	EA	\$4,469.00	1	4,469.00
15 24" drilled piers	EA	\$13,750.00	4	55,000.00
16 Concrete encasement	LF	\$101.00	140	14,140.00
17 Concrete collar	EA	\$75.00	4	300.00
18 12" - 24" rock rip rap	SY	\$94.00	260	24,440.00
19 Remove & replace wood fence	LF	\$81.00	100	8,100.00
20 Construction material testing - allowance	LS	\$16,500.00	1	16,500.00
21 Testing	LF	\$1.00	7,424	7,424.00
22 Trench safety	LF	\$1.00	7,424	7,424.00
23 Seeding	SY	\$0.16	20,825	<u>3,269.14</u>
SUBTOTAL HARD COSTS				\$1,215,115.14
OFFSITE SANITARY SEWER SOFT COSTS				
1 Performance & Payment bonds (Private)	LS		1	N/A
2 PP & 2 Yr 100% Maintenance bonds (Public Only)	LS	\$14,797.80	1	\$14,797.80
3 City inspection fees	%		3.50%	\$38,805.76
4 Engineering & Surveying (12%)				\$147,589.53
5 15% Contingency				<u>\$184,486.91</u>
SUBTOTAL SOFT COSTS				\$385,679.80
TOTAL COMBINED OFFSITE SANITARY SEWER COST				\$1,600,794.94

SUMMARY

TOTAL COMBINED OFFSITE SANITARY SEWER COST WITH 27" PVC	\$2,393,775.75
TOTAL COMBINED OFFSITE SANITARY SEWER COST WITH 12" PVC	<u>\$1,600,794.94</u>
DIFFERENCE IN COST IF 12" PVC IN LIEU OF 27" PVC	\$792,980.81