

## **Interlocal Participation Agreement for the Construction of The Trinity Falls East Feed Water Line and Redbud Pump Link**

This Interlocal Participation Agreement for the Construction of the Trinity Falls East Water Line Feed and Redbud Pump Link (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021<sup>1</sup> (the "Effective Date"), by and between **McKINNEY MUNICIPAL UTILITY DISTRICT NO. 1 OF COLLIN COUNTY**, a municipal utility district created pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, and the applicable Special District Local Law whose address is c/o Sanford Kuhl Hagan Kugle Parker Kahn LLP, 1980 Post Oak Boulevard, Suite 1380, Houston, Texas 77056 ("District") and the **CITY OF McKINNEY, TEXAS** ("McKinney" or the "City") on the terms and conditions hereinafter set forth.

WHEREAS, Trinity Falls Holdings LP ("Trinity Falls") is the assignee and successor-in-interest to CH-B Trinity Falls, LP, and is developing property pursuant to the 2012 Development Agreement, as amended, between CH-B Trinity Falls, LP and the City with the original effective date of December 4, 2012 (together, with all amendments, the "Development Agreement") lying within the extraterritorial jurisdiction of the City of McKinney, Texas; and

WHEREAS, Trinity Falls is required to construct and install the water distribution facilities designated and identified as the "East Feed" in the Development Agreement and Exhibit "C-5" to the Development Agreement, herein after referred to as the "East Water Feed", that contains approximately 8,168 linear feet of twenty-four-inch (24") diameter water line plus approximately 6,404 linear feet of thirty-six-inch (36") diameter water line extending between its northern terminus at the "Trinity EST" on Weston Road along and about Trinity Falls Parkway, Laud Howell Parkway, U.S. 75, and McClarry Road to its terminus at the northern boundary of Bloomdale Road as generally depicted on Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law, together with all appurtenances related thereto including, but not limited to transitions, gate valves and boxes, fire hydrants, fire leads, connections, and surface restoration, pursuant to the Development Agreement and in accordance with the regulations of City; and

WHEREAS, City is required by the Development Agreement to construct and install the water lines required to deliver an adequate supply of water from the "Bloomdale Pump Station," as it is identified in the Development Agreement but which pump station has since been named as the "Redbud Pump Station" by the City and is hereinafter referred to as the "Redbud Pump Station", to the north side of Bloomdale Road as shown on the City's Water Master Plan to deliver adequate water supply to the City system to the

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<sup>1</sup> If this date is omitted, the Effective Date shall be the date the Agreement is executed by the City.

extent necessary to provide uninterrupted, equitable and uniform retail water service to the Property; and

WHEREAS, Trinity Falls has assigned its obligation to construct the East Water Feed to the District, and the District has accepted and assumed the obligation to construct the East Water Feed in the location more particularly depicted on Exhibit A attached hereto, together with all appurtenances thereto pursuant to the Development Agreement and in accordance with the regulations of City; and

WHEREAS, City now desires to have District construct the City's portion of the water line identified as the "Redbud Pump Link," defined below, required to deliver an adequate supply of water from the Redbud Pump Station to the north side of Bloomdale Road to connect to the East Water Feed as shown on the City's Water Master Plan to deliver adequate water supply to the City system to the extent necessary to provide uninterrupted, equitable and uniform retail water service to the Property; and

WHEREAS, District has also assumed the obligation from the City to construct an additional approximately 2,582 linear feet of thirty-six-inch (36") diameter water line between the Trinity Falls' East Water Feed and the City's Redbud Pump Station, as more particularly depicted in Exhibit B attached hereto and incorporated herein by reference for all purposes allowed by law, together with all appurtenances thereto in accordance with the regulations of City (the "Redbud Pump Link") in exchange for the City's payment of the costs associated therewith as more particularly described in Paragraph 5 herein below; and

WHEREAS, the Interlocal Cooperation Act ("Act"), codified at Chapter 791 of the Texas Government Code, authorizes units of local government to contract with one or more units of local government and agencies of the state to perform governmental functions and services; and

WHEREAS, District and McKinney are political subdivisions of the State of Texas and are engaged in the provision of governmental services for the benefit of their citizens and users; and

WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, the Act for the performance of governmental functions and services; specifically, the construction of the East Water Feed and the Redbud Pump Link together with all appurtenances to both portions thereof (collectively the "Project"); and

WHEREAS, District and McKinney have determined that the Project may be completed and maintained most economically by implementing this Agreement; and

WHEREAS, District and McKinney each has current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, McKinney and District agree as follows:

1. Recitals Incorporated.

All of the foregoing recitals are hereby found to be true and correct and they are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

2. Approved Plans and Specifications.

City has received and conditionally approved the plans and specifications for the construction of the Project, which final approval is contingent upon District acquiring the necessary easements to construct the East Water Feed, containing a water line approximately 8,168 linear feet of twenty-four-inch (24") diameter water line plus approximately 8,986 linear feet of thirty-six-inch (36") diameter water line extending between its northern terminus at the "Trinity EST" on Weston Road along and about Trinity Falls Parkway, Laud Howell Parkway, U.S. 75, McClarry Road, Bloomdale Road, and Redbud Boulevard to its terminus at the Redbud Pump Station on Redbud Boulevard by District together with all other appurtenances related thereto as are required for a full and complete Project, which plans and specifications conform to all ordinances and regulations of City and are on file in the office of the City Engineer (the "Plans").

3. Competitive Bidding of Project.

District agrees that it will, or has, competitively bid the Project in accordance with the competitive bid statutes of the State of Texas.

4. Construction by District.

All construction shall be in strict accordance with the Plans. The Project shall be completed and finally accepted by the City within three-hundred (300) days of issuing the notice to proceed, subject to force majeure delays. During the construction process, District shall require its general contractor to comply with all ordinances and regulations governing the construction and installation of the Project. This Agreement shall in no manner be construed as an exemption or waiver by McKinney in favor of District, or its contractors, subcontractors, and/or suppliers, of any of the ordinances or regulations relating to the design, construction or warranty of any of the Project.

Notwithstanding the fact the District is causing the District's general contractor to construct the Project, the City shall have the right to contract, and will contract, with a separate entity to perform construction materials testing of the Redbud

Pump Link portion of the Project to confirm that the Contractor has performed such portion of the Work in compliance with the "Contract Documents."

5. Participation by McKinney in Cost.

(a) District has entered into a contract for the construction of the Project, in two components, with Belt Construction of Texas, LLC (the "Contractor"). As suggested above, one component of the Project includes the cost for constructing the East Water Feed in a southerly direction from the Trinity EST to the north side of Bloomdale Road (the "East Water Feed Bid Component" or "Base Bid Component"). The other component of the Project includes the cost for constructing the Redbud Pump Link from the southern terminus of the East Water Feed to the Redbud Pump Station, but excluding design, engineering, testing and surveying costs (the "Redbud Pump Link Bid Alternate Component" or "Bid Alternate Component").

(1) East Water Feed Bid Component

The Contractor has agreed to construct the Base Bid Component of the Project for a contract price of Six Million Nine Hundred Thirteen Thousand Seven Hundred Seventy-Two Dollars and fifty Cents (\$6,913,772.50) (the "Base Bid Price"). A copy of the Construction Contract between the District and the Contractor is on file in the office of the City Engineer.

(2) Redbud Pump Link Bid Alternate Component.

The Contractor has also agreed to construct the Bid Alternate Component of the Project for a contract price of One Million Eight Hundred Ninety-Nine Thousand Two Hundred Fifty-One Dollars (\$1,899,251.00) (the "Bid Alternate Price"). Again, a copy of the Construction Contract between the District and the Contractor is on file in the office of the City Engineer. McKinney has previously agreed to participate in the full amount of the cost of constructing the Bid Alternate Component which cost is an amount not to exceed \$1,899,251.00 plus and/or minus any additive and/or deductive change orders that are approved in advance and executed by the City for the Bid Alternate Component (the "Maximum McKinney Bid Alternate Payment"). District and McKinney specifically agree that the Maximum McKinney Bid Alternate Payment fairly compensates the District for the services or functions performed under this Agreement and any change orders thereto regarding the Redbud Pump Bid Alternate Component.

(b) Payments by McKinney for McKinney's Bid Alternate Share.

McKinney shall pay the full amount of each "Bid Alternate Draw Request" (defined below) submitted by the Contractor up to a total cumulative amount equal to the Maximum McKinney Bid Alternate Payment.

District shall submit to McKinney each draw request relating to the Bid Alternate Component of the Construction Contract submitted by the Contractor (each, a "Bid Alternate Draw Request") within ten (10) days of receipt of same, together with an invoice (the "Invoice") for an amount equal to McKinney's Share of such Bid Alternate Draw Request. McKinney agrees to process and pay each Invoice promptly, but in any case, pay all undisputed amounts of any invoice no later than twenty (20) calendar days following the receipt of such Bid Alternate Draw Request and Invoice. During said twenty (20) calendar day period, McKinney shall have the right to verify that the Bid Alternate Draw Request and Invoice submitted to the City for payment relate to the scope of work covered by the Bid Alternate Component of the Contract and otherwise conform to the conditions set forth in this Agreement. McKinney agrees to give written itemized notice of any objections thereto to District within ten (10) days of receipt of such Bid Alternate Draw Request and Invoice.

(1) Submission of Payment Applications.

All payment applications for the City's review, approval and payment shall be submitted directly to the City's Director of Engineering or his designee as follows:

Gary Graham, P.E.  
Director of Engineering  
Attn: Trinity Falls East Feed Waterline Construction  
Development Services Building  
221 North Tennessee Street  
McKinney, Texas 75069.

(2) Payments of, and Notices of Objections to, Payment Applications.

All of the City's payments of Payment Applications and notices of objections to any part or all of a Payment Application shall be submitted to the District at the addresses listed in Paragraph 7, "Notice," below.

6. Default.

In the event any party fails to comply with the terms of this Agreement, the other party has the right to enforce the terms of this Agreement by specific performance

or by any other remedy available to it at law or in equity; provided, however, in no event shall any party be liable for speculative, consequential or punitive damages.

7. Notice.

Any notice to be given or to be served upon a party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, recognized overnight carrier, such as Federal Express, hand delivered with a signed receipt reflecting such hand delivery, or by facsimile transmission ("Fax") and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the party (or such party's agent or representative) to whom it is addressed, upon delivery to the address specified below. All notices shall be given to the parties hereto at the address set forth below. Any party hereto may, at any time by giving two (2) days written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

*If Notice to District:*

McKinney Municipal Utility District No. 1 of Collin County  
c/o Sanford Kuhl Hagan Kugle Parker Kahn, LLP  
1980 Post Oak Boulevard, Suite 1380  
Houston, Texas 77056  
Attn: Ryan Rosa, President  
Board of Directors

*With copies to:*

Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 N. Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Attn: Bob Roeder  
E-Mail: rroeder@abernathy-law.com

Trinity Falls Holdings, LP  
5005 Riverway Dr., Suite 500  
Houston, TX 77056  
Attn: Elizabeth York  
Email: elizabeth@johnsondev.com

*[Remainder of page intentionally left blank.]*

*If Notice to McKinney:*

City of McKinney  
222 N. Tennessee St.  
McKinney, Texas 75069  
Attn: Paul Grimes  
Phone: 972-547-7510 Fax: 972-547-7500

8. Venue.

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in state district court in Collin County, Texas.

9. Severability.

In case any one or more provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10. No Waiver of Governmental Immunity.

Nothing contained in this Agreement shall be construed as a waiver by McKinney of its governmental immunity with regard to any matter other than City's obligations to District that are specifically enumerated in this Agreement.

11. Indemnity.

**DISTRICT, TO THE EXTENT PERMITTED BY LAW, SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS THAT SPECIFICALLY RELATE TO OR ARISE OUT OF THIS AGREEMENT AND/OR THE CONSTRUCTION CONTRACT.**

**TO THE EXTENT PERMITTED BY LAW, THE INDEMNITY PROVIDED HEREIN SHALL ALSO INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS AS WELL AS ANY REASONABLE EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

District shall have the right to select counsel subject to the City's consent, which consent will not be unreasonably withheld, to be retained in fulfilling the obligation to defend and indemnify the City. Approved counsel shall be retained for the City within seven (7) business days after receiving written notice from the City that it is invoking its right to indemnification under this Agreement. If such counsel is not timely retained for the City, then the City shall have the right to retain counsel and be reimbursed for all its attorneys' fees and expenses by the party whose acts and/or omissions gave rise to said claim. The City retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

12. Authority.

Each of the parties represents and warrants to the other that they have the full power and authority to enter into and fulfill the obligations of this Agreement.

13. Performance and Payment Bonds.

District shall require the Contractor to execute a performance bond in the amount of one hundred percent (100%) of the aggregate amount of all "public work contracts," as that phrase is defined (in the singular) and used in Chapter 2253 of the Texas Government Code, for the construction of the Project (the "Construction Contract Price") for the benefit of District and City to ensure the completion of the Project. District shall also require the Contractor to execute a payment bond in the amount of one hundred percent (100%) of the Construction Contract Price for the benefit of payment bond beneficiaries who have a direct contractual relationship with the Contractor and/or the Contractor's contractors and subcontractors to provide labor or material for the construction of the scope of work under the Construction Contract. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. Said bonds shall be in a form acceptable to the City Attorney.

14. Maintenance Bond.

District shall require the Contractor to furnish McKinney a good and sufficient maintenance bond in the amount of fifteen percent (15%) of the Construction Contract Price, or in such lesser amount as approved by the City Engineer, with a reputable and solvent corporate surety, in favor of McKinney, to indemnify McKinney against any repairs arising from defective workmanship or materials used in any part of the construction of the scope of work under the Construction Contract, for a period of two (2) years from the date of final acceptance of such improvements.

16. Miscellaneous.

(a) This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except



upon the provisions hereof or by the mutual written agreement of the parties to this Agreement.

- (b) This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- (c) Time is of the essence in this Agreement.

EXECUTED as of the date first above written.

**CITY OF MCKINNEY, TEXAS**

By: \_\_\_\_\_  
Paul G. Grimes  
City Manager

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

**ATTEST:**

\_\_\_\_\_  
Empress Drane  
City Secretary  
Joshua Stevenson  
Deputy City Secretary

**APPROVED AS TO FORM:**

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

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

BEFORE ME, the undersigned authority, on this day personally appeared Paul G. Grimes, known to me to be one of the persons whose name is subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the CITY OF MCKINNEY and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**DISTRICT:**

**McKINNEY MUNICIPAL UTILITY  
DISTRICT NO. 1 OF COLLIN COUNTY,  
A Municipal Utility District**

By: \_\_\_\_\_  
Name: Ryan A. Rosa  
Title: President, Board of Directors

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

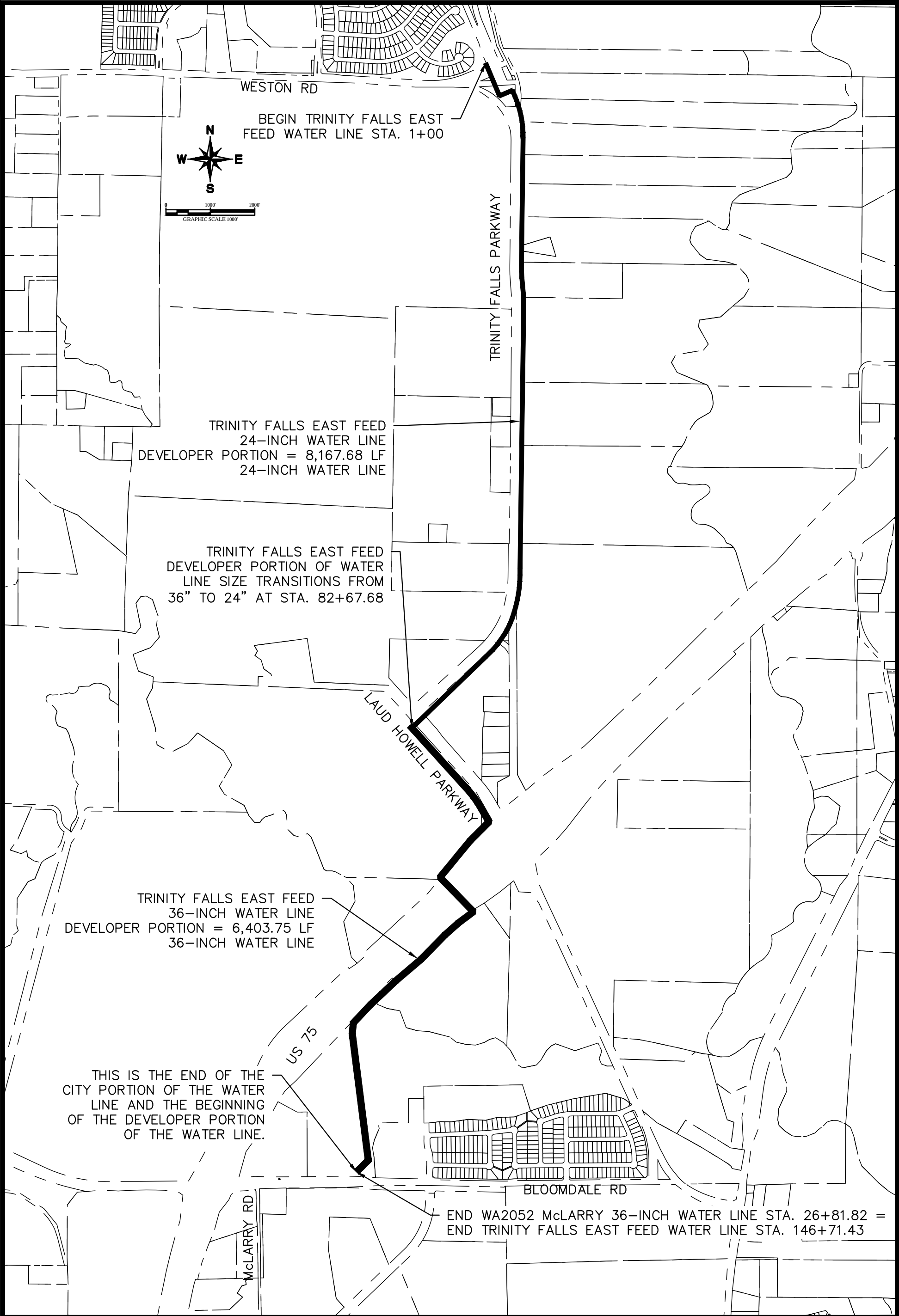
STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Ryan A. Rosa, President of the Board of Directors of McKINNEY MUNICIPAL UTILITY DISTRICT NO. 1 OF COLLIN COUNTY, a Municipal Utility District, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is the President of the Board of Directors of McKINNEY MUNICIPAL UTILITY DISTRICT NO. 1 OF COLLIN COUNTY, a Municipal Utility District, and that he executed the same on behalf of and as the act of the McKINNEY MUNICIPAL UTILITY DISTRICT NO. 1 OF COLLIN COUNTY.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public in and for the State of Texas

# EXHIBIT A DEPICTION OF EAST WATER FEED



# EXHIBIT B DEPICTION OF EAST WATER FEED

