

**Interlocal Participation Agreement for the Construction of
Trinity Falls Parkway from Laud Howell Parkway to FM 543**

This Interlocal Participation Agreement for the Construction of Trinity Falls Parkway from Laud Howell Parkway to FM 543 (the "Agreement") is made and entered into as of this ____ day of _____, 2018 (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 two lanes of the north-south segment of FM 543 (a designated six lane thoroughfare), which roadway segment is now named and hereinafter referred to as "Trinity Falls Parkway," a distance of approximately 5,600 linear feet located as generally depicted and highlighted in gray 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 has exercised its right, pursuant to Sections 5.1.3.2 and 5.1.3.4 of the Development Agreement, to increase this 5,600 linear foot section of Trinity Falls Parkway from a two-lane roadway to a four-lane divided thoroughfare (all four lanes hereafter being referred to as the "Trinity Falls Parkway Section") by participating in the cost thereof in the amount of \$3,600,000; and

WHEREAS, Trinity Falls has assigned its obligation to construct the Trinity Falls Parkway Section to the District, and the District has accepted and assumed the obligation to construct the Trinity Falls Parkway Section in the location more particularly depicted in a portion of the civil drawings thereof attached hereto as Exhibit B and incorporated herein by reference for all purposes allowed by law, together with all appurtenances thereto pursuant to the Development Agreement and in accordance with the regulations of City; and

WHEREAS, District has also assumed the obligation from the City to construct an additional approximately 1,476 linear feet of the two western lanes of Trinity Falls Parkway with transitions from two lanes to four lanes and median openings from and between the southern terminus of the Trinity Falls Parkway Section and the intersection of Trinity Falls Parkway with Laud Howell Parkway, located as more particularly depicted in a portion of the civil drawings thereof attached hereto as Exhibit C and incorporated herein by reference for all purposes allowed by law, together with all appurtenances thereto in accordance with the regulations of City (the "Trinity Falls Parkway Link"); 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 full four lanes of the Trinity Falls Parkway Section extending in a southerly direction from FM 543 as a four-lane divided roadway together with the construction of two additional lanes along the Trinity Falls Parkway Link from the southern terminus of the Trinity Falls Parkway Section to the intersection of Trinity Falls Parkway and Laud Howell Parkway including median openings 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 approved the plans and specifications for the construction of Trinity Falls Parkway by District as a four-lane divided thoroughfare extending in a southerly direction from FM 543 a distance of approximately 5,600 linear feet and then transitioning from four lanes to the two western lanes of Trinity Falls Parkway an additional distance of approximately 1,476 linear feet to its intersection with Laud Howell Parkway plus median openings and all other appurtenances, 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.

Within forty-five (45) days from the Effective Date of this Agreement, District shall direct its general contractor to commence construction of the Project. All construction shall be in strict accordance with the Plans. The Project shall be completed and finally accepted by the City within four hundred twenty (420) days of beginning, 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.

5. Participation by McKinney in Cost.

District has entered into a contract for the construction of the Project, in two components, with Mario Sinacola & Sons (the "Contractor"). As suggested above, one component of the Project includes the cost for constructing the Trinity Falls Parkway Section in a southerly direction from FM 543 a distance of approximately 5,600 linear feet, but excluding design, engineering, testing and surveying costs (the "Trinity Falls Parkway Base Bid Component" or "Base Bid Component"). The other component of the Project includes the cost for constructing the Trinity Falls Parkway Link from the southern terminus of the Trinity Falls Parkway Segment to its intersection with Laud Howell Parkway, but excluding design, engineering, testing and surveying costs (the "Trinity Falls Parkway Link Bid Alternate Component" or "Bid Alternate Component").

(a) Trinity Falls Parkway Base Bid Component.

The Contractor has agreed to construct the Base Bid Component of the Project for a contract price of Seven Million Six Hundred Fifty Thousand Four Hundred Thirty-

One Dollars and Sixty-Five Cents (\$7,650,431.65) (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. McKinney has previously agreed to participate in the cost of constructing the Base Bid Component in the amount of \$3,600,000 (the "Maximum McKinney Base Bid Payment"). District and McKinney specifically agree that the Maximum McKinney Base Bid Payment fairly compensates the District for the services or functions performed under this Agreement regarding the Trinity Falls Parkway Base Bid Component.

(b) Trinity Falls Parkway 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 Two Hundred Ninety-Seven Thousand Nine Hundred Eighty-Three Dollars (\$1,297,983.00) (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 \$1,297,983, 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 Trinity Falls Parkway Bid Alternate Component.

6. Payments by McKinney.

(a) McKinney's Base Bid Share.

McKinney shall pay a proportionate share of each "Base Bid Draw Request" (defined below) submitted by the Contractor up to a total cumulative amount equal to the Maximum McKinney Base Bid Payment. McKinney's proportionate share of a Base Bid Draw Request shall be a percentage, computed by dividing the Maximum McKinney Base Bid Payment by the Contract Price (\$3,600,000 ÷ \$7,650,431.65 = 47.056%), multiplied by the amount of the Draw Request ("McKinney's Base Bid Share").

District shall submit to McKinney each draw request relating to the Base Bid Component of the Construction Contract submitted by the Contractor (each, a "Base Bid 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 Base Bid Draw Request. McKinney agrees to pay each Invoice promptly, but in any case, no later than twenty (20) calendar days following the receipt of such Base Bid Draw Request and Invoice.

(b) 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.

(c) 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 Parkway Construction
Development Services Building
221 North Tennessee Street
McKinney, Texas 75069.

7. 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.

8. 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: Mark McKinney, 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

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

9. 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.

10. 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 effect 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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

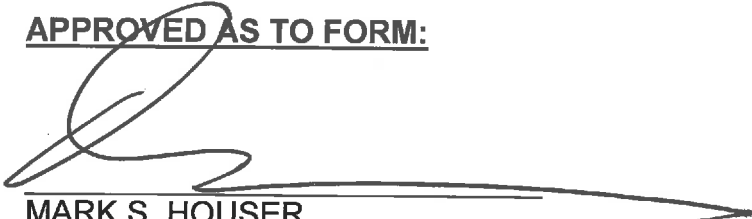
By: _____
Paul G. Grimes
City Manager

Date Signed: _____

ATTEST:

Empress Drane
City Secretary
Melissa Lee
Deputy City Secretary

APPROVED AS TO FORM:



MARK S. HOUSER
City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

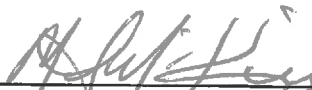
BEFORE ME, the undersigned authority, on this day personally appeared Paul G. Grimes, known to me to be one of the persons whose name is subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the CITY OF MCKINNEY and he executed said instrument for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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2018.

Notary Public in and for the State of Texas

DISTRICT:

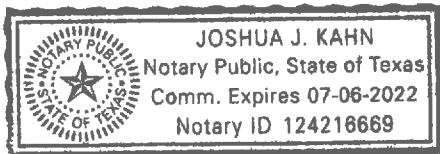
**McKINNEY MUNICIPAL UTILITY
DISTRICT NO. 1 OF COLLIN COUNTY,
A Municipal Utility District**

By: 
Name: Mark McKinney
Title: President, Board of Directors
Date Signed: 11/7/18

STATE OF TEXAS §
 §
COUNTY OF Collin §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Mark McKinney, 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 7th day of November, 2018.





Notary Public in and for the State of Texas

EXHIBIT A
DEPICTION OF TRINITY FALLS PARKWAY

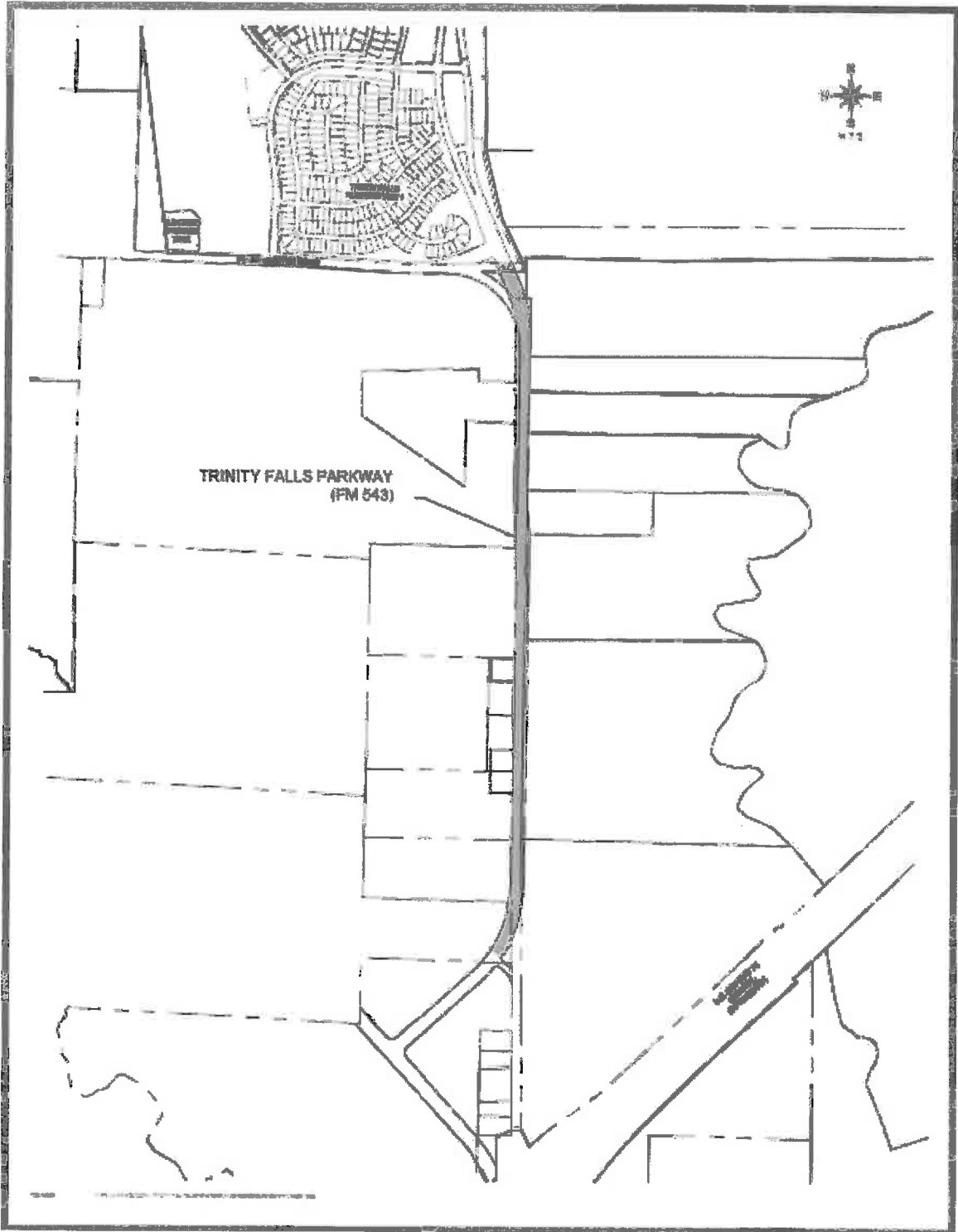


EXHIBIT B

TRINITY FALLS PARKWAY SECTION

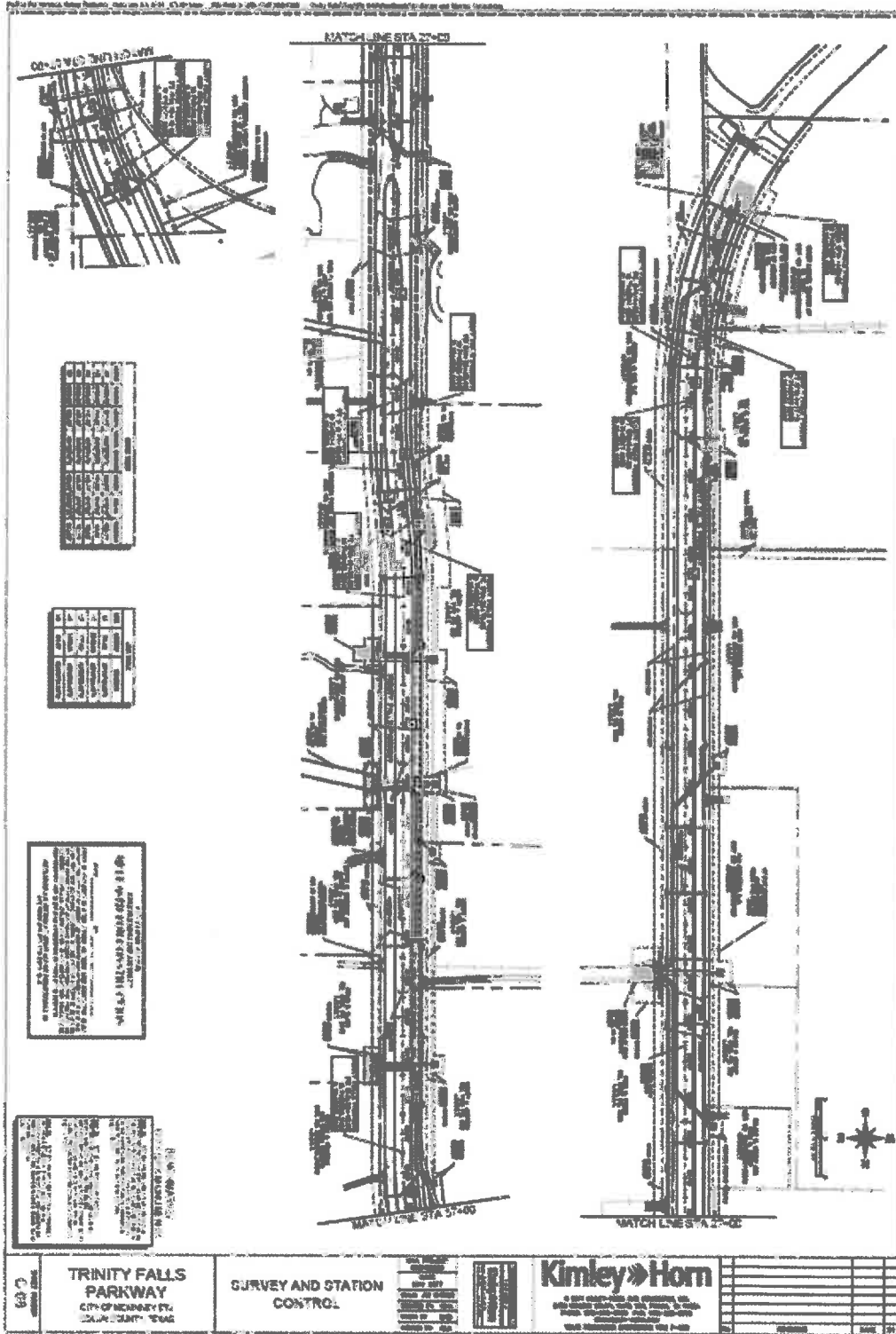


EXHIBIT C

TRINITY FALLS PARKWAY LINK

