

INTERLOCAL COOPERATION AGREEMENT BETWEEN
NORTH TEXAS MUNICIPAL WATER DISTRICT AND
THE CITY OF MCKINNEY, TEXAS FOR
WILSON CREEK SEWER SYSTEM, WILSON CREEK RELIEF INTERCEPTOR, AND
ROWLETT CREEK TRUNK SEWER EXTENSION

THIS Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, a Texas conservation and reclamation district (hereinafter referred to as “NTMWD” or “District”) and the **CITY OF MCKINNEY, TEXAS**, a home-rule municipal corporation operating under the laws of the State of Texas (hereinafter referred to as “McKinney”). Individually, NTMWD and McKinney may be referred to as a “Party” and collectively, NTMWD and McKinney may be referred to as “Parties.”

WHEREAS, the Interlocal Cooperation Act (the “Act”), codified as Chapter 791 of the Texas Government Code, authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the governing bodies of each Party find that this project or undertaking is necessary for the benefit of the public and that each Party has the legal authority to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, the Parties, in paying for the performance of governmental functions or in performing such governmental functions, shall make payments therefore only from current revenues legally available to such Party; and

WHEREAS, McKinney became a “member city” of the District when NTMWD, McKinney and the City of Mesquite entered into that certain October 1, 1975, Trinity East Fork Regional Wastewater System Contract to establish and provide for the District’s operation and maintenance of a regional wastewater system serving McKinney and other communities (the “Regional Wastewater System”); and

WHEREAS, on October 26, 1995, NTMWD and McKinney executed a Wastewater Facilities Contract for construction, operation, and maintenance of the Rowlett Creek Trunk Sewer Extension (“Rowlett Creek Trunk Sewer Extension”) whereby McKinney paid for the costs of constructing, operating, and maintaining the Rowlett Creek Trunk Sewer Extension; and

WHEREAS, McKinney has requested, and NTMWD has agreed to accept the transfer ownership of the Rowlett Creek Trunk Sewer Extension shown in the plans and specifications entitled “Rowlett Creek Trunk Sewer Extension”, dated July 1995 that were prepared by Shimek Jacobs & Finklea, Consulting Engineers (which Rowlett Creek Trunk Sewer Extension is also described as Rowlett Creek Trunk Sewer, Contract No. IRS 95-6, Engineer signed and dated October 18, 1995), from McKinney to NTMWD and the inclusion of the Rowlett Creek Trunk Sewer Extension with the NTMWD Upper East Fork Interceptor System (“UEFIS”) per **Exhibit C**; and

WHEREAS, McKinney has requested, and NTMWD has agreed to compensate McKinney for the cost of raising the rim elevation of up to eighteen (18) manholes within the McKinney-owned Wilson Creek Sewer System (comprised of the Wilson Creek Interceptor Sewer Main, Wilson Creek Interceptor Sewer, and Wilson Creek Relief Interceptor) per **Exhibit A**; and

WHEREAS, McKinney has requested, and NTMWD has agreed for NTMWD to provide quarterly completion schedule updates of the NTMWD Stover Creek Lift Station and Force Main projects; and

WHEREAS, McKinney has requested, and NTMWD has agreed to collaborate in good faith on a flow monitoring program to monitor the flows within the McKinney-owned Wilson Creek Sewer System; and

WHEREAS, McKinney has requested, and NTMWD has agreed, to accept the transfer of ownership of the downstream interceptor segment of the McKinney-owned Wilson Creek Sewer System (the “Wilson Creek Relief Interceptor”) to NTMWD for NTMWD’s incorporation into NTMWD’s UEFIS per **Exhibit B**; and

WHEREAS, NTMWD has requested, and McKinney has agreed to granting NTMWD permission to install a temporary junction box in the McKinney-owned Wilson Creek Sewer System, specifically the Wilson Creek Relief Interceptor, for the NTMWD Sloan Creek Force Main connection per **Exhibit B**; and

NOW THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

**I.
RECITALS INCORPORATED**

The foregoing recitals are found to be true and correct and are fully incorporated into the body of this Agreement and become a part hereof for all purposes allowed by law.

**II.
EFFECTIVE DATE**

This Agreement shall be effective on the date it is signed by the last Party to affix its signature hereto (the “Effective Date”).

[Remainder of page intentionally left blank.]

**III.
THE AGREEMENT**

A. NTMWD to pay for increasing the rim elevation of up to eighteen (18) manholes within the McKinney-owned portion of the Wilson Creek Sewer System

1. McKinney has identified eighteen manholes within the McKinney-owned Wilson Creek Sewer System that have the potential for sanitary sewer overflows, and which need to be elevated to avoid overflowing.

2. The Parties agree that NTMWD will compensate McKinney to raise the rim elevation for up to eighteen (18) manholes within the McKinney-owned Wilson Creek Sewer System, as shown in **Exhibit A**, to maximize storage within the sanitary sewer system in an effort to avoid potential sanitary sewer overflows.

3. McKinney shall be responsible for designing, bidding, constructing, and inspecting the project to raise the elevation of up to eighteen (18) manholes within the McKinney-owned Wilson Creek Sewer System (the “Work”). The standard for evaluating the selection and proposed rim elevation for the Work will be based on raising the manholes three feet (3’) above the hydraulic grade line in the five-year twenty-four-hour duration event.

4. The Parties agree that NTMWD shall escrow with McKinney a cash deposit in the amount of 125% of the total project costs for engineering, easements, and construction costs including performance, payment, and maintenance bonds plus insurance for the Work (the “Manhole Escrow”). The amount of the Manhole Escrow to be paid by NTMWD to McKinney will be initially determined based on an Engineer’s Opinion of Probable Costs for the Work (“OPC”). NTMWD shall pay McKinney the Manhole Escrow within thirty (30) days after McKinney provides NTMWD with the OPC for the Work.

5. McKinney shall have its contractor and engineering firms for the work described herein identify NTMWD as an additional insured on all required insurance policies for the work and design related to this Agreement. Additionally, McKinney shall include a third-party beneficiary provision for the benefit of NTMWD in all contracts with McKinney’s engineering firms and contractors relating to the work described in this Agreement whereby McKinney’s engineering firms and contractors owe the same contractual obligations, duties, and warranties to NTMWD as are owed to McKinney.

6. Within thirty (30) days after McKinney final accepts the Work and pays all bills associated with the design and construction of the Work, the City will provide NTMWD with a final accounting for all costs and expenses associated with the Work. McKinney will also provide NTMWD (a) a refund of any remaining funds in the Manhole Escrow after paying all of the actual costs of the Work or (b) a bill for any difference between the actual costs incurred for the Work and the amount of the Manhole Escrow paid by NTMWD to McKinney (a “Shortfall”). NTMWD will pay McKinney for any Shortfall within thirty (30) days after receipt of a bill for the Shortfall.

B. NTMWD Stover Creek Lift Station and Force Main projects schedule updates

NTMWD will provide McKinney quarterly completion schedule updates regarding the NTMWD Stover Creek Lift Station and Force Main projects. McKinney agrees to help and support NTMWD in completing the Stover Creek Lift Station and Force Main by providing information on current and future development plans, changes to roads/highways, or other infrastructure improvements within the Stover Creek corridor within McKinney's jurisdiction as McKinney becomes aware of such projects. McKinney will also help expedite applicable jurisdictional reviews and approvals, and help expedite easement acquisitions.

C. Collaborate on a flow monitoring program to monitor the flows within the McKinney-owned portion of Wilson Creek Sewer System

1. McKinney and NTMWD will collaborate in good faith to monitor the flows within the McKinney-owned Wilson Creek Sewer System. In this regard, McKinney and NTMWD will establish a baseline for expected dry weather flows within the McKinney-owned Wilson Creek Sewer System until at least December 2028, when the Stover Creek lift station and force main system are expected to be operational.

More particularly, the Parties agree that NTMWD will collaborate and share flow data collected from NTMWD's 2024 UEFIS Capacity Assurance Study and temporary flow meter data with McKinney and McKinney will collaborate and share McKinney's flow and meter data with NTMWD with the intent to establish a predicted baseline dry weather flow.

2. If any of the following scenarios occur, then NTMWD agrees to collaborate with the City to address the increased risk of sanitary sewer overflows on the McKinney-owned Wilson Creek Sewer System:

- A. Actual dry weather flows exceed the predicted dry weather modeled flow prior to 2028;
- B. The Stover Creek Lift Station and Force Main projects are not completed by December 2028; and/or
- C. Sanitary sewer overflows occur on the McKinney-owned Wilson Creek Sewer System in rain events less than the five-year 24-hour duration rain event.

D. Transfer downstream interceptor segment of McKinney-owned Wilson Creek Sewer System to NTMWD

1. NTMWD accepts the transfer of ownership of McKinney's downstream 48-inch diameter interceptor segment of the McKinney-owned Wilson Creek Sewer System referred to as the "Wilson Creek Relief Interceptor" between the NTMWD junction structure identified as WW0140-MH00003 and McKinney's point of entry at NTMWD manhole WWMH49200 on the NTMWD-owned portion of the Wilson Creek Interceptor from McKinney to NTMWD. This portion of interceptor will become part of NTMWD's UEFIS per **Exhibit B**. NTMWD intends to

use that segment of the 48-inch Wilson Creek Sewer System (the Wilson Creek Relief Interceptor) for emergency purposes downstream of the NTMWD junction structure.

2. McKinney will provide NTMWD all of McKinney's record drawings, repair records, and condition assessment reports for the Wilson Creek Relief Interceptor.

3. NTMWD will relocate the McKinney Point of Entry from NTMWD manhole WWMH49200 on the NTMWD-owned Wilson Creek Interceptor to the McKinney 10-inch sanitary sewer line connected to the 48-inch diameter Wilson Creek Relief Interceptor as described or depicted in **Exhibit B**.

4. The Wilson Creek Relief Interceptor situated between the NTMWD junction structure and McKinney's existing Point of Entry traverses the following properties: (1) McKinney Economic Development Corporation, (2) McKinney parkland, (3) Dallas Area Rapid Transit (DART) right of way, and (4) McKinney landfill. McKinney will grant NTMWD permanent easements under and across those portions of McKinney's properties within which the Wilson Creek Relief Interceptor that is being conveyed to NTMWD is situated at no cost to NTMWD as described in **Exhibit B**.

5. The rail right of way was originally owned by Union Pacific Railroad at the time when McKinney's Wilson Creek Relief Interceptor was constructed across the rails (Year 2000). DART later acquired the rail property. No record of the original McKinney-Union Pacific Railroad crossing agreement has been found. McKinney and NTMWD will coordinate with DART on the transfer of the crossing agreement for the Wilson Creek Relief Interceptor from McKinney to NTMWD. NTMWD will acquire a new DART license agreement for the existing interceptor if DART requires a new license agreement.

E. Temporary Junction Box to McKinney-owned Wilson Creek Sewer System

1. McKinney grants permission to NTMWD to design, construct and install at NTMWD's sole cost and expense a temporary junction box to the McKinney-owned Wilson Creek Sewer System, specifically the McKinney Wilson Creek Relief Interceptor, for the NTMWD Sloan Creek Force Main per **Exhibit B**. This temporary junction box will allow for early start-up, testing, and operation of the NTMWD Sloan Creek Lift Station. NTMWD will ultimately replace the temporary junction box with a conflict manhole and extend and complete the Sloan Creek Force Main to the NTMWD Wilson Creek Lift Station for wastewater conveyance and treatment at the NTMWD Sister Grove Regional Water Resource and Recovery Facility at NTMWD's sole cost and expense.

2. NTMWD Sloan Creek Lift Station and Force Main are under construction at the time of this Agreement with anticipated completion by Spring 2024. The location of the temporary junction box is within the limits of the McKinney-owned Wilson Creek Sewer System segment proposed to be transferred to NTMWD by this Agreement. NTMWD has requested, and McKinney has agreed, to grant NTMWD permission to proceed with the design, construction and installation of the temporary junction box in good faith while the terms and conditions of this Agreement are being finalized and before the Agreement is executed.

NTMWD's schedule for removing the temporary junction box and completing the permanent extension of the Sloan Creek Force Main to the Wilson Creek Lift Station is dependent upon available downstream conveyance and treatment capacity.

3. McKinney has requested, and NTMWD has agreed to raising one (1) McKinney manhole, Manhole MH6185, on the McKinney-owned Wilson Creek Sewer System, specifically the Wilson Creek Relief Interceptor, per **Exhibit B** so that the NTMWD Wilson Creek Lift Station junction structure is the lowest rim elevation of the upstream interceptor system. NTMWD estimates that the rim elevation of existing Manhole MH6185 needs to be raised approximately 2-feet; however, NTMWD will confirm the appropriate elevation. The manhole is located on McKinney Economic Development Corporation property. McKinney will grant NTMWD's consulting engineer, contractor, NTMWD staff, and NTMWD inspector(s) access to the property for the design and construction at no additional cost to NTMWD for such access save and except to the extent NTMWD's consulting engineer, contractor, NTMWD staff, and NTMWD inspector(s) may otherwise cause damage to the property. NTMWD agrees to pay all costs for raising this manhole. NTMWD will also restore all areas disturbed by construction to their pre-construction or better conditions.

4. McKinney has requested and NTMWD has agreed that NTMWD shall not connect the NTMWD Sloan Creek Force Main to any other interceptors serving McKinney.

F. Transfer of the Rowlett Creek Trunk Sewer Extension

1. NTMWD accepts the transfer of ownership of the Rowlett Creek Trunk Sewer Extension from McKinney. The Rowlett Creek Trunk Sewer Extension conveys Frisco and McKinney wastewater flows and the Rowlett Creek Trunk Sewer Extension will become part of NTMWD's UEFIS.

2. NTMWD will retain sole responsibility for operating and maintaining the Rowlett Creek Trunk Sewer Extension. All costs associated with NTMWD's operation and maintenance of the Rowlett Creek Trunk Sewer Extension will be paid for by NTMWD. The October 26, 1995, Rowlett Creek Trunk Sewer Extension agreement will be terminated by execution of this Interlocal Cooperation Agreement.

3. The existing easements for the Rowlett Creek Trunk Sewer Extension are between the property owners and NTMWD as grantee. See illustration in **Exhibit C**.

IV. TERM

This Agreement shall be effective from the Effective Date unless terminated earlier pursuant to Section V below. Thereafter, upon mutual agreement, in writing, of the Parties, this Agreement may be modified.

**V.
TERMINATION**

This Agreement shall not be terminated, rescinded or amended except by an instrument in writing signed by authorized representatives of the Parties. The terms of this Agreement shall be binding upon and inure to the benefit of all Parties and their permitted successors and assigns.

**VI.
NOTICE**

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received or, regardless of whether actually received or not, (i) when deposited with Federal Express, DHL, UPS, or other nationally recognized overnight courier service, (ii) when received if delivered by hand, or (iii) when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the addressee as follows or to such other address as shall hereafter be designated by written notice by the addressee actually received by the other Party at least twenty (20) days prior to the effective date of the change:

McKINNEY

Paul G. Grimes
City Manager
City of McKinney
P.O. Box 517
McKinney, TX 75070
972-547-7500 (Telephone)
rgilling@mckinneytexas.org

NTMWD

Jenna Covington
Executive Director and General Manager
North Texas Municipal Water District
P.O. Box 2408
Wylie, TX 75098
972-442-5405 (Telephone)
jcovington@ntmwd.com

The Parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its addresses any other address by at least fifteen (15) days' written notice to the Party hereto.

**VII.
HOLD HARMLESS AND INDEMNITY**

The Parties hereby agree, to the extent allowed by Texas law, to fully release, indemnify, and save and hold each other together with its elected officials, officers, agents, attorneys and employees (hereafter referred to collectively as the "a Party") harmless from and against any and all suits, claims, judgments, demands, actions or causes of action, liabilities, losses, costs or expenses, including the reasonable attorney's fees and court costs and disbursements that a Party suffers or incurs as a result of any of the foregoing. The indemnification provided for herein shall include costs of defense, which shall be an attorney of the indemnified Party's choice, court costs, expert witness fees, and any judgment together with pre-judgment and post-judgment interest.

**VIII.
ENTIRE AGREEMENT**

This Agreement represents the entire agreement between NTMWD and McKinney, and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Parties.

**IX.
VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas, and this Agreement is performable in Collin County, Texas. Exclusive venue for any dispute under this Agreement shall lie in the state courts and federal courts of Collin County, Texas.

**X.
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.

**XI.
ASSIGNMENT**

This Agreement shall not be assigned in whole or in part without the prior written consent of both Parties.

**XII.
INTERPRETATION OF AGREEMENT**

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that this Agreement shall not be construed more favorably for either Party based on the presumption that it was drafted by either Party.

**XIII.
REMEDIES**

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by either

Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIV.
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the Parties hereto are the duly authorized officials and have the necessary authority to execute this Agreement on behalf of the Party they represent.

**XIV.
CALENDAR DAYS**

Throughout this Agreement, “Day” shall mean a calendar day, unless otherwise specified. If a deadline falls on a weekend or holiday, the deadline shall be the following working day.

EXECUTED in duplicate originals this ____ day of _____, 2024.

CITY OF MCKINNEY, TEXAS

By: _____
PAUL G. GRIMES
City Manager

ATTEST:

EMPRESS DRANE
City Secretary

APPROVED AS TO FORM:

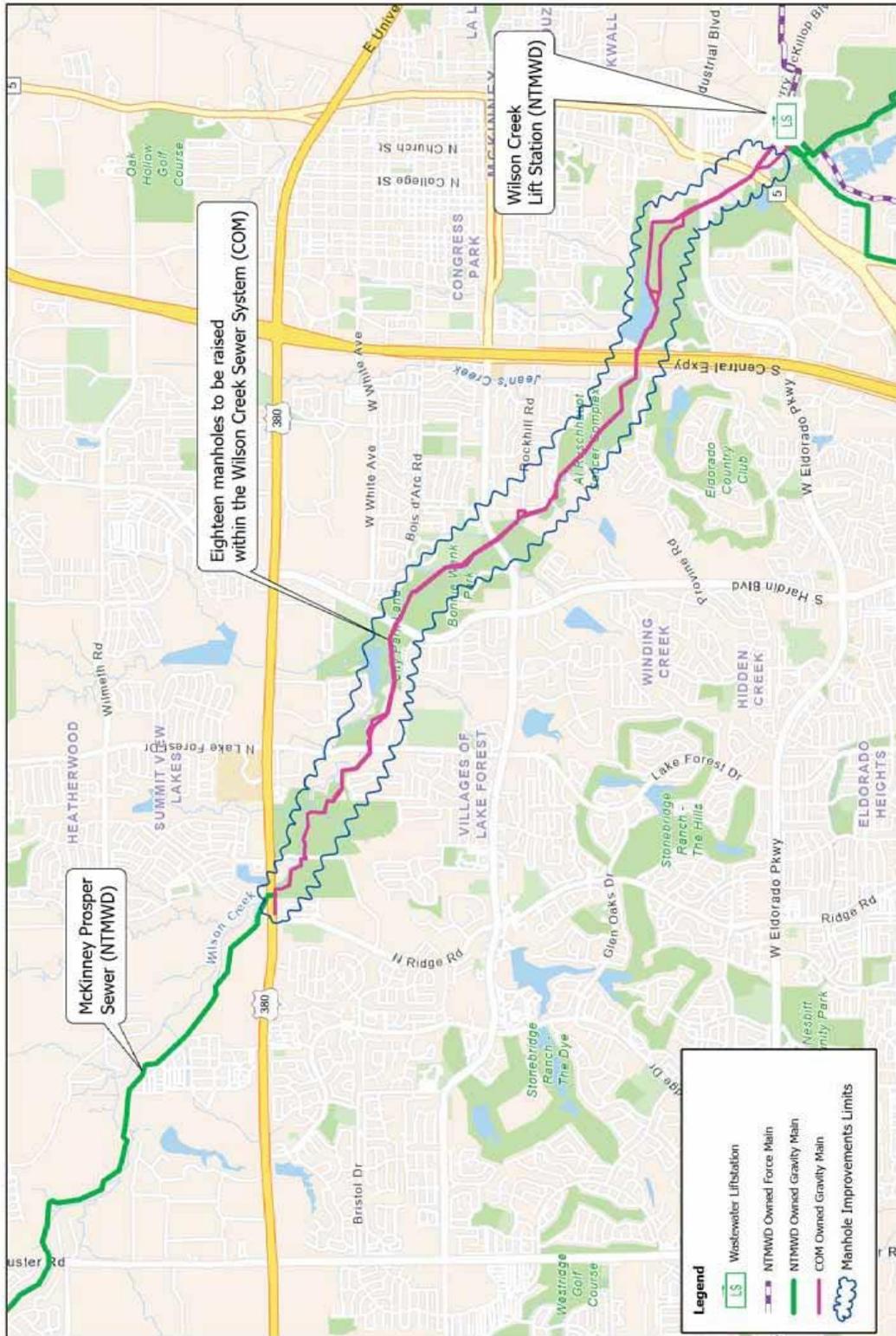
MARK S. HOUSER
City Attorney

[Signatures continue on following page.]

**NORTH TEXAS MUNICIPAL WATER
DISTRICT**

By: _____
JENNAFER P. COVINGTON
Executive Director and General Manager

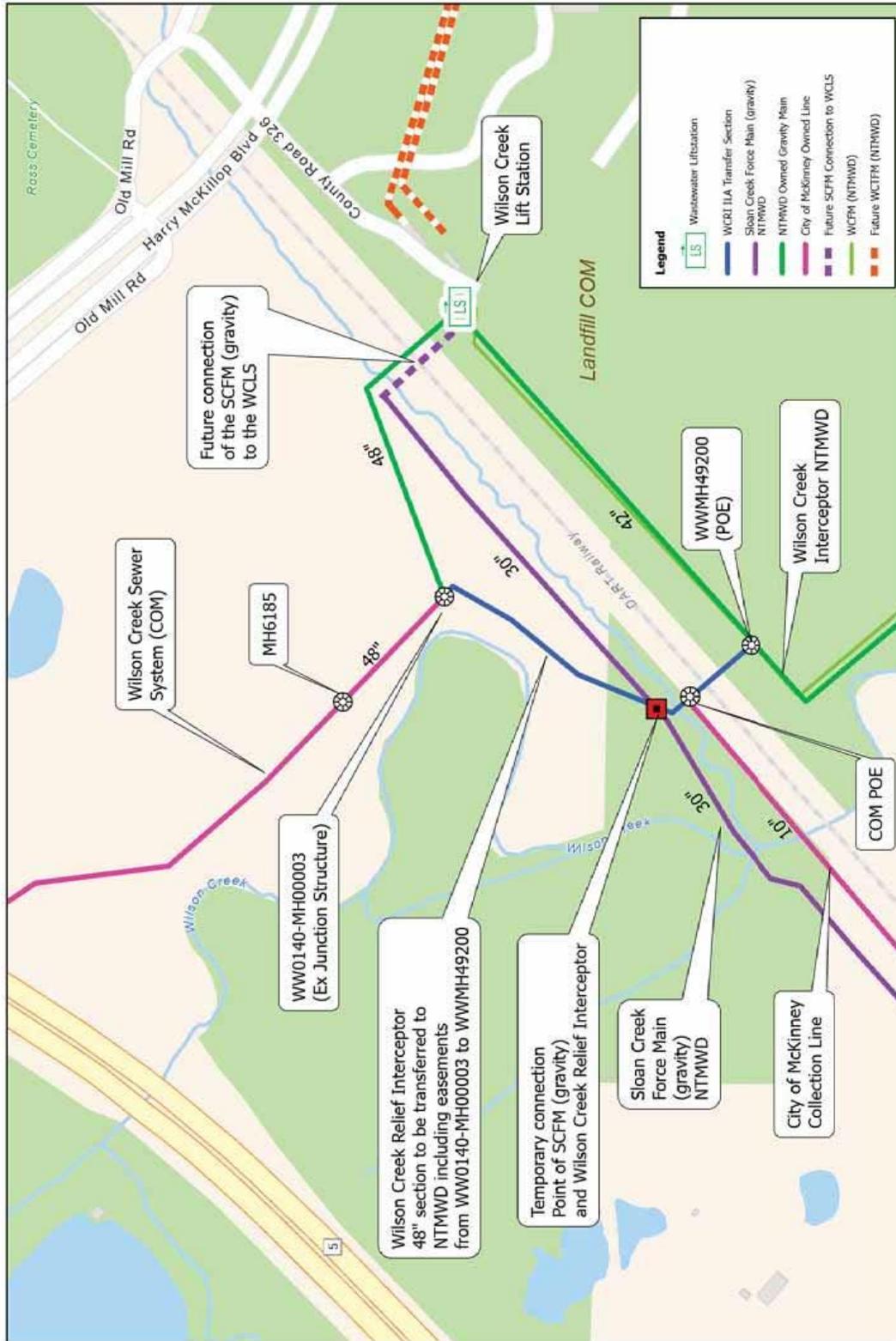
EXHIBIT A
(see following page)



**City of McKinney and NTMWD Transfer of Ownership ILA
Exhibit A**



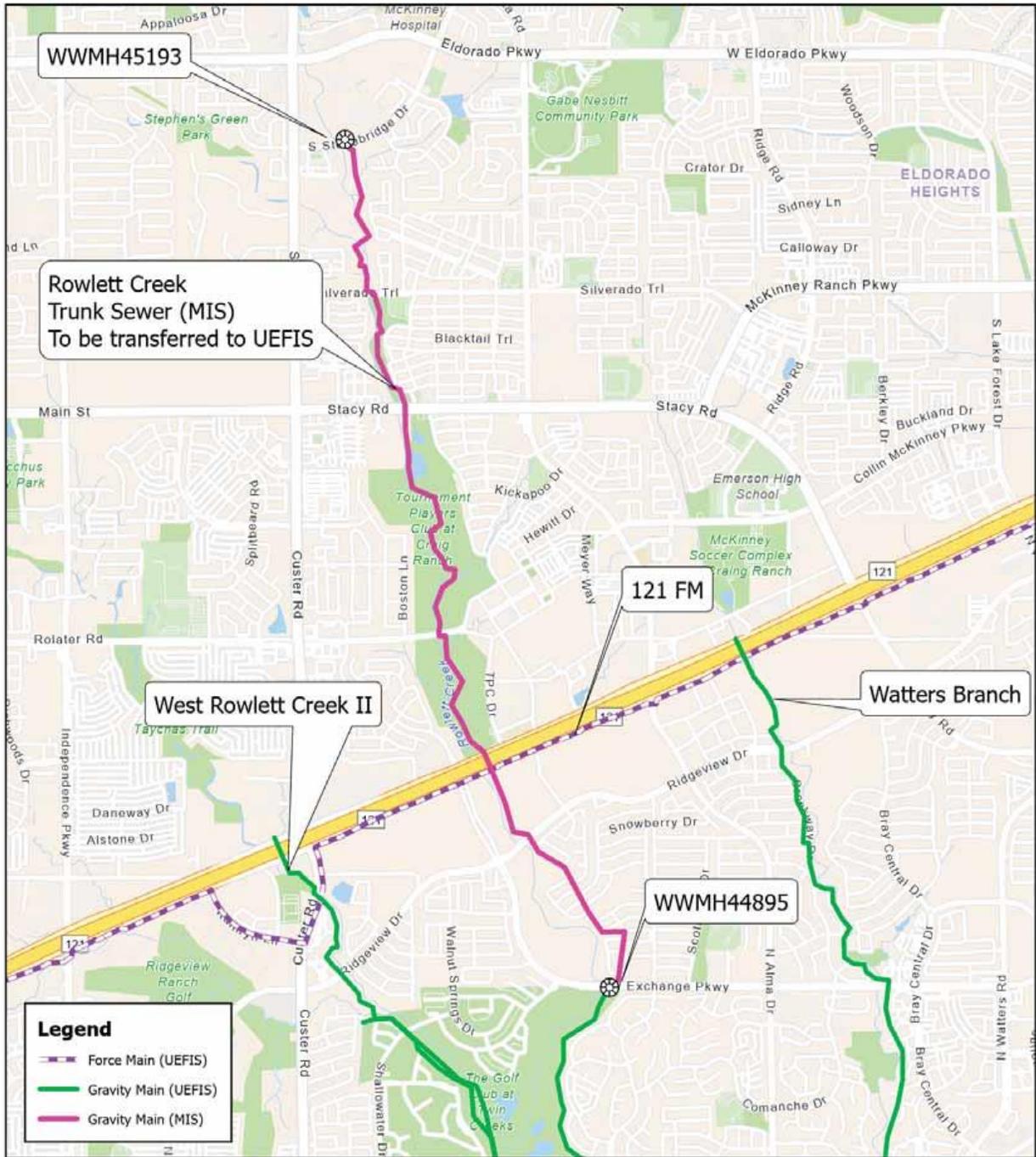
EXHIBIT B
(see following page)



**City of McKinney and NTMWD Transfer of Ownership ILA
Exhibit B**



EXHIBIT C
(see following page)



**City of McKinney and NTMWD
Transfer of Ownership ILA
Exhibit C**

