

INTERLOCAL COOPERATION AGREEMENT BETWEEN
NORTH TEXAS MUNICIPAL WATER DISTRICT AND
THE CITY OF MCKINNEY, TEXAS FOR
HONEY CREEK INTERCEPTOR IMPROVEMENTS

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, NTMWD, McKinney and the City of Mesquite previously entered into that 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 (“Regional Wastewater System”); and

WHEREAS, McKinney is currently planning, designing and preparing to bid a wastewater project to meet growing demands in the north McKinney area, including the construction of a new forty-two-inch (42”) to forty-eight-inch (48”) diameter sanitary sewer interceptor main running from an area near the convergence of Honey Creek and the East Fork of the Trinity River situated north of Spur 195 (formerly Farm-to-Market Road 543) and east of State Highway 5 in a northwesterly direction to an area northeast of the Collin County Animal Services Facility near a portion of Honey Creek situated east of Community Avenue and south of Country Road 1200 (the “Honey Creek Interceptor”); and

WHEREAS, NTMWD is currently in the planning and design process of wastewater improvements to the Regional Wastewater System to provide permanent wastewater service to the northern area of McKinney in addition to the cities of Anna and Melissa; and

WHEREAS, NTMWD plans to abandon and/or remove its current twenty-one-inch (21”) diameter sanitary sewer main (the “NTMWD 21” McKinney East-Side Extension Interceptor”) from service, and construct a new forty-eight-inch (48”) to sixty-six-inch (66”) diameter sewer

main from the downstream connection of the Honey Creek Interceptor generally at manhole 51697 as shown on Exhibit A1, attached hereto, leading to the NTMWD North McKinney Transfer Lift Station; and

WHEREAS, NTMWD has requested, and McKinney has agreed to design, construct and oversize the Honey Creek Interceptor from a forty-two-inch (42”) diameter line to a forty-eight-inch (48”) diameter line to accept the current wastewater flows of approximately 3.55 million gallons per day (“MGD”) from the existing NTMWD 21” McKinney East-Side Extension interceptor; and

WHEREAS, NTMWD has requested, and McKinney has agreed, to disconnect and abandon the existing twenty-one-inch (21”) diameter NTMWD 21” McKinney East-Side Extension interceptor in place and tie said main into the Honey Creek Interceptor at NTMWD manhole WWMH51805 at its northern end, as well as tie in existing points of entry as shown in the Honey Creek Interceptor plans, where the McKinney East Side Extension interceptor and the Honey Creek Interceptor run in parallel, and divert the current NTMWD sanitary sewer flows through the Honey Creek Interceptor as further explained below; and

WHEREAS, McKinney has agreed to coordinate with NTMWD at least 2 weeks prior to performing work on any portion of the 21” McKinney East Side Extension via completed submission of NTMWD’s shutdown / tie-in form to NTMWD’s appropriate staff; and

WHEREAS, the District agrees to compensate McKinney for the cost of the oversizing of the Honey Creek Interceptor that McKinney constructs and for the length of pipe that runs parallel to the existing NTMWD 21” McKinney East-Side Extension interceptor. NTMWD will not compensate McKinney for pipe lengths in excess of the total length of NTMWD’s McKinney East-Side Extension being paralleled.

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”).

III. THE AGREEMENT

A. Oversize of the Honey Creek Interceptor and sharing of Permanent Easement

1. Oversizing of the Interceptor

The Parties agree that McKinney shall oversize the Honey Creek Interceptor (referred to as the “Interceptor” or the “Project”) to convey the equivalent capacity of 3.55 MGD of the existing NTMWD 21” McKinney East-Side Extension interceptor (the “NTMWD Capacity”) in proportion to the linear footage that the Interceptor’s alignment is parallel to the existing NTMWD McKinney East Side Extension interceptor as generally depicted on the general location map attached hereto as **Exhibit A1** and incorporated herein by reference for all purposes allowed by law. The NTMWD Capacity will be included within the total buildout capacity of 27.8 MGD contained within the Interceptor with an increase in size from a forty-two-inch (42”) diameter sanitary sewer pipe to a forty-eight-inch (48”) diameter sanitary sewer pipe from Station 4+88.14 to Station 66+73.71 as identified on **Exhibit A2**, attached hereto and incorporated herein by reference for all purposes allowed by law. The project length is from station 4+88.14 to station 79+62.41, which accounts for the project being parallel to the NTMWD East Side Extension interceptor for 82.76% of the linear footage ($6,185.57 \text{ LF} \div 7,474.27 \text{ LF} = 82.76\%$). The NTMWD Capacity accounts for 12.77% of the total capacity of the Honey Creek Interceptor ($3.55 \text{ MGD} \div 27.8 \text{ MGD} = 12.77\%$).

The Parties agree that McKinney shall grout fill and abandon the existing NTMWD 21” McKinney East-Side Extension interceptor from STA 4+88.14 to STA 66+73.71. McKinney shall also remove the top cone sections of the manholes in-line with the NTMWD 21” McKinney East Side Extension pipe and fill the remaining bottom manhole section. NTMWD’s opinion of probable construction costs for the NTMWD 21” McKinney East-Side Extension interceptor to grout fill and abandon the pipe and remove the manhole tops and fill the bottoms of each section removed is approximately \$230,510.00 (based on 10 manholes and manhole top section removal and fill at \$2,500.00 each; 642 cubic yards of 21” interceptor grout fill at \$320.00/cubic yard). The grout filling of pipe and manhole top section removal and base filling shall be separate bid items in the bid package.

2. Escrow of Estimated Oversizing Costs by NTMWD

NTMWD shall escrow with the City a cash deposit in the amount of 125% of the 10.57% ($12.77\% \times 82.76\% = 10.57\%$) share of the total Project costs for engineering, easements, and construction costs, and 125% of the opinion of probable construction costs to remove the top sections of the existing manholes and grout fill the NTMWD 21” McKinney East-Side Extension interceptor and manholes, and related Change Orders for that work the Project (“Escrow of Estimated Oversizing Costs”). The current opinion of probable Project cost excluding the grout filling and manhole top section removal is estimated at \$12,000,000.00 = (“Estimated Total Project Cost”). The amount of NTMWD’s “Escrow of Estimated Oversizing Costs,” based on the Total Project Cost, calculates as $\$1,585,500.00 + \$288,137.50 = \$1,873,637.50$. NTMWD agrees to escrow with the City a cash deposit in the amount of the “Escrow of Estimated Oversizing Costs” contemporaneously with the execution of this Agreement.

3. Bidding of Project

McKinney shall competitively bid the oversize of the Honey Creek Interceptor, as provided herein to accommodate the NTMWD Capacity, in strict accordance with the competitive bid laws of the State of Texas. Upon receipt of bids, McKinney shall identify the qualified low bidder (“Bidder”). Alternatively, McKinney shall have the right to reject all bids in its sole discretion. If McKinney identifies a Bidder, McKinney shall provide a copy of the Bidder’s Bid Package to NTMWD for NTMWD’s review. In the event that the amount bid on the Project (the “Project Bid”) exceeds the Estimated Total Project Cost, NTMWD shall escrow such additional amount as is necessary to increase NTMWD’s Escrow of Estimated Oversizing Costs to an amount equal to 125% of the 10.57% share of the Project Bid (“Increased Escrow”) within thirty (30) working days.

4. Supervision of Project

At all times during construction of the Honey Creek Interceptor Project, McKinney shall have primary control and final approval authority regarding the Bidder’s work on the Honey Creek Interceptor Project with the exception of the work on the existing NTMWD 21” McKinney East-Side Extension interceptor and connections to NTMWD facilities where NTMWD shall have final authority. Notwithstanding the foregoing, NTMWD shall have the right, but not the obligation, to perform periodic onsite inspection services in addition to McKinney’s inspection services. NTMWD’s inspector will coordinate with McKinney’s Construction Manager and onsite inspector regarding any construction related items, issues or concerns including, but not limited to, defective work. All communications with the Bidder regarding the Honey Creek Interceptor Project shall be conveyed through McKinney.

5. Final Acceptance of Honey Creek Interceptor Project and True Up of Actual Project Costs

McKinney shall notify NTMWD of the Bidder’s substantial completion and final completion of the Honey Creek Interceptor Project. McKinney shall include NTMWD in the substantial completion and final completion walkthroughs, and the creation of the final punch list. The Honey Creek Interceptor shall be completed, tested, and inspected, and accepted by McKinney before the interceptor and any flows are connected to NTMWD’s system. Following McKinney’s final acceptance of the Honey Creek Interceptor Project, McKinney will refund the remaining amount of any Escrow of Estimated Oversizing Costs or Increased Escrow to NTMWD or request an increase in payment from NTMWD after the final design invoice, final easement costs, and final construction costs are determined.

6. Sanitary Sewer Easement

The Parties will have their own respective utility easement(s) and construction easement(s) as identified in **Exhibit B** and **Exhibit C**, which exhibits are attached hereto and incorporated herein by reference for all purposes allowed by law, upon completion of the oversizing

construction and shall remain separated between McKinney and NTMWD to provide permanent wastewater service through the Honey Creek Interceptor Project.

7. Asset Transfer from NTMWD to McKinney

NTMWD currently owns the existing 15” McKinney East-Side Extension interceptor from NTMWD Manhole WWMH51805 to Manhole WWMH51820 (approximately 828 LF in length) as shown in **Exhibit A1** (the “NTMWD 15” McKinney East-Side Extension interceptor”). McKinney has existing interceptors upstream that flow into NTMWD Manhole WWMH51820 (Point of Entry). NTMWD and McKinney agree for McKinney to re-connect the NTMWD 15” McKinney East-Side Extension interceptor to the Honey Creek Interceptor at McKinney Manhole #14 per **Exhibit A2**. The Parties agree that the existing NTMWD 15” McKinney East-Side Extension interceptor from McKinney Manhole #14 to NTMWD Manhole WWMH51820 will transfer ownership from NTMWD to McKinney. That asset transfer and associated easement will be executed under a separate transaction and agreement between the Parties.

8. Ownership of Honey Creek Interceptor

Upon the Bidder’s final completion and McKinney’s final acceptance of the Honey Creek Interceptor Project, the Honey Creek Interceptor shall be maintained and owned by McKinney.

McKinney is responsible for constructing McKinney Manhole #1 and connecting to NTMWD’s existing 48” McKinney East-Side Extension interceptor as shown in **Exhibit A2** and **Exhibit B** (the “NTMWD 48” McKinney East-Side Extension interceptor”). Upon substantial completion and NTMWD’s acceptance, Parties agree that the ownership of McKinney Manhole #1 will be transferred from McKinney to NTMWD as a Point of Entry.

9. Ownership of the NTMWD 21” McKinney East-Side Extension Interceptor

The existing NTMWD 21” McKinney East-Side Extension interceptor will at all times remain the property of NTMWD. NTMWD hereby grants to McKinney the right to enter upon NTMWD easements subject to McKinney providing NTMWD at least 24-hours advance notice both during construction and after substantial completion of the Honey Creek Interceptor installation, within which the NTMWD 21” McKinney East-Side Extension interceptor is situated; remove the dirt upon and about the existing twenty-one-inch (21”) diameter sanitary sewer main and thereafter block off, cut into and through and tie into and redirect and divert the sanitary sewer flows from the NTMWD 21” McKinney East-Side Extension interceptor to the Honey Creek Interceptor with NTMWD approved tie-in shut down forms; grout fill and abandon the existing twenty-one-inch (21”) diameter interceptor; remove the top section of the 10 manholes of the 21” interceptor, and thereafter restore the surface of the NTMWD easements within which the NTMWD 21” McKinney East-Side Extension interceptor is situated to its pre-construction condition or better. All work being performed on the NTMWD 21” McKinney East-Side Extension interceptor by McKinney shall be performed in the presence of a NTMWD inspector. McKinney shall not pile excavated spoils from the Honey Creek Interceptor excavation within the NTMWD 21” McKinney East Side Extension interceptor easements. McKinney shall have no other obligations or responsibility to perform any additional work upon and/or about the NTMWD 21” McKinney East-Side Extension interceptor or the NTMWD easements within which it is

situated. Nothing contained herein shall be deemed an abandonment of NTMWD's rights and privileges in its various easements in which its existing NTMWD 21" McKinney East-side Extension Interceptor Pipeline is located.

10. Driveway Access and Driveway Culvert and Maintenance to the Driveway Access and Driveway Culvert from Spur 195 (FM 543 / Laud Howell Pkwy)

The Parties agree that NTMWD will construct an access driveway with a culvert as identified in **Exhibit C**, which driveway and driveway culvert are situated in an area north of Spur 195 and west of State Highway 5, (the "Driveway and Culvert"). Upon final completion of the Honey Creek Interceptor Project the driveway and culvert shall be shared between McKinney and NTMWD. Both McKinney and NTMWD may use the Driveway and Culvert. The Parties agree that maintenance of the Driveway and Culvert and access thereto shall be the ongoing responsibility of McKinney save and except that NTMWD shall be responsible for any damages caused to the Driveway and Culvert and its related access caused by NTMWD and/or any person or party for which NTMWD is legally responsible.

Once construction on the Culvert has commenced, and upon request by NTMWD, McKinney shall grant a right of access to NTMWD to inspect the Culvert during construction. NTMWD's inspector will coordinate with McKinney's Construction Manager and onsite inspector regarding any construction related items, issues or concerns including, but not limited to, defective work. All communications will be between McKinney and NTMWD.

11. Third-Party Beneficiary and Additional Insured.

McKinney shall have Bidder and any engineering firm with which McKinney contracts to perform the work and design described herein list 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 engineering firms and Bidder that McKinney contracts with relating to the work and design described in this Agreement whereby such engineering firms and Bidder owe the same contractual obligations, duties, and warranties to NTMWD as are owed to McKinney.

**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)
pgrimes@mckinneytexas.org

NTMWD

Jennafer P. 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. RELEASE AND HOLD HARMLESS

Both Parties agree to waive all claims against, to release, and to hold harmless the other Party and its officials, officers, agents, and employees, in both their public and private capacities, for any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action that may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each Party is responsible for its proportionate share of liability.

VIII. IMMUNITY

In the execution of this Agreement, neither Party waives nor intends to waive any immunity or defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

**IX.
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.

**X.
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.

**XI.
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.

**XII.
ASSIGNMENT**

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

**XIII.
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.

**XIV.
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.

**XV.
AUTHORITY TO SIGN**

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

**XVI.
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
TENITRUS BETHEL
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

**NORTH TEXAS MUNICIPAL WATER
DISTRICT**

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

EXHIBIT A1

NTMWD and McKinney Honey Creek Interceptor Improvements Location Map

[See following one page.]

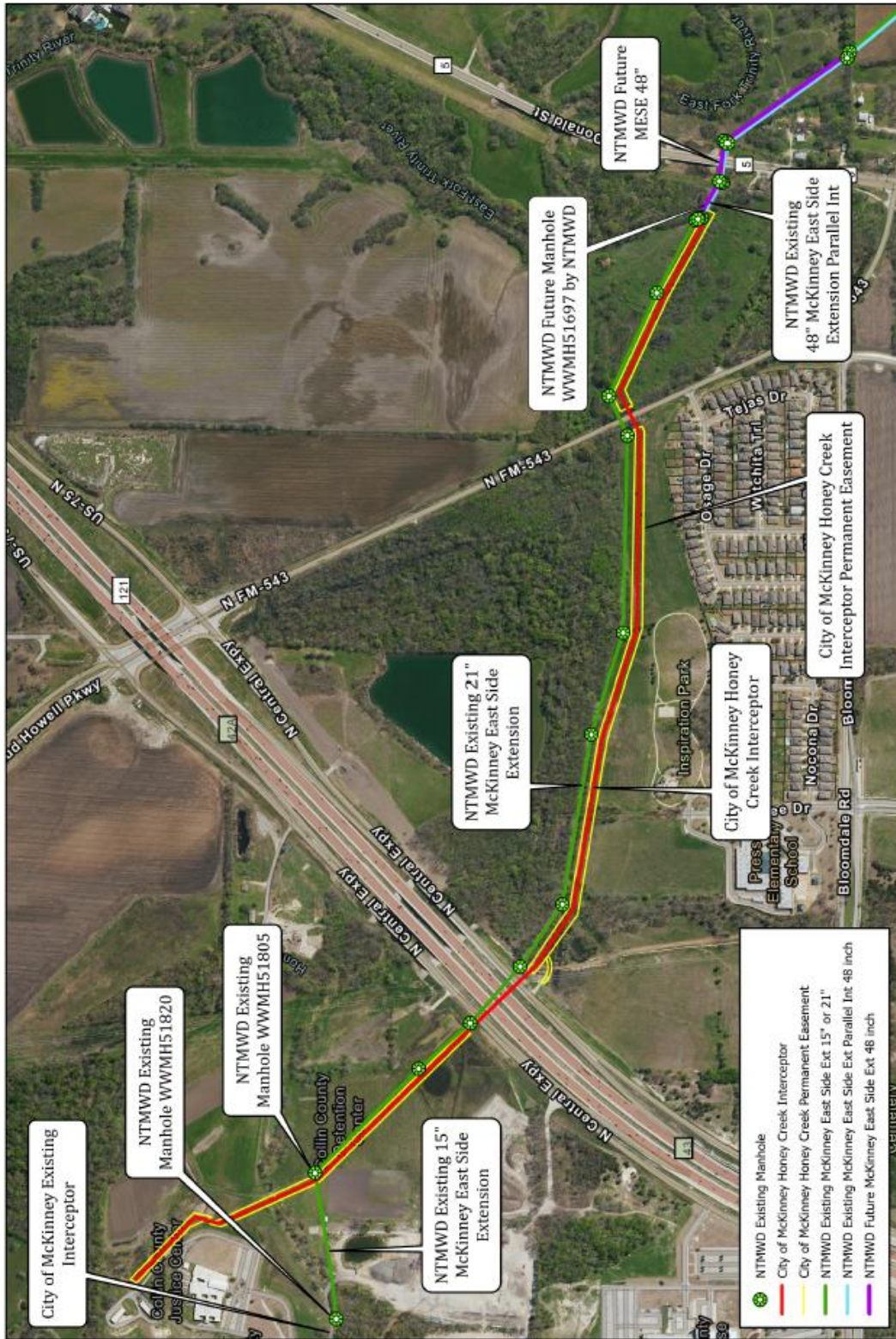


Exhibit A1
North Texas Municipal Water District and the City of McKinney
Honey Creek Interceptor Improvements
Location Map



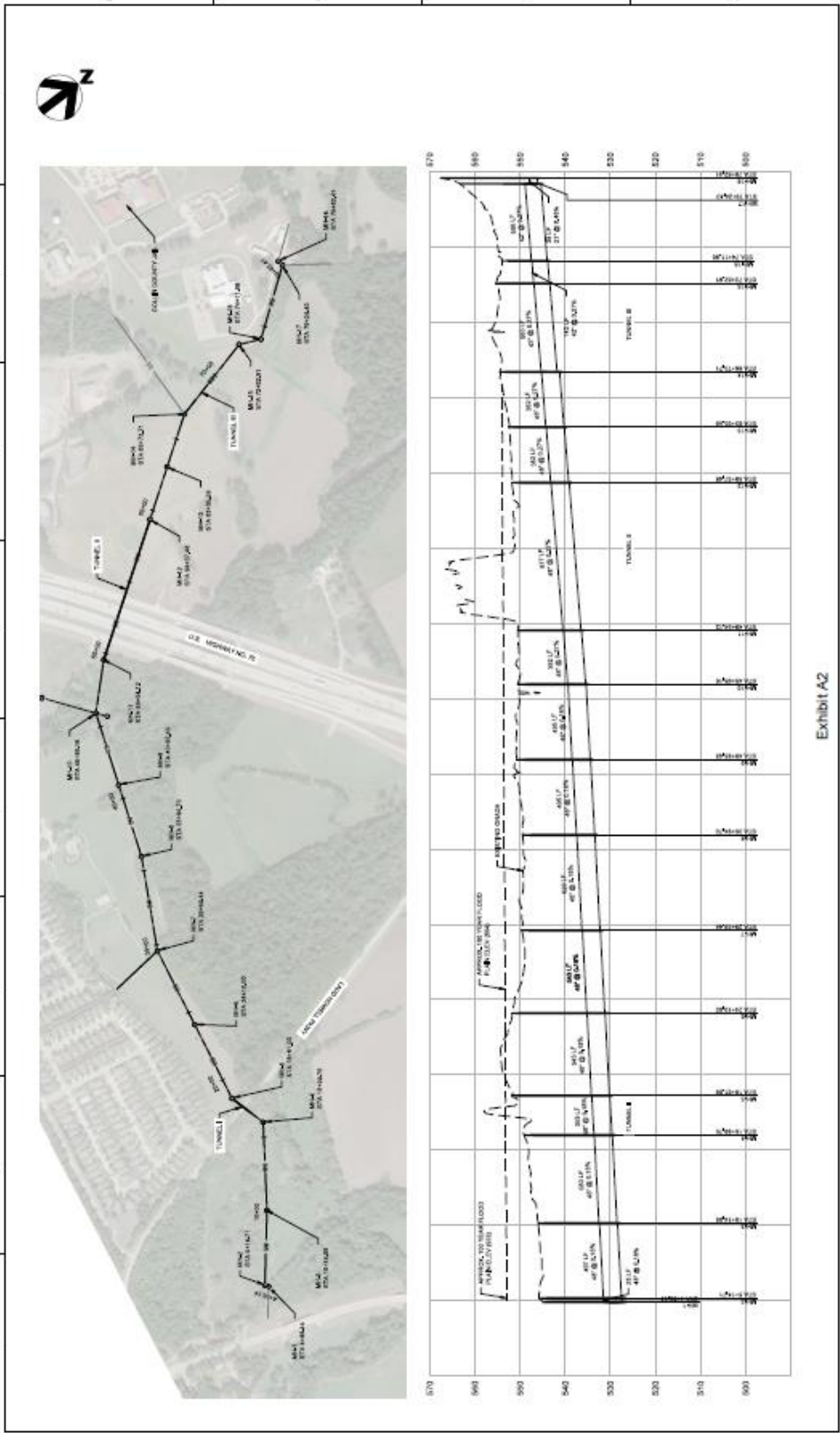
EXHIBIT A2

McKinney Honey Creek Sanitary Sewer Trunk Main

Sewer Plan and Profile with Manholes

Date: July 7, 2023 – Sheet Number G-11

[See following one page.]



SEWER PLAN AND PROFILE WITH MANHOLES

SCALE: 1" = 40' PLAN 1" = 4' PROFILE

SHEET G-11

CITY OF MCKINNEY
HONEY CREEK SANITARY SEWER TRUNK MAIN

Exhibit A2



PROJECT NUMBER	1000000000
PROJECT NAME	HONEY CREEK SANITARY SEWER TRUNK MAIN
PROJECT LOCATION	MCKINNEY, TEXAS
PROJECT DATE	08/20/2024
PROJECT STATUS	PROPOSED

DATE	08/20/2024	BY	00000000
DESCRIPTION	DESIGN	PROJECT NUMBER	1000000000
PROJECT NAME	HONEY CREEK SANITARY SEWER TRUNK MAIN	PROJECT LOCATION	MCKINNEY, TEXAS
PROJECT DATE	08/20/2024	PROJECT STATUS	PROPOSED



EXHIBIT B

NTMWD McKinney East Side Extension Improvements

Station 190+00 to Station 202+73

Date: June 2023 – Drawing Number 05-C322 - Sheet Number 52

[See following one page.]

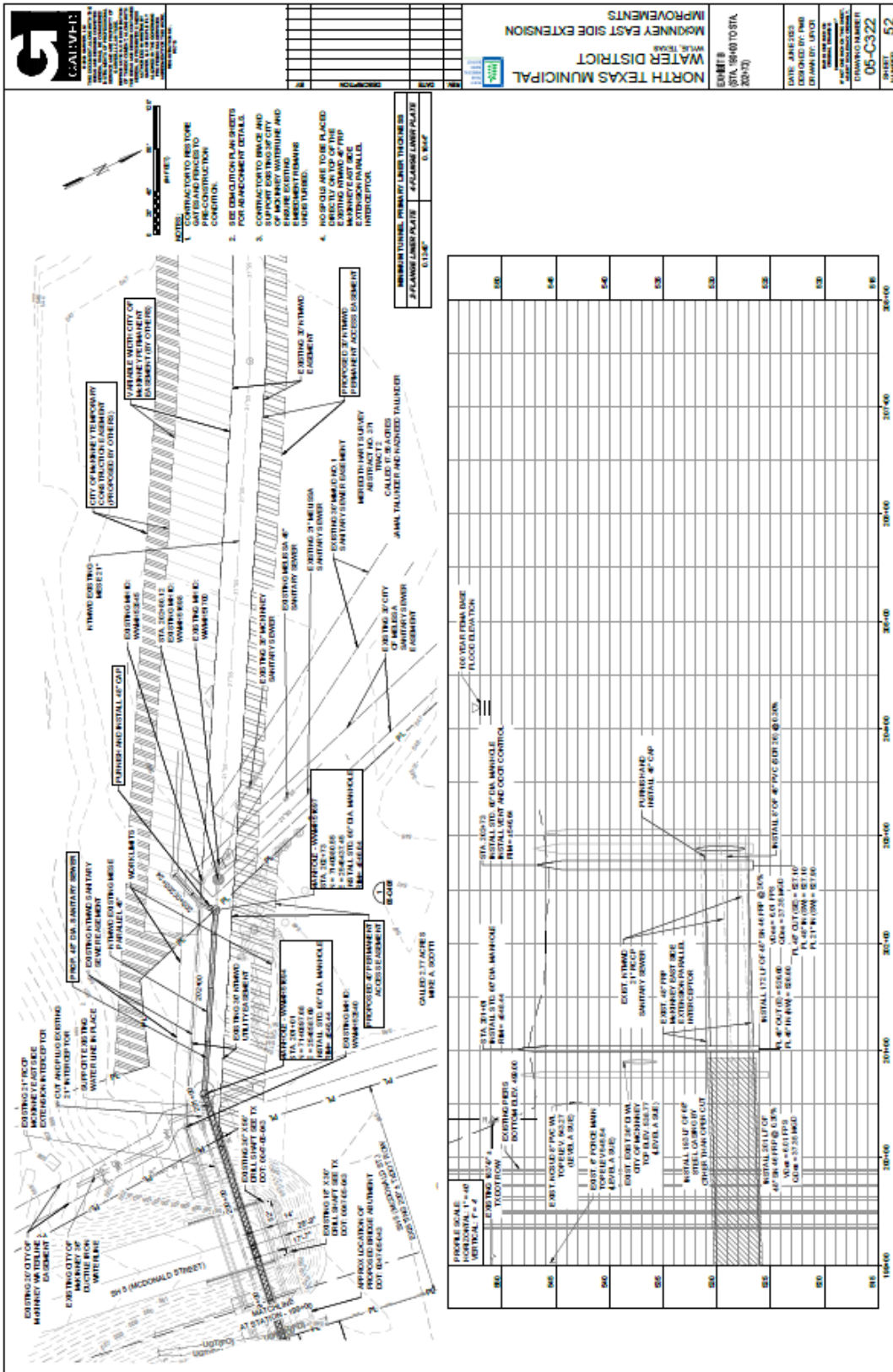


EXHIBIT C

NTMWD McKinney East Side Extension Improvements

Station 200+00 to Station 203+02

Date: June 2023 – Drawing Number 05-C108 - Sheet Number 19

[See following one page.]

