

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF SHERMAN
AND
THE NORTH TEXAS MUNICIPAL WATER DISTRICT
FOR THE
SHEPHERD DRIVE IMPROVEMENTS PROJECT**

THIS AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE NORTH TEXAS MUNICIPAL WATER DISTRICT FOR THE 72-INCH LAKE TEXOMA RAW WATERLINE LOWERING AT SHEPHERD DRIVE PROJECT (the “**Agreement**”) is made between The City of Sherman (“**City**”) and the NORTH TEXAS MUNICIPAL WATER DISTRICT (“**NTMWD**”), acting by and through their respective authorized representatives. City and NTMWD are collectively hereinafter referred to as the “**Parties**” and each, individually, a “**Party**.”

WHEREAS, NTMWD currently owns and operates a 72-inch raw waterline and fiber optic cable (collectively “**Affected Infrastructure**”) within the City’s Shepherd Drive Improvements Project (“**City’s Project**”) as depicted on Exhibit A, which is incorporated herein by reference;

WHEREAS, in order for the City’s Project work to continue, NTMWD’s Affected Infrastructure must be lowered;

WHEREAS, The City shall be solely responsible for the procurement and construction of the lowering of NTMWD’s Affected Infrastructure, including the costs and expenses therefor;

WHEREAS, The City shall be solely responsible for the costs and expenses associated with the materials and labor for the lowering of NTMWD’s Affected Infrastructure, and NTMWD’s inspection fees.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and NTMWD agree as follows:

**ARTICLE ONE
Construction**

1.01 The City’s Scope of Work. As part of the Shepherd Drive Improvements Project, the City shall:

a. Install approximately 222 linear feet of 72-inch urethane coated steel pipe within NTMWD’s 80-foot waterline easement vol. 1870, pg. 21, D.R.G.C.T, between pipeline station 1145+99.14 and station 1148+20.62 per approved construction plans and specifications dated 1/29/2024, revised 2/27/2024.

b. Install one (1) 36-inch access manway and vault within NTMWD's 80-foot waterline easement vol. 1870, pg. 21, D.R.G.C.T., per approved construction plans and specifications dated 1/29/2024, revised 2/27/2024.

c. Remove and relocate existing fiber pull box within NTMWD's 80-foot waterline easement vol. 1870, pg. 21, D.R.G.C.T. per approved construction plans and specifications dated 1/29/2024, revised 2/27/2024.

d. The City warrants the plans and specifications referenced in Section 1.01 of this Agreement are accurate and suitable for their intended use based on the current, actual knowledge of the City Engineer, including knowledge of existing site conditions.

1.02 Site Access Provided. The City, and its contractors and agents, shall have a temporary right to access NTMWD's easement area, as depicted on Exhibit A, for the limited purpose of fulfilling the City's construction obligations outlined in this Agreement. Any other work needing to be performed in NTMWD's easement area, or otherwise affecting NTMWD's infrastructure made the basis of this Agreement, shall require NTMWD's advanced written approval which shall not be unreasonably withheld, delayed, or qualified.

1.03 Inspection Activities. The City and/or its contractor shall notify, in writing, NTMWD's inspection staff 48 hours in advance of any need for NTMWD to inspect the work set forth in this Agreement. Such notice shall include both the scope of inspection(s) and date work will be ready to inspect.

1.04 Standards. All work will be done according to all applicable codes and regulations, including municipal, county, state, and federal. The City, through its contractor, shall give all notices required by and shall comply with all laws and regulations applicable to the performance of the scope of work outlined in Sections 1.01 and 1.02 herein. NTMWD shall not be responsible for monitoring the City's compliance with any laws or regulations. If the City, or any of the City's contractors or agents, performs any work that it is contrary to laws or regulations, NTMWD shall not be held responsible.

ARTICLE TWO

Costs

2.01 Costs Borne by the City. The City shall be solely responsible for all costs and expenses associated with the City's scope of work outlined in Section 1.01 herein. Further, the purpose of this Agreement is that NTMWD shall bear no costs or expenses associated with the City's Shepherd Drive Improvements Project as this Agreement is for the benefit of the City and its expansion needs. The City shall reimburse NTMWD for any and all costs and expenses incurred by NTMWD in relation to its Shepherd Drive Improvements project as outlined in Section 2.02 of this Agreement.

2.02 Reimbursement of NTMWD's Costs and Fees. The City agrees to reimburse ("Reimbursement Payment") NTMWD for NTMWD's scope of work outlined in Section 1.03 of this Agreement. NTMWD will use the Reimbursement Payments by the City for costs NTMWD incurs in providing the following labor, materials, and services:

- a. Design Review Fees: The City shall reimburse NTMWD for all reasonable design review fees associated with the Shepherd Drive Improvements project. Design review fees may, but are not expected to, exceed \$10,000.
- b. Inspection Fees: The City shall pay NTMWD for all reasonable inspection fees incurred. NTMWD inspection staff shall make periodic visits to the construction site to inspect the work and meet with the City's staff and/or contractor to discuss the Shepherd Drive Improvements project. Inspection fees may, but are not expected to, exceed Nine Thousand Five Hundred US Dollars (\$9,500) (180 inspection hours x \$52.50 per hour).
- c. Reimbursement Payment: On a monthly basis, NTMWD shall provide the City an itemized invoice of such design review fees and inspection fees actually incurred and paid by NTMWD during the prior month, if any, including all supporting documentation as reasonably requested by the City.
- d. As for all costs to be reimbursed to NTMWD under this Agreement, the City shall have 45 calendar days after the receipt of NTMWD's invoice and all supporting documentation to make such payment to NTMWD.

ARTICLE THREE **Liquidated Damages**

3.01 NTMWD and the City recognize that time is of the essence in this Agreement and that NTMWD will suffer financial loss if the City's scope of work in Sections 1.01 (a) and (b) is not substantially completed within 28 calendar days after the date set forth in NTMWD's notice to proceed given to the City. The Parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by NTMWD if the City's scope of work is not substantially completed on time. Accordingly, instead of requiring any such proof, NTMWD and the City agree that as liquidated damages for delay (but not as penalty), the City shall pay NTMWD One Thousand US Dollars (\$1,000) for each day that expires after 28 days after the date set forth in NTMWD's notice to proceed given to the City (as may be extended due to delays caused by NTMWD) until the City's scope of work set forth in Section 1.01 (a) and (b) is substantially completed. For purposes of clarity, the City is not responsible for any delay to the City's Project that is caused by NTMWD or its contractors, or any other individual or entity, or any surety for, or employee or agent of any of them.

ARTICLE FOUR
Defective or Non-conforming Work

4.01 NTMWD May Stop Work. If the City's scope of work contemplated in this Agreement is defective, or the City fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the work in such a way that the completed work will conform to the plans and specifications, NTMWD may order the City to stop the work, or any portion thereof, until the cause for such stop-work order has been eliminated. However, this right of NTMWD to stop the work shall not give rise to any duty on the part of NTMWD to exercise this right for the benefit of the City, the City's contractors, or any other individual or entity, or any surety for, or employee or agent of any of them.

4.02 Correction or Removal of Defective Work. Promptly after receipt of written notice, the City shall correct all defective work, whether or not fabricated, installed, or completed, or, if the work has been rejected by NTMWD for being defective, remove it and replace it with work that is not defective. The City shall pay all costs arising out of or relating to such correction or removal of the defective work (including but not limited to all costs of repair or replacement of the work of others).

4.03 Correction Period. If the work associated with the City's scope of work described herein is found within one year after final completion to be defective, the City shall promptly, without cost to NTMWD and in accordance with NTMWD's written instructions: (a) correct such defective work; or (b) if the defective work has been rejected by NTMWD, remove it and replace with work that is not defective, and satisfactorily correct or repair or remove and replace any damage to other work resulting therefrom.

4.04 NTMWD's Option. If the City does not promptly comply with the reasonable terms of NTMWD's written instructions, or in an emergency where delay would cause serious risk of loss or damage, NTMWD may have the defective work corrected or repaired or may have the rejected work removed and replaced. All costs arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by the City.

ARTICLE FIVE
Term

5.01 This Agreement shall be effective upon approval by the City Council and NTMWD's Board of Directors and execution by the City's and NTMWD's authorized representatives. The effective date will be the latter of the dates this Agreement is executed by the Parties' authorized representatives. This Agreement shall continue in effect until all the work required under this Agreement has been performed by the City and all payments required to be made by the City are completed. The City shall provide NTMWD with written notice of completion of such work and payments.

ARTICLE SIX
Insurance and Bonds

6.01 Insurance Rating Requirements. All insurance required to be provided by the City or the City's contractor shall be obtained from insurance companies that are duly licensed or authorized in Texas to issue policies for the limits and coverages so required herein. Insurance companies providing the City's insurance shall have an A.M. Best Company Rating of A-VIII or better.

6.02 Certificates of Insurance. The City shall deliver to NTMWD certificates of insurance (and other evidence of insurance requested by NTMWD) which the City is required to purchase and maintain. Failure of NTMWD to demand such certificates or other evidence of the City's full compliance with these insurance requirements or failure of NTMWD to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of the City's obligation to maintain such insurance. NTMWD does not represent that insurance coverage and limits established in this Agreement necessarily will be adequate to protect the City. The insurance and insurance limits required herein shall not be deemed as a limitation on the City's liability under the indemnities granted to NTMWD in this Agreement.

6.03 The City and Its Contractor's Insurance. The City shall have its contractor purchase and maintain such insurance as is appropriate for the work being performed and as will provide protection from claims set forth below which may arise out of or result from the City's or the City's contractor's performance of the work and the City's other obligations under the Agreement, whether it is to be performed by the City, the City's contractor, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

- a. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
- b. claims for damages because of bodily injury, occupational sickness or disease, or death of the City's or the City's contractor's employees;
- c. claims for damages because of bodily injury, sickness or disease, or death of any person other than the City's or the City's contractor's employees;
- d. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 1. by any person as a result of an offense directly or indirectly related to the employment of such person by the City or the City's contractor, or
 2. by any other person for any other reason;

- e. claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- f. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- g. The City's contractors will provide insurance satisfying the City's insurance requirements.

6.04 Insurance Policies. The policies of insurance required by this Article shall:

- a. be written on an occurrence basis, as applicable, include NTMWD as an additional insured, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of NTMWD, and the insurance afforded to NTMWD as an additional insureds shall provide primary coverage for all claims covered thereby;
- b. include at least the specific coverages and be written for not less than the limits of liability provided herein or required by laws or regulations, whichever is greater;
- c. include contractual liability insurance covering the City's indemnity obligations in this Agreement;
- d. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to NTMWD;
- e. remain in effect at least until the work is complete; and
- f. include completed operations coverage:
 - 1. Such insurance shall remain in effect for two years after the work is complete.
 - 2. The City shall furnish to NTMWD evidence satisfactory to NTMWD of continuation of such insurance for two years after the work is complete.

6.05 Coverage.

- a. Worker's Compensation and Employer's Liability Insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

Workers' Compensation, etc.,	
1) State:	Statutory
2) Applicable Federal (e.g., Longshore)	Statutory
Employers' Liability	
1) Bodily Injury by Accident	\$500,000
2) Bodily Injury by Disease - Each Employee	\$500,000
3) Bodily Injury by Disease - Policy Limit	\$500,000
Insurance shall include a waiver of subrogation in favor of the Additional Insured identified in Paragraph 5.04.B.1.	

- b. The Liability Insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations. The City can satisfy the requirements by a combination of the underlying coverage and umbrella/excess coverage; the underlying coverage amounts will be included in the overall umbrella/excess coverage amount:

Insurance for Claims of Damages	
1) General Aggregate (Except Products - Completed Operations)	\$ 2,000,000 / Occurrence \$ 4,000,000 / Aggregate
2) Products - Completed Operations Aggregate	
3) Personal and Advertising Injury (One Person/Organization)	\$1,000,000
4) Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
5) Limit Per Person – Medical Expense	\$25,000

6) Personal Injury Liability coverage will include claims arising out of Employment Practices Liability, limited to coverage provided under standard contract.	\$1,000,000
7) Property Damage Liability insurance will provide explosion, collapse and underground coverage where applicable	\$1,000,000

- c. The City's contractor's liability insurance shall also include completed operations and product liability coverage, and eliminate the exclusion with respect to property under the care, custody and control of the City or the City's contractor.
- d. The City's contractor's automobile liability insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

Bodily Injury:	
1) Each Person	\$1,000,000
2) Each Accident	\$1,000,000
Property Damage:	
1) Each Accident	\$1,000,000
Or	
2) Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

- e. Additional insured on all insurance policies in accordance with Section 6.05 (excluding workers' compensation) include:

North Texas Municipal Water District
- f. The City's contractor's contractual liability insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

The City's Contractual Liability Insurance	
1) General Aggregate	\$ 2,000,000
2) Each Occurrence (Bodily Injury and Property Damage)	\$ 4,000,000

6.06 Property Insurance. The City shall purchase and maintain property insurance or self-insurance equivalent upon the work at the Shepherd Drive Improvements project site in the amount of the full replacement cost thereof (subject to deductible amounts as

may be required by laws and regulations). This insurance shall: include the interests of NTMWD and its officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.; General Contractor shall purchase and maintain a Builder's Risk "all-risk" policy that shall at least include insurance for physical loss or damage to the work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss. The Builder's Risk policy shall list NTMWD and the City of Sherman as a loss payee; include expenses incurred in the repair or replacement of any insured property (including but not limited to reasonable fees and charges of engineers and architects) and cover materials and equipment stored at the Site or at another location and in transit for incorporation in the work from such storage locations that was agreed to in writing by NTMWD prior to being incorporated in the work. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this section will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to NTMWD.

6.07 NTMWD's Insurance for Project. NTMWD shall not be responsible for purchasing and maintaining any insurance to the City's Project in the interest of the City, the City's contractor or others involved with the work. The stated limits of insurance required are minimum only. The City shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, the City is fully responsible for all losses arising out of, resulting from or connected with operations under this Agreement whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by NTMWD that in any respect do not comply with the Agreement does not release the City from compliance herewith.

ARTICLE SEVEN

Immunity

7.01 It is expressly understood and agreed that, in the execution of this Agreement, NTMWD and the City do not waive, nor shall they be deemed hereby to have waived any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto. Notwithstanding the foregoing, the City does not waive any rights or defenses arising out of NTMWD's breach of this Agreement as permitted by law or otherwise.

ARTICLE EIGHT

Notices

8.01 All notices required under the provisions of this Agreement must be in writing, hand-delivered or sent by registered or certified mail to the addresses below:

City of Sherman: Robby Hefton
City Manager
220 W Mulberry St.
Sherman, TX 75091

NTMWD: Jennafer P. Covington
Executive Director
P.O. Box 2408
Wylie, TX 75098

The name and address for notification may be changed by notice to the other Parties.

ARTICLE NINE Severability

9.01 The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

ARTICLE TEN Successors and Assigns

10.01 This Agreement shall be binding upon the Parties hereto, their successors and assigns. Neither Party will assign or transfer an interest in this Agreement without the written consent of the other Party.

ARTICLE ELEVEN Venue

11.01 The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement. The Parties consent, stipulate, and agree that this Agreement is performable in Grayson County, Texas and that exclusive venue shall lie in a state or federal court in Grayson County, Texas.

ARTICLE TWELVE Recitals

12.01 The recitals are hereby incorporated in and made a part of this Agreement as if fully set forth herein. By signing this Agreement, the City and NTMWD understand and agree to all of these recitals.

ARTICLE THIRTEEN
Interpretation

13.01 This Agreement has been negotiated by and between the Parties, and any presumption that an ambiguity contained in this Agreement shall be construed against the Party that caused this Agreement to be drafted shall not apply to the interpretation of this Agreement.

ARTICLE FOURTEEN
Remedies, Non-Waiver

14.01 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 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.

ARTICLE FIFTEEN
Entire Agreement

15.01 This Agreement embodies the entire agreement between the Parties and may only be modified in writing executed by both Parties.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year pursuant to Section 5.01 above.

EXECUTED this 6th day of September, 2024.

City of Sherman, Texas

By: [Signature]

Name: Robby Hefton

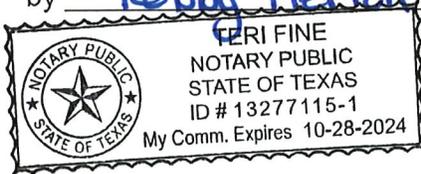
Title: City Manager

STATE OF TEXAS

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§
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COUNTY OF GRAYSON

This instrument was acknowledged before me on September 6, 2024, by Robby Hefton, of the City of Sherman.



[Signature]
Notary Public, in and for the State of Texas.

EXECUTED this _____ day of _____, 2024.

North Texas Municipal Water District

By: _____

Name: Jennafer P. Covington

Title: Executive Director

STATE OF TEXAS

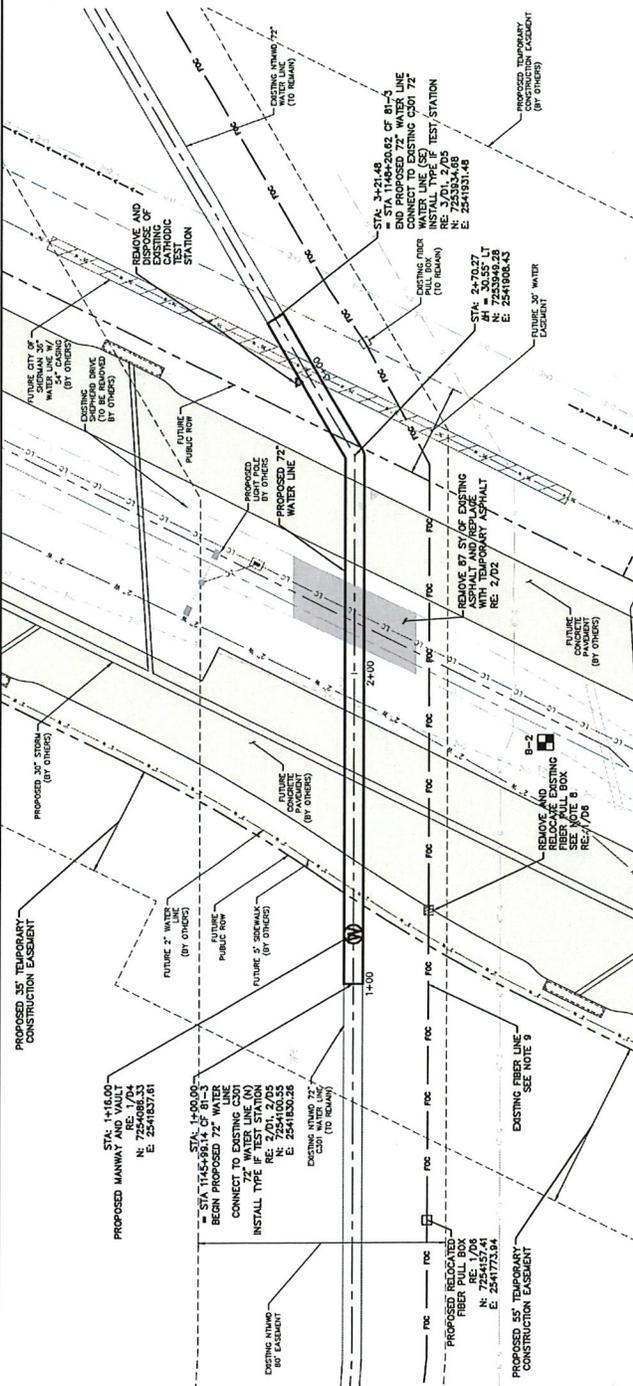
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COUNTY OF COLLIN

This instrument was acknowledged before me on _____, 2024, by _____ of the NORTH TEXAS MUNICIPAL WATER DISTRICT, a governmental agency and body politic and corporate, on behalf of said agency and body politic and corporate.

Notary Public, in and for the State of Texas

EXHIBIT A



Station	Vertical Curve Data	Notes
745	STA. 1415.00 AV = 2.52' T/P = 719.56'	PROPOSED MANWAY AND VALVE
740	STA. 1423.94 AV = 2.52' T/P = 719.02'	PROPOSED 30\"/>
735	STA. 1416.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
730	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
725	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
720	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
715	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
710	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
705	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>
700	STA. 1418.00 AV = 2.52' T/P = 717.95'	PROPOSED 30\"/>

NTMWD 72-INCH WL RELOCATION

RELOCATION EXHIBIT A

EX SHEET NUMBER

SCALE: AS SHOWN

MARGIN: 5/8\"/>

CHECKED BY: R55

DRAWN BY: BAI

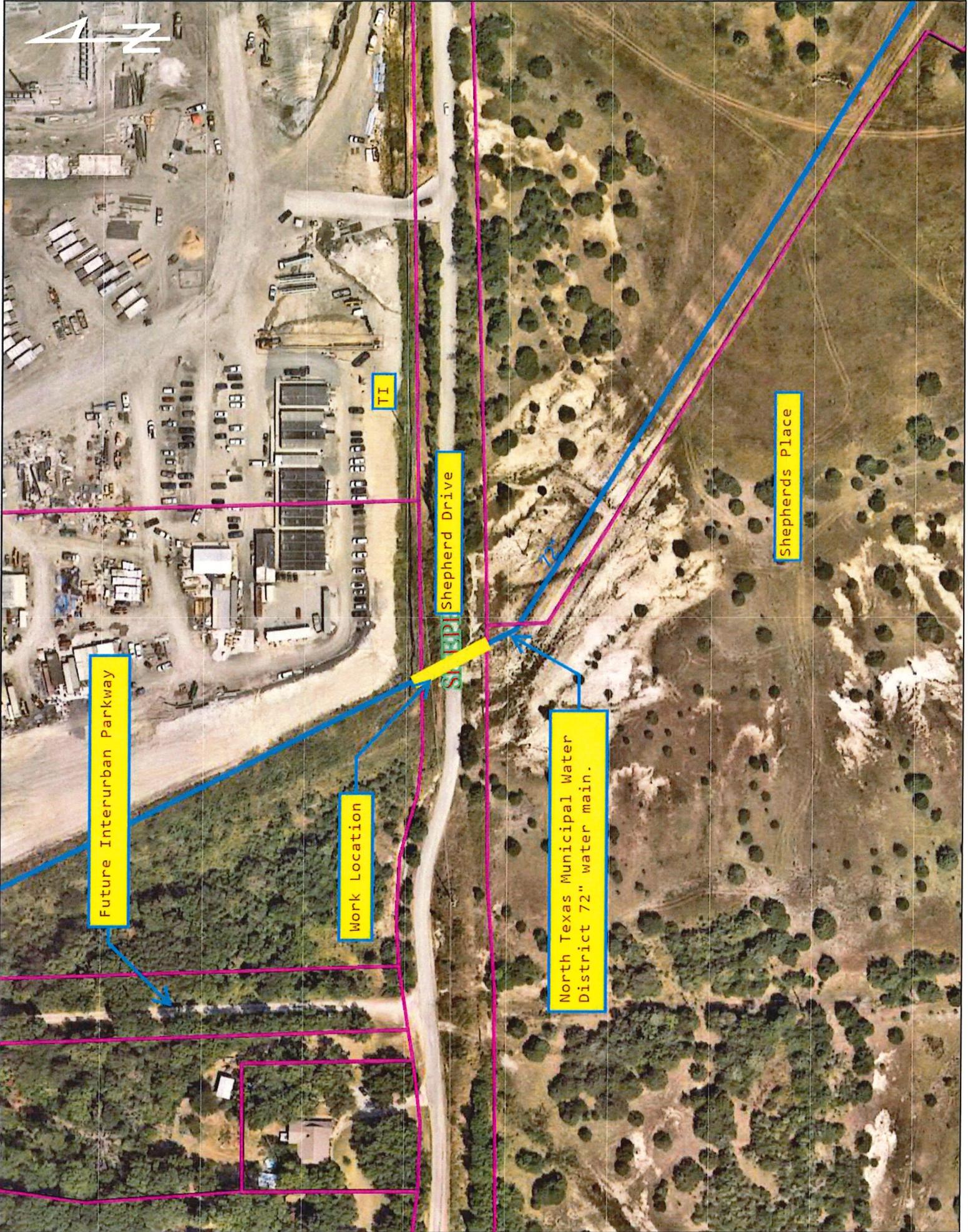
DESIGNED BY: BJS

Kimley-Horn

13155 HOLBROOK BLVD., SUITE 100, DALLAS, TEXAS 75243

WWW.KIMLEY-HORN.COM

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Future Interurban Parkway

Work Location

Shepherd Drive

TI

North Texas Municipal Water District 72" water main.

Shepherds Place