

STATE OF TEXAS	§	INTER-LOCAL COOPERATION AGREEMENT
	§	REGIONAL WASTE WATER LIFT STATION AND
COUNTY OF COLLIN	§	FORCE MAIN PROJECT

This Inter-Local Cooperation Agreement (“Agreement”) is by and between the City of Allen, Texas (“Allen”), the Town of Fairview, Texas (“Fairview”), and the North Texas Municipal Water District (“NTMWD”) (collectively the “Parties” or singularly the “Party”), acting by and through their authorized officers.

WITNESSETH:

WHEREAS, to provide regional sanitary sewer collection for future developments in Allen and Fairview, which would otherwise flow into the existing regional pipeline parallel to Cottonwood Creek, which as a result of recent modeling efforts on behalf of the NTMWD indicates excess capacity does not exist within the trunk system owned by NTMWD along Cottonwood Creek and diversion of flows otherwise would be advantageous to all Parties; and

WHEREAS, NTMWD would avoid more expensive capital improvement costs associated with a parallel line through Allen, as compared to that which is proposed by the Project (hereinafter defined); and

WHEREAS, Allen would avoid disruption and greenbelt impacts associated with construction of additional pipelines parallel to Cottonwood Creek; and

WHEREAS, Fairview would avoid more expensive costs associated with expansion of its existing pump station and a new parallel force main with the Project; and

WHEREAS, Allen and Fairview benefit from collaborating on the design, construction, and implementation of the Project and from the Project being ready for future development within the applicable basin; and

WHEREAS, Parties desire to cooperate in the design, construction, operation, and maintenance of a new wastewater collection system comprised of a gravity pipeline that would extend from Allen into Fairview (the “Gravity Pipeline”) and discharge into a new regional lift station facility to be owned by NTMWD, generally following Sloan Creek (the “Sloan Creek Lift Station”) that would collect gravity flow from Allen and Fairview and discharge through a regional force main (the “Sloan Creek Force Main”) to be owned, operated and maintained by NTMWD, extending from the proposed Sloan Creek Lift Station to the existing NTMWD Wilson Creek Lift Station as generally depicted in **Exhibit “A”** (collectively the “Project”); and

WHEREAS, the Parties desire to enter into an Inter-Local Cooperation Agreement relating to the design, construction and maintenance of the Project; and

WHEREAS, the Inter-Local Cooperation Act, Texas Government Code, Chapter 791 authorizes any local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act;

NOW THEREFORE, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Purpose

The purpose of this Agreement is to set forth the obligations of the Parties regarding the design, construction, operation and maintenance of the Project for a new regional sanitary sewer collection system in anticipation of future developments within Allen and Fairview, which would otherwise flow into an existing NTMWD-owned regional pipeline parallel to Cottonwood Creek. Through modeling efforts, NTMWD has determined that excess capacity does not exist within the Cottonwood Creek trunk sewer that currently serves the areas of proposed development. Further, analysis of the NTMWD system shows that an alternate regional sewer collection system to divert flows to NTMWD's Wilson Creek Lift Station would be most advantageous to all Parties involved since NTMWD is in the process of expanding its existing Wilson Creek Lift Station at this time.

Article II Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Allen” shall mean the City of Allen, Collin County, Texas.

“Approved Design” shall mean the design of the Project prepared by the Project engineer and as approved by the Parties.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals required by applicable governmental authorities have been obtained for construction of the Project; (ii) all necessary permits for the construction of the Project pursuant to the respective plans, have been issued by all applicable governmental authorities; and (iii) grading of the land for the construction of the Project, has commenced.

“Completion of Construction” shall mean that (i) the construction of the Project has been substantially completed; and (ii) Allen has issued an acceptance of the Project.

“Effective Date” shall mean the last date of execution hereof.

“Fairview” shall mean the Town of Fairview, Collin County, Texas.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), inclement weather, fires, earthquake,

tornado, hurricane, explosions, floods, strikes, slowdowns, equipment breakdown or work stoppages.

“Gravity Pipeline” shall mean a gravity pipeline that extends from Allen into Fairview and discharges into the Sloan Creek Lift Station that will serve as the point of entry for both Allen and Fairview into the NTMWD Upper East Fork Interceptor System (UEFIS), generally following Sloan Creek, as generally depicted in **Exhibit “A”**.

“Gravity Pipeline Engineer” shall mean the engineer or firm selected by Allen for the design of the Gravity Pipeline.

“Manholes” shall mean manholes with stub-outs to the North and the South to be constructed with adequate distance to the flow metering equipment for future connection by Fairview and Allen gravity sewer lines to the Sloan Creek Lift Station.

“NTMWD” shall mean the North Texas Municipal Water District.

“NTMWD Project” shall mean the Sloan Creek Force Main and the Sloan Creek Lift Station (including all connection Manholes).

“NTMWD Project Engineer” shall mean the engineer or firm selected by NTMWD and Allen for the design of the NTMWD Project.

“Project” shall collectively mean the Sloan Creek Force Main, the Gravity Pipeline and the Sloan Creek Lift Station.

“Sloan Creek Force Main” shall mean a regional force main that would extend from the Sloan Creek Lift Station to the existing NTMWD Wilson Creek Lift Station to be owned, operated and maintained by NTMWD as generally depicted in **Exhibit “A”**.

“Sloan Creek Lift Station” shall mean a new lift station facility to be owned, operated and maintained by NTMWD, that would collect gravity flow from Allen and Fairview as generally depicted in **Exhibit “A”**.

Article III

Term; Termination

3.1 The term of this Agreement shall begin on the last date of execution of the Parties (the “Effective Date”) and shall continue until the Parties have fully satisfied their respective obligations herein, unless sooner terminated as provided herein.

3.2 Any Party may terminate this Agreement if another Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof.

Article IV Project

4.1 Project Design.

- (a) Gravity Pipeline. Allen shall contract with an engineer or firm for the design of the Gravity Pipeline and shall be responsible for all expenses associated with design of the Gravity Pipeline. Subject to Events of Force Majeure Allen shall contract for the design of the Gravity Pipeline Design within sixty (60) days after the Effective Date. Subject to Events of Force Majeure Allen shall cause the design the Gravity Pipeline to be completed within twelve (12) months after award for the design contract but no later than August 30, 2019. The design review of the Gravity Pipeline shall include both NTMWD and Fairview for input on the proposed design.
- (b) NTMWD Project. A single contract with a single engineer or firm shall exist for the NTMWD Project for continuity and clarity in Project delivery. NTMWD shall solicit proposals for the design of the NTMWD Project and provide written notice of NTMWD's recommendation as to the desired engineer or firm ("Recommendation Notice"). Subject to Events of Force Majeure NTMWD shall contract for the design of the NTMWD Project within sixty (60) days after the Effective Date. Subject to Events of Force Majeure NTMWD shall cause the design the NTMWD Project to be completed within twelve (12) months after award for the design contract estimated to be November 2019. Fairview and Allen shall each have ten (10) business days after receipt of the Recommendation Notice to notify NTMWD in writing whether the recommendation as to the engineer or firm is acceptable. Failure to timely provide such notice shall be deemed as approval of such recommended engineer or firm. Following such process NTMWD shall contract with the recommended engineer or firm for the design of the Project (the "NTMWD Project Engineer") subject to the approval and award by the NTMWD Board of Directors. The design review of the NTMWD Project shall include both Fairview and Allen.
- (c) Design. Completion. Subject to events of Force Majeure Allen and NTMWD shall cause the designs for their respective Projects to be completed on or before November 2019 or some other date agreed to in writing by all Parties.

4.2 Design Costs

- (a) Gravity Pipeline. Allen shall be responsible for all design costs associated with the design of the Gravity Pipeline.

- (b) Sloan Creek Lift Station. Allen and Fairview shall be responsible for all design costs associated with the Sloan Creek Lift Station. Allen and Fairview shall share the design cost associated with the Sloan Creek Lift Station in accordance with estimated contributing flows in the design report prepared by BH&C, dated April 25, 2018 with Fairview being responsible for twenty-five percent (25%) of such costs and Allen being responsible for seventy-five percent (75%) of such costs, or as otherwise allocated by Agreement between Allen and Fairview. Allen shall pay the Allen and Fairview share (totaling 100%) of the design costs of the Sloan Creek Lift Station to NTMWD before NTMWD has any obligation to execute the design contract. NTMWD's remaining contractual duties and obligation in the Agreement are contingent upon NTMWD's receipt of Allen's payment for the Allen and Fairview share of the design costs for the Sloan Creek Lift Station. If Allen fails to pay Allen's and Fairview's shares of the design costs within fifteen (15) business days after NTMWD awards such contract, NTMWD, at its sole option, may terminate this Agreement and pursue any and all legal remedies against Allen and/or Fairview for the breach of this Agreement.
- (c) Sloan Creek Force Main. NTMWD shall be responsible for entire design costs associated with the Sloan Creek Force Main and any modification of the existing Wilson Creek Lift Station Facility.

4.3 Property Acquisition

- (a) Gravity Pipeline. Allen shall at its sole cost be responsible for acquiring the land, easements or right-of-way in Fairview for the Gravity Pipeline, and will to the extent necessary exercise the powers of eminent domain. Fairview shall support any such project and the property acquisition by Allen with a resolution of the Town Council of support and demonstrating the public necessity.
- (b) Sloan Creek Lift Station. NTMWD shall at its sole cost be responsible for the acquisition of all property necessary for the Sloan Creek Lift Station, including costs associated with survey and legal descriptions necessary for such acquisition and to the extent necessary exercise the powers of eminent domain to acquire the necessary easements and other property. Fairview shall take reasonable actions to assist NTMWD in acquiring the property to accommodate the Sloan Creek Lift Station in Fairview, but Fairview shall not be obligated to expend funds as part of such assistance.
- (c) Sloan Creek Force Main. NTMWD shall at its sole cost be responsible for the acquisition of all property associated with and necessary for the Sloan Creek Force Main, including costs associated with survey and legal descriptions necessary for such acquisition and to the extent necessary

exercise the powers of eminent domain to acquire the necessary easements and other property.

- (i) Within Fairview. Fairview shall take reasonable actions to assist NTMWD in acquiring the easements to accommodate the Sloan Creek Force Main in Fairview, but Fairview shall not be obligated to expend funds as part of such assistance. NTMWD will provide survey and field notes (through NTMWD Project Engineer) associated with such easements. Fairview will convey, transfer, deed or dedicate such easements to NTMWD. However, it shall remain NTMWD's sole obligation to acquire and pay for all property necessary for the Sloan Creek Force Main and NTMWD will to the extent necessary exercise the powers of eminent domain to acquire the necessary easements and other property.
- (ii) Outside of Fairview. NTMWD shall acquire all easements (and bear all expense associated with acquisition) to accommodate the Sloan Creek Force Main extension beyond the corporate limits of Fairview, extending to the existing Wilson Creek Lift Station Facility.
- (d) ROW Acquisition. Subject to Events of Force Majeure and the exercise of eminent domain the Parties shall acquire the land, easements or other property necessary for the respective Project on or before August 30, 2019.

4.4 Project Construction and Allocation of Costs

- (a) Gravity Pipeline. Allen shall solicit bids, award one or more contracts for, and manage the construction of the Gravity Pipeline. Allen shall be responsible for the costs of construction of the Gravity Pipeline. Allen shall subject to events of Force Majeure, cause the Commencement of Construction of the Gravity Main to occur as soon as possible following completion of the design for the Gravity Pipeline but no later than January 31, 2020.
- (b) NTMWD Project. NTMWD shall solicit bids, award one or more contracts, and manage the construction of the NTMWD Project. NTMWD shall bid the Sloan Creek Force Main with the Sloan Creek Lift Station in such a way that the Sloan Creek Force Main costs shall be identifiable apart from the Sloan Creek Lift Station. NTMWD shall provide to Allen and Fairview written notice of NTMWD's recommendation as to the desired contractor for the NTMWD Project and provide a copy of such contractor's bid including without limitation the proposed cost of the Sloan Creek Lift Station (collectively the "Constructor Recommendation Notice"). Fairview and Allen shall each have thirty (30) business days

after receipt of the Contractor Recommendation Notice to notify NTMWD in writing whether the recommendation as to the construction contractor is acceptable. Failure to timely provide such notice shall be deemed as approval of such recommended contractor by Allen and Fairview. NTMWD shall subject to events of Force Majeure, cause the Commencement of Construction of the NTMWD Project to occur as soon as possible following completion of the design for the Gravity Pipeline but no later than January 31, 2020. Allen shall be responsible for seventy-five percent (75%) of the costs of construction associated with Sloan Creek Lift Station and Fairview shall be responsible for twenty-five percent (25%) of the costs of construction associated with Sloan Creek Lift Station, or as otherwise allocated by Agreement between Allen and Fairview. Allen shall pay the Allen and Fairview share of the construction costs (100%) of the Sloan Creek Lift Station to NTMWD before NTMWD has any obligation to execute such contract. NTMWD's remaining contractual duties and obligation in this Agreement are contingent upon NTMWD's receipt of the Allen's payment for the Allen and Fairview share of the costs of construction associated with the Sloan Creek Lift Station. If Allen fails to pay Allen's and Fairview's shares of the costs of construction within fifteen (15) business days after NTMWD awards such contract, NTMWD, at its sole option, may terminate this Agreement and pursue any and all legal remedies against Allen and/or Fairview for breach of this Agreement.

- (c) Force Main Cost. NTMWD shall be responsible for all costs for the construction of the Sloan Creek Force Main.
- (d) Project Construction Schedule. Construction of the respective Project shall commence as soon as possible following completion of the respective designs for the Project but no later than January 31, 2020, subject to events of Events of Force Majeure.
- (e) Insurance and Bonds. Any Party responsible for a design and or construction of a portion of the Project shall require its respective engineers and contractors to provide and maintain the appropriate insurance and performance and payment bonds, as applicable, consist with and as are required for a public works project.

4.5 Payment of Project Cost.

Fairview Costs. Costs allocated to Fairview in this Agreement shall be paid by Allen to NTMWD on behalf of Fairview subject to the reimbursement of such costs pursuant to the Allen Fairview ILA Project Costs Allocation Agreement (hereinafter defined).

Article V Miscellaneous

5.1 Assignment. This Agreement may not be assigned by any Party hereto without the prior written consent of all other Parties.

5.2 Notice. Except as may be provided otherwise herein, any notice, demand or request required or permitted to be delivered hereunder shall be deemed received when delivered in person or sent by United States Mail, postage prepaid, certified mail, or by hand-delivery or facsimile transmission addressed to the Party at the address set forth below:

If intended for Allen:

City of Allen
Attn: Peter H. Vargas
City Manager
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013
214.509.4100 – telephone
214.509.4118 - facsimile

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201
214.965.9900 – telephone
214.965.0010 – facsimile

If intended for Fairview:

Town of Fairview
Attention: Julie Couch
Town Manager
372 Town Place
Fairview, Texas 75069
972.562.0522 – telephone
972.886.4203 – facsimile

With a copy to:

Attn: Clark McCoy
Town Attorney
Wolfe Tidwell McCoy, LLP
2591 Dallas Parkway, Suite 30
Frisco, Texas 75034
972.712.3530 – telephone
972.712.3540 – facsimile

If intended for NTMWD:

North Texas Municipal Water District
Attn: Thomas W. Kula
Administration Building
501 East Brown St.
P.O. Box 2408
Wylie, TX 75098
972.442.5405 – telephone

With a copy to:

Attn: Mark Walsh
Saunders, Walsh & Beard
6850 TPC Drive, Suite 210
McKinney, Texas 75070
214.919.3555 - telephone
214.644.2050 – facsimile

Any Party may, at any time, by written notice to the other Party, designate different or additional persons or different addresses for the getting of notices hereunder.

5.3 Amendment. This Agreement may be amended only by the mutual written agreement of all Parties hereto.

5.4 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

5.5 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.6 Entire Agreement. This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

5.7 Recitals. The recitals to this Agreement are incorporated herein.

5.8 Counterparts. This Agreement may be executed in any number of counterparts, each of whom shall be deemed an original and constitute one and the same instrument.

5.9 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

5.10 Conditions Precedent. This Agreement is expressly subject to, and the obligations of the Parties are expressly conditioned upon Allen and Fairview entering an agreement regarding the payment of the costs of the Project being paid by Allen on behalf of Fairview (the "Allen Fairview ILA Project Costs Allocation Agreement").

5.11 Current Funds. Each Party paying for the performance of governmental functions or services under this Agreement shall make those payments from current revenues available to the paying Party.

(Signature Page to Follow)

EXECUTED this ____ day of _____, 2018.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

Attest:

By: _____
Shelley B. George, City Secretary

Approved as to Form:

By: _____
Peter G. Smith, City Attorney
(10-16-2018:TM100751)

EXECUTED this ____ day of _____, 2018.

TOWN OF FAIRVIEW, TEXAS

By: _____
Julie Couch, Town Manager

Attest:

By: _____
Town Secretary

Approved as to Form:

By: _____
Clark McCoy, Town Attorney

EXECUTED this _____ day of _____, 2018.

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
Name: Thomas W. Kula
Title: Executive Director

EXHIBIT "A"

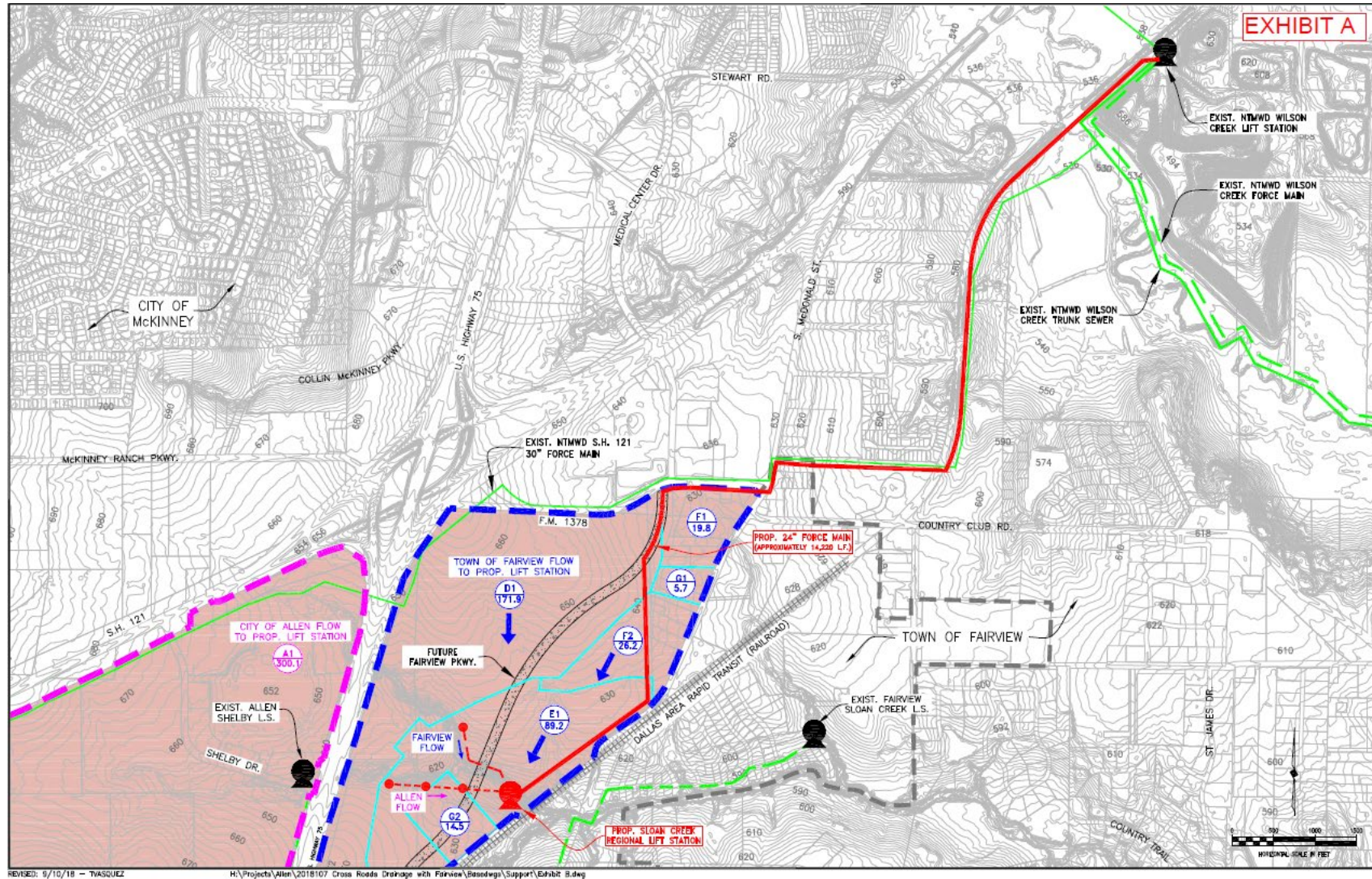


EXHIBIT "A"

