

INTERLOCAL AGREEMENT BETWEEN COLLIN COUNTY AND THE NORTH TEXAS MUNICIPAL WATER DISTRICT FOR ROAD REPAIRS

This Interlocal Agreement for Road Repairs ("Agreement") is made and entered into by and between COLLIN COUNTY, TEXAS, a political subdivision of the State of Texas, ("County") and the NORTH TEXAS MUNICIPAL WATER DISTRICT, a political subdivision of the State of Texas, ("District"). County and District are individually and collectively referred to herein as "Party" or "Parties". The Effective Date of this Agreement shall be the date that the last signatory signs below.

WHEREAS, the District is constructing a Project (hereinafter defined), in Collin County which will require the transportation of equipment and materials over and across certain County Roads in Collin County; and

WHEREAS, the Parties have investigated, determined, and find, acknowledge and agree that the current and anticipated future condition of certain County Roads (identified in Exhibit "A" hereto) will be susceptible to damage and/or destruction due to, among other things, increased traffic flow and use of Commercial Motor Vehicles, (hereinafter defined) associated with the Construction (hereinafter defined) of the Project; and

WHEREAS, the Parties have further investigated, determined, and find, acknowledge and agree that County does not currently have, or anticipate having in the near future, sufficient funds available to budget for the costs associated with any damage that will occur to County Roads as the result, in whole or in part, from the Project; and

WHEREAS, District, in connection with the Construction of the Project, is willing to pay for such Road Damage caused by the use of the County Roads by it or its Contractor's Commercial Vehicles, in exchange for a full release, and otherwise in accordance with this Agreement; and

WHEREAS, the District is willing to compensate the County for potential damage or deterioration of County Road conditions, if any, caused by the construction on a pre-construction, fixed amount basis, as part of a one-time settlement, in accordance with the terms of this Agreement; and

WHEREAS, the amount paid by the District to the County shall not be reduced or re-paid should the actual damage be less than estimated, nor shall it be increased or added to if the damage is worse than estimated.

NOW THEREFORE, for and in consideration of the covenants and conditions contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply;

(a) "Act" means the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended.

(b) "Affected Parties" (individually and collectively) means County and District and their respective officers, directors, members, employees, contractors, subcontractors, vendors, representatives, trustees, agents, licensees, invitees, and any other third party for whom District is legally responsible.

(c) “Commercial Motor Vehicle” means a motor vehicle, other than a motorcycle or passenger vehicle of one-half (1/2) ton or less, designed or used for; (i) the transportation of Project; or (ii) delivery purposes, as defined in Section 621.001 of the Texas Transportation Code, as amended.

(d) “Completion of Project” means completion of Construction of the Project as evidenced by District’s issuance of Final Acceptance (hereinafter defined) of the Project.

(e) “Construction” (or any derivation thereof) means construction of all or any portion of the Project.

(f) “Contractor” means the District’s Construction Manager At-Risk (CMAR) for the Project, Garney Companies, Inc., its employees and subcontractors.

(g) “County Roads” means those public roads owned and/or maintained by County by law, contract or otherwise, shown and listed on Exhibit “A” attached hereto. No other County Roads, other than those depicted or listed in Exhibit “A” are subject to this Agreement.

(h) “Final Acceptance” means District’s final acceptance of the Project as being in accordance with all applicable agreements, approved plans and specifications, regulations, rules, requirements, laws and/or statutes so as to warrant Contractor’s request for Final Acceptance of the Project and final payment for Construction thereof.

(i) “Project” means District’s Treated Water Pipeline From Leonard Water Treatment Plant to McKinney No. 4 Project.

(j) “Road Repairs” means Road Repairs required due to any and all damages to County Roads caused or contributed to by Contractor’s use of Commercial Motor Vehicles during Construction of the Project.

2. PRE CONSTRUCTION PAYMENT FOR DAMAGE TO ROADS

(a) In lieu of a pre and post construction inspection, District agrees to pay the County and County agrees to accept the sum of \$2,000,000.00 as compensation for anticipated damage to the roads (the “Settlement Payment”). This sum will be paid by District’s Contractor to the County within 30 days of the Effective Date of this Agreement. This is a fixed sum and is not subject to re-determination and recapture after Completion of the Project even if the damage to the County Roads is more or less at the Completion of Project than originally anticipated. With the exception of the interim road repairs outlined in Section 3, the Settlement Payment satisfies the District’s and the District’s Contractor’s: (1) obligations to make road repairs to any County Road; (2) required payments for degradation of, or damages to, County Roads associated with or related to the Project; and (3) any and all obligations to make any future road repairs or payments related to construction of the Project. If the Contractor does not timely pay the settlement, the District shall be responsible to pay the settlement payment.

(b) County’s obligations under this Agreement are allowing the use of the Affected Roads and not seeking compensation against the District or its Contractor for road repairs/damage caused in whole or in part by this Project after the payment of the \$2,000,000.00 to the County. However, the County may enforce the requirement that the District keep the County Roads utilized by the District in an operational state of repair during the Project.

(c) District shall require the Contractor to include the County as an additional insured on its liability policies.

(d) District shall require that the Contractor obtain waivers of subrogation rights against the County on all insurance policies, including worker's comp.

3. REPAIR OF COUNTY ROAD DURING CONSTRUCTION. District agrees that its Contractor will make interim repairs, as necessary, to keep the Affected Roads operational. "Operational" means that the road is safely passable for non-commercial vehicles driving at the posted speed limit and does not create an unreasonable risk of damage to such vehicles.

4. SATISFACTION OF DISTRICT OBLIGATION. This Agreement, and the payment of the Settlement Payment, is made in full and final satisfaction of the District's obligations to make any further assessment of the conditions of the County Roads, to make road repairs (other than any necessary interim road repairs), or pay for damages to County Roads related to the District's construction activities, or otherwise compensate the County for the degradation or destruction of roads due to the construction of the Project. Upon making the Settlement Payment hereunder, the District shall have no further obligation, other than the performance of any necessary interim road repairs, to make any payment for road repairs or damages to the County associated with the Project.

5. COUNTY ACKNOWLEDGES PAYMENT AND RELEASE. The County agrees to and hereby accepts the Settlement Payment in full, final, and complete satisfaction of its rights to receive compensation from the District, to require the District to complete an assessment of county road conditions post construction, or, with the exception of necessary interim road repairs, to require further road repairs by the District or its Contractor related to construction of the Project. The County does hereby release and discharge the District and its contractors, including Garney Companies, Inc., from any and all duties, liabilities, and obligations to make any further payment to the County, or any Precinct within the County, for any and all damages or claims for damages for destruction or degradation to County Roads caused by, related to, or arising from the District's and its Contractor's use of County Roads during the above referenced construction Project and from the obligation to make any repairs to said County Roads. The County does hereby release and discharge the District and its Contractor from any obligation to make any further payments related to the condition of the County Roads or alleged damage to County Roads. Both parties understand and agree that this Release only applies to the County Roads identified on Exhibit "A" and that the County reserves its right to seek recovery for damage due to the Project on any roads of the County not identified on Exhibit "A".

6. WRITTEN AGREEMENTS. Any agreement, notice, correspondence, information and/or other documentation required and/or referred to in this Agreement shall be in writing. Any agreement required and/or referred to in this Agreement shall be in writing and executed by the Parties. No agreement required and/or referred to in this Agreement may be amended and/or modified except on written consent of the Parties thereto.

7. NO WAIVER. Waiver by either Party of any breach of this Agreement affecting such Party, or the failure of either Party to enforce any of the provisions of this Agreement, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.

8. GOVERNMENTAL FUNCTIONS. The Parties acknowledge and agree that the

performance by County and District of their respective obligations under this Agreement constitute governmental functions.

9. **DEFAULT AND REMEDIES.** No Party shall be in default under this Agreement until written notice of the default has been given to the defaulting Party (which notice shall describe in reasonable detail the nature of the default) and the defaulting Party has been given fifteen (15) business days to cure said default. If a Party is in default under this Agreement, the non- defaulting Party may, at its option, and without prejudice to any other right under this Agreement, law, or equity, seek any relief available at law or in equity, including but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief. Neither Party shall have the right to terminate this Agreement as a remedy for default or to suspend or be relieved of the Party's continuous performance of its obligations hereunder. Notwithstanding the foregoing, each Party agrees that if any threatened or actual breach of this Agreement arises, which reasonably constitutes immediate, irreparable harm to the other Party for which monetary damages is an inadequate remedy, equitable remedies may be sought by the non- defaulting Party, without providing the notice stated above, and awarded in a court of competent jurisdiction without requiring the non-defaulting Party to post a bond.

10. **PAYMENTS FROM CURRENT REVENUES.** All payments, if any, required to be made by District hereunder shall be payable from bond funds or other funds lawfully available for such purpose.

11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by the Parties.

12. **APPLICABLE LAW.** This Agreement shall be construed in accordance with Texas law without regard to its conflict of laws provisions.

13. **VENUE.** Venue for any action arising hereunder shall be in Collin County, Texas.

14. **NOTICES.** Any notice or other communication required by this Agreement to be given, provided, or delivered shall be in writing addressed as set forth below. Notices shall be considered "given" for purposes of this Agreement: (a) if by Certified Mail, five (5) business days after deposited with the U.S. Postal Service, Certified Mail, Return Receipt Requested; or (b) if by private delivery service (e.g. FedEx or UPS), on the date delivered to the notice address as evidenced by a receipt signed by any person at the notice address

To County:

Jon Kleinheksel, Director of Public Works
700A Wilmeth
McKinney, Texas 75069
Telephone: (972) 548-3700

To District:

Rodney Rhoades
Interim Executive Director
North Texas Municipal Water District

505 E. Brown Street
P.O. Box 2408
Wylie, Texas 75098
Telephone: (972) 442-5405
Facsimile: (972) 295-6440
rrhoades@NTMWD.com

With a copy to:

Lewis Isaacks
Saunders, Walsh & Beard
6850 TPC Drive, Suite 210
McKinney, Texas 75070
Telephone: (214) 644-2059
lewis@saunderswalsh.com

Each Party has the right to change, from time to time, its notice addresses by giving at least ten (10) business day's written notice to the other Party. If any time period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the period shall be extended to the first business day following such Sunday, Saturday, or legal holiday.

15. RECITALS. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; and (c) reflect the final intent of the Parties with regard to the subject matter of this Agreement. If it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be given full effect. The Parties have relied, to their material detriment, upon the recitals as part of the consideration for entering into this Agreement and, but for the recitals, would not have entered into this Agreement.

16. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. A facsimile signature will also be deemed to constitute an original if properly executed.

17. AUTHORITY FOR EXECUTION. The individuals executing this Agreement on behalf of the respective Parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which their signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing their signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date of this Agreement.

18. SOVEREIGN IMMUNITY. The Parties agree that the County and the District have not waived their respective sovereign immunity by entering into and performing their respective obligations under this Agreement.

19. ASSIGNMENT. This Agreement is not assignable.

20. EXECUTION/CONDISERATION. This Agreement is executed by the Parties hereto

without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

21. HEADINGS. The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
22. ADDITIONAL REPRESENTATIONS. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had the opportunity to confer with its counsel.
23. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.
24. SAVINGS/SEVERABILITY. In case 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 any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
25. WARRANTIES/REPRESENTATIONS. All warranties, representations and covenants made by one Party to the other in this Agreement or in any certificate or other instrument delivered by one Party to the other under this Agreement shall be considered to have been relied upon by the other Party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made.
26. REFERENCE TO COUNTY. When referring to "County" herein, this Agreement shall refer to and be binding upon County, and its Commissioners, officers, directors, employees, representatives and agents.
27. REFERENCE TO DISTRICT. When referring to "District" herein, this Agreement shall refer to and be binding upon District, its Board Members, officers, directors, members, employees, contractors, subcontractors, vendors, representatives, trustees, agents, licensees, invitees and any other third party for whom District is legally responsible.
28. MISCELLANEOUS DRAFTING PROVISIONS. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.

COLLIN COUNTY, TEXAS
A Texas political subdivision

By: [Signature]
Chris Hill, County Judge

Date: 10 Nov 2020

STATE OF TEXAS

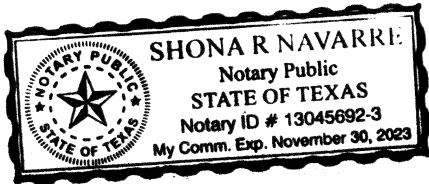
COUNTY OF COLLIN

Before me, the undersigned authority, on this day personally appeared Chris Hill, County Judge of Collin County, Texas, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative of and for the County of Collin, a Texas political subdivision, and he/she executed the said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 10th day of NOVEMBER, 2020.

[Signature]

Notary Public in and for the State of Texas
My Commission Expires:



NORTH TEXAS MUNICIPAL WATER DISTRICT

By: [Signature]
For Rodney Rhoades
Interim Executive Director

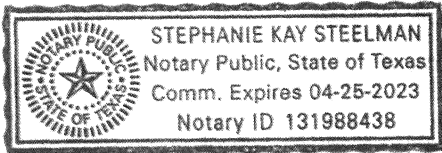
Date: 10/23/2020

STATE OF TEXAS

COUNTY OF COLLIN

Before me, the undersigned authority, on this day personally appeared RODNEY RHOADES, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of and for the NORTH TEXAS MUNICIPAL WATER DISTRICT, a Texas political subdivision, and he executed the said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 23rd day of October, 2020.



Stephanie Kay Steelman
Notary Public in and for the State of Texas
My Commission Expires: 4.25.2023

EXHIBIT A



NTMWD 84" TREATED WATER PIPELINE

Propose to prohibit
construction delivery
semi-trucks

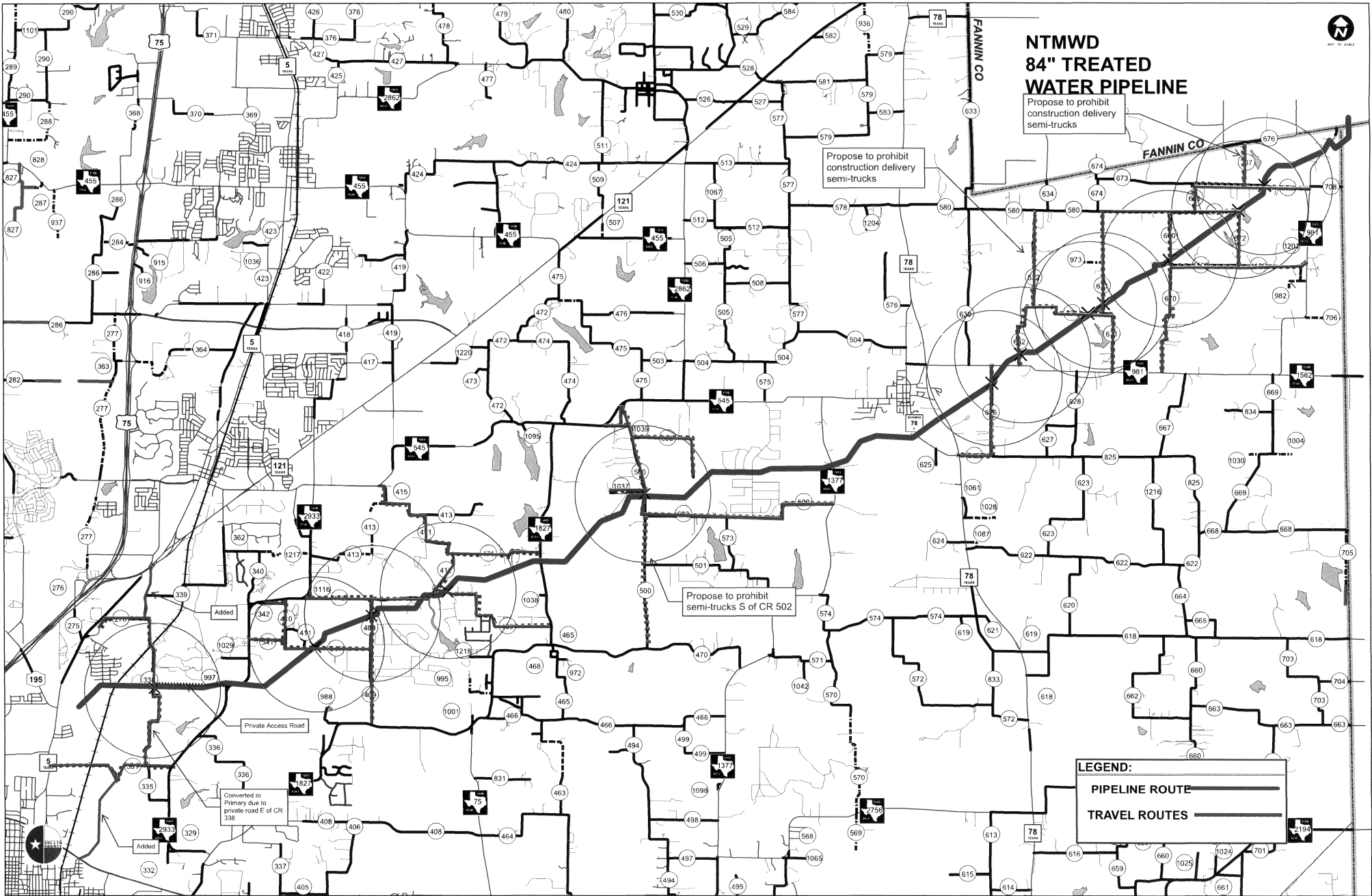
Propose to prohibit
construction delivery
semi-trucks

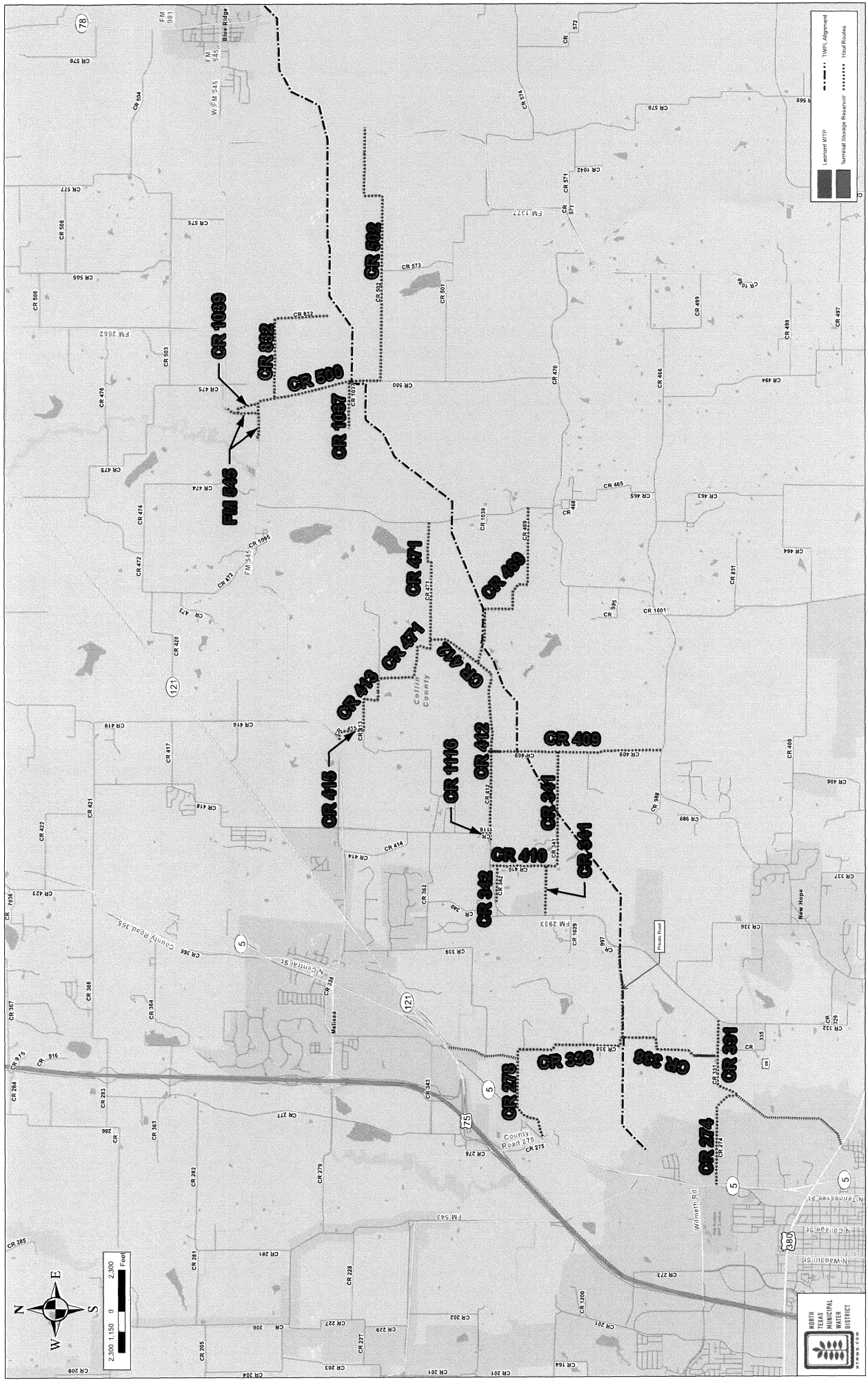
Propose to prohibit
semi-trucks S of CR 502

LEGEND:

PIPELINE ROUTE

TRAVEL ROUTES





Legend WTP
 Terminal Storage Reservoir
 Half Flour

