

PERFORMANCE AGREEMENT BETWEEN
THE BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION AND
BETHANY SPECIAL UTILITY DISTRICT

This Economic Development Agreement (the "Agreement") is entered into as of _____ (the "Effective Date") by and among the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City of Burleson, Counties of Johnson and Tarrant, State of Texas (the "EDC"), by and through its President, and Bethany Special Utility District ("Bethany"), acting by and through its duly-authorized Board President, Tommy Head. In consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows

ARTICLE 1.
WITNESSETH

- 1.01 Bethany owns, operates, and maintains facilities for distributing treated water and holds an exclusive certificate of convenience and necessity to furnish water to an area within the City of Burleson (the "City") along the southern boundaries of the City as depicted on Exhibit A (the "Area").
- 1.02 The City has received proposals for several desirable developments in the Area, but the Area remains undeveloped due to the size of Bethany's current water line which does not have sufficient pressure for the fire suppression requirements to serve any user larger than 6,000 square feet.
- 1.03 Bethany has studied the necessary upgrades to serve industrial users in the Area, and has determined the total cost to upsize the water line to be Three Million Dollars (\$3,000,000.00).
- 1.04 Bethany does not have the current resources to fund the entire cost, but has committed to contribute Eight Hundred Thousand Dollars (\$800,000.00) toward the construction of the Water Line (as hereinafter defined) to the Area.
- 1.05 To encourage industrial development in the Area, the EDC desires to facilitate the construction of the Water Line by matching Bethany's contribution, to be paid upon completion of the Water Line.
- 1.06 The EDC has determined and found that the Project, as defined herein, that the expenditure of the EDC set forth in this Agreement are suitable or required for the construction of infrastructure necessary to promote or develop new or expanded business and industrial purposes, and falls within the definition of a project" as defined in Section 501.103 of the Act.

- 1.07 The EDC, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to City as a result of the Project being located in the City, and desires to have Bethany construct and operate the Water Line in the City.
- 1.08 The Project will increase the taxable value in the City and will directly and indirectly result in the creation of additional jobs throughout the City and the value of the benefits of the Project is anticipated to outweigh the amount of expenditures required of the EDC by the Project under this Agreement.
- 1.09 The EDC has found the Project will contribute to an increase in economic development in the City.

ARTICLE 2 **DEFINITIONS**

- 2.01 The terms "Agreement," "Area," "Bethany," "City," "EDC," "Effective Date," and shall have the meanings provided, above.
- 2.02 "Project" means the EDC contributing Eight Hundred Thousand Dollars (\$800,000.00) towards the construction of the Water Line.
- 2.03 "Water Line" means the construction by Bethany of a water line sufficient to provide fire suppression service to large industrial facilities in the Area, in general conformance with the depiction on Exhibit B.

ARTICLE 3. **AUTHORIZATION**

The EDC finds and determines that this Agreement is authorized and governed by the Development Corporation Act of 1979, and the Development constitutes a Project as contemplated by the Act.

ARTICLE 4. **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate when the obligations of both parties are met, or five (5) years from the Effective Date, whichever occurs first.

ARTICLE 5. **OBLIGATIONS OF BETHANY**

When funding is available, but no later than five (5) years after the Effective Date, Bethany shall commence construction of the Water Line in full conformance with all state and federal law, and applicable ordinances of the City, including but not limited to the Right-of-Way Management Ordinance found in Chapter 70 of Code of Ordinances,

City of Burleson, Texas. Construction of the Water Line shall conform to the requirements found in _____. The Water Line shall be completed within _____ after commencement of construction.

ARTICLE 6. **OBLIGATIONS OF THE EDC**

Provided Bethany is in full conformance with the material terms of this Agreement, the EDC shall pay to Bethany Eight Hundred Thousand Dollars (\$8,000,000.00) within thirty (30) days after completion of the Water Line and a _____ is issued by _____ verifying Water Line is fully functional and capable of providing pressure sufficient for fire suppression for buildings over 6,000 square feet.

ARTICLE 7. **AUTHORITY; COMPLIANCE WITH LAW**

- 7.01 Bethany hereby represents and warrants to the City that its has full lawful right, power, and authority to execute, deliver, and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by the Bethany Board of Directors and this Agreement constitutes the legal, valid, and binding obligation of Bethany Board of Directors, and is enforceable in accordance with its terms and provisions.
- 7.02 Notwithstanding any other provision of this Agreement, Bethany shall comply with all federal, state, and local laws.
- 7.03 To the extent applicable to Bethany, during the term of this Agreement, Bethany agrees not to knowingly employ any undocumented workers at the Water Line, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Bethany shall repay the amount of the EDC contributions received by Bethany as of the date of such violation within one hundred twenty (120) business days after the date Bethany is notified by the EDC of such violation, plus interest at the rate the City is paying on the most recent issuance of bonded indebtedness prior to Bethany's or violation of this section.

ARTICLE 8. **DEFAULT AND REMEDIES**

- 8.01 Default by Bethany. In the event: (i) Bethany fails to fulfill its obligations under Article 4 of this Agreement; or (ii) Bethany materially breaches any of the material terms and conditions of this Agreement, then Bethany after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of such a default, the EDC shall give Bethany written notice of such breach and/or default, and if Bethany has not cured such breach or default within

ninety (90) days after receipt of such notice, the EDC may terminate this Agreement by written notice to Bethany, and the EDC shall have no further obligation to Bethany.

- 8.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by EDC.

ARTICLE 9. **RIGHT OF OFFSET**

Bethany agrees that, subject to the provision of Notice by the EDC and 60-day period following receipt of Notice in which Bethany may respond or act, the EDC may offset the amount of incentives due to Bethany under Article 5 for any calendar year under this Agreement against any amount which is: (i) lawfully due to the EDC from Bethany, and (ii) not subject to challenge by Bethany in a court of competent jurisdiction by Bethany.

ARTICLE 10. **FORCE MAJEURE**

Performance of Bethany's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Bethany's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

ARTICLE 11. **ASSIGNMENT**

Bethany may not assign any part of this Agreement without consent or approval by the EDC.

ARTICLE 12. **MISCELLANEOUS MATTERS**

- 12.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

- 12.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The EDC (including its past, present and future officers, elected officials, directors, employees and agents of the EDC) does not assume any responsibility to any third party in connection with Bethany's construction of the Water Line.
- 12.03 Applicable Law and Venue. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of the City, as amended, and all applicable state and federal laws. This Agreement is performable in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas. Venue for any action arising under this Agreement shall lie in the State District Courts of Johnson County or if in federal court, the 5th Circuit Federal District Court.
- 12.04 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.
- 12.05 Counterparts Deemed Original. 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.
- 12.06 Relationship of Parties. The parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either party be an agent, representative, trustee, or fiduciary of the other. Neither party shall have any authority to bind the other to any agreement.
- 12.07 Governmental Powers. By execution of this Agreement, the EDC does not waive or surrender any governmental immunities, powers or rights.
- 12.08 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 12.09 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and

except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

- 12.10 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one (1) business day after depositing, with such an overnight courier service or (c) two (2) business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

Bethany: Bethany Special Utility District
138 S. CR 810
Alvarado, TX 76009
Attn: _____

EDC: Board President
Burleson Economic Development Corporation
141 West Renfro
Burleson, Texas 76028

With a copy to: Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, Texas 76107

- 12.11 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

- 12.12 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

- 12.13 Texas Government Code Verifications. To the extent the following statutes are applicable to Bethany, Bethany verifies and certifies that it does not and during the duration of this Agreement will not:

A. do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270, as amended;

- B. boycott Israel as that term is defined in Texas Government Code Section 808.001 and Chapter 2271, as amended;
- C. discriminate against a firearm entity or firearm trade association as defined in Texas Government Code Chapter 2274, as amended;
- D. Operate as a foreign owned or controlled company in connection with a critical infrastructure project as defined in Texas Government Code Chapter 2275, as amended; or
- E. boycott energy companies as defined in Texas Government Code Section 809.001 and Chapter 2276, as amended.

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

BURLESON ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on _____, 2024 by _____, the _____ of the Burleson Economic Development Corporation, on behalf of said entity.

[Notary Seal]

Notary Public, State of Texas

Bethany Special Utility District

By: Tommy W. Head
Tommy Head, President

Date: 8-28-24

STATE OF TEXAS
COUNTY OF Johnson

This instrument was acknowledged before me on August 28th, 2024 by Tommy Head, the President of Bethany Special Utility District,, on behalf of said entity.

[Notary Seal]

Laura Aguirre
Notary Public, State of Texas

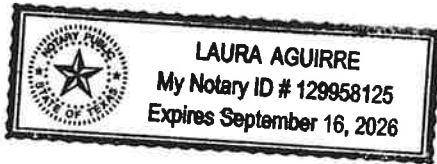
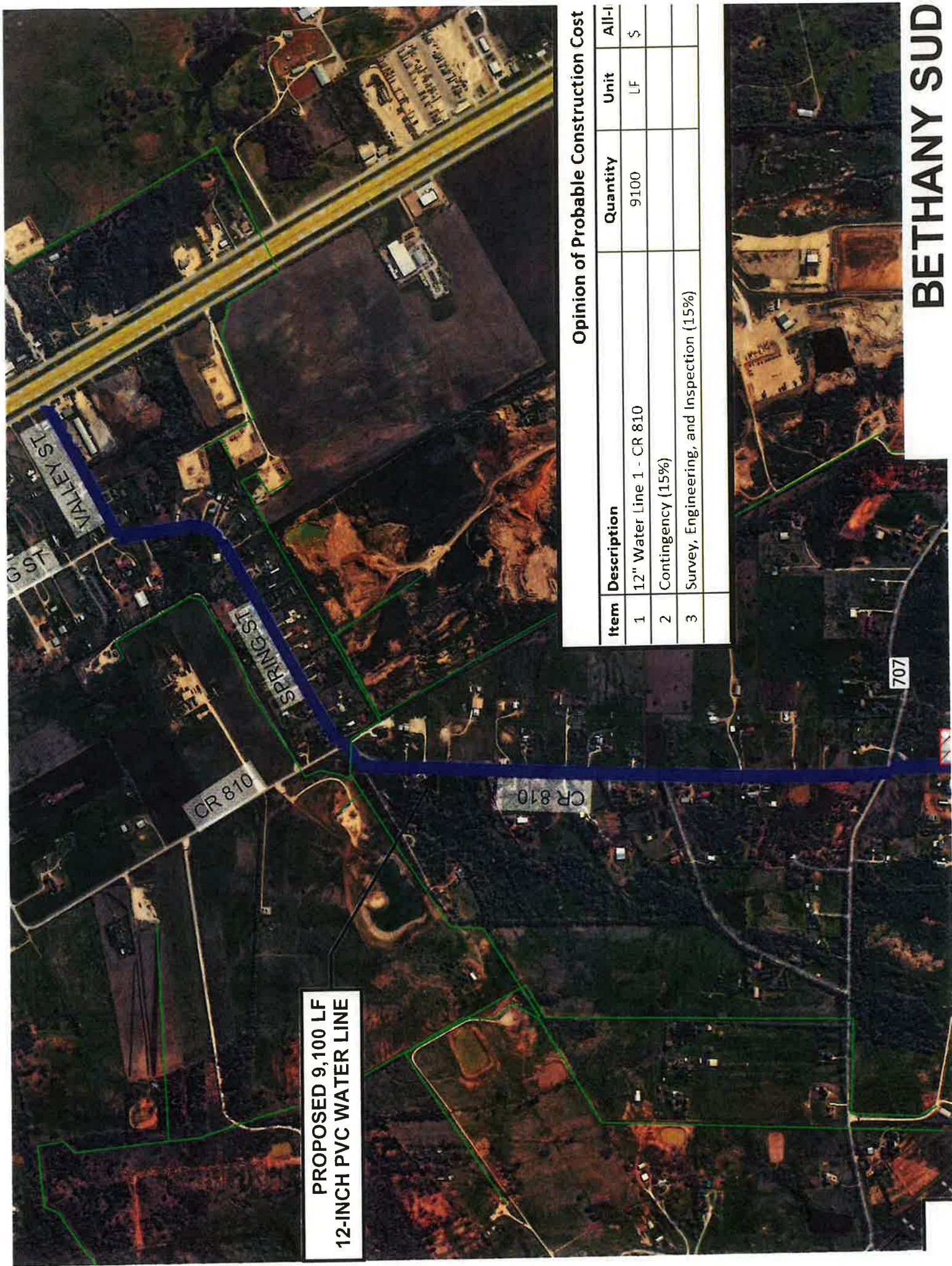


Exhibit A

Depiction of The Area



**PROPOSED 9,100 LF
12-INCH PVC WATER LINE**

Opinion of Probable Construction Cost

Item	Description	Quantity	Unit	All-i
1	12" Water Line 1 - CR 810	9100	LF	\$
2	Contingency (15%)			
3	Survey, Engineering, and Inspection (15%)			

BETHANY SUD

To: City of Burleson Economic Development Corporation

From: Tanner Underwood, PE

Date: August 16, 2024

Dunaway #: 6997.008

Re: Bethany SUD IH-35W Corridor Fire Flow Capacity Evaluation

Introduction

Bethany Special Utility District (SUD) is a rural water utility providing service generally between the cities of Alvarado, Burleson and Keene in Johnson County, Texas. Development has grown south along the Interstate Highway (IH) 35W corridor from Burleson, and in recent years has begun to enter the approximate 4 miles of frontage that lies within Bethany SUD's service area. Commercial and industrial developers along the IH-35W corridor are requesting Bethany SUD provide fire flows in excess of 1,500 gallons per minute (gpm), an amount which the rural water district can sustain with the implementation of a critical piece of infrastructure discussed herein.

System Evaluation

The Bethany SUD water distribution system was evaluated for the provision of fire flow to the IH-35W corridor. Fire flow capacity is defined as the available flow from a fire hydrant with a minimum residual pressure of 20 pounds per square inch (psi). Currently, with the 8" or smaller pipelines near the northern boundary of the system, the modeled fire flow capacity is approximately 500 gpm, well below the amount being requested.

Hydraulic Analysis

Hydraulic analysis utilizing Autodesk Infowater Pro was conducted to determine improvements necessary to extend the requested fire flows to the IH-35W corridor. The analysis concluded that a 12" diameter water line would be required to be extended North along County Road 810 from the elevated storage tank located at the intersection of County Road 810 and County Road 707 to IH-35W, depicted in the Exhibit A attached. The system wide model, which was calibrated in late 2021, indicates that with the proposed 12" water line extension approximately 2,600 gpm of fire flow is available at the County Road 810 and IH-35W intersection.

Recommendation

Due to the development activity and interest along the IH-35W corridor in Bethany SUD's water service area, it is recommended that the 12" water line extension proposed be constructed to facilitate growth in the area. As development grows south, it is anticipated that individual developers would extend the 12" water line south along the IH-35W frontage, eventually looping the 12" water line at County Road 707 and ultimately US 67. Anticipated total project costs are included on Exhibit A.

If you should have any questions, please contact me.

Best Regards,



Jonathon T. Underwood, P.E.
Discipline Lead | Dunaway, LLC
D: 817-335-2937
E: tunderwood@dunaway.com



Exhibit B

Depiction of The Water Line