



City of Sandy

Agenda

City Council Meeting

Meeting Date: Monday, November 2, 2020

Page

1. MEETING FORMAT NOTICE

The City Council will conduct this meeting electronically using the Zoom video conference platform. Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. See the instructions below:

- To login to the electronic meeting online using your computer, click this link: <https://us02web.zoom.us/j/88691665081>
- If you would rather access the meeting via telephone, dial (253) 215-8782. When prompted, enter the following meeting number: 886 9166 5081
- If you do not have access to a computer or telephone and would like to take part in the meeting, please contact City Hall by Friday October 30 and arrangements will be made to facilitate your participation.

2. CITY COUNCIL WORK SESSION - 6:30 PM

- 2.1. Multi-Family and Manufactured Home Park Tenant Utility Bill Assistance / Pandemic Impact to Utility Funds
[Staff Report](#)

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3. CITY COUNCIL REGULAR MEETING - 7:00 PM

4. PLEDGE OF ALLEGIANCE

5. ROLL CALL

6. CHANGES TO THE AGENDA

7. PUBLIC COMMENT

The Council welcomes your comments at this time. Please see the instructions below:

- If you are participating online, click the "raise hand" button and wait to be recognized.
- If you are participating via telephone, dial *9 to "raise your hand" and wait to be recognized.

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[Award CM/GC Contract for Collection System Rehabilitation Project - Pdf](#)

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11. COMMITTEE /COUNCIL REPORTS

12. ADJOURN



Staff Report

Meeting Date: November 2, 2020

From Mike Walker, Public Works Director
Multi-Family and Manufactured Home Park Tenant Utility Bill

SUBJECT: Assistance and Pandemic Impact to Utility Funds

BACKGROUND:

Customer Assistance Program - The City adopted the Utility Bill Assistance Program in February of this year. The program applies only to the sewer portion of the bill for utility customers who meet the income guidelines. We have approximately 35 customers in the program. The program was reviewed by the Council in May. Since the program only applies to customers, tenants of multi-family buildings or manufactured home parks who may meet the income guidelines could be subject to rent increases as a result of the increased sewer rates but cannot take advantage of the assistance program. In August staff sent out 90 surveys to landlords and property managers of multi-family buildings and manufactured home parks. We received responses from 9 customers. The results of the survey are attached. In spite of the low response rate there are a few insights from this information:

- The number of landlords or property managers responding (56%) that have adjusted their rents to cover the increased sewer rates is about the same as those who have not (44%)
- About half of the respondents (44%) plan to adjust rents in the next six months to account for the increased sewer rates
- 56% of landlords/property managers responding accept housing vouchers from prospective and current tenants (these vouchers include a subsidy for sewer service)
- 22% of manufactured home park landlords/property managers responding meter the individual home spaces and charge tenants for utility service based on water consumption
- About 1/3 of respondents with building constructed before 1993 would be willing to install water saving devices in their units if supplied at no cost by the City
- Most respondents would not install low-flush toilets even if a \$85/toilet rebate was provided
- Based on the Clackamas County Housing Authority's 2020 fair market rent figures about 2/3 of respondents charge below-market rates for their units

Since the sewer rate increase in February we have heard from one multi-family resident and one manufactured home park resident regarding eligibility for the customer assistance program.

Suspension of late fees and service terminations during Pandemic - Currently we have about 221 accounts (209 Residential, 3 Multi-family and 9 Commercial / Industrial) that are in arrears since the City suspended late fees and service termination for non-payment in March. The total amount in arrears is \$102,100.70; this includes Water, Sewer, Storm, SandyNet and the Public Safety Fee. The duration of the past due bills range from 240 to 30 days. Sandy is not unique in this instance. Most utilities have suspended late fees and service termination for non-payment during the pandemic. Some agencies have developed customer assistance programs or subsidies for past due accounts. The following table summarizes the policies and procedures in place at other Cities and agencies.

Agency	Suspended Service Termination for Non-Payment	Delayed rate and/or SDC Changes	Impact on Revenue	Customer Assistance Program	Delinquent Accounts	Comments
Beaverton	Yes	Yes, will re-evaluate in November	Minimal			
Oak Lodge Water Services	Yes	Yes, (3% planned, 0.5% implemented to fund customer assistance program)	Commercial consumption down, slight increase in residential consumption	Payment plan defers payments for up to 6 months, on-time payments for the balance receive 10% discount, temporary residential relief of 50% of bill for two billing cycles, up to \$500 discount for commercial customers		
Portland Water Bureau	Yes, also re-established service for accounts shut-off for non-payment pre-Covid			Up to \$1M in utility bill credits to small businesses affected by shutdown		
Rockwood PUD	Yes		Tracking monthly		Direct calling all delinquent customers to offer	

					payment assistance	
Tualatin Valley Water District	Suspended shut-offs and late fees also re-established service for accounts shut off for non-payment pre-Covid		Water revenue up slightly, no negative impacts yet but expects that to change	Pandemic-specific program in development		Updating billing and collections process to address impacts of shut-off and late fee suspension
Clackamas River Water	Yes	Yes, until November				
City of Tualatin	Yes		Minimal			Approximately 200 accounts in shut-off status
City of Tigard	Until December, 2020			\$40/month credit if there is unemployed person in household until 12/2020		
Lake Oswego	Yes		Minimal	In development		
Hillsboro	Yes		# of customers more than 120 past due increasing		Calling customers to set up payment plans	Approximately 50 multi-family accounts delinquent
Gresham	Yes				Calling customers to set up payment plans	700 accounts in shutoff status

BUDGETARY IMPACT:

The amounts in arrears total \$33,036.03 in the Water Fund (1.0% of budgeted rate revenue); \$36,878.76 in the Sewer Fund (1.25% of budgeted rate revenue); \$2,463.71 in the Stormwater Fund (0.49% of budgeted rate revenue); \$27,396.40 for SandyNet service (0.74% of budgeted rate revenue) and \$2,325.80 (0.45% of predicted revenue) for the Public Safety Fee.

RECOMMENDATION:

Staff recommends that we do not include multi-family and manufactured home park tenants in the Customer Assistance program until we have information demonstrating that rents have been adjusted to account for the increased sewer rates. During the pandemic multi-family and manufactured home park rental income has been affected by the moratorium on evictions. We should obtain more information from landlords and property managers on past due rents, sub-metered rates and below market rental rates before the program is expanded.

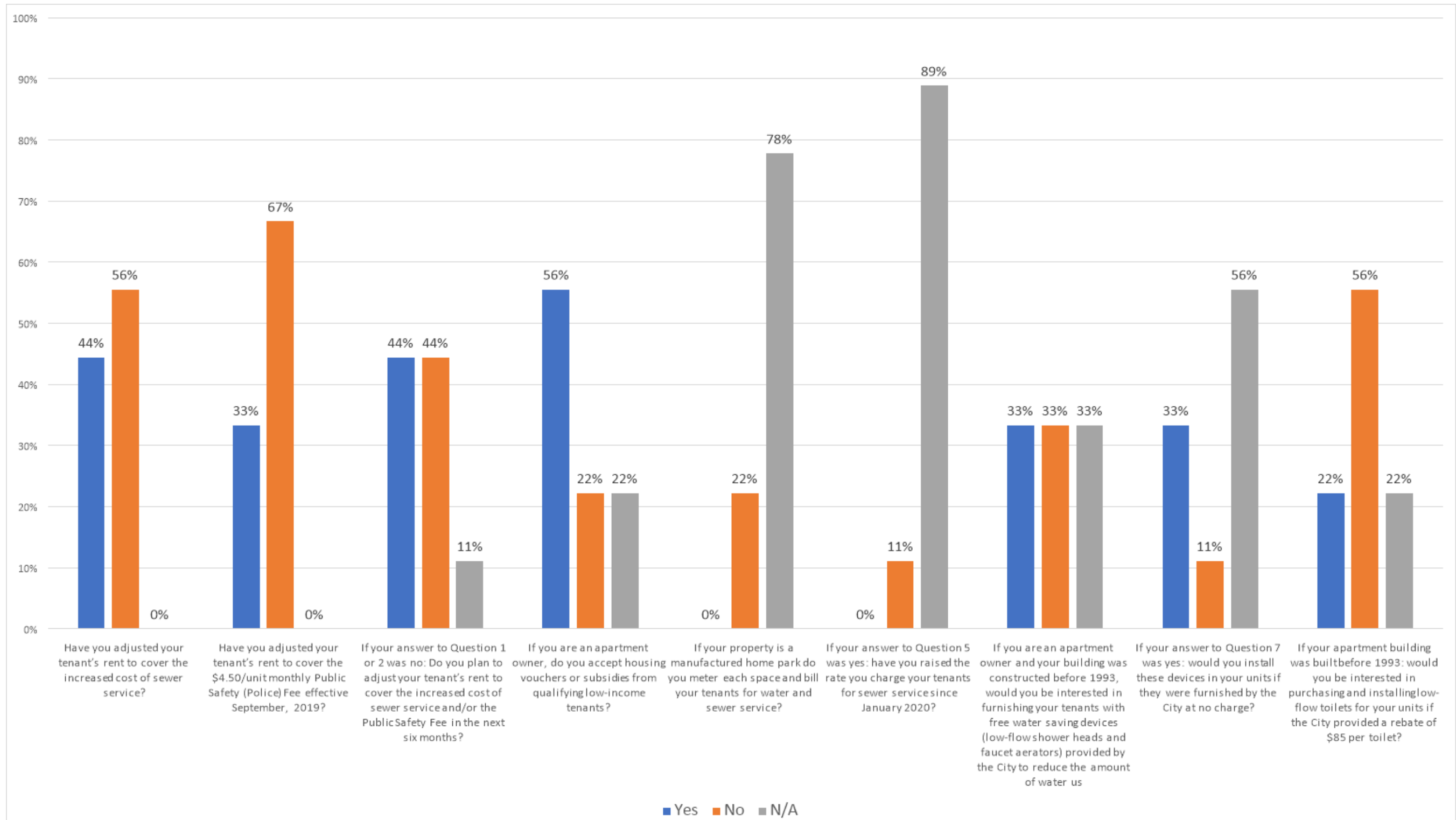
For past due utility accounts staff recommends that we:

- Continue to forgo all late fees in the short term (these total about \$2,700 per month)
- Develop criteria for returning to our past practice of shut-offs for past due balances and contact customers directly to work out payment plans with discounts for clearing up past due balances
- Return at a later meeting with options for the Council to consider.

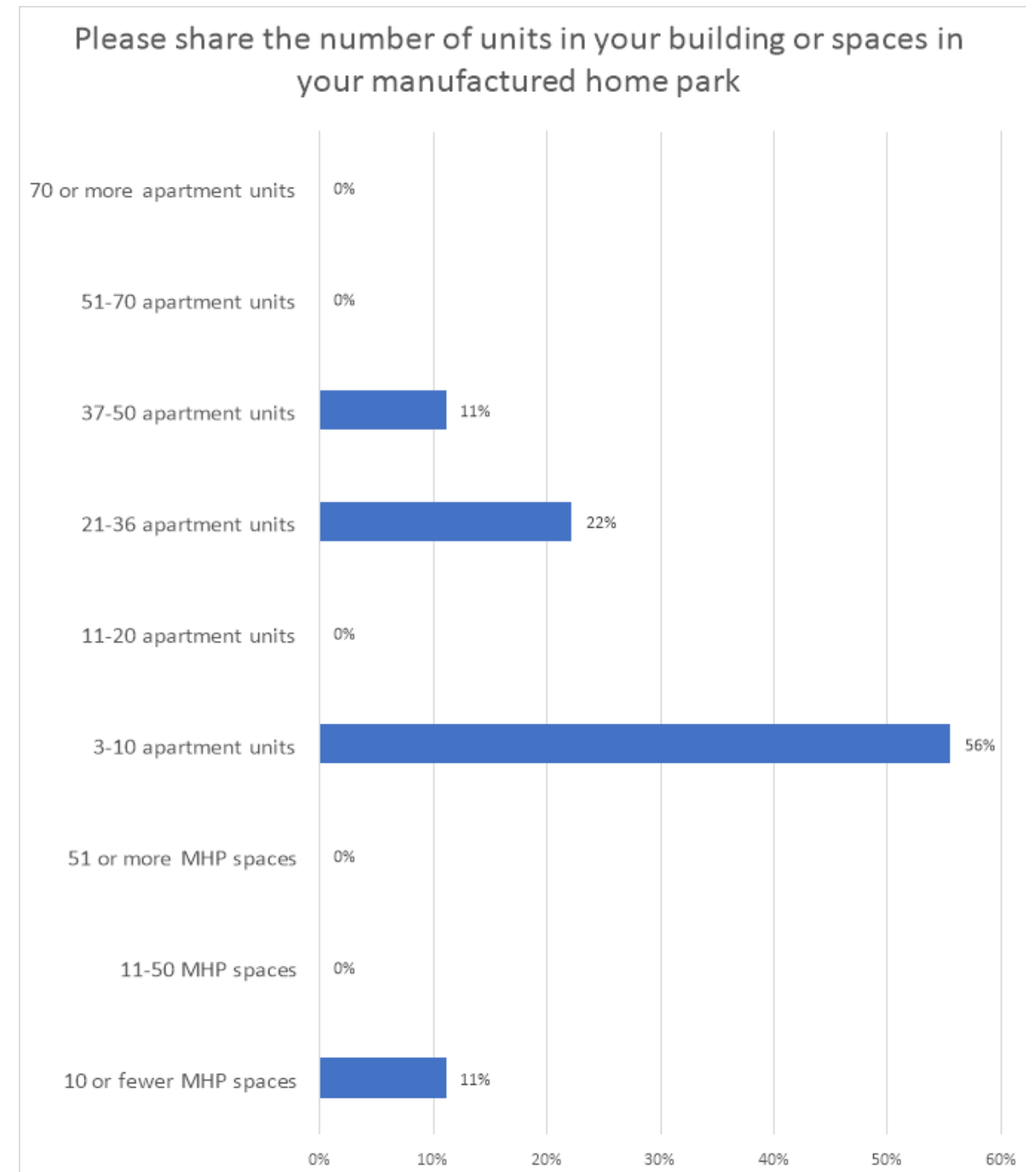
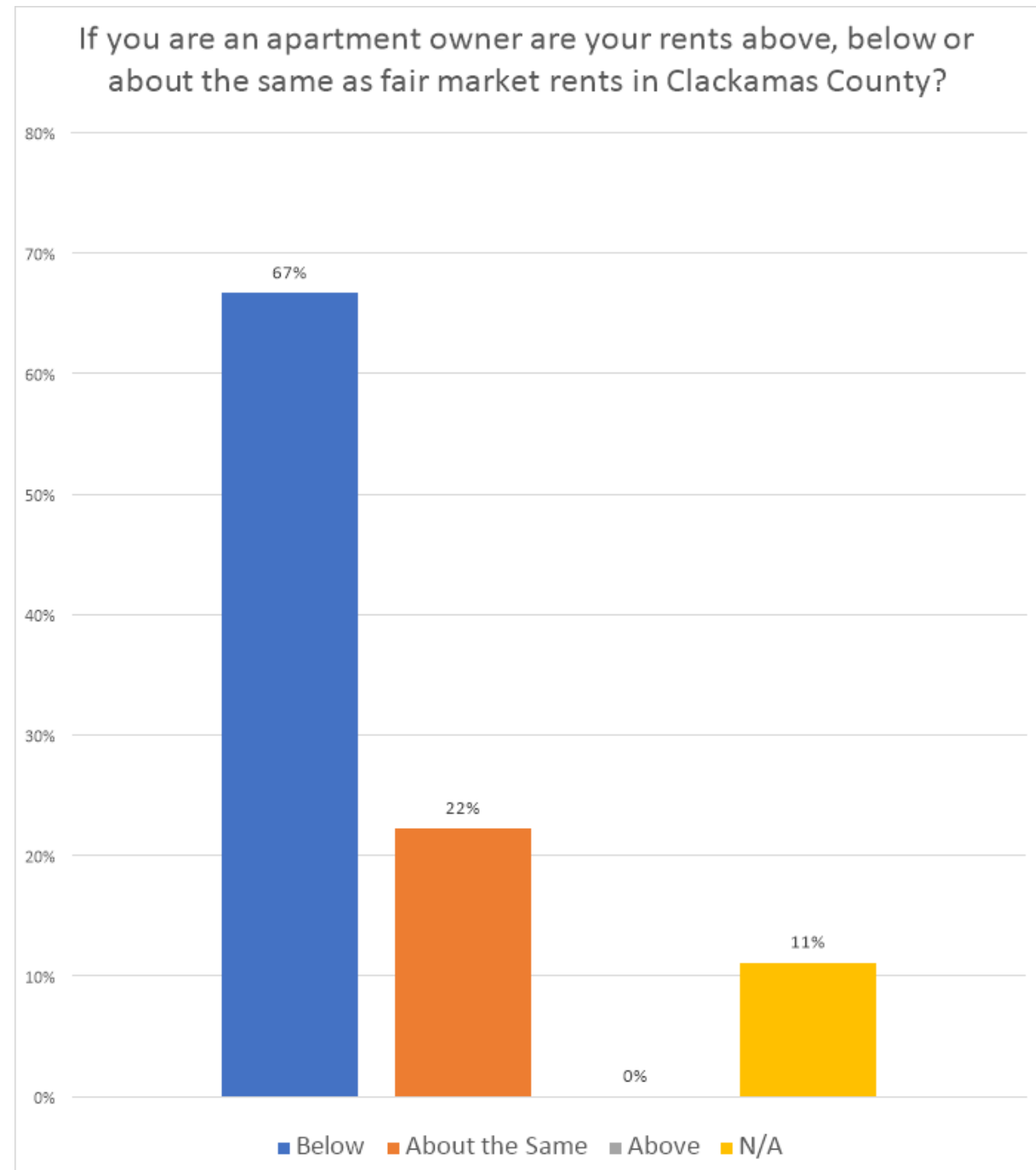
LIST OF ATTACHMENTS/EXHIBITS:

MHP and MFD Property Manager Owner Survey

Manufactured Home Park and Apartment Property Manager / Owner survey



Manufactured Home Park and Apartment Property Manager / Owner survey





MINUTES
City Council Meeting
Monday, October 19, 2020 6:00 PM

COUNCIL PRESENT: Stan Pulliam, Mayor, Jeremy Pietzold, Council President, John Hamblin, Councilor, Laurie Smallwood, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, and Bethany Shultz, Councilor

COUNCIL ABSENT:

STAFF PRESENT: Jordan Wheeler, City Manager, Jeff Aprati, City Recorder, Kelly O'Neill, Development Services Director, Greg Brewster, IT/SandyNet Director, Tyler Deems, Finance Director, Andi Howell, Transit Director, David Doughman, City Attorney, Mike Walker, Public Works Director, and Ernie Roberts, Police Chief

MEDIA PRESENT: Sandy Post

1. MEETING FORMAT NOTE

The City Council conducted this meeting electronically via the Zoom platform. A video recording of the meeting is available on the City's YouTube channel:
https://www.youtube.com/channel/UCbYEclgC6VW_mV2UJGyvYfg

2. CITY COUNCIL WORK SESSION - 6:00 PM

2.1. Comprehensive Plan Future Steps

8 - 14

Staff Report - 0239

The **Development Services Director** referred to the staff report, which outlines important considerations for updating the Comprehensive Plan (Comp Plan). He noted that limited grant funding may be available through the State technical assistance program. His presentation slides are attached to these minutes. He noted that the Comp Plan was last revised in 1997, and that substantial growth has occurred in the city since that time. He stated that the amount of public engagement/outreach the Council desires for this process will impact the required timeline and funding. He stated that the city may need to hire a consultant to assist with the process, depending on the scope approved by the Council. He noted that the total cost of the update could range from \$200,000 to \$350,000.

Mayor Pulliam asked whether the cost of the project could be split between multiple budget cycles. The **City Manager** confirmed this is the case, and noted that the bulk of the public engagement work would be concentrated in the first year. The **Mayor** proposed seeking funding assistance from the Ford Family Foundation.

Councilor Lee asked whether the results of recent planning studies could be used during the Comp Plan update process, thus reducing the total amount of work required. The **Development Services Director** agreed that this is the case, but that HB 2003 requires the city to perform some of that work again by 2024. He stated there may be some funding assistance available for these purposes.

Council President Pietzold asked whether the 1997 update was performed in-house. The **Development Services Director** stated he was unsure, though he noted that several other long-range plans were updated at approximately the same time. **Council President Pietzold** noted that the previous planning effort predicted the city would grow much faster than it ultimately did. The **Development Services Director** noted the importance of ensuring the goals and policies of the updated Comp Plan are implemented through the City's Development Code.

Councilor Lee asked whether HB 2001 requires any special zoning. The **Development Services Director** stated he believes it only requires modification to the Development Code, though the state will be consulted during the update process to ensure compliance.

The **City Manager** stated that the scope of the update should be discussed during the goal setting session in January.

Council President Pietzold proposed the idea of hiring a full time temporary staff member to assist in managing the update process. The **City Manager** agreed that could be beneficial, but noted that budget impacts would need to be considered.

Councilor Lee noted some cities have used retired professionals to assist with such work.

Mayor Pulliam thanked staff, and expressed support for engaging the public in a community visioning process.

[Comprehensive Plan presentation](#)

2.2. **Coronavirus Relief Funds**

Staff Report - 0331

The **Finance Director** summarized the staff report, which addresses the disposition of the \$349,342.11 in CARES Act funding allocated to the City. Approximately \$225,000 has been spent thus far, staff believes that another \$20,000 will be needed over the next two months to cover any additional personal protective equipment, cleaning/sanitization of public spaces, payroll costs associated with employees who are required to quarantine, and any other unanticipated expenses. This leaves approximately \$100,000 in remaining funds, which must be spent by the end of the year. Several options exist for the Council's consideration, including small business interruption grants, grants to landlords who have been impacted by COVID-19 (due to moratoriums), and grants to community members who have been impacted by COVID-19 for payment towards utility balances. He noted that CARES Act funds cannot be used for direct revenue replacement.

Mayor Pulliam asked whether grants to assist with utility balances could be the size of the average outstanding debt. The **Finance Director** noted that moving in this direction should include a discussion of reinstating shutoff policies for non-payment, due to the large and growing outstanding balances on some accounts.

The **Finance Director** referred to an existing utility assistance program at the City of Hillsboro that could serve as a possible example, which involves a partnership with a local non-profit entity for management purposes. He suggested a similar arrangement could work for Sandy.

Councilor Lee asked about possible rent assistance for businesses. The **Finance Director** agreed this is a possibility, and noted that different hybrids of the suggested options could be pursued.

Council President Pietzold ask how the City could ensure that funding assistance intended for utility payments is actually applied for that purpose. The **Finance Director** replied that proof of adverse impact from the pandemic could be required ahead of time. Staff require legal advice on the possibility of sending funds directly to utility companies, due to the fact that applying relief funds to city utility accounts could potentially be construed as revenue replacement. Partnering with an outside organization to administer the program could potentially mitigate this issue.

Councilor Shultz expressed concern over applying funds directly to city utility accounts, as well as the short timeline to use the funds. She suggested that a business assistance program, which has already been done earlier in the year, could potentially be more prudent. She stated that if utility assistance is pursued, a third party organization would indeed need to be engaged. **Mayor Pulliam** noted that most of the likely organizations which which the City could partner have limited staff capacity.

The **Finance Director** noted that reinstating shutoff policies could be an additional factor ensuring that relief funds are used as intended.

Councilor Smallwood expressed support for keeping funds within the community, either in the form of business assistance or rent assistance.

Councilor Lee asked about the possibility of spending funds in December for bills due in January. Staff committed to looking into this issue.

Councilor Exner expressed support for direct assistance for businesses and/or individuals, rather than for utility bills.

Council President Pietzold asked whether any past due city utility accounts are for multifamily dwelling complexes. The **Finance Director** stated that he could assemble this data in the near future. **Council President Pietzold** stated that some local businesses are likely to close due to the pandemic, and that assistance to such businesses could be helpful.

Councilor Exner noted that thought would need to be given to how to allocate business grants in a manner that would be most effective.

Mayor Pulliam expressed support for the small business interruption grant concept. He suggested that the City could move forward with these now, and revisit the question of past due utility accounts at a future time. The ad hoc business grant committee used earlier this year could be engaged again to develop grant parameters and application evaluation criteria. The Council expressed its consensus for this approach.

Councilor Lee expressed support for providing assistance for local charities such as Sandy's Helping Hands, the Sandy Community Action Center, and AntFarm. The **Finance Director** noted that COVID-19 related losses need to be demonstrated to receive CARES Act funds, and that staff would look into this issue. He proposed that such organizations would need to go through the same application process as other entities. Similarly, landlords and property

owners who run rental businesses could submit applications for the committee's consideration. The Council expressed support for this approach, and stated that the committee would need to determine whether to issue new grants to entities that received assistance in the first round.

3. CITY COUNCIL REGULAR MEETING - 7:00 PM

4. Pledge of Allegiance

5. Roll Call

6. Changes to the Agenda

7. Public Comment

None

8. Consent Agenda

8.1. City Council Minutes - 5 Oct 2020

8.2. Transit Vehicle Purchase Authorization

Staff Report - 0327

Moved by John Hamblin, seconded by Carl Exner

Approve the Consent Agenda

CARRIED. 7-0

Ayes: Stan Pulliam, Jeremy Pietzold, John Hamblin, Laurie Smallwood, Jan Lee, Carl Exner, and Bethany Shultz

9. New Business

9.1. CM/GC Contract for the Collection System Rehabilitation Project

Staff Report - 0330

The **Public Works Director** stated that a recommendation to award the contract was prepared based on the results of the bid evaluation process. However, one of the bidders has filed a formal protest. Based on the advice of the **City Attorney**, staff now recommends the Council defer awarding the contract until the protest process is resolved. The Council accepted this recommendation and will consider the matter at a future meeting.

10. Report from the City Manager

The **City Manager** noted the City submitted an application for WIFIA funding to assist with the wastewater system improvement project. He thanked those who assisted in the effort and expressed optimism regarding the City's prospects for securing funding. He mentioned the Parks Master Plan virtual open house, the input deadline for which has been extended.

11. Committee /Council Reports

Councilor Shultz: none

Councilor Exner: encouraged participation in the parks master plan input process. He noted the recent tour of Roslyn Lake attended by Rep. Williams. He stated that the Arts Commission will forego meetings until 2021.

Councilor Lee: stated that much of Sandy's population growth took place under previous city leadership, stating that the city's growth rate last year was 1.93%, and was less than that in the two years prior. She stated that in contrast, in 2016 the growth rate was double the current rate, and in 2010 it was triple. She also mentioned the emerging possibility of generating hydro power in pipelines - technology featured at the recent LOC conference.

Councilor Hambin: none

Councilor Smallwood: noted the recent Parks and Trails Advisory Board meeting, at which the new code of conduct was discussed.

Council President Pietzold: mentioned the recent Economic Development Committee meeting, at which potential Urban Renewal projects were discussed. The 362nd / Bell extension project was also discussed.

Mayor Pulliam: thanked **Councilor Exner** and city staff for assisting with the Roslyn Lake tour. He stated that the major wastewater improvement projects underway will be this council's legacy, and he praised the innovative thinking that led to the Roslyn Lake concept. He mentioned the upcoming Trick or Treat Trail organized by the Chamber of Commerce.

12. Staff updates

12.1. [Monthly Reports](#)

13. Adjourn

14. CITY COUNCIL EXECUTIVE SESSION

City Council
October 19, 2020

Following the adjournment of the regular meeting, the City Council met in executive session pursuant to ORS 192.660(2)(f) and (2)(h).

Mayor, Stan Pulliam

City Recorder, Jeff Aprati

Draft



Comprehensive Plan

Why complete an update to the Comprehensive Plan?

City Council set the following goal for the 2019-2021 biennium:
“Comprehensive Plan: Initiate an update of the city's
Comprehensive Plan.”

Review options and approve an implementation strategy to update the Comprehensive Plan. Depending on the implementation strategy, begin the public engagement process for the Comprehensive Plan update.

Why complete an update to the Comprehensive Plan?

Population Increase:

1997 – 5,091

2000 – 5,602

2010 – 9,651

2018 – 11,326

Now – close to 12,000

Timeline of the Comprehensive Plan



Anticipated cost

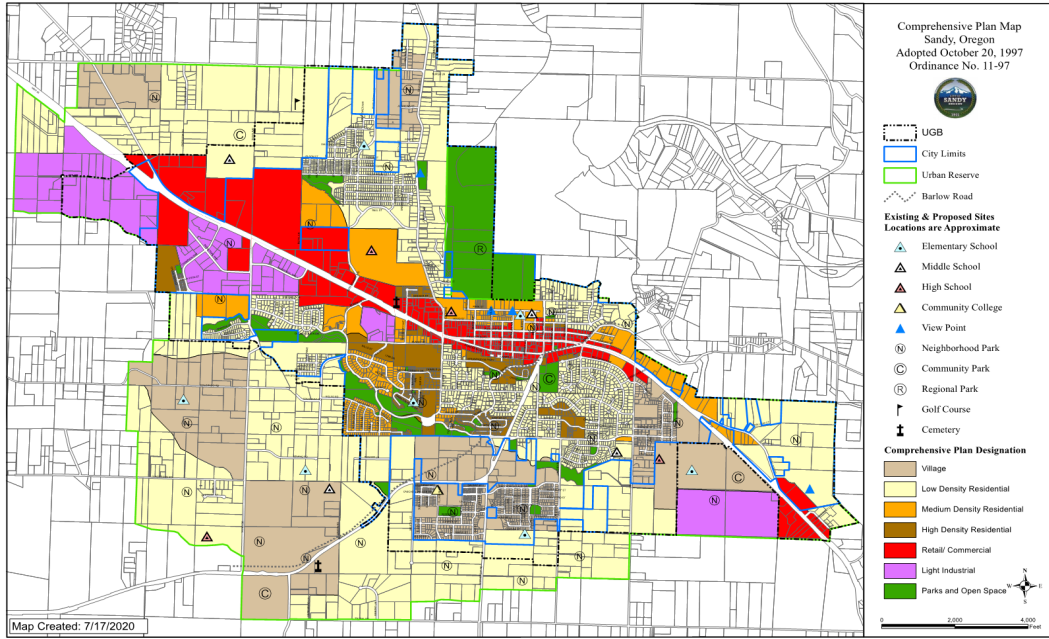
\$200,000 - \$350,000

DLCD Technical Assistance Grant: Up to \$70,000

Out of Pocket for the City of Sandy:

Between \$130,000 and \$280,000 if we receive the grant
from DLCDC

Existing Comprehensive Plan



Next Steps

Meet with the City Council in early 2021 to define the scope of the Comprehensive Plan and create a budget for inclusion in the 2021-2023 budget.





Staff Report

Meeting Date: November 2, 2020

From Mike Walker, Public Works Director

SUBJECT: Award CM/GC Contract for Collection System Rehabilitation Project

BACKGROUND:

City staff solicited proposals to provide Construction Manager / General Contractor services for the Collection System Rehabilitation Project on August 26th, Proposals were due by September 11th but we added another week for submittal due to the wildfire/smoke issues in early September. On September 18th we received six proposals which were reviewed and ranked by a team consisting of City staff and Leeway Engineering Solutions personnel. The top two firms (Emery & Sons and Oxbow Construction) were interviewed on October 9th. After interviews the top-ranked firm was Oxbow Construction of Troutdale. Oxbow has performed sewer rehabilitation work on numerous City of Portland projects similar in cost and scope to the work contemplated in Sandy. Oxbow's Phase I cost is approximately \$200,000.

After we issued the Notice of Intent to Award one of the respondents (MEI Group) filed a protest within the 7-day window. Leeway Engineering developed a response (attached) to the protest which was reviewed and edited by the City Attorney. This resolves the protest per the procedures in OAR 137-049-0450.

Upon completion of Phase I (cleaning and video inspection of mainline and lateral sewers) Oxbow will prepare a detailed plan and recommendations for site specific rehabilitation of mainline sewers and public and private lateral sewers to be performed in Phase II. City and consultant staff will review the detailed plan and negotiate a Guaranteed Maximum Price (GMP) and Scope of Work with Oxbow for Phase II services where the bulk of the sewer rehabilitation work will take place. The GMP and Scope of Work proposal for Phase II services will be submitted to the Council for review and approval sometime next spring.

BUDGETARY IMPACT:

This project will be funded with the proceeds from a State Revolving Fund (SRF) loan from the Department of Environmental Quality for work on public sewers and with the proceeds from a revenue bond for work on private property.

RECOMMENDATION:

Authorize City staff to enter into an agreement with Oxbow Construction for Phase I CM/GC services for the Collection System Rehabilitation Project.

SUGGESTED MOTION:

"I move to authorize staff to enter into an agreement with Oxbow Construction for Phase I CM/GC services for the Collection System Rehabilitation Project."

LIST OF ATTACHMENTS/EXHIBITS:

- CM/GC contract
- Oxbow Construction proposal
- Protest response

SECTION C. PROJECT EXHIBITS

General Conditions

Sample Contract

30% Predesign Documents

EXHIBIT A

City of Sandy, Oregon CONSTRUCTION MANAGER/GENERAL CONTRACTOR GENERAL CONDITIONS

CM/GC GENERAL CONDITIONS

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CM/GC GENERAL CONDITIONS

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

In the Contract Documents the following terms shall be as defined below:

ARCHITECT/ENGINEER, means the Person appointed by the City to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of City (under which City may delegate responsibilities of the City's Authorized Representative to the Architect/Engineer).

BENEFICIAL OCCUPANCY, means the point in time where the City will occupy a portion of the work for its intended use as defined by Substantial Completion, but prior to the Substantial Completion of the entirety of the Work (as in Phased Project completion).

CHANGE ORDER, means a written order issued by the City's Authorized Representative to the CM/GC requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 in administering the Contract, including City's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

CLAIM, means a demand by CM/GC pursuant to Section D.3 for review of the denial of CM/GC's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

CONTRACT, means the written agreement between the City and the CM/GC comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS, means the Solicitation Document and addenda thereto, the City of Sandy CMGC Contract form, CM/GC General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

CONTRACT PERIOD, as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

CONTRACT TIME, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

CM/GC, CM/GC means the Person awarded the Contract for the Work contemplated and is the same Person identified and referred to in the in the CM/GC Contract as the 'CM/GC'. May also be referred to as "Contractor" in the Contract Documents.

DAYS, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

DIRECT COSTS, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance; bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

CITY, means the City of Sandy, Oregon.

CITY'S AUTHORIZED REPRESENTATIVE, means those individuals identified in writing by the City to act on behalf of the City for this project. City may elect, by written notice to CM/GC, to delegate certain duties of the City's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

FINAL COMPLETION, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

FORCE MAJEURE, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

NOTICE TO PROCEED, means the official written notice from the City stating that the CM/GC is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, CM/GC shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to City in a suitable form.

OFFER, means an offer to complete a specific scope for a set price in connection with an invitation to bid and a proposal in connection with a request for proposals.

OFFEROR, means an entity that submits an Offer in connection with an invitation to bid and a proposer in connection with a request for proposals.

OVERHEAD, means those items which may be included in the CM/GC's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), and expenses of CM/GC's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office.

PERSON, means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

PLANS, means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

PUNCHLIST, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to City, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT, means an invitation to bid or request for proposal or request for quotes.

SPECIFICATION, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR, means a Person having a direct contract with the CM/GC, or another Subcontractor, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION, means the date when the City accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2. The Work shall not be considered Substantially Complete if items remaining to be completed cannot be completed without disruption to building occupants.

SUBSTITUTIONS, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the City's Authorized Representative. The decision of the City's Authorized Representative is final.

SUPPLEMENTAL GENERAL CONDITIONS, means those conditions that remove from, add to, or modify these General

Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

WORK, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Contract includes all labor, materials, transportation, equipment, expense and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The CM/GC shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- (1) Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date, including the GMP Amendment;
- (2) The Supplemental General Conditions;
- (3) The City of Sandy Construction Manager/General Contractor Contract Form;
- (4) The General Conditions
- (5) The Plans and Specifications
- (6) The Solicitation Document and any addenda thereto;
- (7) The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the City or City's Authorized Representative's interpretation in writing.

A.3.3 If the CM/GC finds discrepancies in, or omissions from the Contract Documents, or if the CM/GC is in doubt as to their meaning, the CM/GC shall at once notify the City or City's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the City's Authorized Representative. Responses to CM/GC's requests for interpretation of Contract Documents will be made in writing by City's Authorized Representative within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the City's Authorized Representative will be consistent with the intent of and reasonably inferable from the Contract Documents. CM/GC shall not proceed without direction in writing from the City's Authorized Representative.

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

- A.4.1 It is understood that the CM/GC, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The City will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the CM/GC as a result of the CM/GC's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the City, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- A.4.2 City shall make available to CM/GC, and CM/GC shall study, the results of such test borings and information that City has concerning subsurface conditions and site geology. CM/GC shall inform City of any other site investigation, analysis, study, or test conducted by or for CM/GC or its agents and shall make the results available to City upon City's request.
- A.4.3 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, CM/GC shall have the duty to make inquiry of the City and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.4 Any design errors or omissions noted by the CM/GC shall be reported promptly to the City's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.5 If the CM/GC believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the City's Authorized Representative in response to the CM/GC's notices or requests for information, the CM/GC must submit a written request to the City's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than twenty (20) business days after receipt by CM/GC of the clarifications or instructions issued. If the City's Authorized Representative denies CM/GC's request for additional compensation, additional Contract Time, or other relief that CM/GC believes results from the clarifications or instructions, the CM/GC may proceed to file a Claim under Section D.3, Claims Review Process. If the CM/GC fails to perform the obligations of Sections A.4.1 to A.4.3, the CM/GC shall pay such costs and damages to the City as would have been avoided if the CM/GC had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. CM/GC represents and warrants that it is not an officer, employee or agent of the City.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

CM/GC represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. CM/GC will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the CM/GC is subject to backup withholding, City will not withhold from such payments any amount(s) to cover CM/GC's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

- A.7.1 If this payment is to be charged against federal funds, CM/GC represents and warrants that it is not currently employed by the Federal Government. This does not preclude the CM/GC from holding another contract with the Federal Government.
- A.7.2 CM/GC represents and warrants that CM/GC is not an employee of the City for purposes of performing Work under this Contract.

SECTION B
ADMINISTRATION OF THE CONTRACT

B.1 CITY'S ADMINISTRATION OF THE CONTRACT

- B.1.1 The City's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The City's Authorized Representative will act on behalf of the City to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the City's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The City's Authorized Representative will visit the site at intervals appropriate to the stage of the CM/GC's operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The City's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The City's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the City and CM/GC shall endeavor to communicate with each other through the City's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the CM/GC. Communications by and with separate CM/GCs shall be through the City's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the CM/GC's Application for Payment, or unless otherwise stipulated by the City's Authorized Representative, the Architect/Engineer will review and certify the amounts due the CM/GC and will issue Certificates for Payment in such amounts.

B.2 CM/GC'S MEANS AND METHODS; MITIGATION OF IMPACTS

- B.2.1 The CM/GC shall supervise and direct the Work, using the CM/GC's best skill and attention. The CM/GC shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the CM/GC shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The CM/GC is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The CM/GC is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The CM/GC shall enforce strict discipline and good order among CM/GC's employees and other persons carrying out the Work. The CM/GC shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

B.3 MATERIALS AND WORKMANSHIP

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, CM/GC shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The CM/GC is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the CM/GC's expense.

- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the City's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the City's Authorized Representative does not relieve the CM/GC of responsibility for the Work in accordance with the Contract Documents. The review by City or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind is limited to a review for adequacy for the Work and is not approval for use by CM/GC in violation of any patent or other rights of any person or entity.
- B.3.4 CM/GC shall furnish adequate facilities, as required, for the City's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The CM/GC shall furnish Samples of materials for testing by the City's Authorized Representative and include the cost of the Samples in the Contract Price.
- B.3.6 CM/GC shall provide materials in sufficient quantities on hand at such times as to insure uninterrupted progress of Work and shall store materials properly and protect materials as required.
- B.3.7 For all materials and equipment specified or indicated in the Drawings, CM/GC shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. CM/GC shall furnish incidental items not indicated on Drawings, nor mentioned in the Specifications, that can be legitimately and reasonably inferred to belong to the Work described, or necessary in good practice to provide a complete assembly or system, as though itemized here in every detail. In all instances, CM/GC shall install material and equipment in strict accordance with each manufacturer's most recent published recommendations and specifications. CM/GC shall be responsible for appropriately sequencing the Work and for verification of suitability of prior work before subsequent construction activities.
- B.3.8 CM/GC shall coordinate submittal approvals and place orders for materials and/or equipment so that delivery of same will be made without delays to the Work. CM/GC shall, upon City's reasonable request, provide documentary evidence that orders have been placed.

B.4 PERMITS

CM/GC shall obtain all trade permits necessary to comply with specific trade permit requirements. All other permits shall be supplied by City.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

- B.5.1 CM/GC shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, CM/GC expressly agrees to comply with the following as applicable:
- (1) Title VI and VII of Civil Rights Act of 1964, as amended;
 - (2) Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
 - (3) the Health Insurance Portability and Accountability Act of 1996;
 - (4) the Americans with Disabilities Act of 1990, as amended;
 - (5) ORS Chapter 659A; as amended
 - (6) all regulations and administrative rules established pursuant to the foregoing laws; and
 - (7) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- B.5.2 CM/GC shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- (1) CM/GC shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).
 - (2) If CM/GC is performing work as a landscape contractor as defined in ORS 671.520(2), CM/GC must have a current, valid landscape contractor's license issued under ORS 671.560.
 - (3) If CM/GC is performing work as a Contractor as defined in ORS 701.005(2), CM/GC must have a current, valid construction contractor's license issued under ORS 701.026.
 - (4) CM/GC shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
 - (5) CM/GC will notify the City immediately if any license, permit, or certification required for performance of this Contract will cease to be in effect for any reason.
- B.5.3 Unless contrary to federal law, CM/GC shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the CM/GC.
- B.5.4 Unless contrary to federal law, CM/GC shall certify that each landscape contractor performing Work under this Contract holds a valid landscape contractor's license in accordance with ORS 671.560.
- B.5.5 The following notice is applicable to Contractor or CM/GC who performs excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Because the Work will include demolition work, pursuant to ORS 279C.510 the CM/GC shall salvage or recycle construction and demolition debris, if feasible and cost effective.
- B.5.7 Failure to comply with any or all of the requirements of B.5.1 through B.5.6 shall be a breach of Contract and constitute grounds for Contract termination. CM/GC will bear all costs arising from Work performed that it knew, or through exercise of reasonable care should have known, was contrary to any applicable laws, ordinance, rules, or regulations.

B.6 SUPERINTENDENCE /PROJECT MANAGEMENT

- B.6.1 CM/GC shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the City and who shall represent the CM/GC on the site and who will be empowered to obligate the CM/GC. Directions given to the superintendent by the City's Authorized Representative shall be confirmed in writing to the CM/GC. The Superintendent shall be fluent in both written and verbal English and be able to effectively communicate with the City's Representatives
- B.6.2 The Superintendent, Project Manager and Project Engineer/Assistant Project Manager (if applicable) shall not be removed from the Project by the CM/GC without the prior written authorization of the City. Requests to replace personnel must be made a minimum of thirty (30) calendar days prior to the proposed date of replacement.
- B.6.3 CM/GC shall at all times enforce strict discipline and good order among its subcontractors and employees and shall not employ or work any unfit person, or anyone not skilled in work assigned to that person. City may require the CM/GC to permanently remove any of its officers, agents, employees, or subcontractors from all City properties in cases where City determines in its sole discretion that removal of such is in City's best interests. CM/GC shall not employ any person whom the City may deem incompetent or unfit on the Project except with the prior written consent of the City. City may require removal and replacement of any or all construction superintendents, project managers, foreman, or other staff from the Project upon ten (10) business days written notice to the CM/GC.

B.6.4 CM/GC shall maintain at least one (1) set of reports on the Project prepared by CM/GC's employee(s) present on site, and which includes following information: a brief description of all Work performed on that day; a summary of all pertinent events and/or occurrences on that day including records of all tests and inspections; a list of all subcontractor(s) working on that day; a list of each CM/GC employee working on that day; the total hours worked for each employee; a complete list of all equipment on the Project that day, whether in use or not; the time Work commenced and ended; weather conditions; accidents or injuries; and Work progress made for that day ("Daily Job Reports"). CM/GC shall keep the Daily Job Reports current and in good order and shall make current copies available to City upon request.

B.7 INSPECTION

B.7.1 City's Authorized Representative and project team shall have safe access to the Work at all times.

B.7.2 Inspection of the Work will be made by the City's Authorized Representative and its' designees at its discretion. The City's Authorized Representatives will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the City's Authorized Representative, shall be removed and replaced at the CM/GC's expense.

B.7.3 CM/GC shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the CM/GC shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The CM/GC shall give the City's Authorized Representative timely notice of when and where tests and inspections are to be made so that the City's Authorized Representative(s) may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CM/GC and promptly delivered to the City's Authorized Representative(s).

B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the City's Authorized Representative(s) may be ordered removed at the CM/GC's expense.

B.7.5 If directed to do so any time before the Work is accepted, the CM/GC shall uncover portions of the completed Work for inspection. After inspection, the CM/GC shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the City's Authorized Representative, the uncovering and restoration shall be done at the CM/GC's expense. If the Work uncovered is acceptable and was done with sufficient notice to the City's Authorized Representative(s), the uncovering and restoration will be paid for as a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the City's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the CM/GC's expense.

(1) CM/GC shall be granted one (1) re-inspection for each re-inspection required by the Contract Documents. Additional inspections required beyond the initial and re-inspection shall be the responsibility of the CM/GC. The City's Testing and Inspection firm shall not unreasonably require re-inspections.

B.7.7 When the United States government participates in the cost of the Work, or the City has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the CM/GC, through the City's Authorized Representative.

B.8 SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 CM/GC shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the City's Authorized Representative access thereto.

B.9.2 CM/GC shall retain and the City and its duly authorized representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of CM/GC which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in a dispute resolution process, CM/GC shall retain all such records until all disputes are resolved. The City and/or its agents shall continue to be provided full access to the records during any dispute resolution process.

B.10 WAIVER

Failure of the City to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the City of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 CM/GC shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the CM/GC all of the obligations and responsibilities which the CM/GC assumes toward the City thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by CM/GC and approved in writing by City. Where appropriate, CM/GC shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level. CM/GC shall include assignment provisions in each subcontract as indicated in the termination provisions set forth in these General Conditions.

B.11.2 At City's request, CM/GC shall submit to City prior to their execution either CM/GC's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If City disapproves such form, CM/GC shall not execute the form until the matters disapproved are resolved to City's satisfaction. City's review, comment upon or approval of any such form shall not relieve CM/GC of its obligations under this Agreement or be deemed a waiver of such obligations of CM/GC.

B.11.3 CM/GC shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the City. No such written approval shall relieve CM/GC of any obligations of this Contract, and any transferee shall be considered the agent of the CM/GC and bound to perform in accordance with the Contract Documents. CM/GC shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.11.4 CM/GC shall first notify City prior to any change in the name or legal nature or status of CM/GC's entity. City shall determine if CM/GC's intended change is permissible while performing this Contract.

B.12 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

B.13 CITY'S RIGHT TO DO WORK

City reserves the right to perform other or additional work at or near the project site with other forces than those of the CM/GC. If such work takes place within or next to the project site, CM/GC will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The City's Authorized Representative will resolve any disagreements that may arise between or among CM/GC and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the City's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS

In all cases and at any time, the City has the right to execute other contracts related to or unrelated to the Work of this Contract. The CM/GC of this Contract will fully cooperate with any and all other contractors without additional cost to the City in the manner described in section B.13. Specifically and without limitation,

(1) CM/GC shall coordinate and work in conjunction with the City and City's third party consultants to proactively commission the Project in preparation of City occupancy and acceptance.

(2) CM/GC shall be granted one (1) re-inspection review for each inspection activity required by the Contract. Additional reviews required beyond the initial and re-inspections shall be the responsibility of the CM/GC. City and City's third party consultants shall not unreasonably require re-inspections. The City reserves the right to make the final determination if a re-inspection is required or if CM/GC may proceed by incorporating the inspection findings.

(3) CM/GC shall provide City with a copy of all written communications between CM/GC and City's consultants at the same time as that communication is made to such consultants, including, without limitation, all requests for information, correspondence, submittals, notices, and change order proposals. CM/GC shall confirm oral communications in writing.

(4) CM/GC is liable for costs incurred by City for professional services for interpretations or decisions of matters where the information sought is equally available to the party making the request.

B.15 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

Any Claim between City and CM/GC that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States City Court for the City of Oregon. Any trial will be to the court without a jury. In no event shall this section be construed as a waiver by the City of defense or immunity, whether sovereign immunity, governmental immunity, or otherwise, from any claim or from the jurisdiction of any court. CM/GC BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

B.17.1 The CM/GC shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

(1) when finally reconciled, allowances shall cover the cost to the CM/GC of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

(2) CM/GC's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;

(3) Unless City requests otherwise, CM/GC shall provide to City a proposed fixed price for any allowance work prior to its performance.

B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

B.18.1 The CM/GC shall prepare and keep current, for the approval of City's Authorized Representative, a schedule and list of submittals which is coordinated with the CM/GC's construction schedule and allows the Architect/Engineer reasonable time, but in no case less than ten (10) business days, to review submittals. City reserves the right to approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

(1) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the CM/GC or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

(2) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM/GC to illustrate materials or equipment for some portion of the Work.

(3) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the CM/GC proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer or City is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer or City, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the CM/GC as required by the Contract Documents. The Architect/Engineer's or City's review of the CM/GC's submittals shall not relieve the CM/GC of its obligations under the Contract Documents. The Architect/Engineer's or City's review of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer or City is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned without action.

B.18.3 The CM/GC shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate CM/GCs. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the CM/GC may be returned without action.

(1) CM/GC shall be granted one (1) resubmittal review for each submittal required by the Contract Documents. Additional reviews required beyond the initial submittal and re-submittal shall be the responsibility of the CM/GC. A/E shall not unreasonably require re-submittals. The City reserves the right to make the final determination if a re-submittal is required or if CM/GC may proceed by incorporating A/E's comments.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM/GC represents that the CM/GC has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 The CM/GC shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer. CM/GC shall be responsible to provide submittals for A/E and City review in a timely manner to allow sufficient time for review and comment. Delay claims associated with submittals lacking appropriate review time allowances shall not be considered.

B.18.6 The Work shall be in accordance with approved submittals except that the CM/GC shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's or City's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM/GC has specifically informed the Architect/Engineer and City in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by City authorizing the deviation. The CM/GC shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by any review or approval thereof.

B.18.7 In the event that City elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by City on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the City's Authorized Representative.

B.19 SUBSTITUTIONS

The CM/GC may make Substitutions only with the consent of the City and at its sole discretion, after evaluation by the City's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the CM/GC represents that the CM/GC has personally investigated the proposed substitute product; represents that the CM/GC will provide the same warranty for

the Substitution that the CM/GC would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents, including those in electronic format, furnished to CM/GC by City or City's Architect/Engineer shall be used solely for the performance of the Work under this Contract. CM/GC and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by City.

B.21 FUNDS AVAILABLE AND AUTHORIZED

City reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the City's appropriation or limitation.

B.22 NO THIRD PARTY BENEFICIARIES

City and CM/GC are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

B.23 RULES REGARDING CONTACT WITH THE PRESS AND PUBLICATIONS

CM/GC shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one (1) year of Project completion without City's prior written authorization. CM/GC shall not post or publish any textual or visual representations of the Project without approval of City.

SECTION C WAGES, LABOR, AND PAYMENT

C.1 PREVAILING WAGE RATES ON PUBLIC WORKS

C.1.1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker the CM/GC, subcontractor or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon. The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml.

C.1.2 This Contract is ____/is not ____ also subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding Section C.1.1 of this Section, if this Contract is also subject to payment of prevailing wages under the Davis-Bacon Act, CM/GC and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Clackamas County, Building Construction Type). Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>. If the Contract is subject to federal prevailing wages, CM/GC and any subcontractors must pay the higher of the federal prevailing wage rate (under the Davis-Bacon Act) or the state prevailing wage.

C.1.3 The applicable prevailing wages under subsections ____ and, if applicable, C.1.2, will be those in effect on the start of the Construction Phase as described in Section 3.b of the CM/GC Contract, and shall be incorporated by reference in the GMP Amendment or, if applicable, the Early Work Amendment.

C.1.4 During the Construction Phase, CM/GC and all Subcontractors will keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

C.1.5 The City will pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee will be paid to the Commissioner under the administrative rule of the Commissioner.

C.1.6 CM/GC or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it will post notice describing such plans in a conspicuous and accessible place in or about the Project- during the Construction Phase. The notice will contain information on how and where to make claims and where to obtain future information.

C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

C.2.1 In accordance with ORS 279C.845, the CM/GC and every Subcontractor shall submit written certified statements to the City's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the CM/GC or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the CM/GC or the Subcontractor that the CM/GC or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the CM/GC or Subcontractor's best knowledge and belief. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the CM/GC or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The CM/GC and Subcontractors shall preserve the certified statements for a period of six (6) years from the date of completion of the Contract.

C.2.2 The City shall retain 25 percent of any amount earned by the CM/GC on this public works project until the CM/GC has filed the certified statements required by section C.2.1. The City shall pay to the CM/GC the amount retained under this subsection within 14 days after the CM/GC files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

C.2.3 The CM/GC shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the City the certified statements required by C.2.1. Before paying any amount retained under this subsection, the CM/GC shall verify that the first-tier Subcontractor has filed the certified statement, Within 14 days after the first-tier Subcontractor files the required certified statement the CM/GC shall pay the first-tier Subcontractor any amount retained under this subsection.

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

C.3.1 Pursuant to ORS 279C.505 and as a condition to CM/GC's performance hereunder, the CM/GC shall:

(1) Make payment promptly, as due, to all persons supplying to CM/GC labor or materials for the prosecution of the Work provided for in this Contract.

(2) Pay all contributions or amounts due the State Industrial Accident Fund from such CM/GC or Subcontractor incurred in the performance of the Contract.

(3) Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished. CM/GC will not assign any claims that CM/GC has against City, or assign any sums due by City, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the City.

(4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) Demonstrate that an employee drug testing program is in place as follows:

(A) CM/GC represents and warrants that CM/GC has in place at the time of the execution of this contract, and shall maintain during the term of this Contract, a qualifying employee drug testing program for its employees that includes, at a minimum, the following:

- i. a written employee drug testing policy,
- ii. required drug testing for all new subject employees or, alternatively, required testing of all subject employees every 12 months on a random selection basis, and
- iii. requested testing of a subject employee when the CM/GC has reasonable cause to believe the subject employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "qualifying employee drug testing program". For the purposes of this section, an employee is a "subject employee" only if that employee will be working on the project job site.

(B) CM/GC shall require each subcontractor providing labor for the Project to:

- i. demonstrate to the CM/GC that it has a qualifying employee drug testing program for the Subcontractor's subject employees, and represent and warrant to the CM/GC that the qualifying employee drug testing program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
- ii. require that the Subcontract's subject employees participate in the CM/GC's qualifying employee drug testing program for the duration of the Project.

C.3.2 Pursuant to ORS 279C.515, and as a condition to City's performance hereunder, CM/GC agrees:

(1) If City becomes aware that CM/GC has failed, neglected or refused to make prompt payment of any claim for labor or services furnished to the CM/GC or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the City may pay the claim and charge the amount of the payment against funds due or to become due CM/GC under this Contract within ten (10) business days written notice to CM/GC. Payment of claims in this manner shall not relieve the CM/GC or the CM/GC's surety from obligation with respect to any unpaid claims. Notwithstanding any other remedies available to the City,

(2) If the CM/GC or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receipt of payment from City or a CM/GC, the CM/GC or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-Day period that payment is due and ending upon final payment, unless payment is subject to a good faith dispute. The rate of interest charged to the CM/GC or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve City that includes Oregon on the date that is thirty (30) Days after the date when payment was received from City or from the CM/GC, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

(3) If the CM/GC or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute. Every contract related to this Contract shall contain a similar clause.

C.3.3 Pursuant to ORS 279C.545, Construction workers employed by the CM/GC or its Subcontractor will be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the CM/GC or Subcontractor within 90 days from the completion of the Contract, providing the CM/GC or Subcontractor has:

(1) Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and

(2) Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

C.3.4 Pursuant to ORS 279C.580, CM/GC shall include in each subcontract for property or services entered into by the CM/GC and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(1) A payment clause that obligates the CM/GC to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the CM/GC by City under the Contract;

(2) An interest penalty clause that obligates the CM/GC if payment is not made within thirty (30) Days after receipt of payment from City, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. CM/GC or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the CM/GC or first-tier Subcontractor did not make payment when payment was due is that the CM/GC or first-tier Subcontractor did not receive payment from City or CM/GC when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).

(3) A clause which requires each of CM/GC's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

C.3.5 All employers, including CM/GC, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. CM/GC shall ensure that each of its Subcontractors complies with these requirements.

C.4 PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530, and as a condition to City's performance hereunder, CM/GC shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such CM/GC, all sums of which the CM/GC agrees to pay for such services and all moneys and sums which the CM/GC has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

C.5 HOURS OF LABOR

As a condition to City's performance hereunder, CM/GC shall comply with ORS 279C.520 and 279C.540, as amended from time to time and incorporated herein by this reference:

Except as may otherwise be provided in an applicable collective bargaining agreement with a labor organization, CM/GC shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:

(1) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; and

(2) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and

(3) For all Work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

(4) The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from

receiving overtime. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

This Section C.5 shall not excuse CM/GC from completion of the Work within the time required under this Contract.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the City's Authorized Representative, and then only in a manner consistent with the Agreement and, if not prohibited by the Agreement, the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws or the City's contracting rules have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws or City's contracting rules have been obtained.

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the City's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- (1) Modification of specifications and design.
- (2) Increases or decreases in quantities.
- (3) Increases or decreases to the amount of Work.
- (4) Addition or elimination of any Work item.
- (5) Change in the duration of the project.
- (6) Acceleration or delay in performance of Work.
- (7) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, City reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (City's Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by City.

D.1.3 The City and CM/GC agree that Change Order Work shall be administered and compensated according to the following:

(1) *Unit pricing* may be utilized at the City's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.

(2) If the City elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, *fixed pricing* may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by City without adequate justification. Cost and price data relating to Change Orders shall be supplied by CM/GC to City upon request, but City shall be under no obligation to make such requests.

(3) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a *cost*

reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the CM/GC's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the CM/GC's or Subcontractor's own forces:

On Labor..... 10% On Equipment..... 5% On Materials..... 5%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or CM/GC will be allowed a supplemental mark-up of five (5) percent on each piece of subcontract Work covered by such Change Order .

Payments made to the CM/GC shall be complete compensation for Overhead, profit, and all costs that were incurred by the CM/GC or by other forces furnished by the CM/GC, including Subcontractors, for Change Order Work. City may establish a maximum cost for Change Order Work under this Section D.1.3(c), which shall not be exceeded for reimbursement without additional written authorization from City. CM/GC shall not be required to complete such Change Order Work without additional authorization.

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless City's Authorized Representative authorizes CM/GC in writing to start the Work before agreement on Contract Time adjustment. CM/GC shall submit any request for additional compensation (and additional Contract Time if CM/GC was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If CM/GC's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, CM/GC's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation CM/GC's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by City. If the City's Authorized Representative denies CM/GC's request for additional compensation or adjustment of Contract Time, CM/GC may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the CM/GC's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the CM/GC must submit a written request to the City's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by CM/GC.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; CM/GC has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with CM/GC's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the CM/GC in writing with full analysis and justification for the compensation and additional Contract Time requested. The CM/GC will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to CM/GC prior to including those requests and CM/GC's analysis and evaluation of those requests with CM/GC's requests for additional compensation or Contract Time that CM/GC submits to the City's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to CM/GC for inclusion with CM/GC's requests submitted to City's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The City's Authorized Representative and the City will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the State of Oregon, whether in this claims process, in litigation, or in any dispute resolution process.

If the City's Authorized Representative denies the CM/GC's request for additional compensation or an extension of Contract Time, the CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the CM/GC for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. CM/GC agrees to submit its final payment application within sixty (60) business days after Substantial Completion, unless written extension is granted by City. CM/GC shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers,

manufacturers or others not a party to this Contract, or lack of resolution of a dispute with City or any other person of matters arising out of or relating to the Contract. If CM/GC fails to submit its final payment application within sixty (60) business days after Substantial Completion, and CM/GC has not obtained written extension by City, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The CM/GC is notified that numerous changes may be required and that there will be no compensation made to the CM/GC directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", defined in Section D.2.1.2. Further, "Concurrent Delays" are defined in Section D.2.1.3 and "Offsetting Delays" defined in Section D.2.1.4.

(1) Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (A) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its Subcontractors.
- (B) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (C) Do not impact activities on the accepted critical path schedule.
- (D) Are associated with the reasonable interference of other contractors engaged by the City that do not necessarily prevent the completion of the whole Work within the Contract Time.

(2) Unavoidable Delays include delays other than Avoidable Delays that are:

- (A) Caused by any actions of the City, City's Authorized Representative, or any other employee or agent of the City, or by separate contractor engaged by the City.
- (B) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The CM/GC shall notify the City's Authorized Representative immediately of differing site conditions before the area has been disturbed. The City's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If CM/GC and the City's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the City's Authorized Representative disagrees that a differing site condition exists and denies CM/GC's request for additional compensation or Contract Time, CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.
- (C) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its Subcontractors.
- (D) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the CM/GC, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- i. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the

normal monthly average by twenty-five percent (25 %) or more.

- ii. daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information.

(3) Concurrent Delays occur when two Avoidable or two Unavoidable Delays occur within a time frame where all or part of their durations overlap. The cumulative effect of the overlapping delays results in a total impact to the Project duration less than or equal to the cumulative sum of the individual delays or greater than or equal to the longer of the two Delays.

(4) Offsetting Delays occur when an Avoidable and an Unavoidable Delays occur within a time frame where all or part of their durations overlap. In some cases, Offsetting Delays occur where overlapping delays are incurred by both the City and the CM/GC, where the period of overlapping time negates any impact to the Project from the delays during that time frame. The impact of the overlap is that the total impact of the delays is lessened to due to the delays happening at, to some extent, the same time and therefore the project is only impacted once. The overall impact of Offsetting Delays is equal or less than the impact of the longer of the two delays.

D.2.2 Except as otherwise provided in ORS 279C.315, CM/GC shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, CM/GC may be entitled to the following:

(1) CM/GC may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (1) and (2).

(2) CM/GC may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(3) and (4).

(3) In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (2), CM/GC shall submit a written notification of the delay to the City's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the CM/GC shall submit to the City's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the City's Authorized Representative denies CM/GC's request for additional compensation or adjustment of Contract Time, the CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.

(4) If CM/GC does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, CM/GC's Claim shall be barred.

D.2.4 When submitting a request for compensation under D.2.3, CM/GC and the City shall take into account the cumulative impacts of Concurrent and Offsetting Delays that occurs within the same time frame the request for compensation covers.

D.2.5 All requests for compensation under this section shall require the CM/GC to submit a detailed Time Impact Analysis as outlined in the Specifications.

D.3 CLAIMS REVIEW PROCESS

D.3.1 All CM/GC Claims shall be referred to the City's Authorized Representative for review. CM/GC's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by CM/GC to the City's Authorized Representative within five (5) business days after a denial of CM/GC's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within twenty (20) business days after the initial Claim, CM/GC shall submit to the City's Authorized Representative, a complete and

detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by CM/GC and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the CM/GC will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the City's Authorized Representative. The City's Authorized Representative and the City will not consider direct claims from Subs, suppliers, manufacturers, or others not a party to this Contract. CM/GC agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against City.
- D.3.3 The City's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) business days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the CM/GC; (2) inform the CM/GC and City in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.
- D.3.4 The City's Authorized Representative's decision shall be final and binding on the CM/GC unless appealed by written notice to the City within fifteen (15) business days of receipt of the decision. The CM/GC must present written documentation supporting the Claim within fifteen (15) business days of the notice of appeal. After receiving the appeal documentation, the City shall review the materials and render a decision within twenty (20) business days after receiving the appeal documents.
- D.3.5 The decision of the City shall be final and binding unless the CM/GC delivers to the City its requests for mediation, which shall be a non-binding process, within ten (10) business days of the date of the City's decision. The mediation process will be considered to have commenced as of the date the CM/GC delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within forty (40) business days of the commencement of the mediation through the mediation process set forth herein.
- In the event that a lawsuit must be filed within this forty (40) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.
- D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the City and the CM/GC. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with City's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.
- D.3.7 Unless otherwise directed by City's Authorized Representative, CM/GC shall proceed with the Work while any Claim of CM/GC is pending, including a Claim for additional compensation or additional Contract Time resulting from Change Order Work. Regardless of the review period or the final decision of the City's Authorized Representative, the CM/GC shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the CM/GC justified or allowed to cease Work without a written stop work order from the City or City's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

The CM/GC shall submit, at least ten (10) business days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work, for the City's review and approval. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the City's Authorized Representative, this schedule shall be used as the basis for reviewing CM/GC's applications for payment. If objected to by City's Authorized Representative, CM/GC shall revise the schedule of values and resubmit the same for approval of City's Authorized Representative.

E.1.1 The Schedule of Values shall be of sufficient detail and organization to interface with the City's accounting and funding structure.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 City shall make progress payments on the Contract monthly as Work progresses. Prior to the submission of each monthly Application for Payment, CM/GC shall submit and obtain City's approval of a progress schedule update. Payments shall be based upon estimates of Work completed, as indicated in the approved progress schedule update, and the Schedule of Values. All payments shall be approved by the City's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. City shall pay to CM/GC interest on the progress payment, not including retainage, due the CM/GC. The interest shall commence thirty (30) Calendar Days after the receipt of invoice ("application for payment") from the CM/GC or fifteen (15) Calendar Days after the payment is approved by the City's Authorized Representative, whichever is the earlier date. The rate of interest shall be as provided under Oregon law. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, City shall so notify the CM/GC within ten (10) business days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the CM/GC within five (5) business days of being notified by the City, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the City and the CM/GC.

E.2.2 CM/GC shall submit to the City's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Applications for payment shall include all information required by City or City's Authorized representative and shall be supplemented with all additional information requested before the request for payment will be processed. CM/GC shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total.

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at City's sole discretion. Such a payment, if made, will be subject to the following conditions:

(1) The request for stored material shall be submitted at least twenty five (25) business days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.

(2) The CM/GC shall submit applications for payment showing the quantity and cost of the material stored.

(3) The material shall be stored in a bonded warehouse and City's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

(4) The CM/GC shall name the City as co-insured on the insurance policy covering the full value of the property while in the care and custody of the CM/GC until it is installed. A certificate noting this coverage shall be issued to the City.

(5) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the CM/GC.

(6) Within fifty (50) Business Days of the application for payment, the CM/GC shall submit evidence of payment covering the material stored.

(7) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

(8) All required documentation must be submitted with the respective application for payment.

E.2.4 Notwithstanding other parts of this Contract, the City reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the City's opinion to protect the City from loss including but not limited to:

(1) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,

(2) third party claims or fines, including governing agency or regulatory entity, filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the City is provided by the CM/GC;

(3) failure of the CM/GC to make payments properly to Subcontractors or for labor, materials or equipment (in which case City may issue checks made payable jointly to City and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(5) damage to the City or another contractor;

(6) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(7) failure to carry out the Work in accordance with the Contract Documents;

(8) failure to provide or obtain City's approval of a monthly progress schedule update;

(9) failure to maintain updated Record Documents; or

(10) Failure to provide certified payroll reports as required elsewhere in this Contract.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(1) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the City of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet been adjusted by Change Order;

(2) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

(3) Subtract the aggregate of previous payments made by the City; and

(4) Subtract any amounts for which the City's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 CM/GC's applications for payment may not include requests for payment for portions of the Work for which the CM/GC does not intend to pay to a Subcontractor or material supplier.

E.2.7 The CM/GC warrants to City that title to all Work covered by an application for payment will pass to the City no later than the time of payment. The CM/GC further warrants that upon submittal of an application for payment all Work for which payments are received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the CM/GC, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

E.2.8 If CM/GC disputes any determination by City's Authorized Representative with regard to any application for payment, CM/GC nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve CM/GC of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

E.4 RESERVED

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

(1) City may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, City may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the City's sole opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the CM/GC, which application shall include written approval of CM/GC's surety; except that when the Work is 97-1/2 percent completed the City may, at its discretion and without application by the CM/GC, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the CM/GC, City shall respond in writing within a reasonable time.

(2) In accordance with ORS 279C.560 and any applicable administrative rules, CM/GC may request in writing:

(A) to be paid amounts which would otherwise have been retained from progress payments where CM/GC has deposited acceptable bonds and securities of equal value with City or in a custodial account or other mutually-agreed account satisfactory to City, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of City;

(B) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of City, with earnings from such account accruing to the CM/GC; or

(C) that the City allow CM/GC to deposit a surety bond for the benefit of City, in a form acceptable to City, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under

(D) Where the City has accepted the CM/GC's election of option (A) or (B), City may recover from CM/GC any additional costs incurred through such election by reducing CM/GC's final payment. Where the City has agreed to CM/GC's request for option (C), CM/GC shall accept like bonds from Subcontractors and suppliers on the project from which CM/GC has required retainages.

(3) The retainage held by City shall be included in and paid to the CM/GC as part of the final payment of the Contract Price. The City shall pay to CM/GC interest at the rate of one and one-half percent per month on the final payment due CM/GC, interest to commence thirty (30) Calendar Days after the Work under the Contract has been completed, accepted and invoiced in accordance with the terms of this Agreement. CM/GC shall notify City in writing when the CM/GC considers the Work complete and City shall, within fifteen (15) Calendar Days after receiving the written notice, either accept the Work or notify the CM/GC of Work yet to be performed on the Contract. If City does not within the time allowed notify the CM/GC of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Calendar Days after the end of the 15-Day period.

(4) In accordance with the provisions of reference ORS 279C.560, City shall reduce the amount of the retainage if the CM/GC notifies the controller of the City that the CM/GC has deposited in an escrow account with a bank or trust company, in a manner authorized by the City's Authorized Representative, bonds and securities of equal value of a kind approved by the City's Authorized Representative.

E.5.2 As provided in subsections C.2.2 and C.2.3, retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the CM/GC fails to file certified statements as required by section C.2.1 shall be in addition to any retainage withheld as a part of this Section E.5.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, the CM/GC shall notify the City's Authorized Representative, in writing, that CM/GC has completed CM/GC's part of the Contract and shall request final payment. Upon receipt of such notice the City's Authorized Representative will inspect the Work, and if acceptable, submit to the City a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the CM/GC. If the Work is not acceptable, City will notify CM/GC within fifteen (15) Days of CM/GC's request for final payment. Upon approval of this final estimate by the City and compliance by the CM/GC with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the City shall pay to the CM/GC all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the CM/GC submits to the City's Authorized Representative, (1) a notarized affidavit/release of liens and claims in a form satisfactory to City that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the City, (3) a written statement that the CM/GC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City. If a Subcontractor refuses to furnish a release or waiver required by the City, the CM/GC may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the CM/GC shall refund to the City all money that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

E.6.3 Acceptance of final payment by the CM/GC, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

SECTION F
JOB SITE CONDITIONS

F.1 USE OF PREMISES

CM/GC shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the City's Authorized Representative. CM/GC shall follow any and all instructions or requirements regarding the use of premises given by the City's Authorized Representative. CM/GC shall not use or disturb City's property, materials or documents except for the purpose of responding to City's request for proposal or invitation to bid or pursuant to completion of the Work under this Contract. CM/GC shall treat all documents as confidential and shall not disclose such documents without approval from City. Any unauthorized disclosure of documents or removal of City property will be deemed a substantial breach of this Contract. CM/GC shall bear sole responsibility for any liability including, but not limited to, attorneys' fees, resulting from any action or suit brought against City as a result of CM/GC's willful or negligent release of information, documents, or property contained in or on City property. City hereby deems all information, documents, and property contained in or on City property privileged and confidential.

F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

- F.2.1 CM/GC shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the City's Authorized Representative, City's workers, school staff, administrators, students, general public and property from injury or loss arising in connection with this Contract. CM/GC shall remedy acceptably to the City, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the City. CM/GC shall adequately protect adjacent property as provided by law and the Contract Documents. If any person suffers physical injury or property damage arising from the Work, regardless of the cause, the party shall immediately give notice of such injury or damage, whether or not insured, to City and CM/GC with sufficient detail to enable City and any other party affected to investigate the matter.
- F.2.2 CM/GC shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. CM/GC shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. CM/GC shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the City's Authorized Representative. The City's Authorized Representative has no responsibility for Work site safety. Work site safety is solely the responsibility of the CM/GC.
- F.2.3 CM/GC shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. CM/GC shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the CM/GC damages any property, the CM/GC shall at once notify the property owner and make, or arrange to make, full restitution. CM/GC shall report, immediately in writing, to the City's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 CM/GC is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 CM/GC shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the CM/GC, without special instruction or authorization from the City's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the City's Authorized Representative. Any compensation claimed by the CM/GC on account of emergency work shall be determined in accordance with Section D.

- F.2.7 CM/GC shall protect and preserve established benchmarks and monuments and shall not change locations of benchmark and monuments without City's or agency having jurisdiction's prior written approval. CM/GC shall replace any benchmark or monument that is lost or destroyed subsequent to proper notification of the City and with the City's approval at CM/GC's sole cost.
- F.2.8 Prior to the commencement of the Work, CM/GC shall review the Project site with the City in detail and identify the area of the Work, staging areas, connections or interfacing with existing structures and operations, and restrictions on the Work site area. CM/GC shall ensure that all work forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the site. CM/GC, with advance consent of the City, shall erect such barriers and devices as are necessary to restrict access within the Work site to authorized areas and to prevent unauthorized access to non-Work areas.
- F.2.9 Utility Locates: CM/GC will be responsible to locate existing utilities and underground facilities that are indicated in the Contract Documents or that are known or reasonably should be known to exist in the proximity to the Work. CM/GC shall provide timely notice and locate requests with any affected utility or through contact with appropriate notification centers before commencing excavation or demolition Work that CM/GC knows, or reasonably should know, is in proximity to such utilities or facilities. CM/GC assumes the sole risk and will be responsible for all delay and expense arising out of CM/GC's failure to do so.
- F.2.10 This Contract and all individual contracts and purchase orders incorporate by this reference City's safety policies current as of the date of commencement of Work, which have been or will be made available to CM/GC. CM/GC shall schedule and attend a preconstruction meeting with City to review compliance with City's CM/GC Safety and Hazard Notification Policy and City's Risk Management and Environmental Safety and Pollution Policy. CM/GC, as a condition to commencement of the Work, shall instruct all personnel of CM/GC and its subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply.
- F.2.11 In addition to the policies identified above, CM/GC shall review with all subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws and CM/GC shall comply with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and City's adjoining facilities. CM/GC shall implement and maintain a safety program that is specifically adapted for the Project and complies with all applicable requirements of Oregon OSHA. CM/GC shall furnish a copy of the safety program to City before commencing Work.
- F.2.12 CM/GC shall maintain good housekeeping practices to reduce the risk of fire damage and shall make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.
- F.2.13 CM/GC shall ensure that all existing or operating systems, utilities, existing on-site services and access avenues are on and in operating condition before leaving the Project Site each day. If any system, utility, or access avenue is not operable, CM/GC shall notify City before CM/GC leaves the Project Site that day.

F.3 CUTTING AND PATCHING

- F.3.1 CM/GC shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other CM/GCs or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 CM/GC shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then CM/GC shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.
- F.3.3 CM/GC shall not endanger any Work performed by it or anyone else by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other contractor except with consent of City.

F.4 CLEANING UP

The CM/GC shall be responsible to maintain a clean and orderly jobsite at all times in order to promote a safe and efficient work environment. Should the jobsite fall into a state of disorder, the City may order the CM/GC to, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work and bring the jobsite to a state of cleanliness and order deemed satisfactory by the City's Representative. If CM/GC fails to do so within twenty-four

(24) hours after written notification by the City, the work may be done by others and the cost charged to the CM/GC and deducted from payment due the CM/GC. Any directive by the City's Representative shall not relieve the CM/GC in any way or manner for the safety of the jobsite for construction workers or the public.

F.5 ENVIRONMENTAL CONTAMINATION

F.5.1 CM/GC will be held responsible for and shall indemnify, defend (with counsel of City's choice) and hold harmless City from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of CM/GC or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit CM/GC's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and CM/GC shall take no action that would void or impair such coverages

(1) CM/GC agrees to promptly contain, minimize and dispose of such spills, releases, discharge or leaks to the satisfaction of City and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the City and be performed by properly qualified personnel.

(2) CM/GC shall obtain the City's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as defined in Section F.6.1. Notwithstanding such written consent from the City, the CM/GC, at all times, shall:

(A) properly handle, label, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

(B) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which CM/GC has brought onto the Work site; and

(C) promptly clean up, without cost to the City, such spills, releases, discharges, or leaks to the City's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

(3) With respect to Hazardous Materials to be used during the course of the Work, the CM/GC will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the CM/GC's safety training program.

F.5.2 CM/GC shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR Chapter 340 Division 108 for all products addressed therein. Upon discovery, regardless of quantity, CM/GC must telephonically report all releases to the City. A written follow-up report shall be submitted to City within twenty four (24) hours of the telephonic report. Such written report shall contain, as a minimum:

(1) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)

(2) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.

(3) Exact time and location of release, including a description of the area involved.

(4) Containment procedures initiated.

(5) Summary of communications about the release CM/GC has had with members of the press or State officials other than City.

(6) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

(7) Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the CM/GC (reference F.5 Environmental Contamination), CM/GC shall immediately notify City of any hazardous substance(s) which CM/GC discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S

In addition to notifying City of any hazardous substance(s) discovered or encountered, CM/GC shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well-being of CM/GC's or any Subcontractor's work force.

F.6.2 Upon being notified by CM/GC of the presence of hazardous substance(s) on the project site, City shall arrange for the proper disposition of such hazardous substance(s).

F.6.3 Asbestos Abatement. The Work under this Contract may include removal and abatement of asbestos (and proper transportation and disposal). All such Work shall be performed in compliance with the plans and specifications if it is determined that hazardous materials need to be abated. This Work (if required) shall be performed by an asbestos abatement contractor licensed under ORS 468A.720 employing Oregon Certified Asbestos Workers and a Certified Asbestos Supervisor shall be on site at all times asbestos abatement Work is being performed. All federal, state and local laws, statutes, regulations, administrative rules, ordinances, standards, directives and other legal requirements, and all rules and regulations pertaining to the safe removal of asbestos, including but not limited to those of the Oregon Department of Environmental Quality (DEQ), the federal Environmental Protection Agency (EPA), and OSHA, and other authorities having jurisdiction, shall be complied with at all times. CM/GC shall provide City with air sampling records (including clearance sampling documentation) before the commencement of any construction or abatement activities as well as at completion of the asbestos abatement Work. CM/GC shall include these asbestos provisions and requirements in any subcontract(s) related to the asbestos abatement Work.

F.6.4 Lead and Other Hazardous Material Abatement. The Work under this Contract may also include removal and abatement (and proper transportation and disposal) of all other hazardous materials or substances (not covered by Section F.6.3) from the Project site as necessary for full legal compliance, including but not limited to lead. Proper identification, assessment, notifications, handling, testing, certifications, removal, transportation and disposal are the responsibility of CM/GC. All applicable federal, state and local laws, statutes, regulations, administrative rules, ordinances, standards, directives and other legal requirements shall be complied with at all times, including but not limited to those of DEQ, EPA and OSHA. All such Work shall be performed in compliance with the applicable plans and specifications being prepared by the Architect.

F.8 FORCE MAJEURE

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The City may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

G.1.1 CM/GC shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the CM/GC, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, CM/GC shall indemnify, defend (with counsel approved by City) and hold harmless the City, City's Authorized Representative(s), City's third party consultants and contractors working on the Project Site, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to,

(1) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2 to the extent that the CM/GC could or should have reasonably prevented it,

(2) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects to the extent that the Contract could or should have reasonably prevented it,

(3) any failure of the CM/GC to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the CM/GC, or any breach of any agreement, representation or warranty of the CM/GC contained in the Contract Documents or in any subcontract,

(4) the negligent acts or omissions of the CM/GC, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and

(5) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the CM/GC, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CM/GC or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND

G.2.1 Prior to commencement of construction phase services and in any event not later than execution of the GMP Amendment, the CM/GC shall provide to the City a full Performance Bond and a full Payment Bond in the amount of the GMP Amendment.

If an Early Work Amendment is executed the CM/GC shall provide Performance and Payment Bonds in the amount of the Early Work Amendment. The CM/GC shall provide to the City additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of labor or materials for the prosecution of the Work covered by the Amendment and in each case a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a scope change, which increases the GMP, the CM/GC shall provide to the City an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

The CM/GC shall maintain the Performance and Payment Bonds in full force from Sureties licensed to do business in Oregon. The Parties understand and agree that the obligation of the CM/GC's Surety for the faithful performance of the Contract pursuant to the requirements of Oregon Revised Statutes 279C.375.

G.2.2 Bond forms furnished by the City and notarized by awarded CM/GC's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Pursuant to ORS 279C.605, any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

G.2.4 The CM/GC will:

(1) file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).

(2) Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8).

G.3 INSURANCE

G.3.2. General Insurance Requirement. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Oregon such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed;
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- (4) Claims for damages insured by usual personal injury liability coverage and commercial general liability coverage (or its equivalent as approved in advance by the City);
- (5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;
- (7) Claims for bodily injury or property damage arising out of completed operations;
- (8) Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 107.06 of the General Conditions;
- (9) Claims for third-party injury and property damage (including without limitation clean-up costs) as a result of pollution conditions arising from the Contractor's operations or completed operations; and
- (10) Claims involving the Contractor's professional liability, solely to the extent that the Contractor accepts design or design/build responsibilities under the Contract

G.3.3 Required Coverage. Without waiver of any other requirement of the Contract Documents, the Contractor will provide, pay for, and maintain in full force and effect at all times during the performance of the Work until final acceptance of the Work or for such further duration as required, the following policies of insurance issued by a responsible carrier. All of the Contractor's insurance carriers shall be rated A VII or better by A.M. Best's rating service, unless otherwise approved by the City.

- (1) Workers' Compensation.** Workers' compensation coverage sufficient to meet statutory liability limits.
- (2) Employer's Liability.** The Contractor shall purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits in C below.
- (3) Commercial General Liability.** The Contractor shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 0001 (12/04 or later) or an equivalent form approved in advance by the Owner. CGL coverage shall include all major coverage categories including bodily injury, property damage, and products/completed operations coverage maintained for at least ~~six~~ **Ten** years following final payment. The CGL insurance will also include the following: (1) separation of insured; (2) incidental medical malpractice; and (3) per-project aggregate for premises operations.
- (4) Professional Liability/Errors and Omissions.** To the extent that the Contractor accepts design or design/build responsibilities, the Contractor shall purchase and maintain professional liability/errors and omissions insurance or cause those Subcontractors providing design services do so.
- (5) Automobile Liability.** The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by the City. The automobile liability insurance shall include pollution liability coverage resulting from vehicle overturn and collision.

(6) Pollution Liability. The Contractor shall purchase a contractors' pollution liability policy. Coverage shall include third-party claims for bodily injury, property damage, and environmental damage resulting from pollution conditions caused during the performance of covered operations for both on-site and migrating from the job site. Such coverage shall include pollution conditions arising from covered operations including work performed by its Subcontractors and third-party claims against the Contractor alleging improper supervision of its Subcontractors.

(7) Commercial Umbrella/Excess Coverage. The Contractor shall purchase or maintain a commercial umbrella or excess liability policy to meet the minimum limits as described below in Section C. Commercial umbrella/excess liability coverage will include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (where not prohibited by law); (4) application of aggregate (where applicable) in primary coverage; (5) "care, custody, and control" coverage that follows the form for primary coverage; and (6) drop-down feature. Excess/umbrella coverage will be scheduled to the CGL, employee's liability, and automobile liability policies.

G.3.4 Limits. The insurance required by this exhibit shall be written for at least the limits of liability specified in this Section or required by law, whichever is greatest.

(1) Workers' Compensation. Statutory Limits

(2) Employer's Liability.

Each Accident:	\$ 1,000,000
Each Bodily Injury Disease:	\$ 1,000,000
Aggregate Bodily Injury Disease:	\$ 1,000,000

(3) Commercial General Liability.

Each Occurrence:	\$ 1,000,000
General Aggregate:	\$ 2,000,000
Product/Completed Operations:	\$ 2,000,000
Personal & Advertising Injury:	\$ 1,000,000
Fire Damage Limit:	\$ 100,000
Medical Expense Limit:	\$ 5,000

(4) Automobile Liability.

Combined Single Limit:	\$ 1,000,000
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(5) Pollution Liability.

Single Limit:	\$1,000,000
Aggregate:	\$1,000,000

(6) Commercial Umbrella/Excess Coverage.

Each Occurrence:	\$10,000,000
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G.3.5 Additional Insureds. The Contractor's third-party liability insurance policies shall include the City and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The policy endorsement must extend premise operations and products/completed operations to the additional insureds. The additional insured endorsement for the CGL insurance must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

G.3.6 Joint Venture. If the Contractor is a joint venture, the joint venture shall be a named insured for the liability insurance policies.

G.3.7 Primary Coverage. The Contractor's insurance shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the City or the Architect including any property damage coverage carried by the Owner. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Contractor's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party.

G.3.8 Contractor's Failure to Maintain Insurance. If the Contractor for any reason fails to maintain required insurance coverage, such failure shall be deemed a material breach of the Contract and the City, at its sole discretion, may suspend or terminate the Contract pursuant to Section J of the General Conditions. The City may, but has no obligation to, purchase such required insurance, and without further notice to the Contractor, the City may deduct from the Contract Sum any premium costs advanced by the City for such insurance. Failure to maintain the insurance coverage required by this exhibit shall not waive the Contractor's obligations to the City.

G.3.9 Certificates of Insurance. The Contractor shall supply to the City Certificates of Insurance for the insurance policies described in this exhibit prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project site.

(1) Additional Certificates. To the extent that the Contractor's insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

(2) Prohibition Until Certificates Received. The City shall have the right, but not the obligation, to prohibit the Contractor and its Subcontractors from entering the Project site until the required certificates (or other competent evidence that insurance has been obtained in complete compliance with this exhibit) are received and approved by the City.

(3) Deductibles/Self-Insured Retentions. Payment of deductibles or self-insured retention is a Cost of the Work within the Guaranteed Maximum Price and does not justify a Change Order. Satisfaction of all self-insured retentions or deductibles will be the sole responsibility of the Contractor.

G.3.10 Subcontractor Insurance. The Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance as specified in this exhibit, except for coverage limits, which will be agreed upon between the City and the Contractor. The Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the City, the Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

G.3.11 Limitations on Coverage.

(1) No insurance provided by the Contractor under this exhibit will be required to indemnify the City, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.

(2) The obligations of the Contractor under this exhibit shall not extend to the liability of the Architect or its consultants for (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving or failure to give directions or instructions, to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.

(3) By requiring insurance, the City does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the City for claims or suits that result from or are connected with the performance of the Contract.

G.3.12. Property Insurance

(1) Builder's Risk.

Contractor shall obtain, at Contractor's expense, and keep in effect until final acceptance by the City, "all risk" Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and

control of the Contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the full amount of the contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include City, the Contractor and its subcontractors as their interest may appear. (2) **Contractor's Responsibility.** Contractor must provide insurance for its own machinery, tools, equipment, or supplies that are not to become a part of the Project.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

- H.1.1 Time is of the essence on this Contract. The CM/GC shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. CM/GC shall commence Work on the site within ten (10) business days of Notice to Proceed, unless directed otherwise.
- H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The City shall have the right to accelerate the completion date of the Work, which may require the use of overtime to the extent such overtime is not required to achieve Substantial Completion. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1. In the event that overtime or other acceleration is required to achieve the Substantial Completion Date in the Contract Documents, the CM/GC shall be responsible for the additional cost .
- H.1.3 The City shall not waive any rights under the Contract by permitting the CM/GC to continue or complete the Work or any part of it after the date described in Section H.1.2 above.

H.2 SCHEDULE

CM/GC shall provide by ten (10) business days before the pre-construction conference, a detailed master construction schedule for review and acceptance by the City. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, any interim or phased work completions, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the City does not constitute agreement by the City, as to the CM/GC's sequencing, means, methods, or allocated Contract Time. Any positive difference between the CM/GC's scheduled completion and the Contract completion date is float owned by the City. City reserves the right to negotiate the float if it is deemed to be in City's best interest to do so. In no case shall the CM/GC make a request for additional compensation for delays if the Work is completed within the Contract Time but after CM/GC's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

The City may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and CM/GC have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the CM/GC to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the City and CM/GC shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

H.4 BENEFICIAL OCCUPANCY OR USE

The City may take possession of areas of the Project as a part of a scheduled, phased occupancy. Where such Beneficial Occupancy occurs, the CM/GC shall facilitate such occupancy, shall agree to work around occupied areas and shall conduct the balance of the construction of the Work in such a fashion to avoid impeding or otherwise obstructing the access to or activities conducted within the occupied space.

SECTION I
CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The CM/GC warrants to the City that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. CM/GC shall promptly remove from the premises and replace all defective materials and equipment as determined by the City's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the City, and CM/GC shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. CM/GC shall be allowed a period of no longer than sixty (60) Calendar Days for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the CM/GC, City shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the CM/GC. If CM/GC fails to complete the punch list work within the above time period, without affecting CM/GC's obligations City may perform such work and CM/GC shall reimburse City all costs of the same within twenty five (25) days after demand.

I.2 WARRANTY WORK

(1) Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the CM/GC from responsibility for defective Work and, unless a longer period is specified, CM/GC shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the City except for latent defects which will be remedied by the CM/GC at any time they become apparent.

The City shall give CM/GC notice of defects with reasonable promptness. CM/GC shall perform such warranty work within a reasonable time after City's demand. If CM/GC fails to complete the warranty work within such period as City determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting CM/GC's obligations, City may perform such work and CM/GC shall reimburse City all costs of the same within thirty (30) Days after demand.

(2) This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

(3) In addition to CM/GC's warranty, manufacturer's warranties shall pass to the City and shall not take effect until affected Work has been accepted in writing by the City's Authorized Representative.

(4) The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the CM/GC pursuant to this Section, as to the Work corrected. The CM/GC shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the CM/GC nor accepted by the City.

(5) Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to any obligations that the CM/GC has under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific contractual obligation of the CM/GC to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CM/GC's liability with respect to such obligations.

(6) If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

SECTION J
SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 CITY'S RIGHT TO SUSPEND THE WORK

J.1.1 The City and/or the City's Authorized Representative has the authority to suspend portions or all of the Work

J.1.2 The City shall notify CM/GC and the CM/GC's Surety in writing of the effective date and time of the suspension and shall notify CM/GC and its surety in writing to resume Work.

J.2 CM/GC'S RESPONSIBILITIES

J.2.1 During the period of the suspension, CM/GC is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

J.2.2 When the Work is recommenced after the suspension, the CM/GC shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

J.3.1 Depending on the reason for suspension of the Work, the CM/GC or the City may be due compensation by the other party. If the suspension was required due to acts or omissions of CM/GC, the City may assess the CM/GC actual costs of the suspension in terms of administration, remedial work by the City's forces or another CM/GC to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the City, the CM/GC shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the CM/GC or the City, neither party owes the other for the impact.

J.4 CITY'S RIGHT TO TERMINATE CONTRACT

J.4.1 The City may, without prejudice to any other right or remedy, and after giving CM/GC five business days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

- (1) If CM/GC should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and CM/GC as debtor in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- (2) If CM/GC should make a general assignment for the benefit of CM/GC's creditors;
- (3) If a receiver should be appointed on account of CM/GC's insolvency;
- (4) If CM/GC should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
- (5) If CM/GC should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the City or its Authorized Representative; or
- (6) If CM/GC is otherwise in material breach of any part of the Contract.

J.4.2 At any time that any of the above occurs, City may exercise all rights and remedies available to City at law or in equity, and in addition, City may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the CM/GC shall not be entitled to receive further payment until the Work is completed. If the City's cost of finishing the Work exceeds the unpaid balance of the Contract Price, CM/GC shall pay the difference to the City.

J.5 TERMINATION FOR CONVENIENCE

J.5.1 City may terminate the Contract in whole or in part whenever City determines that termination of the Contract is in the best interest of the public.

J.5.2 The City will provide the CM/GC with five (5) business days' prior written notice of a termination for public convenience. After such notice, the CM/GC shall provide the City with immediate and peaceful possession of the premises and materials located on and off the premises for which the CM/GC received progress payment under Section E. Compensation for Work terminated by the City under this provision will be according to Section E. In no circumstance shall CM/GC be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the City, CM/GC shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, unless assigned as provided in Section J.6.4, below, CM/GC shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the City, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- J.6.2 As directed by the City, CM/GC shall upon termination transfer title and deliver to the City all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the City.
- J.6.3 Upon receiving a notice of termination Contractor shall, prior to vacating the site, provide to City a detailed written assessment of any potentially unsafe conditions on site that may be a threat to health or human safety.
- J.6.4 CM/GC shall assign to City each subcontract agreement for a portion of the Work provided that: (i.) Assignment is effective only after termination of this Contract by City for cause or stoppage of the Work by City, and only for those subcontract agreements which City accepts by notifying the subcontractor and CM/GC in writing; and (ii.) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract. Upon such assignment, if the Work has been suspended for more than thirty (30) days, City shall equitably adjust subcontractor's compensation for increases in cost resulting from the suspension.

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), CM/GC shall comply with the following: CM/GC shall provide to City's Authorized Representative, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the City's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, CM/GC shall submit completed operation and maintenance manuals ("O & M Manuals") and asbuilts in electronic format (.PDF) and for review by the City's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the City until the O & M Manual have been received. The O & M Manual shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The City's Authorized Representative shall review and return an electronic copy of the O & M Manual for any modifications or additions required. Prior to submission of its final pay request, CM/GC shall deliver three complete and approved bound paper copies of O & M Manuals and one electronic copy delivered either in CD or Flash Drive format to the City's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the CM/GC shall submit to the City's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to City, which states that all Subcontractors and suppliers have been paid in full, all disputes with property Cities have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the CM/GC's knowledge, there are no claims of any kind outstanding against the project. The CM/GC shall indemnify, defend (with counsel of City's choice) and hold harmless the City from all claims for labor and materials finished under this Contract. The CM/GC shall furnish complete and valid releases or waivers, satisfactory to the City, of all liens arising out of or filed in connection with the Work. CM/GC shall collect all affidavit and lien release documents to deliver to the City in a single consolidated package.

K.4 COMPLETION NOTICES

- K.4.1 CM/GC shall provide City notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the City and CM/GC for security, maintenance, heat,

utilities, damage to the Work and insurance, and the time within which the CM/GC shall finish all items on the punch list accompanying the Certificate. Both completion notices must be signed by the CM/GC and the City to be valid. The City shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the City.

K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation with normal operational staffing experience and levels, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the City's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the City to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The CM/GC may request that a punch list be prepared by the City's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

As part of the Work, and prior to submission of the request for final payment, the CM/GC shall schedule with the City's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. CM/GC shall schedule training sessions at least ten (10) business days in advance of the date of training to allow City personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

K.6 EXTRA MATERIALS

As part of the Work, CM/GC shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the City's Authorized Representative.

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the CM/GC shall notify the City that all environmental pollution clean-up which was performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

The CM/GC shall not be granted Final Completion or receive final payment if the City has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of City.

K.9 OTHER CM/GC RESPONSIBILITIES

The CM/GC shall be responsible for returning to the City all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The CM/GC shall be responsible for notifying the appropriate utility companies to transfer utility charges from the CM/GC to the City. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the City does not take beneficial use of the facility and the CM/GC's forces continue with the Work.

K.10 SURVIVAL

All warranty and indemnification provisions of this Contract, and all of CM/GC's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract

**SECTION L
LEGAL RELATIONS & RESPONSIBILITIES**

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, CM/GC shall comply with any and all enacted ordinances or regulations relating to

environmental pollution and the preservation of natural resources that may affect the performance of the Contract. State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- L.1.1 Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
- L.1.2 State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- L.1.3 Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service City councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special City boards of directors, and other special Cities and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Cities.
- L.1.4 Tribal Governments.

CONSTRUCTION MANAGER/GENERAL CONTRACTOR ("CM/GC") CONTRACT

between

THE CITY OF SANDY, OREGON

and

FULL, LEGAL NAME OF CONTRACTOR

For 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project

This Construction Manager / General Contractor ("CM/GC") Contract ("Contract") is made by and between the City of Sandy, a partnership agency within the State of Oregon ("City" or "Agency") and Full, legal name of Contractor ("Contractor" or "CM/GC") to provide construction services for the Collection System I/I Reduction Project ("Project"), briefly described below:

The Project is briefly described as follows: To reduce RDII and focus attention on the City's collection system, the project includes rehabilitation of the collection system in high priority areas. The rehabilitation includes up to 35,000 feet of gravity sewers and associated manholes and up to 600 sewer service laterals. Private laterals will be rehabilitated as close to the building foundation wherever possible.

The Engineer on this Project is: Leeway Engineering Solutions, LLC.

CONTRACTOR DATA

Contractor must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Contract. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant. Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for Work under this Contract.

Business Name: Full, legal name of Contractor

Contractor Contact Person:

Address:

City, State, ZIP:

Business Telephone:

Facsimile:

Email:

Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"):

Oregon CCB License Number:

Contractor certifies under penalty of perjury that Contractor is a:

- Sole Proprietor
- Corporation
- Limited Liability Company
- Partnership
- Other [describe: _____]

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ATTACHED EXHIBITS

Exhibit A - General Conditions to the Contract

Exhibit A1 – Supplementary Conditions to the Contract

Exhibit B - Request for Proposals (RFP) CM/GC Services

Exhibit C – Contractors Response to RFP for CM/GC Services (redlined to include any negotiated changes)

Exhibit D – Form of GMP Amendment

The City of Sandy (City) and CM/GC agree as set forth below:

1. DEFINITIONS

Except as expressly defined or modified below or elsewhere in the Contract Documents, all capitalized terms shall have the meanings set forth in the General Conditions attached as Exhibit A (the "General Conditions"). The terms below are expressly defined as follows:

- a. **Affiliate.** Affiliate shall mean any subsidiary of CM/GC (defined below), and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).
- b. **Allowances.** Allowances shall mean funding reserved to address non-quantifiable scopes of work shown or inferred in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
- c. **Amendment.** Amendment shall mean a written modification of the Contract executed by both parties.
- d. **Business Days.** Business Days shall mean every day except Saturday, Sunday, and the nine legal holidays recognized by the City: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.
- e. **CM/GC Construction manager / general contractor,** – means a person that provides construction manager/general contractor services to a contracting agency under a public improvement contract as specified in ORS 279C.332 (2).
- f. **Construction manager/general contractor services.** Has the meaning set forth in ORS 279C.332 (3).
- g. **Change Order.** Change Order shall mean a written modification of the Contract under Section D.1 of the General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the City and CM/GC.
- h. **Construction Documents.** Construction Documents are those documents that are used specifically for the construction of the Work and are a part of the Contract Documents.
- i. **Construction Phase.** The Construction Phase shall mean the period commencing on the City's execution of a GMP Amendment or Early Work Amendment, together with the issuance by the City of a Notice to Proceed with any on-site construction.
- j. **Construction Services.** Construction Services shall mean all of the Work other than the Preconstruction services.
- k. **Contract Documents.** Contract Documents shall have the meaning given in Section A.1 of the General Conditions, as supplemented by paragraph 2.a. below.
- l. **Early Work.** Early Work shall mean Construction Services authorized by Pre-GMP Amendment that the parties agree should be performed in advance of establishment of the entire GMP for the Work. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance Work related to critical components of the Project for which performance prior to establishment of the GMP

will materially and positively affect the development of the completion of the Project. The City will only compensate the CM/GC for Early Work if it is authorized in an Early Work Amendment.

- m. Early Work Amendment.** Early Work Amendment shall mean an Amendment to the Contract executed by and between the parties to authorize Early Work prior to GMP.
- n. General Conditions Work.** General Conditions Work (“GC Work”) shall mean:
- 1) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in Exhibit C, and
 - 2) any other specific categories of Work approved in writing by the City as forming a part of the GC Work. GC Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted Work due to: exclusions by the Subcontractor not resolved through the process described in paragraph 11.c, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming Work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that:
 - i. the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of City,
 - ii. such Work is identified as GC Work in monthly billings and
 - iii. CM/GC receives prior approval of the City as to the scope of such GC Work.
- o. Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment(s), as determined in accordance with paragraph 6, and as it may be adjusted from time to time pursuant to the provisions of the Contract.
- p. GMP Amendment.** GMP Amendment shall mean an Amendment to the Contract, issued substantially in the form of Exhibit D executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Services.
- q. GMP Supporting Documents.** GMP Supporting Documents shall mean the documents referenced in a GMP Amendment as the basis for establishing a GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, schedules, phasing plans, assumptions, qualifications, exclusions, conditions, allowances, unit prices, alternates and other pertinent information and documentation that form the basis for the proposed GMP.
- r. Preconstruction Phase.** The Preconstruction Phase shall mean the period commencing on the effective date of this CM/GC Contract and generally ending upon commencement of the Construction Phase; provided that if the City and CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- s. Preconstruction services.** Preconstruction services shall mean all services described in paragraph 3.a. and as described in Exhibit B– RFP for CM/GC Services, Scope of Preconstruction Services, but excluding any Early Work. Early Work shall be considered part of Construction Services.
- t. Scope Change.** Scope Change shall mean only:

- 1) Materially changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment either through review of project documentation or examination of existing site conditions/reports, and
- 2) Material Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates not originally included in the GMP, all as approved by the City under the Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to City of the Allowance items exceeds the total amount of the Allowances).

2. CONTRACT DOCUMENTS

- a. **Contract Documents.** City and the CM/GC agree to the terms of the Contract that are set forth in the Contract Documents. For purposes of this Project, the Contract Document referenced as "CM/GC Contract" in the General Conditions shall mean this Contract between the City and CM/GC. The Contract shall include all exhibits attached hereto, which by this reference are incorporated herein as well as any properly executed Amendments and Change Orders to this Contract. This Contract shall supersede any and all arrangements or agreements between the parties, whether written or otherwise.
- b. **Effective Date.** The Contract shall become effective on the last date on which all parties have signed the Contract and City has issued a written directive for the CM/GC to proceed with Preconstruction services.
- c. **The Contract; Order of Precedence.** Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Section A.3 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

3. WORK OF THE CONTRACT

- a. **Preconstruction services.** The CM/GC agrees to provide all of the services stated in Exhibit B-RFP for CM/GC Services, Scope of Preconstruction Services, on an ongoing basis in support of, and in conformance with, the time frames described herein as well as at the direction of the City and in cooperation with the Engineer and other designated Project consultants (the "Construction Principals").
- b. **Construction Services.**
 - 1) Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall commence with Construction Services as provided in the Contract, including without limitation providing and paying for all materials, tools, equipment, labor, jurisdictional approval as required for the Work, professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract, to furnish to City a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment).
 - 2) Notwithstanding any other references to Construction Services in this Agreement, the Contract shall include only Preconstruction services unless:
 - i. the parties execute a GMP Amendment or

- ii. the parties execute an Early Work Amendment, defined below.
- 3) The parties may execute one or more Early Work Amendments identifying specific Construction Services that must be performed in advance of establishment of the GMP, without exceeding a time & expense budget with a not-to-exceed limit or a fixed price ("Early Work Price") to be stated in such Amendment, subject to all necessary City approvals as required.
- i. If the Early Work Price is a time & expense budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CM/GC Fee, does not exceed the Early Work Price; however
 - ii. if CM/GC performs Early Work under a fixed price, and incurs cost in excess of that fixed price, the CM/GC shall complete the Early Work and pay such excess cost without reimbursement.
 - iii. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to City, which shall incorporate the Early Work Amendments.
- 4) If City thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the General Conditions shall apply.
- 5) Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to City a full performance bond and a payment security bond as required by Section G of the General Conditions in the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to City additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to City an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

4. RELATIONSHIP AND ROLES OF THE PARTIES

- a. **Independent Contractor.** The CM/GC is an independent contractor and not an officer, employee, or agent of City as those terms are used in ORS 30.265.
- b. **Performance of Work.** The CM/GC covenants with City to:
 - 1) cooperate with the City's Authorized Representative(s), Construction Principals, agencies having jurisdiction,
 - 2) utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of City;
 - 3) to furnish efficient business administration and supervision;
 - 4) to furnish at all times an adequate supply of workers and materials; and
 - 5) to perform the Work in conformance with the terms and conditions of the Contract Documents and in a safe, expeditious and economical manner consistent with the interests of City.

- c. **Design Consultants.** City has a separate contract with the Engineer related to the Project. Both the CM/GC and the Engineer shall be given direction by City through City's Authorized Representative(s). The CM/GC agrees to support City's efforts to create a collaborative and cooperative relationship among the CM/GC, Engineer, other Project consultants, and City's Authorized Representative(s).
- d. **Forms and Procedures.** The City has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.
- e. **CM/GC's Project Staff.** The CM/GC's Project staff shall consist of the following personnel:
 - 1) Project Manager: _____ (name, email, phone) shall be the CM/GC's Project Manager and will supervise and coordinate all Construction Phase and Preconstruction services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by City. CM/GC represents that the Project Manager, or designee approved by City, has authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.
 - 2) Job Superintendent: If Construction Services are requested and accepted by City, _____ (name, email, phone) shall be the CM/GC's on-site job superintendent throughout the Project term. In addition to the Construction Services, the Job Superintendent shall be an active part of the Preconstruction Services Project team.
- f. **Key Persons.** The CM/GC's personnel identified in paragraph 4.e., and the key staff identified by name in CM/GC's Proposal to the RFP and accepted by City, shall be considered Key Persons and shall not be replaced during the Project without the prior written permission of City, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to City at least thirty (30) Days (or such shorter period as permitted by City) prior to the intended time of substitution. When replacements have been approved by City, the CM/GC shall provide a transition period of at least ten (10) Business Days during which the original and replacement personnel shall be working on the Project concurrently; provided, however, that City shall be charged and pay for only the original or the replacement personnel, whichever is less expensive but not both, for the transition period. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the prior written permission of City.
- g. In the event that replacement of Key Persons is required during the course of the Project, the resume for subsequent staff members proposed shall be provided to the City for review and approval prior to their assignment to the Project. CM/GC shall not assign any person the City does not specifically approve of, such approval which shall not be unreasonably withheld by the City.
- h. Replacement staff shall be of equal or higher caliber in terms of experience and skills sets than those they are replacing.
- i. In the event that Key Persons are replaced during the Project, the City shall not incur additional cost for labor rates of replacement staff compared to the originally proposed staff members. Any labor expenses in excess of those proposed for the original Key Persons shall be the financial responsibility of the CM/GC.

5. DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

- a. **Notice to Proceed.** If Construction Services are added to the Contract as set forth in paragraph 3.b., then a Notice to Proceed will be issued by City to begin the designated or full Construction Services ("Notice to Proceed"). A separate Notice to Proceed shall be issued for any and every Early Work

Amendment and each of the two GMP Amendments.

- b. Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire Work not later than _____, 20__ and shall achieve Final Completion not later than _____ (__) calendar days after Substantial Completion. City and the CM/GC may agree to phased acceptance, in which case City shall have the right to take possession and acceptance of the Project in phases, and the CM/GC agrees that such partial acceptance shall not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates.
- c. [INTENTIONALLY OMITTED]**
- d. Time is of the Essence.** All time limits stated in the Contract Documents are of the essence.
- e. Time Extensions.** Notwithstanding provisions for Contract time extensions in Section D.2 of the General Conditions, City and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort.
- f. Failure to Achieve Substantial Completion by Final Completion Date.** In the event CM/GC fails to obtain Substantial Completion by the date set for Final Completion in 5.b, subject to any time extensions granted by the City during the Project, City reserves the right to terminate this Contract for Cause and pursue any course of action deemed in the best interest of the City to complete the Project. Any and all costs incurred by the City, in addition to any actual damages accrued, under this clause shall be considered the financial responsibility of the CM/GC.
- g. Delay in Final Completion.** City shall make payment of the balance due for any portion of the Work fully completed and accepted if Final Completion is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion. In the event that final completion is not accomplished within thirty (30) calendar days after the date of Substantial Completion due to any fault of Contractor, City may withhold from the final payment 150 percent of the reasonable cost to complete the unfinished Work and to attain Final Completion. In the event Contractor fails to complete the Work necessary to attain Final Completion after forty five (45) days from Substantial Completion, City may, without waiving other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld.

6. FEES, CONTRACT SUM AND GMP

- a. Fees; Contract Sum; GMP.** City shall pay CM/GC the Preconstruction Fee described in paragraph 6.d. In addition, for each Early Work Amendment executed by CM/GC and City, City shall pay CM/GC, as payment for the Early Work, an amount equal to the sum of the CM/GC Fee to the proportional extent attributable to the Early Work, the cost of any bonds and insurance applicable to the Early Work, and the actual cost of all Early Work completed and accepted by City, but not exceeding the Early Work Price.
- b.** The GMP shall be determined in accordance with the formula set forth below and as described in this paragraph 6.

Preconstruction Fee (Becomes a not-to exceed amount)
+ CM/GC Fee (Is a fixed dollar amount, which is subject to adjustment in accordance with paragraph 6.f.)
Construction Fee (GMP Determination)
+ Cost of the Work (Becomes a total amount based on established pay items)

+ Bonds and Insurance (Estimated costs)
+ Risk/Contingency Items (An allowance not included in Cost of the Work)
= GMP

- c. The "Cost of the Work" is specifically defined in Article 8. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by City. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary City approvals
- d. **Preconstruction Fee.** The Preconstruction Fee shall be payable to CM/GC as a lump sum of \$_____ which shall cover coordination with the City and Engineer, constructability review, value engineering, cost estimating, development of GMP, and all other reconstruction services, as described in paragraph 3. If CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, CM/GC shall absorb such additional costs without reimbursement from City. City shall pay the Preconstruction Fee on a percent-complete basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee, the City shall retain the unused fee.
- e. **Preconstruction services provided after execution of the GMP Amendment:** If City and CM/GC execute a GMP Amendment, compensation for any ongoing preconstruction services that occur after execution of the GMP will be addressed in the GMP Amendment.
- f. **Establishment of CM/GC Fee; Converting the CM/GC Fee Percentage into a Fixed Amount; Adjustments to CM/GC Fee.**
 - 1) The CM/GC Fee shall be a fixed fee, set forth in Exhibit C and the Cost of the Work subject to adjustment by change order that is based upon the Cost of the Work in any Early Work Amendment(s) and the GMP Amendment. In calculating the GMP, the Cost of the Work shall exclude the Preconstruction Costs, the CM/GC Fee itself and any other cost or charge which this CM/GC Contract states is not to be included in calculating the CM/GC Fee.
 - i. The CM/GC Fee Components: The CM/GC Fee is inclusive of 1) profit; 2) general and administrative (G&A) costs; 3) home, branch and regional office overhead; and 4) other indirect and non-reimbursable costs as identified in Exhibit A, the General Conditions. The CM/GC Fee shall exclude costs for construction risk to perform the Work. Costs for Construction General Conditions not included in the CM/GC Fee shall be included in the Cost of the Work. Risk for construction that is allocated to the CM/GC shall be included in the agreed-upon Pay items that comprise the Cost of the Work.

No additional markup will be paid to the CM/GC for change order or force account work or for subcontracted labor or materials.

- 2) **Good Faith Negotiations** - The Agency and CM/GC shall negotiate the fixed lump sum amounts, estimated quantities, fixed unit prices, estimated cost reimbursable amounts, and all other aspects of the Work in good faith and shall establish a set of assumptions upon which all Work and unit prices are based.
- 3) **Amendment Pricing.** Once all components of the Work are agreed upon by the City and CM/GC, all Pay Item total costs (the Pay Item estimated quantity multiplied by the unit price) shall be rolled into one total amount, which becomes the Cost of the Work. The CM/GC Fee then becomes a fixed amount for the Work, subject to adjustment by Change Order in accordance with Article 7. The estimated actual reimbursable costs for any applicable bonds and insurance shall not be subject to

mark-up.

- 4) In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

g. Determination of GMP.

- 1) CM/GC shall deliver to City a proposed GMP and GMP Supporting Documents at a time designated by City during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.
- 2) As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the Engineer that is consistent with the Contract Documents and reasonably inferable there from. Such further development does not include such things as changes in scope outside of the original intent of the design, fundamental system or process types, significant changes to types or quantities of building components that are inconsistent with the original design intent, quality of finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 3) The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:
 - i. A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
 - ii. A detailed list of allowances and contingencies, the allocated amount of the GMP as well as a statement of their basis, parameters and calculation methodology.
 - iii. A list of the clarifications, qualifications, exclusions, assumptions and any other material qualifiers used by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
 - iv. The proposed GMP, including a statement of the estimated cost organized in a manner acceptable to the City, allowances, contingency, and other items and the associated fees that comprise the GMP.
 - v. The parties may agree to identify and carry contingency to reflect potential escalation of material and commodity prices during the course of construction as well as estimated risk costs for changes and differing site conditions.
- 4) The CM/GC shall meet with the City and Engineer to review the GMP proposal and the written statement of its basis. If the City or Engineer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 5) Prior to the City's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.

- 6) The City shall authorize and cause the Engineer to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the City, Engineer and CM/GC. Prior to commencement of work, the CM/GC shall promptly notify the Engineer and City if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 7) The GMP shall include in the Estimated Cost of the Work only those taxes and/or governmental fees which are enacted at the time the GMP is established.
- 8) The Estimated Cost of the Work shall include the Project contingency, which is a sum established by the CM/GC and City for the City and CM/GC's mutually agreed upon use to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order. For purposes of use of Project's contingency, unanticipated costs and unforeseen conditions include Work within the scope of the Project or any conditions that the parties reasonably should have anticipated might be encountered during the renovation of a site or of a building of similar nature, condition and age. The parties shall provide advance written notice to the other each time the parties propose to use the Project contingency, shall include in the notice the purposed purpose for such use, and shall seek the agreement and approval of the other prior to the contingency use, the approval of which shall not unreasonably be withheld by the other party.
 - i. The Project contingency shall not be utilized by any party to make changes to the Project that are inconsistent with Article 6. or should reasonably be incorporated into the Project via a Change Order.
- 9) The CM/GC shall work with the Engineer and City to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project and sequencing to maintain continuous delivery of treated water. City will direct the Engineer to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
- 10) Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility consistent with the design intent of the City and Engineer.
- 11) In developing the GMP, the CM/GC shall include and identify any allowances within the GMP as may be necessary to pay for undefined costs and conditions that are required for a complete, fully functional facility.
 - h. Failure to Furnish an Acceptable GMP.** If the CM/GC does not furnish a GMP acceptable to City or if City determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to City, City may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee earned as of the date of the termination under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the General Conditions as a termination for City's convenience. CM/GC further agrees that City shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.
 - i. Acceptance of GMP.** Upon acceptance of the GMP by City, the parties shall execute a GMP

Amendment for the relevant package to which the GMP relates.

- j. City Savings.** If the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in paragraph 6.a.), is less than the GMP, 100% of the savings shall accrue to the City.
- k. Allowance Work.**

 - 1) CM/GC shall not perform any Allowance Work without prior written authorization by the City approving the Specifications for the Allowance Work and the price thereof.
 - 2) City shall be entitled to reallocate any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.
 - 3) If the total cost of the Work associated with allowances exceeds the total Allowances amount within the GMP, CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance Work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance Work.
 - 4) If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.
 - 5) Allowances shall not be allowed to have costs charged against them for accounting purposes on the Project. CM/GC shall submit itemized estimates based on competitive bids or quotes for City review and approval for any and all Work covered by Allowances. Upon acceptance by the City, CM/GC will reallocate Allowance funding to general Cost of the Work budget line items.
- l. Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, after review and approval by the City, CM/GC shall review projected costs and provide the City with a buy-out status report showing any projected cost over/under runs by contracting package, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by City used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the Project's Contingency. The parties shall negotiate in good faith to execute a budget revision transferring an appropriate portion of any projected cost over/under runs to/from the Project Contingency. Any unused contingency shall be returned to the City.

 - 1) Over/under runs on bid packages and subcontracted scopes of work shall accrue or be funded from a buy-out contingency that will be jointly controlled by the City and CM/GC. Funding in the buy-out contingency shall not be allocated other than to portions of the Work until all Subcontractors are under contract, at which time any surplus shall accrue to the contingency for the Project subject to the requirements and limitation of use described herein.
- m. CM/GC's Sole Responsibility for Errors.** The CM/GC agrees that review or approval by Agency or its agents of the CM/GC's estimates, proposals, pricing, or any other information disclosed to Agency, including those under Early Work Amendment(s) or the GMP Amendment, shall not relieve CM/GC of its sole responsibility for any costs resulting from or arising out of defects or deficiencies in the CM/GC's estimates, proposals, pricing, or any other information disclosed to Agency.

7. CHANGES IN THE WORK

- a. Price Adjustments.** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section D of the General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:
- 1) The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under paragraph 6.f of this Agreement;
 - 2) The increase or decrease in the Estimated Cost of the Work, other than for subcontract Work, shall be calculated pursuant to Articles 8. and 9. of this Contract, instead of being based on CM/GC's Direct Costs as defined in the General Conditions; and
 - 3) In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental markup provided in Section D of the General Conditions, and shall not be modified by Articles 8. and 9. of this Contract.
- b. Adjustments to GMP.** Notwithstanding any contrary language in the Contract Documents, adjustments to the GMP after execution of the GMP Amendment may be made only in the event of a Scope Change, and then only in accordance with the following procedure:
- 1) CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
 - 2) Changes to the GMP shall be initiated by written notice by one party to the other. CM/GC shall deliver any such request to Engineer and City's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any change request shall include a fully itemized proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
 - 3) CM/GC shall submit its request as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a Change Order Request to City's Authorized Representative and to Engineer within the earlier of,
 - i. ten (10) business days after CM/GC has received the information constituting the basis for the claim, or
 - ii. as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and
 - iii. in any event, prior to CM/GC's signing of a Change Order for the Scope Change.
 - 4) City may, at any time, submit a reduction of the GMP, which shall include City's basis for such request, which may include, for example, reduction of the Project's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
 - 5) CM/GC shall work with City and Engineer to reconcile all differences in its request within three (3) business days from the date of submission of the request. "Reconciled" means that the CM/GC, City and Engineer have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the request and the City and/or Engineer's position. CM/GC shall submit the reconciled request to City, which submission shall be a condition

to any CM/GC claim for a GMP increase.

- 6) If the reconciled request is not acceptable to City, CM/GC agrees to work with the City and the Engineer to provide a request that is acceptable to City.
 - 7) CM/GC agrees to make all records, calculations, drawings and similar items relating to the request available to City and to allow Engineer and City access and opportunity to view such documents at CM/GC's offices. Upon City's reasonable notice, CM/GC shall deliver two copies of such documents to City and Engineer at any regular meeting or at the Site.
 - 8) GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
 - 9) Except as provided in this paragraph 7.b., adjustments to the GMP shall be reconciled in accordance with Section D of the General Conditions.
- c. Execution by City.** Engineer has no authority to execute Change Orders or Amendments on behalf of City, and only duly authorized personnel of City may do so. However, as provided in the definitions for "City's Authorized Representative" and "Architect/Engineer" in Section A.1 of the General Conditions, City may, by written notice to the CM/GC, delegate some or all responsibilities of the City's Authorized Representative to the Architect/Engineer.
- d. Continuation of Work.** CM/GC shall continue to prosecute the Work in a timely and diligent manner consistent with the regardless of the status, outcome or other issues associated with potential Change Orders or Amendments. In no way shall CM/GC impact or allow others, such as Subcontractors, to impact the Project Schedule due to pending, on-going or concluded change order negotiations. Failure to do so shall be considered a material breach of the Contract on the part of the CM/GC and subject to recourse by the City.

8. COST OF THE WORK (To Be Reimbursed)

- a. Cost of the Work.** (The term "Cost of the Work" shall mean the following costs.) The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work and specifically identified in this Article 8., and only to the extent that they are directly related to the Project.
- b. Labor Costs.**
- 1) Wages of construction workers directly employed by the CM/GC to perform the construction of the Work.
 - 2) Wages and salaries of the CM/GC's supervisory and administrative personnel
 - i. stationed at the site, or
 - ii. engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with City, or otherwise engaged and off the site when specifically related to the Project, and

iii. under either clause (i) or (ii), only with City's prior written approval, and only for that portion of their time directly required for the Work.

- 3) Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under paragraphs 8.b.1) through 8.b.2).

c. Subcontract Costs.

- 1) CM/GC's actual payment to Subcontractors pursuant to CM/GC's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by City.

d. Costs of Materials and Equipment Incorporated in the Work or Stored On Site.

- 1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.
- 2) Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to City at the completion of the Work or, at City's option, shall be sold by the CM/GC. Any sale shall be commercially reasonable and CM/GC shall provide accounting for such a sale within fifteen (15) business days of the transaction. Net amounts realized, if any, from such sales shall be credited to City as a deduction from the CM/GC Fee.

e. Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.

- 1) Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site and fully consumed in the performance of the Work.
- 2) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented:
- shall be according to industry standards,
 - shall not exceed 100% of the rental rates published from time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated in effect at the time of rental
 - shall not exceed acquisition costs, and
 - for individual items exceeding \$ 500.00, will be subject to City's prior approval.

CM/GC shall deliver to City a list of published rates from time to time at City's request. For all items rented or leased, the CM/GC shall charge City only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the

interest of the City. Efforts shall include, but not be limited to, providing City with a rent/buy analysis so that City may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue.

- 3) Costs of removal of debris from the site.
- 4) Cost of communication devices, postage and parcel delivery charges, and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

f. Other Costs.

- 1) That portion of premiums for insurance directly attributable to the Contract for builders all/risk insurance, and payment, performance and public works bond premiums as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by City). CM/GC's charge to City for all bonds and insurance shall be limited to the CM/GC's verifiable costs for those items.
- 2) Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable.
- 3) Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.
- 4) CM/GC deposits lost for causes other than the CM/GC's fault or negligence.
- 5) Costs of drawings, Specifications and other documents required to complete the Work, except as provided by City or Engineer.
- 6) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by City.

g. Costs to Prevent Damage or Injury in Emergencies. The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

h. Costs For General Conditions Work. CM/GC shall be paid on a lump-sum basis as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. The lump-sum amount for GC Work shall be established in each Early Work Amendment or the GMP Amendment, as applicable. To the extent any GC Work is otherwise described above in this Article 8., CM/GC's compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Cost for GC Work, less 5% retainage thereon, shall be paid monthly on a percent complete basis of the scheduled Construction Phase, including any period of Early Work, commencing with the first progress billing after commencement of the scheduled Construction Phase or Early Work Period. However, no adjustment in the amount for General Conditions Work will be made if the actual construction period or Early Work period is shorter or longer than the number of months scheduled for the Construction Phase or Early Work period, unless such period is extended because of a City-requested delay.

i. Travel and subsistence expenses of the CM/GC shall be included in the costs for General Conditions.

j. At the Owner's and Engineer's discretion and in negotiations with the CM/GC, the Cost of the Work may be modified to a traditional unit cost basis for all work performed.

9. COSTS EXCLUDED FROM COST OF WORK (Not To Be Reimbursed)

a. Costs Excluded from Cost of Work. The following shall not be included in the Cost of the Work unless specifically approved in writing by the City prior to approval of the GMP:

- 1) Salaries and other compensation of the CM/GC's personnel stationed in offices other than the site office except as allowed under paragraphs 8.b.2) and 8.b.3).
- 2) Office expenses of the CM/GC other than the site office.
- 3) Any overhead and general expenses, except as may be expressly included in paragraph 8.
- 4) CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 5) Rental cost of machinery and equipment, except as provided in paragraph 8.e.2).
- 6) Any cost associated with the Project not specifically and expressly described in paragraph 8.
- 7) Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 8) The cost of correction of any repair Work, nonconforming or defective Work, or warranty Work.
- 9) Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.
- 10) Fines and penalties.
- 11) Except for Early Work, the cost of Preconstruction services.
- 12) The Cost of GC Work in excess of the lump-sum amount established for GC Work.
- 13) Any costs in excess of the GMP.
- 14) Any equipment, vehicle, tool or other items the CM/GC retains ownership of beyond the Substantial Completion date of the Project.

10. DISCOUNTS, REBATES AND REFUNDS

- a. Discounts, Rebates and Refunds.** Cash discounts obtained on payments made by the CM/GC shall accrue to City. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to City, and the CM/GC shall make provisions so that they can be secured.
- b. Amounts Credited to City.** Amounts which accrue to City in accordance with the provisions of paragraph 10.a. shall be credited to City as a deduction from the Cost of the Work.

11. SUBCONTRACTS AND OTHER CONTRACTS

a. General Subcontracting Requirements.

- 1) Other than Work performed pursuant to paragraphs 13.e. or 13.f. of this Agreement, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates. If CM/GC elects to bid on any Work, CM/GC shall inform City of its intention to do so prior to the bid package release date for public bidding for that Work.

b. CM/GC's Obligations under Subcontracts.

- 1) No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.
- 2) The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify City for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Agreement in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their portions of the Work.
- 3) **Retainage from Subcontractors.** Except with the City's prior approval and as allowed under Oregon law, payments to Subcontractors shall be subject to retainage of no more than 5%. The City and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

c. Subcontractor Selection.

- 1) All Subcontractors performing Work must be, as legally required or appropriate for the Work they are performing, registered or licensed by the following before such Subcontractors commence Work and for the duration of the subcontract:
 - i. The Construction Contractors' Board in accordance with ORS 701.035 to 701.138;
 - ii. The State Board of Examiners for Engineering and Land Surveying in accordance with ORS 672.002 to 672.325;
 - iii. The State Board of Architect Examiners in accordance with ORS 671.010 to 671.220;
 - iv. The State Landscape Architect's Board in accordance with ORS 671.310 to 671.459; or
 - v. The State Landscape Contractor's Board in accordance with ORS 671.510 to 671.710.
- 2) These registration and licensing requirements shall also apply to employees of the CM/GC and it shall require and ensure that they are in compliance.
- 3) The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with State

prevailing wage rates in effect at the time of execution of the first Early Work Amendment, or if no Early Work Amendment is executed, at the time the GMP Amendment is executed, as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto. The higher of those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project.

- 4) The CM/GC shall review all bids and shall work with bidders to clarify submitted bids, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- 5) Unless otherwise provided under this Article 11., the selection of all Subcontractors and suppliers shall be made by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the procedures discussed herein, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.
- 6) CM/GC shall submit to City's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all City comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the City an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by City. The competitive process used to award subcontracts by the CM/GC may be monitored by the City's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Agreement. CM/GC shall cooperate in all respects with City's monitoring. The City's Authorized Representative shall be advised in advance of and be given the opportunity to be present at bid openings, and CM/GC shall provide him or her with a summary or abstract of all bids in form acceptable to the City's Authorized Representative, and copies of particular bids if requested, prior to CM/GC's selection of bids. Prior to opening bids, the CM/GC agrees to disclose in writing to City any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project Work, directly or indirectly, including whether such party is an Affiliate of CM/GC.
- 7) The following minimum requirements apply to the Subcontract solicitation process:

For solicitations where the resulting subcontract estimated to exceed \$100,000:

- i. Solicitations shall be advertised at least ten (10) business days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- ii. Unless specific other prior arrangement has been made with the City representative, all bids will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- iii. If fewer than three (3) bids are submitted in response to any solicitation estimated to exceed \$100,000, (inclusive of any bid submitted by CM/GC), prior written approval by a City representative shall be required to accept a bid.
- iv. City may at its sole discretion, require CM/GC to re-solicit for bids based on the same or modified documents.

- v. The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and City shall be entitled to inspect such documentation on request.
- vi. CM/GC shall determine the lowest responsive and responsible bid for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with City's prior approval, execute a subcontract with the second-lowest Offeror pursuant to paragraph 11.c.9) below. CM/GC may alternatively utilize a solicitation method whereby both price and subcontractor qualifications are evaluated. In such case, the solicitation method and evaluation process must be documented in writing, must be competitive, fair and open, and must be prior approved by City. City reserves the right to approve such a method on a case by case basis.

For solicitations where the resulting subcontract estimated to be below \$100,000:

- i. Solicitations must be publically advertised in any or all of the following methods: electronically, in the Oregon Daily Journal of Commerce, or a local community newspaper.
- ii. Unless specific other prior arrangement has been made with the City representative, all bids will be written, and submitted to a specific location or email address at a specific time. Quotes may be sent and submitted electronically. CM/GC shall retain a record of the time and date all quotes are received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- iii. A minimum of three (3) written quotes must be solicited. CM/GC may consider price and other qualifications in awarding such subcontracts.

Generally:

- i. CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with City's prior written approval of such prequalification process.
 - ii. The CM/GC shall comply, and require Subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements. The wage rates that apply to this Project are described in paragraph C.1. of Exhibit A - General Conditions.
- 8) Under special circumstances and only with prior written authorization by City, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, City may require CM/GC's agreement to establish and implement qualification and performance criteria for bidders, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor Work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit City. Such alternative procurements may, at the sole determination of the City, be subject to the City's procurement policies.
- 9) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in paragraph 11.c.5., the process must meet the following requirements:
- i. The CM/GC must prepare and submit a written justification to the City explaining the project

circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification.

- ii. For a "sole source" selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - iii. If required by the City, the CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process.
 - iv. The CM/GC must fully respond to all City questions or comments pertaining to a proposed or completed non-competitive selection process or associated Work package.
 - v. The City must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
- 10) A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
- 11) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project:
- i. the CM/GC must disclose that fact in the selection process documents and announcements.
- 12) CM/GC shall notify City in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to City of all bidders received for the Subcontract at issue. City reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. City shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to City's disapproval shall be cause for an increase in the GMP. Notification shall be made with suitable time for review and comment/approval by the City before issuance of the Subcontract for execution.
- 13) The CM/GC shall notify the City in the event that it receives an objection or protest in response to subcontractor selection. The City must approve the CM/GC's proposed resolution to any such objections or protests, prior to the CM/GC implementing the resolution.
- 14) Briefings for Unsuccessful Subcontractors. Unsuccessful subcontractors will be allowed 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC and the City. The CM/GC shall hold such meetings within 45 days of the subcontractor's written request.

- 15) CM/GC's subcontracting records shall not be considered public records; provided, however, that City and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the City's interests.

d. CM/GC Field Work.

- 1) The CM/GC or its Affiliate(s) may provide GC Work required to complete the Project with its own forces, without the necessity of subcontracting such Work.
- 2) Except as provided in paragraph 11..d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of paragraph 11..e.

e. Subcontracting by CM/GC.

- 1) Except to the extent otherwise approved in advance in writing by City's Authorized Representative, the CM/GC or its Affiliates may submit a bid in accordance with paragraph 11.c. to do Work with its own forces, provided at least 80% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate. If CM/GC is selected to perform the Work, the overhead and markup paid to CM/GC shall be limited to its CM/GC Fee percentage and the markups applicable to Change Order Work or subcontracted Work set forth in the General Conditions shall not apply. The CM/GC shall clearly identify any Work for which it was the winning bidder in the supporting documentation and invoicing for payments so it can be easily determined that the Work was provided within CM/GC's bid price.
 - 2) For those items for which the CM/GC or any of its subsidiaries intends to submit a bid, such intent must be publicly announced with the solicitation for bidders required by paragraph 11.c., and City notified in writing. All bids for this Work, including the CM/GC, shall be delivered to City and publicly opened by City at an announced time, date, and place. An appointed City representative will provide objective, independent review and opening of bids or proposals for the elements of Work on which CM/GC bids.
 - 3) CM/GC or an Affiliate or subsidiary of the CM/GC may only perform elements of the construction Work without competition from subcontractors when:
 - i. The work is job-site GC Work, or
 - ii. The CM/GC proposed to self-perform certain elements of the Work in response to the City's CM/GC RFP and the City accepted these portions of the proposal in its contract negotiations with the CM/GC, or
 - iii. The CM/GC provides the City a detailed written proposal to self-perform the work, showing that such self-performance is cost effective, the City accepts the written proposal and the proposal is supported by at least one independent cost estimate prior to Work being included in the Contract.
- f. Change of Subcontractors.** Once a subcontract has been accepted by the City and executed by the CM/GC and Subcontractor, CM/GC shall not terminate or substitute the Subcontractor without prior written approval of the City. In the event a change to the subcontract assignment is made, CM/GC shall initiate a new bid package consistent with this Agreement to procure a new Subcontractor.

12. ACCOUNTING RECORDS

- a. **Accounting; Audit Access.** The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to City. City and City's representatives shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- b. **Periodic and Final Audits.** City may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. City intends to conduct a final audit of reimbursable costs prior to the Contract closeout and final payment application approval. The CM/GC shall cooperate fully with City in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in paragraph 14.d.

13. PROGRESS PAYMENTS

- a. **Integration with General Conditions.** The requirements of this paragraph 13. and paragraph 14. are in addition to, and not in lieu of, the requirements of Section E of the General Conditions. In the event of conflict between the provisions of paragraph 13. and 14. and Section E, the provision more favorable to City shall control. Without limitation, the provisions of paragraph 13..c. and 13..d. shall control over the corresponding provisions of Section E.2.5 of the General Conditions.
- b. **Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the General Conditions, City shall make progress payments on account of the Preconstruction Fee, Cost of the Work, and associated CM/GC Fee, less 5% retainage, to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. All progress payment requests shall include the forms designated or approved by the City stating that all of the Contractor's obligations to date relating to the Work have been paid. Reference Exhibit E, Progress Payment Waiver and Release.
- c. **Percentage of Completion.** Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.
- d. **Calculation of Payment.** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - 1) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work based on the monthly progress schedule update by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the City of changes in the Work, amounts not in dispute shall be included. For the lump-sum General Conditions, the amount payable will be equal to the amount allocated to General Conditions multiplied by the overall percent complete for the Project;
 - 2) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the General Conditions;
 - 3) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the

same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in paragraph 8..a., but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;

- 4) Subtract the aggregate of previous payments made by and retained by the City;
- 5) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the City in such documentation;
- 6) Subtract any amounts for which the City's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- 7) Subtract 5% retainage on the entire progress payment.

14. FINAL PAYMENT

- a. **Final Payment Accounting.** CM/GC shall submit to City a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment.
- b. **Calculation of Final Payment.** The amount of the final payment shall be calculated as follows:
 - 1) Take the sum of the CM/GC Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
 - 2) Subtract amounts, if any, for which the City's Authorized Representative withholds, in whole or in part, approval of payment.
 - 3) Subtract the aggregate of previous payments made by City to CM/GC. If the aggregate of previous payments made by City exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to City within 30 Days with interest at the rate applicable to City payments under the General Conditions.
- c. **Final Payment Review.** City or its accountants will review and report in writing on the CM/GC's final accounting within twenty (20) business days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as City or City's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of the Contract have been met, the City's Authorized Representative will, within ten (10) business days after receipt of the written report of City's accountants, either issue to City an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and City in writing of the City's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include City's Authorized Representative's estimate of the amount that is due the CM/GC under the application for payment.
- d. **Payment Disputes.** If City's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if City's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the City's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within twenty (20) business days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 20-Day period shall result in the substantiated amount reported by City's accountants becoming binding on the CM/GC. In addition, if City performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have twenty (20) business days after delivery of request for reimbursement by City to demand additional review by City's highest contracting authority; failure to make such demand within this 20 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the City's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section D.3 of the General Conditions. Pending a final resolution, City shall pay the CM/GC the amount of the application for payment approved by the City's Authorized Representative.

- 15. **Effect of Payment.** Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the City shall constitute acceptance of Work not conforming to the Contract Documents, a waiver of City's right to compel CM/GC to fix nonconforming Work or waiver of the right to assert overpayment.

16. TERMINATION OR SUSPENSION

- a. **City's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the City may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If City terminates for convenience during the Preconstruction Phase, City shall be entitled to copies of, and shall have the right to use, all work products of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to City on request.
- b. **City's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by City without penalty for convenience pursuant to Section J.5 of the General Conditions in which case CM/GC shall be entitled to payment of the amount stated in paragraph 16.a., together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP.
- c. **City's Termination for Cause.** In the event of termination of this Agreement by City for cause pursuant to Section J.4 of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and City's rights at law shall not exceed the amount the CM/GC would be entitled to receive under paragraph 16.b. If a court or other dispute resolution body determines City's for-cause termination to be unlawful, the City's termination is to be deemed a termination for convenience under 16.b. to the greatest extent the law permits.
- d. **CM/GC Termination for Cause.** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that City's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates the Contract for City's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under paragraph 16. above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.
- e. **Assignment of Subcontracts.** Each Subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the City, provided that such assignment is effective only after termination of the Contract by the City, and only for those Subcontracts and supply contracts which the City accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those Subcontracts and supply contracts accepted by City, if the Work has been suspended for more than twenty (20) business days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each Subcontract and supply agreement whereby the Subcontractor/supplier acknowledges City's rights under this paragraph 17.e. With respect to any Subcontracts/supply contracts that are not accepted by City, the provisions of Section J.6.1 of the General Conditions shall apply.

17. REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

- a. **Representations and Warranties.** CM/GC represents and warrants to City as of the effective date of the Contract:
 - 1) it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;

- 2) it has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered this Agreement to City and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);
- 3) CM/GC's execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under,
 - i. CM/GC's Articles of Incorporation or Bylaws;
 - ii. any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or
 - iii. any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 4) no material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;
- 5) there is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 6) the CM/GC's Project Manager identified in paragraph 4.e. is a duly appointed representative and has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

b. Tax Compliance Certification.

By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of CM/GC and that CM/GC is, to the best of the undersigned's knowledge, not delinquent in the filing or payment of any Oregon income taxes, Oregon personal property taxes, Oregon municipal taxes, or Oregon real property taxes and that it has otherwise complied with all Oregon tax laws and all tax laws of those Oregon municipalities to which Engineer is subject.. For purposes of this certification, "taxes" includes a state tax imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

18. MISCELLANEOUS

- a. Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.
- b. Merger.** The Contract Documents constitute the entire Contract between the parties and supersedes any previous negotiations, agreements or other commitments between the Parties for this Project. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be

effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

- c. **Foreign Contractor.** The CM/GC shall be domiciled in or registered to do business in the State of Oregon. If the CM/GC is not domiciled in or registered to do business in the State of Oregon, CM/GC shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies, or other regulatory bodies, relative to the resultant Contract. CM/GC shall maintain its legal capacity to perform the services set forth under the Contract.
- d. **Recyclable Products.** The CM/GC shall use recyclable products to the maximum extent economically feasible in the performance of the Contract Work set forth in this document.

CM/GC has the power and authority to enter into and perform this Contract. The persons executing this Contract on behalf of CM/GC, have the actual authority to bind CM/GC to the terms of this Contract.

For the CM/GC

For the City

Insert Full, Legal name of the CM/GC

Signature

Jordan Wheeler, City Manager

Printed Name and Title

Date

Exhibit A
Clean Water State Revolving Fund Forms and Requirements

The following attached CWSRF forms must be submitted with the proposal:

- BC 4 – Sworn Statement of Compliance
- BC 5 – Prevailing Wage Agreement
- BC 6 – List of Contacted DBE Businesses
- BC 7 – Certification of Independent Price Determinations
- BC 8 – Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Contract Language
- BC 9 – Certification Regarding Lobbying Activities
- BC 10 – Disclosure of Lobbying Activities
- BC 11 – Certification of Non-segregated Facilities
- BC 13 – Debarment and Suspension
- BC 11 – Certification of Non-segregated Facilities
- BC 12 – Non-discrimination in Employment Notice to Labor unions or Other Organizations of Workers
- BC 14 – Contractors compliance statement (EO 11246)

City of Sandy, Oregon

2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction

30 Percent Design



Spatial Reference
Name: NAD 1983 HARN StatePlane Oregon North FIPS 3601
PCS: NAD 1983 HARN StatePlane Oregon North FIPS 3601
GCS: GCS North American 1983 HARN
Datum: North American 1983 HARN
Projection: Lambert Conformal Conic
Map Units: Foot

Vertical Datum

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Sanitary Sewer

- Project Manhole
- ✕ Other Project Junction
- Manhole
- ✕ Other Junction or Unknown

- Pressure Main
- (SS) Gravity Main
- ++ Abandoned Sewer Main
- Sewer Laterals
- +- Abandoned or Plugged
- Gravity

Stormwater Drainage

- ⊙ Manholes
- Catch Basins
- Cleanouts
- (SD) Gravity Pipeline

Symbols

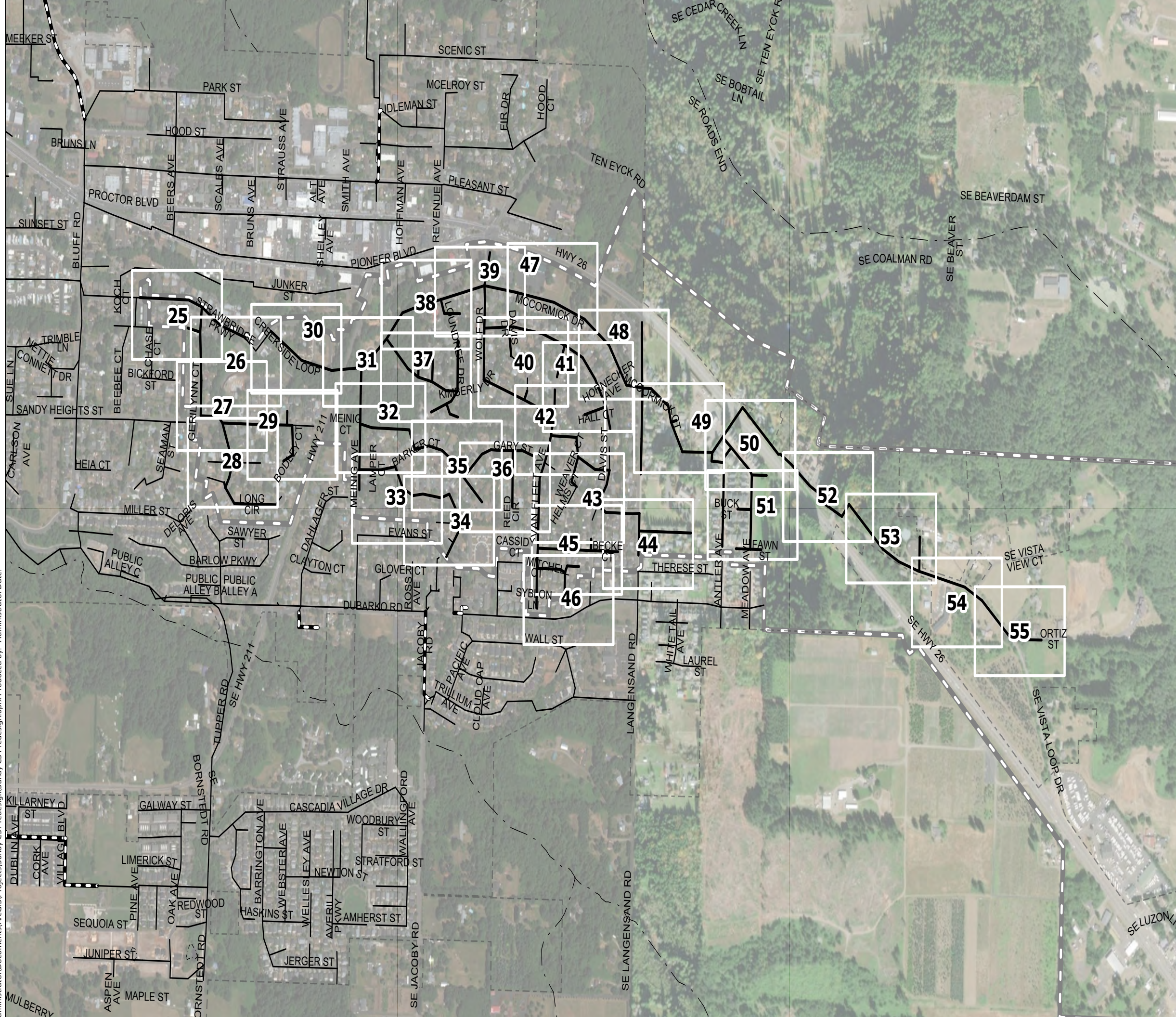
- Laterals
- Stream routes
- - - Stream routes
- Water Distribution Utility
- (W) Main

Electric Utility

- Underground Structures
- * Underground Power
- Optical Cable
- F--F Optical Cable

- / BPA_Easement
- Building footprints
- ☑ Sewer Basins 2 and 8

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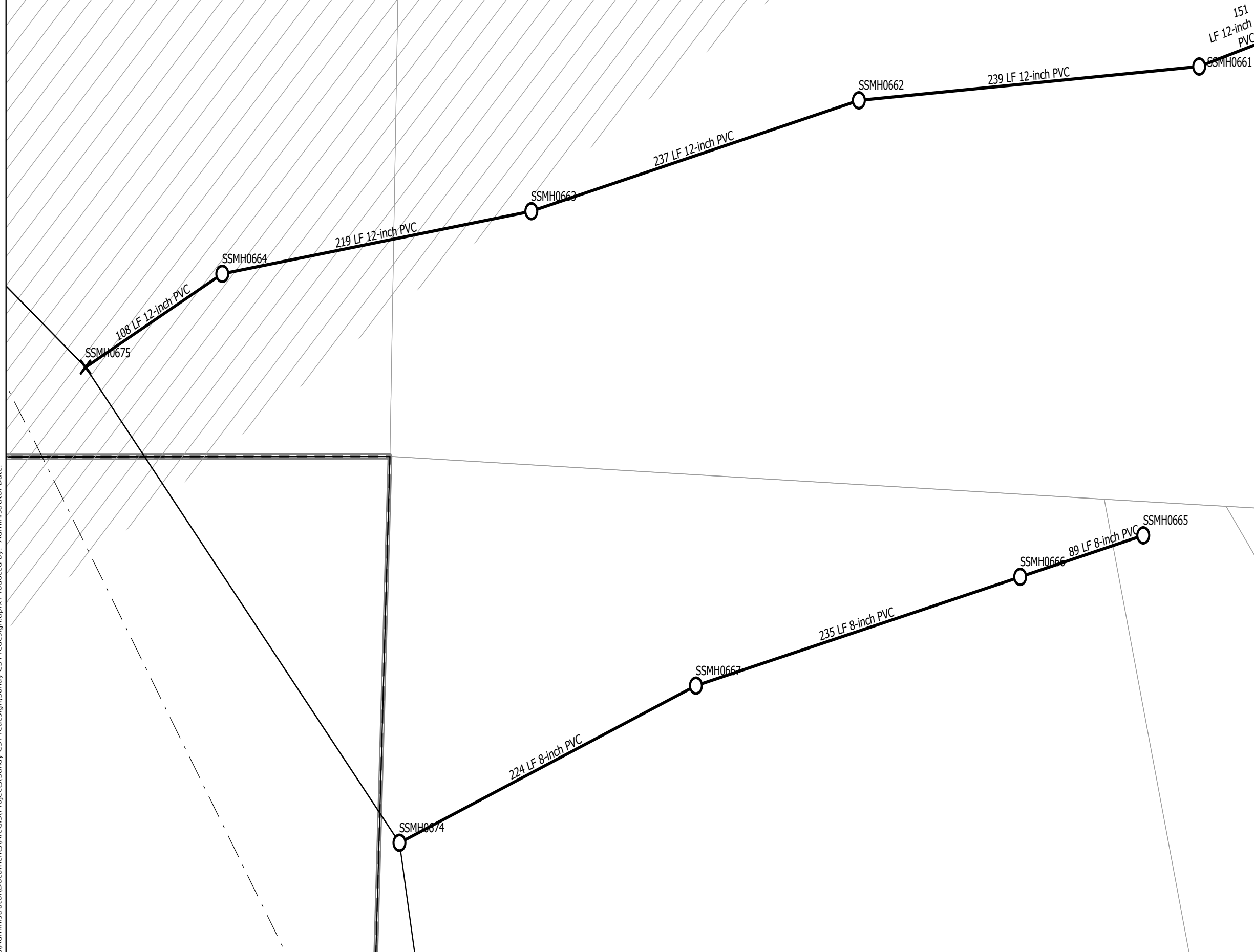


Scale printed on 11 x 17
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US Feet

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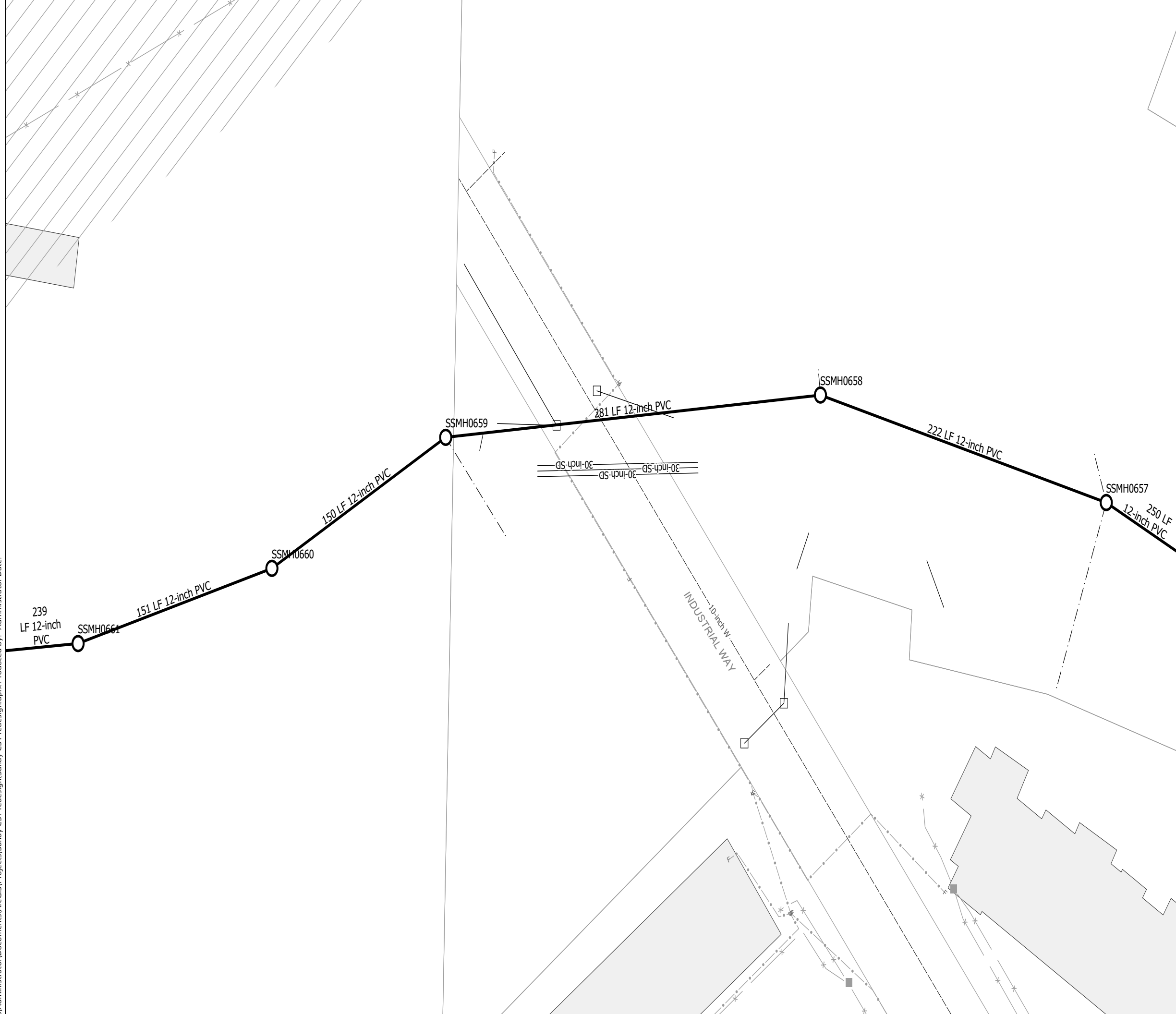


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Collection System RDII Reduction

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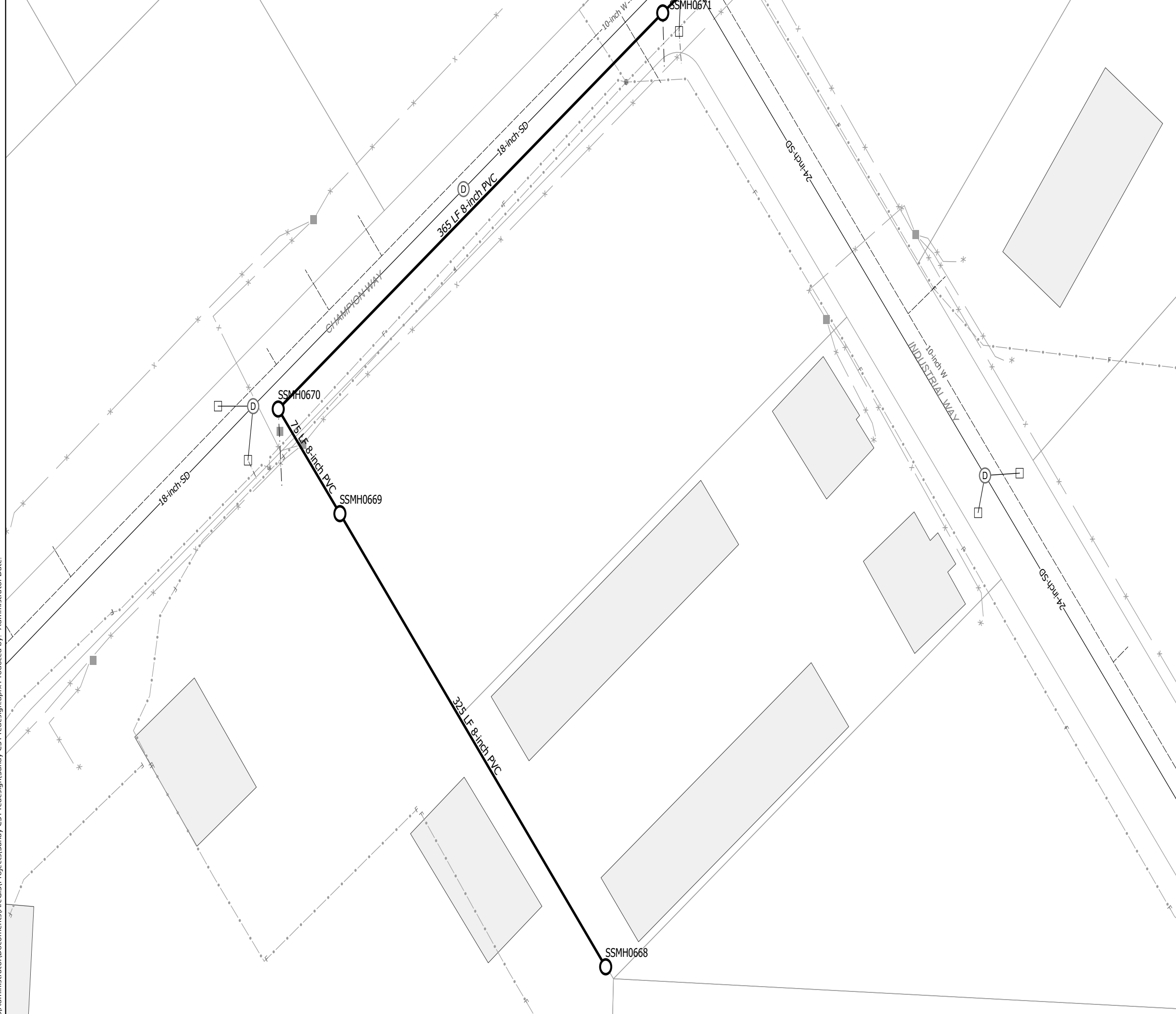
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Sheet 2 of 55

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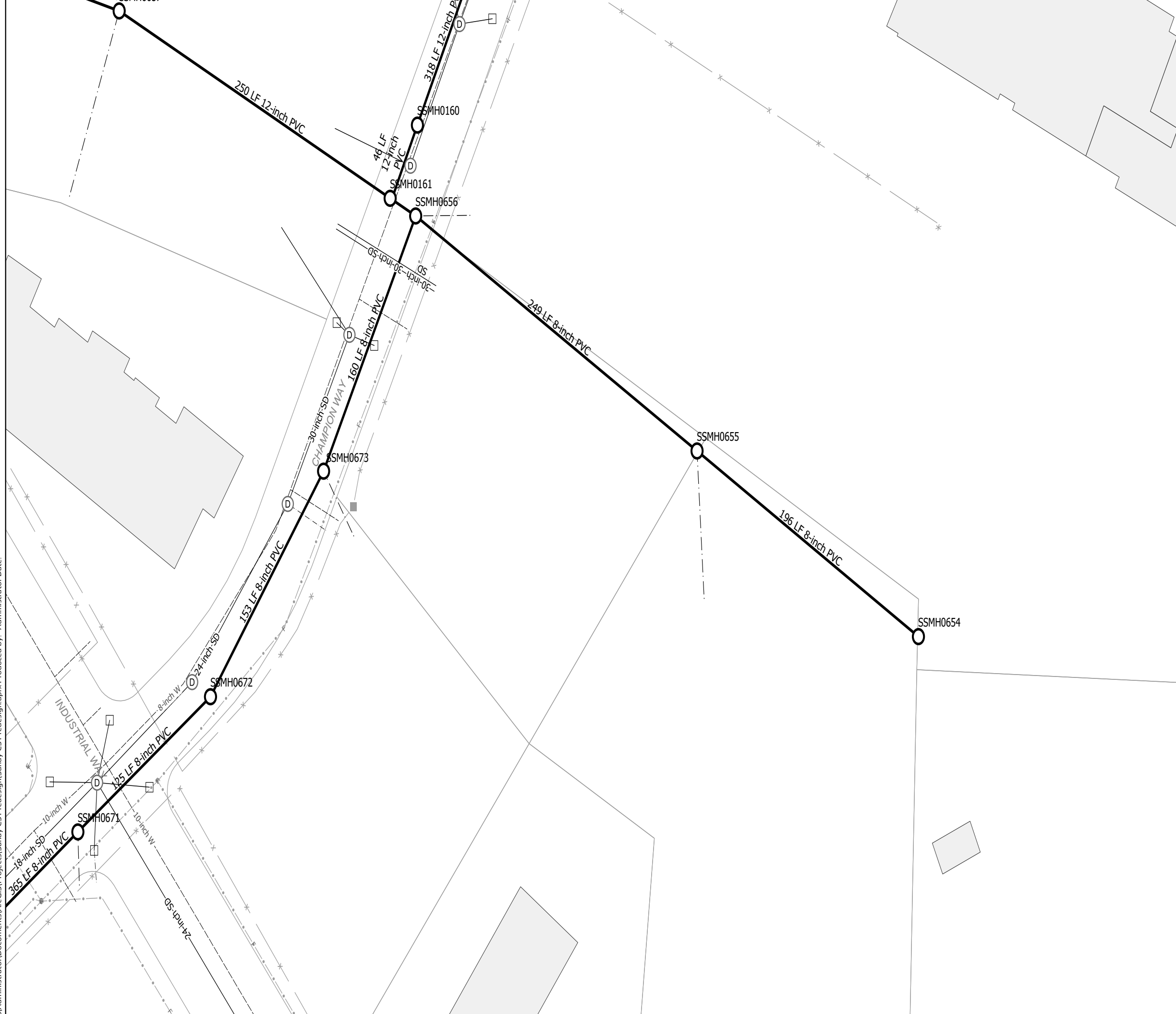
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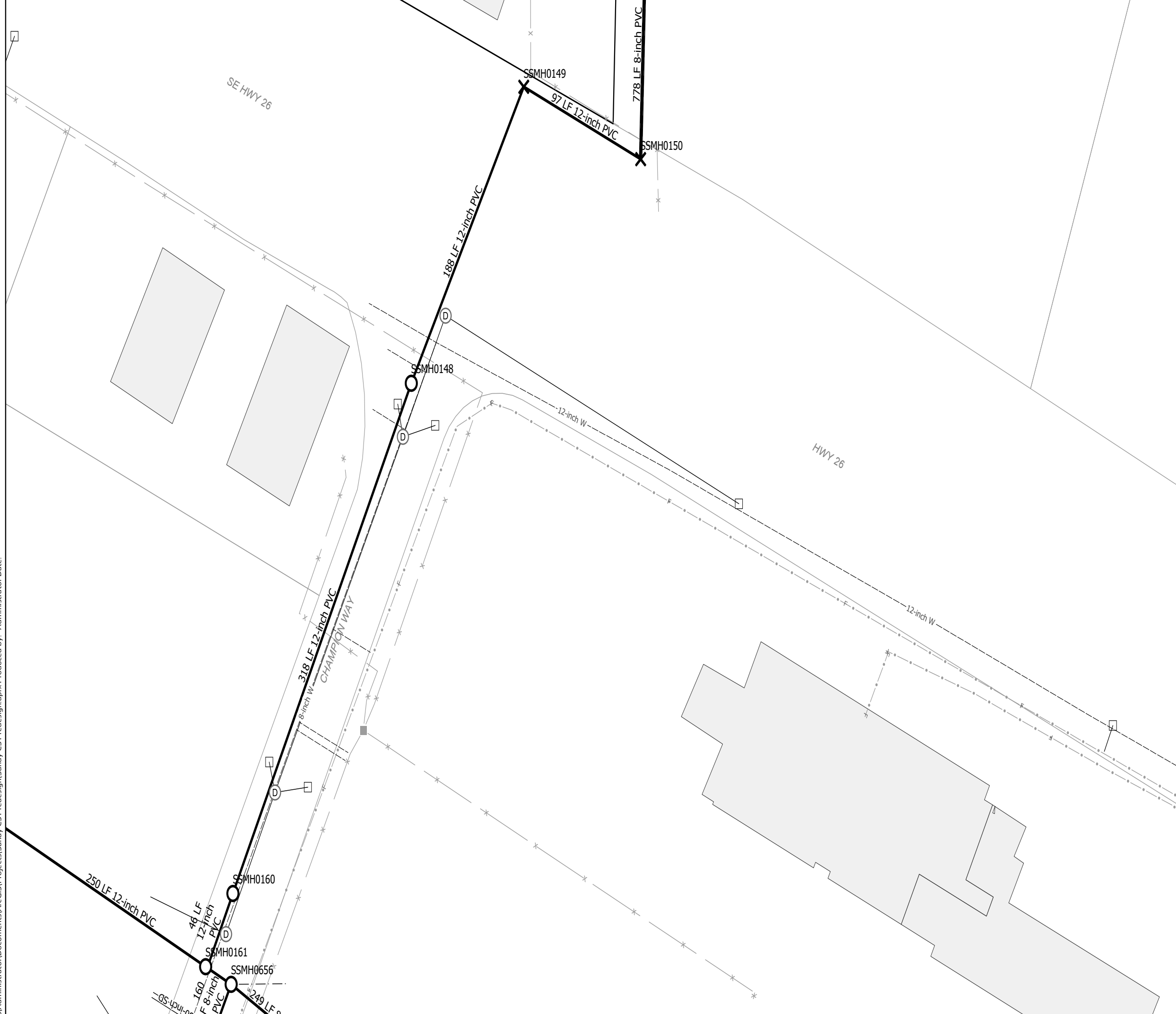
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Sheet 4 of 55

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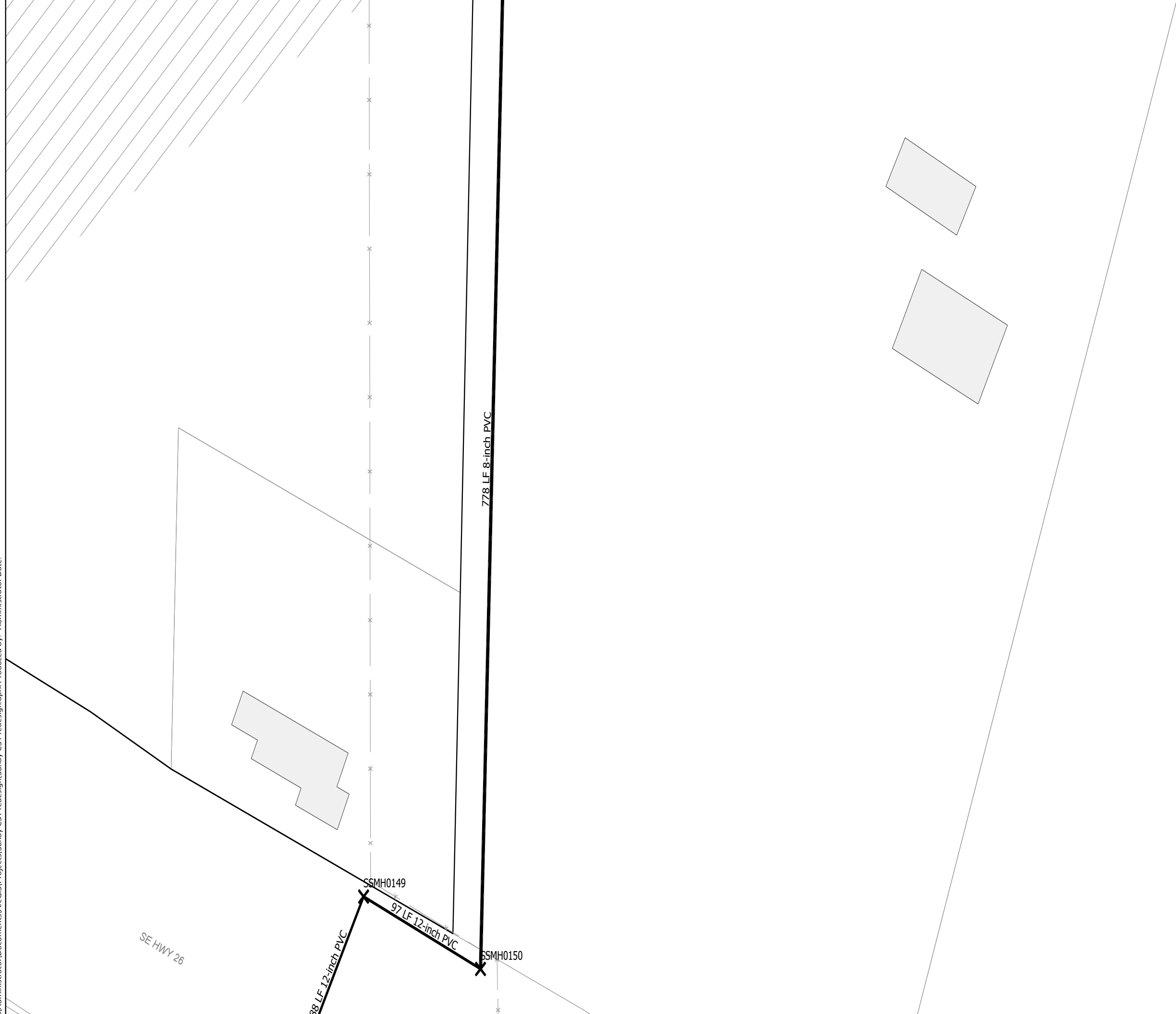
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 Sheet 6 of 55

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**Collection System
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Sheet 8 of 55

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**Collection System
RDII Reduction**

Sheet 10 of 55

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When printed on 11 x 17
1 inch equals 60 feet



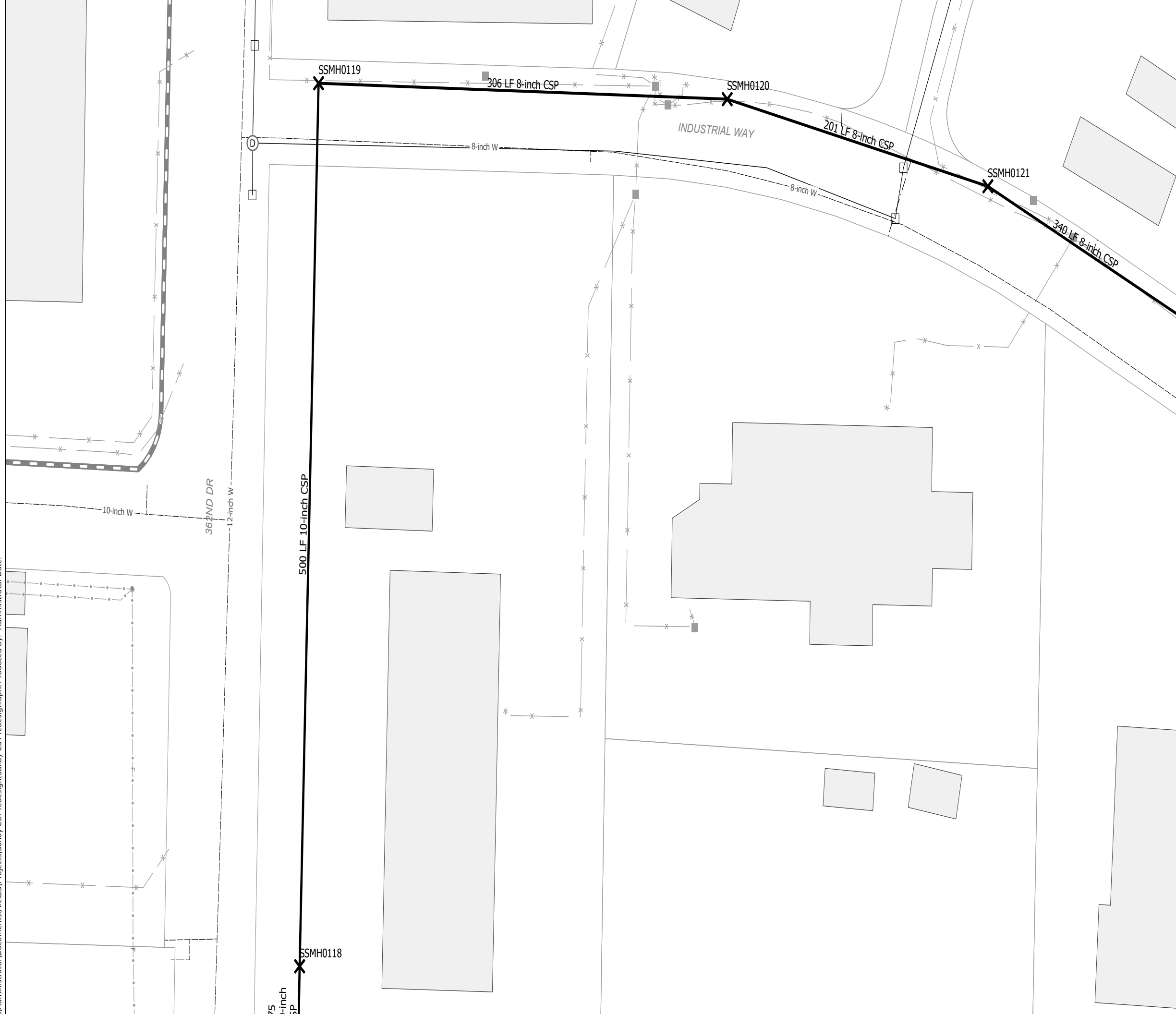
30 Percent Design

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**Collection System
RDII Reduction**

Sheet 11 of 55

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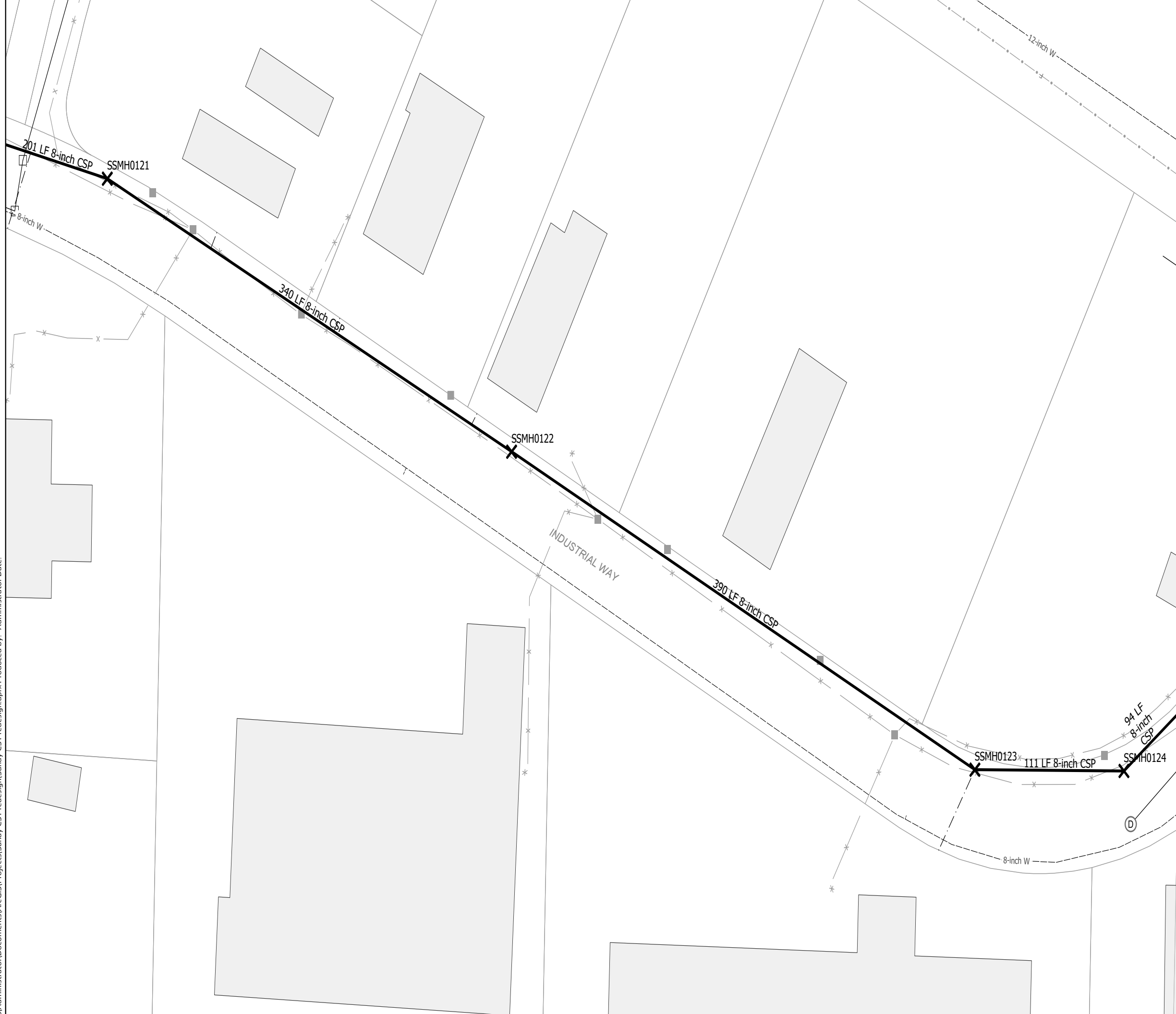


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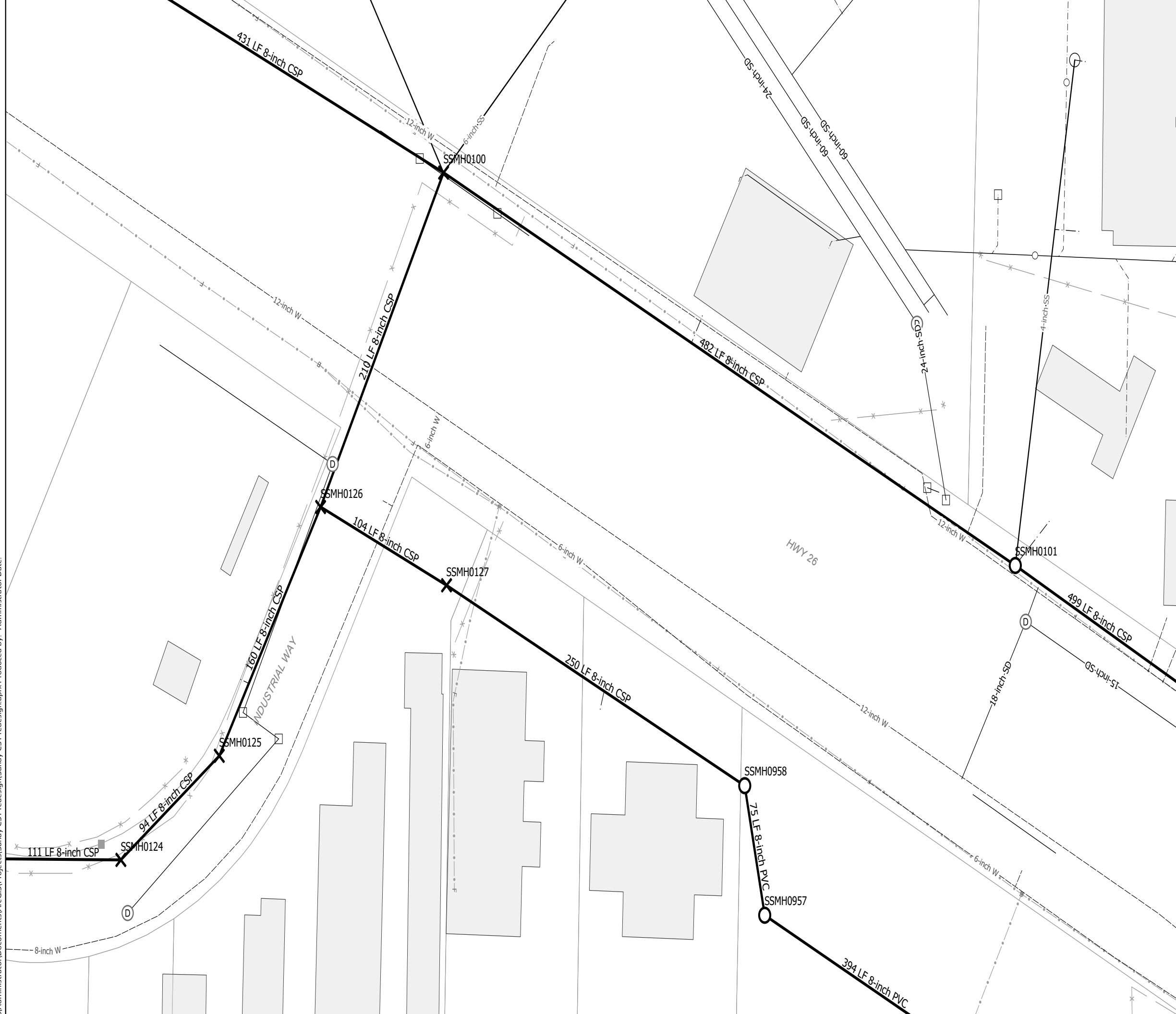
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**Collection System
RDII Reduction**

Sheet 13 of 55

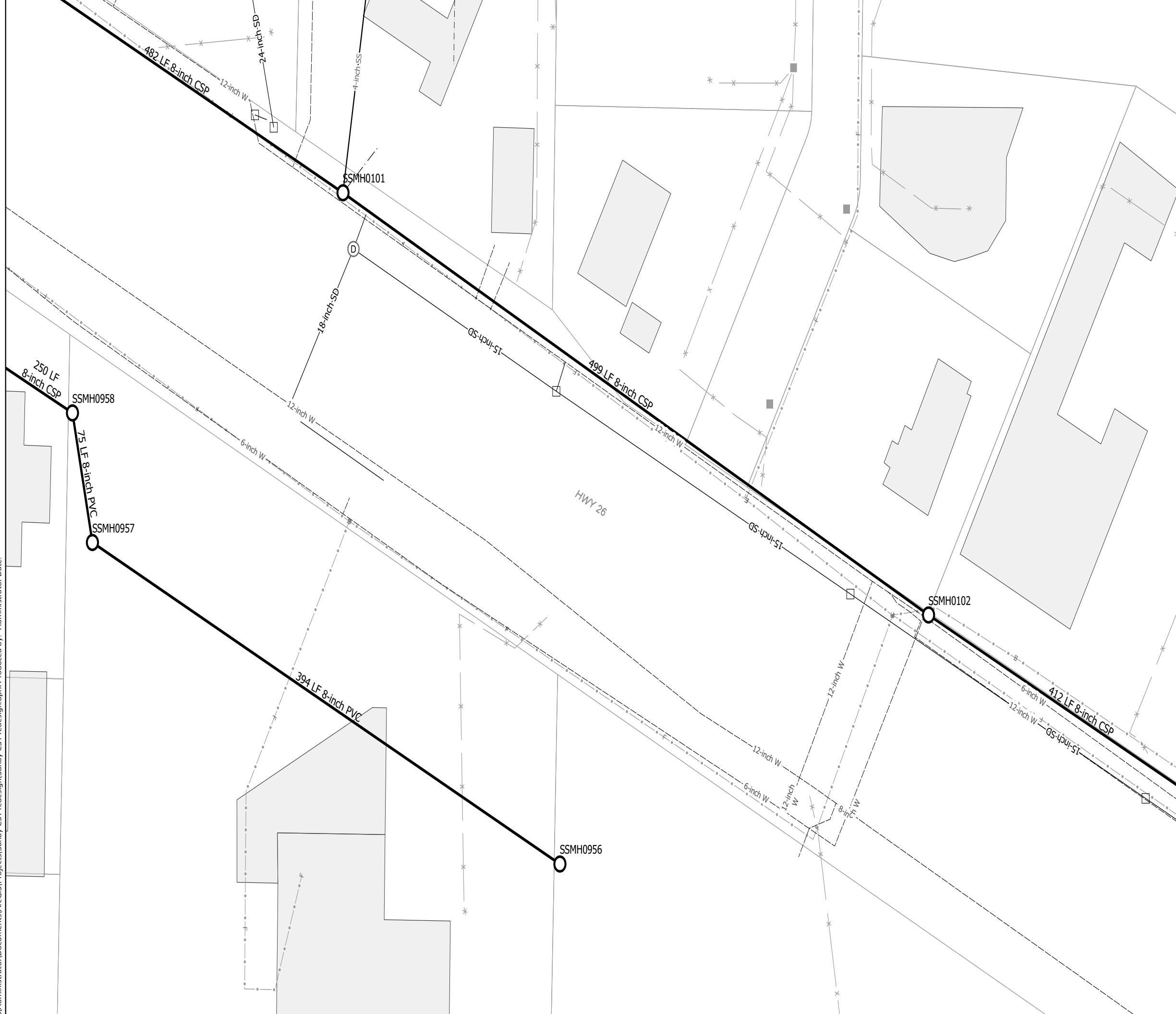
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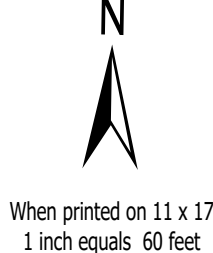
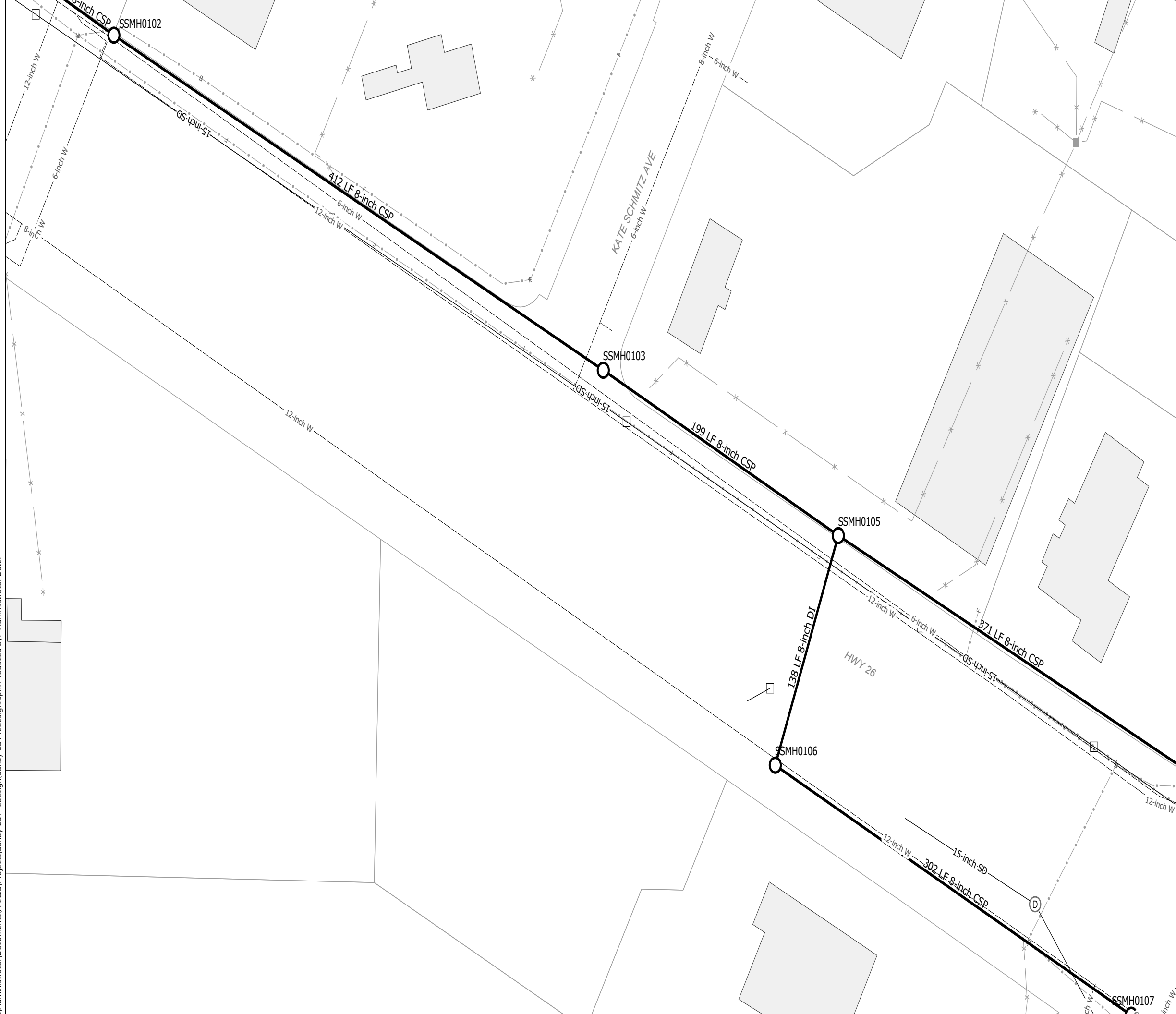
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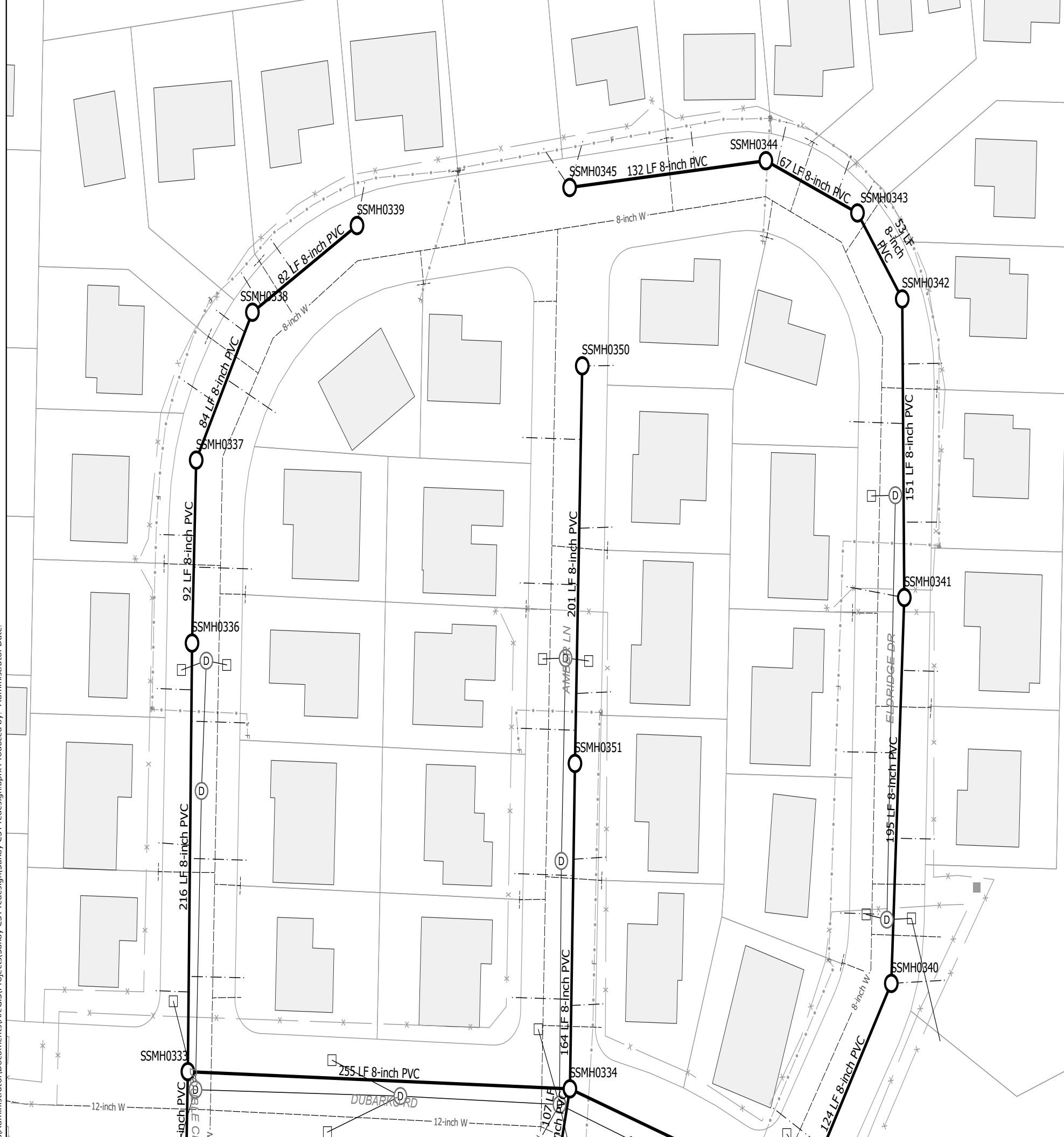
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**Collection System
RDII Reduction**

Sheet 19 of 55

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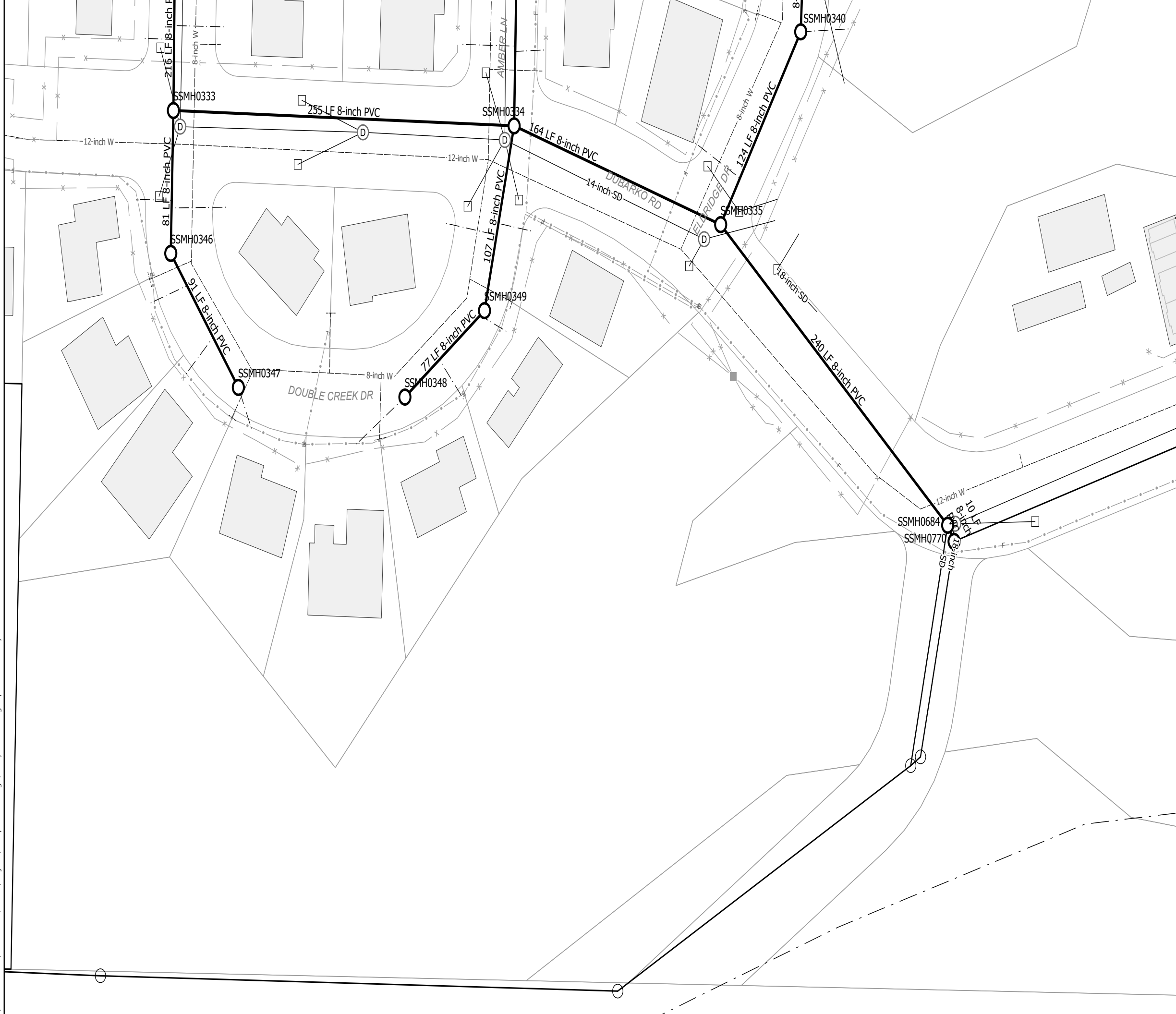


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Sheet 21 of 55



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**Collection System
RDII Reduction**

Sheet 25 of 55

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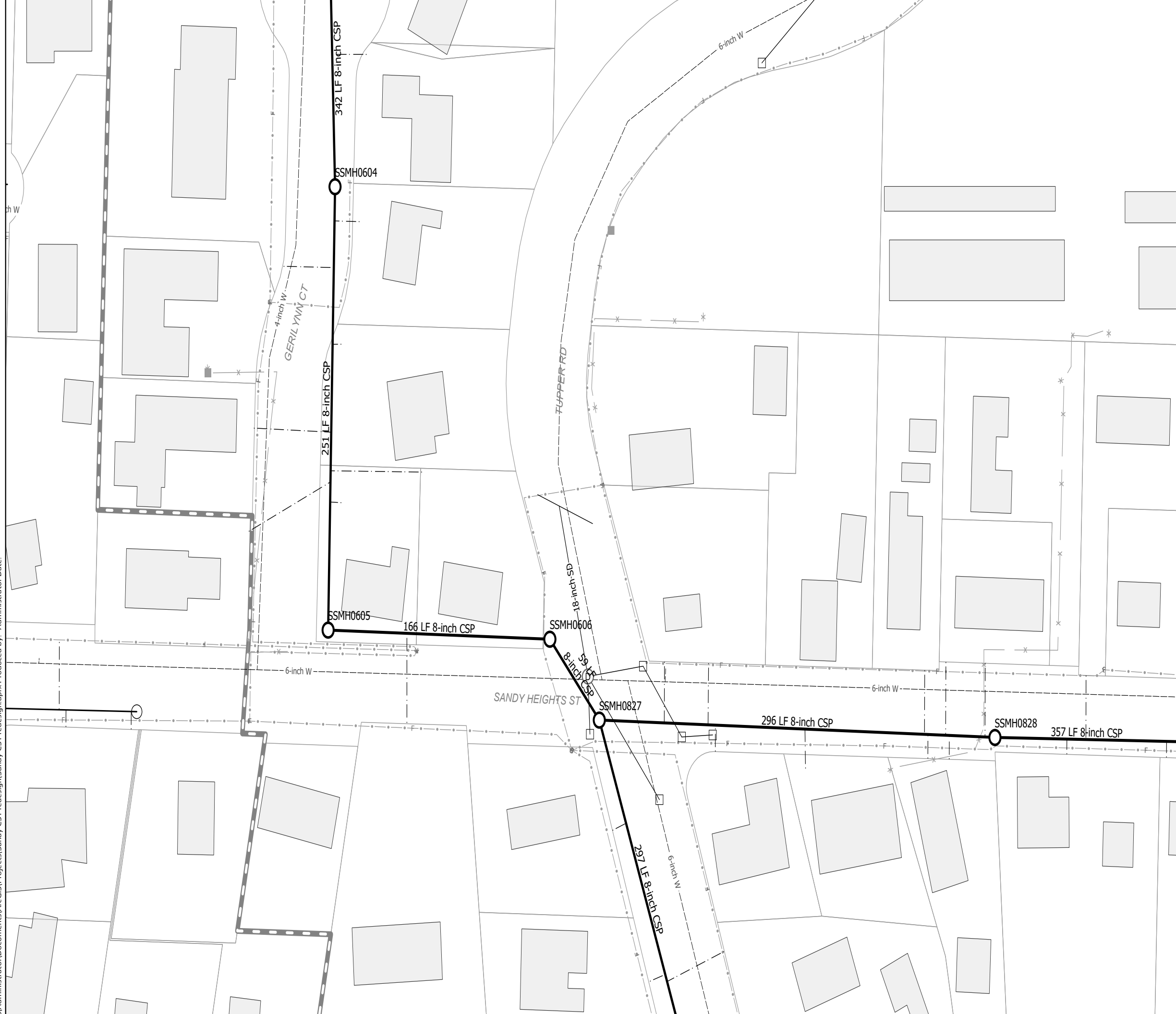


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**Collection System
RDII Reduction**

Sheet 27 of 55

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When printed on 11 x 17
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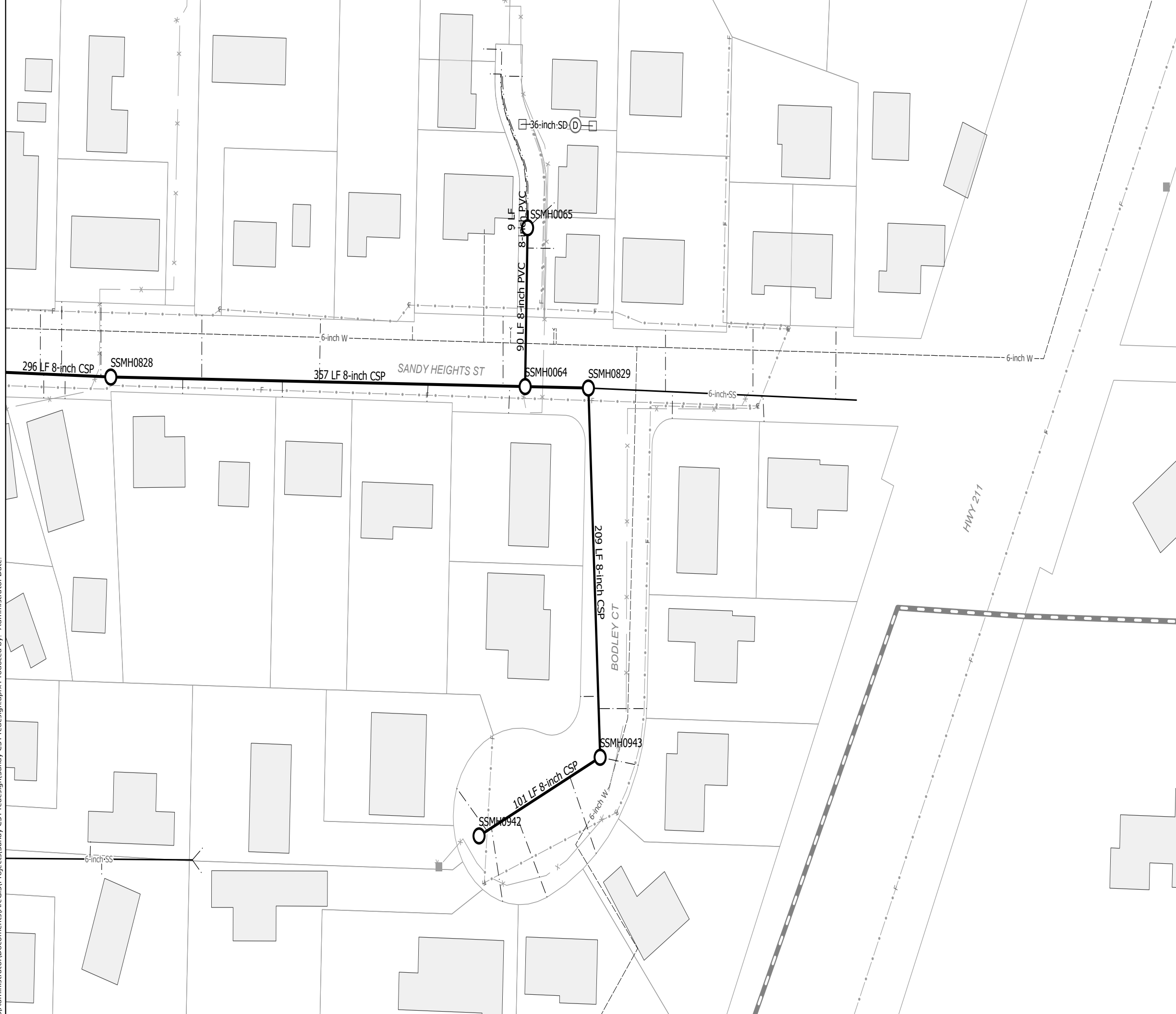
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Collection System RDII Reduction

Sheet 28 of 55

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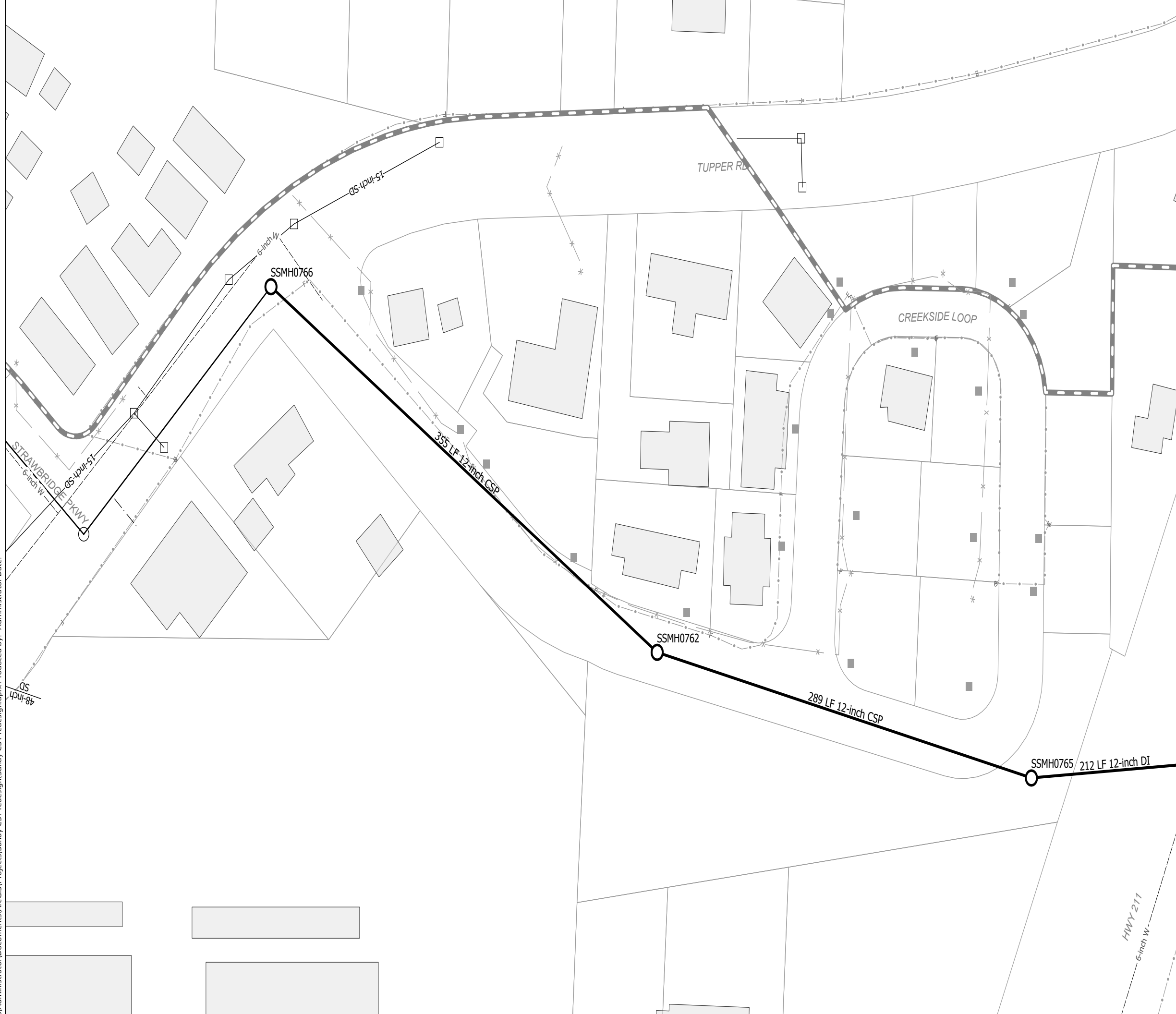
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**Collection System
RDII Reduction**

Sheet 29 of 55

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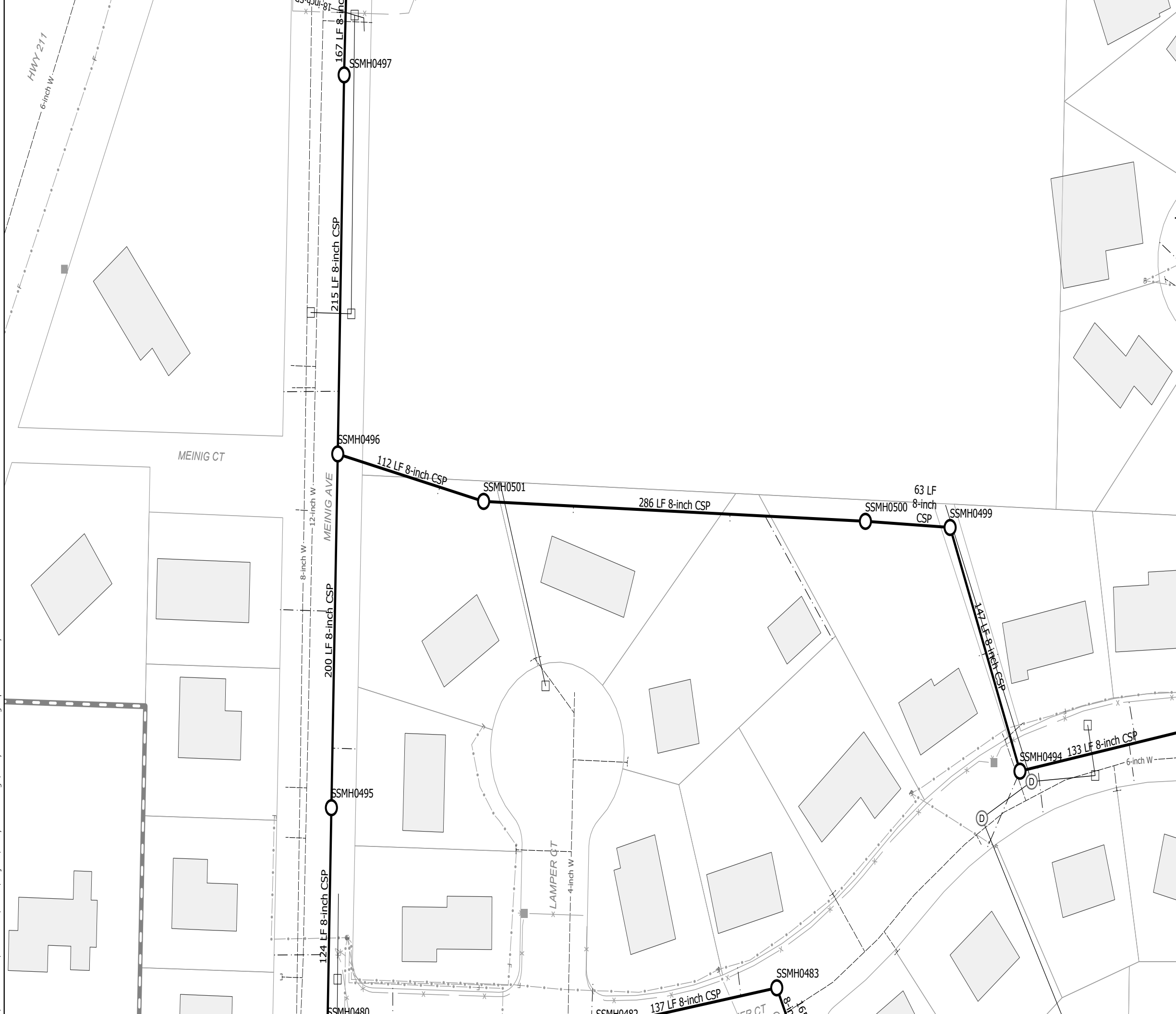
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**Collection System
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Sheet 30 of 55

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**Collection System
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Sheet 32 of 55

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**Collection System
RDII Reduction**

Sheet 33 of 55

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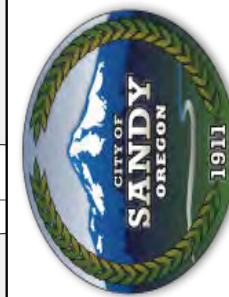
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Collection System RDII Reduction

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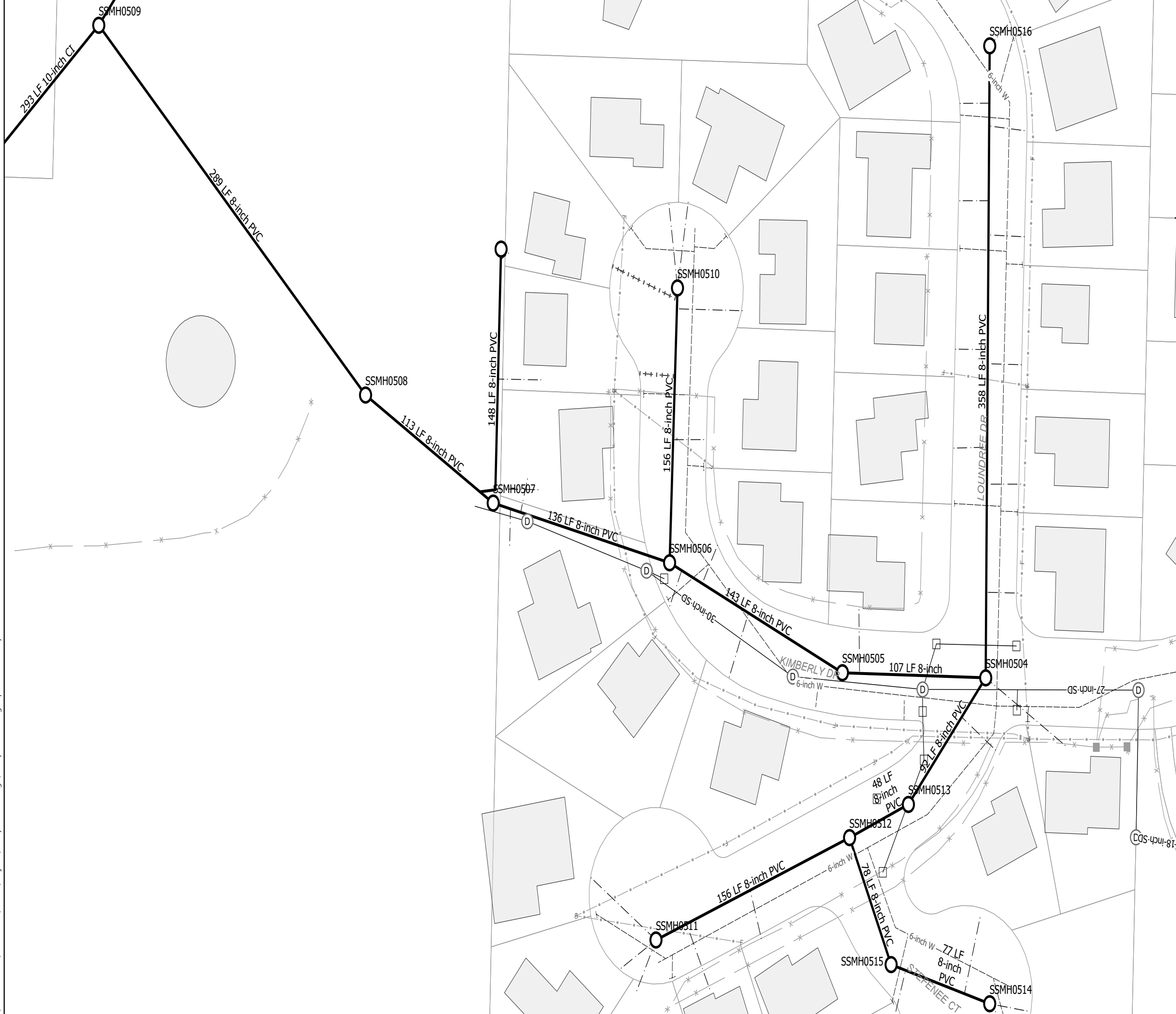
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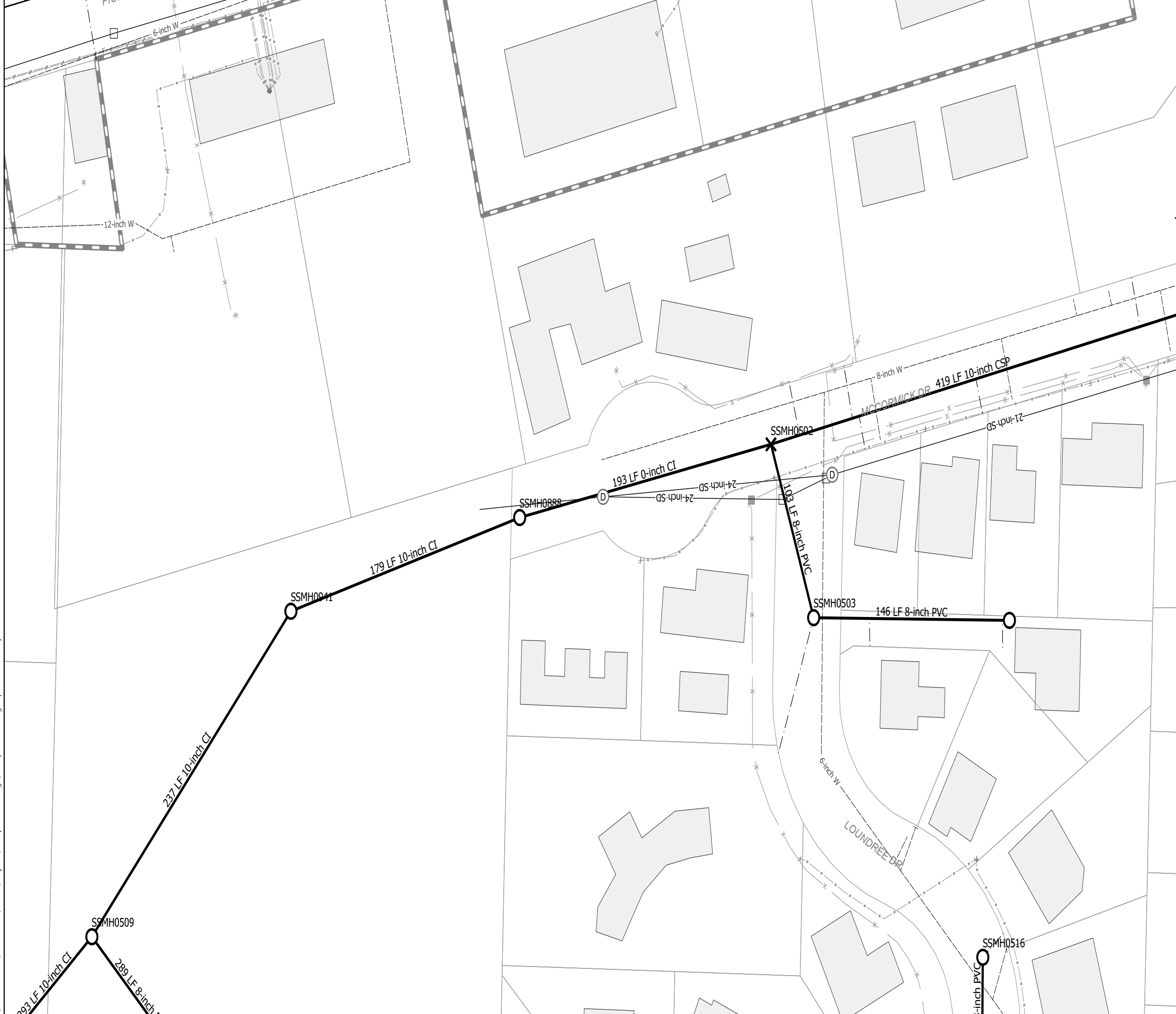


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**Collection System
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Sheet 38 of 55

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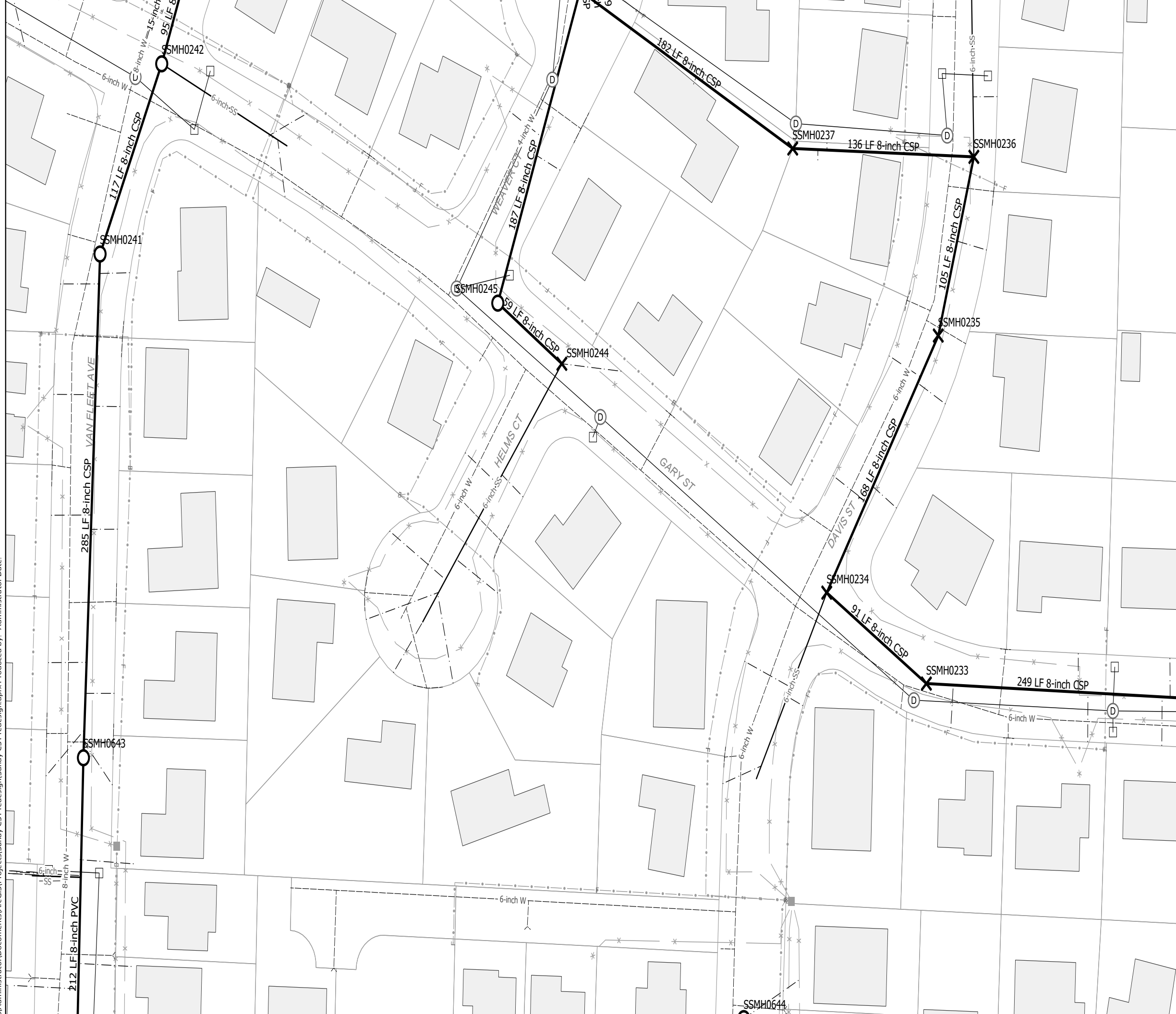


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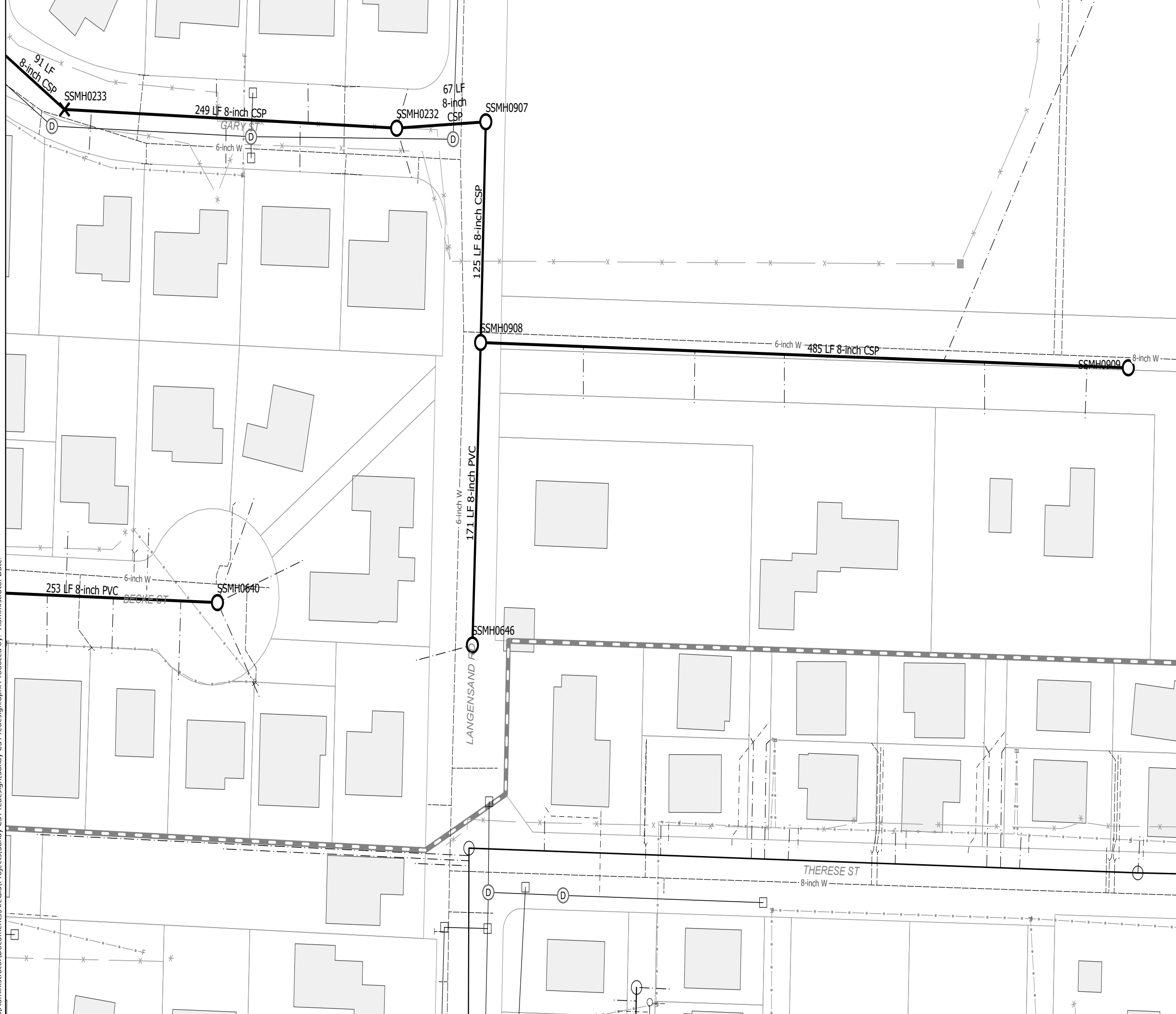


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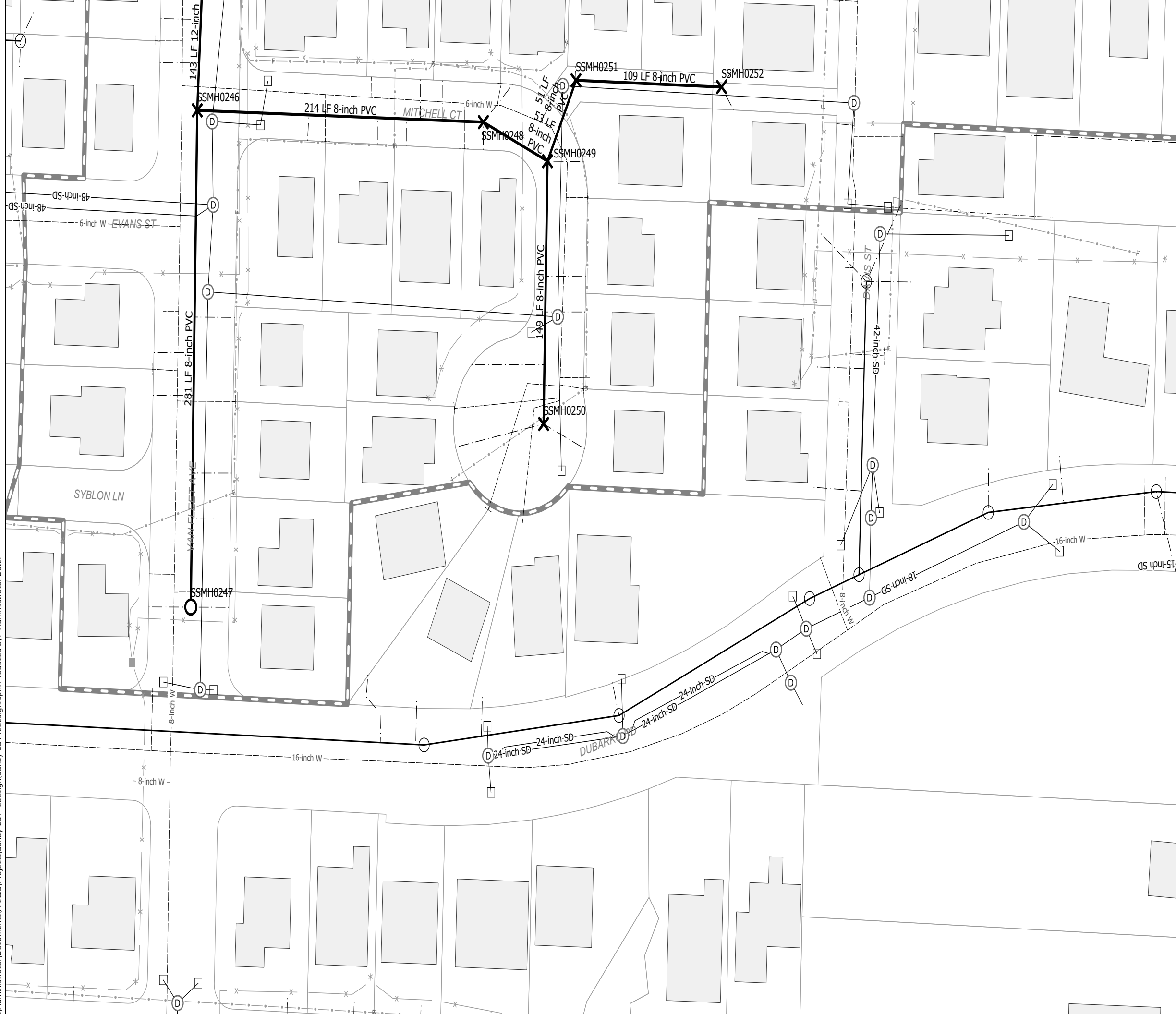
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**Collection System
RDII Reduction**

Sheet 47 of 55

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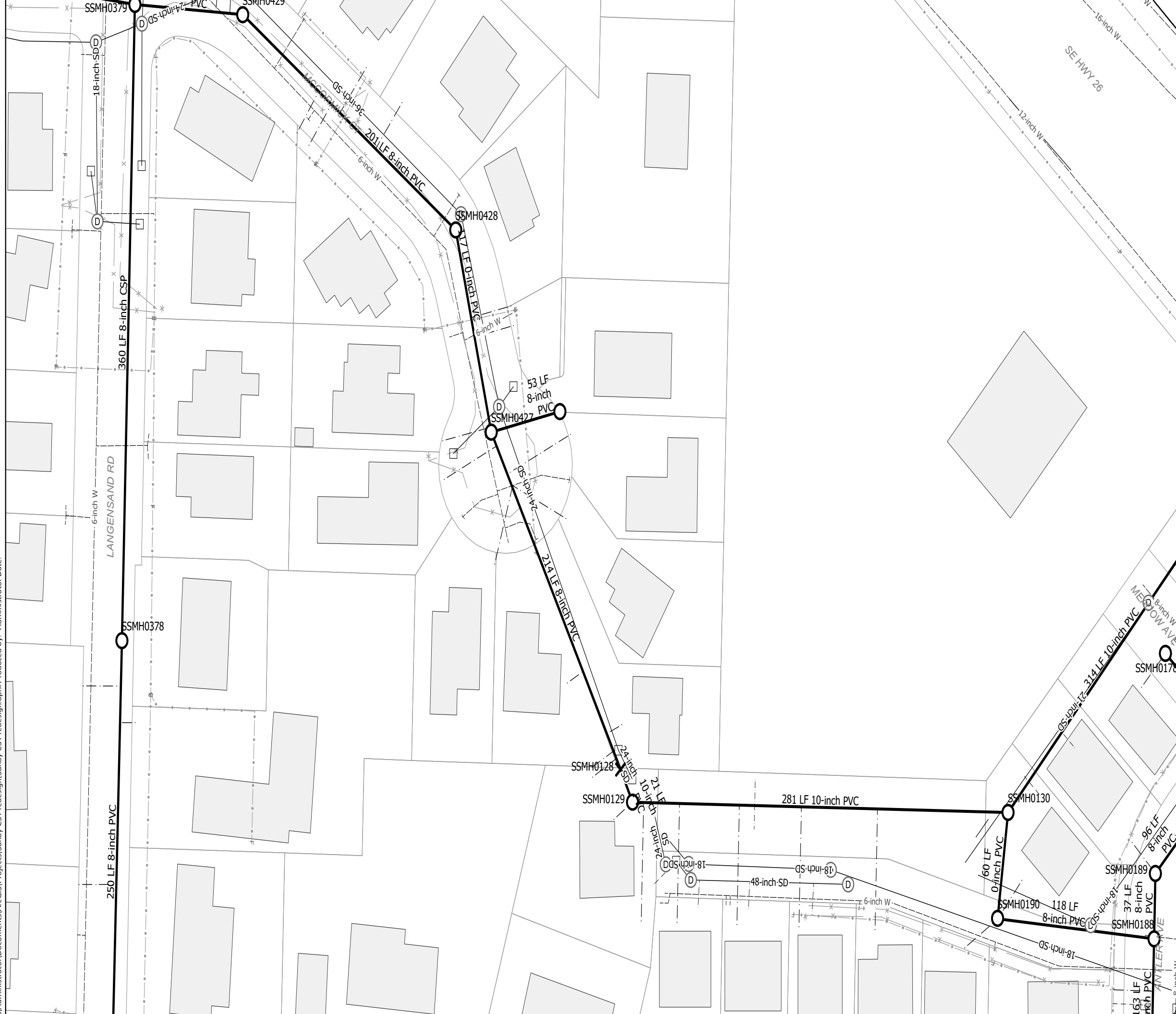
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**Collection System
RDII Reduction**

Sheet 48 of 55

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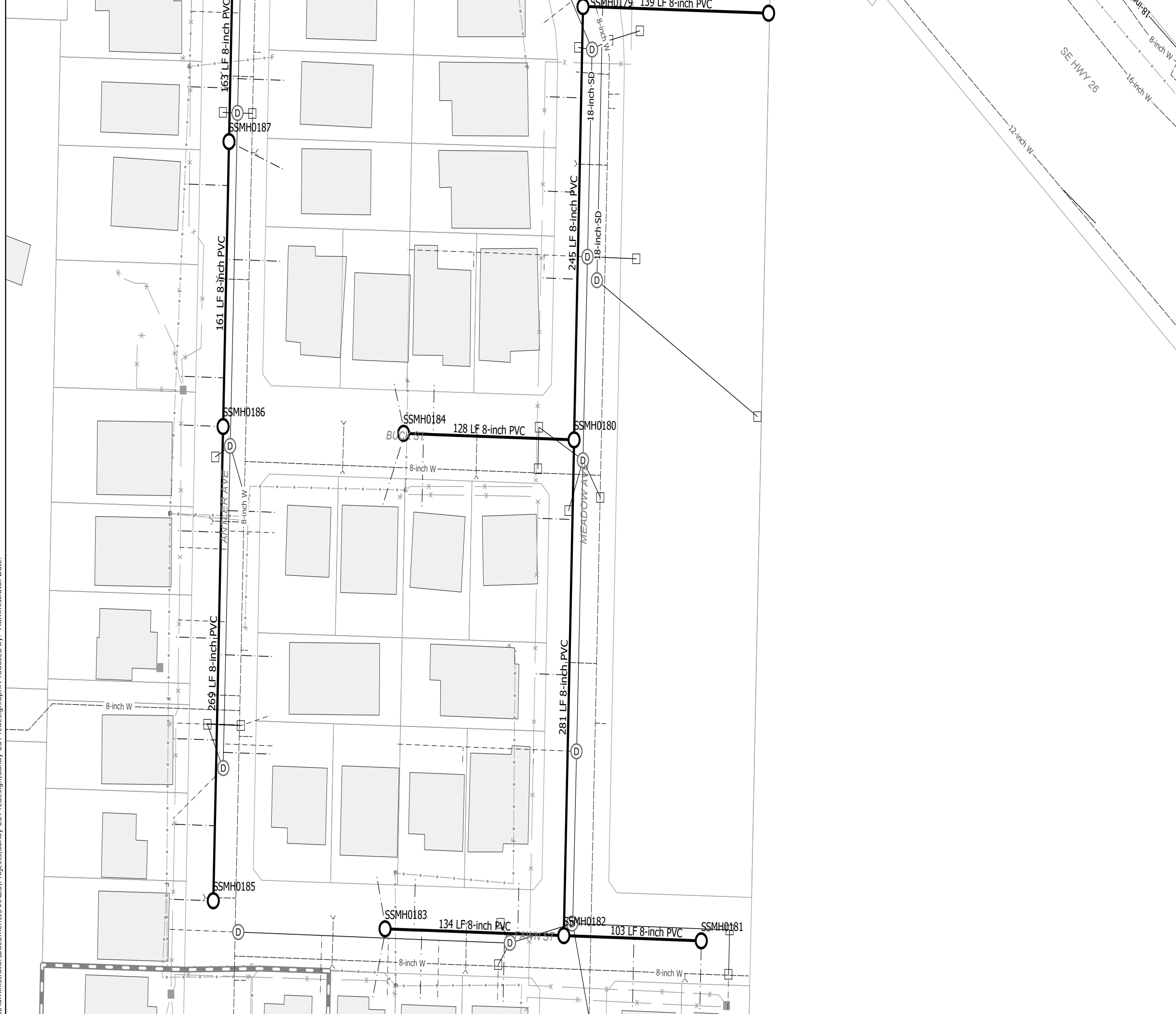


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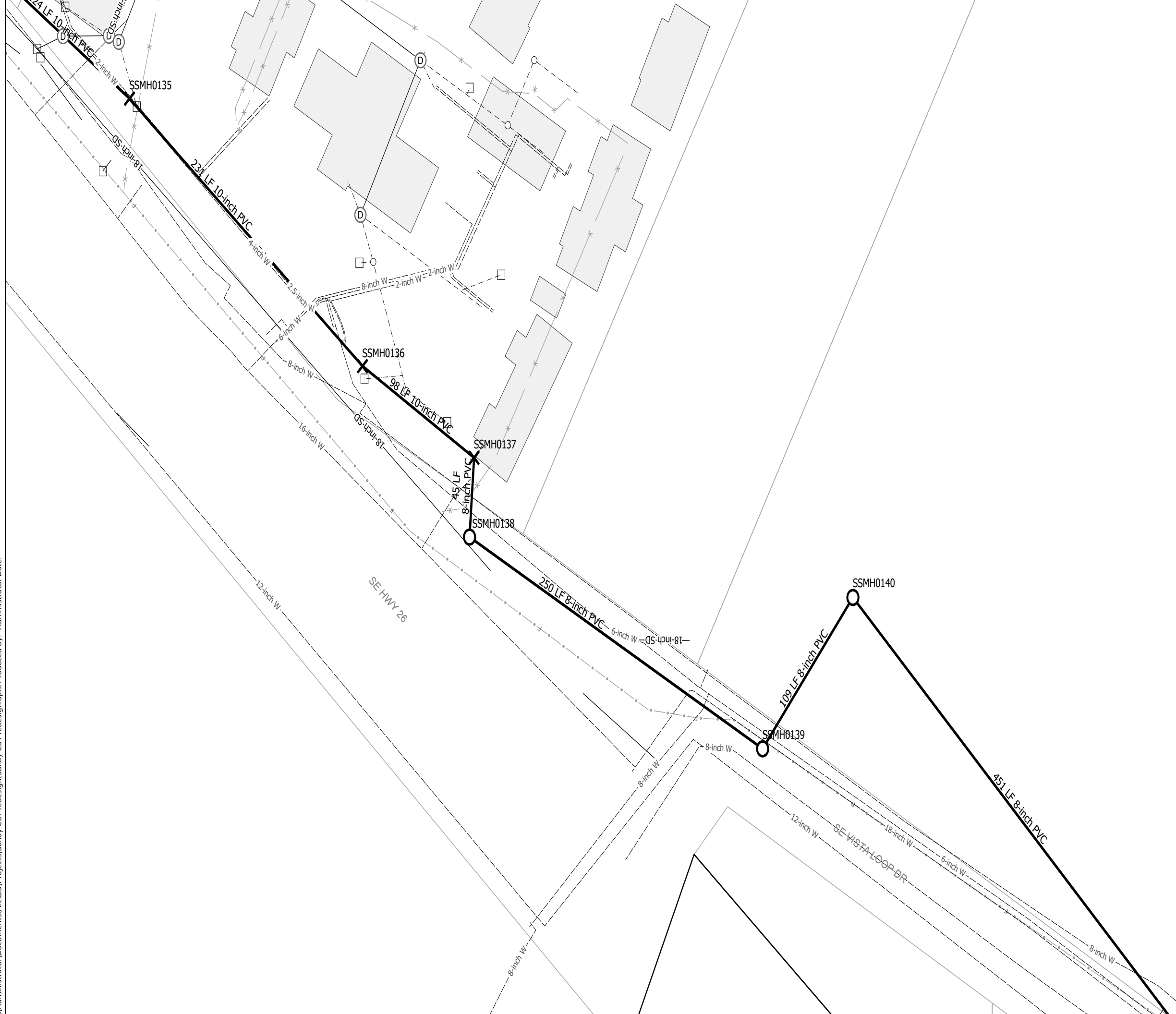


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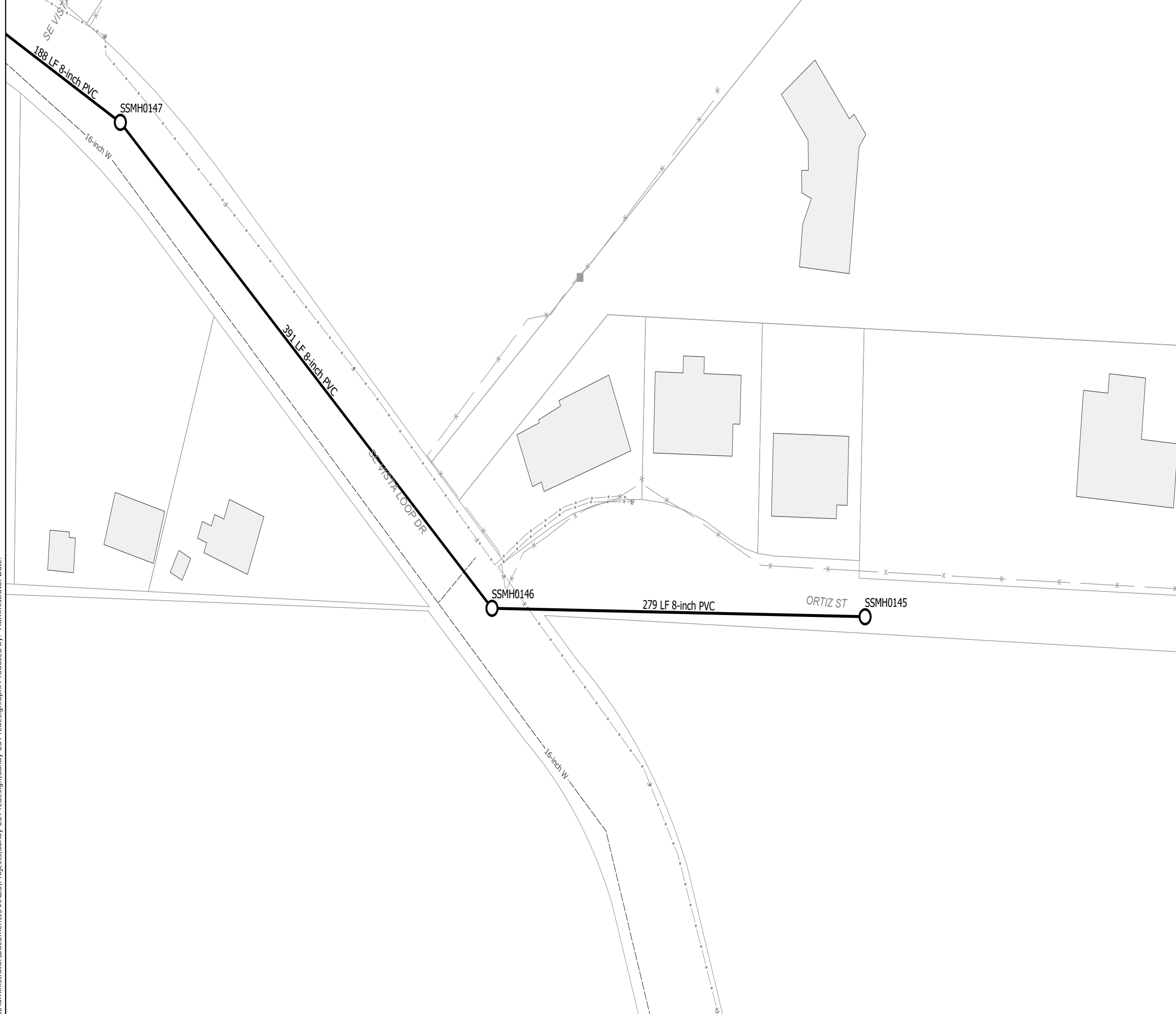
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State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

Sworn Statement of Compliance

Contact: [Regional Project Officer](#)

Sworn Statement of Compliance with Small, Women and Minority Business Utilization Requirements

To be eligible for award of this contract, each bidder must execute, and submit, as part of their proposal, and together with their bid, the following certification relating to SBE/WBE/MBE participation. The certification below shall be deemed a part of the resulting contract.

The bidder has taken the following affirmative steps in awarding subcontracts:

- (1) Include qualified small, minority and women's businesses on solicitation lists
- (2) Insure that small, minority and women's businesses are solicited whenever they are potential sources
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of small, minority and women's businesses
- (4) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce as appropriate.

Contract # _____

Contract Title: _____

Name of Company: _____

Signature of Authorized Official _____ Date _____

Name and Title of Signer _____

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality

Prevailing Wage Agreement

Contact: **Regional Project Officer**

The loan recipient, prime contractor and subcontractors all must initial and sign this form.

- The prime contractor copy must be submitted as part of the bid/proposal to the loan recipient.
- A copy of this form signed by the loan recipient and the prime contractor must be submitted with the contract copy to DEQ.
- The prime contractor must obtain a signed copy of this form from each subcontractor and retain them in the prime contractor's contract file.

The undersigned understands that this public works project is funded in whole or in part by the Clean Water State Revolving Fund and is subject to the prevailing wage requirements of Oregon's Bureau of Labor and Industry and the requirements of the Davis-Bacon Act.

_____ The undersigned agrees that, notwithstanding any other provision of law, all laborers and mechanics employed on the project must be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor, or the Commissioner of the Oregon Bureau of Labor and Industries, whichever is higher, per ORS 279C.838; OAR 839-025-0035(2).

When a public works project is subject to both the state and federal prevailing wage rate laws, contractors and subcontractors must pay the higher of either the state or federal prevailing wage rates for the type of work being performed, per ORS 279C.838; OAR 839-025-0035(2).

Davis Bacon (federal law) for Point Source Projects

_____ Davis-Bacon applies to all **treatment works construction projects** for the entirety of the construction activities financed by a CWSRF loan through the completion of construction, no matter when construction commences.

_____ The Loan Agreement includes specific Davis-Bacon terms and conditions contract language that must be passed through to the prime contractor and all subcontractors in their contracts over \$2,000.

_____ The Secretary of Labor's determination, regarding the prevailing wages applicable in the state of Oregon, are located at: <http://www.wdol.gov/> The prevailing wages are those in effect at the time of contract award. Wages obtained through this web link should be printed at the time of contract award and included in procurement documents and all contracts resulting from the procurements.

_____ The loan recipient or the prime contractor on behalf of the loan recipient maintains on-going wage information as a requirement of the Clean Water State Revolving Fund loan for a project subject to Davis-Bacon. The program suggests using the [wage matrix](#). You may find the [instructions](#) helpful.

_____ The loan recipient conducts a wage interview at 30 percent, 60 percent and 90 percent completion, with a representative group of workers during the project construction. The loan recipient must conduct additional interviews if there is any reason to suspect a contractor or their subcontractor is at risk for

violating wage requirements. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use [Standard Form 1445](#) to memorialize the interviews.

Oregon Bureau of Labor and Industry (state law)

_____ Bureau of Labor and Industry prevailing wage rates apply to projects over \$50,000. Oregon prevailing wage rate regulations require every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed, per OAR 839-025-0035.

_____ The wage rates identified by the Commissioner of the Oregon Bureau of Labor and Industry are available [online](#).

_____ The prevailing wage rates in effect at the time the bid specifications are first advertised are the Oregon wage rates that apply for the duration of the project. Prevailing wages obtained through the Bureau of Labor and Industry websites must be included in the bid solicitation and incorporated in all contracts resulting from the procurements.

_____ All contractors and subcontractors shall file, with the Construction Contractors Board, a \$30,000 public works bond with a corporate surety authorized to do business in this state, per ORS 279C.836. The bond must provide that the contractor or subcontractor will pay claims ordered by Bureau of Labor and Industry to workers performing labor upon public works projects. It must be filed before starting work on a contract or subcontract for the project.

Payroll/Certified Statement (form WH-38)

Form WH-38 may be used by contractors for reporting their payroll as required by ORS 279C.845 on public works projects subject to the Prevailing Wage Rate Law. This form has not been officially approved by the United States Department of Labor, however it is designed to meet the requirements of the federal Davis-Bacon Act as well. Prevailing wage rate [forms](#) are available online.

Signature

Date

Title

Company

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us



State of Oregon Department of Environmental Quality
**List of Contacted Disadvantaged
Business Enterprises**

Contact: [Regional Project Officer](#)

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-participation

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-participation

List of Disadvantaged Businesses Contacted

Page 2

Alternative formats

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

List of Disadvantaged Businesses Contacted



State of Oregon Department of Environmental Quality

Certificate of Independent Price Determination

Contact: [Regional Project Officer](#)

The prime contractor must:

- Sign and submit this form as part of the bid/proposal to the loan recipient
- Include a signed copy in their contract
- Retain a signed copy of this form from each subcontractor

Bidder's Name: _____

Address: _____

a. The bid offeror certifies that:

1. The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to:
 - i. Those prices
 - ii. Intention to submit an offer
 - iii. Methods or factors used to calculate the prices offered
2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law
3. No attempt has been or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

b. Each signature on the offer is considered to be a certification by the signatory that the signatory:

1. Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
2. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above;
3. As an authorized agent, certifies that the principals named below have not participated, and will not participate, in any action contrary to subparagraph (a)(1) through (a)(3) above; and

4. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
5. If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization:

Full Name of Person(s) in the Offeror's Organization	Title	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature of Prime Contractor _____

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality

Six Good Faith Efforts, Contract Administration and Contract Language

[Regional Project Officer](#)

This form must be completed by the loan recipient, prime contractor and any subcontractor who will further subcontract on the Clean Water State Revolving Fund project within the scope of the loan. All boxes in this attachment must be initialed and the bottom signed.

- One completed attachment for the prime contractor must be submitted as part of the bid/proposal to the loan recipient.
- One completed attachment for each subcontractor who will further subcontract must be submitted before the contract award.
- A copy of those must be included in the contract copy to DEQ, along with one attachment initialed and signed by the loan recipient.

DBE certification

All Minority Business Enterprises and Woman Business Enterprises must be certified by Oregon's [Office of Minority, Women and Emerging Small Businesses](#) or by the state in which they are located. This office administers the Disadvantaged Business Enterprise, Minority Business Enterprise/Women Business Enterprise, and Emerging Small Business programs.

Six Good-Faith Efforts

The good-faith efforts are required methods to ensure that all DBEs have the opportunity to compete for procurements funded by the Clean Water State Revolving Fund. The loan recipient and their prime contractor are required to:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian tribal, state and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they're potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian tribal, state and local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

BC8

5. Use the services and assistance of the federal Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and the state Office of Minority, Women and Emerging Small Business.
6. If the prime contractor awards subcontracts, require the prime contractor to take steps one through five above.
7. **Native American provisions 40 CFR, Section 33.304**
The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.304. Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

Contract administration

_____ The Loan Recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

_____ If a DBE subcontractor fails to complete work under the subcontract for any reason, the Loan Recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.

_____ The Loan Recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Loan Recipient.

_____ The Loan Recipient must require written notification from its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

_____ Specific contract language

All contracts between the Loan Recipient and prime contractor, and prime contractor and subcontractors must include the following statement required by 40 CFR Part 33:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

BC8

The undersigned has initialed the items above and understands the resulting responsibility for each item.

Signature

Date

Title

Company

Accessibility

Alternative formats DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality

Certification Regarding Lobbying Activities

Contact: [Regional Project Officer](#)
503-229-LOAN

This form must be signed by the prime contractor and submitted by the loan recipient by the time the contract is award. A copy must be included in the contract copy to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor, and retain them in the prime contractor's contract file.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Date

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



State of Oregon Department of Environmental Quality
Certification of Non-Segregated Facilities

Contact: [Regional Project Officer](#)
503-229-LOAN

This form must be signed by the prime contractor and submitted by the time of contract award from the Loan Recipient. A copy must be included in the contract copy to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor, and retain them in the prime contractor's contract file.

Applicable to federally-funded construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.

The federally-assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally-assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain a copy of such certification.

Signature

Date

Name and Title of signer (please type)

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality
Non-discrimination in Employment

Notice to Labor Unions or Other Organizations of Workers

Contact: Regional Project Officer

503-229-LOAN

The CWSRF loan recipient must provide this notice to the contractor and subcontractor(s) advising the labor union or workers' representative of the contractor's commitments under Executive Order No. 11246.

TO: _____
NAME OF UNION OR ORGANIZATION OF WORKERS

The undersigned currently holds contract(s) with _____
NAME OF LOAN RECIPIENT

Using funds or credit of the U.S. government, or one or more subcontractors with a prime contractor holding such contracts.

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Section 202 of Executive Order 11246 dated Sept. 24, 1965, as amended, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

- EMPLOYMENT, UPGRADING, TRANSFER OR DEMOTION
- RECRUITMENT OR RECRUITMENT ADVERTISING
- RATES OF PAY OR OTHER FORMS OF COMPENSATION
- SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION

This notice is furnished to you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order #11246.

CONTRACTOR OR SUBCONTRACTOR(S) _____ DATE _____

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us



State of Oregon Department of Environmental Quality
**Debarment and Suspension for
 Loan Recipient and all Contracts
 of \$25,000 or more**

Contact: [Regional Project Officer](#) or call 503-229-LOAN

The recipient must complete, sign and submit this to the DEQ project officer before the loan project contract is awarded, along with a System for Award Management report for each contractor and subcontractor proposed to perform work within the scope of the loan. **Every contractor paid under this loan agreement with a contract equal to or greater than \$25,000, including professional services, must be registered on the [System for Award Management](#).** Award approval by DEQ is contingent on *none* of the contractors and subcontractors being excluded on the System for Award Management.

The recipient and all subsequent prime and subcontractors must fully comply with Subpart C of 2 Code of Federal Regulations Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).” The following contractors and subcontractors are proposed to perform work within the scope of the loan agreement. Use additional pages if necessary.

Loan recipient:

Loan number:

Project:

Contractor name and mailing address	Phone number and email address	DUNS and CAGE number codes for contracts equal to or greater than \$25,000	Contract \$ Amount

 Signature of Authorized Loan Recipient Representative

 Date

 Name and Title of Authorized Representative (type or print clearly)

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us



State of Oregon Department of Environmental Quality
Contractor's Compliance Statement
Executive Order #11246

Contact: [Regional Project Officer](#)
503-229-LOAN

This form must be signed by the prime contractor and submitted by the time of contract award from the Loan Recipient. A copy must be included in the contract copy to DEQ.

Date _____

This statement relates to a proposed contract with _____

(Name of CWSRF loan recipient)

who expects to finance the contract with assistance from the Environmental Protection Agency. I am the undersigned bidder or prospective contractor. I represent that:

I have I have not participated in a previous contract or subcontract subject to *Executive Order 11246* of September 24, 1965 (regarding equal employment opportunity) or a preceding similar Executive Order. I agree to comply with all the provisions of this Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor. (*41 CFR 60-1.4(b); 41 CFR 60 1.7 (b)*)

Signature

Date

Name and Title of signer (please type)

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



PROPOSAL FOR THE CITY OF SANDY

**2020 SANITARY SEWER REHABILITATION FOR
INFLOW AND INFILTRATION REDUCTION PROJECT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES**

September 18, 2020

Section 1

COVER LETTER

Iron Horse Excavation, LLC dba
OXBOW CONSTRUCTION

CCB #166020 ~ DBE/WBE/ESB # 7618 ~ DEQ #38548 ~ WA #OXBOW8*894C8

31005 E Historic Columbia River Hwy.
Troutdale, OR 97060
Office: 503-816-1312
Cell: 503-780-7124
Fax: 503-907-5131
E-mail: June@Oxbow-Construction.com
www.Oxbow-Construction.com

Mike Walker
Director of Public Works
39250 Pioneer Blvd, Sandy, OR 9705

September 18, 2020

Re: **2020 SANITARY SEWER REHABILITATION FOR INFLOW AND INFILTRATION REDUCTION PROJECT, CM/GC SERVICES**

Dear Mr. Walker and Selection Committee Members,

The City of Sandy's 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction (SSRIIR) Project will play a vital role in providing the business and residential community with a sound, reliable, and economically viable sewer system that will endure another fifty to one hundred years of use without further significant rehabilitation work. The keys to project success include completing the project on schedule, providing for continued operations of adjacent facilities, delivering the project within budget, and keeping everyone safe while minimizing public impact. Executing this will require an experienced CM/GC team who has a proven track record in completing similar work, understands how to be a good neighbor, and who sincerely cares about minimizing risks. Iron Horse Excavation, LLC dba Oxbow Construction (Oxbow) is the best choice for the City of Sandy, with our proven ability to deliver and our impressive set of unique qualifications that include:

A proven team you know and trust that delivers on time and budget.

Oxbow has a long successful history of working with many local agencies and municipalities. Jim Hall has managed local projects up to 80 million dollars for City Bureaus, Allen Kalkhoven has supervised the completion of over 200 City public works projects of all sizes, and Jim Seely has built some extremely challenging projects. Building on over a decade of this experience, we've developed strong capabilities in construction meeting quality expectations on time and within budget.

PROJECT TITLE

2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project, CM/GC Services

FULL LEGAL NAME

Iron Horse Excavation, LLC dba Oxbow Construction

STRUCTURE OR TYPE OF BUSINESS ENTITY

Limited Liability Company

PERSON AUTHORIZED TO REPRESENT OXBOW CONSTRUCTION IN ANY NEGOTIATIONS

June L. Kalkhoven,
Project Principal

PERSON AUTHORIZED TO SIGN ANY CONTRACT THAT MAY RESULT

June L. Kalkhoven

CONTACT

June Kalkhoven
31005 E Historic Columbia River Hwy
Troutdale, OR 97060
p: 503.780.7124
f: 503.907.5131
e: June@Oxbow-Construction.com
com

OREGON CONSTRUCTION CONTRACTORS BOARD LICENSE NUMBER

166020

Unequaled sewer pipe rehabilitation experience. Oxbow brings cutting-edge technology perfect for the 2020 SSRIIR Project. Oxbow is an expert in the use of many trenchless methods, including CIPP, pipe bursting, and HDD options for large and small diameter sewer projects. Our key team members bring valuable experience of installation and rehabilitation in excess of hundreds of thousands of feet of sewer in the region. This group has successfully completed multiple high-profile projects, including City of Portland's SE CIPP, Downtown Mall Sewer, and NW 22nd & Northrup projects. We are eager to bring lessons learned and innovation from past projects to anticipate the risks and mitigate them effectively, ensuring the best value for delivering a successful project for the City.

Commitment to social equity, diversity, and inclusion. Oxbow is an Oregon State Certified D/W/ESB firm and takes pride in promoting a culture of inclusion in all areas of business. Oxbow's workforce has a diverse makeup, with over 40% of our employees being minority. We are proactive in seeking new D/M/W/ESB/SDVBE firms to work with and have a long-standing relationship with many of them. To us, this is not just a goal, but a real opportunity to expand and grow our contractor relationships and resources. We are committed to going above and beyond when it comes to contracting with other D/M/W/ESB/SDVBE firms.

We have a unique level of continuity and individual investment to bring to this project. We are excited about the opportunity to work with you. Thank you for your consideration.

Sincerely,
IRON HORSE EXCAVATION, LLC
dba OXBOW CONSTRUCTION



June L. Kalkhoven,
Managing Member

ADDENDA ACKNOWLEDGMENT

Oxbow acknowledges Addenda 1, 2, 3, and 4

BONDING CAPACITY

- Per project: \$12,000,000
- Aggregate: \$18,000,000

OREGON STATE CERTIFICATION:

DWESB #7618

NOTE: Oxbow Construction a dba of Iron Horse Excavation, LLC is NOT affiliated with Moore Excavation, MEI Group, Iron Horse Group, or Iron Horse, LLC in any way.



Section 2
Project Team

Section 2

PROJECT TEAM

Oxbow team brings relevant experience, ingenuity, and eagerness to build this project in a timely, efficient, and cost-effective manner. Our team will lean on lessons learned from numerous successfully completed sewer rehabilitation projects for the worry-free completion of the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project.

PROJECT TEAM

The ideal team for the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project (SSRIIR Project) will be a combination of team members that fill every niche that makes this project uniquely challenging. Oxbow brings a team beaming with relevant experience, ingenuity, and eagerness to build this project in a timely, efficient, and cost-effective manner. Our key team members have successfully built several high-profile projects in the region and completed them with great success. These projects required a vast amount of field engineering and a collaborative design between the contractor, utility franchise owners, property owners, the municipality, and the engineer of record. It is this type of collaborative partnering that the 2020 SSRIIR Project requires. Team Oxbow meets these needs!

We have assembled a proven team that you can trust to deliver this project on time and within budget. Our team members have a long successful history of working with local Municipalities. Jim Hall has managed local projects up to 80 million dollars for City of Portland, Allen Kalkhoven has supervised the completion of over 200 public works projects of all sizes, and Jim Seely has built some extremely challenging projects, such as Downtown Mall Sewer for the City of Portland. This experience makes Team Oxbow the perfect choice for the worry-free design assistance and construction of the SSRIIR Project!

OXBOW TEAM ADVANTAGE



Will keep the public safe



Brings experience for accurate assessment, constructability review and alternative ideas for best project value



Will work with the City to form a collaborative team for project success



Has a reputation for ingenuity and alternative means and methods of construction



Key people have completed multiple complex projects of similar scope with great success



Will work with the City team to keep the public informed



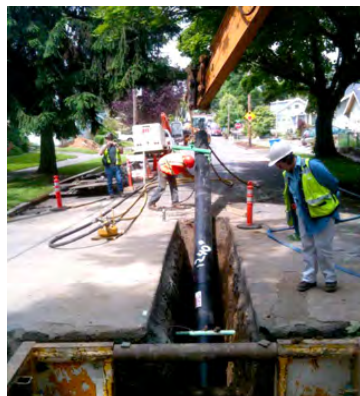
Will keep the City moving- from private traffic to public transportation



Will provide pedestrian and bicyclist traffic safety and accommodate all ADA requirements

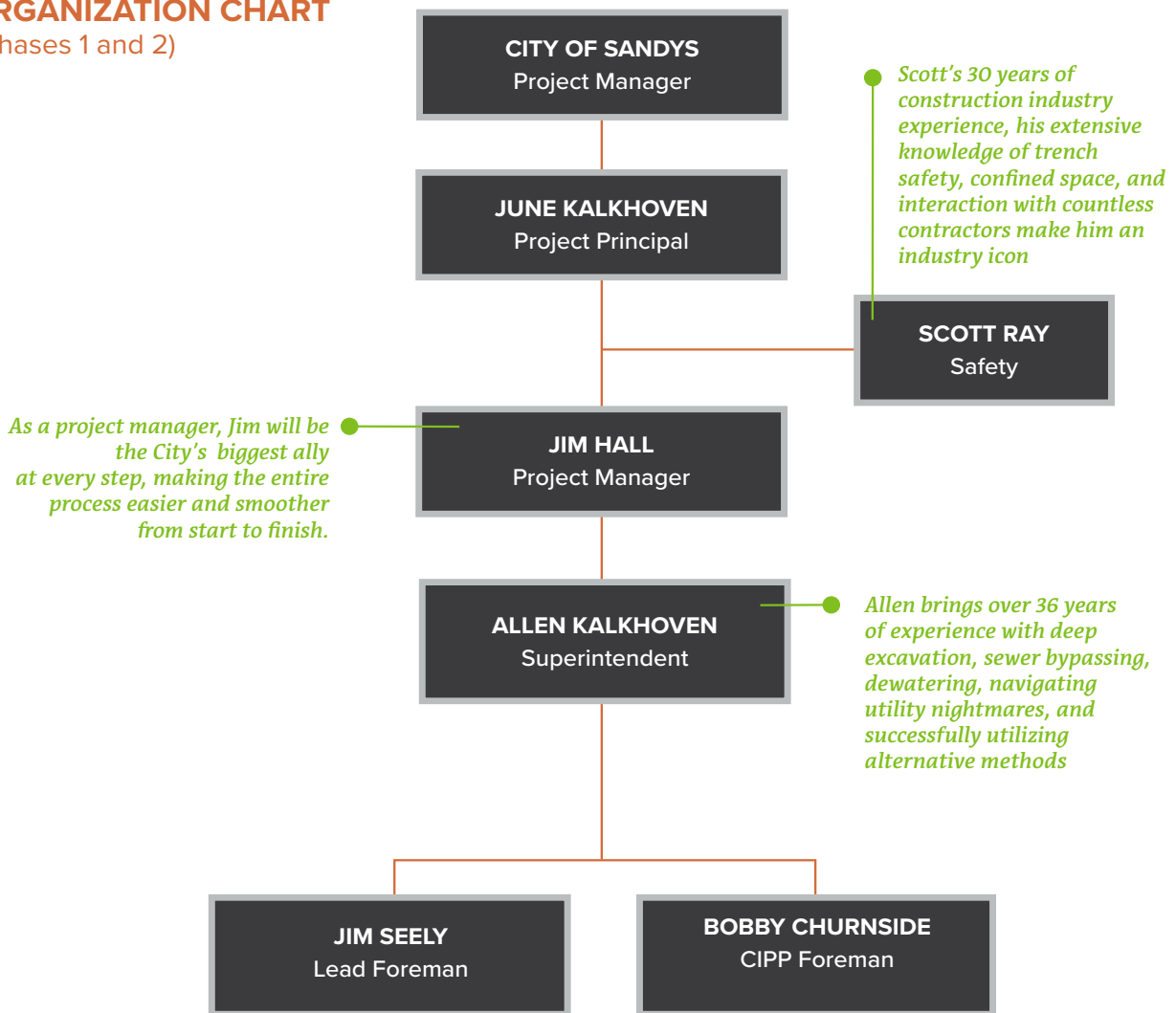


Will exceed the DEQ requirements for DBE outreach and usage for the project as proven by Oxbow's history of diversity and inclusion in both our workforce and subcontractor utilization.



Our team will lean on lessons learned from numerous successfully completed sewer rehabilitation projects for the worry-free completion of the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project

ORGANIZATION CHART
(Phases 1 and 2)



PHASE 1 VS. PHASE 2 STAFFING

Oxbow purposely selected their team for a smooth transition and continuity from phase 1 to phase 2. With this intention, Oxbow will have the same team on both phases, resulting in time savings, increased efficiency, employee ownership while eliminating the gaps in bringing new staff up to speed. As a result, the project will be delivered and completed in a timely, precise, safe, and efficient manner.

In addition to the key members listed on the following pages, auxiliary, highly qualified people will be added to fill any other positions required for a cohesive and complete team.

Phase 1 will consist of the six key people listed on the following pages. Phase 2 will consist of the same six people plus the addition of one office staff person.

KEY PERSONNEL COMMITMENTS

Our team is committed to the success of the SSRIR Project. Each of the staff identified in this proposal will be available for the full duration of the project as noted.

KEY PERSONNEL RESUMES

Abbreviated key personnel resumes are included at the end of the proposal. Full resumes are available upon request.

Effective Project Management for Successful Project Delivery



Jim Hall
Project Manager, Estimator

Why Jim?

Jim is a long-time resident of the Portland Metro area and has served the local construction community as project manager and estimator for nearly three decades. He has a long successful history of working with local municipalities and has managed local projects up to 80 million dollars. Jim's practical management and estimating experience includes sewer construction and reconstruction, water system, highway/road construction, military, and environmental remediation/cleanup projects. He brings a unique problem-solving skill set to construction challenges.

What is your management style?

With over 28 years of construction industry experience, I have learned that a qualified field staff are essential to project success. Having this robust staff, allows me to foster a team environment and include information from the field in managing project progress. Getting everyone on the same page and including the key players in the planning provides the commitment and buy-in that can make a significant difference.

What about this project most excites you?

The City of Sandy is what I would consider to be a fantastic blend of country community with some urban flair. The opportunity to make a significant impact on the City's operation is something that I can really grab onto and get excited about. Additionally, the chance to work with the variety of people that will take part in the project—engineers, public relations group, the commercial and residential community—is really exciting. It's always very rewarding to complete a project in way that benefits the environment that we live in.

References

Michelle Lostra, Senior Engineer
City of Portland
📞 503.823.7744
✉ michelle.lostra@portlandoregon.gov

Riley Walsh, Senior Engineer Associate
City of Portland Bureau of Environmental Services
📞 503.823.2820
✉ Riley.Walsh@portlandoregon.gov

Proven Construction Methods Delivering Safe, Economical, Best Quality Projects



Allen Kalkhoven
Superintendent

Why Allen?

Allen has been working in the Portland Metro area for over 36 years and is well known with many engineers and managers in the region. He is routinely consulted by engineering firms on a variety of design projects, including constrained open cut utilities, jacking and boring, HDD, sliplining, and CIPP projects. As a design-build partner, Allen will certainly provide the City of Sandy with the absolute best way to construct the SSRIIR Project.

What drives you to look at alternative means for construction work?

I always approach a project with an open mind and try not to be fixated on the "usual" method for building the project. This allows me to look at the work from a different angle and see where using an alternate method, such as hand-tunneling under a large utility or using HDD as opposed to open-cut excavation, will reduce the impact to the local environment, achieve lower cost, and provide a better end result. I am often asked why I provide this benefit to our clients when it can reduce Oxbow's scope of work. Our clients trust us to provide the best project value and that's what we do, and we are proud of it!

What excites you about this project?

Oxbow is ideally suited to deliver this project to the City of Sandy. Oxbow is capable in every method of construction required, and I am very excited about getting the chance to assist Leeway Engineering in developing a viable plan to complete this sewer project. Over the years I have completed many sewer and water projects for rural and semi-rural Cities. From installing the City of Manzanita Water Supply System, to City Heppner water distribution system. I really appreciate the rural communities and strive to support them by constructing their projects and continuing to give them my best work.

References

Erik Durshpek, Construction Group Supervisor
City of Portland Bureau of Environmental Services
📞 503.823.5728
✉ erik.durshpek@portlandoregon.gov

Roy Martinez, Public Works Inspection Manager
City of Portland Water Bureau
📞 503.823.8311
✉ roy.martinez@portlandoregon.gov

SELF-PERFORMED WORK

Oxbow Construction has the capacity and capability to perform nearly every scope of work identified in the Contract. As an experienced contractor, we recognize the addition of other key subcontractors will allow for our crews to focus on what we do best to deliver the best-value, best-quality, and on-time project.

Oxbow will self-perform the following:

- ✓ Sewer bypassing Including laterals
- ✓ Cleanout installation
- ✓ UV CIPP mainline lining
- ✓ Lateral lining
- ✓ Manhole restoration
- ✓ Open cut mainline (if required)

POTENTIAL SPECIALTY SUBCONTRACTORS

Oxbow intends to subcontract the following scopes of work:

- ✓ **Pipe Bursting.** Oxbow is very excited to have the commitment from K&R Plumbing to be our pipe bursting subcontractor for the project. K&R Plumbing specializes in pipe bursting, is an industry leader in the field and is highly qualified and experienced to perform this scope of work. As confirmation to their qualifications, Rick Rogers is often consulted by design engineers for pipe bursting projects and feasibility reviews.
- ✓ **Pipeline video inspection.** JNM Services, a local WBE firm utilizing the newest Ques camera equipment.
- ✓ **Hauling/Trucking.** Rock and Road Construction, a local DBE/MBE firm.
- ✓ **Flagging/Traffic control**
- ✓ **Saw cutting**

KEY PERSONNEL

June Kalkhoven | Project Principal
Oxbow Construction



June started Iron Horse Excavation, LLC dba Oxbow Construction in 2005. Prior to that, June had been in various residential construction trades beginning in 1979. Starting as a flagger for Neil Choate at Kimsey Construction, and later as President and majority shareholder of a successful construction supply company, Northwest Nail & Staple in Portland. She received her Real Estate Brokers license in 1991, which eventually led to her starting Oxbow Construction in 2005. In 2010, June moved into public works projects with her traffic control services and later into the maintenance hole rehabilitation business. Oxbow carved out a niche market, becoming a maintenance hole rehabilitation specialist. In 2012, Oxbow moved full time into the sewer and water side of construction. Under June's leadership and attention to quality and detail, Oxbow became such a successful, reliable, and respected name in the industry. June is an Executive Board member of the Northwest Utility Contractors Association (NWUCA) and is presently the Secretary Treasurer. In three years, she will become the first woman President of NWUCA of Oregon and SW Washington. June brings a straightforward approach, with honesty and integrity, to everything she does. June is a contract specialist and will ultimately oversee all personnel under her employment as well as oversee their performance.

TIME COMMITMENT

Phase 1  20%
Phase 2  20%

RELEVANT EXPERIENCE

- SE CIPP, BES
- NW Flanders, BES
- NW 19th & Northrup, BES
- SE 78th & Salmon, BES
- SE Interceptor, BES

PHASE 1 RESPONSIBILITIES

- Lead Partnering
- Bring cohesiveness
- Assure individual team performance
- Oversee subcontracting
- Subcontract Packaging

PHASE 2 RESPONSIBILITIES

- Assure team performance
- Oversee contract compliance
- Add additional personnel if requested
- Oversee partnering
- Prompt subcontractor and supplier payment



Jim Hall
Project Manager/Estimator
Oxbow Construction

TIME COMMITMENT



Jim started his construction career after finishing his civil/environmental engineering degree at Oregon State University and went on to build a wide variety of projects in both scope and type. His experience in heavy civil and utility construction includes performing as project manager and lead estimator for contractors on ODOT, WSDOT, US Army Corps of Engineers, and the City of Portland projects, ranging from several hundred thousand dollars to over \$80,000,000. Jim has completed major sewer and water infrastructure, private/commercial developments, Superfund site remediation, bridges, buildings, and military training facilities projects. Jim is an adept, well respected construction project manager and estimator and serves as a Tier 1 estimating software Beta tester for HCSS Heavy bid.

RELEVANT EXPERIENCE

- Downtown Mall Sewer Rehab, BES
- Downtown Water Main, BES
- SE CIPP, BES
- SE Interceptor, BES
- Riverside Emergency, BES
- Sellwood Interceptor, BES
- ESCSO SE 2nd Ave. Sewer, BES
- NW 22nd & Northrup, BES

PHASE 1 RESPONSIBILITIES

- Team management
- Design assistance
- Value engineering
- Estimating
- Project schedule
- Safety/quality assurance plans

PHASE 2 RESPONSIBILITIES

- Team management
- Schedule oversight
- Budget management
- Subcontractor management
- Communication with PI
- Prompt subcontractor and supplier payment
- Safety/quality oversight



Allen Kalkhoven
Superintendent/Quality Control
Oxbow Construction

TIME COMMITMENT



Allen brings over 36 years of public works experience to the team. For a five-year period in the mid-90s, Allen was an inspector for BES and later, he became a superintendent. Allen has built strong relationships with Local engineers, managers and inspection staff by adhering to the requirements of the plans and specification and keeping an open and honest dialogue. Allen has ingenuity and is always exploring new ideas and alternative ways to improve means and methods. His alternative thinking and broad knowledge of construction will be a huge asset for the successful completion of the City's project. Allen is well versed in open cut, pipe bursting, CIPP, slip lining, HDD, laser-guided AXIS, hand tunneling and caissons. Allen has extensive experience with deep excavation, sewer bypassing, dewatering, navigating utility nightmares, and successfully utilizing alternative methods.

RELEVANT EXPERIENCE

Downtown Mall Sewer Rehab, Downtown Water Mains, SW 1st and Harrison Emergency, SE Interceptor, NW 19th and Northrup, NW 22nd and Northrup, Tanner Creek Overflow, SE CIPP, Riverside Emergency, Overlook MH, Sellwood Interceptor, SE 2nd -3rd & Alder, SE 2nd & Alder Emergency, WSCSO sewer relocations, ESCSO SE 2nd Ave. Sewer

PHASE 1 RESPONSIBILITIES

- Assistance with project design
- Constructability review
- Value engineering
- Alternative methodology
- Lateral identification/locating
- Individual lateral bypass plans development
- Mainline bypass plan assistance
- Scheduling assistance
- Safety and quality plans assistance

PHASE 2 RESPONSIBILITIES

- Public safety plans implementation
- Project safety and quality plans implementation
- Sewer bypass operation oversight
- Construction schedule management
- Field operations management
- Subcontractors management
- Communication with PI
- Construction budget management
- Resolution of unforeseen field conditions



Jim Seely
Lead Foreman
Oxbow Construction

TIME COMMITMENT



Jim brings over 33 years of experience to the Oxbow team. He has been a successful superintendent on many very technical and high-profile projects over the years. Jim has built long-standing relationships with inspectors, project managers and owners. He is highly respected, easy to get along with and has a deep, immense knowledge of sewer rehabilitation. Jim’s experience and ability to problem solve, troubleshoot, as well as his cool-headedness, make him the perfect lead foreman for this project. Jim and Allen have been working together for over 33 years. This rich work history has created incredible synergy, ultimately resulting in highly successful projects.

RELEVANT EXPERIENCE:

Downtown Mall Sewer Rehab, PAURSS, Burlingame Sewer, Multnomah Force Main, PB Reservoir 2, Lake Oswego Lake Down North Shore, Lake O Water B-5 & 3B, Hawthorne Sewer, Mt Tabor Res, North Plains FM, Westside Header, Sellwood Interceptor, OHSU Outfall, Lambert, Taggart Basin, SE Rex, SE CIPP, SE Interceptor.

PHASE 1 RESPONSIBILITIES

- Lateral Identification/ locating
- Lateral bypass plans development
- Mainline bypass plans assistance
- Value engineering assistance
- Constructability review assistance
- Safety and quality plans assistance

PHASE 2 RESPONSIBILITIES

- Public safety plans implementation
- Project safety and quality plans implementation
- Assure sewer bypass systems are installed and operated correctly
- Assure tradesmen and subcontractors are following all plans, safety, quality
- Close communication with superintendent and project manager



Bobby Churnside
CIPP Foreman
Oxbow Construction

TIME COMMITMENT



Bobby is a resident of Sandy and super excited about the possibility of helping repair his home town. He started in the construction industry 12 years ago. He is a certified diesel mechanic and held positions managing one of the largest trucking company fleets of over 280 tractors. Bobby’s attention to detail and ethics are second to none. He is an excellent manager of time and resources. With his mechanic background, he was the perfect fit to take on many of the trenchless methods. He has the technical skills to trouble shoot, and build a better “mouse trap” that can be invaluable in the trenchless field. Bobby has taken on the lining industry with great success from lateral lining to Cosmic UV Top hats and UV CIPP mainline. In addition Bobby is qualified in the MH rehabilitation field utilizing Epoxytec and Sherwin Williams Epoxies.

RELEVANT EXPERIENCE

SE CIPP, SE 2nd and Alder Emergency CIPP, Hillsdale RDII Ph 2, NE 22nd and Northrup CIPP, NE 32nd Emergency CIPP, PSU Campus CIPP.

PHASE 1 RESPONSIBILITIES

- CIPP constructability review
- Lateral Identification/ locating
- Lateral bypass plans development

PHASE 2 RESPONSIBILITIES

- Public safety plans implementation
- Project safety and quality plans implementation
- Assure tradesmen are following all plans, safety, quality
- Close communication with superintendent, lead foreman, and project manager
- CIPP Lining



Scott Ray
Safety Manager
All About Safety, LLC

TIME COMMITMENT



Scott has over 30 years of experience in the construction industry. He has extensive knowledge of trench safety, confined space as well as site safety in general. With Scott’s knowledge and interaction with countless contractors over the years, he became an industry icon. Scott has intimate knowledge of OSHA regulations and how to enforce them. In addition, he is train-the-trainer certified and is one of the region’s top safety trainers. Scott has a great relationship with municipality owners and their safety representatives. This allows Scott to work closely with them and resolve any concern that they may have or arise.

RELEVANT EXPERIENCE

Train the Trainer Certified, Trench rescue 1 &2, Confined space, Fall protection, OSHA 30, first aid/CPR, Powell Butte 2, Safety manager for several local general contractors, Army Corp Eng. John Day Dam Gate project.

PHASE 1 RESPONSIBILITIES

- Assist with Safety Plan development
- Assist in site specific SDS
- Assist in JHA development

PHASE 2 RESPONSIBILITIES

- Communicate with City Staff
- Perform site safety inspection
- Assure field compliance to plan
- Modify safety plans as needed



Section 3

Proposer's Capabilities

Section 3

PROPOSER’S CAPABILITIES

Our team has the capability, resources, commitment, relationships, and knowledge, gleaned from numerous similar completed projects. We are eager to bring lessons learned and innovation from past projects to anticipate the risks and mitigate them effectively, ensuring the best value for delivering a successful project for the City.

Since its inception 15 years ago, Oxbow Construction has partnered with many of the local municipalities in constructing, maintaining, and rehabilitating their infrastructures. Combining this direct experience with the seventy-five plus years of utility construction experience possessed by its key staff provides an incredibly knowledgeable, professional construction group capable of delivering best value projects on time and under budget.

We offer the following benefits on this project:

- Experience and understanding of pipeline work in congested city and residential streets.
- Oxbow’s significant technical capabilities in:
 - Manhole rehabilitation including preparation, structural rebuilding, chemical resistant, and leak-proof lining and coating. In addition, we perform curtain grouting and injection grouting services. We are a licensed applicator routinely performing this work on an annual basis.
 - Extensive open cut excavation utility construction experience including complex deep shoring

installations including pipelines from 4” to 96” diameter concrete, ductile Iron, PVC, hdpe, and welded steel pipe materials.

- UV-CIPP mainline, lateral, and UV Top-Hat installation experience and certification with the latest technology equipment including Blue-Light capabilities.
- HDD drilling and Pipe Bursting
- Extensive sewer bypass experience
- Oxbow continually provides value engineering and cost-saving approaches to projects completed to its municipality partners

As an exceptionally qualified, experienced, local, WBE/DBE contractor, Oxbow brings to this project everything needed—knowledge, skills, experience, ingenuity, integrity, and agency/subcontractor/supplier relationships—to successfully achieve project goals.

The following table shows our experience on other successfully completed projects that focused on elements similar to the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project.

PROJECTS	PROJECT ELEMENTS									
	PRECONSTRUCTION INVESTIGATIONS, PIPELINE INSPECTIONS & I&I SOURCE ID.	CONSTRUCTION PHASE SERVICES FOR SMALL DIA. COLLECTION SYSTEM REHAB.	OPEN CUT EXCAVATION & SHORING	TEMPORARY WORK ZONE TRAFFIC CONTROL MEASURES	UTILITY PROTECTION AND SUPPORT	SANITARY SEWER CONSTRUCTION	TRENCHLESS PIPELINE CONSTRUCTION & CIPP	MANHOLE REHAB.	DEWATERING AND BYPASS SYSTEMS	
SE CIPP		■	■	■	■	■	■	■	■	
NW 22nd and Northrup		■		■		■	■	■	■	
SE 2nd and Alder Emergency Repair	■			■		■	■		■	
NE 32nd RR Emergency Repair	■			■		■	■		■	
PSU Campus Wide CIPP	■	■		■		■	■		■	
NW 19th and Northrup		■	■	■	■	■	■	■	■	
Riverside Emergency CIPP	■		■	■	■	■	■		■	
NW Flanders CIPP		■	■	■	■	■	■		■	

PROJECT DESCRIPTIONS

While nearly **all** of our construction projects contain experience relevant to this project, we have highlighted three projects that best match elements of the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project.

SE CIPP

City of Portland Bureau of Environmental Services



REFERENCE

Chris Beard, project technician
p: 503.823.5241
e: chris.beard@portlanoregon.gov

START DATE

01/2017

END DATE

11/2018

INITIAL CONTRACT VALUE

\$2,882,314

FINAL CONTRACT VALUE

\$3,044,751

REASON FOR VARIANCE

City added additional run of 36" CIPP on SW Clay St and added a Lateral on SE 78th Ave from the Powell Sewer Project

KEY TEAM MEMBERS

- **June Kalkhoven**, Project Principal
- **Jim Hall**, Project Manager
- **Allen Kalkhoven**, Superintendent
- **Jim Seely**, Project Foreman



PROJECT RELEVANCE

- Multiple sewer rehabilitation methods
- Complex bypass
- Coordination with residential and commercial properties

PROJECT DESCRIPTION

The SE CIPP employed many of the same construction processes that the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project will require. This project involved the rehabilitation of over 6,300 feet of 8- to 36-inch diameter sanitary sewer. Scope of work included CIPP mainline, CIPP lateral lining, Cosmic Top-Hats, vac-a-tee installation, and open cut. The project required complex, large sewer diversions as well as the design and implementation of traffic control to keep the public safe and moving smoothly. The project spanned over a wide area throughout SE Portland, in both residential and commercial areas. The project required extensive coordination with the City's PI team as well as working with property owners and the general public for individual needs. An example was the extensive planning and coordination for rehabilitating the 18-inch diameter sewer at the emergency entrance to Providence Hospital. With careful coordination with Providence, the City's public involvement team and Oxbow we were able to keep the emergency access open, while completing our work timely and efficiently.

Hillsdale RDII Ph 2

City of Portland Bureau of Environmental Services



REFERENCE

Ana Brophy, Capital Project Manager
503-823-5319
ana.brophy@portlanoregon.gov

START DATE

6/2018

END DATE

02/2019

INITIAL CONTRACT VALUE

\$750,000

FINAL CONTRACT VALUE

\$565,380

REASON FOR VARIANCE

Underrun

KEY TEAM MEMBERS

- **June Kalkhoven**, Project Principal
- **Jim Hall**, Project Manager
- **Allen Kalkhoven**, Superintendent
- **Bobby Churnside**, CIPP Foreman



PROJECT RELEVANCE

- I & I Project
- Lateral lining and interface seals
- Rehabilitating private residential laterals

PROJECT DESCRIPTION

This project is very similar in scope to the 2020 SSRIIR Project. The intent was to reduce I & I especially on the private side where a large portion of I & I occurs. Phase 1 of the project involved mainline CIPP lining. The intent of Phase 2 was to rehabilitate the laterals and make watertight interface seals. Oxbow was the specialty subcontractor hired to perform all the CIPP lateral lining and interface seals. Originally, another subcontractor was hired to utilize a one piece main/lateral lining system, but in above-ground testing, they were unable to pass an air test. Oxbow performed above ground testing as well as actual testing installations using the Cosmic UV Top hat system. With this system, we passed all required testing and ultimately performed all the work. For lateral lining, we utilized the Perma-Liner Lateral Lining System, and as mentioned we installed Cosmic UV Top hats for the interface sealing.

NW 22nd and NW Northrup Sewer Rehabilitation

City of Portland Bureau of Environmental Services



REFERENCE

Riley Walsh E.I.T.
503-823-2820
Riley.walsh@portlanoregon.gov

START DATE

02/2020

END DATE

08/2020

INITIAL CONTRACT VALUE

\$586,759

FINAL CONTRACT VALUE

\$550,000

REASON FOR VARIANCE

Underrun

KEY TEAM MEMBERS

- **June Kalkhoven**, Project Principal
- **Jim Hall**, Project Manager
- **Allen Kalkhoven**, Superintendent
- **Bobby Churnside**, CIPP Foreman

PROJECT RELEVANCE

- Work in combination of residential and commercial setting,
- Sewer bypass
- UV CIPP main
- CIPP laterals
- Cleanout installation
- Good public relations- working alongside Good Samaritan Hospital

PROJECT DESCRIPTION

We selected this project for several reasons. One it is similar in scope and two it involves the new standard of working with COVID. This project started at the beginning of the COVID crisis. In addition, the entire length of the project was alongside Good Samaritan Hospital. This project was a very high profile and closely watched due to these conditions. Oxbow implemented new guidelines that resulted in proper training, safety measures and communication plans for both our workforce and the public's safety. As a result, the project was completed with no complications or issues. The project consisted of CCTV, Lateral investigation, heavy root cutting, rehabilitation 1,000 ft of 16" VSP with UV CIPP, CIPP Lateral rehabilitation, Cosmic UV Top hat interface seals, main and lateral bypassing and traffic control. In addition, we performed a Blue Light Lateral lining demonstration lining a high flow lateral to Good Samaritan Hospital. This new technology will change Lateral lining as we know it. In addition, the Public relations and involvement were extremely important to the Owner. As a result of good communication, planning and scheduling, the owner received no complaints throughout the project.

FIRM'S ANNUAL REVENUE

2019	2018	2017
\$6,329,000	\$8,156,000	\$6,440,000

LITIGATION HISTORY

In construction, unforeseen conditions, differences of interpretations, and errors and omissions are often unavoidable. How each of those is handled makes the difference. At Oxbow, we are proud of our ability to avoid disputes with our clients through open, honest communication, and ownership of our work products, including our hard-bid estimates. As a result, **Oxbow Construction has zero client litigation history.**

FIRM'S RESOURCES AND CAPABILITY

The benefit of being a smaller, local contractor affords us the opportunity of not having to overcommit our resources and staff to several different projects in order to maintain our business. We are able to focus and commit to each project at the required level. Oxbow Construction will deliver to the City of Sandy the necessary equipment and personnel, including subcontractors, for all aspects of the pre-construction and construction services work.

Oxbow's field construction personnel who are trained and certified in main CIPP lining, vac-a-tee installation, pipe cleaning and inspection, root cuttings, lateral CIPP lining, lateral bursting, top hat installation and other methods that will be used to investigate and determine final construction designs,

are available as of Oct 15th, 2020 and will be committed to the project immediately upon award.

Currently, Oxbow Construction's contracted future work is planned for completion by the early winter of 2020. This contracted work is primarily PBOT road construction and heavy civil grading work. Our key sewer rehabilitation personnel are currently available as of November 2020.

Key management and supervisory personnel are immediately available and are slated for assignment to the CM/GC team. All of our construction key identified staff and field personnel can be committed to the construction phase.

In addition to our internal capabilities, Oxbow has secured commitments from several D/M/W/ESB contractors to assist in the investigative field work:

- **JNM Services:** video pipe inspection and traffic control plan design
- **C.O.A.T. Flagging:** traffic control services

All of the above resources will be committed to the construction services scope of work when needed.

BONDING CAPACITY

Oxbow Construction is bonded and insured with Anchor Insurance & Surety, Inc. Our bonding capacity as follows:

- Single: **\$12,000,000**
- Aggregate: **\$18,000,000**

Current bonded work is nine percent of bonding capacity and with the addition of this project, we would be at 25 percent of total bonding capacity. Despite being a smaller contractor, Oxbow has sufficient funds and cash flow for not only the construction of the 2020 SSRIIR Project, but also for the balance for our aggregate bonding capacity. In addition, Oxbow has a strong line of credit with Bank of America, that has a zero balance.

OXBOW'S CURRENT EQUIPMENT CAPABILITIES

- **Horizontal Directional Drilling (HDD) equipment**
- **Vector/Jet truck and trailer equipment**
- **UV main-line installation equipment**
- **Top Hat liner connection equipment**
- **Schwalm and Cosmic Robotic Cutters**
- **Perma-Liner Lateral Lining System**
- **Structural lining/epoxy/cement grout application equipment**
- **Sewer diversion pumps, hoses, generator equipment**
- **Root cutting/clearing equipment**
- **Excavators, loaders, backhoes, shoring for open excavation**
- **Lateral pipe bursting equipment**
- **Tunnel jacking frames and equipment**



WORK QUALITY AND COST CONTROL

Oxbow's internal policy is to perform quality work at all times. June's motto is ***"always do what is right, even when no one is looking."*** We live by that motto and as a result our reputation for quality stands out! At Oxbow we strive to have **no** punch-list projects. Our key people know the City Standards and also pay special attention to and apply the Special Specifications, and our projects reflect this.



OUR INTERNAL QC PROCESS ASSURES

- ✓ Conformance with the plans and specifications
- ✓ Only first-quality materials and products are incorporated into the project
- ✓ Removal of damaged materials from the site
- ✓ Removal of damaged or non-compliant work
- ✓ Non-confrontational inspections with the owner's representatives
- ✓ Proper documentation, as-builts, changes to plans, unknown utilities



By using our quality control philosophy, Oxbow has always produced a great work atmosphere making for a happy, non-hostile and non-contentious work environment. This allows our workers to focus on the task at hand and concentrate on performing to the best of their abilities.

Oxbow quality control procedures will include the following:

- ✓ **Review the design during pre-construction phases to eliminate any unnecessarily complicated material requirements unless needed for economics** (for example, not use four different liner mil thicknesses).



- ✓ Prior to installation, review the specifications and plans and cross reference submittals.
- ✓ Check materials in the field for compliance with the project requirements.
- ✓ Perform initial inspection of first work installed to ensure quality standards are met or exceeded.
- ✓ Perform follow-up inspections to ensure standards are maintained throughout the work.
- ✓ Perform monthly quality control report review and modify procedures if deemed necessary.

In the natural progression from pre-construction to construction services, Allen Kalkhoven will perform the duties of quality control manager for this project.

This is a natural fit as Allen has intimate knowledge of all aspects of the construction means and methods as well as the specifications. In addition to his vast construction experience, Allen has actual inspection experience gained while working as a public works sewer inspector for the City of Portland. Additionally, Allen has significant experience working for various agencies in good faith evaluating completed work and identifying construction defects, their causes, and the best method for rectifying sewer system deficiencies.

As quality control manager, Allen will report directly to the Owner and to the City of Sandy. Oxbow will take ownership of the work quality and provide the City of Sandy with confidence that a best quality project is delivered.

FIRM SAFETY EXPERIENCE

Oxbow's commitment to safety is obvious on all our construction projects. We routinely hear comments regarding our safe work practices. Our public agency clients can attest to their confidence in Oxbow's willingness to always perform work in the safest manner possible.

3 In Oxbow's nine years of working with City of Portland BES, we have earned the BES Safety Award three times, in 2014, 2017, and 2019.

You cannot put a price on safety, and we firmly believe that. Oxbow is committed to putting in place any and all procedures and measures for any known or possible safety issues to protect the public, City workers, consultants, sub-contractors, and our workforce from harm. Our proactive approach and pre-planning makes for an incident-free work environment. Oxbow's commitment to safety is at the top of every task we perform. We spare nothing when it comes to outfitting our crews with the required safety equipment and gear. With the COVID-19 pandemic, we now have implemented even stricter guidelines than are recommended to protect our workforce.

To maintain our commitment to safety on this project, Oxbow will enlist Scott Ray of All About Safety, LLC to oversee our safety operations. Scott will report directly to the Owner to ensure project bias does not impact operations. The CSD will perform on-site inspections throughout the life of the project and provide monthly safety review reports to the City and a safety review committee.



SAFETY PAYS! It is a slogan Oxbow lives by and it has special meaning to us. It was 1939 during construction of Grand Coulee Dam that safety superintendent and grandfather of Allen Kalkhoven, Frank W. Johnson, coined the now famous slogan. It holds true today! In the photo you can see the 12-foot-high famous slogan that was illuminated 24 hours a day during construction.



SITE-SPECIFIC HEALTH AND SAFETY PLAN WILL COVER

- ✓ Public safety
- ✓ Emergency responders- provide training to all employees about assisting first responders access
- ✓ Special job hazards- SHARPS, working near sewage, blood borne pathogens, COVID-19
- ✓ Flex and stretch- Implemented every day
- ✓ JHA's to address the unique safety challenges this project has
- ✓ Weekly toolbox talks- relevant to our specific tasks

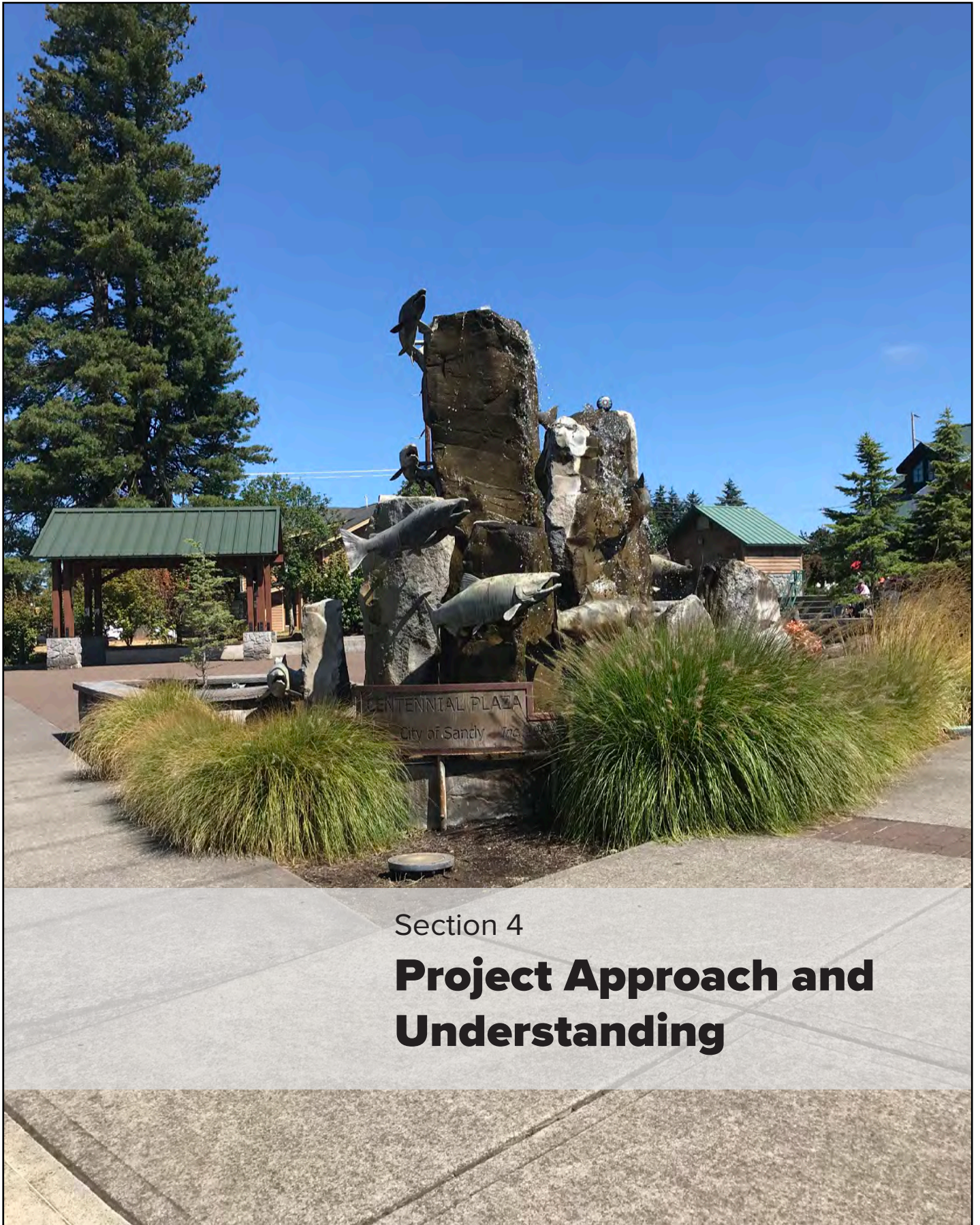
Our EMR was 0.80 until a single, non-work-related claim raised it to 1.09. In Oxbow's case, an alleged knee accident, reported after work ended, was denied by SAIF. Although SAIF clearly concluded the injury did not occur on Oxbow's projects, the Oregon State Attorney representing SAIF offered a small settlement to close the claim. As a result, and out of Oxbow's control, our EMR was raised to above 1.0. Prior to this false claim, Oxbow's EMR was 0.80. The above information can be readily confirmed with written formal documentation.

OSHA VIOLATIONS

As a result of our true commitment to safety, Oxbow Construction, from its formation, has never received an OR-OSHA or WA-OSHA warnings, citations, or violations of any kind.



No FED-OSHA, OR-OSHA, or WA-OSHA citations, warning, violations, or fines of any kind, ever!



Section 4

Project Approach and Understanding

Section 4

PROJECT APPROACH AND UNDERSTANDING

Oxbow Construction is and has always been dedicated to working with our clients to continually provide the most cost-effective, least disruptive, best quality work for the community. By using Oxbow's ability to evaluate sewer infrastructure and develop the best way to rehabilitate or reconstruct it, City's staff can take comfort in knowing the job will get done in a manner consistent with Sandy's values and expectations.

UNDERSTANDING OF OWNER'S PROJECT DELIVERY GOALS AND DESIGN OBJECTIVES

The 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project (SSRIIRP) is at the unseen heart of the City of Sandy. The existing sewer infrastructure has outlived its serviceable life, has significant I&I issues that greatly impact treatment costs. Finally, these issues pose the risk of major disruptions and costly failures. Unexpected repairs and construction events significantly impact the City and its residents. During heavy rain events, the sewer system flows can swell to over 14 times the normal flow rate. Treatment of these added flows constitutes a significant cost increase to the City and its clients. The City relies on a fully functioning, leak free sewer system to conduct "business as usual". Oxbow Construction is the company that will see that they can.

By using the CM/GC procurement method for this project, the City will maintain control of the overall design, mitigate risks, and reduce the overall design and construction time-frame that can occur with Design-Bid-Build projects. The SSRIIR Project stakeholders will remove the normal design-bid-build procedural constraints and open the door to collaboration and ingenuity. These are areas where Oxbow Construction shines. Oxbow will provide The City with the additional tools, experience, field knowledge, resourcefulness, and special skills required to successfully provide the deliverables and ensure a timely, best-value project.

The ultimate goal of SSRIIR Project is to provide businesses and residents with a sound, reliable, I&I-free, economically viable sewer system that will endure another fifty to one hundred years of use without further significant rehabilitation work. In completing this project, the team members must bring to the table a mix of construction knowledge, experience, and ingenuity as well as an understanding of the local community.

Oxbow is committed to the success of SSRIIR Project, and will dedicate the time and resources required to assure the achievement of the following delivery goals:

- ✓ **Provide proactive and effective communication and interaction with the community**
- ✓ **Minimize impacts to the community, including the business entities and their patrons, and employees, residences, vehicular traffic including bikes, and pedestrians**
- ✓ **Prevent any disruption to sewer, water, gas, and electrical service to the community**
- ✓ **Identify and implement the most appropriate, least disruptive, and longest lasting technology for rehabilitating the sewer system**
- ✓ **Achieve the safe, successful construction of 100% of the assigned work at the most effective cost**

YOUR TRUSTED PARTNER

Oxbow Construction, and many of its personnel, have spent a significant portion of the last 30-plus years working as a partner with multiple public agencies in Oregon in serving their clients through quality and best-value construction. We will provide the City of Sandy with avenues for improvement through value engineering, cost saving measures, and reducing the impacts to the local community. Oxbow performs CIPP, burst, open cut, manhole rehabilitation, and directional drilling IN-HOUSE for both sewer and water lines. The City of Portland, Clean Water Services, and Clark County rely on Oxbow's full-service experience and capability when they encounter that "special" case that needs to be solved.

OVERALL MANAGEMENT AND INTEGRATION OF ALL PHASE 1 AND PHASE 2 ACTIVITIES

Oxbow will provide the City of Sandy with one, identical team for both phases of the project. The primary team of Jim Hall, Allen Kalkhoven, and our lead foremen Jim Seely brings the essential knowledge and skills to perform both the pre-construction and construction phases of the work. The efficiency this team brings will equate to cost and time savings for the project.

Proper selection of investigative technologies will be critical in Phase 1 as it directly impacts the Phase 1 and Phase 2 work. For example, based on field investigation and conditions, is CIPP or pipe bursting the best method of rehabilitating a particular sewer? Does the additional ground water head pressure make fused on saddles a better option than a trenchless type seal? Therefore, having consistency across the two phases is critical. With extensive experience in all constructability aspects of this project, our pre-construction team will collaborate with the design team to develop the best design for Phase 2. Together and through Allen Kalkhoven, they will assure a smooth flow of information from the pre-planning performed in Phase 1 to our field crews in Phase 2.

Jim Hall and Allen Kalkhoven have worked together as a team for nearly 20 years. In addition, Allen Kalkhoven and Jim Seely started working together in 1988. Over the years they have formed a working relationship that is unsurpassed. Once plans are passed onto the field, general foremen Jim Seely will execute the plan without deviation. If unforeseen conditions arise, the project team will immediately identify the problem most likely have a resolution before presenting the issue to our partner, the City. The rare combination of vast experience and cohesiveness this team brings will make this project a true success.

Oxbow can and does make the commitment to have these key people available and work on this project from beginning to end. Our key people are not committed to other work that would interfere with this project. With this team, we will build on individual strengths to become one united group.

By providing this team continuity, the project design and the City team can rely on effective communications and consistent work product during the pre-construction and construction services phases. The transition from pre-construction to construction work will be smooth as all parties will have owned the planning and design work.

This cohesive CM/GC team will have complete “ownership” of all aspects of the design/planned work including:

- ✓ Value engineering
- ✓ Means and methods selection
- ✓ Budget and GMP
- ✓ Project schedule
- ✓ Project Safety

This ownership of design and planning will remove the tendency for re-thinking or re-evaluating the construction design and schedule which would impact the successful completion of the work.

With respect to transitioning from pre-construction to construction phases, Oxbow’s team will transition its team to perform the different roles required based on experience and logic:

ROLE	PRECONSTRUCTION ACTIVITIES	CONSTRUCTION ACTIVITIES
Project Manager	<ul style="list-style-type: none"> • Participation in Design • Budget/GMP Development • Contract Schedule Development • Subcontract Procurement/Selection • Submittal Schedule Development 	<ul style="list-style-type: none"> • Cost Control/Management • Baseline Schedule Management/Updates • Subcontract Management • Overseeing Submittal Processing
Quality Control Manager	<ul style="list-style-type: none"> • Field Report Evaluation • Technical Design Participation • Budget Review 	<ul style="list-style-type: none"> • QC/QA Design Implementation in Field
Construction Superintendent	<ul style="list-style-type: none"> • Field Investigations • Participation in Design Process • Means and Methods Selection • Construction Planning • Budget Review • Schedule Review 	<ul style="list-style-type: none"> • Direct Construction Supervision • Field Safety Management • Subcontractor Field Supervision • Schedule Update Review • Budget Progress Review

THE PLAN FOR PROVIDING PHASE 1 PRE-CONSTRUCTION SERVICES

Oxbow's number one priority at the start of Phase 1 will be to build a true partnership with the City's team. During the Phase 1 pre-construction services, Oxbow's team will collaborate with the City's team, including management and design engineers to assemble comprehensive, concise, and detailed plans and specifications for the successful completion of rehabilitating the failing sewer system. Pre-construction services program will include:

- ✓ Complete CCTV inspection of the system
- ✓ Manhole assessment
- ✓ Lateral investigation
- ✓ Sewer bypass design
- ✓ Project design
- ✓ Constructability review
- ✓ Risk assessment
- ✓ Value engineering
- ✓ Scheduling
- ✓ Budgeting
- ✓ Public safety
- ✓ Traffic control plans
- ✓ SSHSP
- ✓ GMP
- ✓ Construction management plan

AREAS OF INTEREST AND PROPOSED PROCEDURES TO SELF-PERFORM PORTIONS OF THE WORK

Oxbow Construction has the capacity and capability to perform nearly all scopes of work identified in the Contract. Although we have the ability to do the work in house, Oxbow recognizes that partnering with other subcontractors and service providers may improve the outcome of the overall project. These improvements may be recognized by the reduction in the overall schedule as well as introducing the positive impact of competition on certain scopes of work. Oxbow will self-perform the following:

ADDITIONAL PHASE 1 WORK



Public safety. Our team in conjunction of the City will develop a plan that is specifically tailored to public safety. While much of this project is trenchless, many specific safety nets can be put in place to protect the public. Many will be addressed in other plans, but particular attention will be placed on traffic control, use of temporary fencing, ADA compliant ramps, trip hazards to name a few.



Project design. Oxbow will assist both the City and Leeway Engineering Solutions with our experience and knowledge of means and methods, constructability, and ideas. We will assist the team in finalizing the construction methodology that is feasible and meets the City's goals.



Risk assessment. Our experienced key personnel will perform risk analysis for constructability, public safety and viability for project success.



Value engineering is an Oxbow specialty. Oxbow's key people are very innovative. They have used creative techniques for countless projects throughout the area. Oxbow will bring the best of its experience and creativity to work every day on this project to expedite schedules, minimize impacts and disruptions, and increase cost savings.



Traffic control plan development will be accomplished by a qualified D/M/W/ESB/SDVBE firm with basic ideas from our team. Maintaining public access and public safety will be our number one priority!



Site-specific safety plans (SSSP). We will develop a detailed SSHSP that addresses all safety aspects for this project. Special attention will be placed on traffic awareness, confined spaces, and biohazards for the site.



Scheduling. Our team will develop and present a project schedule, depicting how we will accomplish 100% of the scoped work, including the incorporation of special events and moratoriums.



Construction management plan. Our team will work with the City and team members to develop a plan that addresses issues of stored materials, laydown areas and temporary construction office that suits the needs of the team. As part of the CMP, Oxbow will recommend to the City to use part of the Early Work Package (EWP) Implementation to perform additional lateral work to assure a complete assessment of sewer services.

- ✓ Sewer bypassing Including laterals
- ✓ Cleanout installation
- ✓ UV CIPP mainline lining
- ✓ Lateral lining
- ✓ Manhole restoration
- ✓ Open cut mainline (partial)

INNOVATIVE OR ALTERNATIVE IDEAS AND APPROACHES

Oxbow sets itself apart from other contractors through their consistent ability to think “outside the box” when evaluating and planning to do work. Allen is well known in the utility construction community for developing alternate construction materials, redesigning work, providing alternate means and methods and for taking ordinary equipment and making it do something completely different. At Oxbow, there is never only “one way” to build something. We are continually looking for new and improved materials and technologies. As an example:

- ✓ Oxbow has recently invested in and is certified to use the new “Blue Light” Lateral system technology.
- ✓ Oxbow has tested and trained with a new “invertable glass liner”. A technology that will change the CIPP Industry.
- ✓ Oxbow is a certified Cosmic UV Top-hats installer. This technology provide long term leak free interface seals whereas previously installed Felt Interface/T-Liner type seals are failing throughout the US.
- ✓ Oxbow is a certified manhole rehabilitation contractor and we are continually looking to utilize improved manhole lining materials and I&I methods

Team Oxbow is always looking for new and better ways to improve projects and will continue to do so.

PROJECT MANAGEMENT APPROACH TO MANAGING COST AND SCHEDULE DURING PRE-CONSTRUCTION AND CONSTRUCTION SERVICES



The key to successfully managing any project with respect to cost and schedule comes down to three primary activities:

- ✓ Understanding what cost and schedule risks are inherent with each design and construction activity to allow the project team to manage those risks in a proactive, preventative manner.
- ✓ Developing an initial budget/schedule of values (SOV) program that is (1) understandable, (2) manageable, and (3) accurate.
- ✓ Developing a manageable and realistic schedule. This requires that real relationships between tasks be established and used to manage the project rather than developing a “pretty picture” on how the project might proceed. Additionally, the scheduled activities must be resource limited. Active use of actual physical relationships and recognition and implementation of resource limitations will result in significantly greater schedule control.

PRE-CONSTRUCTION SERVICES RISK ASSESSMENT AND MITIGATION

As the selected CM/GC entity, Oxbow brings the experience, knowledge, and ingenuity to really hone down the risks by developing the best means and methods for each phase and work type. During the pre-construction services phase of the work, the project team, primarily Jim Hall and Allen Kalkhoven will evaluate each required construction task, and provide the City with multiple ways of completing those tasks. Through this collaborative design process, the CM/GC will mitigate the construction risks that are inherent with each activity.

PRE-CONSTRUCTION SERVICES BUDGET AND SOV DEVELOPMENT

Using the pre-construction services risk analysis, Oxbow will provide the City with a complete SOV/budget and associated schedule based on the following:

- ✓ Develop the technical professional services contract Fee (budget) based on the following:
 - Identifying key design (Owner Consultant) deliverables and a schedule for the associated support services anticipated by the CM/GC to complete.
 - Identifying key CM/GC provided deliverable items.
 - Identifying outside subcontracted deliverable items.

POTENTIAL CONSTRUCTION ACTIVITIES, RISKS, AND MITIGATION APPROACH

CONSTRUCTION TASK	RISK	RISK SOLUTION/MITIGATION PLAN
Diversion Pumping	<ul style="list-style-type: none"> • Unexpected Flow Increases • Storm Events • Pedestrian and Vehicle Access Limits • Pump malfunction 	<ul style="list-style-type: none"> • Proper diversion design • Environmental Monitoring Processes • Maximize Dry Weather Work • Design below grade diversions • Design ramps for diversion crossings • Use non-clog impeller pumps • Use low-hour pumps
Upsizing Pipe	<ul style="list-style-type: none"> • Unforeseen Contaminated Materials • Unforeseen Utility Conflicts 	<ul style="list-style-type: none"> • Pre-Investigation/Testing Program • Potholing Critical Alignments • Develop HDD or Bursting Installation Alternative
CIPP Lining	<ul style="list-style-type: none"> • Collapsed/Failed Liner • Liner Material Availability • Equipment failure 	<ul style="list-style-type: none"> • Pre-Inspection of Liner • Contingency Materials On-Hand • Advance Procurement/Reserve Materials • Have backup UV equipment on hand • Start project with new UV lamps
Pipe Bursting	<ul style="list-style-type: none"> • Damage to surrounding utilities • Heaving of ground • Large foot print (public safety) 	<ul style="list-style-type: none"> • Pothole utilities • Site investigation and analysis • Site specific safety plan/planning

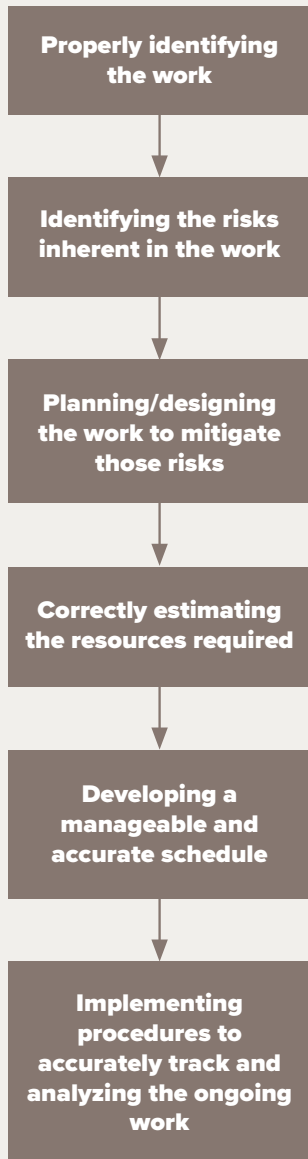
- ✓ Develop the pre-construction services schedule using the data above ensuring (1) a critical path is identified, (2) incorporating a contingency float period, and (3) accelerating or modifying activities which do not allow the float period to be applied to the schedule. Too often the project is actively managed using no float and a critical path which does not afford the project with an avenue to correct when the schedule is delayed, impacted, or not met.
- ✓ Based on the deliverables identified, budget appropriate resources/costs to meet those deliverables.
- ✓ Identify measurable units, (normally worker-hours) of resources required to meet design deliverable schedule.
- ✓ Develop standard CPM schedule loaded with resources as identified above.
- ✓ Track quantities of resources expended weekly versus budgeted amounts.
- ✓ Provide progress report using percentages complete, budgets consumed, and CPM timeline to Owner monthly to ensure project is on track.
- ✓ If project is not on schedule, identify and report acceleration measures required to correct mitigate schedule delays.
- ✓ If project is not on budget, identify if there are any efficiencies or means for mitigating budget and implement those actions.



Successful management of the project from both the schedule and cost standpoint will benefit by developing forward-thinking cost- and time-savings measures in advance and during the work.

- ✓ The Schedule of Values (SOV) will be based on the standardized unit price pay items.
- ✓ Possible cost and or schedule reducing measures that will be considered by Oxbow through both the pre-construction and construction services contracts are as follows:
 - ✓ Perform a thorough pre-construction field investigation to clearly identify laterals, needing rehabilitation, requiring reconnection, or requiring new cleanouts for rehabilitation purposes.
 - ✓ Explore, develop, and implement multiple, simultaneous work sequences to mitigate schedule and reduce project management costs through multiple operation efficiencies.
 - ✓ Multiple work paths will also insure the completion of the entire scope. Multiple, simultaneous work sequences will insure 100% completion of the desired scopes of work.
 - ✓ Thorough investigation and analysis of existing structures to eliminate unnecessary repairs and or rehabilitation or optimizing the rehabilitation work.

To ensure the successful completion of all planned work on the 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project, Oxbow will provide the following to the City:



PROJECT MANAGEMENT APPROACH - CONSTRUCTION SERVICES SCOPE

Through the CM/GC process, the “hard” work of designing, planning, and budgeting the work is complete. The focus would then shift to managing the construction activities. We are confident the pre-construction activities above will be completed to the extent that the construction would be entirely manageable.



STAFFING

Oxbow will maintain an office in the vicinity of the work and all management personnel will work from that location during the project work. Intended project staff:

- Project Manager
- Project Engineer/Admin Assistant
- Superintendent
- Quality Control Manager (Superintendent)
- Safety Manager



REPORTING

Through the course of construction, Oxbow will deliver the following project management deliverables to the City’s team members:

- Weekly Budget/Cost Reports (Labor, Equipment)
- Weekly three-week, look-ahead schedules
- Monthly Project Contract (Baseline) Schedule Updates
- Monthly Budget/Cost Reports (Labor, Equipment, Materials, Subcontractors)
- Monthly Work Summary Report (Written statement of progress)
- Monthly Safety Summary Report
- Monthly QA/QC Summary Report



PM TOOLS

Oxbow Construction will utilize the following project management tools for tracking work, processing reports, managing costs and schedules:

- **HCSS Heavy Bid** – Cost Estimating/Change Order Estimating
- **HCSS Heavy Job** – Field Work Recording (Diary, Time Cards, Etc)
- **HCSS Heavy Plans** – Field Plan Management, As-builts, etc.
- **MS Project/Primavera P6** – Scheduling





Section 5

Price Proposal

PRICE PROPOSAL (Phase 1)

PRE-CONSTRUCTION SERVICES COST ESTIMATE ANTICIPATED/COMMITTED RESOURCES	PROJECT MANAGER	SENIOR ESTIMATOR	SUPERINTENDENT	SAFETY MANAGER	PROJECT ADMIN/ENGINEER	PROJECT FOREMAN	LABORERS	VACTOR TRUCK SERVICE	SUBCONTRACT COMPLIANCE OFFICER	TRAFFIC CONTROL FLAGGING	OFFICE EXPENSES	PROFESSIONAL LIABILITY INSURANCE	VIDEO PIPE SERVICE	MH POLE MOUNTED CAMERA INSPECTION	TOTAL (\$)
	\$90 MAN-HRS	\$90 MAN-HRS	\$90 MAN-HRS	\$50 MAN-HRS	\$35 MAN-HRS	\$65 MAN-HRS	\$55 MAN-HRS	\$100 EQUIP HRS	\$45 MAN-HRS	\$68 MAN-HRS	\$	\$	1.37/LF	\$75/EA	
Initial Kick-off Meeting	2	2	2	2	2	2			2		\$50	\$6,000			\$12,800
Collaborative Project Design	64	32	32	8		10									\$9,690
Pre-construction Investigations	10	20	20	8		247	300	200		24	\$100		\$75,350	\$22,500	\$153,629
Constructability Report	8										\$100				\$820
Project Management Plan	20		4								\$100				\$2,260
Construction Procurement Plan	8		4								\$100				\$1180
Construction Management Plan	20		4								\$100				\$2,260
Traffic Control Plans	8		4							48	\$100				\$4,724
Site Specific Health and Safety Plan (SSHSP)	20		4	16	8						\$100				\$3,340
Construction Schedule	16		8		8						\$100				\$2,540
Cost Estimating	8	32	8								\$100				\$4,420
Guaranteed Maximum Price Proposal	20		4								\$50				\$2,210
TOTAL	204	32	94	34	26	259	300	200	2	72	\$1,000	\$6,000	\$75,350	\$22,500	\$199,873

*Note: MH pole mounted inspection may be deleted if visual inspections are adequate

PHASE 2 CMGC FEE

Ten percent (10%) as defined in Part 1 Section A Item 4 Phase 2: Construction Services Scope of Work.



Resumes



June Kalkhoven | Project Principal

June founded Oxbow in 2005. In 2010, June moved into public works projects providing traffic control services and later maintenance hole rehabilitation. Under her leadership and attention to quality and detail, Oxbow became a successful, reliable, and respected name in the industry. June brings a straightforward approach, with honesty and integrity, to everything she does. June is a contract specialist and will ultimately oversee all personnel under her employment as well as oversee their performance.

Firm

Oxbow Construction

Years of experience

13

Training

- Interise MBA
- DEQ Cert Installer
- Certified for EpoxyTec, HCSS, Perma-Liner
- CESCL
- Trench Safety
- Confined Space
- First Aid CPR
- OSHA-10

SELECT PROJECT EXPERIENCE

SE CIPP, City of Portland, BES, OR; Project Principal

This project rehabilitated 6,300 lf of 8"-36" by CIPP (Thermal & UV) and open cut. The project required complex bypass systems, traffic control and rehabilitation of laterals by CIPP and Cosmic UV Top hat installation. There were technical sections that required close communication with PI, Providence Hospital and ODOT. A 36" sewer was rehabilitated under I-84 requiring extensive traffic control.

NW Flanders & NW 11th Ave Sewer Repair, City of Portland, BES, OR; Project Principal

Project involved close coordination with the PI, one way In/out to a large parking garage, good working relationships with adjacent businesses and their patrons, traffic control within the CBD, leak free large sewer bypassing, 24" CIPP mainline rehabilitation, lateral Identification and rehabilitation both open cut and CIPP. All completed with zero Issues and complaints.

NW 19th & Northrup, City of Portland, BES, OR; Project Principal

SE 78th & Salmon, City of Portland, BES, OR; Project Principal

SE Interceptor, BES, City of Portland, BES, OR; Project Principal



Jim Hall | Project Manager/Estimator

Jim's experience in heavy civil and utility construction includes performing as the lead estimator and project manager for contractors on ODOT, WSDOT, US Army Corps of Engineers, and the City of Portland. His practical management and estimating experience includes sewer construction and reconstruction, water system, highway/road construction, military, and environmental remediation/cleanup projects ranging from several hundred thousand dollars to over \$80,000,000. Jim is an adept, well-respected construction estimator and serves as a Tier 1 estimating software Beta tester for HCSS Heavybid.

Firm

Oxbow Construction

Years of experience

28

Education/Training

- BSCE, Environmental Engineering Minor, Oregon State University
- 40 Hour Hazwopper
- Confined Space
- USACE QA/QC Certified
- First Aid/CPR

SELECT PROJECT EXPERIENCE

SE CIPP, City of Portland, BES, OR; Estimator & Construction Project Manager

This project rehabilitated 6,300 lf of 8"-36" by CIPP (Thermal & UV) and open cut. The project required complex bypass systems, traffic control and rehabilitation of laterals by CIPP and Cosmic UV Top hat installation. There were technical sections that required close communication with PI, Providence Hospital and ODOT. A 36" sewer was rehabilitated under I-84 requiring extensive traffic control.

Middle Hillsdale RDII Pilot Project Laterals, City of Portland, BES, OR; Construction Project Manager

This project was nearly identical in scope the 2020 SSRIIR Project, Phase 2 involved the reduction of excessive I&I. Phase 1 involved CIPP of the mainlines on a prior contract. This contract focused on lateral rehabilitation and lateral interface seals. Oxbow was the specialty subcontractor that performed the CIPP lateral lining and main/lateral interface seals. Approx. 120 laterals on both the public and private side were CIPP-lined and 160 Cosmic UV Top hats were installed. The City approved Cosmic UV Top hats after a prior subcontractor failed to pass water tightness testing with a one-piece full wrap main line product and performance was substandard.

NW 22nd & Northrup Sewer Project, City of Portland, BES, OR; Construction Project Manager

This project consisted of rehabilitating 1,000 ft of 16" mainline and laterals by CIPP methodology. We rehabilitated the mainline with UV CIPP. The laterals were rehabilitated with the Perma-Liner Lateral lining System. In addition, we utilized the new technology of The Blue Light Lateral System. We successfully lined a lateral as a demo for the owner to show the benefits of this new technology. The lateral interface seals were completed using the Cosmic UV Top hat System.

Downtown Mall Sewer Project, City of Portland, BES, OR; Senior Estimator and Senior Construction Project Manager

The project rehabilitated 40 sanitary sewer mainline runs, varying for 8"-27". Project posed technically challenging conditions, because they were rehabilitating sewers under newly constructed light rail track and new brick intersections. Methods used: open cut, CIPP, pipe bursting, slip lining, hand tunneling. Laterals were rehabilitated by open cut and CIPP. Project required technical bypassing, in basement lateral bypassing, traffic control and close communication with PI.

North Commercial CIPP Rehabilitation; BES, Estimator and Project Manager



Allen Kalkhoven | Superintendent/Quality Control

Allen has built strong relationships with local municipalities, engineers, managers and inspection staff by adhering to the requirements of the plans and specification and keeping an open and honest dialogue. Allen is always exploring new ideas and alternative ways to improve. He is well versed in open cut, pipe bursting, CIPP, slip lining, HDD, laser-guided AXIS, hand tunneling and caissons. Allen has extensive experience with deep excavation, sewer bypassing, dewatering, navigating utility nightmares, and successfully utilizing alternative methods.

Firm

Oxbow Construction

Years of experience

36

Training

- OSHA 30
- Drug & Alcohol Awareness
- Confined Space
- First Aid/CPR
- Rigging Safety
- Trench Safety
- EpoxyTec
- Permaliner
- ProKasro
- CESCL
- Cosmic Top Hat
- Schwalm Robotics
- Blue Light Lateral

SELECT PROJECT EXPERIENCE

SE CIPP, City of Portland, BES, OR; Superintendent

This project rehabilitated 6,300 LF of 8"-36" by CIPP (Thermal & UV) and open cut. The project required complex bypass systems, traffic control and rehabilitation of laterals by CIPP and Cosmic UV Top hat installation. There were technical sections that required close communication with PI, Providence Hospital and ODOT. A 36" sewer was rehabilitated under I-84 requiring extensive traffic control.

Middle Hillsdale RDII Pilot Project Laterals, City of Portland, BES, OR; Superintendent

This project was nearly identical in scope the 2020 SSRIIR Project, Phase 2 involved the reduction of excessive I&I. Phase 1 involved CIPP of the mainlines on a prior contract. This contract focused on lateral rehabilitation and lateral interface seals. Oxbow was the specialty subcontractor that performed the CIPP lateral lining and main/lateral interface seals. Approx. 120 laterals on both the public and private side were CIPP-lined and 160 Cosmic UV Top hats were installed. The City approved Cosmic UV Top hats after a prior subcontractor failed to pass water tightness testing with a one-piece full wrap main line product and performance was substandard.

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Jim Seely | Lead Foreman

Jim has been a successful superintendent and foreman on many very technical and high-profile projects over the years. Jim has built long standing relationships with with local municipalities, engineers, project managers and inspectors. He is highly respected, easy to get along with and has a deep, immense knowledge for sewer rehabilitation. Jim's experience and ability to problem solve make him the perfect lead foreman for this project.

Firm

Oxbow Construction

Years of experience

33

Training

- OSHA 30
- Core Curricula Instructor
- First Aid/CPR
- Asbestos Awareness Training
- Trench Safety
- Rigging Safety
- CESCL
- Train the Trainer Certified

SELECT PROJECT EXPERIENCE

SE CIPP, City of Portland, BES, OR; Foreman

This project rehabilitated 6,300 lf of 8"-36" by CIPP (Thermal & UV) and open cut. The project required complex bypass systems, traffic control and rehabilitation of laterals by CIPP and Cosmic UV Top hat installation. There were technical sections that required close communication with PI, Providence Hospital and ODOT. A 36" sewer was rehabilitated under I-84 requiring extensive traffic control to remove one lane of the Interstate. Providence Emergency access was kept open through close coordination with PI and our crews.

Non-Conforming Sewers Projects, City of Portland, BES, OR; Foreman

These projects are a series of contracts performed on our annual Non-Conform Sewers Contract for the City of Portland. Projects utilize a variety of means and methods. These typically consist of open cut, HDD of mainline and laterals and pipe bursting. All projects are in residential areas and similar surroundings to the 2020 SSRIIR Project. The special needs of residents, understanding and compassion that residents undergo are imperative to project success. Typical projects consist of 8"-12" mainline, laterals, manholes, sewer bypassing, restoration, and working with the public in "their environment".

Downtown Mall Sewer Project, City of Portland, BES, OR; Foreman

The project rehabilitated 40 sanitary sewer mainline runs, varying for 8"-27". Project posed technically challenging conditions, because they were rehabilitating sewers under newly constructed light rail track and new brick intersections. Methods employed were open cut, CIPP, pipe bursting, slip lining, hand tunneling. Laterals were rehabilitated by open cut and CIPP. Project required technical bypassing, in basement lateral bypassing, traffic control and close communication with PI.



Bobby Churnside | CIPP Foreman

Bobby has been in and around the construction industry for over 12 years. While Bobby started as a diesel mechanic, he moved full time to Oxbow Construction to pursue the expanding CIPP field. Bobby is very motivated and creative all great qualities for any field, but especially the CIPP field. With the CIPP field comes special unforeseen circumstances, and this is what sets Bobby apart from others. His mechanic abilities are invaluable especially during CIPP lining and re-instatement to be able to trouble shoot and repair on the fly. Agencies that work with him all appreciate his good manners, great attitude, and honesty. He is the perfect fit for this project.

Firm

Oxbow Construction

Years of experience

12

Training

- Diesel Certified Mechanic
- OSHA 30
- First Aid/CPR
- Certified CIPP installer of: Perma-liner, BKP-Berolina and Blue Light, Cosmic UV Top Hat, Schwalm and Cosmic Robotic Cutters, ProKasro UV Equipment
- Confined Space
- Trench Safety
- Competent Person
- Rigging Safety
- CESCL

SELECT PROJECT EXPERIENCE

Middle Hillsdale RDII Pilot Project Laterals, City of Portland, BES, OR; CIPP Foreman

This project was nearly identical in scope the 2020 SSRIIR Project, Phase 2 involved the reduction of excessive I&I. Phase 1 involved CIPP of the mainlines on a prior contract. This contract focused on lateral rehabilitation and lateral interface seals. Oxbow was the specialty subcontractor that performed the CIPP lateral lining and main/lateral interface seals. Approx. 120 laterals on both the public and private side were CIPP-lined and 160 Cosmic UV Top hats were installed. The City approved Cosmic UV Top hats after a prior subcontractor failed to pass water tightness testing with a one-piece full wrap main line product and performance was substandard.

NW 22nd & NORTHRUP SEWER PROJECT, City of Portland, BES, OR; CIPP Foreman

This project consisted of rehabilitating 1,000 ft of 16" mainline and laterals by CIPP methodology. Oxbow rehabilitated the mainline with UV CIPP. The laterals were rehabilitated with the Perma-Liner Lateral lining System. In addition, we utilized the new technology of the Blue Light Lateral System. Oxbow successfully lined a lateral as a demo for the owner to show the benefits of this new technology. The lateral interface seals were completed using the Cosmic UV Top hat System.

SE CIPP, City of Portland, BES, OR; CIPP Foreman

This project rehabilitated 6,300 lf of 8"-36" by CIPP (Thermal & UV) and open cut. The project required complex bypass systems, traffic control and rehabilitation of laterals by CIPP and Cosmic UV Top hat installation. There were technical sections that required close communication with PI, Providence Hospital and ODOT. A 36" sewer was rehabilitated under I-84 requiring extensive traffic control to remove one lane of the Interstate. Providence Emergency access was kept open through close coordination with PI and our crews.

SE 2nd & Alder Emergency CIPP, City of Portland, BES, OR

NE 32nd Emergency CIPP Repair PSU Campus Sewer Repair, City of Portland, BES, OR

CBWWTP Digester Pipe, City of Portland, BES, OR

Multiple Non-Conforming Sewer Projects, City of Portland, BES, OR



Scott Ray | Safety Manager

Scott has extensive knowledge of trench safety, confined space as well as site safety in general. With his industry knowledge and interaction with countless contractors over the years he became an industry icon. Scott has intimate knowledge of OSHA regulations and how to enforce them. In addition, he is “train the trainer” certified, and is one of the region’s top safety trainers. Scott has a great relationship with municipality owners as well as their safety representatives. This allows Scott to work closely with them and resolve any concern that they may have or arises.

Firm

All About Safety LLC

Years of experience

30

Training

- Train the Trainer Certified
- Trench rescue 1 &2
- Confined space
- Fall protection

SELECT PROJECT EXPERIENCE

Powell Butte Res Phase 2, City of Portland, OR; Safety Manager

Intel Project Site, Portland, OR; Safety Manager

Johnday Dam Gate Project, Army Corp of
Eng Safety Manager

MEI Group, Coffman Excavating; Corporate Safety Officer

Confined Space/Competant Person/Trench Safety Trainer for 20+ years with Sunbelt Rental, United Trench Safety, NES Trench Safety, Allwest Underground and the Plank Company.



Appendix

Clean Water State Revolving Fund Forms and Requirements

CLEAN WATER STATE REVOLVING FUND FORMS AND REQUIREMENTS

The following attached CWSRF forms must be submitted with the proposal:

- **BC 4** – Sworn Statement of Compliance
- **BC 5** – Prevailing Wage Agreement
- **BC 6** – List of Contacted DBE Businesses
- **BC 7** – Certification of Independent Price Determinations
- **BC 8** – Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Contract Language
- **BC 9** – Certification Regarding Lobbying Activities
- **BC 10** – Disclosure of Lobbying Activities
- **BC 11** – Certification of Non-segregated Facilities
- **BC 13** – Debarment and Suspension
- **BC 11** – Certification of Non-segregated Facilities
- **BC 12** – Non-discrimination in Employment Notice to Labor unions or Other Organizations of Workers
- **BC 14** – Contractors compliance statement (EO 11246)



State of Oregon Department of Environmental Quality
Sworn Statement of Compliance

Contact: [Regional Project Officer](#)

Sworn Statement of Compliance with Small, Women and Minority Business Utilization Requirements

To be eligible for award of this contract, each bidder must execute, and submit, as part of their proposal, and together with their bid, the following certification relating to SBE/WBE/MBE participation. The certification below shall be deemed a part of the resulting contract.

The bidder has taken the following affirmative steps in awarding subcontracts:

- (1) Include qualified small, minority and women's businesses on solicitation lists
- (2) Insure that small, minority and women's businesses are solicited whenever they are potential sources
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of small, minority and women's businesses
- (4) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce as appropriate.

Contract # N/A

Contract Title: 2020 Sanitary Sewer Rehabilitation For Inflow And Infiltration Reduction Project

Name of Company: Iron Horse Excavation, LLC dba Oxbow Construction

Signature of Authorized Official  Date 9-9-2020

Name and Title of Signer June L Kalkhoven Managing Member

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality

Prevailing Wage Agreement

Contact: **Regional Project Officer**

The loan recipient, prime contractor and subcontractors all must initial and sign this form.

- The prime contractor copy must be submitted as part of the bid/proposal to the loan recipient.
- A copy of this form signed by the loan recipient and the prime contractor must be submitted with the contract copy to DEQ.
- The prime contractor must obtain a signed copy of this form from each subcontractor and retain them in the prime contractor's contract file.

The undersigned understands that this public works project is funded in whole or in part by the Clean Water State Revolving Fund and is subject to the prevailing wage requirements of Oregon's Bureau of Labor and Industry and the requirements of the Davis-Bacon Act.

JLK The undersigned agrees that, notwithstanding any other provision of law, all laborers and mechanics employed on the project must be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor, or the Commissioner of the Oregon Bureau of Labor and Industries, whichever is higher, per ORS 279C.838; OAR 839-025-0035(2).

When a public works project is subject to both the state and federal prevailing wage rate laws, contractors and subcontractors must pay the higher of either the state or federal prevailing wage rates for the type of work being performed, per ORS 279C.838; OAR 839-025-0035(2).

Davis Bacon (federal law) for Point Source Projects

JLK Davis-Bacon applies to all **treatment works construction projects** for the entirety of the construction activities financed by a CWSRF loan through the completion of construction, no matter when construction commences.

JLK The Loan Agreement includes specific Davis-Bacon terms and conditions contract language that must be passed through to the prime contractor and all subcontractors in their contracts over \$2,000.

JLK The Secretary of Labor's determination, regarding the prevailing wages applicable in the state of Oregon, are located at: <http://www.wdol.gov/> The prevailing wages are those in effect at the time of contract award. Wages obtained through this web link should be printed at the time of contract award and included in procurement documents and all contracts resulting from the procurements.

JLK The loan recipient or the prime contractor on behalf of the loan recipient maintains on-going wage information as a requirement of the Clean Water State Revolving Fund loan for a project subject to Davis-Bacon. The program suggests using the [wage matrix](#). You may find the [instructions](#) helpful.

JLK The loan recipient conducts a wage interview at 30 percent, 60 percent and 90 percent completion, with a representative group of workers during the project construction. The loan recipient must conduct additional interviews if there is any reason to suspect a contractor or their subcontractor is at risk for

violating wage requirements. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use [Standard Form 1445](#) to memorialize the interviews.

Oregon Bureau of Labor and Industry (state law)

JLK Bureau of Labor and Industry prevailing wage rates apply to projects over \$50,000. Oregon prevailing wage rate regulations require every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed, per OAR 839-025-0035.


JLK The wage rates identified by the Commissioner of the Oregon Bureau of Labor and Industry are available [online](#).

JLK The prevailing wage rates in effect at the time the bid specifications are first advertised are the Oregon wage rates that apply for the duration of the project. Prevailing wages obtained through the Bureau of Labor and Industry websites must be included in the bid solicitation and incorporated in all contracts resulting from the procurements.

JLK All contractors and subcontractors shall file, with the Construction Contractors Board, a \$30,000 public works bond with a corporate surety authorized to do business in this state, per ORS 279C.836. The bond must provide that the contractor or subcontractor will pay claims ordered by Bureau of Labor and Industry to workers performing labor upon public works projects. It must be filed before starting work on a contract or subcontract for the project.

Payroll/Certified Statement (form WH-38)

Form WH-38 may be used by contractors for reporting their payroll as required by ORS 279C.845 on public works projects subject to the Prevailing Wage Rate Law. This form has not been officially approved by the United States Department of Labor, however it is designed to meet the requirements of the federal Davis-Bacon Act as well. Prevailing wage rate [forms](#) are available online.


Signature

9-9-2020
Date

Managing Member
Title

Iron Horse Excavation, LLC dba Oxbow Construction
Company



State of Oregon Department of Environmental Quality

List of Contacted Disadvantaged Business Enterprises

Contact: [Regional Project Officer](#)

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-participation
All About Flagging	8926	Reynelda Hayes	971 207-0617	9-9-20	Pre-Bid only for all contacts Traffic
C & C Flagging	11036	Candice Pierce	971 533-0011	9-8-20	Traffic
C.O.A.T. Flagging	4546	Val Solorzano	503 467-6386	9-8-20	Traffic
D & H Flagging	478	Shannon Bowden	503 232-2488	9-8-20	Traffic
IMN Traffic Specialties	10722	Maile Wagner	971 331-5089	9-8-20	Traffic

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-participation
Iron Horse, LLC	10683	Carlie Moore	503 674-0980	9-8-20	Prebid only at this time. CCTV
JNM Services NOTE: WBE	11710	Stacy Romo	503 849-7278	9-8-20	NOTE: Iron Horse, LLC is the only DBE on the COBID site for CCTV. So we solicited additional M/W/ESB firms
JW Services NOTE: ESB/SDBE	11854	Jason Wingate	503 423-7724	9-8-20	



State of Oregon Department of Environmental Quality
**Certificate of Independent Price
Determination**

Contact: [Regional Project Officer](#)

The prime contractor must:

- Sign and submit this form as part of the bid/proposal to the loan recipient
- Include a signed copy in their contract
- Retain a signed copy of this form from each subcontractor

Bidder's Name: Iron Horse Excavation, LLC dba Oxbow Construction

Address: 31005 E Historic Columbia River Hwy, Troutdale, OR 97060

a. The bid offeror certifies that:

1. The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to:
 - i. Those prices
 - ii. Intention to submit an offer
 - iii. Methods or factors used to calculate the prices offered
2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law
3. No attempt has been or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.


b. Each signature on the offer is considered to be a certification by the signatory that the signatory:

1. Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
2. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above;
3. As an authorized agent, certifies that the principals named below have not participated, and will not participate, in any action contrary to subparagraph (a)(1) through (a)(3) above; and

4. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
5. If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization:

Full Name of Person(s) in the Offeror's Organization	Title	Date
<u>June Kalkhoven</u>	<u>Managing Member</u>	<u>9-9-2020</u>
<u>Jim Hall</u>	<u>Estimator/Project Manager</u>	<u>9-9-2020</u>
<u> </u>	<u> </u>	<u> </u>

Signature of Prime Contractor  _____

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

BC8



State of Oregon Department of Environmental Quality

Six Good Faith Efforts, Contract Administration and Contract Language

[Regional Project Officer](#)

This form must be completed by the loan recipient, prime contractor and any subcontractor who will further subcontract on the Clean Water State Revolving Fund project within the scope of the loan. All boxes in this attachment must be initialed and the bottom signed.

- One completed attachment for the prime contractor must be submitted as part of the bid/proposal to the loan recipient.
- One completed attachment for each subcontractor who will further subcontract must be submitted before the contract award.
- A copy of those must be included in the contract copy to DEQ, along with one attachment initialed and signed by the loan recipient.

DBE certification

All Minority Business Enterprises and Woman Business Enterprises must be certified by Oregon's [Office of Minority, Women and Emerging Small Businesses](#) or by the state in which they are located. This office administers the Disadvantaged Business Enterprise, Minority Business Enterprise/Women Business Enterprise, and Emerging Small Business programs.

Six Good-Faith Efforts


The good-faith efforts are required methods to ensure that all DBEs have the opportunity to compete for procurements funded by the Clean Water State Revolving Fund. The loan recipient and their prime contractor are required to:


1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian tribal, state and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they're potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian tribal, state and local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.


BC8


5. Use the services and assistance of the federal Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and the state Office of Minority, Women and Emerging Small Business.
6. If the prime contractor awards subcontracts, require the prime contractor to take steps one through five above.
7. **Native American provisions 40 CFR, Section 33.304**
The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.304. Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

Contract administration


 The Loan Recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

 If a DBE subcontractor fails to complete work under the subcontract for any reason, the Loan Recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.

 The Loan Recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Loan Recipient.

 The Loan Recipient must require written notification from its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

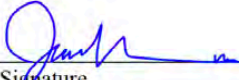
Specific contract language

 All contracts between the Loan Recipient and prime contractor, and prime contractor and subcontractors must include the following statement required by 40 CFR Part 33:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

BC8

The undersigned has initialed the items above and understands the resulting responsibility for each item.


Signature 9-9-2020
Date

Managing Member
Title

Iron Horse Excavation, LLC dba Oxbow Construction
Company

Accessibility

Alternative formats DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

Form BC 9



State of Oregon Department of Environmental Quality
Certification Regarding Lobbying Activities

Contact: [Regional Project Officer](#)
503-229-LOAN

This form must be signed by the prime contractor and submitted by the loan recipient by the time the contract is award. A copy must be included in the contract copy to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor, and retain them in the prime contractor's contract file.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Signature

9-9-2020
Date

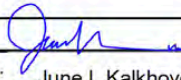
Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

Updated May 2019

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: a. contract — b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing N/A b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: _____ Iron Horse Excavation, LLC dba Oxbow Construction 31005 E Historic Columbia Rver Hwy Troutdale, OR 97060 Congressional District, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ 0	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): N/A	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): N/A	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature:  Print Name: <u>June I. Kalkhoven</u> Title: <u>Managing Member</u> Telephone No.: <u>503-816-1312</u> Date: <u>9-9-2020</u>	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Form BC 11



State of Oregon Department of Environmental Quality
Certification of Non-Segregated Facilities

Contact: [Regional Project Officer](#)
503-229-LOAN

This form must be signed by the prime contractor and submitted by the time of contract award from the Loan Recipient. A copy must be included in the contract copy to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor, and retain them in the prime contractor's contract file.

Applicable to federally-funded construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.

The federally-assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally-assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain a copy of such certification.


Signature

9-9-2020
Date

June L Kalkhoven Managing Member
Name and Title of signer (please type)

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality
Non-discrimination in Employment

Notice to Labor Unions or Other Organizations of Workers

Contact: Regional Project Officer
503-229-LOAN

The CWSRF loan recipient must provide this notice to the contractor and subcontractor(s) advising the labor union or workers' representative of the contractor's commitments under Executive Order No. 11246. The contractor will send a signed notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

TO: _____
NAME OF UNION OR ORGANIZATION OF WORKERS

The undersigned currently holds contract(s) with _____
NAME OF LOAN RECIPIENT

Using funds or credit of the U.S. government, or one or more subcontractors with a prime contractor holding such contracts.

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Section 202 of Executive Order 11246 dated Sept. 24, 1965, as amended, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

- EMPLOYMENT, UPGRADING, TRANSFER OR DEMOTION
- RECRUITMENT OR RECRUITMENT ADVERTISING
- RATES OF PAY OR OTHER FORMS OF COMPENSATION
- SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION

This notice is furnished to you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order #11246.

CONTRACTOR OR SUBCONTRACTOR(S)

9-9-2020
DATE



State of Oregon Department of Environmental Quality
**Debarment and Suspension for
 Loan Recipient and all Contracts
 of \$25,000 or more**

Contact: [Regional Project Officer](#) or call 503-229-LOAN

The recipient must complete, sign and submit this to the DEQ project officer before the loan project contract is awarded, along with a System for Award Management report for each contractor and subcontractor proposed to perform work within the scope of the loan. **Every contractor paid under this loan agreement with a contract equal to or greater than \$25,000, including professional services, must be registered on the [System for Award Management](#). Award approval by DEQ is contingent on none of the contractors and subcontractors being excluded on the System for Award Management.**

The recipient and all subsequent prime and subcontractors must fully comply with Subpart C of 2 Code of Federal Regulations Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The following contractors and subcontractors are proposed to perform work within the scope of the loan agreement. Use additional pages if necessary.

Loan recipient: _____ Loan number: _____

Project: 2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project

Contractor name and mailing address	Phone number and email address	DUNS and CAGE number codes for contracts equal to or greater than \$25,000	Contract \$ Amount
Iron Horse Excavation, LLC dba Oxbow Construction 31005 E Historic Columbia River Hwy Troutdale, OR 97060	503-816-1312 June@Oxbow-Construction.com	23760869	

 _____ 9-9-2020
 Signature of Authorized Loan Recipient Representative Date

June L. Kalkhoven, Managing Member
 Name and Title of Authorized Representative (type or print clearly)

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us

Form BC 14



State of Oregon Department of Environmental Quality

Contractor's Compliance Statement

Executive Order #11246

Contact: [Regional Project Officer](#)
503-229-LOAN

This form must be signed by the prime contractor and submitted by the time of contract award from the Loan Recipient. A copy must be included in the contract copy to DEQ.


Date 9-9-2020

This statement relates to a proposed contract with Iron Horse Excavation, LLC dba Oxbow Construction

(Name of CWSRF loan recipient)

who expects to finance the contract with assistance from the Environmental Protection Agency. I am the undersigned bidder or prospective contractor. I represent that:

I have I have not participated in a previous contract or subcontract subject to *Executive Order 11246* of September 24, 1965 (regarding equal employment opportunity) or a preceding similar Executive Order. I agree to comply with all the provisions of this Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor. (*41 CFR 60-1.4(b); 41 CFR 60 1.7 (b)*)



Signature

9-9-2020

Date

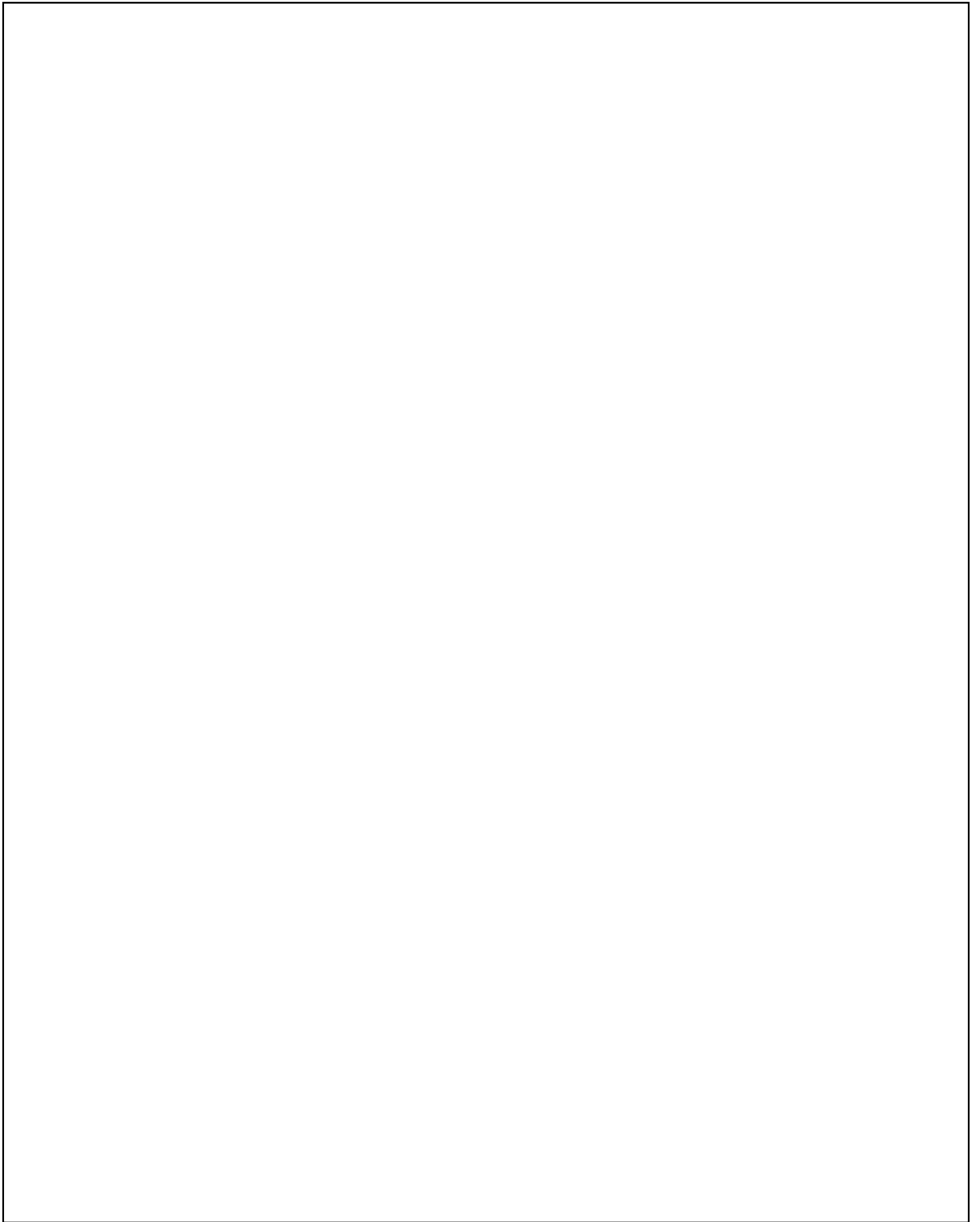
Name and Title of signer (please type) June L Kalkhoven, Managing Member

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

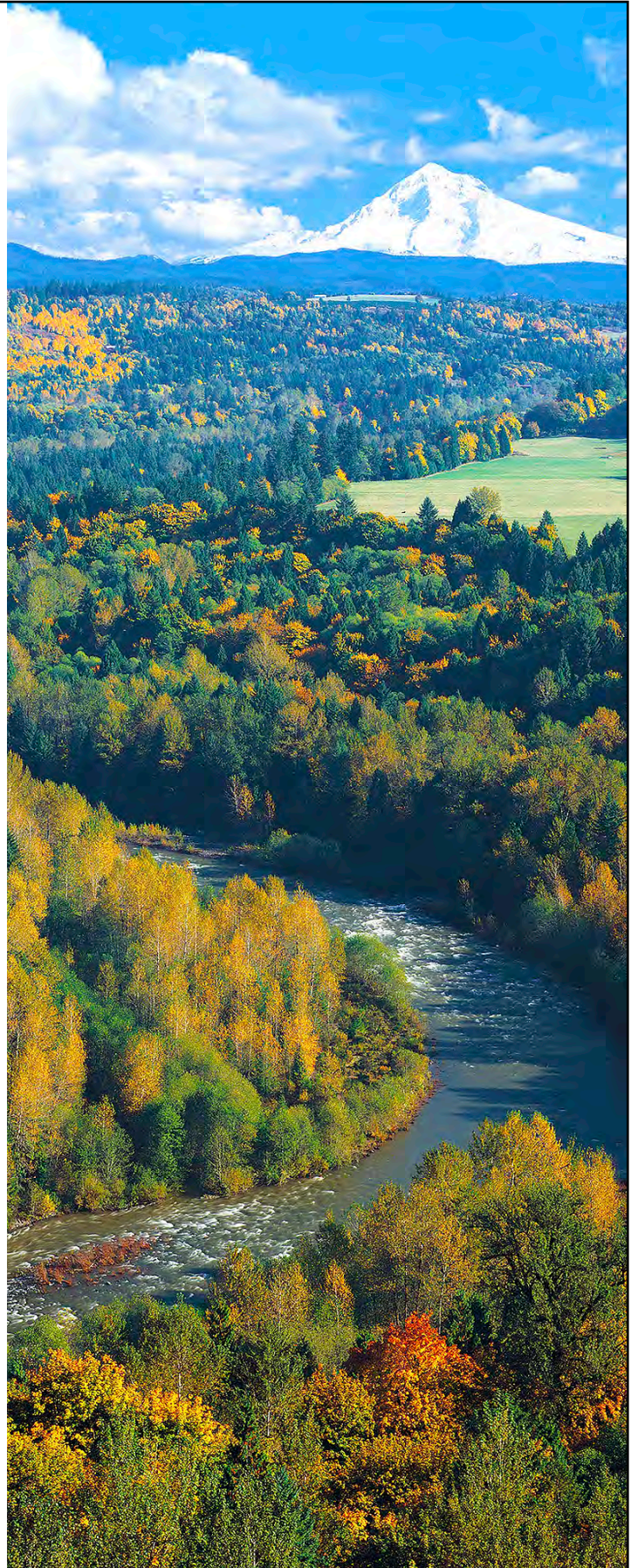
Updated May 2019

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Iron Horse Excavation, LLC dba
OXBOW CONSTRUCTION

31005 E Historic Columbia River Hwy.
Troutdale, OR 97060
Office: 503-816-1312
Cell: 503-780-7124
Fax: 503-907-5131
E-mail: June@Oxbow-Construction.com
www.Oxbow-Construction.com





October 20, 2020

Via Email

TO: Roy Moore
President
Moore Excavation, Inc.

SUBJECT: Re: October 19, 2020 Protest of Notice of Intent to Award
2020 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction

This letter responds to the protest Moore Excavation, Inc (MEI) filed regarding the City of Sandy's intent to award a contract to Oxbow Construction. After considering your protest and other information relevant to the City's decision, I am denying MEI's protest for the reasons discussed below.

The RFP describes the process the City used to select Oxbow. In accordance with the RFP, after evaluating and scoring the written proposals, the City established a short list of proposers to proceed to a second stage of the solicitation, which included an interview. The RFP states that the City "will award the Contract to the Proposer with the highest combined score from the written proposal and the interview."

According to OAR 137-049-0450, only an adversely affected or aggrieved offeror may submit an award protest. Pursuant to state law, "[a]n Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the . . . Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all . . . *higher-scored Proposers are ineligible for Award.*" (emphasis by the City). MEI does not claim and does not demonstrate that all higher-scored proposers are ineligible to be awarded the contract. For these reasons, MEI is not adversely affected or aggrieved. In fact, all the higher ranked proposers are qualified to perform the work and meet the requirements of the RFP.

The City of Sandy, although not required to, is providing the following response to the specific issues raised in MEI's protest. The City wants to assure MEI that the evaluation committee proceeded in good faith when scoring the proposals.

MEI Statement 1: "MEI received zero (0) points for project approach from Evaluator #4 according to the provided Proposal Evaluation Summary. MEI proposed a complete and thorough approach to the project and received scores from other evaluators consistent with those received by other proposers. Having proposed an approach largely similar to other proposers that addressed the questions presented by the RFP, a score of zero (0) appears to be an entry error in scoring or misapplication of scoring criteria."



MEI Statement 2: “MEI again received zero (0) points from Evaluator #3 for our proposed Phase 1 cost, but the score of zero (0) appears inconsistent with other scorers when no other score for either Phase 1 cost or CM/GC cost was below a score of two (2).”

MEI Statement 3: “It appears that MEI submitted a more competitive CM/GC Cost than Oxbow with three evaluators assigning MEI a score higher than Oxbow as one would expect. Evaluator #1, however, gave three proposers a higher score than MEI even though MEI’s CM/GC fee appears lower, Scoring of the CM/GC fee would seem to be one of the less subjective elements of proposals. The RFP and contract documents do not indicate/identify any criteria other than the proposed fee that would be considered in scoring this element. The actual scoring of this proposal element indicates mis-scoring and/or deviation from the process described in the solicitation document.”

MEI Statement 4: “MEI recognizes that the exercise of judgment used by evaluators is not sufficient grounds for protest. This judgment should be utilized, however, in evaluating the substance of proposals in relation to evaluation criteria. The scoring of Evaluator #4 of both MEI and Oxbow with respect to capabilities and experience does not appear to apply stated evaluation criteria. Project descriptions provided by Oxbow, along with failing to detail what the RFP states relevant projects shall include, completely lack explanation as to how the projects are relevant to the City of Sandy project. Again, we recognize and respect that independent judgment is not ground for protest, but the scoring of MEI and Oxbow proposals by Evaluator #4 in relation to other evaluators on this element and Evaluator #4 scoring of MEI throughout, do not seem to apply the stated Evaluation Criteria.”

City of Sandy General Response: Scoring is based on qualitative factors stated in the evaluation criteria in the solicitation documents. Although criteria is precise, there will be variation in scores between evaluators. Evaluator scores were not entered erroneously, but rather represented the distinct judgment of each individual evaluator. Note that one other firm also received 0 points on their Approach.

Proposed costs from Phase 1 ranged from \$199,873 to \$441,303 with a mean of \$294,034 and a median of \$271,075. MEI’s proposed Phase 1 cost of \$441,303 is 2.2 times that of the lowest proposed Phase 1 cost and 1.5 times the mean Phase 1 cost. Scoring by the evaluators reflected the highest Phase 1 costs proposed by MEI.

Additionally, proposed CM/GC fees ranged from 5.5% to 10.5% with the mean CM/GC fee of 8.5%. MEI was not the lowest priced proposal for the CM/GC fee or Phase 1.

However, even if the City adjusted scores mentioned in Statement 1 and 4 (i.e., Evaluator #4 scoring changed to a maximum of 20 points on the Approach, Evaluator #3 score changed to 4 points on the Phase 1 Cost [same as proposers at the mean Phase 1 cost], and Evaluator #1 score changed to 10 points on CM/GC cost), MEI’s adjusted score would be 73.3/100 points. A score of 73.3 points would still rank MEI fifth out of six firms. Adjustment of these scores would not impact the ranking of written proposals or the inclusion of firms in the Competitive Range.



We appreciate your interest in this project; however, the City rejects MEI's protest for the reasons stated in this letter. The City encourages MEI to propose on future City of Sandy Projects.

Sincerely,

A handwritten signature in blue ink that reads "Jordan Wheeler".

Jordan Wheeler
City Manager