

SANDY CLEAN WATERS

REQUEST FOR PROPOSAL

CITY OF SANDY, OREGON

Engineering Services for

Sandy Collection System Rehabilitation Project

Basins 6 and 7 and Related Services



Section 1 - Introduction

The City of Sandy, Oregon (“City”) requests proposals from qualified consultants with experience related to wastewater collection system rehabilitation to perform design and services during construction for the Sandy Collection System Rehabilitation Project Basins 6 & 7 and related services.

The City is finalizing a successful project consisting primarily of trenchless (CIPP and pipe bursting) pipe rehab and manhole grouting. This project comprised over 16,000 LF of 6, 8, 10 and 12-inch mainline CIPP lining and pipe bursting, over 200 public and private laterals rehabilitated and over 100 manholes grouted. The City seeks to build on the success of this project and lessons learned for the work in basins 6 & 7 and other collection system improvements.

Project information, proposal requirements and procurement schedule are provided below.

Section 2 - Project Contact

The Director of Public Works is the issuing officer for this Request for Proposal (RFP) and the point of contact for the City for all process and contract questions as well as protests.

Mike Walker
Director of Public Works
39250 Pioneer Blvd,
Sandy, OR 97055
mwalker@ci.sandy.or.us

Section 3 - Background

The City of Sandy is located approximately 25 miles east of Portland, OR with a population of about 12,800.

The City has embarked on an ambitious program to improve its wastewater collection, conveyance, and treatment system. The Wastewater System Facilities Plan (WSFP, 2019) identified improvements to be implemented in three phases through 2040. This project was identified in the WSFP under Phase 1 improvements.

The collection system is comprised of approximately 47 miles of main and trunk line piping, over 4,500 service laterals 1,170 manholes and six pump stations. The system is primarily composed of PVC and concrete pipe ranging in age from 0 to 70 years.

The collection system experiences large swings between dry weather and wet weather flows due to Infiltration and Inflow, (I & I). This project is intended to reduce or eliminate I & I in basins 6 & 7 which during initial and ongoing collection system flow monitoring were identified as the second greatest source of I & I in the collection system. Basins 6 and 7 are comprised of approximately 45,00 LF of sewer main, 174 manholes, 45 cleanouts and over 800 laterals.

The Wastewater System Facilities Plan (Murraysmith, 2019) evaluated improvement requirements to address issues for both the collections and treatment systems.

The following references related to previous studies, construction projects, and operations are

available for consultants to review during preparation of their proposal.

- 2019 Wastewater System Facilities Plan
<https://www.ci.sandy.or.us/publicworks/page/wastewater-system-facilities-plan>
- The City has an existing ordinance which permits entry onto private property to investigate I&I sources and compel property owners to correct suspected or confirmed sources of I&I identified in the course of an investigation. The ordinance can be reviewed here:
https://library.municode.com/or/sandy/codes/code_of_ordinances?nodeId=TIT13WASE_C_H13.14ININ

Section 4 – Scope of Work

The Project will include strategies for main and lateral (public and private) rehabilitation. Based on the success of the work in basins 2 and 8 the City intends use the Construction Manager / General Contractor (CM/GC) project delivery method for this project. The Scope of Work will include (but is not limited to) the following tasks:

- Prepare design drawings and specifications for the various rehabilitation methods to be employed. Plan views of the basins showing basin boundaries, manholes, mains and laterals, building outlines, parcel boundaries and rights-of-way are included in this document.
- The City will make available GIS shape files (ESRI ArcGIS) for the project areas consisting of manholes, cleanouts, mains and laterals, pipe material and diameter information, building outlines, aerial photos, 5 ft. contours, parcel boundaries and rights-of-way, stormwater facilities, environmental overlays and soils data by contacting Thomas Fisher
tfisher@ci.sandy.or.us
- It is not expected that detailed survey or design will be required for the project plans and the GIS coverage provided supplemented with information collected in the preliminary design stage will be sufficient to convey the projects limits and design intent to CM/GC proposers.
- Prepare construction schedule, engineering cost estimate, bid documents. The City's standard CM/GC contract documents are provided for review only in Attachment C
- The successful consultant must work closely with the City, and coordinate and cooperate with the selected CM/GC partner to determine the preferred rehabilitation method for pipeline segments (mainline and lateral sewers)
- The rehabilitation of public lines and appurtenances will be funded with either ARPA funds administered through Business Oregon or a WIFIA loan provided through the US Environmental Protection Agency. Rehabilitation of private laterals will be 100% locally funded.

Collection System Rehabilitation

The Collection System Evaluation section from the Wastewater System Facilities Plan (attached) provides a general overview of the scope of the rehabilitation improvements desired for the Project. The Consultant selected for this project will be expected to perform the following tasks:

1. Project Management

- a. Provide and perform project administration and management activities.
- b. Technical and financial management, including the following:
 - Track and manage project scope, schedule, and budget
 - Prepare monthly progress reports with task level budget status to be submitted with invoices.
 - Monthly progress calls with the City (1 hour per call)
- c. This scope element assumes a project duration of ten months

2. Design and Construction Contracting Services

- a. Develop predesign-level (30%) documents for the collection system rehabilitation in Basins 6 and 7 for use in CM/GC solicitation document.
- b. Prepare itemized Preliminary Estimate based on 30% design
- c. Coordinate with funding agency to confirm project scope, delivery method and compliance with Business Oregon, EPA WIFIA and ARPA requirements.
- d. Prepare project documentation as required by Business Oregon, ARPA and WIFIA funding requirements.
- e. Prepare solicitation documents, develop evaluation and scoring criteria for CM/GC partner selection and review proposals submitted from CM/GC firms
- f. Participate in review of successful CM/GC partner's GMP proposal and assist City in negotiations of final GMP with selected CM/GC partner
- g. Working closely with City and CM/GC partner to develop detailed design of collection system rehabilitation methods

Assumptions:

- City operations staff will assist with field inspections (e.g. site visits, manhole access and inspections) including traffic control as necessary
- No survey or geotechnical investigations will be required during this stage
- City will provide advance notice to the public and affected residents and businesses
- Selected CM/GC partner will perform CCTV inspection and NASSCO PACP condition assessment of all mainline and service laterals as part of their pre-construction services.
- CCTV inspection and condition assessment data will be used to jointly develop recommendations for pipeline rehabilitation strategies and methods.
- Coordination with funding agency will be conducted via teleconference
- City will provide advance notice to the public and affected residents and businesses

3. Collection System Detailed Design

- a. Prepare 60% plans, 90% plans and specs and Final Plans and Specifications for the project
- b. Identify any temporary or permanent easements required to complete the work
- c. Coordinate and participate in workshop at 90% design stage to finalize rehabilitation methodologies for sub-basins or pipeline segments
- d. Supporting permitting and third-party coordination efforts, such as with Oregon Department of Transportation (ODOT).

Assumptions:

- City will furnish or provide available GIS data for all underground wet utilities and franchised dry utilities (power, telecom, natural gas).
- City will acquire any temporary construction or permanent facility easements needed for the project.
- City will implement public outreach plan, including individual notifications to property owners in the project area.

4. Services During Construction

Provide Construction Management services during the project including the following:

- Conduct general Pre-Construction meeting and regular project progress meetings
- Review Contractor pay applications and prepare Recommendation of Payment
- Prepare, review and approve construction change orders and field work directives
- Monitor project progress against construction schedule
- Review and approve submittals for pipeline rehabilitation materials
- Provide periodic construction observation commensurate with the complexity of the project. City will provide daily construction observation and reporting services
- Complete project closeout, obtain all warranties performance guarantees, bonds, certificates of insurance affidavits of payment of for subcontractors and materials suppliers, analyze all claims, represent the City at meetings and inspections as Engineer of Record. Provide Certificates of Substantial and final completion

Assumptions:

- City will provide daily observation reports, quarterly wage and hour interviews and confirm quantities in place.
- City will respond to questions from the public regarding the project
- Consultant will provide daily observation report and work in place quantity templates for use by City personnel.

Section 5 – The Proposal

Interested and qualified firms are invited to submit a Proposal that demonstrates their capabilities in performing work similar to the Project in nature and scale.

Proposals submitted for this project must address all requested information to qualify for evaluation. Firms are encouraged to keep the proposals brief and to the point, but sufficiently detailed to allow evaluation and differentiation of the firm and team.

Responses must include the following items:

A. Cover letter

The Cover Letter (one page) must include the following:

- Project title
- Full legal name of proposing business entity
- Structure or type of business entity
- Name(s) of the person(s) authorized to represent the Proposer in any negotiations
- Name(s) of the person(s) authorized to sign any contract that may result
- Contact person's name, mailing or street addresses, phone and fax numbers and email address
- Introductory letter (one page) expressing interest in the project
- The Cover letter and Introductory letter may be combined into one page

B. Project Understanding and Approach (30 points)

Provide a statement of project understanding, including project objectives, issues to be addressed and potential complications or conflicts.

Describe the proposed project delivery method, approach, solution concepts, and methodologies to performing the work to accomplish the project objectives and tasks listed in the statement of work. Describe how the approach will benefit the City and the implementation of this project. Using the provided project description as a basis of understanding, provide recommendations and solutions to improve upon or confirm that the base concept will meet the project objectives in the most effective way possible.

Include a complete project schedule along with a discussion of scheduling considerations, including any deviations or enhancements. Project schedule shall identify duration and completion dates for all major milestones, including meeting dates and city review periods. Project schedule shall identify the project design critical path and expectations of City involvement and review.

C. Firm profile (10 Points)

Describe the firms overall experience with providing services related to wastewater

collection system rehabilitation project design and construction support in the Pacific Northwest. The profile should demonstrate the firm's qualifications and ability to provide professional services as required to successfully complete the project.

D. Project Team Qualifications (30 points)

The City wishes to engage a team that has the ability to provide quality work in a timely manner; a commitment to collaborative project delivery; the resources, capacity and capabilities to deliver the work. The consultant team and Project Manager must have a demonstrated record in designing and providing engineering construction support services for wastewater collection system rehabilitation projects similar in scope and scale to the Project. Especially critical is the proposed project team's experience using the CM/GC project delivery method.

Information for the proposed team should include the following:

1. Organization chart including key personnel, roles, level of commitment, and responsibilities. Any proposed subconsultants shall be identified, including subconsultants specialties and key personnel and assigned task(s).
2. Bios for "Key Personnel". Bios should include a description of experience and qualifications and a brief resume. Confirm the availability and commitment of named key personnel. Full resumes may be included in proposal appendix.
3. Three references for the Project Manager. Please include client's name, address, email, and telephone number.

E. Sample Projects (15 points)

Describe up to five recent projects similar to the proposed project completed by the Project Manager and/or firm. Include project delivery method, project duration and completion date, client name and contact, and measures that indicate quality and successful project completion. Provide the involvement of proposed key personnel on the listed projects.

F. References (15 points)

Provide a minimum of three (3) references from previous clients on similar projects completed within the past five (5) years. Please include client's name, address, email, and telephone number.

G. Signature Page

(1 page maximum) The proposal shall be signed by a representative authorized to bind the team and shall expressly state the proposal is valid for 90 days. The signature page must also include a statement that the firm is licensed to perform engineering services in the State of Oregon and a certified statement that the firm is not disbarred, suspended, or otherwise prohibited from professional practice by any federal, state or local agency.

H. Project Funding

The work under the Professional Services Agreement resulting from this solicitation will be funded with either ARPA funds administered through Business Oregon or a WIFIA loan provided through the US Environmental Protection Agency. Rehabilitation of private laterals will be 100% locally funded. The selected Consultant shall work with the City to ensure all forms, documentation and audits are completed in compliance with funding agency requirements. The consultant and all sub consultants must be System for Award Management (SAM) registered at the time of proposal submission.

I. Proposal Limitations

- Sections 2-6 are limited to a total of 15 pages of text. Concise proposals are appreciated.
- The limitation does not apply to covers or dividers unless they are used to convey project information. Any 11 X 17 pages will be counted as two pages. A two-sided page counts as two pages.
- Pages beyond these page limitations will not be evaluated.

J. Pre-Proposal Meeting

No pre-proposal conference will be held.

K. Proposal Review and Selection

Selection Criteria

The City will evaluate responses per ORS 279C.110(5). The selection of the engineering firm for this project will be accomplished through a two-step process with an optional interview, as follows:

An Evaluation Committee (Committee) will be appointed to evaluate the proposals received. For the purpose of scoring proposals, each Committee member will evaluate each proposal in accordance with the requested information listed in Section 6.

The Committee will require up to five (5) working days to evaluate and score the proposals. At any point during the evaluation process, the City is permitted, but is not required, to seek clarification of a proposal. However, a request for clarification does not permit changes to a proposal. Evaluation will be based on the criterion in the following table.

Table 1. Written Proposal Scoring Criteria

Criterion	Maximum Points
Cover/Introductory Letter	0
Project Understanding and Approach	30
Firm profile	10
Project Team Qualifications and Experience	30
Sample Projects	15
References	15

Signature Page	0
Total Possible Points	100

Up to three of the highest scoring respondents will be invited to submit price proposals. The price proposal shall include a fee schedule table that includes hours allocated to individual staff member by each task and the hourly billing rate. A summary of costs (with estimated expenses and sub-consultant markups listed separately) for each project element, task and sub-task by category. Evaluation will be based on the criterion in the following table.

Table 2. Price Proposal Scoring Criteria

Criterion	Maximum Possible Points
Value of services provided	30
Total Maximum Points Available for Price Proposal	30

Optionally and at the discretion of the selection committee, the City will invite up to three of the top-ranked Respondents for an interview. The interview will be for the purposes of distinguishing teams with close total scores from the project proposals and price proposals. Evaluation will be based on the criterion in the following table.

Table 3. Interview (optional) Scoring Criteria

Criterion	Maximum Possible Points
Project Team and Approach	70
Total Maximum Points Available for Interview and/or Presentation	70

The City will award the Project contract to the Respondent with the highest total sum of points awarded for project proposal, price proposal, and interview (if conducted) (200 points maximum).

Unsuccessful firms will be notified as soon as possible. The City has the right to reject any or all proposals for good cause in the public interest, and the Procurement Officer may waive any evaluation irregularities that have no material effect on upholding a fair and impartial evaluation and selection process.

Point of Contact

Point of Contact: All communications shall be through the contact(s) referenced in Section 2 (Project Contact) of the RFP. At the City’s sole discretion, communications with members of the evaluation committee, other City staff, or elected City officials for the purpose of unfairly influencing the outcome of this RFP may be cause for the Proposer’s proposal to be rejected and disqualified from further consideration.

The City has the right to reject any or all proposals for good cause in the public interest, and the Procurement Officer may waive any evaluation irregularities that have no material effect on upholding a fair and impartial evaluation and selection process.

Cost of Submittal

Consultants responding to this solicitation do so at their own sole expense. The City is not responsible for any costs associated with submitting responses to this solicitation.

Submittal of Proposals

To be considered, the applicant must submit four (4) identical hard copies and one (1) digital (Adobe pdf file) copy of the proposal must be received by Mike Walker, Director of Public Works at 39250 Pioneer Blvd, Sandy, OR 97055 by the date and time of **4:00 PM Tuesday, January 25, 2022**. Please mark the submittal on the outside of the sealed envelope with the following: "Engineering Consulting Services for the Sandy Wastewater Collections System Basins 6&7 Rehabilitation Project".

Any addenda to this RFP will be in writing and will be issued to all persons or businesses that have indicated an interest in this project. No proposal will be considered if it is not responsive to any issued amendments.

The City reserves the right to negotiate an agreement with the selected firm based on fair and reasonable compensation for the scope of work and services proposed as well as the right to reject any and all responses deemed unqualified, unsatisfactory, or inappropriate, to waive defects or informalities and to offer contact with any firm in response to this RFQ. The City will not pay any costs incurred by the firm in preparing or submitting the proposal. This RFQ does not constitute any form of offer to contract.

Selection Schedule

The following dates are proposed as a timeline for this project:

Event	Date and Time
Written proposals due	4:00 PM Tuesday, January 25, 2022
Price Proposal submitted	4:00 PM Thursday, February 10, 2022
Interviews of top proposers (if necessary)	Time TBD Monday, February 14, 2022
Intent to Award issued	4:00 PM Tuesday, February 15, 2022
Notice to Proceed	Monday, March 14, 2022

The City reserves the right to make adjustments to the above noted schedule as necessary. Pursuant to ORS 279C.337(2)(i)(D), any Proposer who is not selected may request a meeting with the City within seven days after the date of the Notice of Intent to Award. The City will respond to any timely submitted meeting request with a date and time for the meeting.

Section 6 – Contract Award

Sample Form of Contract

A sample Professional Services Agreement is attached to this document. This is intended to demonstrate the basic framework of the Agreement between the City and the selected firm and not the final form of Agreement between the parties.

Protest Procedures

A Proposer who objects to the terms and conditions of this RFP may submit a written solicitation protest to the City in accordance with OAR 137-049-0260 no later than seven (7) days prior to the date proposals are due. Thereafter, the City will not accept any solicitation protests and will not entertain changes or challenges to the terms and conditions of the RFP.

Following the Notice of Intent to Negotiate and Award, the public may view proposal documents. However, any proprietary information so designated by the Proposer as a trade secret or confidential and meeting the requirements of ORS 192.501, 192.502 and/or ORS 646.461 et seq., will not be disclosed unless the City of Sandy determines that disclosure is required. At this time, Proposers not awarded the contract may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the evaluation committee.

Proposers who are eliminated at any stage of the evaluation process will be notified of their elimination. At that time, Proposers who wish to protest their elimination shall file a protest within seven (7) calendar days of the notice. Protests submitted to the City may only originate from those Proposers who would receive the contract if their protest was successful. Protests must be in writing and received by the City within seven (7) calendar days, unless otherwise noted, following the date the City's Notice of Intent to Negotiate and Award. The protest must specifically state the reason for the protest and show how its proposal or the successful proposal was mis-scored or show how the selection process deviated from that described in the solicitation document. No contract will be awarded until the protest has been resolved. Protests must be timely and must include all legal and factual information regarding the protest, and a statement of the form of relief requested. Protests received later than specified or from other than the Proposer who would receive the contract if the protest was successful will not be considered. The exercise of judgment used by the evaluators in scoring the written proposals and interviews, including the use of outside expertise, is not grounds for appeal.

The City may waive any procedural irregularities that had no material effect on the selection of the proposed consultant, invalidate the proposed award, amend the award decision, request the evaluation committee re-evaluate any proposal or require the City to cancel the solicitation.

Attachment A – Chapter 7, Collection System – Sandy Wastewater System Facilities Plan

Attachment B – Professional Services Agreement Template

Attachment C – CM/GC Agreement Template

Attachment D – Basin Figures and Tabular Data

Section 7

Sanitary Sewer Collection System Evaluation

7.1 Introduction

This section of the Wastewater System Facilities Plan (WSFP) summarizes the pump station condition assessment, the wastewater collection system capacity analysis and the hydraulic model assumptions. To evaluate system capacity, design criteria were established for maximum allowable flow depth during dry and wet weather conditions, maximum velocity, and pump station capacity. A hydraulic model was developed and calibrated to evaluate the response of the system against the design criteria for existing and future flows. The hydraulic model was used as a tool to evaluate and recommend system improvements. This section documents the model development, design criteria assumptions, application of future flows, existing and future system capacity evaluation, and capital improvement alternatives.

Additionally, this section of the WSFP summarizes wet weather impacts to the system from the design storm event. Capacity deficiencies and improvements are identified for the current system with flows including response to the design storm. The capacity improvement alternatives are developed at graduated levels of wet weather flow reduction, then combined and evaluated with corresponding treatment plant alternatives.

The wet weather analysis and recommendations to rehabilitate existing infrastructure are discussed in more detail at the end of the section. Wet weather is defined as the combination of rainfall derived infiltration and inflow (RDII) and ground water infiltration (GWI). The opportunities to prevent and reduce RDII could include a balance between pump station capacity improvements, storm water disconnects, and RDII reduction through pipeline repair or replacement. A recommended RDII reduction program would target critical storm water system disconnections and structural pipe improvements for high priority infrastructure. A longer-term Rehabilitation and Replacement (R&R) program is also recommended for on-going system maintenance.

All improvements are evaluated at the master planning level of accuracy, which determines budget level cost estimates for calculating system development charges (SDCs) and rates (user fees) to support the Capital Improvement Program (CIP) as presented in Section 11, "Recommended Plan and Improvement Schedule." Each improvement project will require standard design phases to identify construction details and refine infrastructure sizing prior to implementation.

7.2 Model Development

To evaluate the existing and future capacity of the system, a collection system hydraulic model was developed in INFOSWMM (a proprietary software program by Innovyze) which utilizes the industry-standard SWMM 5 hydraulic engine developed by the Environmental Protection Agency (EPA). Information required to perform the hydraulic calculations in a network model include pipeline diameter, length, slope (based on invert elevations), and manhole invert and rim elevations. GIS data from the City were used to create the model network populated with most of the information needed for the hydraulic model. Gravity pipelines 8-inches and larger were incorporated into the model network. Where necessary, pipes with diameters less than 8-inches were also included. Six pump stations were incorporated into the hydraulic model including the number of pumps, wet well dimensions, pump curves, and control set points provided by the City. The Sandy Bluff Pump Station was modeled as “ideal” (flow in equals flow out) to represent variable frequency drives. The downstream boundary condition in the model is a free outfall at the Sandy Wastewater Treatment Plant (WWTP) influent. Where the source GIS data were incomplete or appeared erroneous, assumptions were made to develop a functioning model with reasonable pipeline profiles. Examples of such revisions included matching adjacent pipe diameters and invert elevations, using topographic data to estimate manhole rim elevations and splitting pipelines at junctions with other pipes and interpolating invert elevations.

7.3 Model Calibration

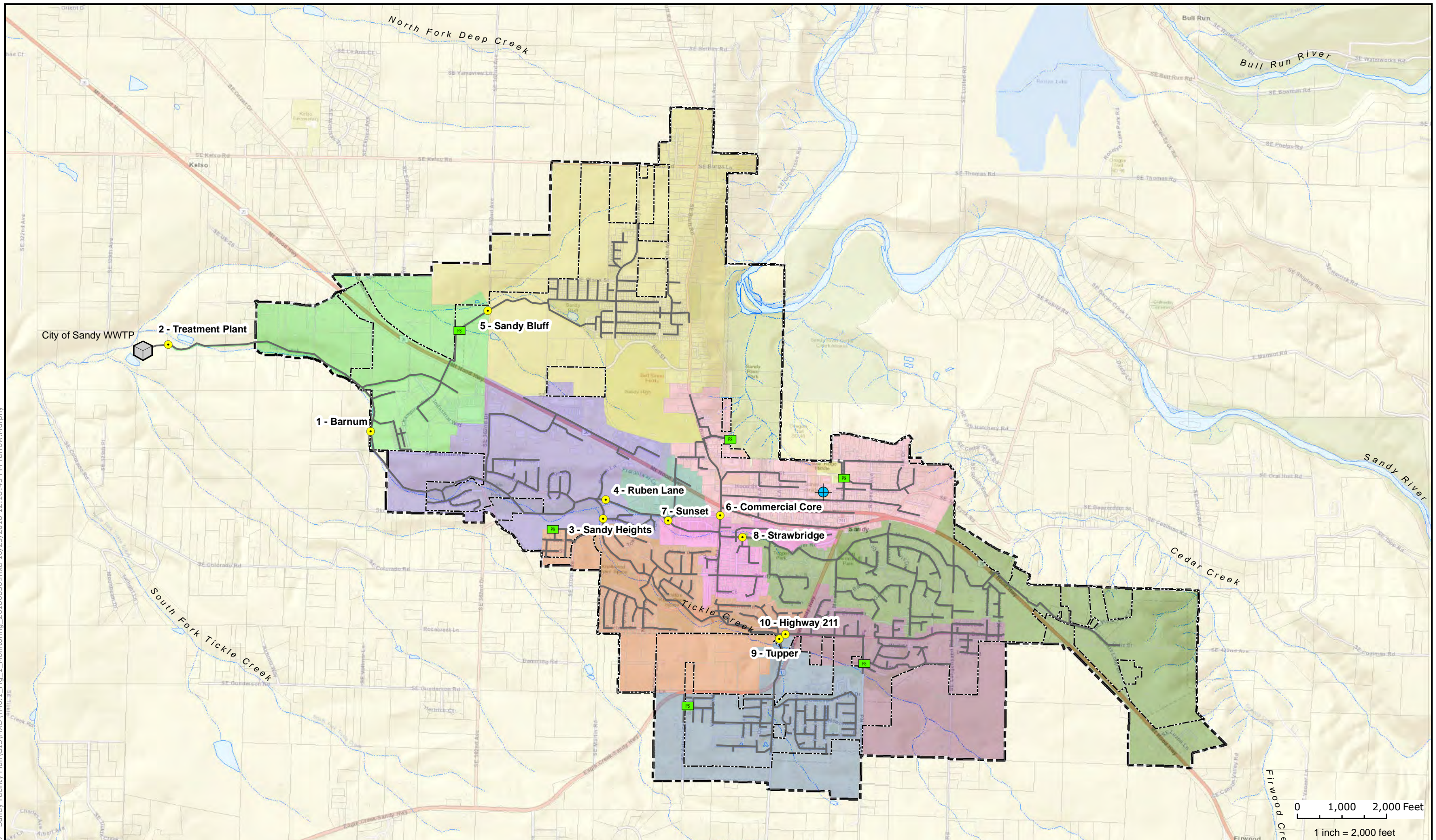
Model calibration generally consists of establishing and adjusting model parameters until model and field data match to within a reasonable tolerance. After each calibration iteration, field data are compared with the modeled data to determine the model’s level of accuracy. Once the desired level of accuracy has been achieved, the calibration is complete.

In collection system modeling, the calibration level of accuracy is both qualitative and quantitative. Flow rates measured at each flow monitoring site are visually compared to model flow rates for an extended period. A dry weather period and a wet weather period are selected for model calibration. The dry weather flow scenario is calibrated first with adjustments to the model loading (i.e., average dry weather flow and groundwater infiltration) and diurnal patterns. Next, the wet weather flow scenario is calibrated with adjustments to wet weather hydrographs, RDII parameters, and sewershed areas (wet weather impact areas) until field and model flows match during a significant rain event. Historical precipitation gage data is used in the model during the wet weather calibration. Levels of calibration accuracy include the following:

- Good – when field and model peak flows and volumes match within 10 percent,
- Moderate – when field and model peak flows and volumes match within 20 percent, and
- Poor – when field and model peak flows and volumes match within greater than 20 percent.

The City performed temporary gravity flow monitoring at a total of 10 locations in coordination with SFE Global between December 20, 2017 and February 28, 2018. The flow monitoring basins (meter basins) and meter sites are shown in **Figure 7-1**. The largest rain event of the flow

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City of Sandy, Oregon Wastewater System Facility Plan

Sandy UGB	WWTP	Rain Gage	3	7
City Limits	Pump Station	Meter Basins	4	8
Taxlots	Sewer Mains	1	5	9
Water Body	Temp Monitor	2	6	10
Stream				

**Figure 7-1
Metering Locations
and Service Areas**

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monitoring period occurred between 5:00 PM on January 17, 2018 and 2:20 AM on January 20, 2018 with a total rainfall depth of 1.5 inches. The dry weather period selected for calibration occurred between February 6-13, 2018. The modeling parameters that impact the dry weather and wet weather calibration are described in detail below.

7.3.1 Existing System Dry Weather Flow Development

The existing system dry weather flow component of the model consists of a daily average flow and a normalized diurnal pattern that informs the model how to adjust the average flow throughout the day. Daily average flows and diurnal patterns for each meter basin were calculated for weekdays (Monday-Friday) and weekend days (Saturday-Sunday) separately.

Within each meter basin, service areas were comprised of parcels proximal to gravity sewer pipelines upstream of the meter. The calculated daily average flows from each the flow monitors were distributed to the associated service areas based on land use zoning classification. The flows were assigned to model nodes (manholes) at the upstream end of the pipe most proximal to each parcel (see **Figure 7-1**).

7.3.2 Existing System Wet Weather Flow Development

The wet weather flow component of the model consists of a storm event, sewershed acreage (wet weather area of impact), and RDII unit hydrograph (UH). The sewersheds are defined by placing a 25-foot buffer around all system pipes. During the model calibration, actual precipitation data is used to perform the wet weather simulations. Rainfall is converted to runoff as a function of the sewershed acreage and RDII parameters, thereby creating a volume of water. The sewershed areas are assigned to model nodes at the downstream end of the associated pipe (see **Figure 7-1**).

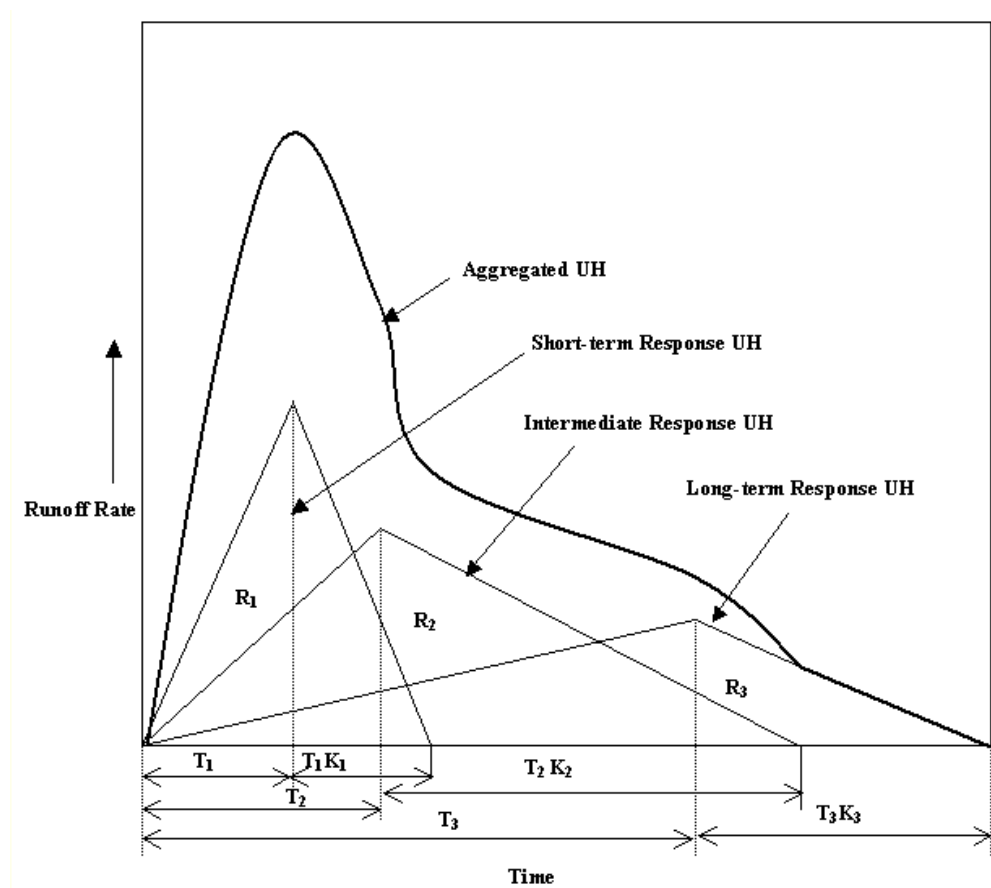
The RDII UH defines both the amount of runoff (percentage of the volume created from the sewershed and rain depth) that enters the system and the travel time. The RDII UH is a composite of three hydrographs representing the short-, intermediate-, and long-term system response. Each of the three hydrographs is defined by three parameters, which are adjusted during model calibration until field and model flows match within the desired level of accuracy (~10-percent). The RDII unit hydrograph parameters are described below and shown in **Figure 7-2**.

Unit Hydrograph Parameter 1 - R1, R2, R3 – Response ratios for the short-, intermediate-, and long-term UH responses, respectively.

Unit Hydrograph Parameter 2 - T1, T2, T3 – Time to peak for the short-, intermediate-, and long-term UH responses, respectively.

Unit Hydrograph Parameter 3 - K1, K2, K3 – Recession limb ratios for short-, intermediate-, and long-term UH responses, respectively.

Figure 7-2
EPA SWMM Unit Hydrograph



7.3.3 Dry Weather Calibration Results

The dry weather calibration results, including the diurnal pattern peaking factors and the quality of calibration at each meter, are presented in **Table 7-1**. Accurate dry weather metering data was available at nine locations. Plots comparing field and model flows are presented in **Appendix D**, for each flow meter location. The model was calibrated in each meter basin by adjusting diurnal patterns, average flow, and GWI with the overall goal of matching flow data at the Sandy Wastewater Treatment Plant (WWTP). Visual comparisons of the field and model dry weather flows show a reasonable model calibration with most meters providing “good” calibration results. It is important to note that several meters are impacted by pump station operation, and the model tends to dampen flow spikes caused by the pump station turning on and off. Efforts to address model conservancy were focused on the wet weather calibration since the peak flow rates caused by RDII are the primary source for system deficiencies.

Table 7-1
Dry Weather Calibration Results

Meter ID	Description	Diurnal Pattern Peaking Factor	Calibration Quality	Comments
1	Barnum	1.2	Moderate	Monitor consistently measuring more flow than seen at meter site 2, downstream
2	Treatment Plant	1.4	Good	
3 ¹	Sandy Heights	1.5	Moderate	
4	Ruben Lane	1.2	Good	
5	Sandy Bluff	1.7	Good	Site located just upstream of a pump station.
6 ¹	Commercial Core	1.6	Good	
7 ¹	Sunset	1.4	Good	Peaks match well, but overall volume in model slightly high. This site is downstream of sites 6 and 8 which are well calibrated for dry weather. Therefore, this meter basin was not adjusted.
8	Strawbridge	1.6	Good	
9 ¹	Tupper	1.8	Good	
10 ¹	Highway 211	1.9	Moderate	Peak flows highly influenced by pump operation. Overall volume is good calibration quality.

Note:

¹ Meters influenced by pump station operation upstream.

7.3.4 Calibration Storm Selection

The RDII unit hydrograph parameters are storm dependent. Typically, calibration priority is given to the storm that most closely resembles the theoretical design storm. This approach not only minimizes extrapolation of wet weather impacts but also reduces the level of conservancy in the analysis.

The rainfall data during the calibration period was collected from a temporary rain gauge located at the Old Cedar Ridge Middle School, located at 38955 Pleasant Street. During the 2-month monitoring period, the maximum 24-hour rainfall depth was 1.3 inches, while the 2-year 24-hour rainfall event for the Sandy vicinity is approximately 3.7 inches, based on the *NOAA Atlas 2, Precipitation-Frequency Atlas of the Western United States, Oregon - Volume X* [NOAA, 1973]. The storms during the monitoring period with the most significant flow response to rainfall were used in calibration and included December 28th (1.0 inch 24-hour depth), January 8th – 9th (1.0 inch 24-hr depth), January 17th (1.3 inches 24-hour depth) and January 26th (0.8 inch 24-hour depth). These storms had a frequency of approximately 1-year or less. The calibrated wet weather model was validated using the flow chart record at the influent of the WWTP on January 19 – 20, 2012 and rainfall from the Troutdale Airport.

7.3.5 Wet Weather Calibration Results

The modeled wet weather flow rates can be associated with contributing sewer basin areas to estimate flow per net area, gallons-per-acre-per-day (gpad) values, typically referred to as RDII rates. These RDII rates can vary significantly across the system due to factors such as sewer basin development, land use differences, soil type, and pipe condition, and storm water connections.

The wet weather calibration results, including the existing RDII rate during the January 2018 storm and quality of calibration at each meter, are presented in **Table 7-2**. Accurate metering data for the storm events was available at eight of the meter locations. 15-minute data recorded at the WWTP were also available for these events. Plots comparing field and model flows are presented in **Appendix D** for each flow meter location. Visual comparisons of the field and model wet weather flows show a reasonable model calibration with most meters providing “Good” calibration results during the storm events. Flows measured at Site 1 (at Barnum Road) were higher than flows measured downstream at the WWTP and Site 2 (near the WWTP). Flows during wet weather at Site 4 (at Ruben Lane) were significantly lower than those measured upstream at Site 7 (at Sunset Street). The wet weather flows at Sites 1 and 4 were assumed to be erroneous and, therefore, were not used for calibrating wet weather flows. The calibration effort focused on matching peak flow response rather than matching total storm volume.

Table 7-2
Wet Weather Calibration Results Summary

Meter ID	Description	Existing Peak RDII Rate for Calibration Storm (gallons per acre per day, gpad)	Calibration Quality	Comments
1	Barnum	NA	Not used	Monitor consistently measuring more flow than seen at meter site 2, downstream
2	Treatment Plant	95	Moderate	
3 ¹	Sandy Heights	20	Moderate	
4	Ruben Lane	NA	Not used	Monitor consistently measuring significantly less flow than seen at meter site 7, just upstream. Also, very little response to rainfall.
5	Sandy Bluff	2,200	Good	
6 ¹	Commercial Core	3,800	Good	
7 ¹	Sunset	2,500	Good	
8	Strawbridge	3,300	Good	
9 ¹	Tupper	4,200	Good	
10 ¹	Highway 211	8,800	Moderate	Peak flows highly influenced by pump operation. Overall volume is good calibration quality.

Note:

¹ Meters influenced by pump station operation upstream.

7.4 Collection System Design Criteria

7.4.1 System Criteria for Deficiencies and Improvements

The criteria used for determining collection system deficiencies and planning improvements are shown in **Table 7-3**. These standards are consistent with the “Recommended Standards for Wastewater Facilities [The Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2004].” For pipelines, the criteria focus on a maximum water depth of 80-percent during dry weather conditions and elimination of surcharging within 2 feet of the ground surface during the design storm event. For pump stations, the criteria focus on pumping peak wet weather flows with the largest pump out of service. Maximum velocity and minimum scouring velocity are considered secondary criteria and are indicative of undersized or over-sized piping respectively. In the case of the minimum scouring velocity violations, the pipelines are flagged for additional maintenance and flushing to prevent solids deposition. Solids deposition can pose an issue when pipelines are constructed at less than the minimum design slopes or prior to build-out of the upstream service area.

Table 7-3
Design Criteria for Collection System Deficiencies

Category	Criterion	Explanation
Primary Standards		
Maximum water depth to diameter ratio during dry weather conditions	0.8	When the depth to diameter ratio exceeds 0.9, the pipe begins to lose gravity capacity due to greater frictional loss.
Minimum freeboard during 5-year design storm (clearance from water surface to manhole rim)	2.0 feet minimum, hydraulic grade line categories determine risk.	The standard is moderate in that it does not allow surcharging at less than 2 feet of freeboard during the design storm event. With this criterion, the maximum wet weather flow to design flow ratio can exceed 1.
Pump Station firm capacity ¹	Lift stations have capacity to pump at flows greater than or equal to peak hour flows with largest pump out of service.	The firm capacity criterion protects against loss of service during equipment failure and allows for pump cycling for longer equipment life.
Maximum force main velocity ¹	8.0 feet per second (fps)	The velocity criteria protects against excessive head loss and allows pumps to operate efficiently.
Secondary Standards		
Maximum gravity pipeline velocity	< 15.0 ft/sec or anchored appropriately for extreme slopes	The maximum velocity criteria protects pipelines from turbulent flow conditions and excessive air entrainment.
Minimum cleansing/scouring velocity, gravity pipeline ¹	2.0 fps	Pipe diameters and minimum slopes should be selected to prevent solids deposition.
Minimum cleansing/scouring velocity of force mains ¹	3.5 fps	Pipe diameters should be selected to prevent solids deposition.

Category	Criterion	Explanation
Minimum design slopes (feet per 100 feet)	8-inch (0.4); 10-inch (0.28); 12-inch (0.22); 15-inch (0.15); 18-inch (0.12); 21-inch (0.10); 24-inch (0.08); 27-inch (0.07); 30-inch (0.06); 36-inch (0.06)	Based on 2014 Public Works Standards. Minimum slope allows for 2 fps scour velocity when flowing full.

Note:

¹ Oregon DEQ standard.

7.4.2 Design Storm

Collection system deficiencies are typically the result of RDII associated with large storm events. The wet weather flow component of the model consists of a storm event, sewershed acreage (wet weather area of impact), and RDII unit hydrograph. The unit hydrograph defines both the amount of runoff (percentage of rainfall volume) that enters the system and the travel time. During the model calibration, the sewershed acreages and RDII unit hydrographs are established to reflect system response to rainfall based on available flow monitoring data and measured precipitation. During the deficiencies and improvements analysis, a design storm is substituted for the precipitation data, thereby allowing for an extrapolation of system response to the critical storm event. Selection of the design storm is discussed in **Section 6 “Flow and Loads Projection”**.

7.4.3 Rainfall Derived Infiltration and Inflow

When applying the design storm to the City’s calibrated existing system model, the calculated peak RDII rates vary by sub-basin between roughly 1,300 gpad and 19,400 gpad as summarized in **Table 7-4**. For comparison, typical design standards for new collection systems in Oregon assume RDII rates on the order of 1,000 to 2,500 gpad. The peak rates for the City’s existing system are significantly high in some areas, suggesting interconnections between the storm and sanitary systems or other sources of RDII.

Table 7-4
Existing RDII Peak Rates

Meter ID	Basin Description	Peak RDII Rate for Design Storm (net gpad)
2	Sunset Street to the Treatment Plant	6,900
3	Highway 211 to Sandy Heights	1,300
5	Sandy Bluff	11,700
6	Commercial Core	16,800
7	Chalet Mobile Estates and Bluff Road	19,400
8	East end to Strawbridge	16,600
9	Cascadia Village to Tupper	11,000
10	Dubarko Drive east of Highway 211	16,700

7.5 Existing Collection System Capacity Evaluation

The collection system model was used to identify system hydraulic response to existing dry and wet weather flows during the design storm based on the design criteria presented in **Table 7-3**.

Results of the analysis indicate hydraulic deficiencies in the existing trunk sewer near the wastewater treatment plant with existing design storm flows. Because of the limitations in pipeline capacity during the design storm, wastewater may back up in the pipeline upstream of the capacity limitation and cause surcharging in the manholes with minimum freeboard predicted to be less than two feet. The existing system deficiency results are presented in **Figure 7-4**.

Estimated peak flows into each pump station during the design storm were compared to pump station existing firm capacity. With the existing condition design storm peak flows, the major capacity risks are found in pump stations and force mains. The Sandy Bluff Pump Station is predicted to have flows of 1670 gpm while the firm capacity is only 600 gpm. The Jacoby Pump Station is predicted to have a peak flow of 760 gpm during the design storm, with only 300 gpm firm capacity. The Marcy Street Pump Station is deficient by 40 gpm. The Sandy Bluff force main velocity exceeds 10 ft/s given design storm flows of 1670 gpm. The other force mains do not exceed the 10 ft/s deficiency criteria. The results of the pump station capacity analysis are presented in **Table 7-5** and assume removal of all sanitary overflows and pipeline restrictions.

Table 7-5
Existing Pump Station Capacity

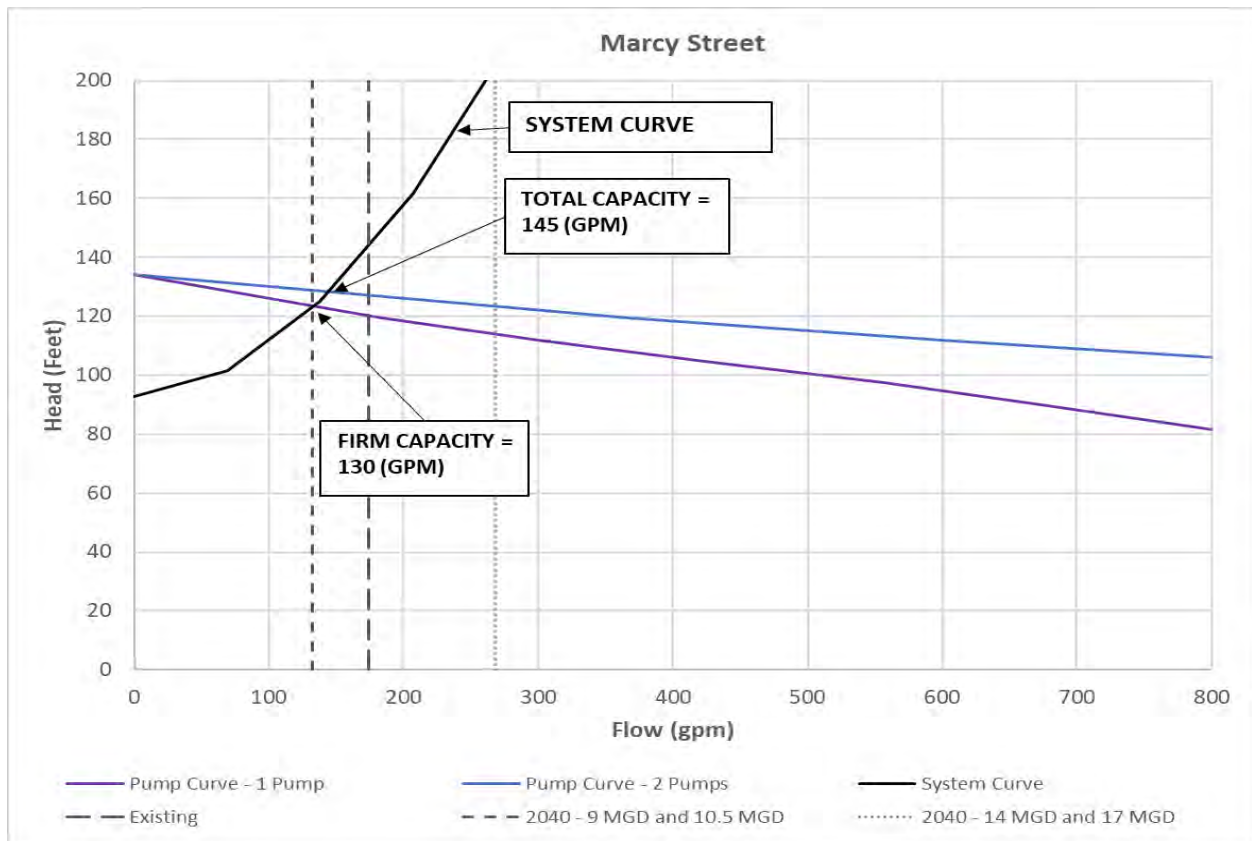
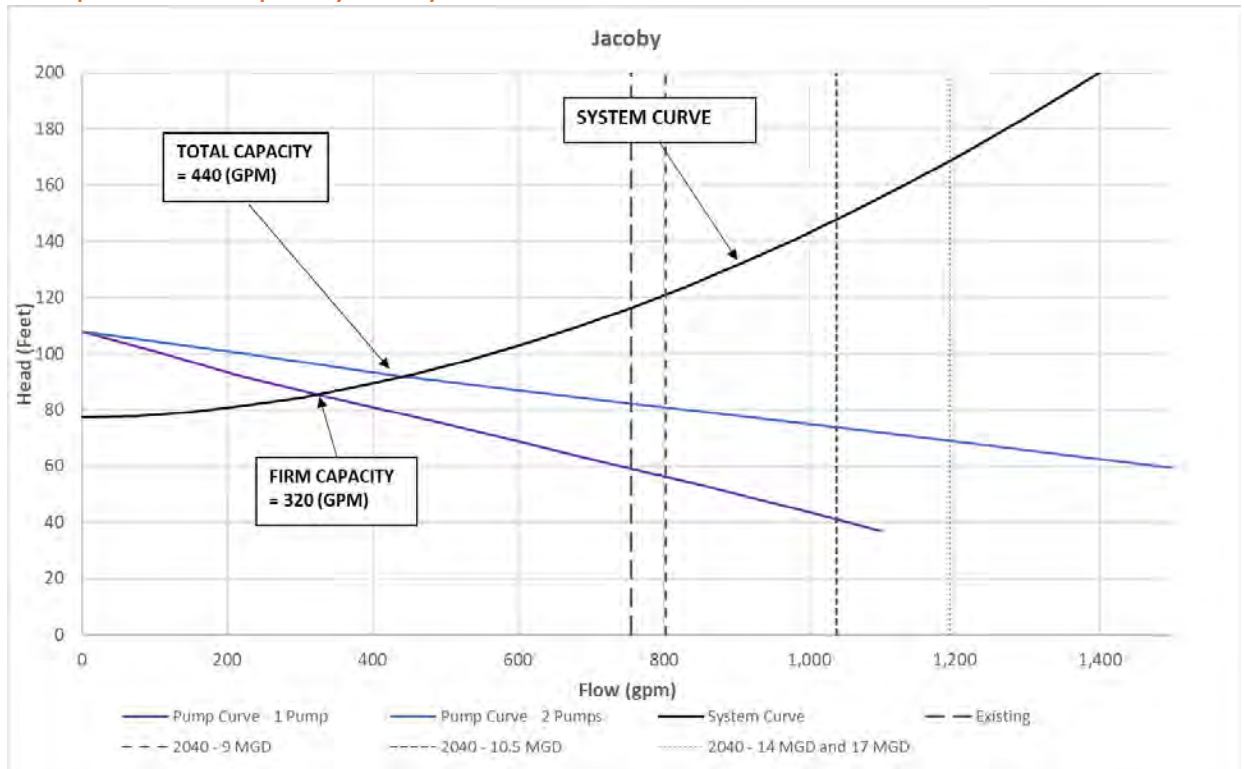
Pump Station	Firm Capacity (gpm)	Peak Flow to Pump Station (gpm) ¹	Peak Force Main Velocity (fps)
Marcy Street	130	170	4.4
Northside (Sandy Bluff)	600	1670	10.7
Meinig Ave ²	355	330	3.8
Southeast (Jacoby/ Timberline Trails)	320	760	8.6
Southwest (Sleepy Hollow) ²	115 (sheet says 188 at 92.4 ft)	10	0.10
Southside (Snowberry)	185	66	7.5

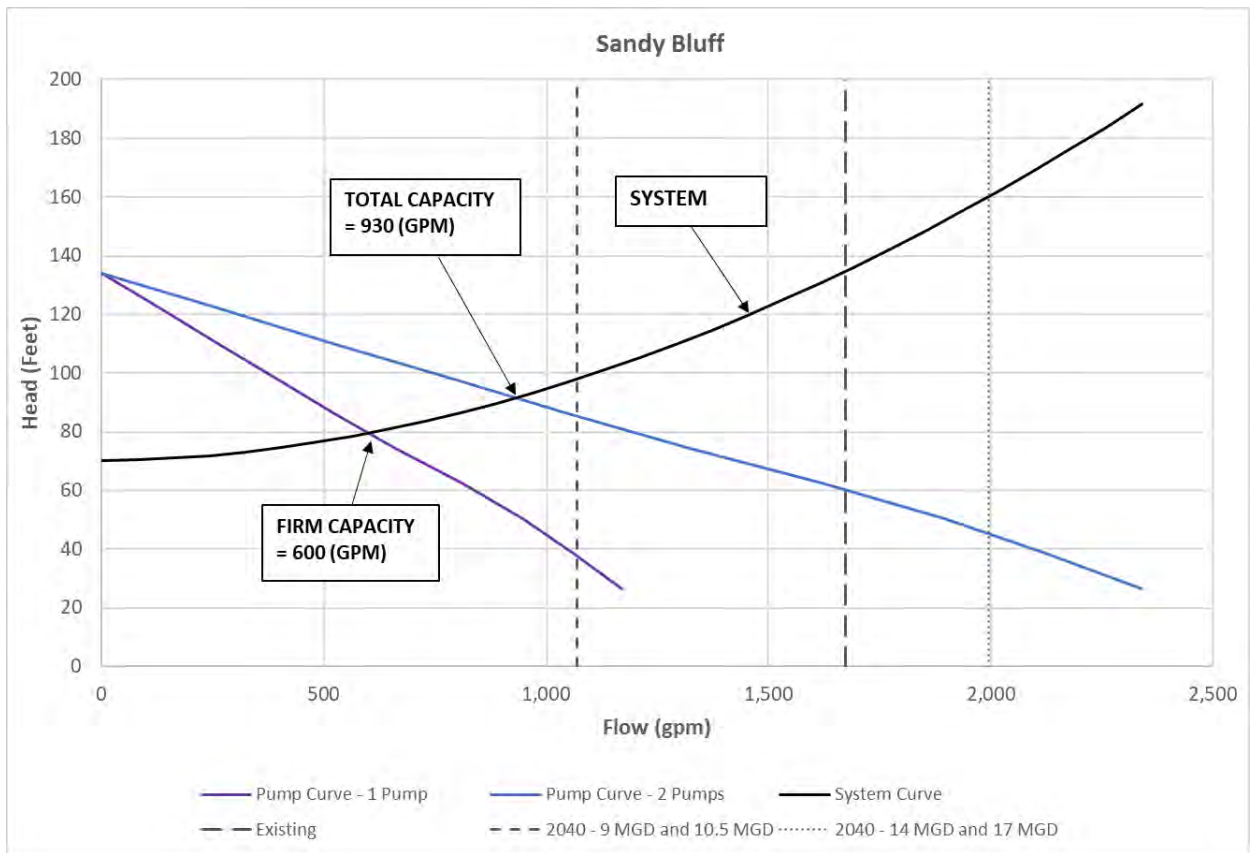
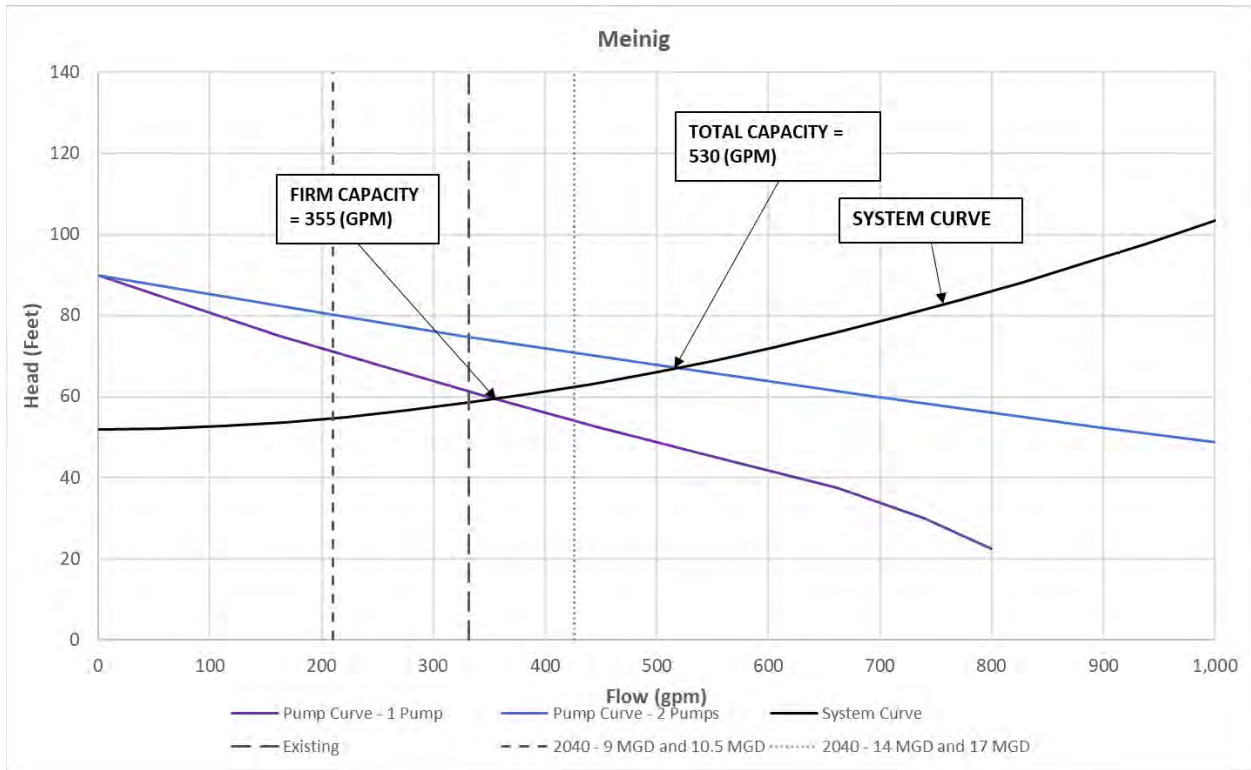
Notes:

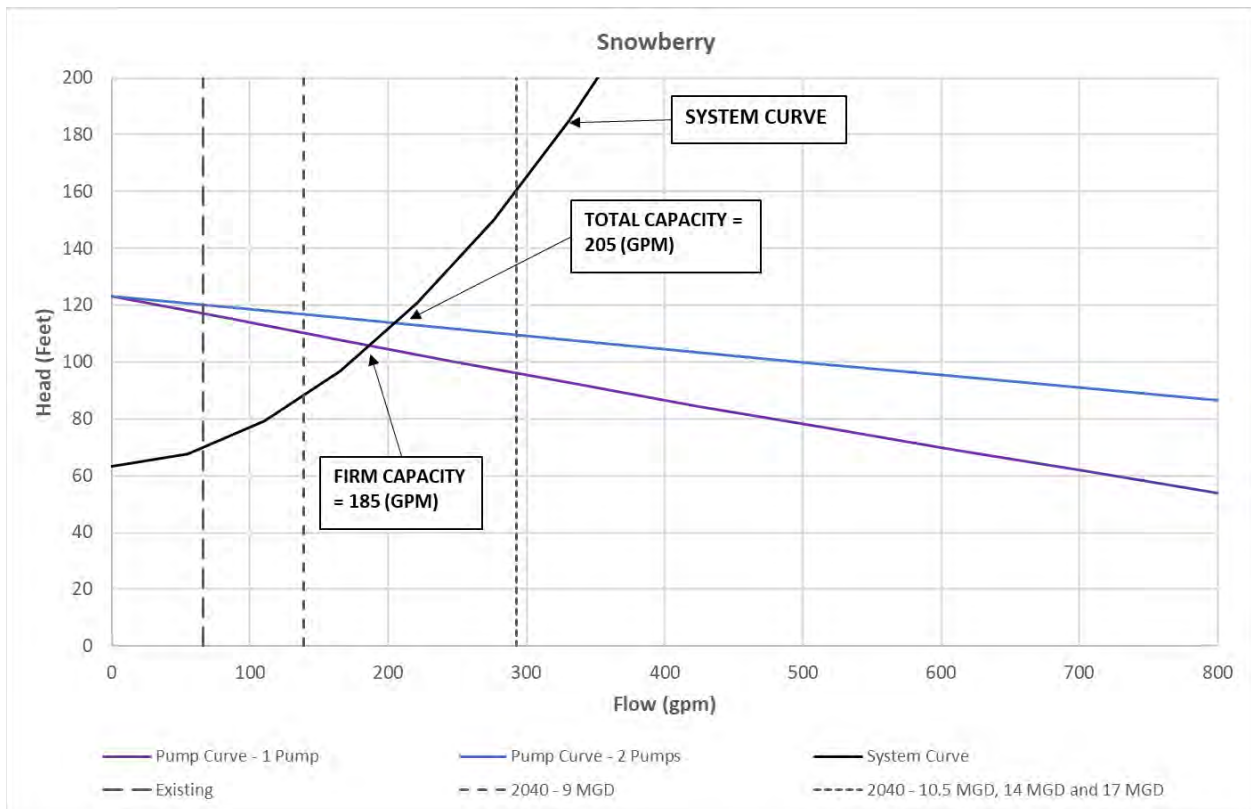
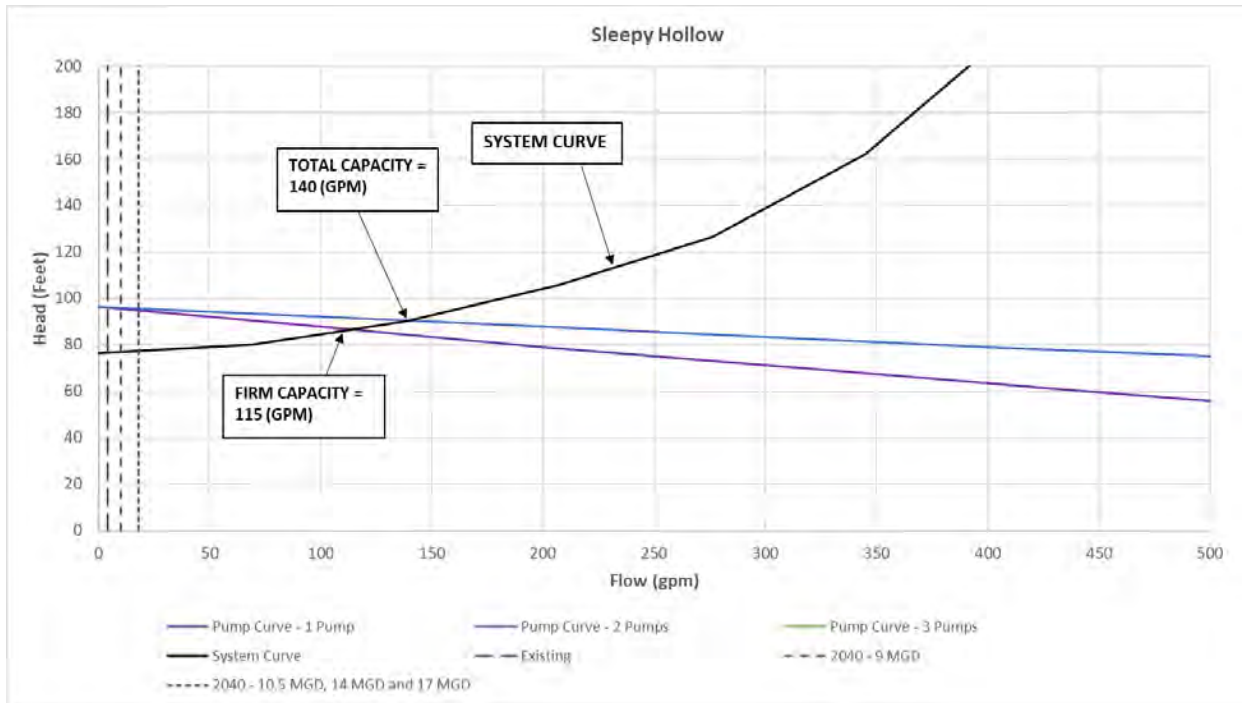
- ¹ Peak flow during design storm assuming removal of all sanitary overflows and pipeline restrictions.
- ² Requires additional review and field verification

System curves and pump curves for the pump stations are provided in **Figure 7-3**. These figures identify the capacities of each pump station, including the firm and total capacities compared to peak flow contributions.

Figure 7-3
Pump Station Capacity Analysis





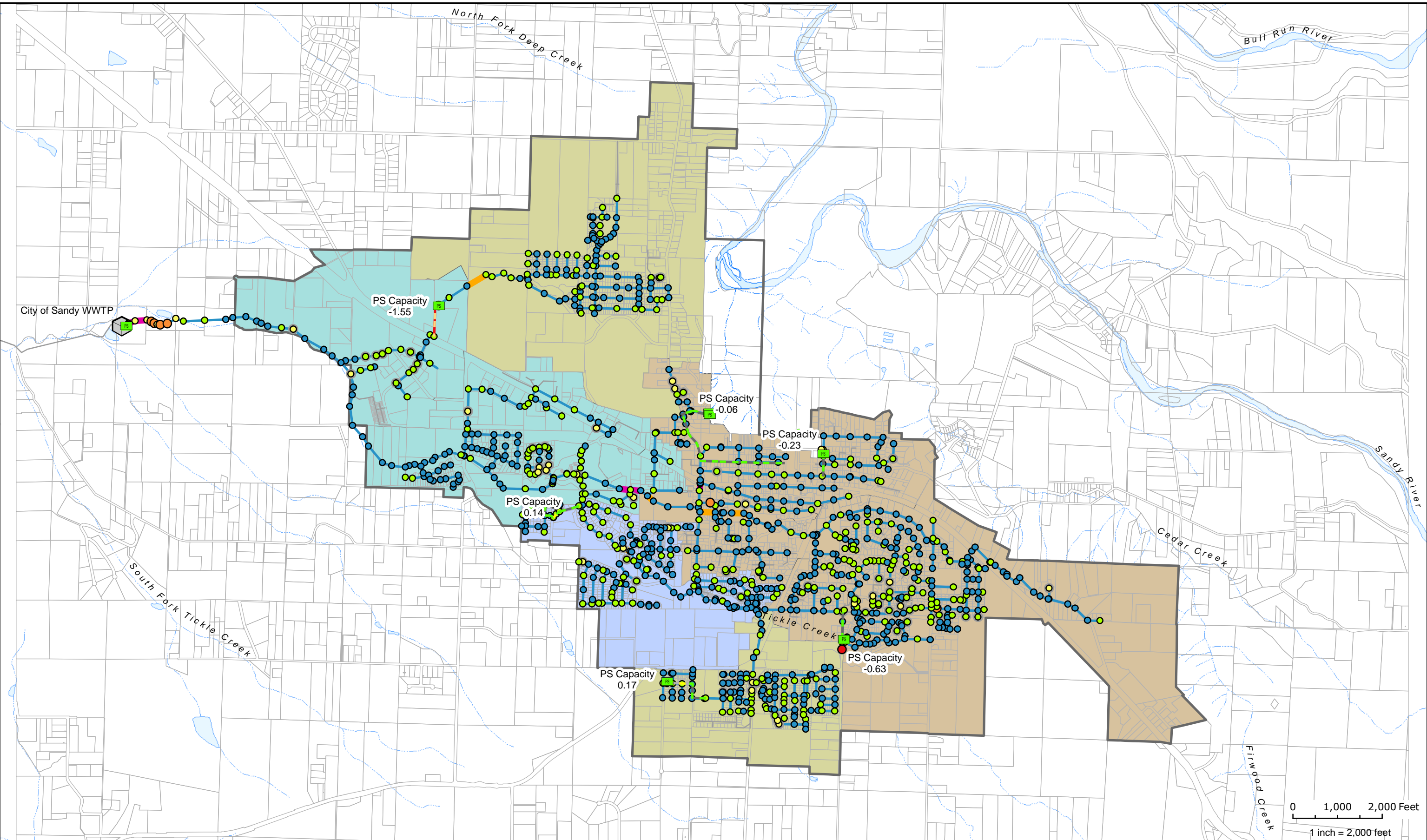


Notes for Figures.

Existing and build-out flows assume removal of all sanitary overflows and pipeline restrictions without reduction of stormwater impacts and RDII.

System curves are theoretical and are based on nominal force main diameter and a Hazen-Williams friction coefficient of 100-120. The system curves have not been verified with pump station field tests (draw down tests).

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City of Sandy, Oregon Wastewater System Facility Plan

UGB	Flooding	< 5 ft depth	RDII Rate (gpad)
Pump Station	< 2 ft	Max Flow : Design Flow	1,300 - 6,000
Force Main Velocity	2 - 4 ft	1.0 - 1.15	6,000 - 10,000
< 7 fps	4 - 8 ft	>1.15	10,000 - 15,000
7 to 10 fps	> 8 ft		> 15,000
> 10 fps			

**Figure 7-4
Existing
Capacity Deficiencies**

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7.5.1 Existing System Capacity Evaluation Summary

With the existing condition design storm peak flows, the major capacity risks are found in pump stations and force mains. The Sandy Bluff Pump Station and Jacoby/Timberline Trails Pump Station are predicted to have flows exceeding total rated capacities and The Sandy Bluff force main velocity exceeds 10 fps. The Sandy Trunk is predicted to surcharge within two feet of the surface at four manholes near the WWTP, but flooding is not predicted.

7.6 Future (2040) Collection System Capacity Evaluation

The City’s wastewater collection system model was used to identify system hydraulic response to 2040 base flows and RDII based on the design storm and criteria presented in **Table 7-3**. 2040 system base flows and deficiencies assume partial development of parcels within the UGB to accommodate the projected population. 2040 flow rates were generated by applying unit flow factors to unserved parcels by zoning classification as documented in **Section 6, “Flow and Load Projections.”** Service and sewershed areas were assigned to manholes utilizing existing sub-basin delineation and available contour data. The results presented here include RDII based on projected pipe degradation over time and no RDII reduction.

For 2040, the collection system is predicted to be at significantly higher risk of capacity deficiencies compared to the existing system evaluation. The 2040 system deficiency results are presented in **Figure 7-5**, illustrating deficiencies without pipeline and pump station constraints.

Estimated peak 2040 flows into each pump station during the design storm were compared to pump station existing firm capacity, presented in **Table 7-6**. The 2040 pump station capacity analysis assumes removal of all sanitary overflows and pipeline restrictions. The 2040 peak flows are also highlighted in **Figure 7-5**.

Table 7-6
2040 Pump Station Capacity

Pump Station	Firm Capacity (gpm)	Peak Flow to Pump Station (gpm) ¹	Peak Force Main Velocity (fps)
Marcy Street	130	270	6.8
Northside (Sandy Bluff)	600	2000	12.7
Meinig Ave	355	430	4.8
Southeast (Jacoby/ Timberline Trails)	320	1190	13.6
Southwest (Sleepy Hollow)	115	20	0.5
Southside (Snowberry)	185	290	7.5

Notes:

¹ Peak flow during design storm assuming removal of all sanitary overflows and pipeline restrictions.

7.6.1 Summary of Deficiencies 2040

The 2040 collection system capacity deficiencies during the design storm can be grouped by location and type of facility. Gravity pipe capacity deficiencies are found in the 18- to 21-inch Sandy Trunk Sewer, which conveys flows from the tributary sewers to the WWTP. The 12-inch pipe conveying flows from the southeast neighborhoods to the Sandy Trunk is also predicted to have flows exceeding the gravity sewer capacity in 2040 and causing extensive surface flooding. Five of the six pump stations in the collection system are predicted to have flows exceeding the pump station capacity in 2040, with Sleepy Hollow Pump Station being the one station with sufficient capacity. The two force mains serving Sandy Bluff and Jacoby Pump Stations are predicted to have peak design storm velocities exceeding 10 ft/s.

7.7 Infiltration and Inflow Analysis

The City experiences capacity constraints related to RDII and direct storm water connections which are also considered sources of inflow to the system. An RDII Reduction Program is recommended which targets critical storm water system disconnections and structural pipe improvements for high priority infrastructure. A longer-term Repair and Replacement (R&R) Program is also recommended for on-going system maintenance to address long-term system degradation.

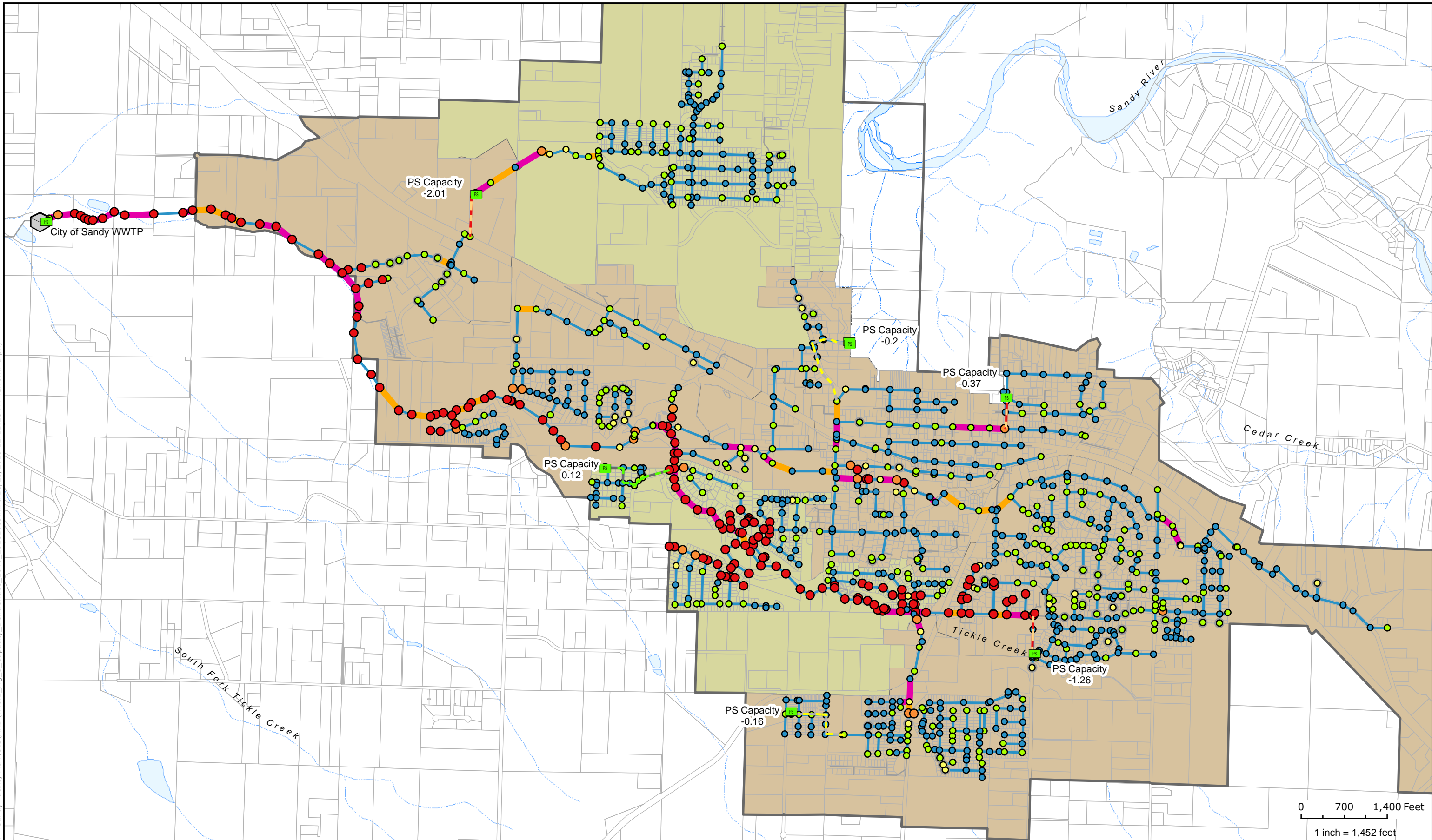
7.7.1 Rainfall Derived Infiltration and Inflow

Peak RDII flows within contributing sewer basin areas can be summarized as flow-per-acre values, typically referred to as RDII rates. These RDII rates can vary significantly across the system, due to factors such as sewer basin development, land use differences, soil type, and system condition (pipe and manhole). The RDII rates were estimated for each flow monitoring location for the calibration flow and rainfall time series using the EPA software, Sanitary Sewer Overflow Analysis and Planning (SSOAP) Toolbox. The output of this analysis was a set of basin-specific unit hydrograph parameters, which were then applied to the design storm to simulate a rainfall-runoff response. Eight of the ten meters were used in developing flow rates. Meters excluded from the wet weather flows analysis are described below.

- Meter 1 (Trunk line near Champion Way) – Flow measurements higher than the magnitude of measured flows at Meter 2, located downstream. The sub-basin area is combined with meter basin 2 for development of unit hydrograph parameters and RDII rates.
- Meter 4 (Ruben Lane) – Flows at this meter during wet weather were significantly lower than those measured at site 7, located 1,500 feet upstream. Flow measurements used to estimate DWF, but not RDII. The sub-basin area is combined with meter basin 2 for development of unit hydrograph parameters and RDII rates.

The unit hydrograph parameters for each basin, developed based on the temporary monitoring period, were extrapolated to the design storm to determine the basin-specific peak flow rates.

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City of Sandy, Oregon Wastewater System Facility Plan

<ul style="list-style-type: none"> UGB Pump Station Force Main Velocity < 7 fps 7 to 10 fps > 10 fps 	<ul style="list-style-type: none"> Freeboard Flooding < 2 ft 2 - 4 ft 4 - 8 ft > 8 ft 	<ul style="list-style-type: none"> Max Flow : Design Flow < 1.0 1.0 - 1.15 > 1.15 	<ul style="list-style-type: none"> RDII Rate (gpad) 1,300 - 6,000 6,000 - 10,000 10,000 - 15,000 > 15,000
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**Figure 7-5
2040
Capacity Deficiencies**

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7.7.2 Existing System RDII Rates

When applying the design storm to the City’s calibrated existing system model, the calculated peak RDII rate is 12,000 gpad overall, which varies by sub-basin between roughly 1,300 gpad and 18,300 gpad as summarized in **Table 7-7**. For comparison, Oregon utilities typically use standard design rates for RDII in new systems in the range of 1,000 to 2,500 gpad. The rates found in the City indicate significant influence of RDII on the existing system, particularly in areas where there are older concrete pipes, as illustrated in **Figure 7-6**.

Table 7-7
Existing Peak RDII Rates by Meter Basin

Meter ID	Basin Description	Peak RDII for Design Storm (gp/d)
2	Sunset Street to the Treatment Plant	6,900
3	Highway 211 to Sandy Heights	1,300
5	Sandy Bluff	11,700
6	Commercial Core	18,300
7	Chalet Mobile Estates and Bluff Road	15,800
8	East end to Strawbridge	16,600
9	Cascadia Village to Tupper	11,000
10	Dubarko Drive east of Highway 211	16,700

7.7.3 Future (2040) RDII Estimation Methodology

Collection system extensions associated with future development will contribute some amount of RDII to the system. During the planning horizon, the sanitary collection system for 2040 was projected to grow at the same rate as the general population growth, with the RDII rates for new pipes set at the design rate of 2,500 gpad.

In addition to added RDII from new sanitary sewer pipes, existing pipes will continue to degrade and thus be sources of increasing RDII over time. This analysis assumed pipe condition degrades based on age and pipe material, with degradation continuing in the future at a rate similar to that observed in the existing system.

7.7.4 Future (2040) RDII Rates

When applying the design storm to the City’s wastewater system model with additional flows from future development and pipe degradation, the calculated peak RDII rate varies by sub-basin between roughly 11,700 gpad and 24,100 gpad as summarized in **Table 7-8** and illustrated in **Figure 7-7**. These rates reflect the RDII from the existing pipes and existing area served, which is the appropriate measure to target RDII source reduction of existing facilities. The rates found in the City indicate growth in the influence of RDII on the collection system capacity.

Table 7-8
2040 RDII Rates by Meter Basin

Meter ID	Basin Description	Peak RDII for Design Storm (net gpad) ¹
2	Sunset Street to the Treatment Plant	15,900
3	Highway 211 to Sandy Heights	12,700
5	Sandy Bluff	11,700
6	Commercial Core	19,600
7	Chalet Mobile Estates and Bluff Road	19,400
8	East end to Strawbridge	22,100
9	Cascadia Village to Tupper	24,100
10	Dubarko Drive east of Highway 211	18,900

Note:

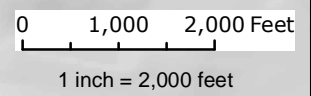
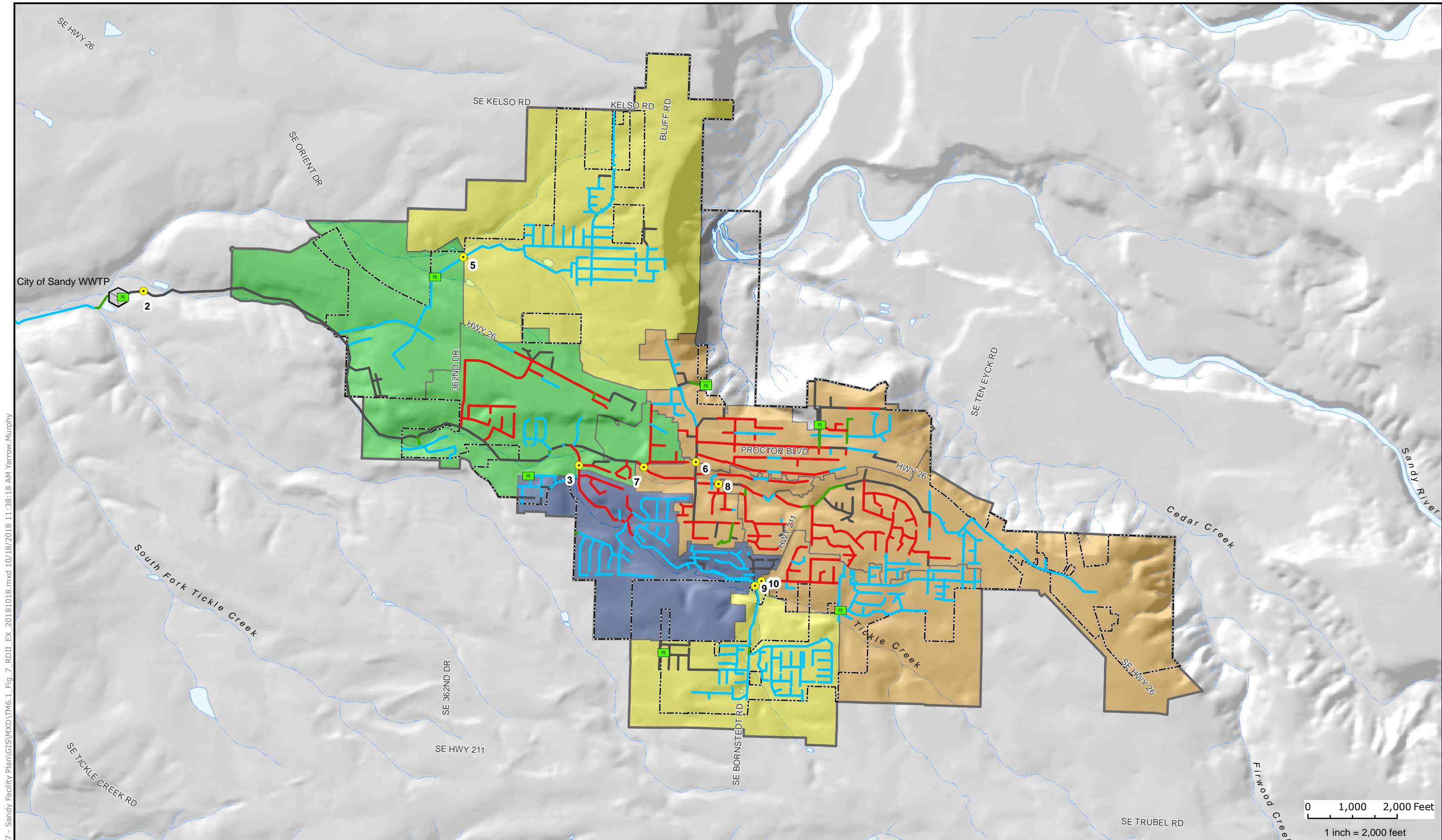
RDII rates for the existing pipe system and net service areas only. These rates do not include the future development areas and RDII resulting from pipes installed between 2018 and 2040.

7.7.5 Sanitary Sewer Condition

As the collection system ages, the structural and operational condition of the sewer system will decline as the number and type of defects in the piped system increase. If unattended, the severity and number of defects will increase along with an increased potential of sewer failure. Sewer failure is defined as an inability of the sewer to convey the design flow and is manifested by hydraulic and/or structural failure modes. Hydraulic failures can result from inadequate hydraulic capacity in the sewer, which can result from a reduction in pipe area due to accumulations of sediment, gravel, debris, roots, fats, oil, and grease, and structural failure. Further, a major loss of hydraulic capacity can be the result of excessive RDII or inappropriate planning for future growth that results in flows exceeding pipe capacity.

Structural defects left unattended can lead to catastrophic failures, such as pipe collapses and sanitary sewer overflows (SSOs). Structural failures may stem from common structural defects, such as cracks, fractures, holes, corrosion, and joint separations. Some cracked and broken sewers are the result of a condition called soil piping. Soil piping in this context is a loss of pipe bedding and backfill support due to small grain soil particles washing out of the supporting soils into the sewer as a result of infiltration at sewer cracks and separated joints. If these conditions are not addressed, sewers can fail, resulting in sinkholes, basement backups, and SSOs. Both hydraulic and structural failures can have a significant negative impact on the community and the environment.

An R&R program is required to extend the useful life of the collection system and minimize downstream capacity impacts by repairing or replacing failing infrastructure. Once the critical failures are eliminated, a R&R program proactively rehabilitates sewers prior to failure. Such a program extends the useful life of assets at minimum cost since the cost of rehabilitation is typically half the cost of pipe replacement and is even more economical when compared with the cost of repairing a failed sewer.



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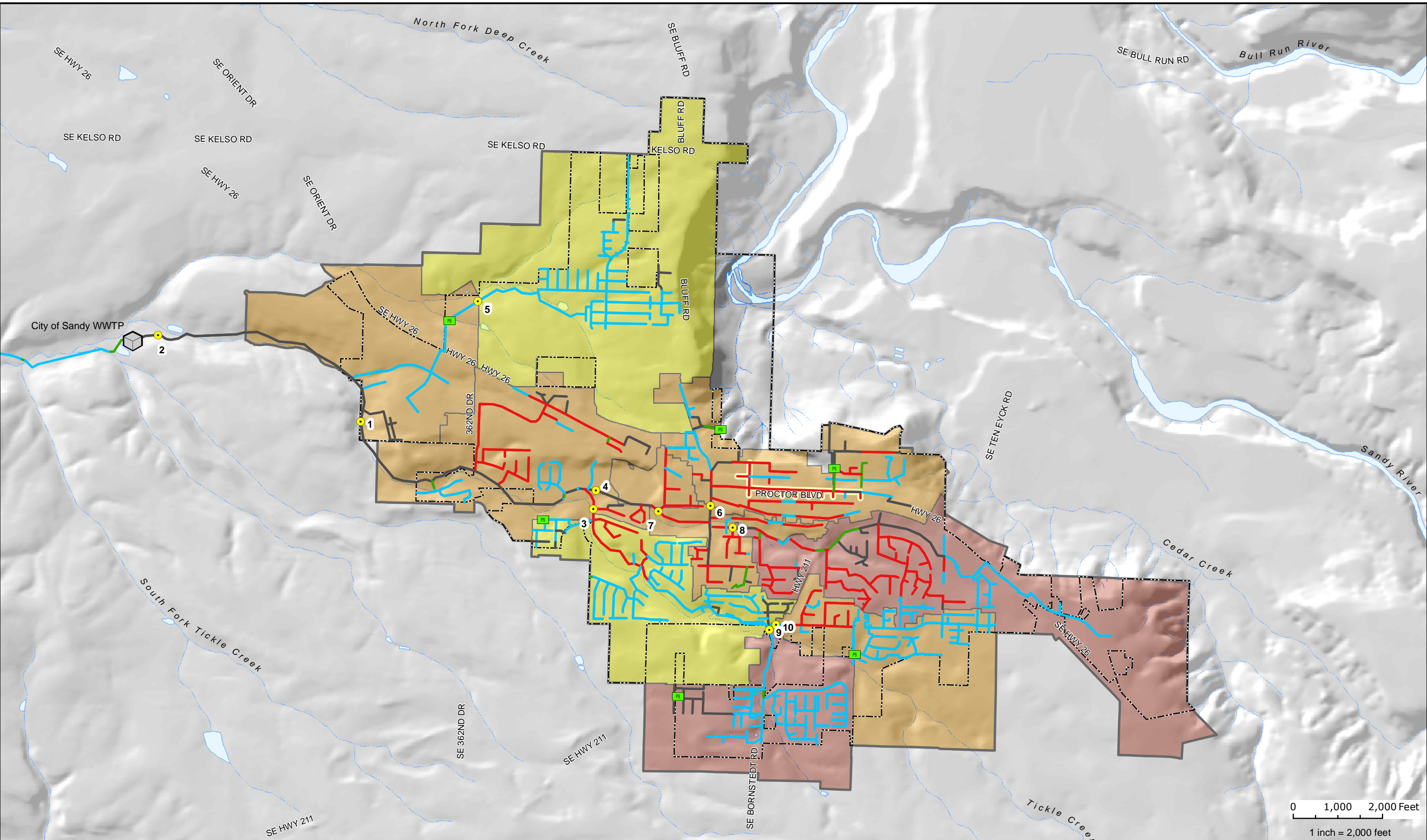
City of Sandy, Oregon Wastewater System Facility Plan

WWTP	Pipe Material	RDII Rate (gpad)	10,000 - 15,000
Pump Station	CI or DI	< 1,500	15,000 - 20,000
Temp Monitor	CSP	1,500 - 5,000	> 20,000 gpad
Stream	PVC	5,000 - 10,000	
	Unknown		

**Figure 7-6
Existing RDII Rates**

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City of Sandy, Oregon Wastewater System Facility Plan

WWTP	Pipe Material	RDII Rate* (gp/d)	10,000 - 15,000
Pump Station	Cl or DI	< 1,500	15,000 - 20,000
Temp Monitor	CSP	1,500 - 5,000	> 20,000
Stream	PVC	5,000 - 10,000	
	Unknown		
	CIPP Lined		

**Figure 7-7
2040 RDII Rates**

*Note: RDII Rate for existing pipes and areas including degradation.

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An RDII Reduction Program focuses more on the excess water entering the collection system and less on the structural and hydraulic failures. There can be some significant overlap, as structural and hydraulic failures in a pipeline can contribute to higher RDII. However, an RDII Reduction Program will prioritize areas with the highest rates of leakage as well as non-sewer main sources of RDII, such as cross-connected storm drains, roof drain leaders, and private laterals.

Many of the non-sewer main potential RDII sources are prohibited by the City. Per the City's Municipal Code, "No spring, creek, surface water drainage, downspout shall be connected with the city sewer system without permission and the approval of the building official." (per 13.12.120). The City's code provides the authority to embark on an RDII Reduction Program and can even contemplate enforcement of their Code to private property owners to address those sources related to unauthorized connections.

The City's capital improvement program (CIP), as presented in **Section 11**, includes funds set aside for the development of an RDII Reduction Program. An R&R program is assumed to be established as a maintenance program outside of this CIP, with an investment rate between \$0.5M to \$1M per year. The foundation of these programs is a sewer inspection and condition assessment that identifies specific sewer and manhole condition. Sewer condition and other risk factors are used to establish improvement priorities. This risk-based approach considers the likelihood and consequences of sewer failure based on sewer structural integrity and hydraulic condition. Other factors include emergency sewer repair costs, sewer location, environmental impacts of failure, and health impacts of failure. A risk-based approach to implementing these programs helps ensure that capital dollars are spent where they will provide the greatest benefit.

7.7.6 Infiltration and Inflow Reduction

The City's sanitary sewer collection system and downstream infrastructure including treatment systems are significantly influenced by RDII. Reducing wet weather influence in the collection system may be the most cost-effective way of improving the hydraulic capacity and reducing the need to expand pump stations, piping, treatment, effluent storage and effluent piping to convey, treat and discharge existing and future flows. This plan considers the cost of RDII reduction, collection system capacity improvements and treatment improvements as a whole system, so the cost of RDII reduction is optimized with the CIP.

The following are suggested components of the City's RDII Reduction Program:

1. Additional flow monitoring to quantify the RDII in the collection system, especially during storm events similar in magnitude to the design storm event. Use additional flow monitoring to refine existing model calibration, pipe degradation rates and RDII predictions.
2. RDII source investigations and repair of stormwater inflow sources
3. Collection system condition assessment

4. Develop and prioritize RDII reduction projects
5. Design and construction projects.
6. Follow up RDII reduction projects with monitoring and modeling to inform further action and continue coordination with treatment and conveyance capacity.

An effective RDII Reduction Program requires comprehensive implementation efforts and critical coordination with local property owners to disconnect storm drains and replace failing laterals on private property. The RDII Reduction Program typically includes short-term goals to address the most deficient piping and service connections, and long-term goals of large-scale rehabilitation or replacement of aging infrastructure.

7.7.7 Infiltration and Inflow Source Investigation

It is recommended that the City take early action to identify likely sources contributing to high peak flows in the collection system and downstream infrastructure. Potential RDII sources within a basin include the following:

- Manhole covers and frames
- Basement sump pumps
- Foundation and area drains
- Pipe cleanouts
- Roof drain connections
- Cross-connections to storm water system
- Defective areas of pipes and manholes
- Defective pipe joints and manhole connections
- Defective service laterals and lateral connections to mainline

Techniques available to identify RDII include the following:

- Smoke testing - A nontoxic, odorless, non-staining smoke is injected into the collection system via a blower. The smoke will travel throughout the system and detect specific inflow points such as storm sewer cross-connections, roof connections, yard and area drains, foundation drains, and faulty service connections. In some cases, smoke testing will reveal locations of defective pipes and joints.
- Dye testing - Dyed water is injected into catch basins or storm drains to check for public storm drain cross-connections. Dyed water can be injected into downspouts, area drains, and floor drains to check for private sector connections to the sanitary sewer.
- Visual inspections - Visual inspections include the internal pipe CCTV inspections performed by City staff and can include external inspections conducted at the ground level. CCTV inspections are an excellent tool for identifying structural and operational defects in the collection system. In general, the identification of separated and broken joints, holes

in pipes, and many other forms of structural decay indicate potential sources of RDII. However, CCTV inspections are not a good source for quantifying the volume of RDII in the system.

- Exfiltration testing - Exfiltration testing primarily identifies mainline defects, as service laterals cannot be isolated easily and tested with this method. This method is sensitive to the groundwater elevation at the time of the test and is most reliable in periods of dry weather or, at a minimum, after several days without significant rainfall. Exfiltration testing should be performed in similar groundwater conditions in both the pre- and post-rehabilitation stages.
- Refined flow monitoring - Flow monitoring is the primary tool available for quantifying the amount of RDII entering the collection system. Flow monitoring is required throughout dry and wet periods to establish both the base flow and wet weather contributions. Judicious use of flow monitors within a basin will help identify the RDII contributions for smaller, more localized areas.

The recommended CIP depends on identifying and addressing inflow sources throughout the collection system within the first 2 years of this plan. The program will focus on smoke testing, with the other techniques, such as dye testing, to be used when necessary to clarify connections. Smoke testing area priorities are outlined in **Table 7-9**. 169,000 LF of pipe is recommended for testing. At a rate of \$1 per LF, the total estimated cost for the source detection is \$169,000. The cost excludes the costs of repairs.

Table 7-9
RDII Source Detection Priorities

Priority	Location(s)	Pipe Length (LF) ¹	Note
1	Upstream of Meter 4 to meters 6 and 8	14,500	Observed GWI during the wet season and inflow during storm events.
1	Upstream of Meter 5	22,000	Observed inflow during storm events. Newer pipe in Basin 5 (Sandy Bluff area) not expected to have high RDII as recorded by monitor.
2	Basins 2 and 8	71,200	Priority RDII reduction basins
2	Basin 6	20,800	Cost effectiveness and RDII rate similar to Basin 8. Also has oldest pipes in the system. There may be some opportunities to address inflow sources there.
3	Basin 10	18,000	RDII rate exceeds 15,000 GPAD
3	Basin 9	22,800	RDII rate exceeds 10,000 GPAD

Note:

¹ Pipe length exclusive of force mains.

7.7.8 Inspection and Condition Assessment

The USEPA's proposed Capacity, Management, Operation, and Maintenance (CMOM) requirements identify a sewer inspection program as being an essential element of a proactive maintenance program and its complementary R&R program.

Although there are currently a number of inspection and investigative technologies on the market, closed-circuit television (CCTV) inspection remains the most economic and versatile inspection technology available. Many of the other investigative technologies are best applied for specialized conditions not addressed by basic CCTV inspection.

Due to the time constraints in upgrading the wastewater treatment, reuse, and discharge components of the City's wastewater facilities, the collection system condition assessment should be expedited to be completed in a three-year cycle. The City has approximately 200,000 linear feet (LF) of sanitary gravity pipe eight inches and larger in diameter. To inspect the entire collection system on a three-year cycle, an average of 67,000 LF of sewer would need to be inspected annually. Assuming an average cost of \$1.55 per LF for inspection and \$1.05 per LF for engineering condition assessment, the cost for the inspection is approximately \$520,000, or \$173,000 per year for three years.

The City's inspection schedule should prioritize the oldest and leakiest portions of the system first, with an emphasis on structurally vulnerable pipe materials and the highest RDII. **Table 7-10** suggests a timeline for CCTV inspection.

Table 7-10
Suggested Inspection Schedule

Year	Basins	Total Pipe Length (ft)
2	2 and 8	74,200
3	5, 6 and 7	54,300
4	3, 9 and 10	71,000

The results of the inspection and condition assessment will inform investments in the long-term R&R program as well as identify shorter term, high priority actions that can be taken to address structural defects that are likely contributing high rates of RDII.

7.7.9 RDII Reduction Projects

The RDII projects that come from the investigative work include correcting inflow sources, sewer rehabilitation and replacement, service lateral replacement, and, potentially, the construction of new sanitary sewers.

If storm cross-connections, broken pipes near streams, roof drain connections, etc., are identified in the RDII source investigation, then these isolated sources should be corrected. These sources are often relatively inexpensive to correct but contribute a significant amount of RDII.

Sewer and manhole rehabilitation to reduce RDII may be implemented on a block-by-block or basin-wide basis. The approach depends on several factors though, in general, the condition of the sewers, the surface and sub-surface conditions (under road or gravel, in bedrock or soil), and available funding for the project will dictate if it is feasible to rehabilitate the entire basin or simply focus on the worst defects. However, the wastewater treatment strategy recommended in this plan is contingent on maintaining flows at specified levels by 2040, meaning that any failure to meet the RDII reduction target will result in financial consequences related to wastewater treatment capacity. These risks and tradeoffs are discussed in greater detail in Section 10, “Alternatives Analysis” and Section 11, “Recommended Capital Improvement Program”.

7.7.9.1 RDII Reduction Costs and Scenarios

RDII reduction levels vary based on the extent of the program to include rehabilitation of sewer laterals. Recognizing that the City’s jurisdiction is over the sewer mains and connections, three RDII reduction scenarios were considered for this plan with assumed RDII reduction rates as follows:

- Rehabilitate sewer mains only - 20%
- Rehabilitate sewer mains and connections - 30%
- Rehabilitate sewer mains, connections, and private laterals - 65%

The target removal percentages are based on several pilot studies and projects in Sweet Home, Oregon. The work consisted of rehabilitation of sewer mains and lateral connections only, laterals only (both lower and upper), and full rehabilitation of the mains and entire laterals to the building. The analysis showed that full rehabilitation was more cost-effective than partial rehabilitation. These types of reductions have been validated by RDII work performed in Portland, Oregon and throughout the country. The City has approximately 3,500 service laterals that may be addressed both for RDII reduction and to preserve structural integrity of the mains where they connect. In a program that addresses mains and laterals, laterals account for about 25 to 50-percent of the overall project cost depending on density of development. However, with the effectiveness of the RDII reduction more than doubling when adding the repair of the entire lateral, the most cost-effective approach tends to be to rehabilitate the mains, connections and the entire lateral.

For comparison purposes, planning level construction costs were calculated to holistically replace and rehabilitate the pipes in each basin for the three reduction scenarios (20-percent, 30-percent, and 65-percent). The percentage reductions are assumed to encompass a combination of stormwater removal from direct connections and from repair of structural defects. **Table 7-11** lists the key statistics of the meter basins, including the assumed number of laterals and pipe length by pipe diameter in each basin. **Table 7-12** list the approximate project costs by meter basin for trenchless (CIPP) construction techniques.

Table 7-11
Meter Basin Pipe Length and Laterals

Meter ID	Basin Description	Length of pipe (LF) by diameter (inches)				Number of laterals
		8-10	12-15	18-21	Total	
2	Sunset Street to the Treatment Plant	25,700	5,300	12,000	43,000	150
3	Highway 211 to Sandy Heights	23,300	2,000	3,800	29,100	520
5	Sandy Bluff	17,800	1,300	0	19,100	540
6	Commercial Core	22,600	800	0	23,400	230
7	Chalet Mobile Estates and Bluff Road	7,800	2,200	0	10,000	100
8	East end to Strawbridge	30,000	2,200	0	32,200	300
9	Cascadia Village to Tupper	23,000	600	400	24,000	550
10	Dubarko Drive east of Highway 211	16,000	2,600	0	18,800	330

Table 7-12
RDII Reduction Costs^{2, 3} for CIPP Mainline Rehabilitation

Meter ID	Basin Description	20% RDII Reduction ¹	30% RDII Reduction	65% RDII Reduction
2	Sunset Street to the Treatment Plant	\$2,593,000	\$3,051,000	\$3,395,000
3	Highway 211 to Sandy Heights	\$3,044,000	\$4,612,000	\$5,788,000
5	Sandy Bluff	\$2,693,000	\$4,322,000	\$5,544,000
6	Commercial Core	\$1,499,000	\$2,190,000	\$2,708,000
7	Chalet Mobile Estates and Bluff Road	\$775,000	\$1,062,000	\$1,277,000
8	East end to Strawbridge	\$1,931,000	\$2,832,000	\$3,507,000
9	Cascadia Village to Tupper	\$2,824,000	\$4,469,000	\$5,703,000
10	Dubarko Drive east of Highway 211	\$2,054,000	\$3,042,000	\$3,783,000

Notes:

- ¹ Pipes larger than 15-inch diameter excluded from the cost estimate due to unknown condition of the trunk sewer and higher costs associated with CIPP lining larger pipes, making the gains in RDII reduction less cost effective for these larger pipes. Any decision regarding replacement or rehabilitation of the trunk sewer due to condition will be based on further condition assessment.
- ² Cost estimates represent a Class 5 budget estimate in 2018 dollars, as established by the American Association of Cost Engineers. This preliminary estimate class is used for conceptual screening and assumes project definition maturity level below two percent. The expected accuracy range is -20 to -50 percent on the low end, and +50 to +100 percent on the high end, meaning the actual cost should fall in the range of 50 percent below the estimate to 100 percent above the estimate.
- ³ Stormwater infrastructure for drainage disconnects is excluded from cost estimates.

Cost estimates represent a Class 5 budget estimate in 2018 dollars, as established by the American Association of Cost Engineers. This preliminary estimate class is used for conceptual screening and assumes project definition maturity level below two percent. The expected accuracy range is -20 to -50 percent on the low end, and +50 to +100 percent on the high end, meaning the actual cost should fall in the range of 50 percent below the estimate to 100 percent above the estimate. Costs estimates represent replacement and rehabilitation of small diameter (15-inches and smaller) sewer mains assuming one lateral per parcel in each meter basin. Costs estimates do not account

for any additional needed stormwater conveyance, but do include costs for design, construction management and or other ancillary project costs, such as traffic control and bypass pumping.

Using the costs provided in **Table 7-12**, the peak flow rates and the assumed flow reduction with each approach, the costs are normalized to cost per peak flow removed. The peak flow reduction and costs per peak gallon per day removed are provided in **Table 7-13**.

Table 7-13
Rehabilitation Costs Summary

Meter ID	Basin Description	2040 Peak Flow Reduction (MGD)			Cost per Peak RDII Removed (\$/gpd)		
		20% RDII Reduction	30% RDII Reduction	65% RDII Reduction	20% RDII Reduction	30% RDII Reduction	65% RDII Reduction
2	Sunset Street to the Treatment Plant	0.54	0.81	1.76	\$4.80	\$3.80	\$1.90
3	Highway 211 to Sandy Heights	0.13	0.20	0.43	\$23.00	\$23.20	\$13.40
5	Sandy Bluff	0.39	0.59	1.28	\$6.90	\$7.30	\$4.30
6	Commercial Core	0.33	0.54	1.27	\$4.50	\$4.10	\$2.10
7	Chalet Mobile Estates and Bluff Road	0.11	0.16	0.34	\$7.40	\$6.70	\$3.70
8	East end to Strawbridge	0.51	0.76	1.65	\$3.80	\$3.70	\$2.10
9	Cascadia Village to Tupper	0.25	0.37	0.80	\$11.40	\$12.10	\$7.10
10	Dubarko Drive east of Highway 211	0.21	0.31	0.67	\$9.90	\$9.80	\$5.60

Defining cost-effective RDII reduction projects requires consideration of the costs of conveying and treating the wastewater. The evaluation of the cost effectiveness of the complete set of wastewater collection and treatment system improvements needed is discussed in detail in **Section 10, “Alternative Evaluation”**.

7.7.10 Post Rehabilitation Project Monitoring

Post-rehabilitation monitoring and modeling are recommended to determine the impact and effectiveness of RDII reduction activities to meet the flow reduction targets established for the wastewater treatment and effluent capacity. This information may be used for ongoing refinement of RDII projects and downstream capacity improvements.

Although there are several ways to approach RDII reduction projects, the common denominator is a methodology to quantify RDII reduction achieved from the various efforts so that refinements to the program can be made and future investments can be better focused. For the City, this may be done most efficiently by conducting pre- and post-rehabilitation flow monitoring and recalibration of the hydrologic model and/or pre- and post-rehabilitation exfiltration testing. The key component in determining the impact of rehabilitation is having sufficient and accurate flow and rainfall data that is collected at similar locations so that a direct comparison can be made between pre- and post-rehabilitation results.

The temporary monitoring performed to calibrate the model and establish pre-treatment RDII rates included 10 monitors that were installed for just over two months. Monitoring equipment installed on a longer-term basis would enable the City to better monitor and understand flows in the collection system over time. The budget includes \$100,000 per year to perform this monitoring at five sites throughout the collection system.

7.7.11 Summary of RDII Evaluation and Recommendations

The RDII rates for the existing condition indicate that the City's wastewater collection system and downstream infrastructure are significantly influenced by wet weather. Several actions are recommended for both the near-term and long-term to prevent the need to continually invest in infrastructure with greater capacity to accommodate growing flows.

Key actions for near term years 1 to 2 include:

- Additional monitoring to refine the characterization of the RDII rates, with confirmation of system response during larger storm events
- RDII source detection and repair of identified stormwater connections to the sanitary collection system.
- Establish City code that provides for lateral repair on private property.

Key actions for near term years 2 to 5 years:

- Condition inspection of the entire gravity collection system for pipes 8-inch diameter and larger.
- Identify and develop priority RDII reduction projects.
- Begin designing and implementing the priority projects.

Key actions for medium term 5 to 13 years:

- Continue implementing projects and monitoring reduction results.
- Adjust priorities based on monitoring results.
- Coordinate monitoring and reduction success with treatment and effluent capacity.

Key ongoing and longer-term (14+ years) actions:

- Monitor flows to evaluate success of RDII reduction and adjust need for further reduction efforts.
- Establish an R&R program to continue the condition inspection and implementation of rehabilitation, repair, or replacement projects as needed.

7.8 Pump Station Condition Assessment

Condition assessments for all pump stations in the collection system were conducted during field visits in January 2018. **Table 7-14** summarizes the findings of the condition assessments. The detailed report is included in **Appendix E**.

Table 7-14
Pump Station Condition Assessment Summary

Pump Station	Condition Assessment Summary
Marcy Street	Need to replace pumps and guide rails in the wet well. Hydrant in the valve vault needs backflow assembly. The valve vault needs fall protection. Site needs fenced enclosure for safety of the public and to protect from vandalism. Other equipment shows rust but is in fair condition.
Sandy Bluff	Pipes and valves in valve vault and wet well are in poor condition, need to be replaced in next 5 years. Safety grate needed on valve vault. Pump building needs active ventilation for cooling. Verify that variable frequency drive on pump 2 now functioning properly after installation of internal drop structure in wet well. Pumps in good condition.
Meinig Avenue	Wet well needs rehabilitation or replacement. Fan and heater in valve vault not rated explosion proof and the control panel and wiring are not protected. Pump condition not inspected but based on age, likely need to be replaced in 5 - 10 years.
Jacoby/Timberline Trails	The discharge piping needs replaced due to corrosion. Bolts in valve vault need to be replaced with stainless steel bolts. Pumps in fair condition – need to be replaced in 5-10 years.
Sleepy Hollow	No improvements recommended at this site. The valve vault is missing a safety grate. Condition of pumps not assessed.
Snowberry	No improvements recommended at this site. The valve vault is missing a safety grate. Discharge piping in the wet well and piping in the valve vault are missing adequate corrosion protection and showing signs of corrosion.

7.9 References

NOAA Atlas Volume 2.

Recommended Standards for Wastewater Facilities [The Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, 2004].”

City of Sandy. 2015B. Urbanization Study Final Report. Adopted per ordinance 2015-01.

City of Sandy. 2015A. Sandy Market Analysis Update. Accessed 5/3/2018 via internet at <https://evogov.s3.amazonaws.com/media/88/media/22983.pdf>

City of Sandy. 2017. Urban Growth Boundary Expansion Analysis Final Report. Adopted per ordinances 2017-01 and 2017-02.

Flood Insurance Management Agency (FEMA). 2008. Flood Insurance Study for Clackamas County and Incorporated Areas. Accessed 4/24/2018 via internet at https://www.orcity.org/sites/default/files/fileattachments/public_works/page/4511/file/1_of_3.pdf.

National Centers for Environmental Information. 2018. US Normals Data (1981-2010) Map. Report for Headworks Portland Water Bureau station. Accessed 5/3/2018 at <https://gis.ncdc.noaa.gov/maps/ncei/normals>

Oregon Trail School District. 2018. 2017-2018 Current Enrollment Count. Accessed 5/1/2018 via internet at <http://oregontrailschools.com/wp-content/uploads/2018/03/Enrollment-Count-2-28-18.pdf>

PROFESSIONAL SERVICES AGREEMENT

PREAMBLE

This Contract, made and entered into this _____ day of _____, 2022, by and between _____ hereinafter called "Contractor", and the CITY OF SANDY, a municipal corporation of the State of Oregon, hereinafter called "City".

WHEREAS, City has need for the services of a party with the particular training, ability, knowledge and experience possessed by Contractor.

WITNESSETH:

The parties hereto mutually covenant and agree to and with each other as follows:

1. SCOPE OF WORK

The scope of work, is contained in Exhibit A attached hereto and by this reference made a part hereof.

This contract shall supersede any prior representation or contract, written or oral. This contract shall not be subject to modification or amendment except in writing, executed by both parties.

2. DURATION OF CONTRACT

Unless earlier terminated or extended, this contract shall remain in force and effect from the date in the preamble above through December 31, 2022.

3. PAYMENT

City agrees to pay, and Contractor agrees to accept, in full payment for the performance of this contract, according to the fee schedule in Exhibit B attached hereto and by this reference made a part hereof. The fee schedule in Exhibit B may be adjusted annually upon mutual agreement of the parties to reflect inflation and changes in labor and materials costs.

4. CHANGES

This contract and any substantive changes to the scope of work or changes to the contract costs will not be effective until approved in writing by the City.

5. INDEPENDENT CONTRACTOR STATUS

Contractor agrees and certifies that:

- A. Contractor is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to payment under this contract;
- B. Contractor will not, on account of any payments made under this contract, be eligible for any benefit from federal social security, workers' compensation, unemployment insurance, or the Public Employee's Retirement System, except as a self-employed individual;
- C. Contractor is not currently an employee of the federal government or the state of Oregon;
- D. Contractor is not a contributing member of the Public Employees' Retirement System;
- E. Contractor certifies it meets the specific Independent Contractor Standards of ORS 670.600;
- F. Contractor is not an "officer, employee or agent" of City as those terms are used in ORS 30.265.

6. SUBCONTRACTS AND ASSIGNMENT; SUCCESSORS IN INTEREST

Contractor shall not enter into any subcontracts for any of the work required by this contract, excepting those portions of the work specifically described in Exhibit A or assign or transfer any of its interest in this contract without the prior written consent of City. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

7. PAYMENT OF LABORERS

- A. Contractor shall:
 - (1) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the prosecution of the work provided for in this contract;
 - (2) Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this contract;
 - (3) Not permit any lien or claim to be filed or prosecuted against

City on account of any labor or material furnished; and

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

B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this contract as such claim becomes due, City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of such contract.

C. The payment of a claim in this manner shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

8. PAYMENT FOR MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION

Contractor shall promptly, as due, make payment to any person, co-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 Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

Contractor, its subcontractors, if any, and all employers working under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

9. OVERTIME AND HOLIDAYS

Persons employed by Contractor under this Personal Services Contract shall receive at least time and a half pay for work performed on the following legal holidays:

- A. New Year's Day on January 1
- B. Memorial Day on the last Monday in May
- C. Independence Day on July 4
- D. Labor Day on the first Monday in September
- E. Thanksgiving Day on the fourth Thursday in November
- F. Christmas Day on December 25

and for all overtime worked in excess of forty [40] hours in any one week, except for individuals who are excluded under ORS 653.101 to 653.261 or under 29 U.S.C., Sections 201 to 209, from receiving overtime.

10. TIME LIMITATION ON CLAIM FOR OVERTIME

Any worker employed by Contractor shall be foreclosed from the right to collect for any overtime under this contract unless a claim for payment is filed with Contractor within ninety [90] days from the completion of the contract, providing Contractor has:

A. 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

B. Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

11. ERRORS

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

12. DEFAULT

City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of the contract:

A. If Contractor fails to provide services called for by this contract within the time or in the manner specified herein, or any extension thereof; or

B. If Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten [10] days or such longer period as City may authorize.

Upon termination, City will pay Contractor for only the value to City of work actually performed. The rights and remedies of City provided in the above clause related to defaults (including breach of contracts) by Contractor shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

13. OWNERSHIP OF WORK

All work products of Contractor, including background data, documentation and staff work that is preliminary to final reports, which result from this contract are the exclusive property of City. If this contract is terminated by either party or by default, City, in addition to any

other rights provided by this contract, may require Contractor to transfer and deliver such partially completed reports or other documentation that Contractor has specifically developed or specifically acquired for the performance of this contract.

14. INDEMNITY AND HOLD HARMLESS

Contractor shall indemnify and hold City, its officers and employees, harmless against all liability, loss or expenses, including attorney's fees, and against all actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by Contractor's negligent act or omission of an act sustained in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation.

15. INSURANCE

Contractor shall obtain, prior to the commencement of the contract, and shall maintain in full force and effect for the term of this contract, at Contractor's expense, an automobile liability insurance policy for the protection of Contractor and City, its officers, boards, commissions and employees. This policy shall be issued by a company authorized to do business in the state of Oregon, protecting Contractor or subcontractors or anyone directly or indirectly employed by either of them against liability for the loss or damage of personal and bodily injury, contractual liability, death and property damage, and any other losses or damages above mentioned in the combined single limit of \$1,000,000 or the limit of public liability contained in ORS 30.260 to 30.300, whichever is greater. The insurance company shall provide City with an endorsement thereto naming City as an additional insured, providing that no acts on the part of the insured shall affect the coverage afforded to the above policy, and providing City will receive thirty [30] days' written notice of cancellation or material modification of the insurance contract.

Contractor will not perform any work under this contract until City has received copies of applicable insurance policies or acceptable evidence that appropriate insurance heretofore mentioned is in force.

16. STANDARD OF WORK

Contractor will accomplish the work using a standard of performance and care that is currently accepted by other professionals engaged in similar work in the Portland metropolitan area.

17. TERMINATION

This contract may be terminated by mutual consent of the parties, or by City at any time by giving written notice to Contractor no later than fifteen [15] days before the termination date. Contractor shall be entitled to compensation for services performed up to the date of

termination.

18. CONFIDENTIALITY

No reports, information and/or data given to or prepared or assembled by Contractor under this contract shall be made available to any individual or organization by Contractor without the prior written approval of City. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Contractor from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Contractor to defend itself from any suit or claim.

19. PUBLICATION RIGHTS / RIGHTS IN DATA

All publication rights in the product produced by Contractor in connection with the work provided for under this contract, whether in preliminary draft or final form, shall be vested in City.

Contractor shall not publish any of the results of the work without the prior written permission of City.

All original written material and other documentation, including background data, documentation and staff work that is preliminary to final reports, originated and prepared for City pursuant to this contract, shall become exclusively the property of City. The ideas, concepts, know-how or techniques relating to data processing development during the course of this contract by Contractor or City personnel, or jointly by Contractor and City personnel, can be used by either party in any way it may deem appropriate.

Material already in Contractor's possession, independently developed by Contractor outside the scope of this contract or rightfully obtained by Contractor from third parties, shall belong to Contractor. However, Contractor grants to City a non-exclusive, irrevocable and royalty-free license to use such material as it sees fit.

This contract shall not preclude Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered to City pursuant to this contract in developing materials for others, except as provided in this section.

20. ACCESS TO RECORDS

Contractor agrees that City and its authorized representatives shall have access to the books, documents, papers and records of Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

21. ATTORNEY'S FEES

If a suit or action is filed to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.

22. COMPLIANCE WITH APPLICABLE LAW

Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with:

- A. Title VI of the Civil Rights Act of 1964;
- B. Section V of the Rehabilitation Act of 1973;
- C. The Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and
- D. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

23. FOREIGN CONTRACTOR

If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this contract.

24. GOVERNING LAW; JURISDICTION; VENUE

This contract shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between City (and/or any other agency or department of the state of Oregon) and Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusive within the Circuit Court of Clackamas County for the state of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor, by the signature below of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

25. FORCE MAJEURE

Neither City nor Contractor shall be held responsible for delay or default caused by fire, riot, epidemics, pandemics, declared states of emergency, acts of God, or war where such cause was beyond, respectively, the reasonable control of City or Contractor. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

26. MERGER CLAUSE

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS 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 THIS CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

27. EXECUTION AND COUNTERPARTS

This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

CONTRACTOR

Firm Name

By: _____

City/State/Zip

Printed Name

Individual S.S.N. or

Title: _____

Employer ID #: _____

_____, 2022
Date

Check one:

- Sole Proprietor
- Partnership
- Corporation

- Governmental
- Non-Profit

Address

CITY OF SANDY

By: _____
XXXXXXXX XXXXXX
City of Sandy
39250 Pioneer Blvd.
Sandy, OR 97055

_____, 2022
Date

ATTACHMENT C

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

CM/GC GENERAL CONDITIONS

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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 1.2, 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 Subcontractor'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 Citys 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 Citys and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Citys.
- 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

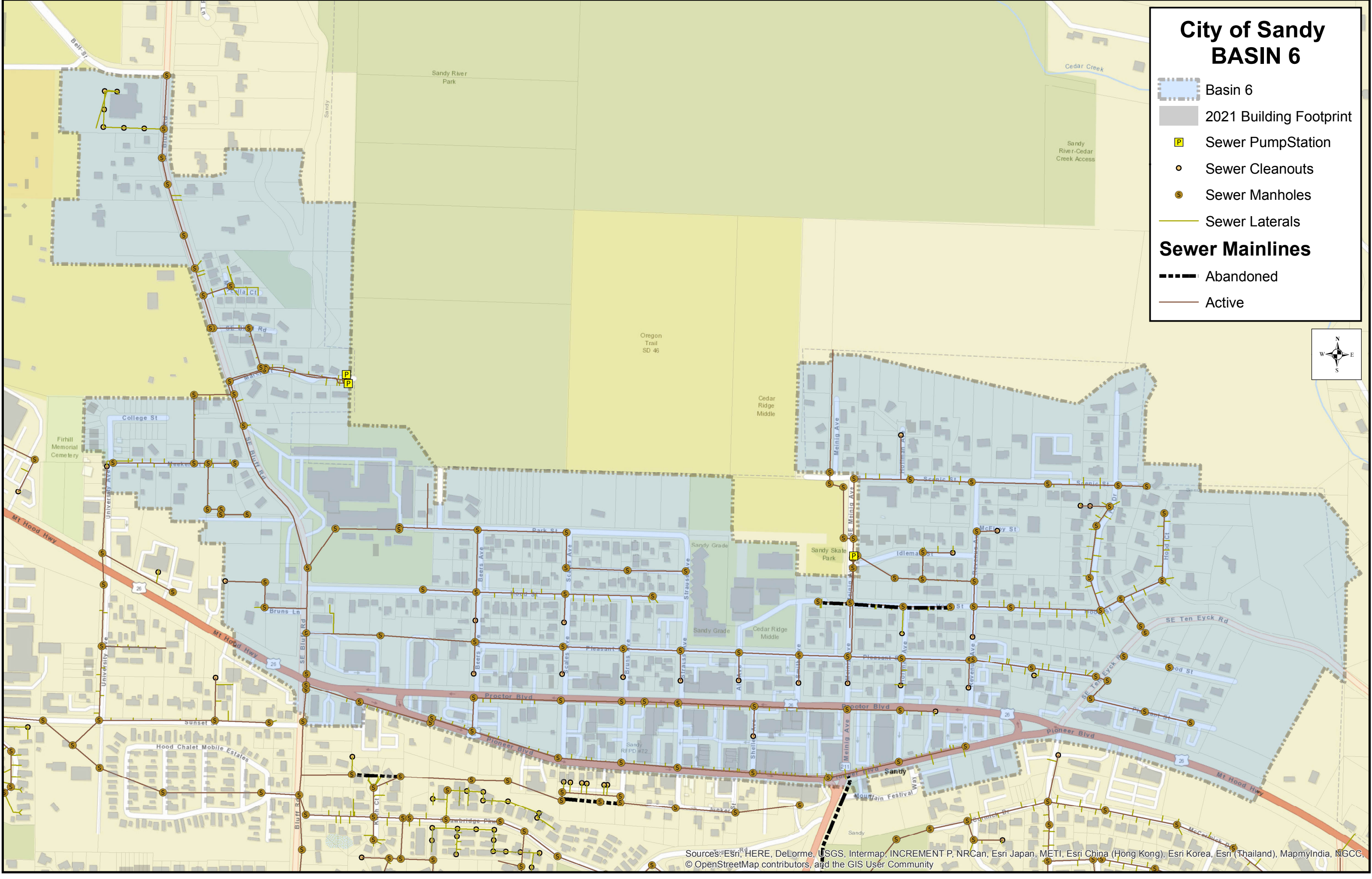
Printed Name and Title

Date

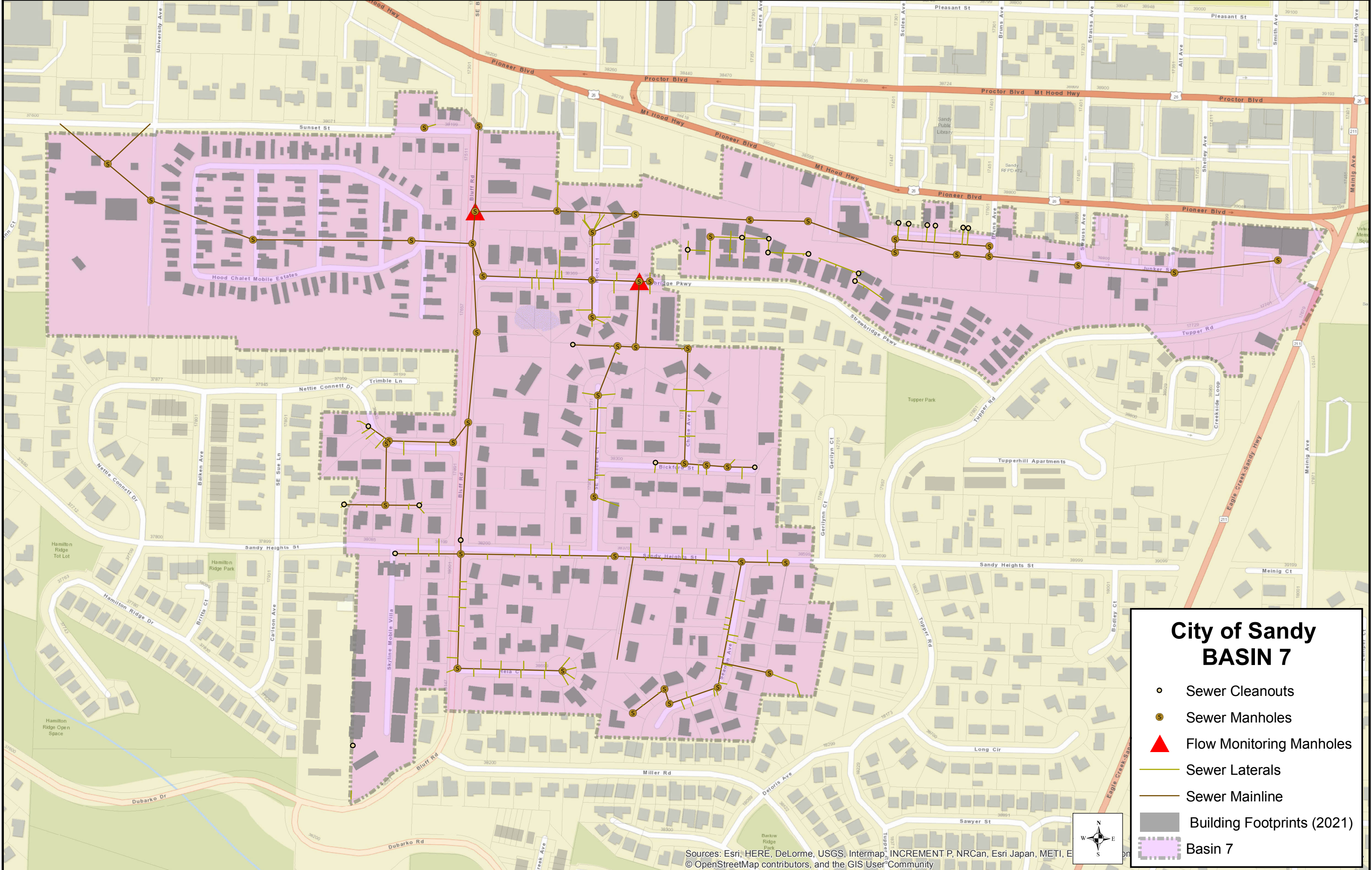
ATTACHMENT D

City of Sandy BASIN 6

-  Basin 6
-  2021 Building Footprint
-  Sewer PumpStation
-  Sewer Cleanouts
-  Sewer Manholes
-  Sewer Laterals
- Sewer Mainlines**
 -  Abandoned
 -  Active

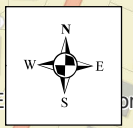


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City of Sandy BASIN 7

- Sewer Cleanouts
- Sewer Manholes
- ▲ Flow Monitoring Manholes
- Sewer Laterals
- Sewer Mainline
- Building Footprints (2021)
- Basin 7



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, E
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Basin 6						
Diameter (in.)	No Data	PVC	CSP	DI	CI	Totals (LF)
No Data	1,069					1,069
6"	337	285	2,628		639	3,889
8"	3,627	8,188	11,432			23,247
10"	577					577
12"	448		328			776
15"						-
Total (LF)						31,828

MANHOLES	118
CLEAN OUTS	23
LATERALS	530

Basin 7					
Diameter (in.)	No Data	PVC	CSP	CI	Totals (LF)
6"	475		1,680	125	2,279
8"		868	7,918	610	9,395
10"					-
12"		106	895		1,001
15"			1,403		1,403
Total (LF)					14,079

MANHOLES	56
CLEAN OUTS	22
LATERALS	332