

REQUEST FOR PROPOSALS

CITY OF SANDY, OREGON

2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project

CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES

PART I SOLICITATION REQUIREMENTS

SECTION A. GENERAL INFORMATION

1. INTRODUCTION

The City of Sandy, Oregon (“CITY” or “OWNER”) is seeking proposals from individuals, firms, or teams, hereafter called “Proposer(s),” with demonstrated experience in the construction of sanitary sewer system rehabilitation and improvements using the Construction Management/General Contractor (CM/GC) Services alternative delivery method for the 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project (“Project”). The Sandy City Council, acting as the local contract review board, held a duly noticed public hearing on April 18, 2022 and approved use of the CM/GC delivery method through the adoption of a resolution and associated findings. The CITY is conducting this procurement in accordance with ORS 279C.337 and the Oregon Attorney General’s rules regarding use of the CM/GC delivery method.

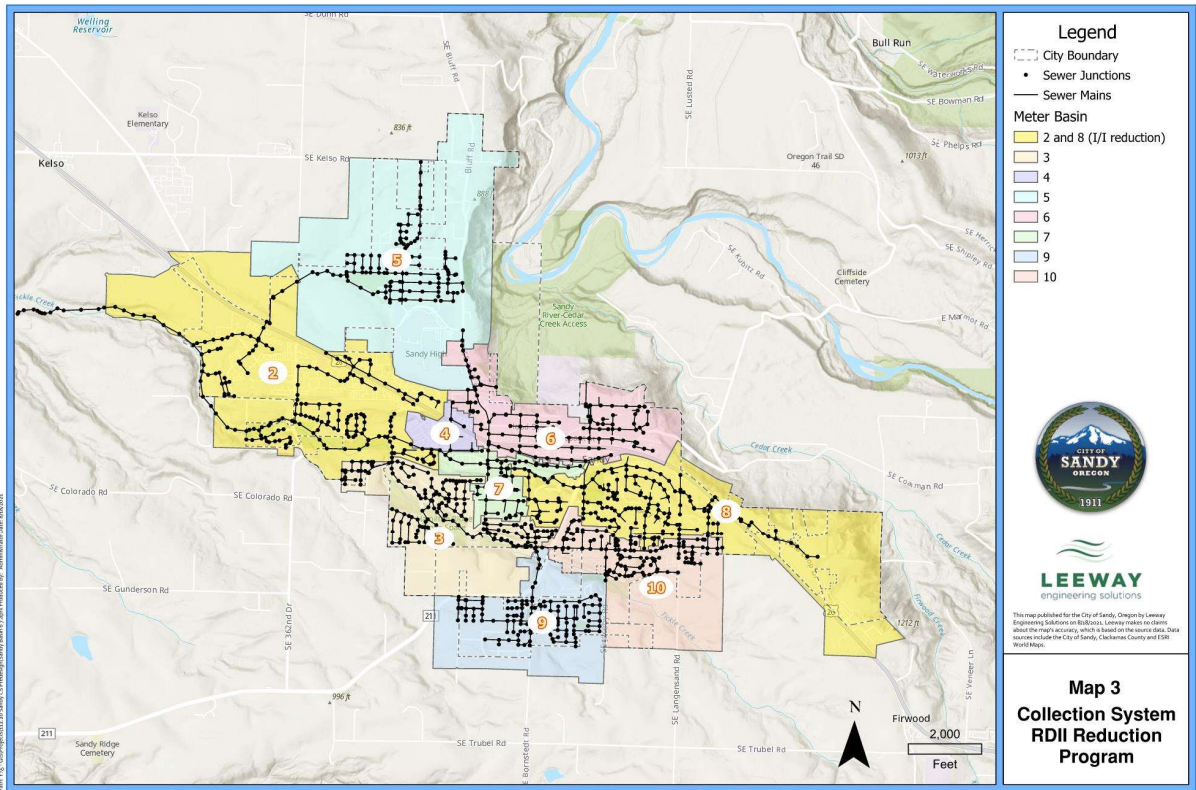
The OWNER has retained the following consultants in the development and design of the Project: ENGINEER and OWNER’s REPRESENTATIVE: Leeway Engineering Solutions, LLC. This consultant is not eligible to submit a proposal for the Project, nor is it eligible to serve as a subcontractor to a Proposer on the Project. Additionally, the CM/GC will be required to report to the OWNER and collaborate with the Project Team, the OWNER and the ENGINEER.

The Project will design and construct repairs on public sewer pipes in Sandy, which is located about 25 miles east of Portland, with a population of about 11,000 residents. Repairs will protect the public and the environment by reducing the possibility of sewage releases to buildings and streets, and by reducing flows to the wastewater treatment plant. This project is part of a greater effort in Sandy to improve the wastewater system. Improvements made under other projects will include upgrades to the existing treatment plant, new treatment facilities, and a new outfall. These projects depend on reduced flows in the collection system, so the successful, timely construction of pipeline rehabilitation is critical to the timelines and design parameters of the other projects. The timeline for this project is to get construction underway in summer of 2022 and to wrap up construction in the end of 2022.

The general project area is comprised of Meter Basins 6 and 7, the oldest basins within the Sandy collection system. They are centrally located by downtown Sandy. Basin 6 is located on the east end of town North of Highway 26 with Basin 7 located further southwest of Basin 6 as seen in the Figure 1 below. These basins are general targeted areas and do not represent absolute limits or extents of the project area. Rehabilitation will be prioritized based on findings during the first phase of the project and may occur outside of those basins, if deemed appropriate by the OWNER during the preconstruction

design phase. The majority of rehabilitation will use trenchless methods such as cured-in-place-pipe lining (CIPP), with a smaller amount of open-cut excavation required.

Figure 1. Map Displaying Project Location and Outline of Meter Basin



2. BACKGROUND

The successful Proposer will provide Pre-Construction Services as described in PART I, SECTION B. 1 CM/GC SERVICES. Upon successful negotiation of a Guaranteed Maximum Price (“GMP”) with terms and conditions acceptable to the OWNER, the OWNER may enter into one or more separate construction contracts with successful Proposer for project construction. The draft 30% Project design is completed, see Attachment A; however, the CM/GC will base its work on the latest available complete plan set. The major elements of the Project include the following:

Preconstruction Phase

- Coordinate with OWNER and ENGINEER on selection of most appropriate rehabilitation methodologies
- Determine mainline and lateral bypassing

Sanitary Sewer Improvements

- CIPP, Pipe Bursting, or Replacement: approx. 36,000 linear feet of 6-, 8-, 10- and 12-inch diameter sewer pipe
- Reinstate and rehabilitate approximately 613 active laterals
- Install or replace manholes appearing to be sources of infiltration

Project Considerations and Goals

Using collaboration and integration, the proposed Project will bring together project management, design and construction resources to rehabilitate the sanitary sewer collection system serving the City.

The goals of the Project are:

1. **Public Safety** – Assure that the construction of the Project will occur without incident to the public.
2. **Schedule and Budget** - The Project must stay within the agreed upon budget and schedule as determined during the Phase 1: Pre-Construction Services.
3. **Contract Performance** - Provide effective and efficient Contract performance with reciprocal Team cooperation for delivery of this important Project.
4. **Public Involvement and Outreach** – Interacting with residents, business owners and other individuals before and during construction will be part of this project.

3. DEFINITIONS

These definitions apply to the Request for Proposal:

Definitions

These definitions apply to the Request for Proposal (RFP):

OWNER: The OWNER is further defined as the City of Sandy, Oregon, which is synonymous with the City and its Public Works Department.

ENGINEER: The individual, partnership, corporations, joint-venture, or other legal entity retained by the OWNER for design services on the project and named as such by the OWNER. The ENGINEER for the Project is Leeway Engineering Solutions, Inc.

CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC): The individual, firm, partnership, joint venture or corporation, or other legal entity who has entered into a Contract with the OWNER for the Work.

PROPOSER: The individual, partnership, corporation, joint-venture, or other legal entity that delivers a Proposal for possible selection by the OWNER as the CM/GC for the Phase 1 Pre-Construction Services and potentially Phase 2 Construction Services for the Project.

PROJECT: References to the “Project” refer to the Basins 6 and 7 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project.

OWNER intends to contract with the successful Proposer in two phases, with separate contract amounts and negotiations for each phase. For Phase 1, the successful Proposer will provide Pre-Construction Services during the design phase of the Project. At the completion of the 90% design stage, or sooner, the successful Proposer will be requested to provide a Guaranteed Maximum Price (GMP), to act as CM/GC for the construction, and assume the risk of delivering the Project on schedule at or under the GMP.

Acceptance of the GMP by OWNER and Notice to Proceed (NTP) will initiate Phase 2, which will include providing complete construction services for the actual construction of the Project.

1. **Phase 1 – Pre-Construction Services.** The Pre-Construction Services will include, but are not limited to; participating in design meetings, inspecting pipelines, investigating laterals, estimating and controlling cost, developing schedules, assisting with permits, reviewing plans and specifications and reviewing proposed project constructability. In addition, the CM/GC will help develop the construction scope of work, construction schedules, and the GMP for the construction phase of the work. All work performed during Phase 1 shall be performed on an hourly rate, not-to-exceed basis, up to the contracted amount for Phase 1. Scope for this work is further detailed below.

The OWNER reserves the right to terminate the successful Proposer's services at any time during Phase 1 and continue with an alternate CM/GC procurement or other procurement, if deemed in the best interests of the OWNER. If this occurs, the successful Proposer will be paid at the agreed upon contract amount for services rendered up to termination. Payment will be made based on an hourly rate, not-to-exceed basis, up to the Phase 1 – Pre-Construction Services project amount.

2. **Phase 2 – Construction Services.** If the OWNER accepts the GMP, which it may choose or decline to accept in its sole discretion, the OWNER and successful Proposer will enter into a GMP amendment. After the GMP amendment is executed, Phase 2 will begin. This final phase of the work includes construction, management, and completion of all construction work elements within the required schedule on a GMP basis.

Construction will occur in the summer of 2022. OWNER reserves the right to authorize early construction work prior to execution of the GMP amendment, as may be permitted in the contract between OWNER and the successful Proposer.

4. DETAILED CM/GC SCOPE OF WORK

Phase 1: Pre-Construction Services Scope of Work

The successful CM/GC Proposer (CM/GC) will provide pre-construction phase services under the terms of the CM/GC Contract (Contract) between OWNER and the CM/GC. The OWNER will provide the form of the Contract in an addendum to this RFP. The CM/GC will be responsible for producing and submitting all deliverables and providing all administrative and overhead support necessary to support the Pre-Construction services as delineated in the RFP. Phase 1 Pre-Construction Services shall be complete within 90 calendar days of Phase 1 NTP. Tasks for this work are further detailed below.

1. **Project Partnering and Administration** – Partnering is critical to the success of a CM/GC Project and the Pre-Construction Services Phase begins with a Project Kick-off/Orientation Meeting with the OWNER, which will include City staff, ENGINEER, other key stakeholders as invited by OWNER, and the CM/GC. CM/GC will provide all administrative and overhead support necessary to support the Phase 1 Pre-Construction Services scope of work.
2. **Collaborative Project Design** – Advise, assist, and provide recommendations to OWNER on all aspects of the design of the work, construction planning, scheduling, and safety and risk issues.

Provide input regarding current construction industry practices or innovations as they may relate to the design.

Provide input on project pipeline system rehabilitation methodology and improvements. Provide input regarding the current labor market, materials availability, and any feedback on suppliers or installations that the CM/GC may have had problems in the past. Provide both written and oral recommendations to OWNER to establish procedures for expediting and streamlining the processing of shop drawings, requests for information, scope changes and other documents. Design collaboration meetings to occur every other week during Phase 1.

3. **Preconstruction Investigations** –Provide elevation survey, including pipeline inverts, diameters and manhole depths as needed.
4. **Constructability Reviews (CR)** – The following CR services shall be provided:
 - a. CR to include:
 - i. Alternatives
 - ii. Benefit of alternatives to OWNER and project
 - iii. Lateral rehabilitation options
 - iv. Costs
 - v. Schedule
 - b. Provide constructability comments continuously throughout the design development. One formal plan review will be completed at the 90% design level for each GMP package; for this review, the CM/GC shall provide written constructability review comments and cost- savings comments on plan sets. Provide input and advice to OWNER and the DESIGNER with respect to construction feasibility, alternative materials, products, layouts, utility impacts, and/or construction means and methods.
5. **Project Management Plan (PMP)** - Submit a Project-specific PMP for Phase 1 activities. The PMP shall include a communications plan, quality plan, risk management plan, cost control and records management.
6. **Construction Procurement Plan** - Develop and submit Construction Procurement Plan for review by the OWNER and ENGINEER. The CM/GC shall submit draft Construction Procurement Plans within 30 calendar days of the completion of the Constructability Report (Task 5 above). There is no minimum percentage of work that must either be subcontracted or self-performed. The final Construction Procurement Plan must be approved by the OWNER before the Phase 2 contract will be awarded. The OWNER will review and may provide feedback on subcontractors, materials, or other aspects of the Construction Procurement Plans.

The Construction Procurement Plan shall include a detailed approach to self-performed and competitively bid work that meets the City's requirements. Recommend separation of the work to facilitate bidding and award of trade contracts considering fast-tracking of construction, minimizing trade jurisdiction disputes, reducing or eliminating "scope gaps" between trades, and other related issues. Work with OWNER and ENGINEER to identify long lead-time materials and equipment. Develop a procurement strategy to mitigate potential schedule impacts due to identified long-lead items.

7. **Construction Management Plan (CMP).** This CM/GC CMP includes, but is not limited to, identifying storage areas, lay-down areas, disposal site(s) for excavated materials, storage sites for excavated materials to be used as backfill, contractor temporary office location(s), and other construction logistics as requested. This plan will include staging and phasing that addresses the need to minimize impacts of construction to nearby residences and businesses. Access to residences and businesses must be maintained throughout the Project. The CMP must be complete by the end of Phase 1 Pre-Construction Services.

Early Work Package (EWP) Implementation: If OWNER wishes to initiate implementation of EWPs not already identified in this RFP prior to NTP for Phase 2: Construction Services, CM/GC shall create a specific EWP Scope of Work in consultation with OWNER.

8. Develop and submit **Traffic Control Plans (TCP)** for review by the City and ODOT (if necessary) based on plans and specifications used for the development of the GMP. TCPs for Phase 1 are due 2 weeks before scheduled Phase 1 work. TCPs shall follow City, ODOT, and MUTCD standards and guidelines.

General parameters for the TCP are as follows:

- a. Limited duration detours will be allowed for traffic during pipe construction work.
 - b. Traffic must be maintained on other streets within the project boundaries.
 - c. Pedestrian circulation and access must be included in the TCP, ensuring that temporary pedestrian routes are provided through or around any Project work zone.
 - d. Operation of and access to Sandy Transit (SAM) bus routes must be addressed in the TCP. The TCP for Phase 2 Construction Services must be complete by the end of Phase 1 Pre-Construction Services.
9. Submit a **Site-Specific Safety and Health Plan ("SSSHP")** 30 calendar days from the Phase 1 NTP. SSSHP for Phase 2 is due by the end of Phase 1 Pre-Construction Services.
 10. **Construction Schedule** – Develop a detailed Critical Path Method (CPM) baseline Project schedule showing the duration of construction activities, activity sequence, and constraints. Schedule shall be developed within 45 calendar days following Phase 1 NTP and refined based on continual coordination with the OWNER. The baseline CPM schedule shall meet the overall schedule objectives of the OWNER. The final CPM schedule will be submitted with the GMP and include private and public utility relocation.
 11. **Cost Estimating** – In conjunction with the CR (Task 4 above) the CM/GC will develop a cost estimate for the project and work with the engineer to continuously update it throughout the project design. The CM/GC will provide cost estimates for alternative construction ideas as requested. One formal review of the cost estimate will be completed at the 90% design level for each GMP package. The CM/GC shall develop all construction cost estimates with due diligence as their content is critical to the decision-making process for the execution of the project, funding availability and development of work packages.

Preparation of Cost Estimates should include the following:

- a. Review the scope of work prepared by the Engineer.
- b. Provide a construction cost estimate for the Project based on the 90% Construction Documents. The estimate shall comply with the requirements of the Association for the Advancement of Cost Engineering International (AACE International) Class 2 (+ 20% to - 15%) or Class 1 (+10% to -15%) and be considered the initial foundation for the GMP. This estimate should be developed at the start of the project and built on as the design is developed. At the 90% design level, a formal review will be completed on the final cost estimate that has been built throughout the project design.
- c. Engineer will review estimates. CM/GC will respond to any comments from Engineer.
- d. Provide an updated cost estimate after City acceptance.

12. Guaranteed Maximum Price Proposal – In response to OWNER’s GMP Proposal Request, and in accordance with the terms of the Contract, the CM/GC shall deliver to the OWNER a proposed GMP for the Project for the OWNER’s review and acceptance (the “GMP Proposal”). If any actual Subcontractor offers are available at the time the CM/GC shall use those subcontractor offers in establishing the GMP Proposal. Except as permitted under ORS 279C.337(3), OAR 137-049-0690(5)(k) and the terms of the Contract, the CM/GC’s selection of subcontractors must be competitive.

The GMP Proposal shall be in conformance with the Construction Procurement Plan, based on the 90% Plans and Specifications, and in accordance with the General Conditions of the Contract. If necessary, OWNER and CM/GC shall negotiate the direct cost of the construction in order to agree on a final GMP. Proceeding to the Construction Services Phase (Phase 2) is contingent on the OWNER’s acceptance of the GMP.

The GMP shall be the total of items a through g. GMP Proposal shall be organized according to, and including, the following items:

- a. Cost Model per the following requirements that identifies:
 - i. CM/GC Fee
 - ii. Reimbursable Costs of the Work
 - iii. General Conditions Reimbursement
 - iv. CM/GC Contingency
- b. Updated cost estimate by identifying any changes from OWNER-accepted Cost Estimate (Task 10 above) and any deviations from OWNER-accepted Construction Procurement Plan (Task 6 above).
- c. Baseline CMP Construction Schedule (Task 10 above) with critical path of the work and include the anticipated Notice to Proceed Date, Substantial Completion Date and Final Completion Date upon which the GMP Proposal is based.
- d. Schedule of Values aligned with GMP.
- e. A list of the Documents, including all addenda thereto as well as list of drawings, technical specifications, reports, pre-construction plans etc. which were used in preparation of the GMP Proposal.
- f. A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP Proposal to supplement the information contained in the Documents.
- g. A list of eligible General Conditions Reimbursement items.

Payment for the construction of the Project will be paid through a Schedule of Values or Bid Schedule developed by the CM/GC and the OWNER and ENGINEER during the Pre-Construction Services Phase. The GMP is not a lump sum contract (although some bid items may be lump sum) and most items are measured and paid at actual quantities. The CM/GC assumes all risk with performance of the bid items, including management of its subcontractors and suppliers. In accordance with ORS 279C.337(2)(g), the OWNER will not pay any amount that exceeds the GMP as reflected in the GMP amendment, unless the excess amount results from material changes to the Scope of Work set forth in the Contract and the OWNER agrees to the changes in writing. Proposers are encouraged to suggest additional specific services they can offer that may be of benefit to the design and pre-construction planning activities described for Phase 1 above. Proposer shall identify any additional service and the cost for each additional service being offered and describe the benefit to the OWNER.

Except as OWNER may otherwise agree in the Contract, any savings the CM/GC realizes in its performance of the Work will accrue solely to the OWNER. The terms "savings" or "cost savings" for the purposes of this procurement and the Contract are defined in ORS 279C.337(4).

Phase 2: Construction Services Scope of Work

Acceptance of the GMP by OWNER and Phase 2 NTP initiates the second phase, which will include complete construction services for the actual construction of the Project. The successful Proposer shall be responsible for construction means, methods, sequencing, scheduling, coordination, selection and supervision of subcontractors (subject to OWNER review under the terms of the Contract), and self-performing a portion of the Work, per the Contract Documents. Phase 2 Construction Services required of the successful Proposer include, but are not limited to, the following tasks:

1. Procure and furnish payment and performance bonds prior to execution of the construction contract.
2. Provide necessary insurance coverages and certificates, consistent with the Project General Conditions, prior to the execution of the construction contract.
3. Identify any proposed changes from Phase 1 in Key Personnel (as identified in Proposal) and obtain OWNER approval for such change(s). Identify any changes from Phase 1 in OWNER-approved Subcontractors and obtain OWNER approval for such change(s).
4. Update and submit **Project Management Plan** within 30 calendar days of acceptance of the GMP.
5. Update and submit **Site-Specific Safety and Health Plan (SSSHP)** within 30 calendar days of accepted GMP.
6. Work with the OWNER and update the Public Communications Plan as necessary.
7. Update and implement plans developed during the Pre-Construction Services Phase including:
 - a. Project Risk Management Plan
 - b. Any other plans as required during the Pre-Construction Services Phase.

- 8.** Maintain a critical path schedule and fully advise the OWNER of work progress status. Provide monthly reports of work progress in comparison to estimated scheduled Projections. Explain significant variations and provide supporting information, as required by the OWNER. Develop schedule recovery action plans if Project work lags behind projected work schedule by greater than 30 calendar days.
- 9.** Make available all cost and budget estimates, including supporting materials and records to the OWNER. Provide monthly reports of actual costs in comparison to estimated cost projections. Explain significant variations and provide supporting information, as required by OWNER or OWNER's REPRESENTATIVE. Develop recovery action plans when required.
- 10.** Provide the following reports, as required by OWNER:
 - a.** Monthly Payment Applications with supporting documentation
 - b.** Three-week construction activity forecast (three-week look ahead)
 - c.** Weekly construction status report
 - d.** Monthly Project update report
 - e.** Monthly Updated Comprehensive Construction Schedule
 - f.** Monthly Bureau of Labor and Industries (BOLI) Certified Payroll reports
 - g.** Supporting document as required by any special funding sources
- 11.** Provide the following coordination and administration services:
 - a.** Project Superintendent - Maintain the originally identified, full-time Superintendent(s) as identified in the Proposal with necessary staff at the active work site to coordinate and provide direction of the work. The Superintendent will be required to ensure adequate Quality Control management, Project Scheduling and Project Site Safety Management.
 - b.** Provide additional staff, as required, to properly manage the Project and ensure conformance with plans and specifications.
 - c.** Conduct daily internal staffing and planning meetings.
 - d.** Maintain adequate security staff and facilities for work. Procure and maintain staging area if one is determined to be necessary.
 - e.** Coordinate with all public and private utility providers in the project area. Coordinate all public and private utility work done by others.
 - f.** Private property plumbing assessment as necessary for lateral bypassing and rehabilitation work.
- 12.** Plan for and participate in weekly schedule and coordination meetings with the OWNER.
- 13.** Provide contract management services, as described below:
 - a.** Review and process all twice-monthly applications for payment by subcontractors and material suppliers in accordance with the terms of the Contract. Review and resolve, on behalf of the OWNER, all subcontractors' and/or material suppliers' requests for additional costs.
 - b.** Contracts administration as defined in the Contract Documents.
 - c.** Change management as defined in the Contract Documents.
- 14.** Furnish one-year warranty and associated services, per Contract Documents.

15. Implement any other plans as required during the Pre-Construction Services.

5. BUSINESS COMPLIANCE

PROPOSERS shall comply with all applicable federal, state, and local laws and regulations regarding all matters concerning this RFP and its contracts, including conducting business in the City of Portland before a contract award may be made, and agree they are currently in compliance with all tax laws. PROPOSERS shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations.

The Proposer shall be responsible for the following:

Oregon Construction Contractors Board

PROPOSERS must be licensed with the State of Oregon Construction Contractors Board (OCCB) in accordance with ORS 701.005 and any other specialty licensing as required in the RFP specifications prior to submitting a bid to the City. **PROPOSER must have their OCCB license at the time of submitting this proposal in order for the proposal to be considered responsive.**

For information contact:

CONSTRUCTION CONTRACTORS BOARD
700 Summer St. NE, Suite #300
Salem, OR 97310
(503) 378-4621
Website: <http://www.oregon.gov/ccb>

Prevailing Wage Rates

All work on this project is subject to the State of Oregon Bureau of Labor and Industries (BOLI) Prevailing Wages Rates. The Prevailing Wage Rates for the construction work will be the rates in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", including any applicable amendments, in effect at the time the CM/GC contract becomes a public works contract, and which are hereby incorporated into this contract by this reference. The CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting, or when the CM/GC contract enters the construction phase, whichever occurs first.

In accordance with OAR 839-025-0020(8), the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction after the public agency and CM/GC commit to the guaranteed maximum price. The CM/GC contract enters the "construction phase" when the agency first authorizes the performance of early construction-type work directly related to the public works project.

The prevailing wage rates in effect on the date of this solicitation are available online:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. In addition, copies of the current BOLI wage rates that will apply to the Work may be obtained from the Bureau of Labor & Industries, 800 NE Oregon St. #32, Portland OR 97232, and phone (503) 731-4200. However, such rates may change before the CM/GC contract becomes a public works contract. As stated above, the applicable rates for construction are those in existence at the time the construction contract or early work is authorized.

Every subcontract must provide that work on the project is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates. The PROPOSER awarded the contract is required to post a Public Works Bond with the Oregon Construction Contractors Board (OCCB) unless exempt prior to start of work on the project. The Subcontractors awarded the contract are required to post a Public Works Bond with the Oregon Construction Contractors Board unless exempt prior to start of work on the project.

Certification as an EEO Affirmative Action Employer

All PROPOSERS must be certified as Equal Employment Opportunity Employers. **Business Tax Registration**

Prior to commencing any work on the project, the selected CM/GC firm must be in compliance with the City of Sandy’s Business License and Transit Payroll Tax requirements.

6. PROJECT FUNDING

The Proposer’s proposal shall include the proposer’s true estimated cost or fixed price to perform the work regardless of the City’s budgeted funds for this work. If the City and the CM/GC are unable to agree on the terms of a final construction contract or if the project does not proceed to construction for any reason beyond the control of the CM/GC, then the CM/GC shall be reimbursed for the actual costs of providing the services during the pre-construction services phase, in a not-to-exceed amount.

It is anticipated that the work under the contract resulting from this solicitation will be funded by American Rescue Plan (ARPA) Funding.

7. TIMELINE FOR SELECTION

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

Event	Date and Time
Mandatory Pre-proposal meeting	Tuesday, April 26, 2022 at 2:00 PM
Written proposals due	Wednesday, May 4, 2022 at 4:00 PM
Interviews of top proposers (if necessary)	Wednesday, May 11, 2022
Intent to Award issued	Wednesday, May 11, 2022
Phase 1 preconstruction services contract Notice to Proceed	Tuesday, May 17, 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 OWNER within seven (7) days after the date of the Notice of Intent to Award. The OWNER will respond to any timely submitted meeting request with a date and time for the meeting.

SECTION B. CM/GC SERVICES

1. CM/GC SERVICES

The intent of the CM/GC approach is to establish a working relationship based on mutual trust and collaboration between the successful Proposer, OWNER, and ENGINEER. The 2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction Project will be an “Open Book” job, whereby the

OWNER's team may attend any and all meetings and bid openings relating to the Project and have access to any and all of CM/GC's books, accounts and records relating to the Project and will provide overlapping Project and construction management activities.

Phase 1 - Pre-Construction

The selected CM/GC will provide pre-construction services for the Project as set forth in Part I, Section A. 4 - DETAILED CM/GC SCOPE OF WORK.

Phase 2 - Construction

The selected CM/GC will provide Construction Services as set forth in Part I, Section A. 4 - DETAILED CM/GC SCOPE OF WORK, provided a GMP is successfully negotiated.

2. WORK PERFORMED BY THE CITY / OTHERS

The OWNER will make available sufficient hours of staff personnel as is required to meet with the CM/GC and provide such information as required. The ENGINEER will assist the OWNER in overseeing the successful Proposer's work and provide support as needed

Work performed by the City and others will include the following:

Phase 1 - Pre-Construction

1. Develop OWNER's initial Project Work Plan and establish the preliminary budget.
2. Provide 30% preliminary construction documents for CM/GC review.
3. Address comments received from CM/GC from each of the design reviews.
4. Complete the design of the Project and prepare final plans and specifications to be issued for receipt of permits and for construction of the project.
5. Prepare an estimate of construction cost based on the Construction Documents, independent from the CM/GC cost estimate.
6. Manage the CM/GC contractor selection process.
7. Review CM/GC work plans based upon their construction knowledge and relevant Project materials.
8. Analyze program versus budget and adjust/refine them accordingly.
9. Review the cost estimates during design and construction document development and provide feedback.
10. Lead and manage the CM/GC GMP negotiations. Issue the Contract Documents. Approve the GMP program and budget.

11. Manage the CM/GC Contract including issuing payments and approval of change orders. Meet with the ENGINEER and CM/GC as agreed upon to review the status of the Project including review of cost control and schedule updates.
12. Meet with the Stakeholders, ENGINEER and CM/GC through the design phase.
13. Review with the ENGINEER and CM/GC cost control reports, QC reports and Project status at least once per month.

Phase 2 - Construction

1. Oversee and manage Contract with CM/GC.
2. Provide monthly updates on program, costs versus budget and schedule(s).
3. Provide overall construction oversight and coordination, including weekly construction progress meetings.
4. Assure Contract compliance and intended outcomes.
5. Attend regular Project meetings with ENGINEER and CM/GC.
6. Lead public notification process and private property outreach.
7. Manage and coordinate City staff work tasks relevant to the Project.
8. Quality Assurance
9. Submittal reviews
10. Manage Request for Information process
11. Review applications for payment from CM/GC and make progress payments.
12. Review and approve the Project closeout items and punch lists and establish the final closeout and payment of the Contract.
13. Manage the Contract closeout processes.

3. WORK PERFORMED BY THE ENGINEER

The ENGINEER, led by the City, will perform the following work related to this Project:

Phase 1 - Pre-Construction

1. Technical Investigation – Assemble, review, and document all relevant data required for site evaluation and the design work.
2. Meetings – Participate in meetings with OWNER and CM/GC.

3. CM/GC Process – Work with the CM/GC in a collaborative way to achieve Project goals.
4. Permit Documents – Provide documents for OWNER-furnished permits.
5. Construction Documents – Provide final documents for construction.

Phase 2 - Construction

1. Participate in weekly meetings, and other coordination meetings as appropriate/required.
2. Review and respond to RFIs, submittals, and change orders.
3. Provide Construction Management services.
4. Site observations.

4. DELIVERABLES AND SCHEDULE

Deliverables shall be considered those tangible resulting work products that are to be delivered to the City such as draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings, reports, and as built drawings.

At a minimum, deliverables and schedule for this project shall include:

Phase 1 - Pre-Construction Services (including but not limited to the following)

1. Schedule: initial, revisions, and final
2. Report of Findings from preconstruction investigations completed in the Preconstruction Phase. The report shall include elevation survey, including pipeline inverts, pipe diameters and manhole depths
3. Constructability Reviews
4. Plans identified in Part I Section A. 4 as “DETAILED CM/GC SCOPE OF WORK”, including:
 - a. Project Management Plan
 - b. Construction Procurement Plan
 - c. Construction Management Plan (CMP)
 - d. Traffic Control Plans
 - e. Site-Specific Safety and Health Plan (SSSHP)
 - f. Erosion Control Plan
5. Detailed Schedule of Values
6. Critical Path Method (CPM) Baseline Project Schedule
7. Detailed Construction Cost Estimates with CR, 90% design.

8. Monthly Subcontractor/Sub-Consultant Payment and Utilization Report (see Part II, Section D.5).
9. Guaranteed Maximum Price Proposal
10. Permit submittals (for permits secured by CM/GC) and permitting support materials to assist the City in acquiring the permits and approvals for permits to be obtained by the OWNER.

Phase 2 - Construction Services

1. Project field office, if deemed necessary
2. Temporary utilities as necessary
3. Construction staging area and requisite signage and protective measures
4. Site protection fencing or other security measures
5. Permits (for permits secured by CM/GC)
6. Monthly Progress Reports as including but not limited work completed and in progress, report on the three-week schedule look ahead, updated CPM schedule, updated cost estimates
7. Bonds and Contractor-furnished insurance
8. Lien waivers from all subcontractors
9. RFI, Change Order, and Contingency Request Logs
10. Approved submittal logs
11. Monthly and final reports of all construction costs
12. Critical Path Schedule updated monthly including a four-week schedule 'Look Ahead', schedule variances.
13. BOLI Certified Payrolls
14. Monthly Subcontractor Payment and Utilization Report (see Part II, Section D.5)
15. Monthly requests for payment
16. Updates, as appropriate, and implementation of plans prepared in Phase 1 Pre-Construction including:
 - a. Project Management Plan
 - b. Construction Procurement Plan
 - c. Construction Management Plan (CMP)
 - d. Traffic Control Plans
 - e. Site-Specific Safety and Health Plan (SSSHP)

17. Additional preparation of the following plans:

- a. Shoring Plan
- b. Pollution Control Plan
- c. Sewer Bypassing Plan

18. Deferred submittals as required in Contract Documents

19. Construction of all required renovations – permanent and temporary

20. Warranties

21. Close out documentation

22. Project photos and photo log monthly

23. Quarterly construction cash flow projections

24. Special funding forms and documentation, as required by 3rd party funding agencies (e.g., DEQ ARPA, etc.)

Schedule will be according to Table 1. Project Schedule.

Table 1. Project Schedule

Description	Start Date		Completion
Phase 1 Preconstruction Notice to Proceed	05/17/2022	to	08/12/2022
Design 90% and GMP			06/28/2022
Phase 2 Construction Notice to Proceed	08/12/2022	to	12/29/2022
Substantial completion Phase 2 Construction			12/15/2022

All deliverables and resulting work products from this Contract will become the property of the City of Sandy.

SECTION C. PROJECT ATTACHMENTS

Attachment A – Draft 30% Design

Attachment B – General Conditions

Attachment C – Sample Contract

ATTACHMENT A

City of Sandy, Oregon

2022 Sanitary Sewer Rehabilitation for Inflow and Infiltration Reduction

Draft 30% Design Basins 6 and 7



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

Vertical Datum (NA - no elevations referenced)

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Project Pipes Technology

- Burst
- CIPP
- Pipe with Spot Repair
- CCTV and Rehab
- CCTV

Project Junctions

- Cleanout
- Manhole
- Other or Unknown

Project Laterals

- Project Laterals

Sanitary Sewer

- Gravity Main (SS)
- Pressure Main
- Abandoned Main
- Manhole
- Cleanout
- Other or Unknown

Sewer Laterals

- Gravity
- Pressure
- Abandoned or Plugged

Symbols

Stormwater Drainage

- Gravity Storm Main (SD)
- Stream routes
- Storm Manholes
- Catch Basins
- Storm Laterals
- Storm Cleanouts

Other Utilities

- Optical Cable
- Main (W)
- Service Line

Electric Utility

- Underground Power
- Secondary Underground Power
- Underground Structures

Other Background Information

- Outside Project Area
- Match Lines
- Taxlots
- Building footprints
- Federally Protected Wetlands

GENERAL NOTES

1. VERIFY LOCATIONS, ELEVATIONS, TYPES AND SIZES OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION. ELEVATION ADJUSTMENTS SHALL BE EXPECTED AND ARE INCIDENTAL TO THE WORK.
2. NOT ALL EXISTING UTILITIES ARE SHOWN. LOCATIONS OF EXISTING UTILITIES SHALL BE CONSIDERED AS APPROXIMATE ONLY. AS REQUIRED BY STATE LAW, THE CONTRACTOR SHALL OBTAIN UTILITY LOCATES PRIOR TO COMMENCING CONSTRUCTION.
3. ALL EXISTING FEATURES INCLUDING BUT NOT LIMITED TO ROADWAYS, STRUCTURES, LOTS, CURBS, SIDEWALKS, FENCES, WALLS, PLANTING, DITCHES, MAILBOXES, SIGNS, PIPING AND UTILITIES DISTURBED DURING CONSTRUCTION SHALL BE RESTORED TO AS GOOD OR BETTER THAN EXISTING CONDITION AS DETERMINED BY THE OWNER. REPAIR ALL UTILITY SERVICES DAMAGED DURING CONSTRUCTION AND SUCH REPAIR SHALL BE CONSIDERED INCIDENTAL UNLESS PROVIDED FOR OTHERWISE IN THE SPECIFICATIONS.
4. FINAL LOCATIONS OF ALL NEW FACILITIES SHALL BE FIELD VERIFIED WITH ENGINEER PRIOR TO CONSTRUCTION.
5. PROVIDE "AS CONSTRUCTED" DRAWINGS TO THE ENGINEER INDICATING ALL CHANGES IN GRADE, ALIGNMENT, FITTINGS AND MATERIALS INSTALLED AND ANY OTHER UTILITIES OR OBSTACLES NOT SO INDICATED ON THESE PLANS.
6. AT THE END OF EACH WORKDAY ALL OPEN TRENCHES SHALL BE BACKFILLED OR OTHERWISE PROTECTED TO THE SATISFACTION OF THE ENGINEER.
7. SUPPORT AND PROTECT AS NECESSARY ANY PIPE OR CONDUIT EXPOSED AS PART OF THE NEW WORK. MAINTAIN ALL EXISTING UTILITIES IN SERVICE AT ALL TIMES AND SHALL COORDINATE WITH RESPECTIVE UTILITY COMPANIES TO MAINTAIN AND PROTECT SERVICES.
8. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING CONSTRUCTION SURVEYS. PRIOR TO CONSTRUCTION, FIELD LAYOUT SHALL BE APPROVED BY ENGINEER.
9. REVIEW PREVIOUS CCTV INSPECTIONS AND INSPECT SEWERS FOR OBSTRUCTIONS THAT NEED TO BE REMOVED PRIOR TO REHABILITATION WORK.
10. ATTENTION: OREGON LAW REQUIRES THE CONTRACTOR TO FOLLOW THE RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. THE CONTRACTOR MAY OBTAIN COPIES OF THE RULES BY CALLING THE UTILITY NOTIFICATION CENTER. (NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS 1-800-332-2344).
11. THE CONTRACTOR SHALL REPLACE ANY AND ALL SURVEY MONUMENTS WHICH ARE AFFECTED BY THE CONSTRUCTION. ALL MONUMENTS WILL BE RESET BY A LICENSED LAND SURVEYOR.
12. CONTRACTOR SHALL MAINTAIN A MINIMUM HORIZONTAL SEPARATION OF TEN (10) FEET BETWEEN WATER MAINS AND SEWER MAINS MEASURED EDGE TO EDGE. (SEE OAR 340-052, DIVISION 52, APPENDIX A AND OAR 333-061-0050(g)).
13. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL REQUIRED PERMITS FOR WORKING IN PUBLIC RIGHT-OF-WAYS (I.E., ODOT, CITY, COUNTY).
14. CONTRACTOR SHALL COORDINATE WITH LOCAL RESIDENCES FOR INTERRUPTION OF SEWER SERVICE. PROVIDE RESIDENCES WITH 24 HOURS NOTICE PRIOR TO DISRUPTION OF SERVICE. AT NO TIME SHALL A RESIDENCE HAVE THEIR SEWER SERVICE INTERRUPTED FOR ANY EXTENDED PERIOD. WORK FOR THE DAY OR WEEK WILL NOT END UNTIL ALL RESIDENCES HAVE BEEN RECONNECTED TO SEWER SERVICE.
15. PROTECT OPEN EXCAVATIONS DURING NON-WORKING HOURS WITH METAL PLATES OR OTHER APPROVED METHODS.
16. SUBMIT SHOP DRAWINGS FOR PRECAST MANHOLES TO THE ENGINEER PRIOR TO CASTING THE BASE.
17. TEST ALL PIPING AND MANHOLES IN ACCORDANCE WITH THE SPECIFICATIONS INCLUDING PERMEABILITY TESTS AT THE POINT OF MANUFACTURE.
18. FIELD VERIFY ALL SERVICE LATERALS FOR LOCATION, SIZE AND DEPTH AT RIGHT-OF-WAY PRIOR TO INSTALLING THE TEE ON THE SEWER MAIN. PROVIDE NEW CLEANOUT AND CONNECT TO EXISTING SERVICE AT RIGHT-OF-WAY.
19. REPLACE DISTURBED AREAS OUTSIDE OF ROADWAY IN KIND.
20. ALL PIPE DISTANCES ARE MEASURED FROM CENTER OF MANHOLE TO CENTER OF MANHOLE.
21. CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING AND INSTALLING ALL FITTINGS AND APPURTENANCES, AS NEEDED, TO CONNECT NEW SEWER INFRASTRUCTURE TO EXISTING SEWER INFRASTRUCTURE.
22. CONTRACTOR RESPONSIBLE FOR ALL REQUIRED BYPASS PUMPING. SUBMIT BYPASS PUMPING PLAN TWO WEEKS BEFORE PUMPING BEGINS.

GENERAL SANITARY SEWER NOTES

1. SANITARY SEWER LATERALS FROM THE BUILDING TO THE RIGHT-OF-WAY LINE SHALL BE CONSTRUCTED IN ACCORDANCE WITH OREGON STATE DEPARTMENT OF COMMERCE, BUILDING CODES DIVISION, 2017 UNIFORM PLUMBING CODE AND ITS AMENDMENTS. 4" AND 6" LATERALS SHALL BE PVC ASTM 3034. ALL LINES SHALL HAVE TONING WIRE INSTALLED IN THE TRENCH FOR FUTURE LOCATING.
2. CONTRACTOR TO PROVIDE PREFORMED PLASTIC GASKETS IN ALL MANHOLE JOINTS.
3. A COMMERCIAL CONCRETE BONDING AGENT SHALL BE USED ON ALL CONCRETE TO BE GROUTED.
4. ALL MANHOLES SHALL BE 48" DIAMETER WITH CONCENTRIC CONES, EXCEPT AS NOTED OTHERWISE.
5. NO FLAT-TOP MANHOLES TO BE USED WITHOUT CITY APPROVAL.
6. DEFLECTION TESTING SHALL BE CONDUCTED ON ALL NEW SEWERS CONSTRUCTED OF FLEXIBLE PIPE NOT LESS THAN 30 DAYS AFTER TRENCH BACKFILL AND COMPACTION. TESTING WILL CONFORM TO 2008 APWA STANDARD SPECIFICATIONS, SECTION 00445.
7. CONTRACTOR SHALL PERFORM ALL TESTING OF COMPACTION ON SEWER PIPE, MANHOLES AND TRENCH BACKFILLS.
8. MANHOLE EXCAVATIONS AND PIPE GRADES ARE FIGURED FROM THE CENTER OF EACH MANHOLE. SUPPLIERS OF PRECAST MANHOLE BASES SHALL SUBMIT SHOP DRAWINGS SHOWING THE LOCATIONS OF PIPE INLETS AND OUTLETS FOR REVIEW PRIOR TO MANUFACTURING.
9. ALL PERMANENT DROP MANHOLES SHALL HAVE AN INSIDE DROP.
10. MAXIMUM LENGTH OF SEWER LINE BETWEEN MANHOLES SHALL BE 400' UNLESS OTHERWISE APPROVED.
11. REHABILITATE ALL SANITARY SEWER LATERALS CONNECTED TO PROJECT SEWER MAINS OR MANHOLES UNLESS LATERALS ARE PVC OR OTHERWISE DIRECTED BY THE OWNER. LATERALS SHALL BE REHABILITATED TO AS CLOSE TO PRIVATE BUILDING FOUNDATION AS POSSIBLE, UNLESS OTHERWISE SHOWN OR DIRECTED.
12. FOR PIPE BURSTING PIPES, CONTRACTOR MAY ELECT TO REMOVE MANHOLES SLATED FOR REHABILITATION AS PART OF THEIR BURSTING PIT AND INSTALL A NEW MANHOLE. SEE SPECIAL PROVISIONS FOR MEASUREMENT AND PAYMENT.

ASBESTOS SPECIAL NOTE

MATERIALS CONTAINING ASBESTOS MAY BE PRESENT IN UNDERGROUND PIPE SYSTEMS. ALL APPROPRIATE FEDERAL, STATE, COUNTY AND MUNICIPAL RULES, REGULATIONS AND GUIDELINES MUST BE FOLLOWED WHEN WORKING WITH ASBESTOS-CONTAINING MATERIAL. NONFRIABLE MATERIAL MUST BE HANDLED, TRANSPORTED AND DISPOSED OF IN A WAY THAT PREVENTS IT FROM BECOMING FRIABLE AND RELEASING ASBESTOS FIBERS. IF AC PIPE IS SHATTERED, DAMAGED OR BADLY WEATHERED, IT IS CONSIDERED TO BE FRIABLE AND WILL LIKELY RELEASE ASBESTOS FIBERS. DEQ LICENSED ASBESTOS ABATEMENT CONTRACTOR USING DEQ CERTIFIED WORKERS MUST REMOVE ALL FRIABLE ASBESTOS MATERIAL. ANY AND ALL PERMITS AND FEES THAT ARE REQUIRED BY THE DEQ, DOUGLAS COUNTY AND ANY OTHER REGULATORY AGENCY MUST BE OBTAINED BY THE CONTRACTOR PRIOR TO DISPOSING OF THE ASBESTOS CONTAINING MATERIAL. FOR INFORMATION ABOUT ASBESTOS RULES, CONTACT DEQ.

CONSTRUCTION NOTES

- 1 REHABILITATE PIPE WITH CIPP LINER
- 2 BURST PIPE AND INSTALL NEW PIPE OF SAME DIAMETER
- 3 BURST PIPE AND INSTALL NEW PIPE, UPSIZED TO 8"
- 4 BURST PIPE, OPEN CUT LAST 30' FROM ROW TO MH
- 5 OC SPOT REPAIR LIKELY TO ADDRESS CROSS BORE
- 6 REHABILITATE LATERAL WITH CIPP LINER
- 7 RECONNECT LATERAL WITH FUSION SADDLE, RECONSTRUCT LATERAL USING BURSTING OR OPEN-CUT
- 8 RECONNECT LATERALS TO BURST PIPE WITH FUSION SADDLE

- 9 GROUT MH
- 10 REPLACE MH
- 11 UNCOVER, RAISE MH TO GRADE
- 12 REPLACE STORM LID
- 13 INSTALL INSIDE DROP WITH HOOD
- 14 INSTALL CHERNE PLUG
- 15 INSTALL BEAVER SLIDE
- 16 REBUILD MH BASE
- 17 LOCATION OF NW NATURAL GAS DISTRIBUTION MAIN WITHIN 5'. SEE NWN MAPS IN APPENDIX FOR APPROXIMATE LOCATION
- 18 REMOVE ROOTS
- 19 REPLACE TOP 3' OF MH
- 20 GROUT GRADE RING OR CHIMNEY SEAL
- 21 STRUCTURAL REPAIR OF FL
- 22 REFORM CHANNEL
- 23 POTHOLE TO CONFIRM WATER MAIN DEPTH. INSTALL NEW HDPE FROM SSMH0760 TO EDGE OF ROW AND CONNECT TO HDPE BURST PIPE USING HARD COUPLER. ENCASE NEW OPEN-CUT PIPE IN CONCRETE TO TOP OF PIPE ZONE.
- 24 VERIFY STATUS OF SERVICE LATERAL
- 25 REHAB FROM PUBLIC SEWER TO FIRST PRIVATE LATERAL BRANCH
- 26 RESET GRADE RINGS AND FRAME AND COVER
- 27 REHABILITATE 30' OF CSP FROM SSMH0870 TOWARDS SSMH0871 TO 2' PAST THE PIPE MATERIAL CHANGE TO PVC
- 28 UNCOVER, RAISE CLEANOUT TO GRADE
- 29 INSTALL CIPP LATERAL-MAIN CONNECTION THAT EXTENDS UP INTO THE LATERAL A MINIMUM OF 12 INCHES

Collection System
I/I Reduction

General Notes
Basins 6 and 7

Sheet G1 Page 2 of 37

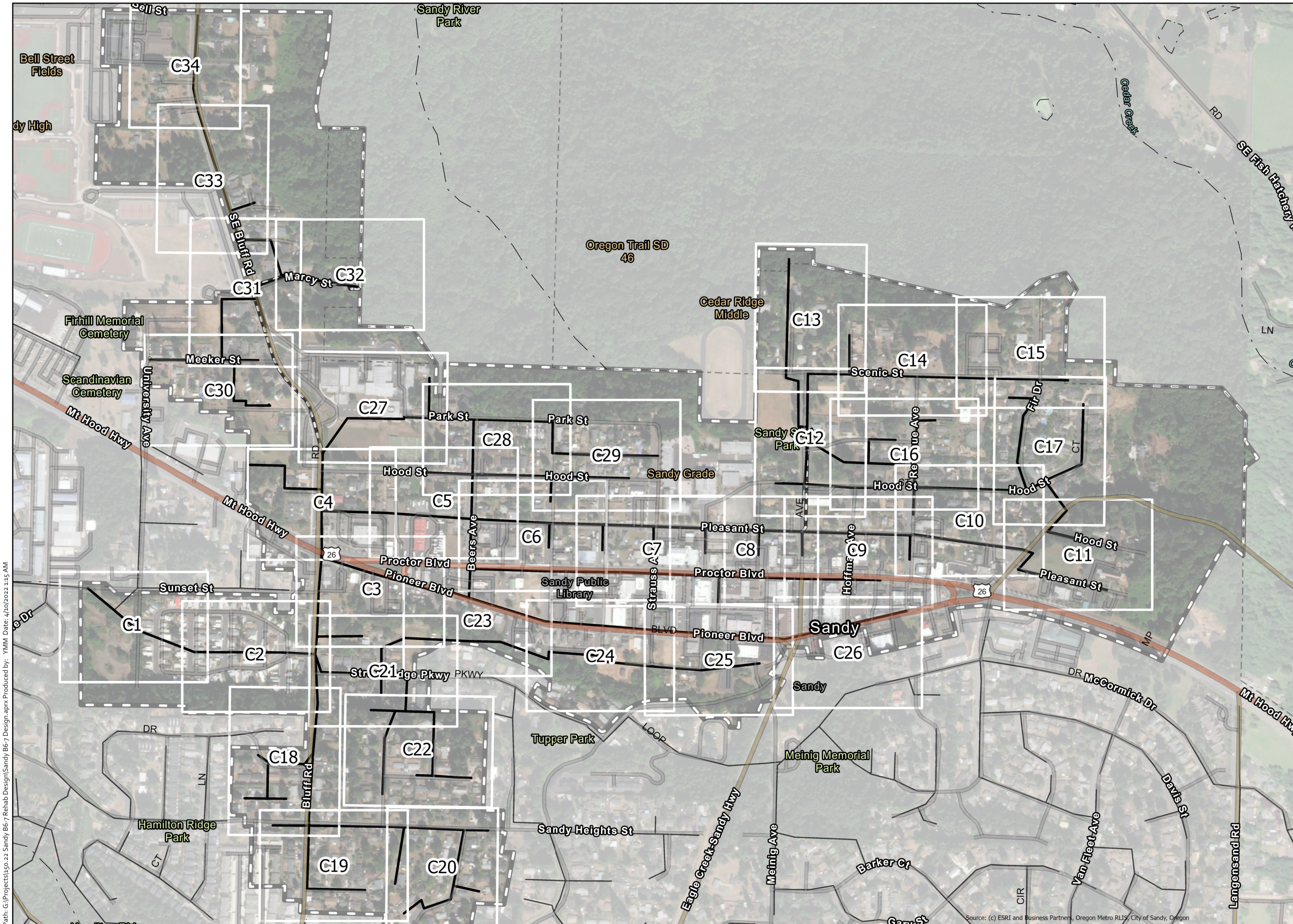
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US Feet



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Basins 6 and 7

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Basins 6 and 7

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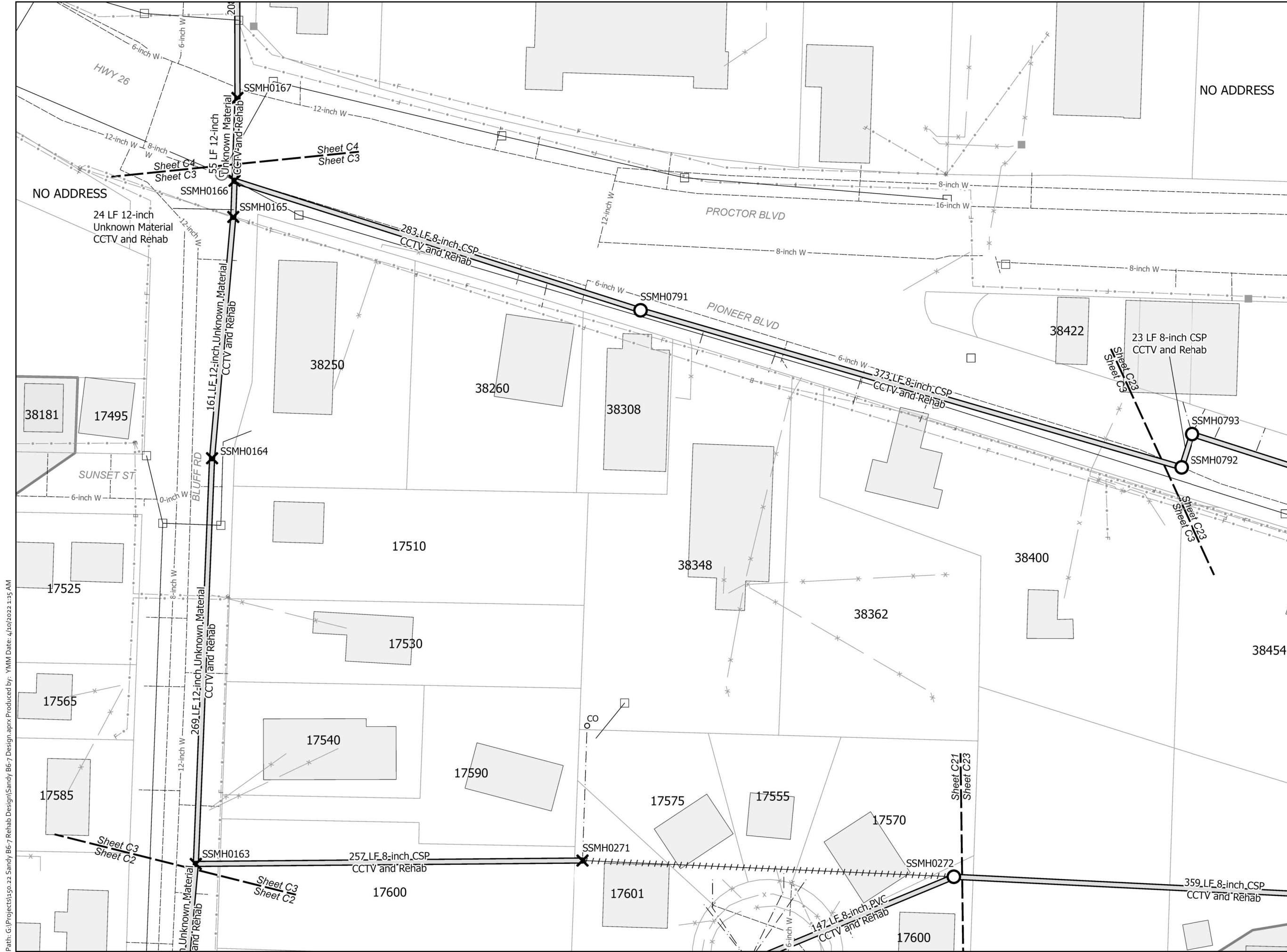
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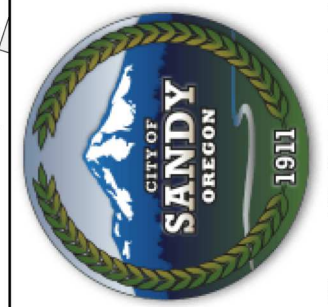
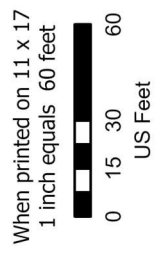
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Basins 6 and 7

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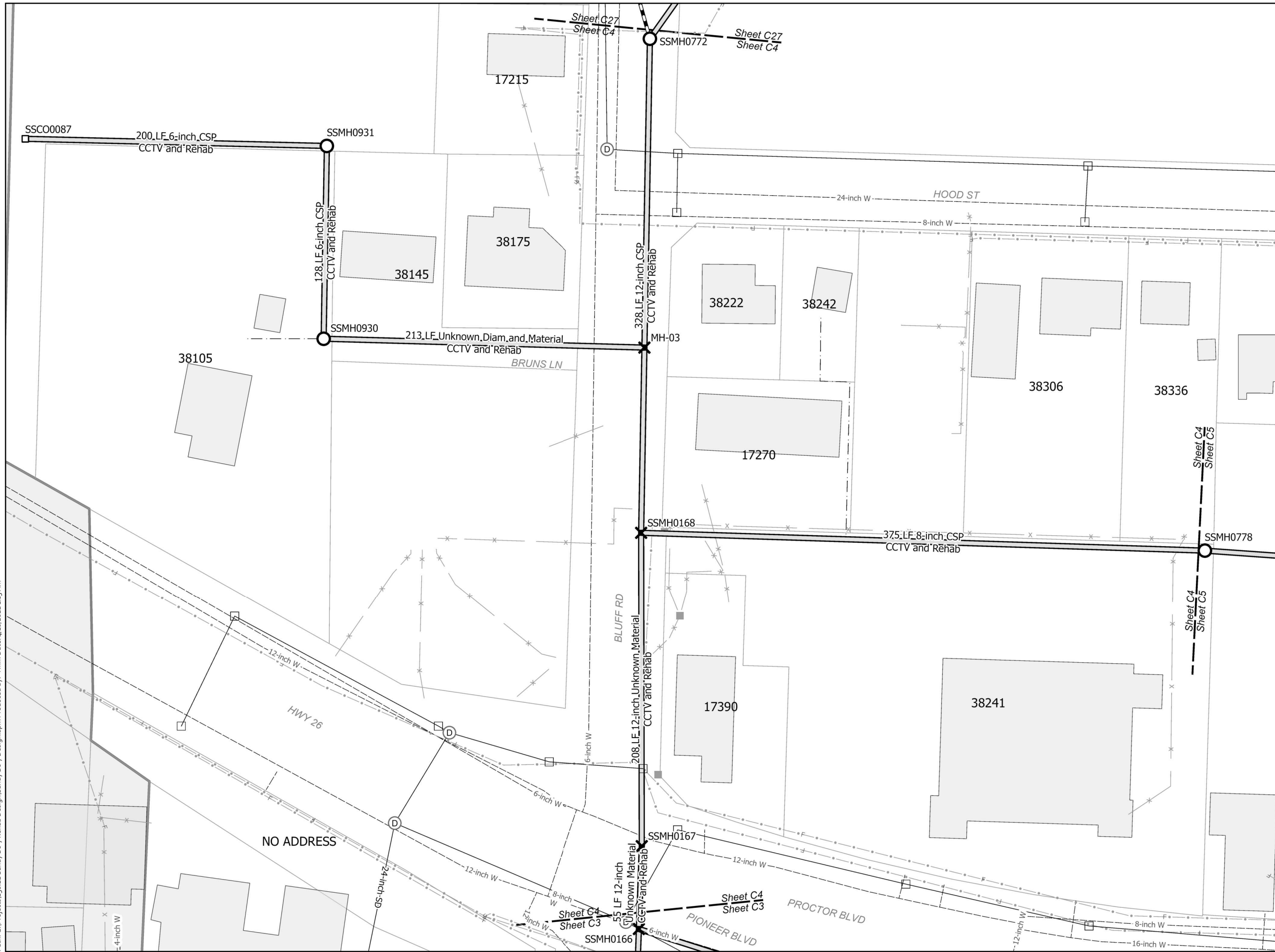


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Basins 6 and 7

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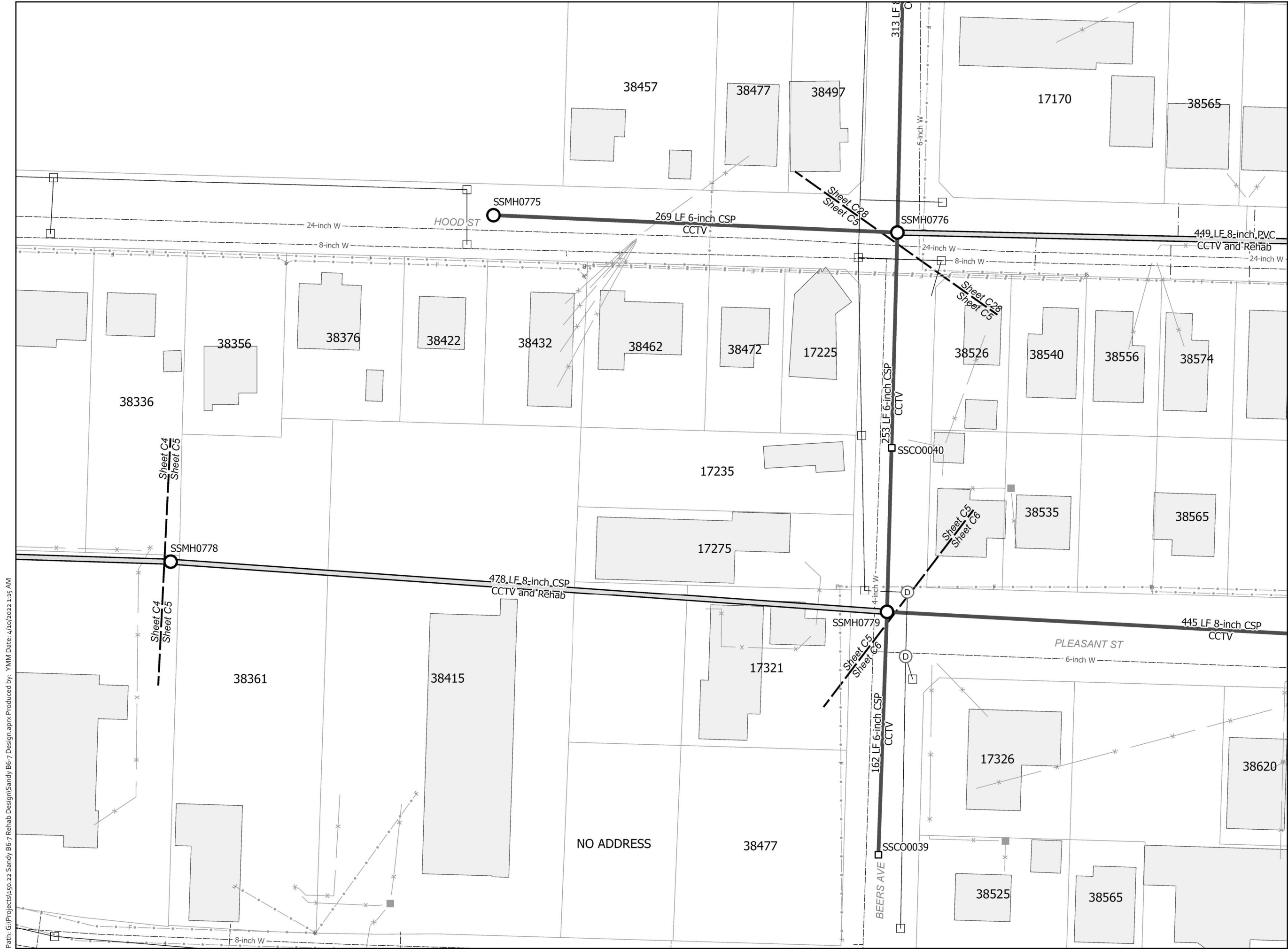
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Basins 6 and 7

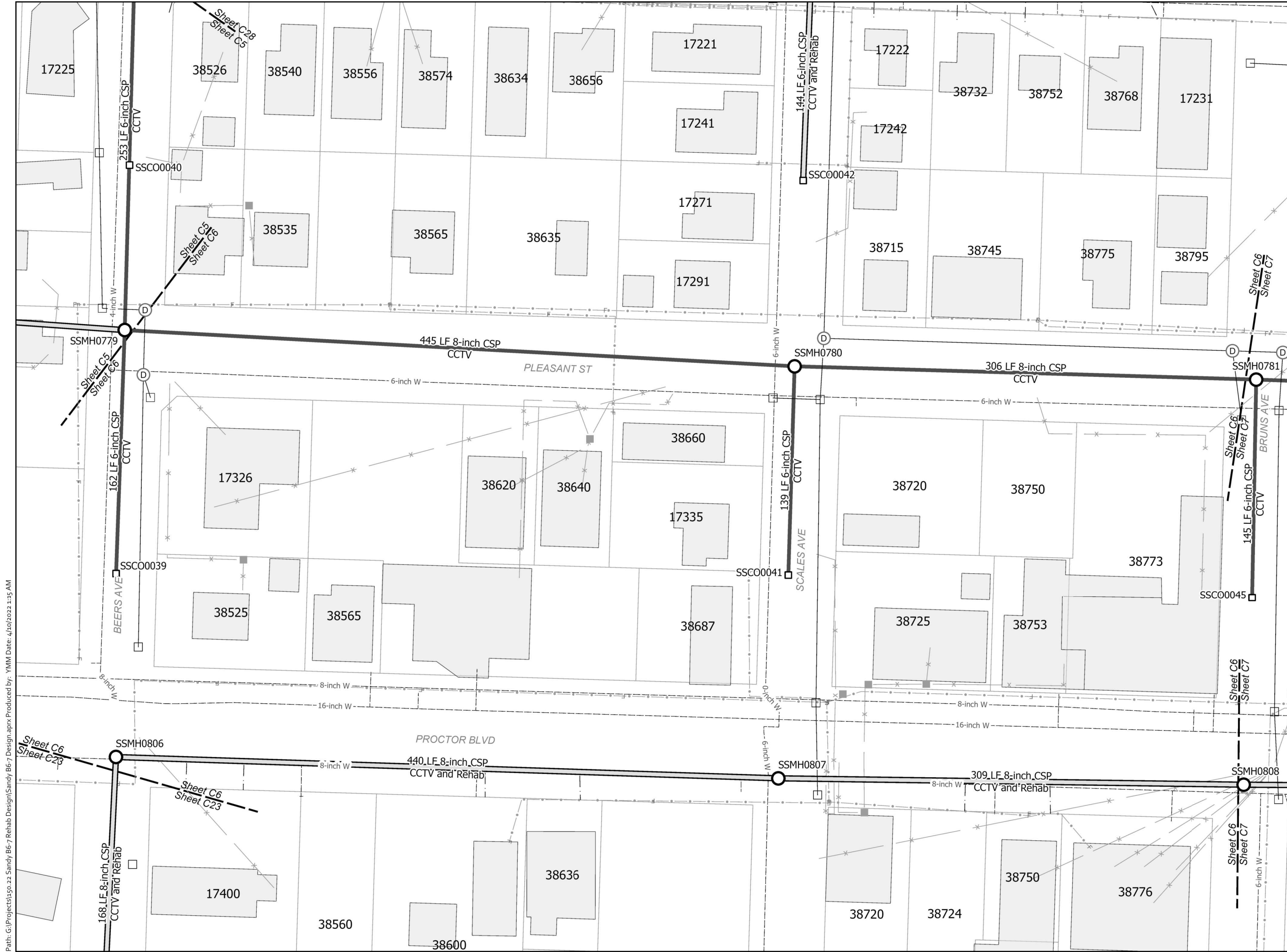
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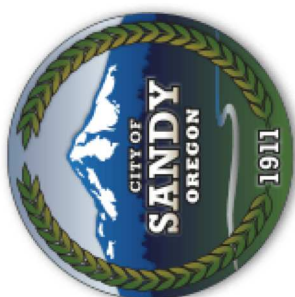
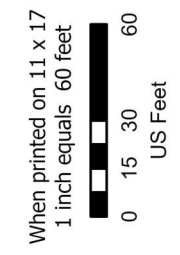
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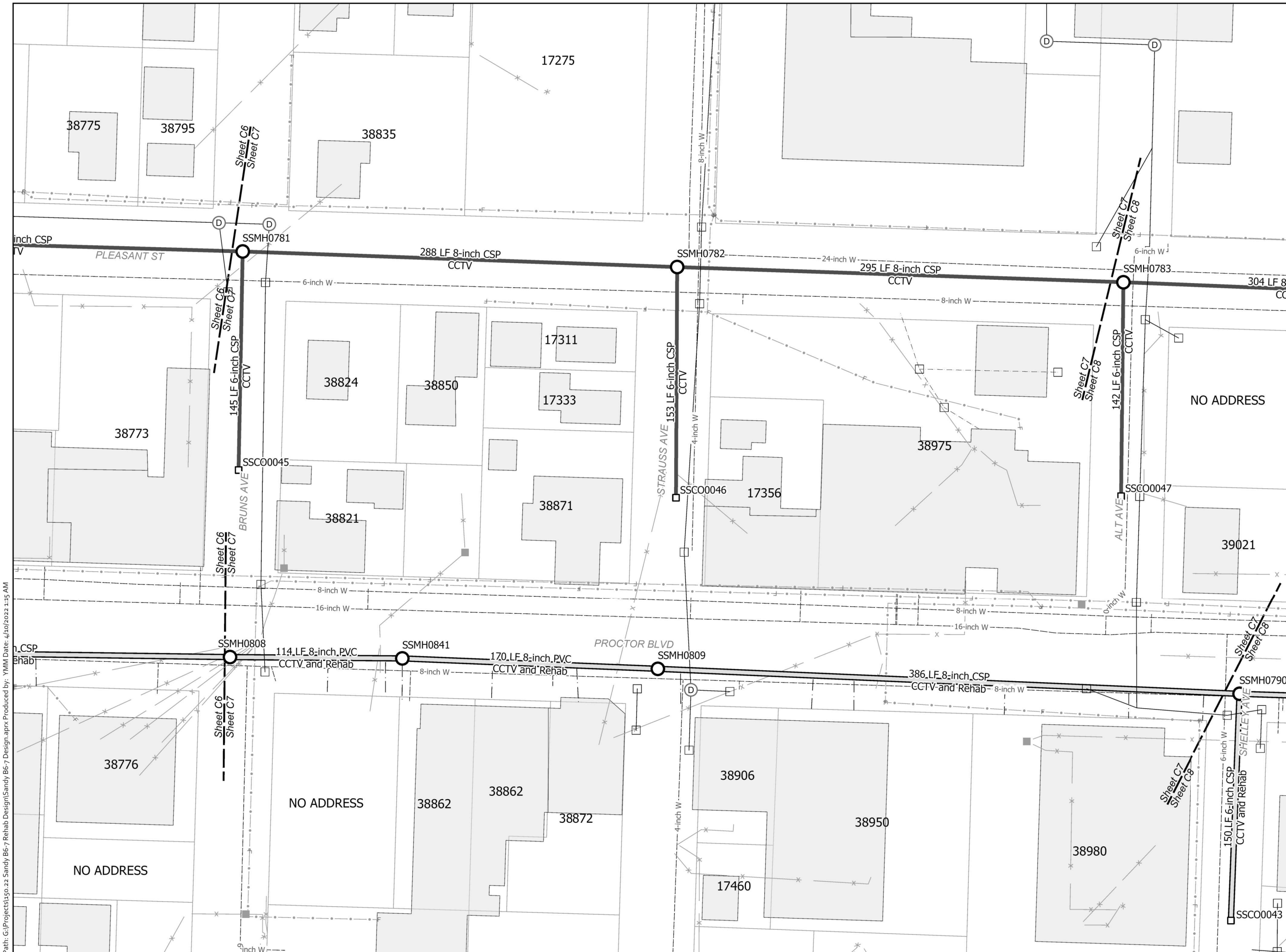
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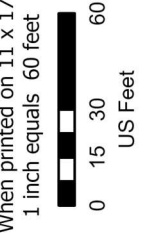


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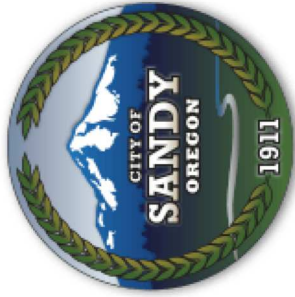
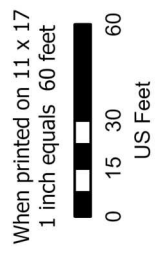


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Basins 6 and 7

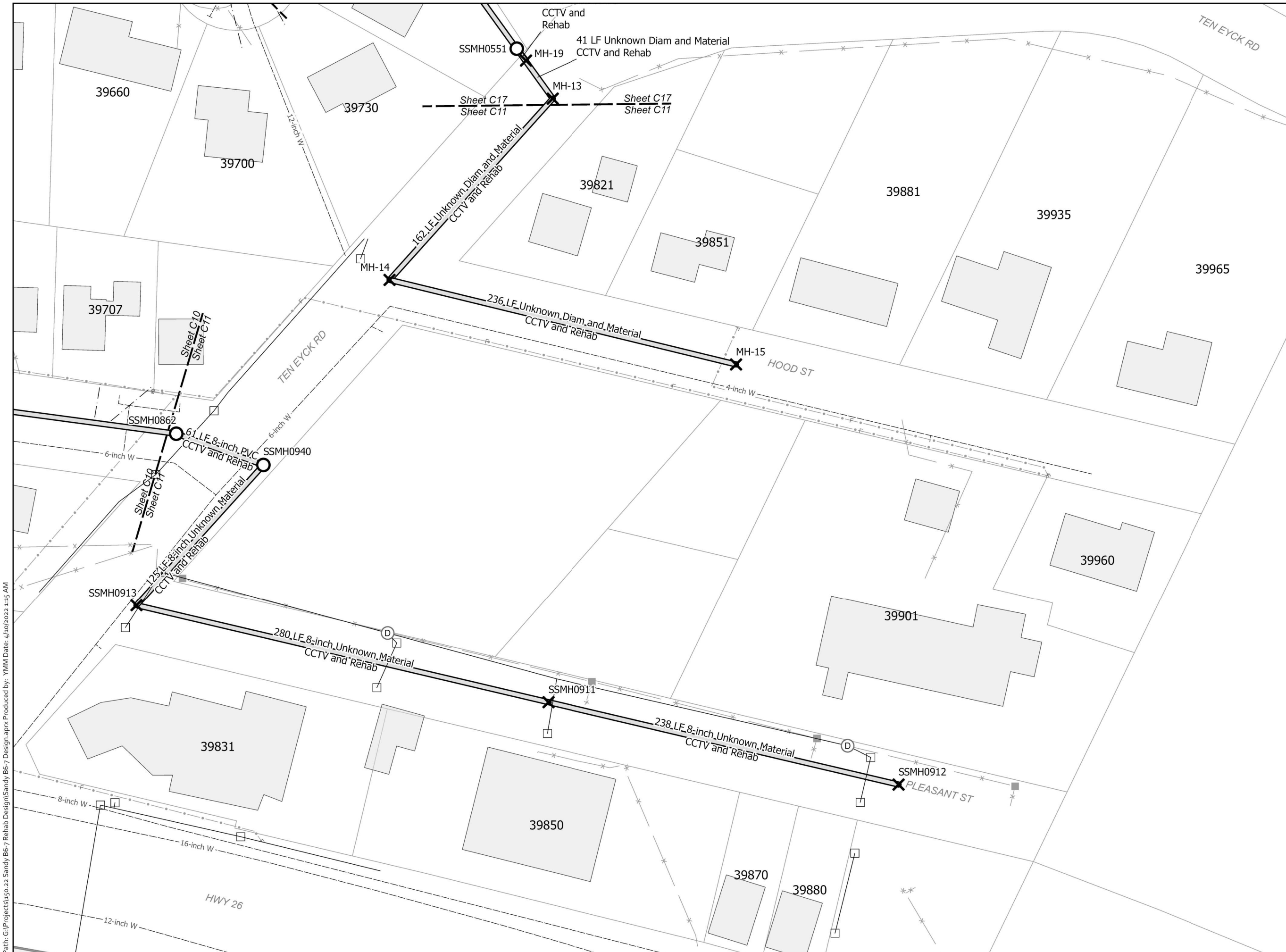
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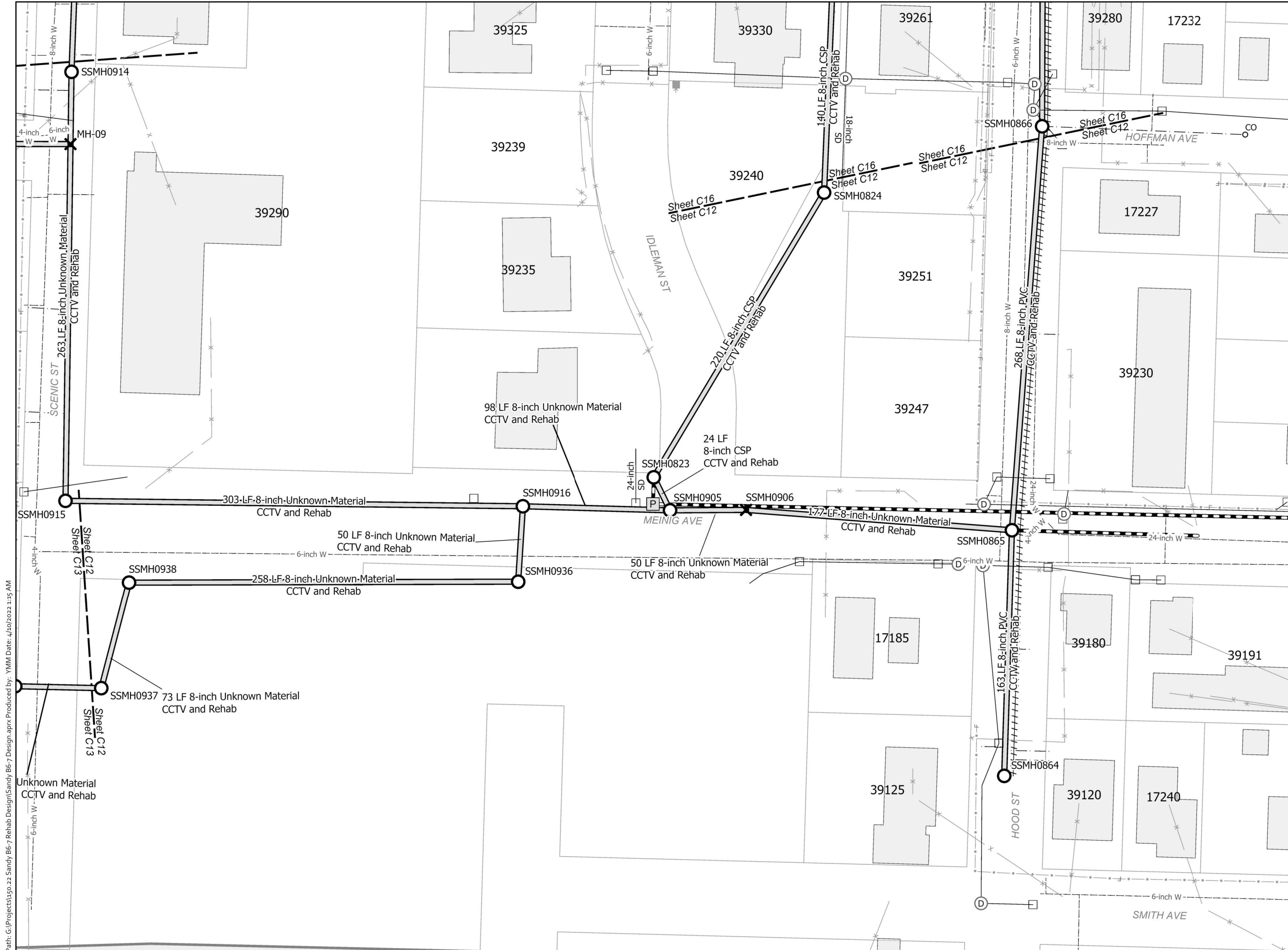
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Collection System
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Basins 6 and 7

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30% Design

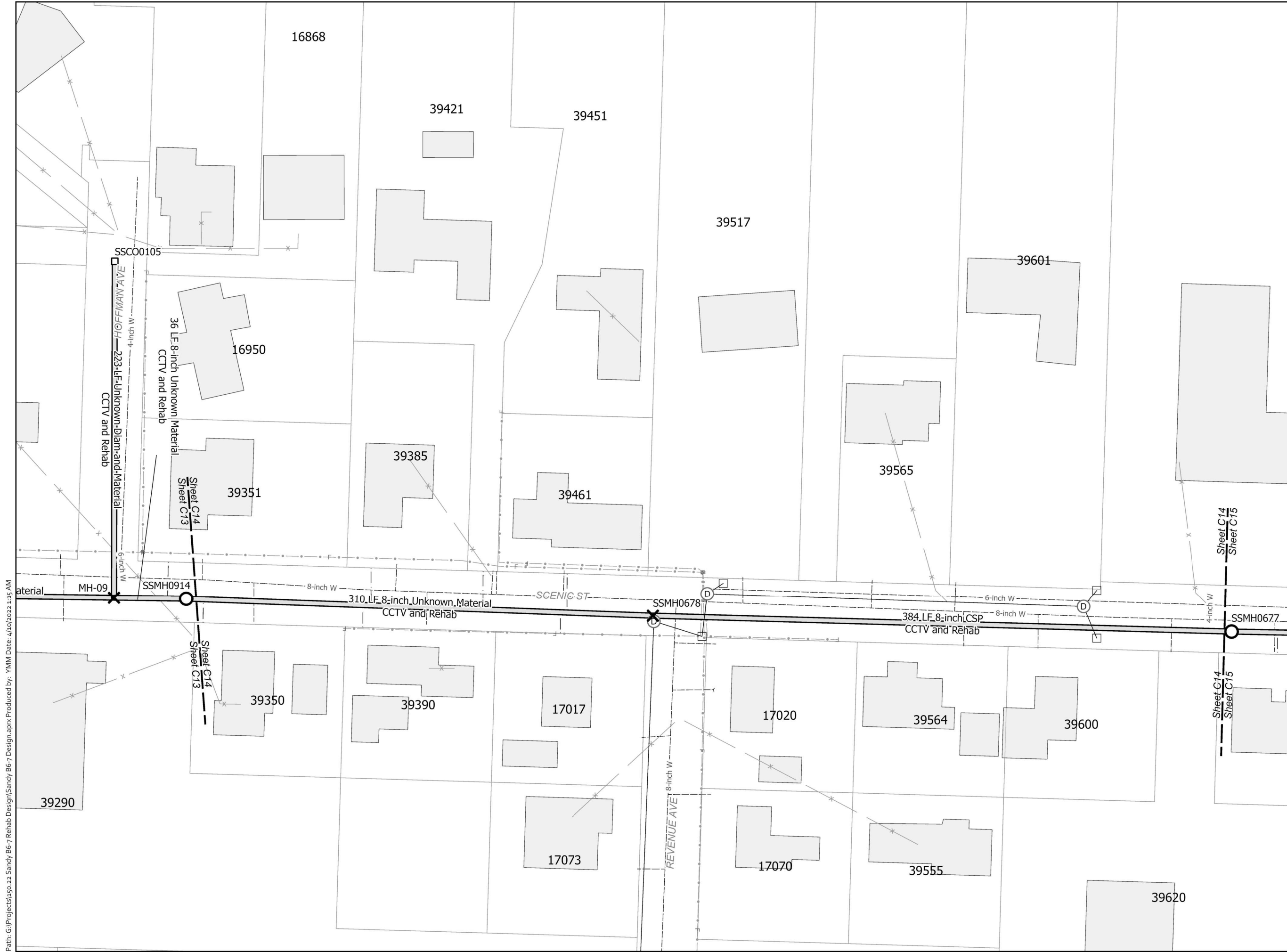
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US Feet

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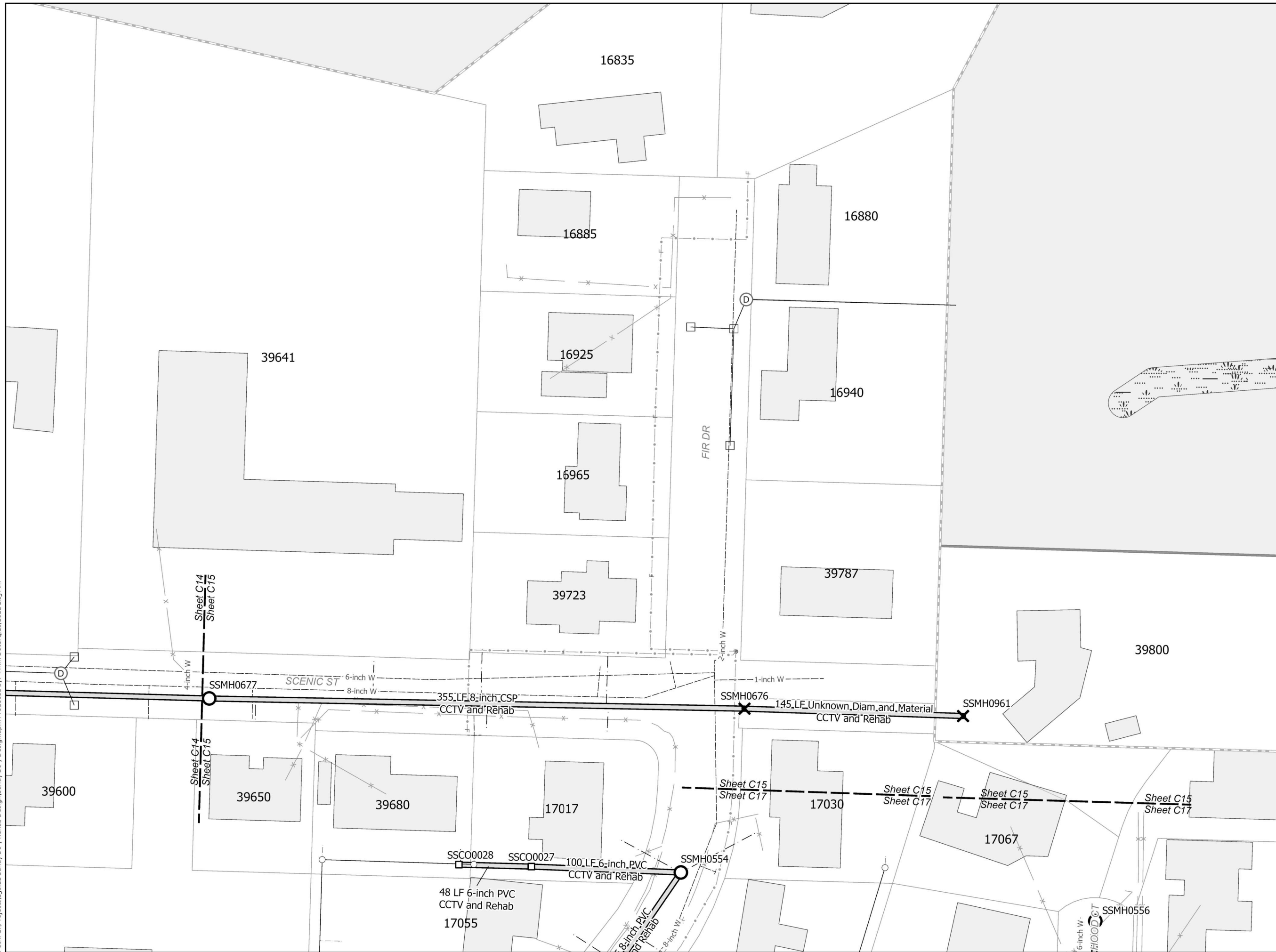
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US Feet

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Collection System
I/I Reduction

Basins 6 and 7

30% Design

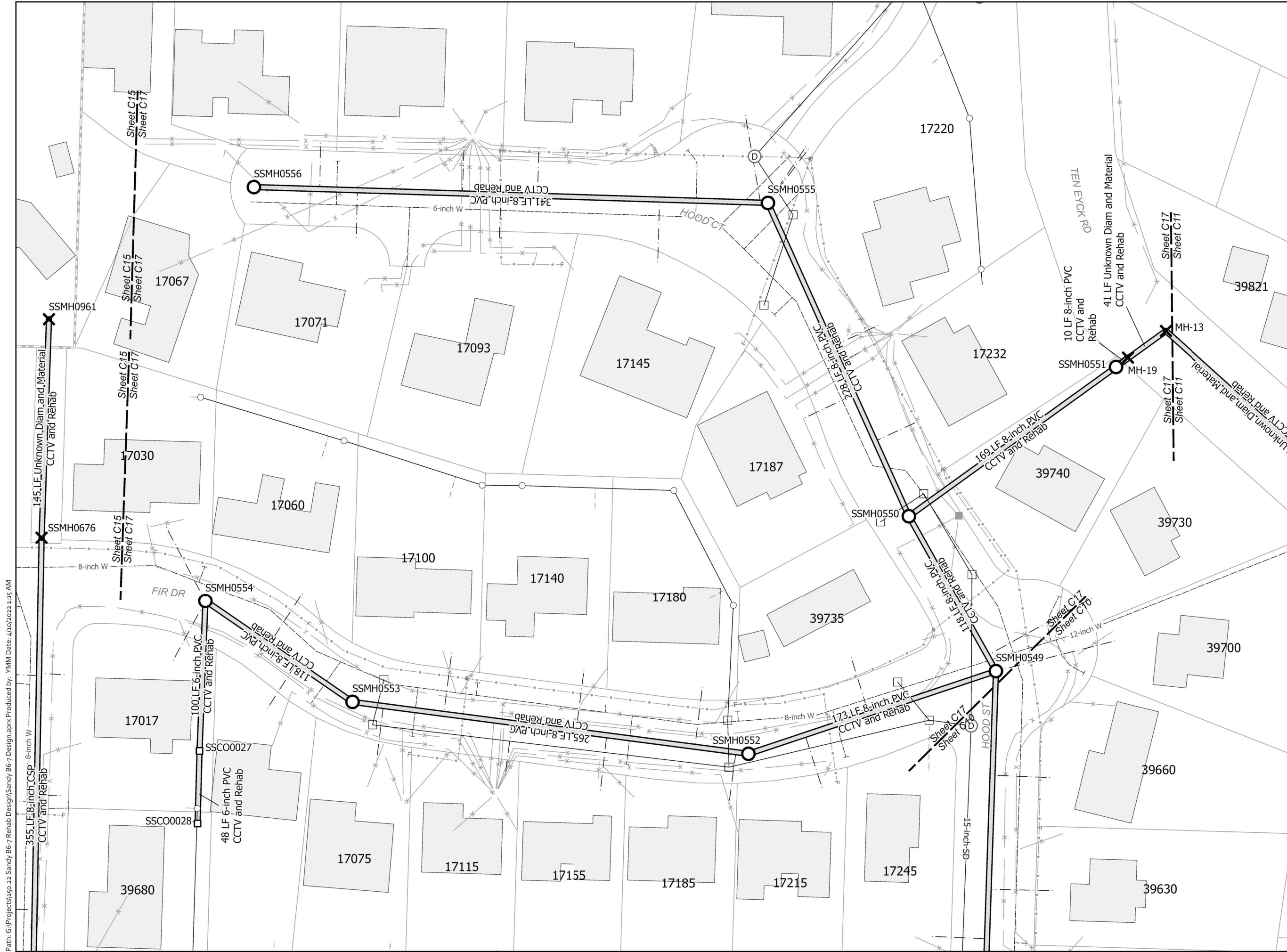
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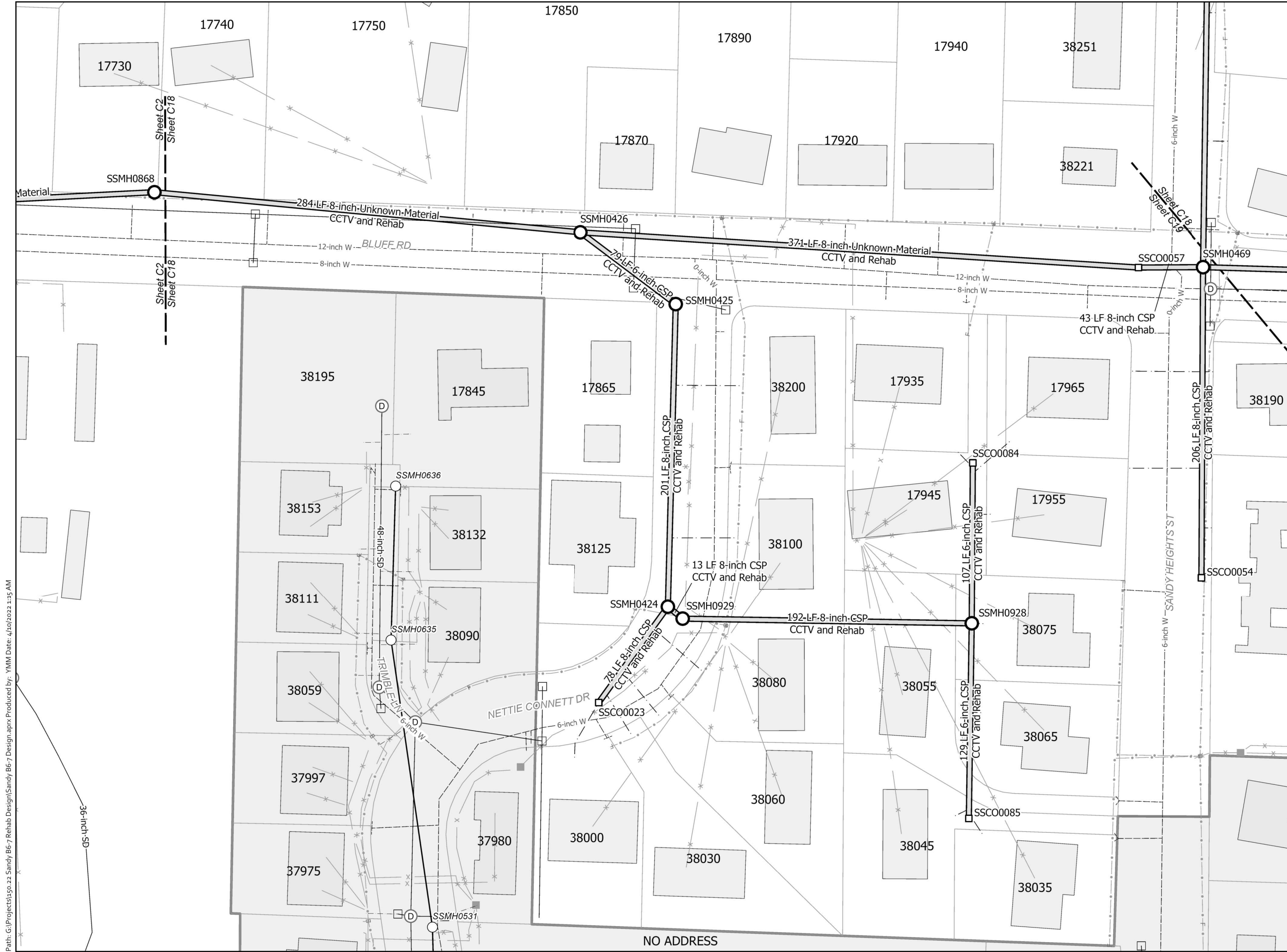
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CITY OF SANDY OREGON 1911

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Collection System
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Basins 6 and 7

Sheet C19 Page 22 of 37

30% Design

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US Feet

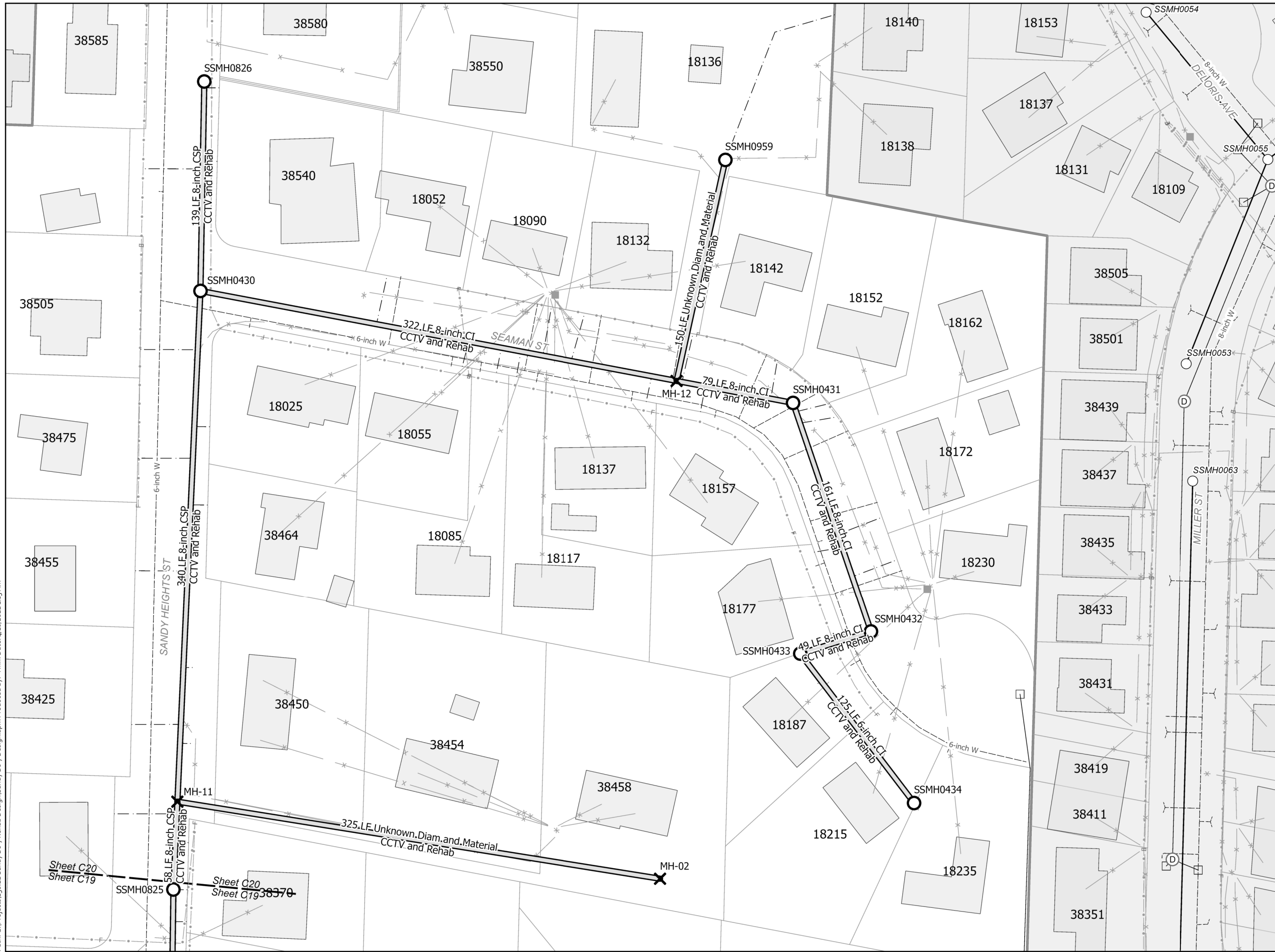
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**Collection System
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Basins 6 and 7**

Sheet C20 Page 23 of 37

30% Design

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1 inch equals 60 feet

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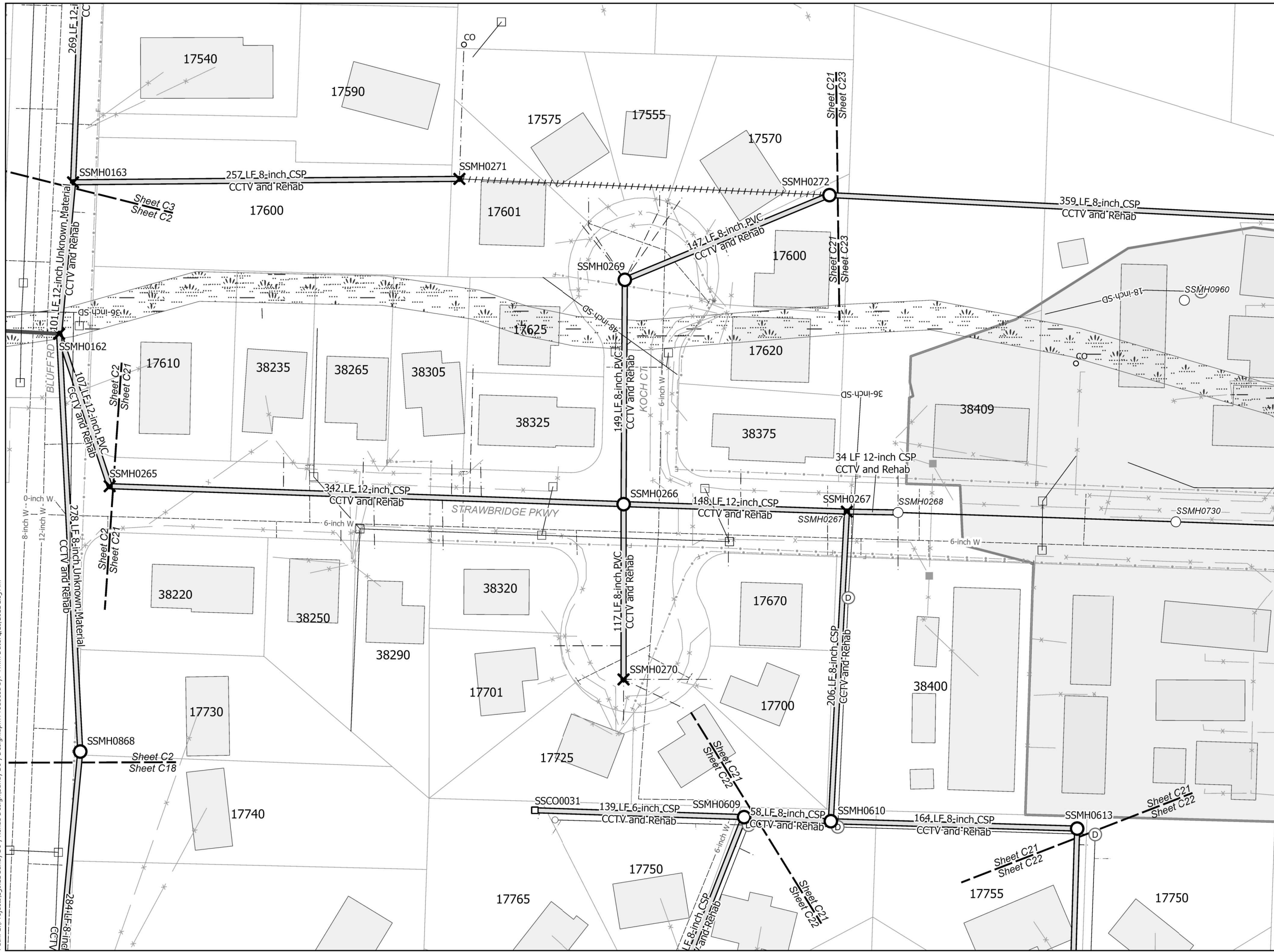
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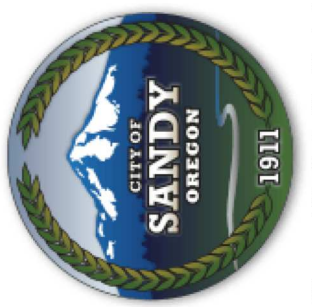


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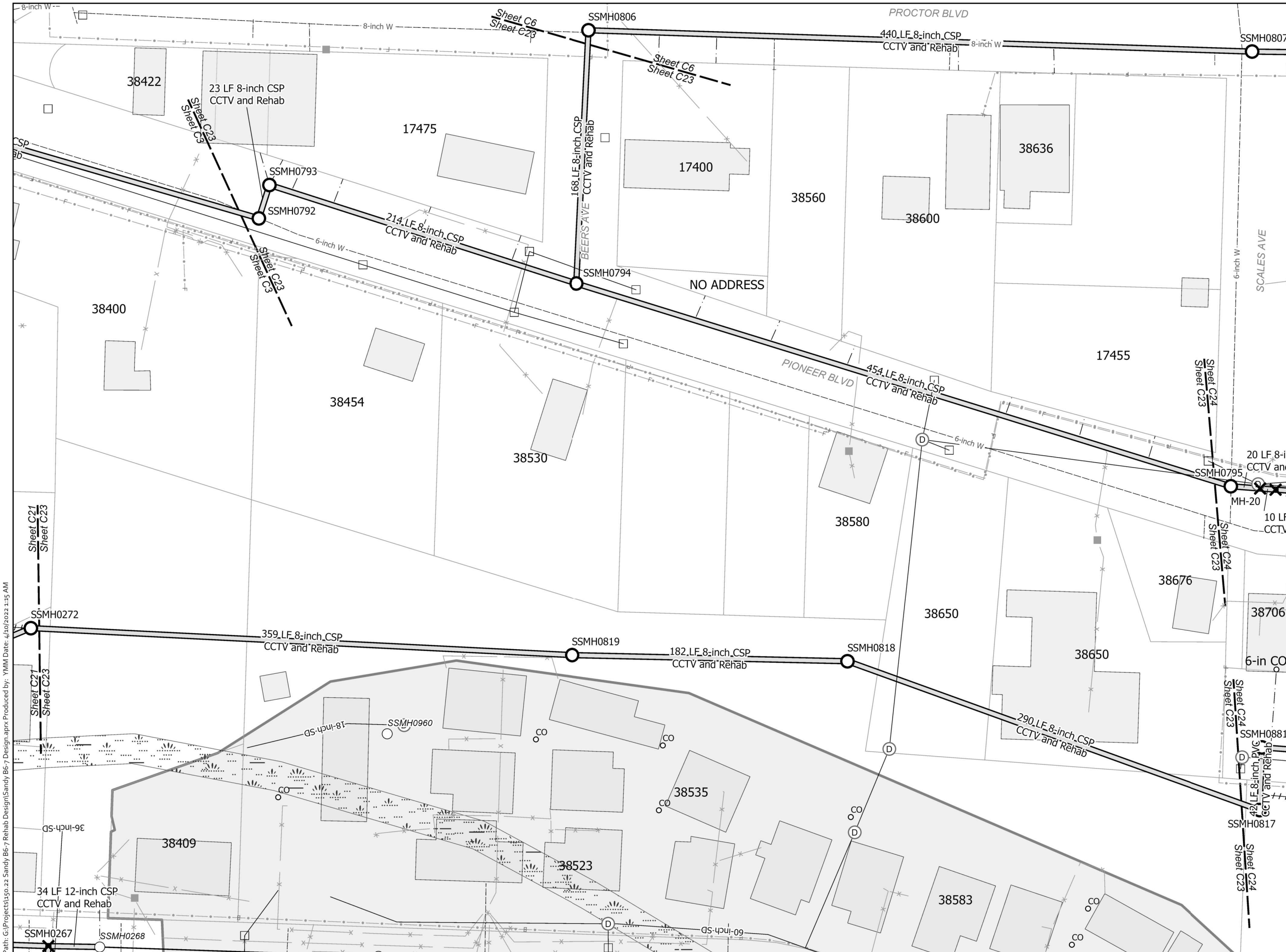
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Collection System
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Basins 6 and 7

Sheet C23 Page 26 of 37

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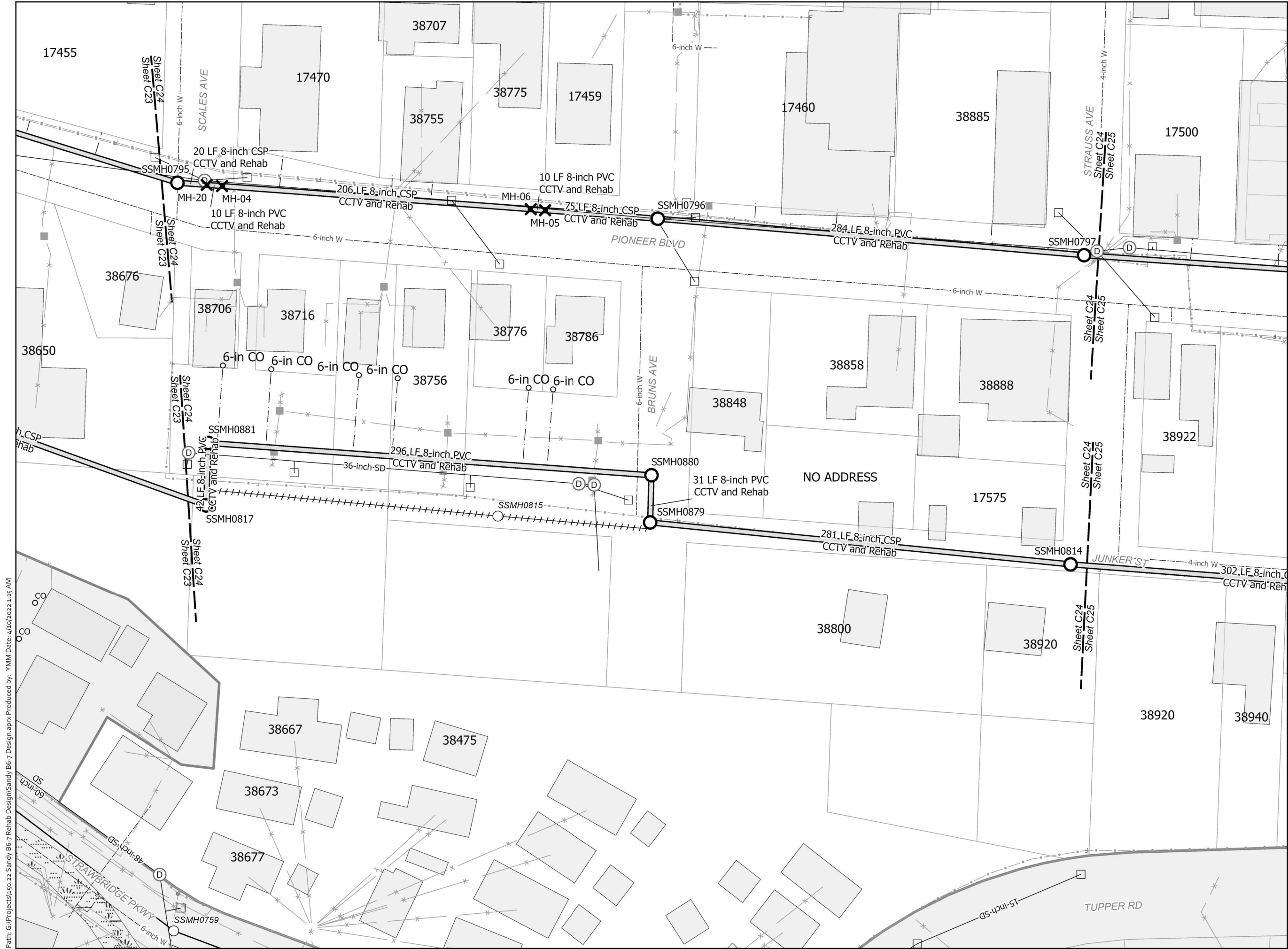
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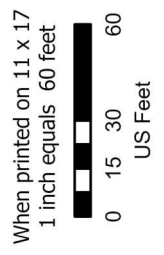


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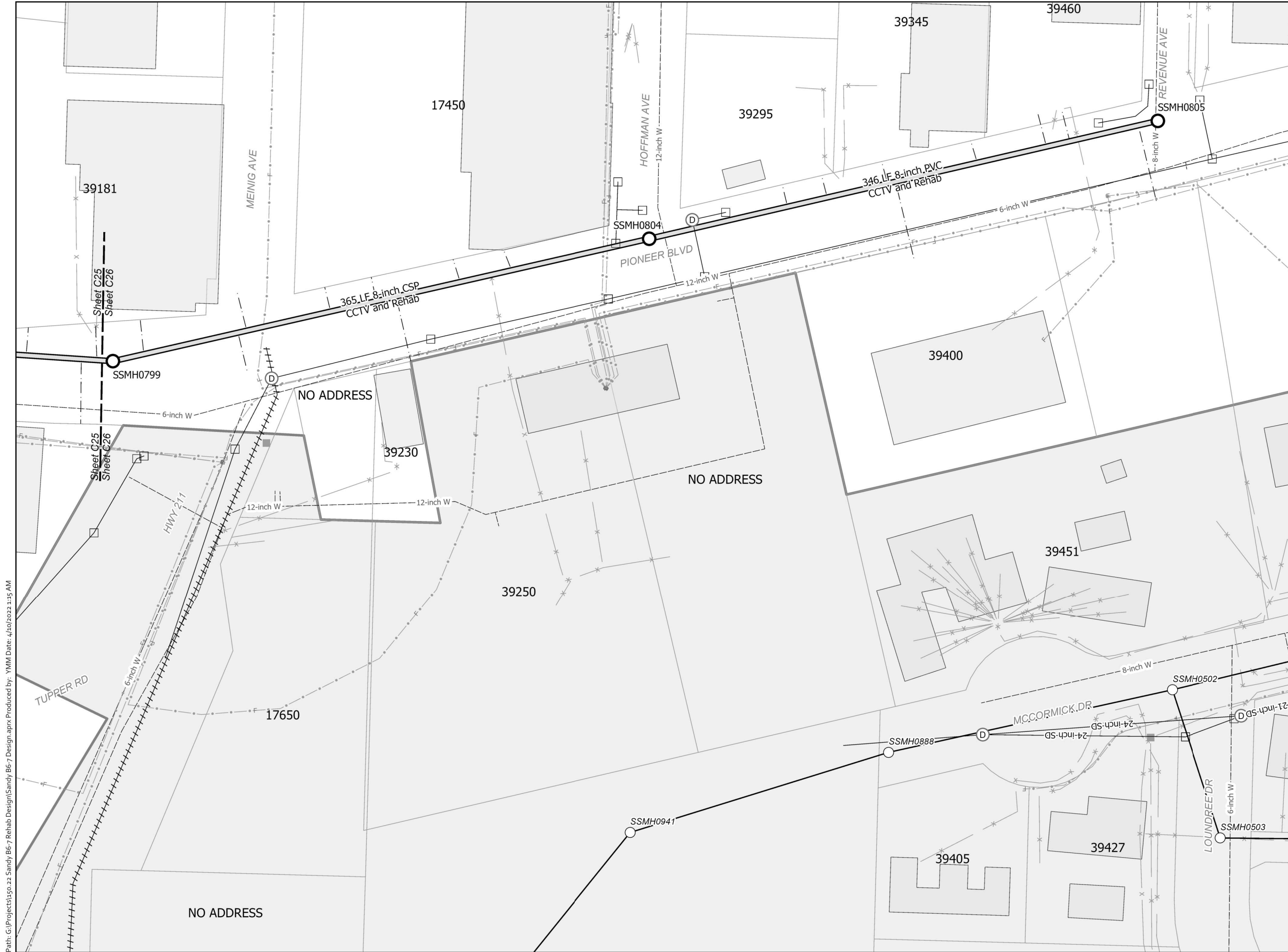


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US Feet

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Collection System
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Basins 6 and 7

Sheet C26 Page 29 of 37

30% Design

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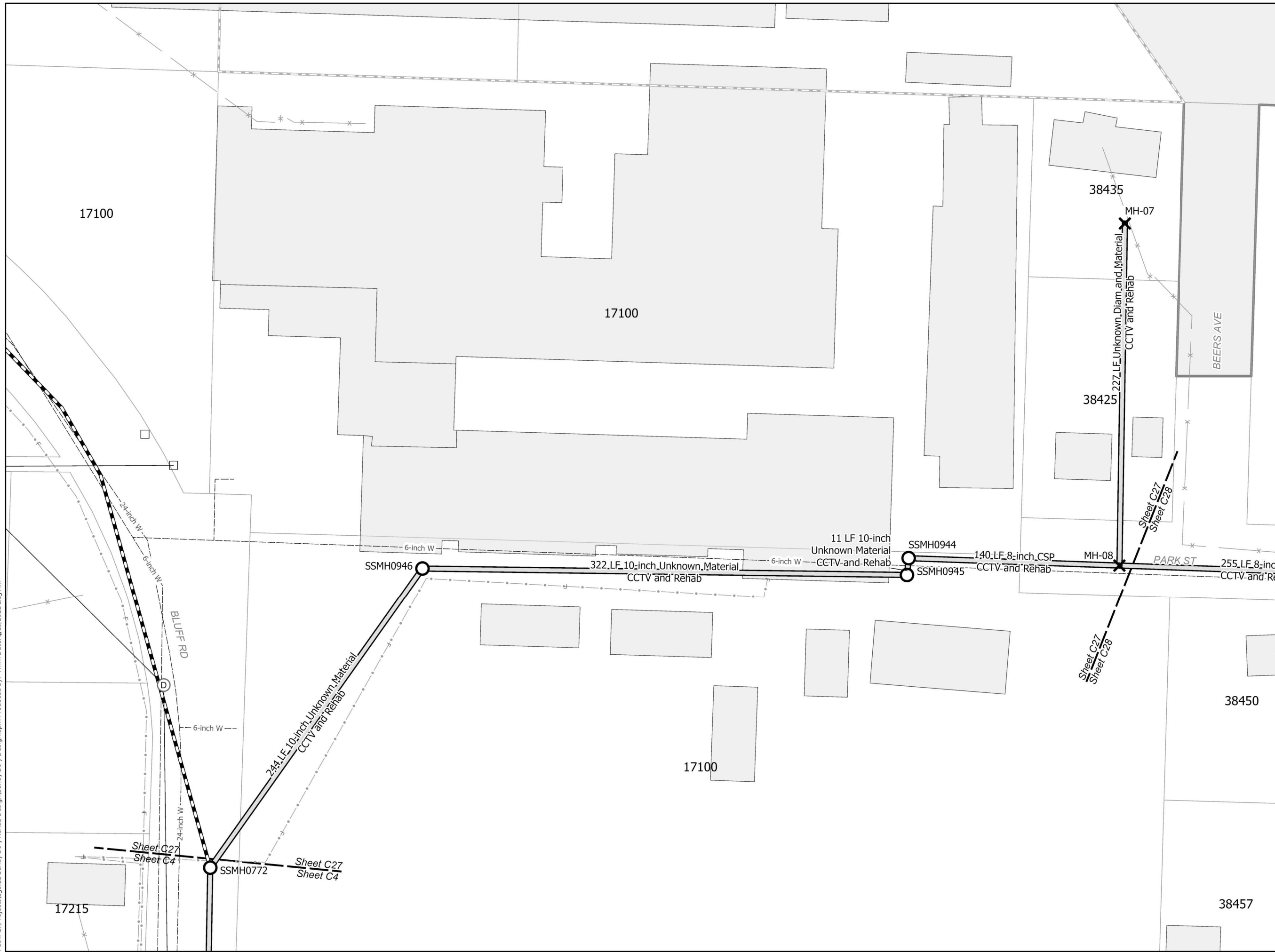
US Feet

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Collection System
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Basins 6 and 7

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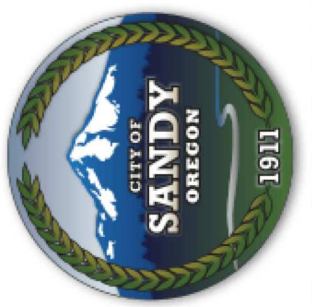
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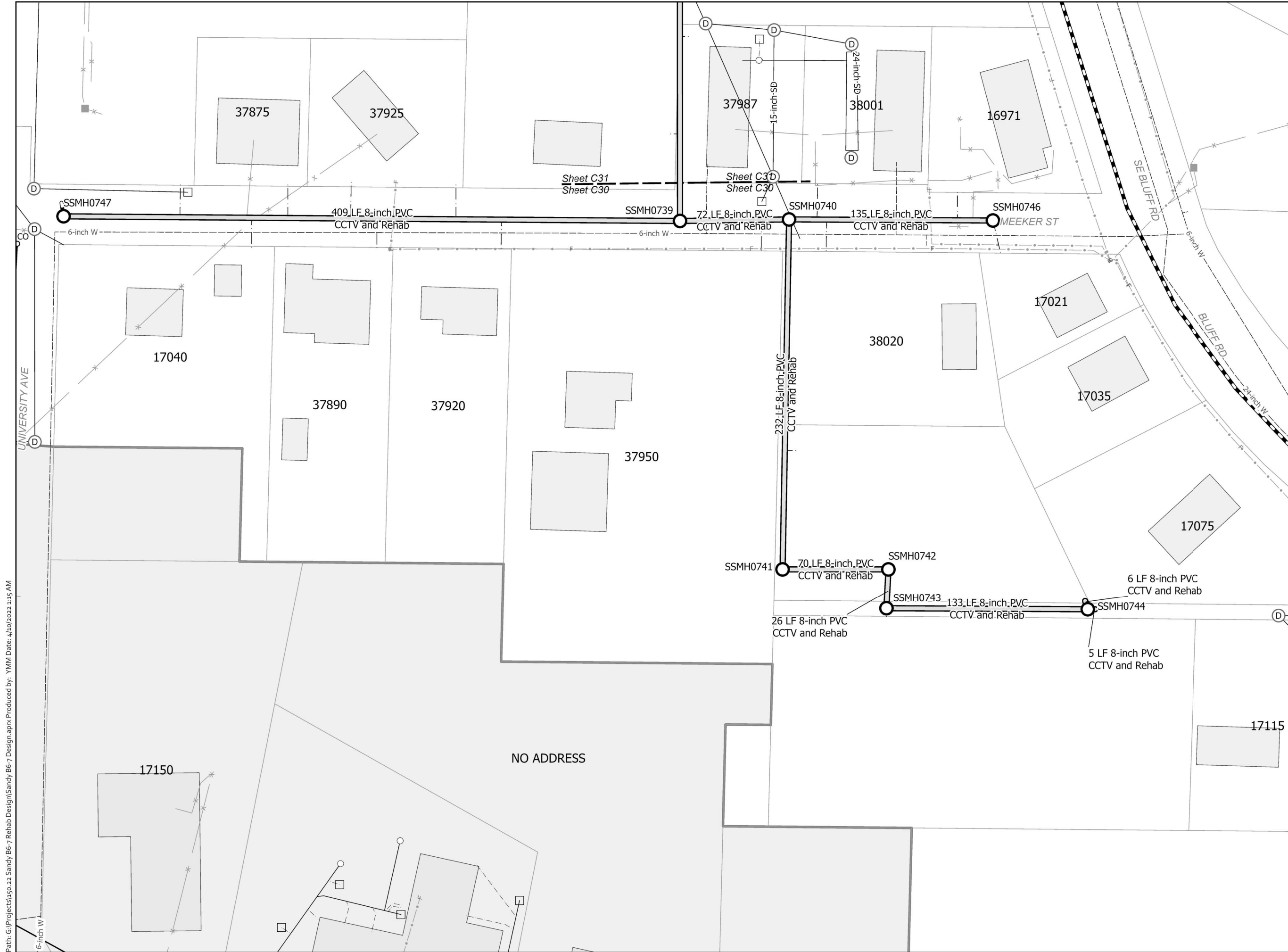
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Collection System
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Basins 6 and 7

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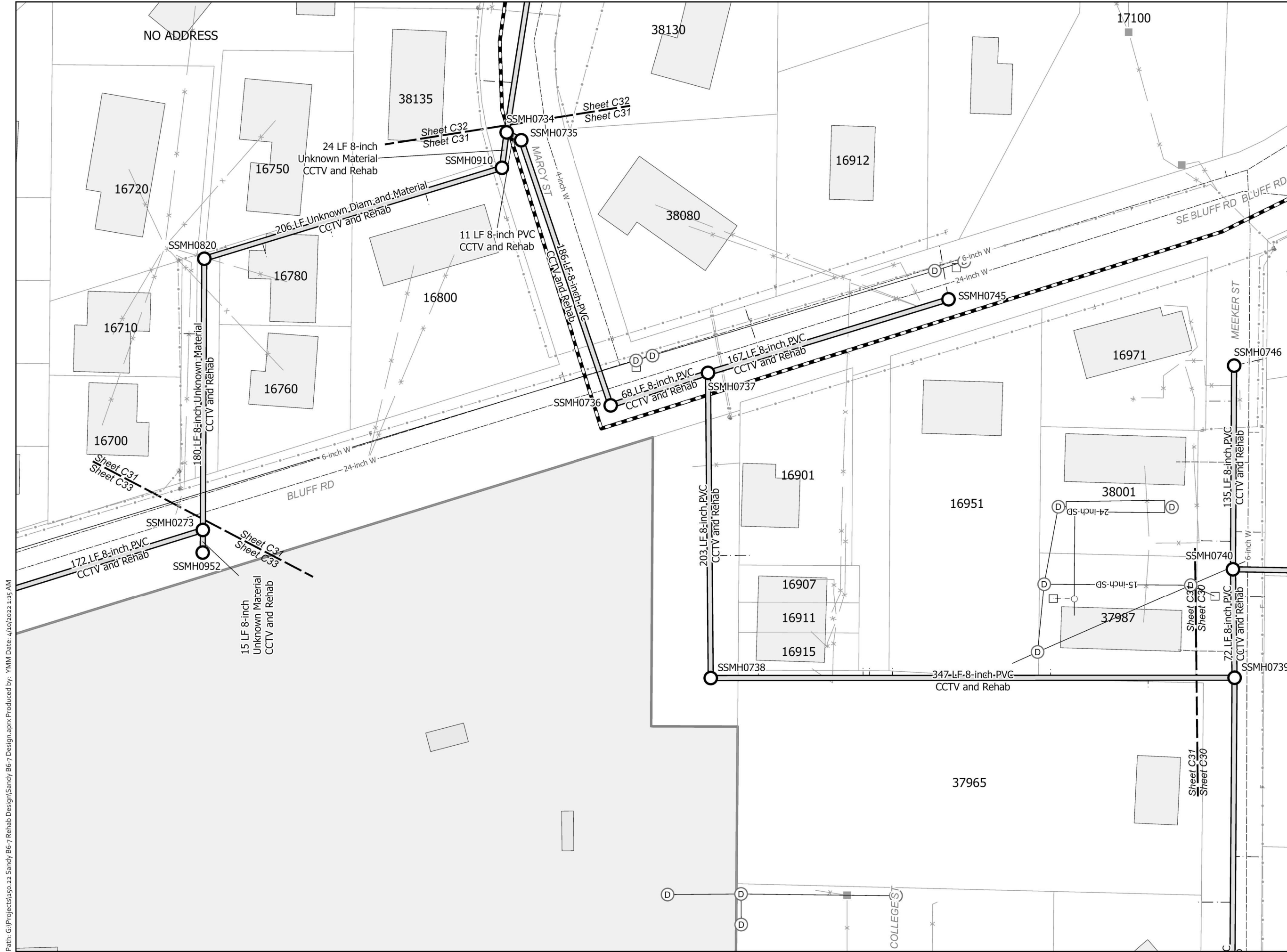
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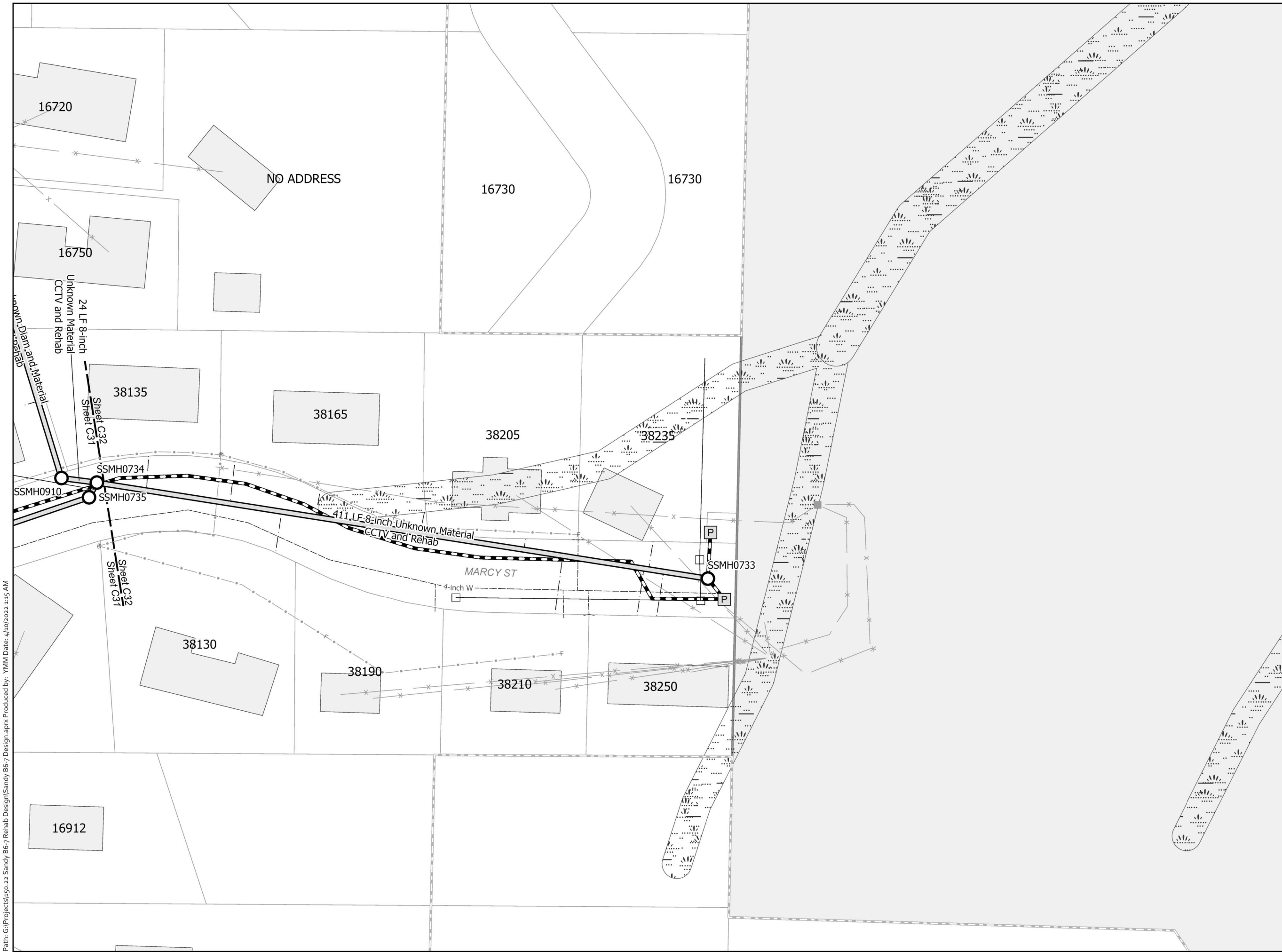
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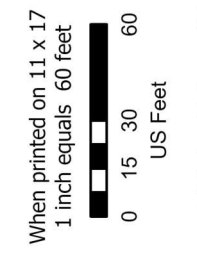
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Collection System
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Basins 6 and 7

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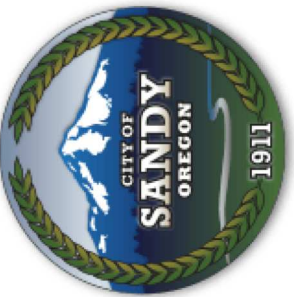
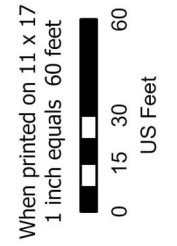
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ATTACHMENT B

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

CM/GC GENERAL CONDITIONS

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CM/GC GENERAL CONDITIONS

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY, means the City of Sandy, Oregon.

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

FINAL COMPLETION, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section 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 Subcontract's subject employees participate in the CM/GC's qualifying employee drug testing program for the duration of the Project.

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

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

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

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

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

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

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

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

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

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

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

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

C.4 PAYMENT FOR MEDICAL CARE

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

C.5 HOURS OF LABOR

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

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

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

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

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

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

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

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

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D.2 DELAYS

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

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

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

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

- (A) Caused by any actions of the City, City's Authorized Representative, or any other employee or agent of the City, or by separate contractor engaged by the City.
- (B) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The CM/GC shall notify the City's Authorized Representative immediately of differing site conditions before the area has been disturbed. The City's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If CM/GC and the City's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the City's Authorized Representative disagrees that a differing site condition exists and denies CM/GC's request for additional compensation or Contract Time, CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.
- (C) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its Subcontractors.
- (D) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the CM/GC, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
 - i. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the

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

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

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

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

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

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

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

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

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

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

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

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

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

D.3 CLAIMS REVIEW PROCESS

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

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

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

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

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

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

E.2 APPLICATIONS FOR PAYMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) damage to the City or another contractor;

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

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

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

(9) failure to maintain updated Record Documents; or

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

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

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

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

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

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

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

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

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

E.3 PAYROLL CERTIFICATION REQUIREMENT

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

E.4 RESERVED

E.5 RETAINAGE

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

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

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

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

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

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

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

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

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

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

E.6 FINAL PAYMENT

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

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

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

SECTION F
JOB SITE CONDITIONS

F.1 USE OF PREMISES

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

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

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

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

F.3 CUTTING AND PATCHING

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

F.4 CLEANING UP

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

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

F.5 ENVIRONMENTAL CONTAMINATION

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

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

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

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

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

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

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

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

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

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

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

(4) Containment procedures initiated.

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

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

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

F.6 ENVIRONMENTAL CLEAN-UP

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

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

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

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

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

F.8 FORCE MAJEURE

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

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

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

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

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

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

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

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

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

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

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND

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

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

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

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

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

G.2.4 The CM/GC will:

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

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

G.3 INSURANCE

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

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

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

(1) Workers' Compensation. Workers' compensation coverage sufficient to meet statutory liability limits.

(2) Employer's Liability. The Contractor shall purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits in C below.

(3) Commercial General Liability. The Contractor shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 0001 (12/04 or later) or an equivalent form approved in advance by the Owner. CGL coverage shall include all major coverage categories including bodily injury, property damage, and products/completed operations coverage maintained for at least ~~six~~ **Ten** years following final payment. The CGL insurance will also include the following: (1) separation of insured; (2) incidental medical malpractice; and (3) per-project aggregate for premises operations.

(4) Professional Liability/Errors and Omissions. To the extent that the Contractor accepts design or design/build responsibilities, the Contractor shall purchase and maintain professional liability/errors and omissions insurance or cause those Subcontractors providing design services do so.

(5) Automobile Liability. The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by the City. The automobile liability insurance shall include pollution liability coverage resulting from vehicle overturn and collision.

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

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

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

(1) Workers' Compensation. Statutory Limits

(2) Employer's Liability.

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

(3) Commercial General Liability.

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

(4) Automobile Liability.

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

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

(6) Commercial Umbrella/Excess Coverage.

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

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

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

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

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

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

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

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

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

G.3.11 Limitations on Coverage.

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

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

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

G.3.12. Property Insurance

(1) Builder's Risk.

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

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

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

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

H.2 SCHEDULE

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

H.3 PARTIAL OCCUPANCY OR USE

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

H.4 BENEFICIAL OCCUPANCY OR USE

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

SECTION I
CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

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

I.2 WARRANTY WORK

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

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

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

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

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

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

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

SECTION J
SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 CITY'S RIGHT TO SUSPEND THE WORK

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

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

J.2 CM/GC'S RESPONSIBILITIES

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

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

J.3 COMPENSATION FOR SUSPENSION

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

J.4 CITY'S RIGHT TO TERMINATE CONTRACT

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

(1) If CM/GC should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and CM/GC as debtor in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;

(2) If CM/GC should make a general assignment for the benefit of CM/GC's creditors;

(3) If a receiver should be appointed on account of CM/GC's insolvency;

(4) If CM/GC should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;

(5) If CM/GC should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the City or its Authorized Representative; or

(6) If CM/GC is otherwise in material breach of any part of the Contract.

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

J.5 TERMINATION FOR CONVENIENCE

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

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

J.6 ACTION UPON TERMINATION

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

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

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

K.2 OPERATION AND MAINTENANCE MANUALS

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

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the CM/GC shall submit to the City's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to City, which states that all Subcontractors and suppliers have been paid in full, all disputes with property 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 Cities and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Cities.
- L.1.4 Tribal Governments.

ATTACHMENT C

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

Kevin Hanway, City General Manager

Printed Name and Title

Date

PART II PROPOSAL PREPARATION AND SUBMITTAL

SECTION A. PROJECT CONTACT

Ryan Wood
Public Works Crew Leader
City of Sandy
39250 Pioneer Blvd, Sandy, OR 97055 Office: 503-489-0928
Mobile: 971-212-7393
rwood@ci.sandy.or.us

SECTION B. PRE-PROPOSAL MEETING

A mandatory virtual pre-proposal meeting will be held per the schedule on Part I, Section A. 7. Anyone interested in proposing will be required to request an invitation to the meeting by 5:00 p.m. one business day prior to the meeting to the following contact:

Zach Swartzendruber, PE
Leeway Engineering Solutions
Mobile: (503) 957-0765
zach.swartzendruber@leewayengineeringsolutions.com

SECTION C. PROPOSAL FORMAT AND DUE DATE

Concise responses with relevant information as outlined in the SECTION D - EVALUTION CRITERIA will be more useful than elaborate submittals with extensive graphics and corporate boilerplate. Submittals in excess of 15 pages will not be considered. One page is considered to be one side of a standard US letter 8.5"x11" page. Double-sided 8.5"x11" pages will be counted as two pages. A single-sided 11"x17" sheet will be considered two pages. Proposal cover, cover letter, fly sheets, price proposal, and resumes are not included in the page limit. To be considered, four (4) hard copies and one (1) digital (.pdf file) copy of the proposal must be received by Ryan Wood, Public Works Crew Leader at 39250 Pioneer Blvd, Sandy, OR 97055 by 4:00 p.m. on Wednesday, May 4, 2022.

SECTION D. EVALUTION CRITERIA

1. COVER LETTER

The Cover Letter 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
- Oregon Construction Contractors Board License Number

- Acknowledgement of all Addenda received for this project
- PROPOSERS per project and aggregate bonding capacity

A legal representative of the PROPOSER, authorized to bind the PROPOSER in contractual matters, must sign the Cover Letter.

The Cover Letter will also include a short narrative describing the respondent's understanding of the scope of work and their overall vision for the successful project completion.

By submitting a response, the PROPOSER is accepting the General Instructions and Conditions of this Request for Proposal, the Standard Contract Specifications of the Pre-Construction contract and the Construction Services contract that are applicable to this project, unless otherwise noted in Proposal. Any exceptions to the requirements or requests for waivers **MUST** be included in the proposal Cover Letter or they will not be considered.

2. PROJECT TEAM (30 points maximum)

The City wishes to engage a team that has the ability and experience to provide quality work in a timely manner; a commitment to collaborative project delivery; the resources, capacity, and capabilities to deliver the work given other contract obligations; a commitment to a safe workplace for employees, the public, and OWNER's employees.

Information for the proposed team should include the following:

- A. Organization chart for Phase 1 including Key personnel, level of commitment, and responsibilities.
- B. Bios for "Key Personnel". Key Personnel shall include, at a minimum, the Project Manager, Project Superintendent, and Estimator.
- C. Two references each for the Project Manager and Project Superintendent.
- D. Organization chart for Phase 2 including Key personnel, level of commitment, and responsibilities. Indicate type of work and Lead Foreman for self-performed work. List potential specialty subcontractors for work not self-performed.

3. PROPOSERS CAPABILITIES AND EXPERIENCE (30 points maximum)

Capabilities of Proposer in providing services related to wastewater collection system rehabilitation construction in the Pacific Northwest in the last 10 years.

To demonstrate that your team has the capabilities described above, provide the following:

- A. Project Descriptions - Describe the Proposer's experience and the experience of proposed Project Team with the construction of similar Projects. Limit the summary to a maximum of three (3) recent and relevant projects.

The range of relevant projects shall include:

- Preconstruction investigations, inflow and infiltration source identification;
- Developing construction scopes of work, construction schedules, and the construction cost for the construction phase of small diameter collection system rehabilitation work;
- Temporary work zone traffic control measures including detours;

- Utility protection and support;
- Sanitary sewer construction including open cut trench excavation and trench shoring;
- Trenchless pipeline construction and engineering design support;
- Manhole rehabilitation; and
- Dewatering and bypass systems.

The project descriptions should address how the experience is relevant to the Project, how the Proposer performed relative to providing pre-construction services, scope, schedule and budget management, minimizing claims and disputes and lessons learned. Additionally, the description should address the Proposer's approach to preserving design intent; staging, sequencing, and public information protocols during construction of the example projects. Provide a reference for each project including name, title, email address and phone number.

- B. Firm's annual revenue for the past 3 years.
- C. A list and description of all current, pending, and completed project-related litigations that your firm has been involved with in the last 3 years.
- D. A list and narrative describing your firm's resources available to perform the work for the duration of the project and other on-going projects, both during Pre-Construction and during the Construction phase.
- E. Bonding Capacity - Describe current and future workload as a percentage of Proposer's total bonding capacity. Compare aggregate construction cash flow for the past 12 months and projected through the duration of the Project with anticipated cash flow for the Project.
- F. Your firm's internal procedures and/or policies associated or related to work quality and cost control.
- G. Firm Safety Experience - Provide a specific description of Proposer's safety and drug and alcohol programs and its most recent Workers Compensation Insurance experience modifier.
- H. A statement as to whether you have been cited for an OSHA violation in the past 24 months. If yes, provide details including specific violation(s) and date(s).

4. PROJECT APPROACH AND UNDERSTANDING (20 points)

Proposers are to describe a detailed approach to providing the desired services for the Project. In the proposal, address the following at a minimum:

- A. Understanding – Provide a description of Proposer's understanding of the OWNER's project delivery goals and the design objectives of the Project.
- B. Approach – Describe Proposer's approach to the project including:
 - a. Overall management and integration of all Phase 1 and Phase 2 activities required by the scope of work, including management objectives and techniques that demonstrate how the work requirements are met. Include your approach to fostering collaboration

and partnering with OWNER and ENGINEER, including meetings, communication, and risk management.

- b. The plan for providing Phase 1 Pre-Construction Services including proposed approach to work with OWNER and DESIGNER to optimize the completion of Contract Documents that produce a Project that can be built within the stated construction budget and schedule with minimal change orders, claims and disputes.
- c. Indicate those areas of interest and proposed procedures to self-perform portions of the work.
- d. Discuss any innovative or alternative ideas and approaches to the design and construction of this Project.
- e. Describe your Project Management Approach to managing costs and schedule during Pre-Construction and Construction services. Identify any tools that would be employed for management of these two interconnected elements of work including cost accounting and subcontractor management. Define key cost control/cost reduction steps and/or measures in both design and construction of the project.

5. PRICE PROPOSAL (20 points maximum)

Proposers shall submit price proposals conforming to the requirements of this RFP and based on the Scope of Services listed in the Part I, SECTION A. 4 DETAILED CM/GC SCOPE OF WORK.

The price proposal should identify any assumptions used to develop the Phase 1 Pre-Construction Cost. Include an estimate of expenses and a description of what expenses have been included. Identify staff to be involved in pre-construction along with an estimate of hours and individual billing for each staff.

This Pre-Construction Cost will be the basis for negotiating the pre-construction services phase of the Contract with the City.

CM/GC Fee: The CM/GC Fee shall be the maximum sum payable to the CM/GC by the OWNER for the CM/GC's performance of all construction management, project management and administration services as defined herein and in the General Conditions. The CM/GC Fee shall be determined by applying the CM/GC fee percentage as identified in the Proposal to the direct costs of the project including General Conditions Reimbursement and any authorized Bid Alternates.

State the CM/GC Fee as a percentage for which Proposer would contract to perform this Project. The percentage so stated in the Proposal shall be the maximum allowable contractual markup on the direct cost of the work and shall be based on the recovery of ALL indirect costs, overhead costs, G&A costs, and profit, if Proposer is awarded the construction contract.

The CM/GC Fee shall be composed of those items stated in the General Conditions and nothing else.

PART III PROPOSAL EVALUATION

SECTION A PROPOSAL REVIEW AND SELECTION

1. EVALUATION SCORING SUMMARY

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 criteria listed in PART II, SECTION D - EVALUTION CRITERIA. The Committee may seek the assistance of outside expertise, including, but not limited to, technical advisors. The Committee will require a minimum of five (5) working days to evaluate and score the proposals. The choice of how to proceed, decisions to begin or terminate negotiations, determination of a reasonable time, decisions to open negotiations with a lower scoring Proposer, and any decision that a solicitation should be cancelled are all within the sole discretion of the City.

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.

The review and scoring by the Committee of the written proposals will be as listed in Table 2. Written Proposal Evaluation Criteria.

Table 2. Written Proposal Evaluation Criteria

Criterion	Maximum Points	Submission
1. COVER LETTER (REQUIRED)	0	Required with written proposal
2. PROJECT TEAM	30	Required with written proposal
3. PROPOSER'S CAPABILITIES	30	Required with written proposal
4. PROJECT UNDERSTANDING AND APPROACH	20	Required with written proposal
6. PROPOSED COST – Pre-Construction Services	8	Required with written proposal
7. PROPOSED PRICE – CM/GC	12	Required with written proposal
Total Possible Points	100	

If after the scoring of the written and price proposals, oral interviews or presentations are determined to be necessary, the next evaluation step will consist of oral presentations to further clarify the Proposer's proposal(s). The number of proposals on the "short list" depends on whether the Committee believes such proposals have a reasonable chance of scoring well enough to be awarded a contract.

Proposers invited to participate in oral interviews will be given additional information regarding the City's desired content a reasonable time before the scheduled oral interviews are held. The scoring of the interviews will be per instructions provided at the time of the interview invitation. Should interviews be necessary, they will be held on per the schedule on Part I, Section A. 7.

Table 3. Oral Interview Evaluation Criteria

Criterion	Maximum Points
Oral Interviews by subsection	100
Total Possible Points	100

Point of Contact: All communications shall be through the contact(s) referenced in PART II, SECTION A 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.

SECTION B CONTRACT AWARD

1. CM/GC SELECTION

The City will award the Contract to the PROPOSER with the highest combined score from the written proposal and interview. Should the City not reach a favorable agreement with the highest scoring PROPOSER the City, at its sole discretion, shall terminate negotiations with the highest scoring PROPOSER and commence negotiations with the second highest scoring PROPOSER and so on until a favorable agreement is reached. The City may terminate negotiations at any time and may cancel the solicitation if it finds it is in the City's best interest to do so.

2. CONTRACT DEVELOPMENT

The proposal and all responses provided by the successful PROPOSER may become a part of the final contracts. The form of contracts shall be the City's Contracts for Construction Management / General Contractor construction services. A form of Contract will follow via an addendum to this RFP.

3. REVIEW AND PROTESTS

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.