

TAB 12

POINT PAPER

I & I PROGRAM 2008

AGREEMENT FOR GENERAL CONSTRUCTION SERVICES SANITARY SEWER LINING AND REHABILITATION

MILLER PIPELINE CORPORATION

COP Job # 07- 571

Problem:

In an effort to prevent peaks at the WWTP during heavy rain events and sewage overflows, the PWD has initiated an I & I Program as a part of the Capital Improvement Plan (CIP). The peaks are a direct result of stormwater entering into the sewer system through aged and dilapidating manholes and unstable infrastructure piping

It should be noted that the FDEP permit requires that the city continually upgrades its sewer system to remove Inflow and Infiltration. The replacement of old leaking and cracked pipes and manholes throughout the system is needed to stay in compliance with the I & I requirements.

Background:

As part of an ongoing I & I remediation plan, the Department of Public Works is proposing to reline and rehabilitate approximately 3,967 linear feet of 8 inch diameter sewer line located within Lift Station #1 basin as part of the Capital Improvement Program.

Alternatives:

1. – Take No Action
2. – Authorize the execution of the attached piggy-back contract with Miller Pipeline Corporation.

Recommendation:

Staff recommends Alternative #2; authorize the execution of the piggy-back contract with Miller Pipeline Corporation.

Budget Impact:

Within the 2008 CIP budget I & I Program, \$208, 427 is approved for these services. The total cost for this project is not to exceed \$119,010. \$105,000 and will be charged to account umber 432-633-6300-4389 and \$14,010 will charge to 432-632-6300-4389.

AGREEMENT FOR GENERAL CONSTRUCTION SERVICES
SANITARY SEWER LINING AND REHABILITATION

THIS AGREEMENT is made and entered into on this _____ day of _____, 2008, by and between the CITY OF PALMETTO (hereinafter "CITY"), whose address is 516 8th Avenue West, Palmetto, Florida 34221 and MILLER PIPELINE CORPORATION (hereinafter "MILLER"), whose address is 727 Cheston Street, New Smyrna Beach, Florida 32168.

WHEREAS, the CITY desires to employ MILLER to provide general construction services within the CITY relating to sanitary sewer lining and rehabilitation; and

WHEREAS, the City Commission has approved a budget and provided for the purchase of such services; and

WHEREAS, MILLER was one of at least three bidders to submit a bid in response to an Invitation to Bid issued by the City of Orlando, Florida and the City of North Miami Beach, Florida for services substantially similar to those to be performed for the CITY; and

WHEREAS, MILLER was ultimately selected to perform such services for the above listed jurisdictions; and

WHEREAS, the CITY and MILLER desire to use the contracts previously bid by and awarded to the above listed jurisdictions as the basis for this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, CITY and MILLER agree as follows:

1. EXISTING CONTRACTS

The City of Orlando contract (A-1) and the City of North Miami contract (A-2) ("Contracts") are open and were secured by MILLER as the result of a competitive bid process. A copy of these Contracts and their exhibits are attached hereto as Exhibit A and incorporated herein.

2. PRICE QUOTATIONS

The parties agree that the unit price quotations contained in the Contracts are the same as the price quotations contained in this Agreement. The parties agree that the unit price quotations contained in the Contracts

are the same as the price quotations contained in this Agreement. When more than one unit price quotation exists for the same item, the CITY shall pay the lowest unit price quoted in any of the Contracts.

3. GENERAL

- 3.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
- 3.2 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party, provided, however, that such consent shall not be unreasonably withheld.
- 3.3 All notices shall be in writing and transmitted by certified mail to the addresses stated above.
- 3.4 This Agreement, including **Exhibits A and B**, constitutes the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the term "MILLER" shall include the respective officers, agents, directors and employees, and the term "CITY" shall include elected officials and employees.
- 3.5 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 3.6 It is understood that the relationship of MILLER to CITY is that of independent Contractor.

4. SCOPE OF SERVICES / BOND

- 4.1 MILLER shall perform some or all of those services described in the Contract, attached hereto as **Exhibit A**, upon receipt and acceptance of written Work Orders signed by the CITY's Director of Public Works or his authorized representative, which Work Order shall be in substantially the same form as those attached hereto and incorporated herein as **Exhibit B**. MILLER shall furnish all materials and equipment, and perform all of the work in the manner and to the full extent set

forth in this Agreement. The materials and the manner and extent of the work shall be to the satisfaction of the City or its duly authorized representative, who shall at all times have full opportunity to inspect the materials and the work to be done under this Agreement.

- 4.2 Prior to commencement of work under any given Work Order, MILLER shall provide CITY with an acceptable performance and payment bond in the amount of one hundred percent (100%) of the total compensation for all services provided under this that Work Order.
- 4.3 MILLER shall ensure that work is completed in a manner that complies with all permits specifically procured for a given project as well as all Federal, State and local laws and regulations controlling the pollution of the environment. MILLER shall take necessary precautions to prevent pollution of all bodies of water with sediment, fuels, oils, chemicals, or other harmful materials and to prevent adverse impacts to the native flora and fauna of a project site.
- 4.4 MILLER shall staff all projects with employees who have met any certification requirements of the State of Florida.
- 4.5 MILLER shall implement and maintain an operator safety program in compliance with all applicable laws, rules and regulations.
- 4.6 MILLER shall execute a sworn statement demonstrating that CITY informed MILLER of the provisions of Section 287.133(2)(a), Florida Statutes, concerning public entity crimes.
- 4.7 MILLER shall comply with CITY's Drug Free Workplace policy and demonstrate compliance by executing the CITY's form regarding said policy prior to initiating any work under this Agreement.
- 4.8 MILLER shall provide to CITY, in writing, on or before the day services begin under this Agreement, the name of MILLER' authorized representative.
- 4.9 Upon completion of all work contemplated by this Agreement, and upon inspection and approval of the work by the City or its duly authorized agent, MILLER shall provide the City with a Contractor's Affidavit as required by the Construction Lien Law,

Florida Statutes Ch. 713. An executed Release of Lien also may be required by the City at its option.

5. CLEAN UP

- 5.1 MILLER will keep all work areas free from accumulations of waste materials, rubbish and other debris resulting from work performed by MILLER. At completion, MILLER will remove all waste materials, rubbish and debris from and about the work areas as well as all tools, construction equipment and machinery, and surplus materials. MILLER shall provide for the lawful disposal of all solid waste resulting from the work.
- 5.2 MILLER will restore to an original condition those areas that were not designated for alteration by a Work Order but became altered by the actions of MILLER during the course of work.
- 5.3 If MILLER fails to clean up or restore areas as provided in this Agreement, the CITY may do so and the cost thereof shall be deducted from the compensation due MILLER for services performed under a given Work Order.

6. COMPENSATION

- 6.1 MILLER's compensation under this Agreement shall be based upon amounts budgeted in the current Capital Improvements Plan and approved by the City Commission, the unit price quotations contained in the Contracts attached hereto as **Exhibit A**, and the type of service provided pursuant to Work Orders similar to that attached hereto and incorporated herein as **Exhibit B**. The total compensation for all services provided under this Agreement shall not exceed **\$120,000** without City Commission approval.
- 6.2 All compensation to MILLER is due upon receipt of MILLER's invoice and payable within thirty (30) days unless written notice of a defect or default has been provided to MILLER pursuant to the terms of this Agreement. Invoices shall be submitted not more frequently than once every thirty (30) days.

7. INDEMNITY, LIABILITY AND INSURANCE

- 7.1 The CITY shall not be liable for any loss, injury, death or damage to persons or property, which at any time may be

suffered or sustained by any person whatsoever arising from the negligent performance by MILLER and its employees and agents of its obligations under the provisions of this Agreement. MILLER shall indemnify and hold harmless the CITY, agents and employees against all claims, liabilities, loss, injury, death or damage whatsoever, including but not limited to attorney fees, on account or arising out of or resulting from any negligent act or omission of MILLER in performance of the work. The CITY and MILLER acknowledge that the first Ten Dollars (\$10.00) of the compensation paid MILLER for its work hereunder shall be deemed specific consideration for this indemnification. MILLER shall fund the foregoing indemnification by providing the insurance coverages set forth in Section 7.5, below.

- 7.2 MILLER shall additionally indemnify CITY and hold it harmless from any claims or demands arising from:
- a. MILLER's operation, control and maintenance of the a given project not in conformance with the terms and conditions of this Agreement;
 - b. Any default of MILLER under this Agreement;
 - d. Any damage to the property of the CITY, not otherwise covered by insurance as provided herein, or others or injury to any person caused by MILLER, its agents, or employees;
 - e. Any legal or administrative proceedings occasioned by MILLER in which the CITY is made a party without the CITY's fault;
 - f. All costs, attorney's fees and expenses incurred by CITY in connection with the items indemnified against. MILLER shall defend any legal action or proceedings resulting from a claim or demand indemnified against, at its expense, by an attorney satisfactory to CITY on receipt of proper notice from CITY to do so.
- 7.3 MILLER shall be liable for those fines or civil penalties imposed by a regulatory agency for violations that are the result of MILLER' negligence. CITY will assist MILLER to contest any such fines in administrative proceedings and/or in court prior to

any payment by MILLER. MILLER shall pay the cost of contesting any such fines.

- 7.4 CITY shall be liable for those fines or civil penalties imposed by any regulatory agencies on CITY and/or MILLER that are not a result of MILLER' negligence or willful conduct and are directly related to the ownership of a given project.
- 7.5 MILLER shall provide the CITY with a certificate of insurance containing the following limits:
- a. WORKERS' COMPENSATION – Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employer's Liability with a minimum limit of \$500,000.00 for each accident. The certificate shall include a waiver of subrogation from the carrier. In addition, Workers' Compensation coverage shall be endorsed to include federal Longshore and Harbor Workers' Act coverage and Maritime Employers Liability (Jones Act) coverage with minimum limits of \$500,000.00 per occurrence for employees working in, on, or near navigable waters.
 - b. COMMERCIAL GENERAL LIABILITY – Shall have minimum limits of \$500,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent MILLER and Products and/or Completed Operations Broad Form Property Damage, XCU Coverage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis. CITY, its officers, advisory board members and employees shall be included as an Additional Insured.
 - c. BUSINESS AUTOMOBILE POLICY – Shall have minimum limits of \$500,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-Owned Vehicles, and Employees Non-Ownership and be based on an occurrence basis.

The certificate of insurance shall state that the CITY will be notified in writing at least fifteen (15) days prior to the cancellation of any policies required of MILLER, state that the coverage is primary, and shall be in the types and amounts stated herein. Certificates should include issuer's address and phone number, and an address and phone number for issuer's agent in Manatee County, if any.

8. AGREEMENT TERMINATION

- 8.1 This Agreement shall terminate upon the later of two (2) years from the date of execution, or at such time as all work and services have been completed and accepted by the City. This Agreement may be renewed for an additional two (2) year term upon written agreement by both parties.
- 8.2 CITY shall be entitled to terminate this Agreement in its entirety and without prior written notice at any time for the following reasons:
- a. If MILLER becomes insolvent, commits any act of bankruptcy, or makes a general assignment for the benefit of creditors; or
 - b. If MILLER shall fail to prosecute work under a given Work Order, or any part thereof, with the diligence necessary to insure its progress and completion as prescribed by that Work Order and shall fail to take such steps to remedy such default within five (5) calendar days after receipt of written notice thereof from CITY as CITY shall direct; or
 - c. If MILLER shall commit a default under any of the terms, provisions, conditions, or covenants contained in this Agreement and shall fail to take such steps to remedy such default within ten (10) calendar days after written notice thereof from CITY as CITY shall direct.
- 8.3 Should CITY terminate this Agreement pursuant to Section 8.2 herein, MILLER shall cease all work immediately and CITY shall be entitled to complete work remaining under any and all outstanding Work Orders. MILLER shall receive no further compensation until all work remaining under any and all outstanding Work Orders is completed. If the unpaid balance otherwise due to MILLER exceeds the direct and indirect cost of completing the remaining work, including compensation for additional professional services, such excess shall be paid to MILLER. If such cost exceeds such unpaid balance, MILLER will pay the difference to the CITY. Such cost incurred by the CITY will be reasonably determined by the CITY.

9. DISPUTES AND FORCE MAJEURE

9.1 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which are directly attributed to such litigation in addition to any other relief to which it may be entitled.

9.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly due to any unforeseen occurrence beyond its reasonable control. However, this Section 9.2 may not be used by either party to avoid, delay or otherwise affect any payments due to other party.

Both parties indicate their approval of this Agreement by their signatures below and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been taken.

WITNESSES:

MILLER PIPELINE CORP.

By: _____

By: _____

Print Name: _____

Name: _____

By: _____

Title: _____

Print Name: _____

Date: _____

ATTEST: James R. Freeman,
City Clerk

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: _____
City Clerk/ Deputy Clerk

By: _____
Lawrence E. Bustle, Jr., Mayor

Date: _____

**I & I PROGRAM 2008
SANITARY SEWER LINING
AND REHABILITATION**

MILLER PIPELINE CORPORATION

**EXHIBIT A1
CITY OF ORLANDO**

**EXHIBIT A2
CITY OF NORTH MIAMI**

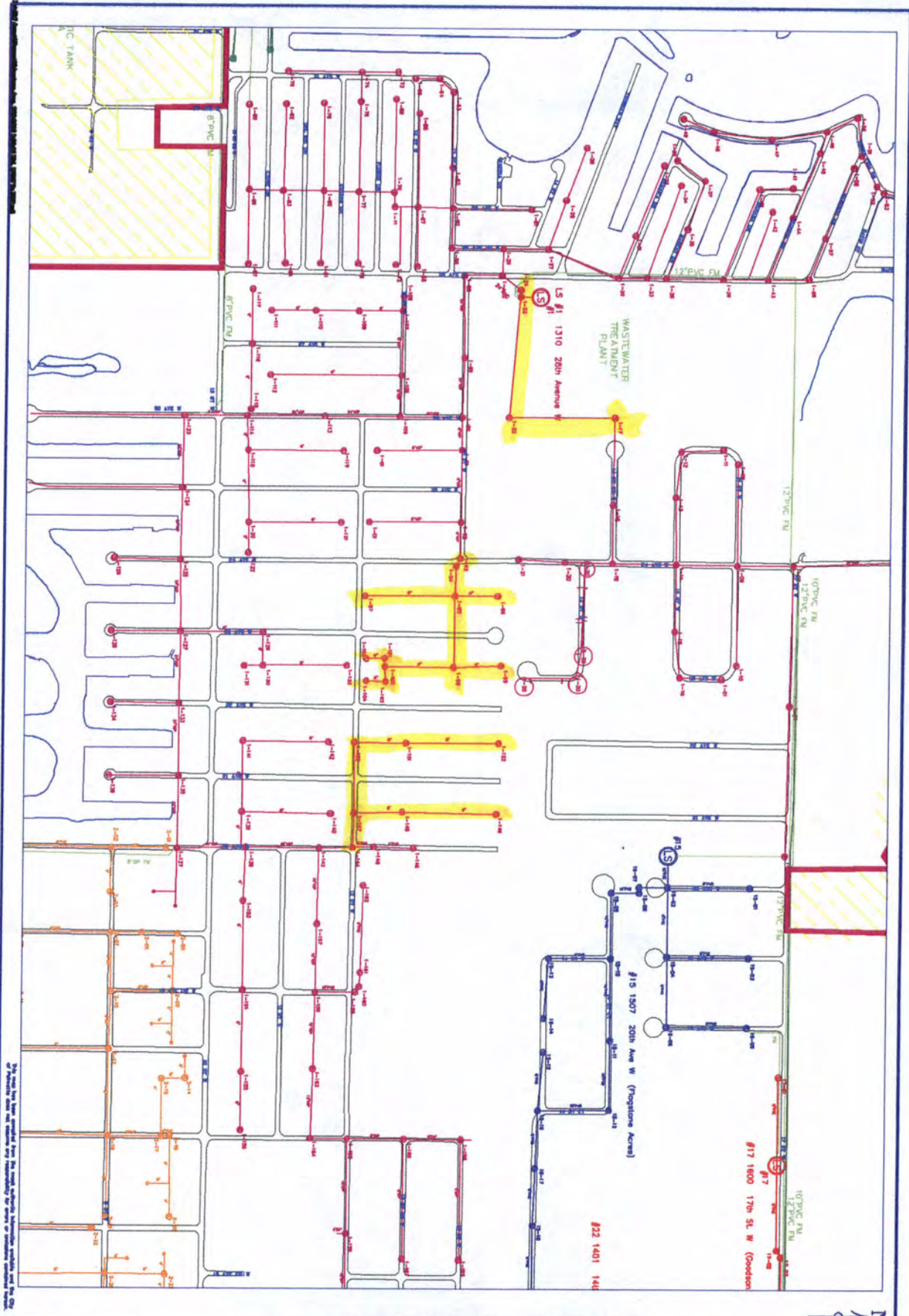
**CONTRACTS ARE ON FILE IN THE
CITY CLERK'S OFFICE**

EXHIBIT B

City of Palmetto Lining Assignment February 2008

Street	Upstream Manhole	Downstream Manhole	Diameter	Length	Service Connections	Price
Ease. Off 13th Ave. W	17th St. W	15th St. W	8	655	17	\$ 19,650.00
Ease. Off 24th Ave. W	55	53A	8	160	2	\$ 4,800.00
Ease. Off 24th Ave. W	54	55	8	162	5	\$ 4,860.00
Ease. Off 24th Ave. W	56	55	8	368	10	\$ 11,040.00
Ease. Off 23rd Ave. W	55	58	8	306	4	\$ 9,180.00
Ease. Off 23rd Ave. W	57	58	8	180	6	\$ 5,400.00
Ease. Off 23rd Ave. W	59	58	8	291	6	\$ 8,730.00
Ease. Off 23rd Ave. W	60	59	8	30	0	\$ 900.00
Ease. Off 23rd Ave. W	62	59	8	38	0	\$ 1,140.00
Ease. Off 23rd Ave. W	61	60	8	63	3	\$ 1,890.00
Ease. Off 23rd Ave. W	63	62	8	59	3	\$ 1,770.00
Ease. Off 22nd Ave. W	64	65	8	305	10	\$ 9,150.00
Ease. Off 22nd Ave. W	65	66	8	265	6	\$ 7,950.00
12th St. W	66	69	8	332	0	\$ 9,960.00
Ease. Off 21st Ave. W	67	68	8	304	12	\$ 9,120.00
Ease. Off 21st Ave. W	68	69	8	279	6	\$ 8,370.00
12th St. W	69	70	8	170	0	\$ 5,100.00
Totals				3967	90	\$ 119,010.00

Pricing Based on a Piggyback of the City of Orlando Contract #BI07-2295-04



This plan was prepared for the City of Palmetto. It is the property of the City of Palmetto and is not to be used for any other purpose without the written consent of the City Engineer.

<p>CITY OF PALMETTO</p> <p>WASTEWATER COLLECTION SYSTEM</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>REVISION</th> <th>BY</th> <th>DATE</th> </tr> <tr> <td>Added LS 21-25</td> <td>SM</td> <td>03-29-23</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	REVISION	BY	DATE	Added LS 21-25	SM	03-29-23							<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>PROJECT #</td> <td>03-2023-04</td> </tr> <tr> <td>OWNER</td> <td>City</td> </tr> <tr> <td>DESIGNER</td> <td>City</td> </tr> <tr> <td>SCALE</td> <td>1" = 250'</td> </tr> <tr> <td>DATE</td> <td>03-29-23</td> </tr> </table>	PROJECT #	03-2023-04	OWNER	City	DESIGNER	City	SCALE	1" = 250'	DATE	03-29-23		<p align="center">CITY OF PALMETTO</p> <p align="center">engineering department</p> <p align="center">800 270-2000 • 813 949-1111 • 813 949-1112 • 813 949-1113 • 813 949-1114 • 813 949-1115 • 813 949-1116 • 813 949-1117 • 813 949-1118 • 813 949-1119 • 813 949-1120</p>
REVISION	BY	DATE																								
Added LS 21-25	SM	03-29-23																								
PROJECT #	03-2023-04																									
OWNER	City																									
DESIGNER	City																									
SCALE	1" = 250'																									
DATE	03-29-23																									