



Twain Harte Community Services District

P. O. Box 649 ▪ Twain Harte, CA 95383
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www.twainhartecsd.com

Directors: Jim Johnson ▪ Gary Sipperley ▪ Richard Knudson ▪ Bill McManus ▪ Eileen Mannix

REQUEST FOR PROPOSAL CONSULTING SERVICES FOR GRANT APPLICATION & SEWER SYSTEM EVALUATION

November 17, 2017

Twain Harte Community Services District ("District") is soliciting proposals from engineering consultants to prepare and submit a planning grant application to the State Water Resources Control Board and to perform a complete analysis of the District's wastewater collection system.

The complete Request for Proposal and associated attachments is available on the District's website at <http://www.twainhartecsd.com/bidding.html>. Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda posted on the website. Prospective proposers must check the website for addenda or other relevant new information during the response period. The District is not responsible for the failure of any prospective proposer to receive such addenda.

If your firm is interested and qualified, proposals must be submitted no later than 3:00 p.m. on Wednesday, November 29, 2017. Proposals may be submitted by any one of the following methods:

1. Submit a PDF copy of your proposal to ttrott@twainhartecsd.com; or
2. Submit three (3) hard copies and one electronic PDF copy of your proposal by mail to: Twain Harte CSD, P.O. Box 649, Twain Harte, CA 95383; or
3. Submit three (3) hard copies and one electronic PDF copy of your proposal in person to: Twain Harte CSD, 22933 Twain Harte Drive, Twain Harte, CA 95383.

Please take note that the timeline for submittals is abbreviated due to the stringent timing and nature of the planning grant sought by the District.

Proposals may be brief, due to time constraints, but each proposal must specify each and every item as set forth in the Request for Proposal. Any and all exceptions must be clearly stated in the proposal. Failure to set forth any item in the specifications without taking exception may be grounds for rejection. The District reserves the right to reject any and all proposals and to waive any irregularity or informality in any proposal or in the Request for Proposal process, as long as, in the judgment of the District, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

All questions pertaining to the content of this Request for Proposal must be made in writing via e-mail to ttrott@twainhartecsd.com before close of business on Monday, November 27, 2017. Questions and responses will be posted on the District's website located at the link above. The District reserves the right to determine the appropriateness of comments/questions that will be posted on the website.

TOM C. TROTT
General Manager

REQUEST FOR PROPOSALS

CONSULTING SERVICES FOR GRANT APPLICATION & SEWER SYSTEM EVALUATION

GENERAL INFORMATION

Purpose

The Twain Harte community Services District (District) is seeking a qualified and experienced engineering consultant (Consultant) to conduct a complete analysis of its aging and deteriorating wastewater collection system for the purposes of identifying and prioritizing capital replacement and improvement projects. Funding for this planning is dependent on receipt of a planning grant, which Consultant will be required to prepare, submit and manage. If the planning grant is successful, the Consultant will be responsible to conduct a complete assessment of the system, including identification of system assets through creation of a sustainable GIS asset management system, CCTV surveying of the system, data collection and analysis, hydraulic modeling, identification of deficiencies and prioritization of capital improvement projects. The purpose of this request for proposals (RFP) is to provide interested consultants with sufficient information concerning the services requested by the District.

Background

The Twain Harte Community Services District (District) provides water, sewer, park and recreation and fire protection services to the community of Twain Harte (2,500+ population) in Tuolumne County. The District is considered a disadvantaged community due to its median household income (MHI) of \$45,642 (less than 80% of the State MHI of \$61,818).

The District operates and maintains a sewer collection system that serves approximately 1,450 connections. The system includes three lift stations and an estimated 23 miles of sewer line. One approximate 150-home subdivision in the District is still on a septic system. The existing system has serious infiltration problems, resulting in high flows to the regional wastewater treatment plant, which is operated by Tuolumne Utilities District. The existing sewer lines are mainly old asbestos cement pipe (ACP) with some portions of vitrified clay pipe (VCP). Many sections have sags and potential offsets due to significant root intrusion and interference, which is common since the District is located within a conifer forest. Many areas require excessive jetting to avoid sanitary sewer overflows (SSO) as well as emergency repairs. It is critical that the District obtain funding to identify existing assets, deficiencies and produce a project plan to replace critical deficiencies.

The State Water Resources Control Board (SWRCB) is offering planning grants through its Small Community Wastewater Grant Program to small, disadvantaged communities, serving populations of less than 20,000. These planning grants are awarded on an ongoing, but “first-come, first-serve” basis making timing for submittal of the application critical to success. Planning grants can be used for a variety of planning tasks, such as wastewater system evaluation, updating and identifying assets in GIS format, capital improvement planning, feasibility studies, plans and specifications, environmental documents and financial analyses. The maximum amount available for a planning grant is \$500,000.

Existing System Information

The District’s sewer system atlas book (see Attachment A) is the most complete asset inventory available to the District at this time. The atlas book was created about 6 years ago along with a geo database. The geo database contains some system information, but requires significant refinement and addition of data. The District also has roughly 70 as-built sheets that range from hand drawings to engineered plans that contain more detail. There are also roughly 300 easement documents that contain important system information.

SCOPE OF WORK

Task 1 – Grant Application Preparation & Processing

This task includes preparing and submitting the “Planning or Design Financial Assistance Application” form to SWRCB as quickly as possible to maximize the District’s chances of receiving the grant funding. The Consultant will serve as the liaison between the District and SWRCB through the application, award and grant disbursement process.

This task will also include preparation of the required Plan of Study submittal, which details what the planning grant will be used for, including budgets, schedules, etc.

The Consultant will work with the District to obtain any data or documents required for this task in an efficient and timely manner.

Tasks 2-6 will only be authorized if the District is awarded the planning grant.

Task 2 – Preparation of Claims for Disbursement

This task includes preparation and submittal of monthly claims for reimbursement to SWRCB after the planning grant has been awarded. Preparation of claims shall include preparation of a cash flow projection and claims schedule, review of invoices from consultants involved in planning grant activities, compiling District soft costs, preparing claims with documentation meeting SWRCB requirements and tracking of claim processing.

Task 3 – Sewer System Asset Identification

Consultant will gather existing District system data and create a complete GIS database, which includes all pertinent asset information and can be easily updated and managed on an ongoing basis. Existing District GIS data may be used in this process. The GIS database shall be constructed in a way that it can be easily updated in the field by operators and can also be used for maintenance tracking and management in the future.

Task 4 – CCTV Survey

Consultant shall perform a CCTV survey of the entire District sewer system to accurately assess the condition of the system and identify deficiencies. This task may be performed by a subconsultant that is managed by the Consultant.

Task 5 – Hydraulic Model

The Consultant shall create a model of the entire sewer system to identify any system capacity deficiencies. The model shall also be capable of being utilized to accurately compare system improvement options.

Task 6 – System Evaluation

The Consultant shall use all of the data and information produced in Tasks 3-5 to evaluate the District’s wastewater collection system. The evaluation shall identify system deficiencies, recommend capital projects to address deficiencies and prioritize said projects. The system evaluation must result in clear capital projects for implementation and potentially future construction grants.

Tasks 3-6 are not presented in detail at this time in recognition that they will be refined during the preparation of the Plan of Study.

OTHER REQUIREMENTS

Qualifications & Experience

The ideal Consultant will have the following qualifications and experience:

1. Experience with preparing applications to the SWRCB for the Small Community Wastewater Grant Program and successfully obtaining planning grants as a result.
2. Experience working with SWRCB staff on planning grants and managing submittals.
3. Registered professional engineering staff with experience in wastewater system evaluation, including modeling, inspection and design of wastewater capital improvement projects.
4. Trained GIS staff with experience in creating robust GIS databases that accurately identify system assets and can be easily used and updated in the field by operations staff for asset tracking and maintenance.

Project Timing

The services requested herein, especially in Task 1, must be completed as quickly as possible to better the District's chances of obtaining a planning grant. Consultant's ability to quickly complete Task 1 in a quality manner is critical to this project.

Services Agreement

The selected Consultant must negotiate with the District to enter into a time and materials agreement with a ceiling, substantially complying with the District's standard Agreement for Professional Services (see Attachment B).

Insurance and Indemnification

The selected Consultant will be required to provide insurance coverage complying with Section 4 of the attached Agreement for Professional Services (Attachment B) prior to initiating work. The cost of insurance coverage shall be reflected in Consultant's professional fee.

The Consultant shall also indemnify the District in accordance with Section 5 of the attached Agreement for Professional Services (Attachment B).

PROPOSAL FORMAT

Due time constraints, proposals may be brief in nature, but must address everything discussed in this RFP. Proposals must contain the following information:

- 1. Project Title / Applicant or Firm Name**
- 2. Qualifications & Experience**
 - a. Provide a statement of qualifications that provides information about your firm's qualifications and experience.
 - b. Preference will be given to firms whose experience and qualifications closely meet those described above.
- 3. Scope of Work**
 - a. Describe how your firm will satisfy each work task in the Scope of Work, including assumptions and exceptions.

- b. Prepare the scope of work so that is simple to incorporate as an exhibit to the District's Agreement for Professional Services (Attachment B).

4. Proposed Schedule

- a. Provide a basic task completion schedule estimating the time frame necessary to complete Task 1 of the Scope of Work.

5. Cost Proposal

- a. Provide a cost proposal that clearly connects costs with services listed in the Scope of Works. District acknowledges that costs for Tasks 3-6 will be an estimate based on assumed outcome of the Plan of Study. Proposed cost for Task 1 shall be firm.
- b. Provide a rate schedule listing the hourly rates for all project team members, including subcontractors. Rate schedule shall be good for the entire anticipated project duration.
- c. Prepare the cost proposal and rate schedule so that is simple to incorporate as an exhibit to the District's Agreement for Professional Services (Attachment B).

PROPOSAL SUBMITTAL AND SELECTION

1. All proposals must be received no later than 3:00 p.m. on Wednesday, November 29, 2017. Late proposals will not be considered.
2. Proposals may be submitted by any one of the following methods:
 - Submit a PDF copy of your proposal to ttrott@twainhartecsd.com; or
 - Submit three (3) hard copies and one electronic PDF copy of your proposal by mail to: Twain Harte CSD, P.O. Box 649, Twain Harte, CA 95383; or
 - Submit three (3) hard copies and one electronic PDF copy of your proposal in person to: Twain Harte CSD, 22933 Twain Harte Drive, Twain Harte, CA 95383.
3. Costs of preparation of proposals will be borne by the proposer.
4. Selection of qualified proposers will be by standard procedures for awarding professional contracts.
5. This request does not constitute an offer of employment or to contract services.
6. The District reserves the option to reject any or all proposals, wholly or in part, received in response to this request.
7. The District reserves the option to retain all proposals, whether selected or rejected.
8. All proposals shall remain firm for ninety (90) calendar days following closing date for receipt of proposals.
9. The District reserves the right to award the contract to the firm who presents the proposal which in the judgment of the District is most qualified to accomplish the desired results.

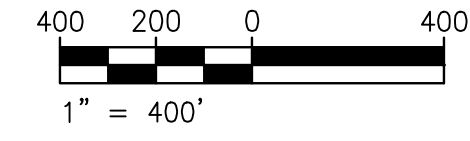
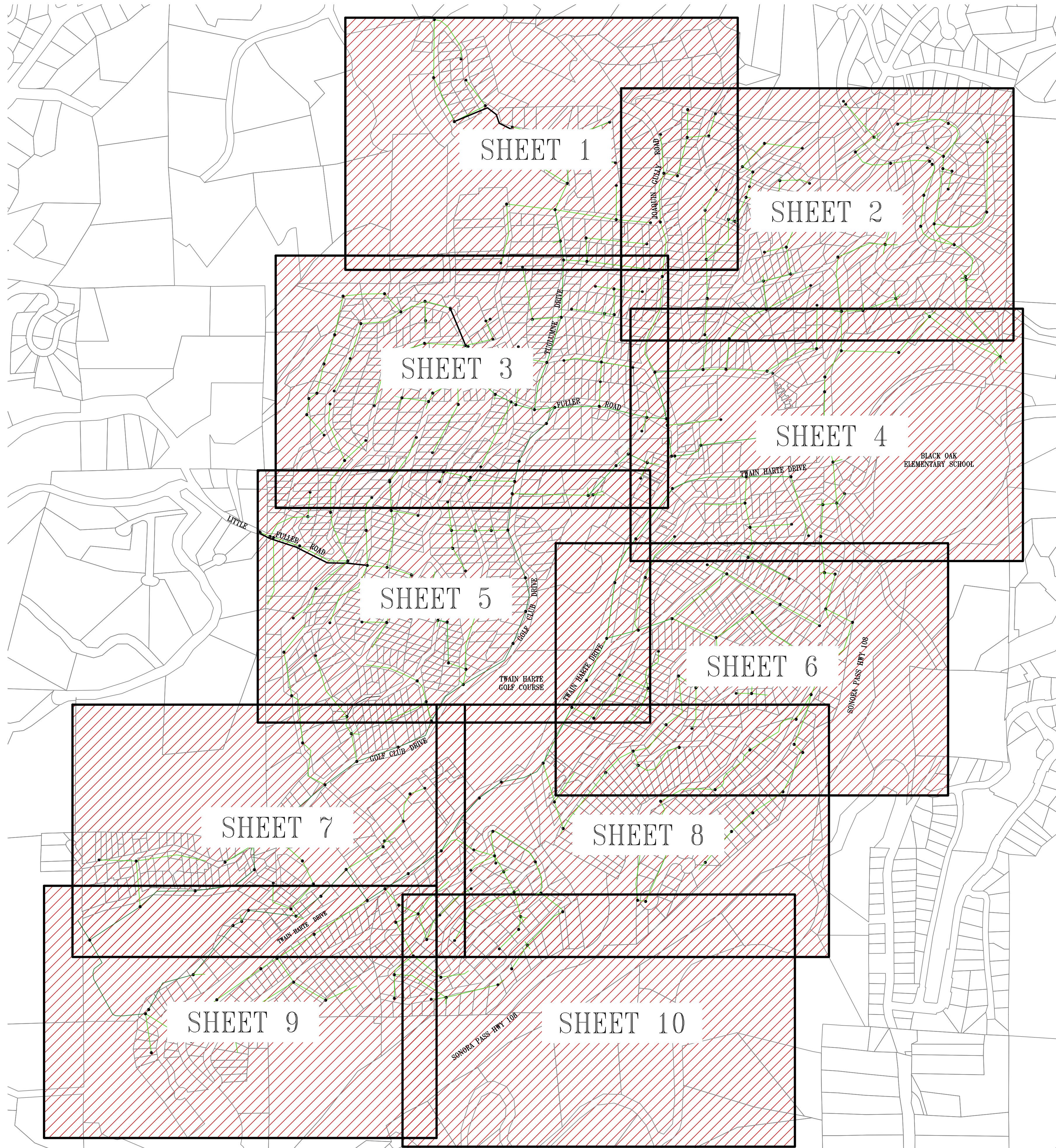
10. Selection will be made on the basis of the proposals as submitted. The selection committee may deem it necessary to interview applicants. The District retains the right to interview applicants as part of the selection process.
11. The proceedings of the selection committee are confidential. Members of the selection committee are not to be contacted by the proposers.
12. Award of this contract will be based on the criteria herein, with a focus on the following:
 - Qualifications and experience of the proposed project team.
 - Agility and availability of the Consultant to quickly negotiate, contract for and perform quality services in a timely manner.
 - Proposed cost for services.
13. The District’s anticipated Consultant selection schedule is as follows:

Selection Process Actions	Target Date
RFP Submission Deadline	November 29, 2017
Proposal Review	November 30-December 5, 2017
Consultant Selection	December 5, 2017
Contract Negotiation/Finalization	December 5-8, 2017
Final Contract Approval	December 14, 2017

ATTACHMENTS

- Attachment A District Wastewater Collection System Atlas Book
- Attachment B Standard Agreement for Professional Services

ATTACHMENT A
District Wastewater Collection System Atlas Book



NO.	REVISIONS	DATE	APPROVED

**SEWER SYSTEM TOPOGRAPHY
INDEX SHEET**
TWAIN HARTE SEWER STUDY
TWAIN HARTE, CALIFORNIA

North Star Engineering Group, Inc.
 CIVIL ENGINEERING • SURVEYING • PLANNING
 409 14th Street, Modesto, CA 95304
 (209) 524-3525 Phone (209) 524-3226 Fax

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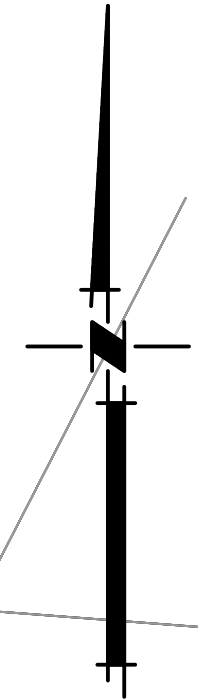
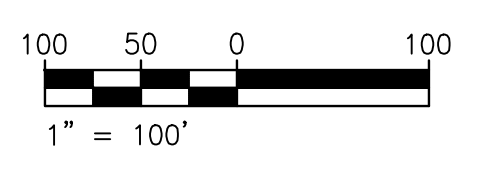
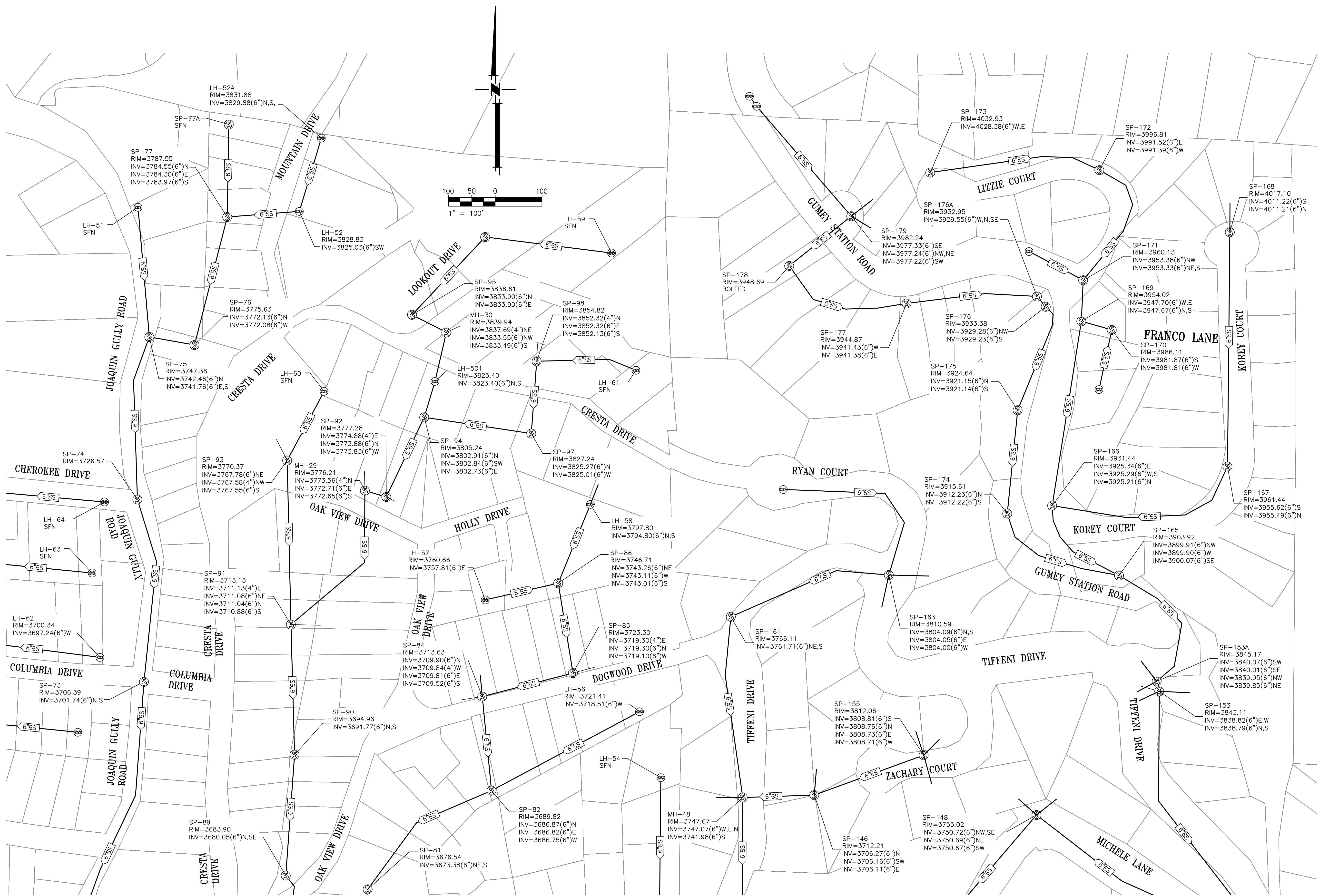


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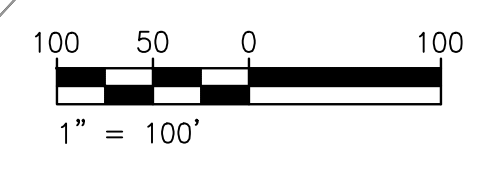
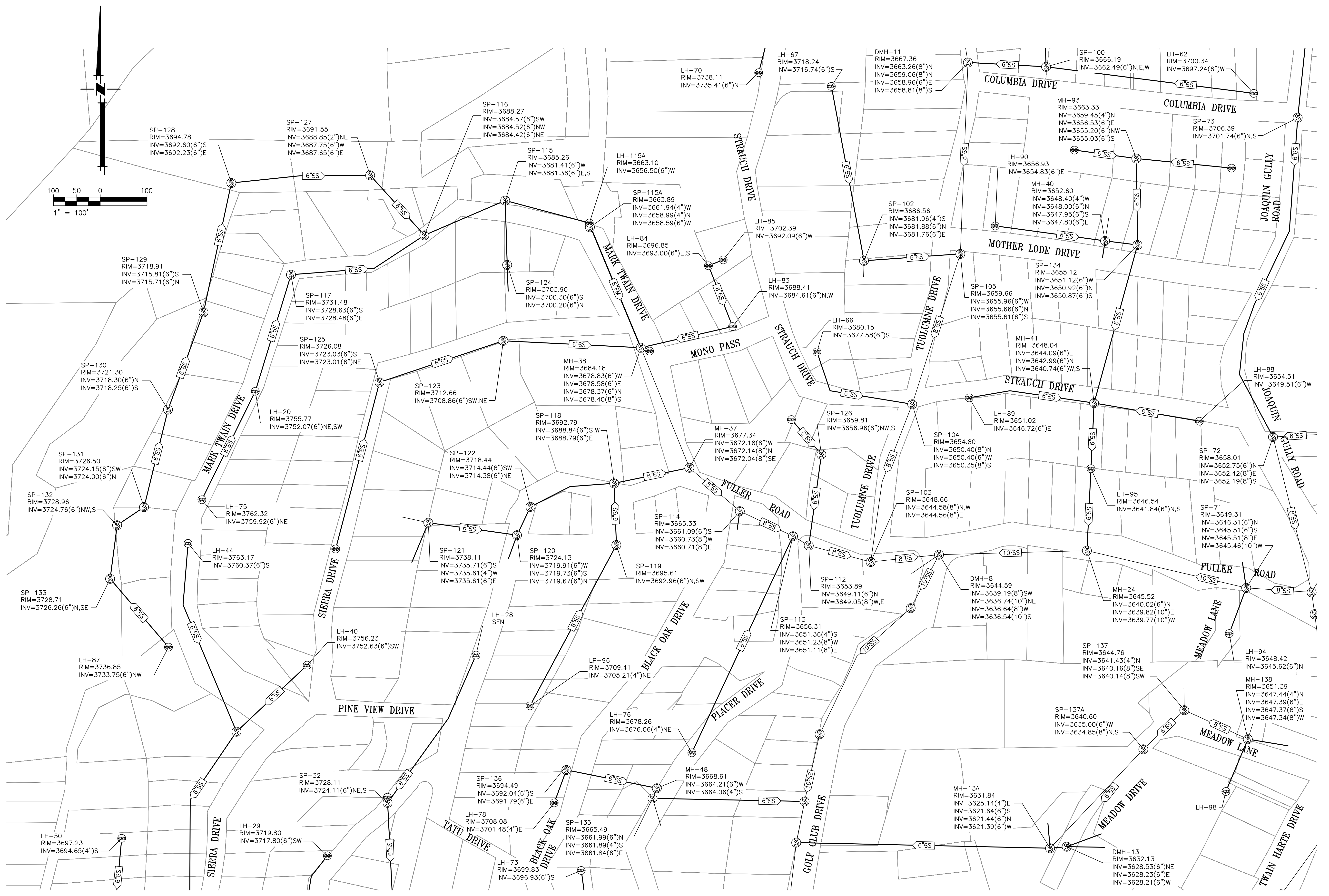
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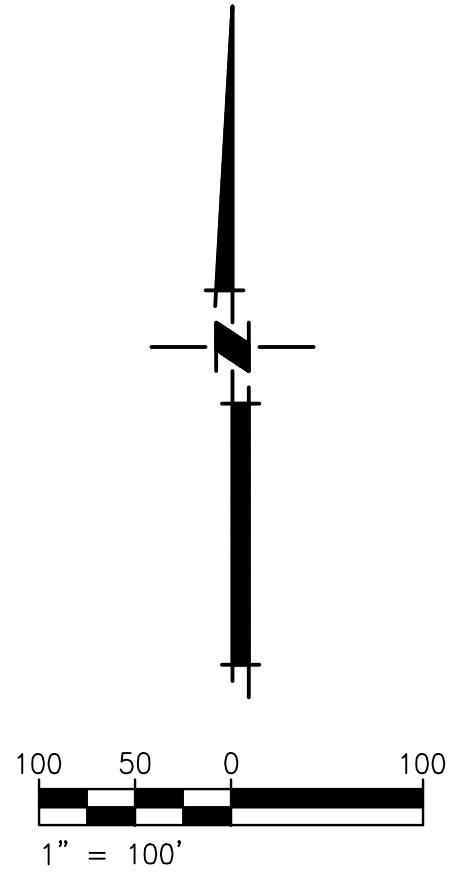
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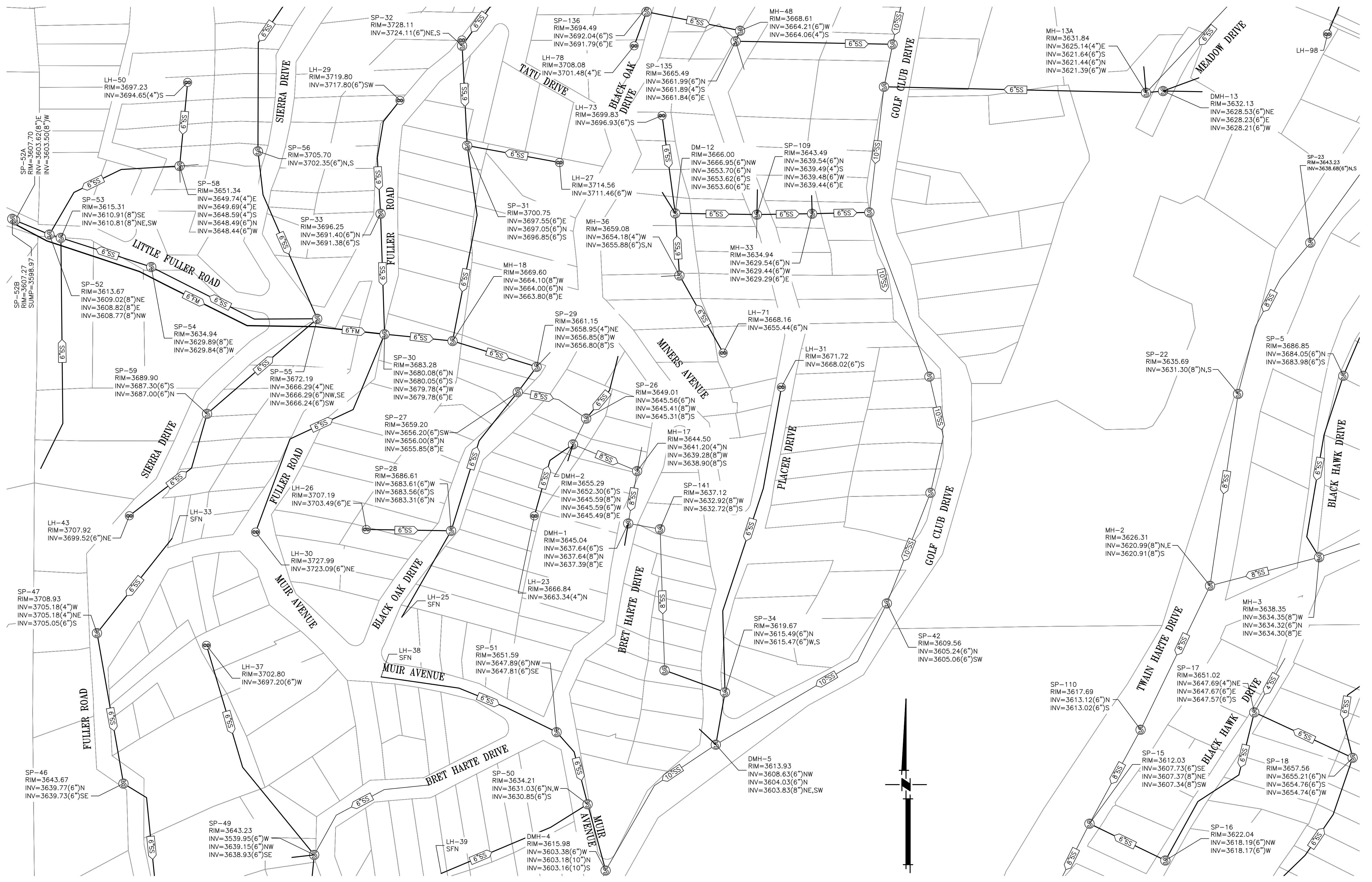
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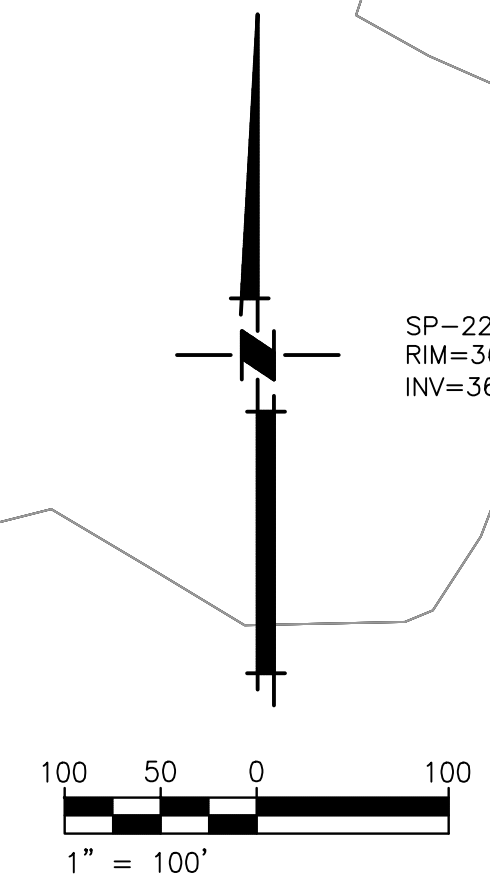
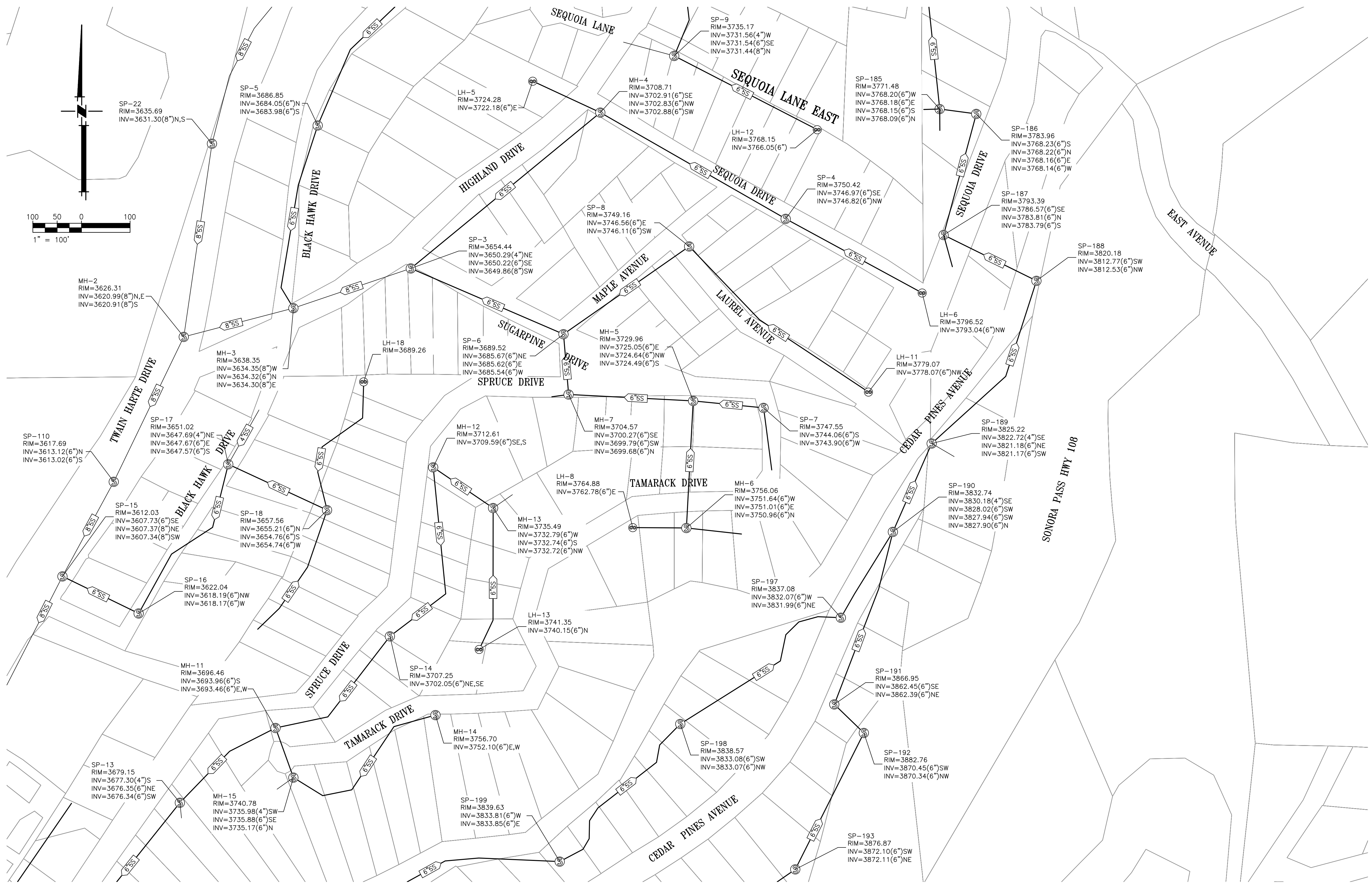
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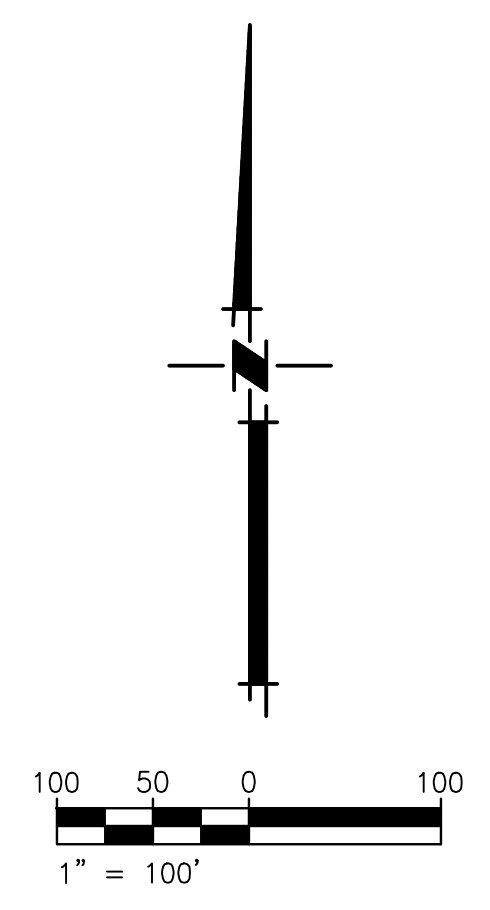
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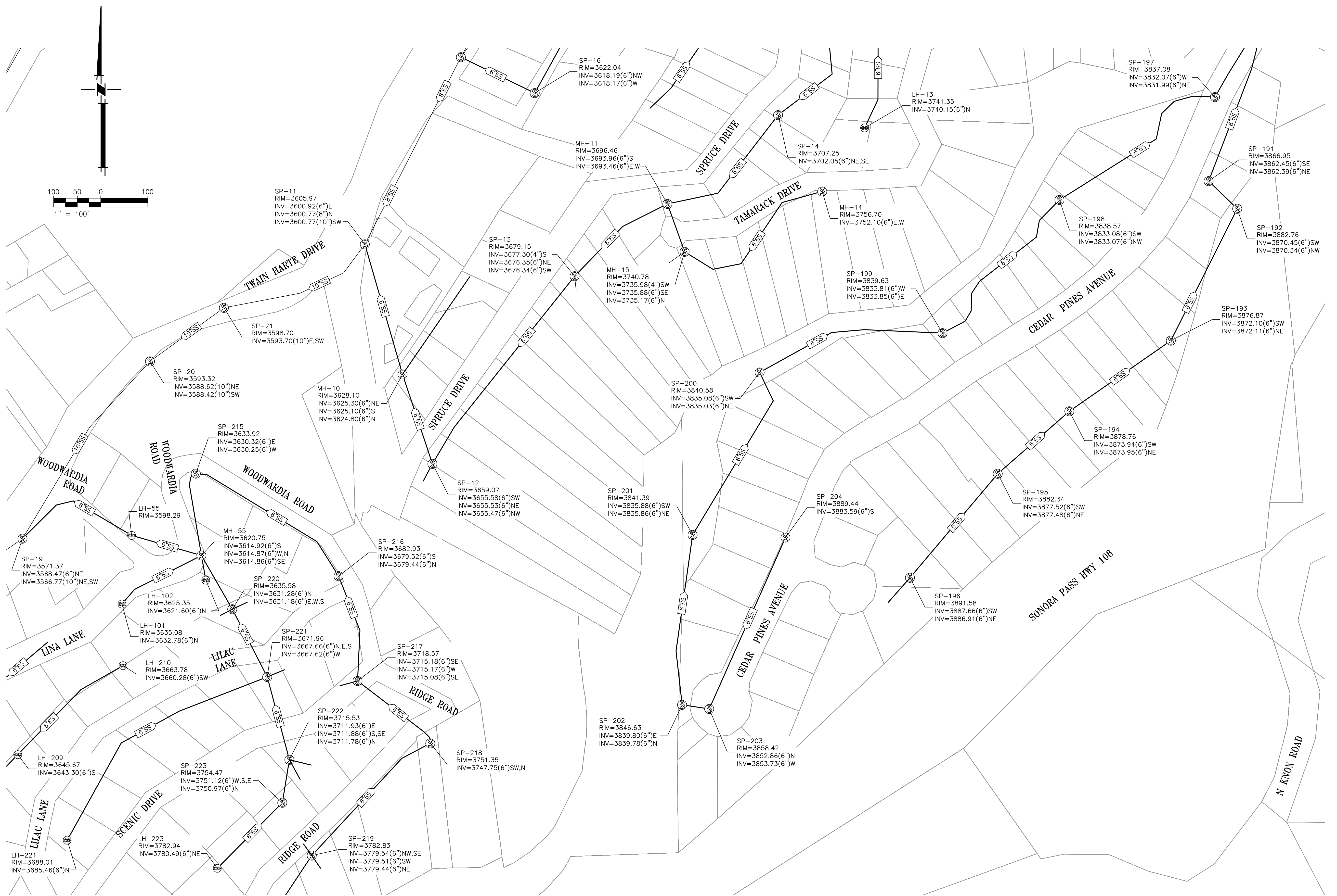
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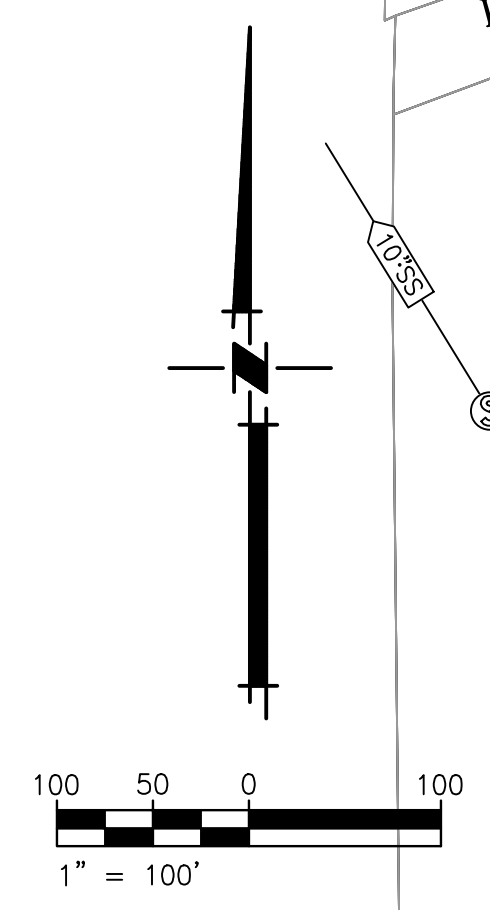
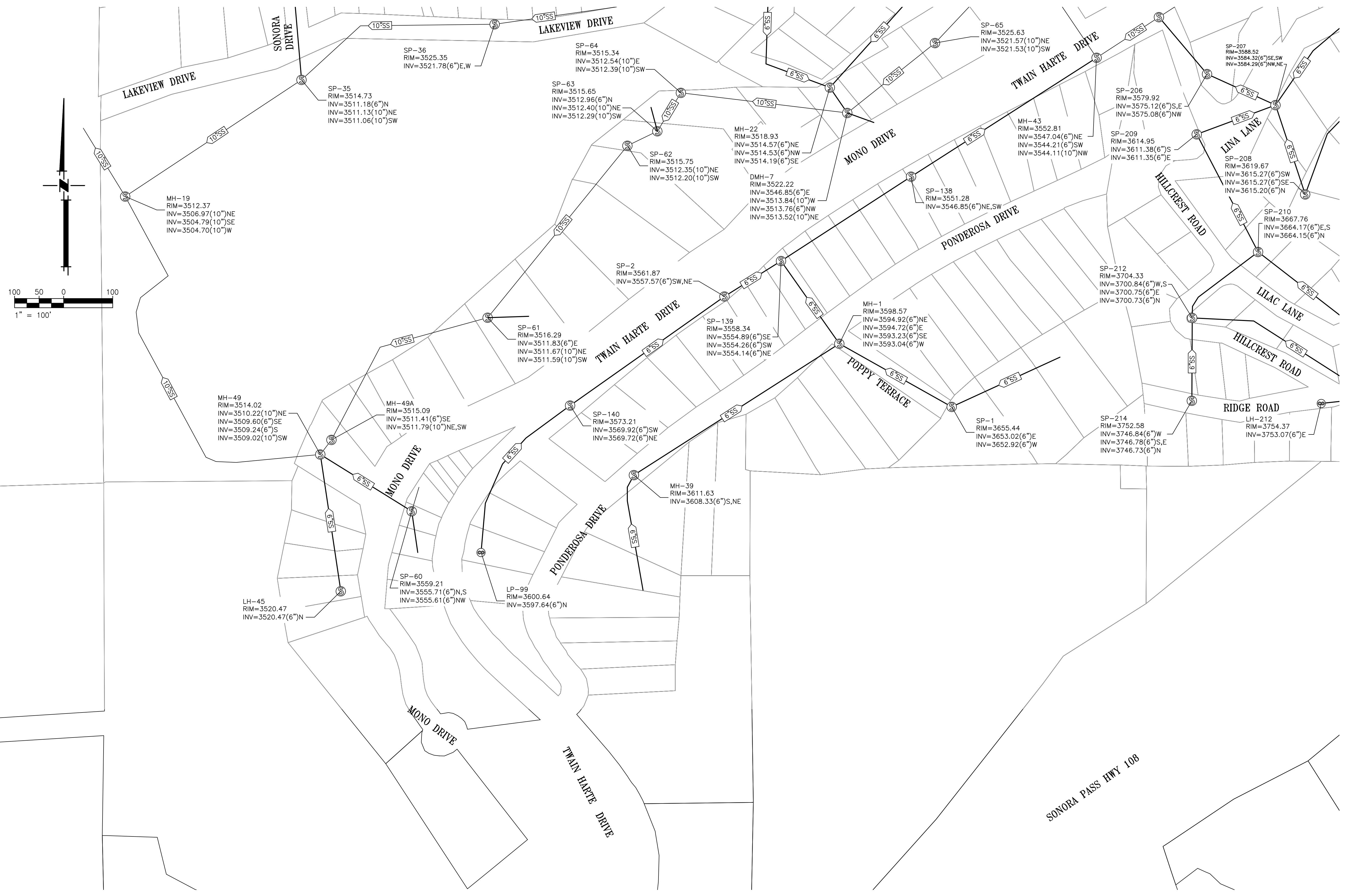
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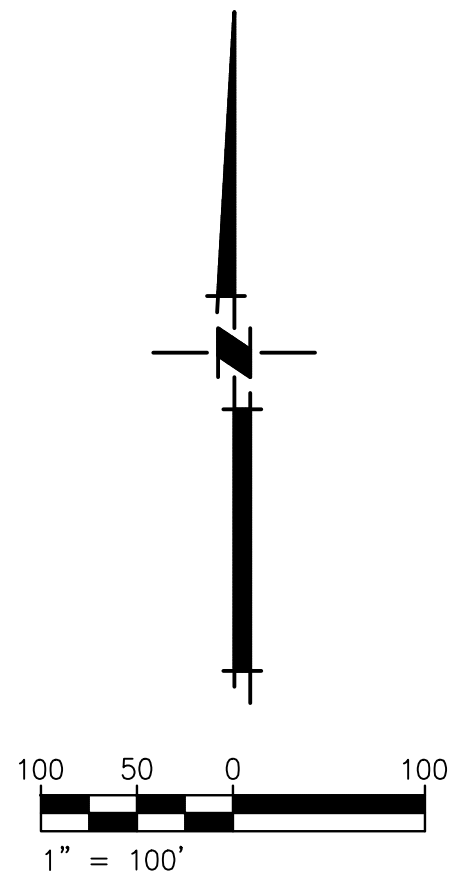
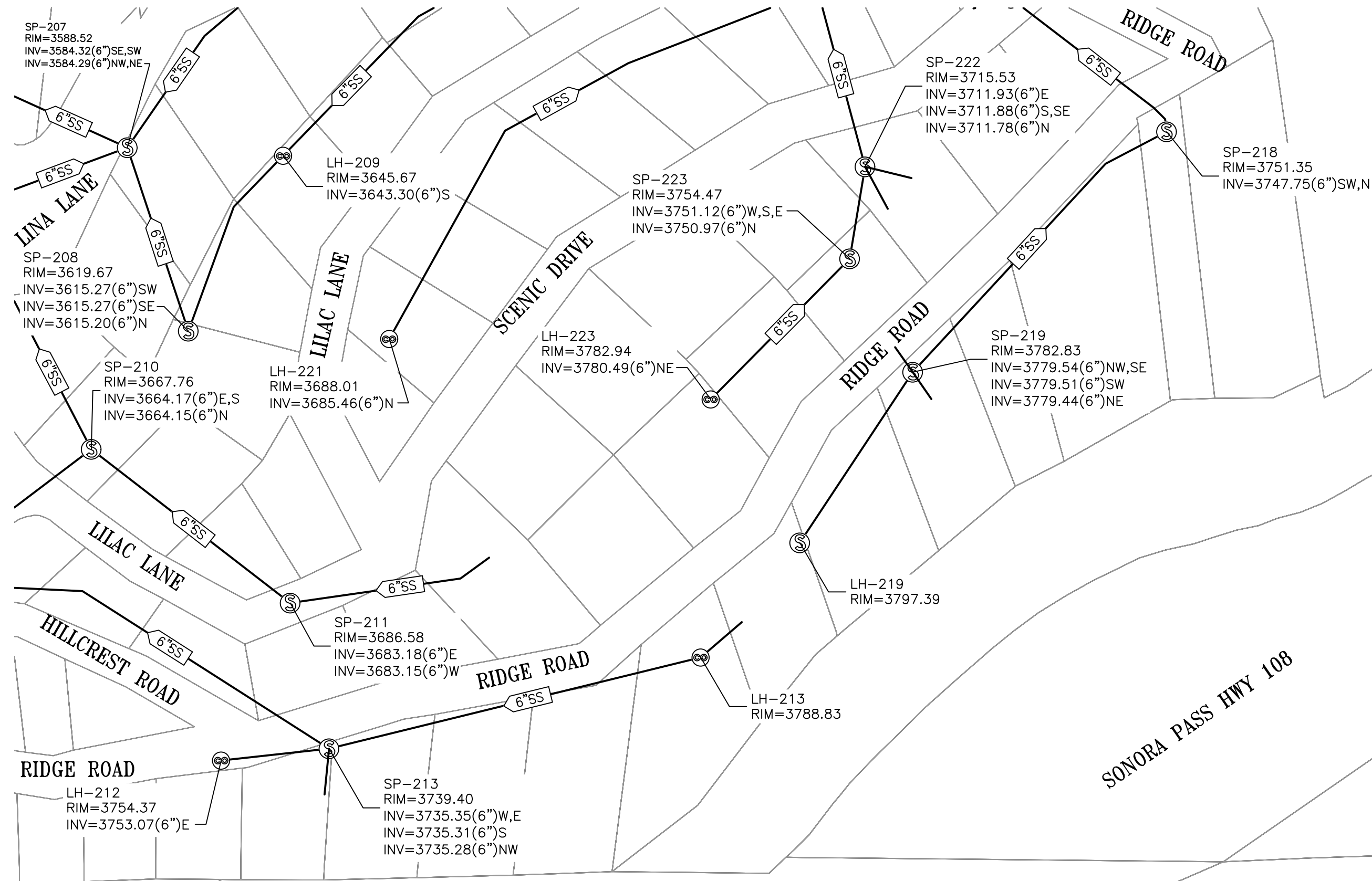
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ATTACHMENT B
Standard Agreement for Professional Services

AGREEMENT FOR PROFESSIONAL SERVICES

Name of Services Project

[USE THIS AGREEMENT FOR CONSULTING AGREEMENTS WITH LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, AND DESIGN FIRMS]

THIS AGREEMENT for Professional Services (“Agreement”) is made on _____, 2016 (“Effective Date”), by and between the Twain Harte Community Services District (“District”), a special district of the State of California, and _____ (“Consultant”) (together sometimes referred to as the “Parties”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Time for Completion of Work.** No work shall be commenced prior to the Consultant’s receipt of the District’s Notice to Proceed. All work shall be completed no later than _____, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the District’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 Deletion of Work.** The District reserves the right to delete work from the Scope of Work set forth in Exhibit A. Such deletion of work must be in writing and must expressly state that certain portion of work being deleted. Consultant shall be entitled to no compensation for any work that is deleted.
- 1.3 Standard of Performance and Responsibility for Work.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged. The Consultant shall be solely responsible for the work described in Exhibit A.
 - a. The District is under no duty or obligation to review or verify the appropriateness, quality or accuracy of any of the Consultant’s work. The District’s review, approval, and/or adoption of any designs, plans, specifications or any other work shall be in reliance on the Consultant’s specialized expertise and shall not relieve the Consultant of its sole responsibility for the work.
 - b. All information which the Consultant receives from the District should be independently verified by the Consultant. The Consultant shall not rely upon such information, unless otherwise stated by the District in writing, until it has independently verified its accuracy.

c. If Consultant ever has reason to believe that any of its general or professional duties of care conflict with any requirements of this Agreement, the Consultant shall promptly notify the District in writing.

1.4 Assignment of Personnel. All work performed under this Agreement shall be performed by the personnel identified in the Consultant's Project Personnel Chart, attached hereto as Exhibit C. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.

1.5 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Consultant's obligations hereunder.

1.6 Public Works Requirements. Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with prevailing wage rates and their payment in accordance to the provisions of the Labor Code applicable to public works. Consultant will comply, or cause it subcontractors to comply, with the provisions of Labor Code Section 1774.

[IF THE SERVICES ARE NOT WITHIN THE STATUTORY DEFINITION OF A PUBLIC WORKS PROJECT, THEN SECTION 1.6 MAY BE DELETED. CHECK WITH THE DISTRICT ATTORNEY IF THERE IS A QUESTION ABOUT WHETHER THE SERVICES CONSTITUTE A PUBLIC WORKS PROJECT.]

Section 2. COMPENSATION. District hereby agrees to pay Consultant in full for all work required by this Agreement a sum not to exceed the total Agreement amount of . Progress payments will be made to Consultant based on compensable services provided and allowable costs incurred at the rates set forth in the Consultant's Cost Proposal, attached hereto as Exhibit B.

[THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall be based on the Cost Proposal contain the following information:

- Invoice number;

- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- **[ONLY USE IF LONG TERM CONTRACT]** Consultant shall give separate notice to the District when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and District. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and District, if applicable.

2.2 Monthly Payment. District shall make monthly payments, based on invoices received, for actual services satisfactorily performed, and for authorized reimbursable costs incurred, as set forth in Exhibit B. District will pay Consultant no later than 30 days from the receipt of a compliant invoice.

2.3 Final Payment. Consultant shall only submit a final invoice upon completion of all services. The final 10% of the total sum due to pursuant to this Agreement will only be paid if all services required have been satisfactorily performed.

2.4 Excess Payments. District shall pay only for the services to be rendered by Consultant pursuant to this Agreement and shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant for said services or for any other services, unless the Agreement is modified by amendment to include said additional costs or services.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

2.5 Hourly Fees. Fees for work performed by Consultant shall be on an hourly basis and shall not exceed the amounts shown on the hourly rate schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses shall not exceed the amount specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to District. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment upon Termination. In the event that the District or Consultant terminates this Agreement pursuant to Section 8, the District shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. District, however, may condition payment of such compensation upon Consultant delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the District in connection with this Agreement. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.8 Total Payment. Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries, taxes, employment taxes and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

[SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and for any additional period required below.

4.1 All Policies Requirements.

- 4.1.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.1.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish District with complete copies of all policies, in a form satisfactory to the District, including complete copies of all endorsements attached to those policies. If the District does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them at the request of the District.
- 4.1.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the District's written approval for the self-insured retentions and deductibles before beginning any of the work called for in this Agreement. At the option of the District, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.1.4 Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.1.5 Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- 4.1.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to District.
- 4.2 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in

the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall provide an endorsement waiving all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.3 Commercial General and Automobile Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.3.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.3.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- District, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be

excess of the Consultant's insurance and shall not contribute with it.

- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the District.

4.4 Professional Liability Insurance. [OPTIONAL]

4.4.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than **\$1,000,000** covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.4.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the District for review prior to the commencement of any work under this Agreement.

4.4.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy

4.5 Remedies. In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option, exercise any of the following remedies:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- c. Terminate this Agreement.

Section 5. INDEMNIFICATION. Consultant shall, to the fullest extent allowed by law, with respect to all work performed in connection with this Agreement, defend with counsel acceptable to District, indemnify, and hold District, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, (“Claims”). Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly (“Liability”). Such obligations to defend, hold harmless and indemnify the District shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the District.

Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of District. District shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.4; however, otherwise District shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Not an Agent.** Except as District may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the performance of the work hereunder. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to District that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to District that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby. Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** District may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to District and shall include in such notice the reasons for cancellation.
- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if District grants such an extension, District shall have no obligation to provide Consultant with

compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the District, District shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the District. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the District.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, District's remedies shall include, but not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- d. Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, whether complete or in process, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant hereby agrees to deliver those documents to the District upon termination of the

Agreement. The Consultant shall assume no responsibility for the unintended use by others of any such documents. District and Consultant agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Tuolumne or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the District. If Consultant was an employee, agent, appointee, or official of the District in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the District for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.7 Professional Endorsement. The Consultant shall endorse all reports, maps, plans, documents, materials and other data in accordance to the laws of the State of California.

10.8 Notices. Any written notice to Consultant shall be sent to:

Name
Company
Address
Address

Any written notice to District shall be sent to:

District Project Manager
Twain Harte Community Services District
P.O. Box 649
Twain Harte, CA 95383

10.9 Integration. This Agreement, including the following exhibits attached hereto and incorporated herein represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral:

[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]

<u>Exhibit A</u>	Scope of Work
<u>Exhibit B</u>	Cost Proposal
<u>Exhibit C</u>	Project Personnel Chart

10.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

DISTRICT

CONSULTANT

Name	Name
Board President or General Manager	Title

Attest:

Name
District Board Secretary

EXHIBIT A
SCOPE OF SERVICES

**EXHIBIT B
COST PROPOSAL**

EXHIBIT C
PROJECT PERSONNEL CHART