

**REIMBURSEMENT AGREEMENT
(ORANGE COUNTY SANITATION DISTRICT MANHOLE ADJUSTMENT)**

THIS REIMBURSEMENT AGREEMENT FOR UTILITY ADJUSTMENT (this “**Agreement**”) is entered into the _____ day of _____, 20__ (“**Effective Date**”), between **Orange County Sanitation District**, a California public body (“**OC San**”), and **City of Newport Beach**, a California municipal corporation and charter city (“**City**”), individually referred to as “**Party**” and collectively “**Parties**”.

RECITALS

A. Caltrans proposes improvements to Pacific Coast Highway from Santa Ana River Bridge to Jamboree Road, which work will generally consist of asphalt concrete pavement resurfacing and associated improvements within the existing right-of-way. City is to adjust all of City’s structures to finished surface that are in locational conflict with Caltrans’ proposed improvements (“**City Project**” or the “**Project**”).

B. OC San has surficial manhole structures (the “**Utilities**”) located on Pacific Coast Highway that are also in locational conflict with Caltrans’ proposed improvements and that will similarly have to be adjusted to finished surface (the “**Adjustment Work**”).

C. In order to minimize impacts to the environment, community and surrounding areas, City agrees to perform the Adjustment Work as part of its Project subject to reimbursement from OC San.

D. City and OC San desire to enter into this Agreement to outline their respective obligations regarding the cost, reimbursement, and timely execution of the Adjustment Work by City.

E. OC San has provided City with a copy of all OC San standard drawings (“**Standards**”) outlining the Adjustment Work to be performed, and a copy of which Standards are attached hereto and made a part hereof as **Exhibit A**.

AGREEMENT

For and in consideration of the foregoing recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and OC San agree as follows:

Section 1: **Recitals.** The Recitals above are deemed true and correct, are hereby incorporated in this Section as though fully set forth herein, and each Party to this Agreement acknowledges and agrees that they are bound by the same.

Section 2: **Elements of Agreement.** City and OC San will work cooperatively together so that Adjustment Work can be constructed as part of the Project in a manner that minimizes the

costs and impacts to all Parties and the public. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.

Section 3: CITY's Specific Obligations.

- A. City will be responsible for compliance with the California Environmental Quality Act ("CEQA") and all other permitting requirements.
- B. City will undergo a Public Works bidding process and will enter into a construction contract that includes the Adjustment Work as part of the Project. The Adjustment Work shall be constructed in accordance with the Standards. The total estimated cost of the Adjustment Work is \$656,856, which includes a 20% contingency for unforeseen work not included in Project bid documents. The amount to be reimbursed by OC San shall be based on the actual cost of the Adjustment Work, subject to the prior written approval of OC San.
- C. After award of the construction contract, City will submit relevant documentation to OC San for its files.
- D. For the duration of Project construction, City will:
 - 1. Promptly inform OC San of any proposed changes to the construction contract as it relates to the Adjustment Work. Copies of proposed changes affecting the Adjustment Work will be provided to OC San within five (5) working days of submission to City.
 - 2. Provide OC San staff with contractor schedules and updates within five (5) days of acceptance by City staff.
 - 3. Invite OC San staff to construction progress meetings.
 - 4. Notify OC San 72 business hours prior to the need for an inspection.
 - 5. Ensure the City's construction contractor coordinate with OC San to retrieve the manhole frames and covers for the Utilities (provided by OC San) from the OC San Treatment Plant No. 2 in Huntington Beach.
- E. City will document and inform OC San of the date of the completion of the Adjustment Work. City will verify with OC San prior to issuance of progress payment to City's construction contractor that Adjustment Work was completed per the Standards.
- F. City shall not be obligated to perform any Adjustment Work in excess of \$656,856 unless OC San increases the Reimbursement Amount in accordance with Section 4.D.

Section 4: OC San's Specific Obligations.

- A. OC San will provide, at OC San's expense, new frames and covers for the Utilities to replace the existing frames and covers.
- B. OC San will provide, at OC San's expense, inspection services to assure compliance with the Standards. OC San will promptly notify City if any portion of the Adjustment Work appears not to conform to the Standards, and will work with the City to resolve all discrepancies.
- C. OC San will respond to City's request for an inspection within 48 hours. OC San will be responsible for the City's construction contractor's downtime due to failure to comply with this provision.
- D. OC San's obligation to reimburse City includes the actual total costs for construction of the Adjustment Work (including design, permits, and bonds) plus an Administrative Fee (collectively the "**Reimbursement Amount**"), which shall not exceed a cumulative total of \$689,699, unless otherwise approved by OC San or provided herein. The "**Administrative Fee**" is intended to cover the City's internal costs related to administration of the Adjustment Work and is equal to five percent (5%) of the total costs of the Adjustment Work. Any cost of the Adjustment Work that exceeds \$656,856 shall be OC San's sole responsibility. City agrees to notify OC San at the earliest opportunity if the cost of the Adjustment Work is expected to exceed \$656,856 at any time during the Project. If reimbursement over and above \$689,699 is requested by City, OC San staff will request approval from OC San's General Manager or Board of Directors, as appropriate, to increase the Reimbursement Amount, which approval shall not be unreasonably withheld, conditioned, or delayed.

Section 5: Timing of Reimbursement. For each progress payment, including the final progress payment, made by City to its contractor, City shall submit an invoice to OC San setting forth OC San's share of the payment and the amount of the Administrative Fee. Invoices shall be accompanied by a copy of any documentation processed with the progress payment or other documentation to substantiate the calculation of OC San's portion. OC San shall pay City within thirty (30) days of OC San's receipt of all required invoices and supporting documentation.

Section 6: Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.

Section 7: Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of City and OC San and their respective legal representatives, successors and assigns. Notwithstanding anything herein to the contrary, the OC San may not assign its rights and obligations under this Agreement without the prior written consent of City. City may assign its

rights or obligations under this Agreement without the OC San's consent, but with notice to the OC San.

Section 8: Indemnity. Each Party hereby agrees to indemnify, defend, protect and hold harmless the other Party, and its elected and appointed officials, officers, employees, representatives, volunteers, and agents from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, workers' compensation benefits, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses of any kind or nature, arising from any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of the indemnitor, or its officers, agents, or employees arising out of the performance of, or failure to perform, any provisions of this Agreement. Neither Party assumes liability for the acts or omissions of persons other than each Party's respective officers, agents, or employees. In the event judgment is entered against both Parties because of joint or concurrent negligence of both Parties, or their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. The respective obligations of the Parties pursuant to this Section shall survive expiration or earlier termination of this Agreement.

Section 9: Alteration of Terms. This Agreement fully expresses all understanding of the City and OC San with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by the Parties.

Section 10: Notices. Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

CITY: City of Newport Beach
Attn: City Clerk
100 Civic Center Drive
Newport Beach, CA 92660

OC San: Orange County Sanitation District
Attn: Clerk of the Board
10844 Ellis Avenue,
Fountain Valley, CA 92708

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

Section 11: Term of Agreement. The Effective Date of this Agreement shall be the latter to occur of the following: (a) execution by the City or (b) execution by OC San. The term of the Agreement shall continue in full force and effect until all obligations of OC San to the City are completed in full accordance with the terms of this Agreement.

Section 12: Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, in such event the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of the invalidated or voided provision, covenant, and condition can be accomplished to the maximum extent legally permissible; provided, however, that in no event shall either party be required to agree to an amendment or modification of this Agreement that materially adversely impacts its rights or materially increases its obligations or risks as set forth herein.

Section 13: Waiver of Default or Breach. Waiver of any default by either party shall not be considered a waiver of any subsequent default. Waiver of any breach by either party of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach by either party shall not be considered a modification of the terms of this Agreement.

Section 14: No Third-Party Beneficiaries. Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the City and OC San, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

Section 15: Further Assurances. OC San and the City agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances and to perform any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

Section 16: Agreement Negotiated. The text of this Agreement is the product of negotiation among the parties and their counsel and is not to be construed as having been prepared by one party or the other.

Section 17: Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 18: Termination. OC San may terminate this Agreement at any time, subject to the provisions of this section, by providing five (5) business days' prior written notice to City. If, at the request or direction of a party other than City, the performance of the Adjustment Work is not accomplished or completed, OC San shall remain obligated for the actual amount of the costs incurred by City for that work to the date of termination.

If Caltrans' improvement work or the Project is canceled or modified so as to eliminate the necessity of the construction of the Adjustment Work, City shall have the right to terminate this Agreement and thereby terminate its obligation to perform the Adjustment Work, by providing five (5) business days' prior written notice to OC San. In such case, OC San will not be obligated for any design or any other costs incurred by City. If OC San elects to perform the Adjustment Work, OC San may, but shall not be obligated to, acquire the design or other work from City by separate agreement.

Section 19: Force Majeure. Neither party will be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, acts of third parties, or any law, order, or requirement of any governmental agency or authority other than the parties.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties are signing this Agreement as of the Effective Date.

ORANGE COUNTY SANITATION DISTRICT, a California public body

Date: _____

By: _____
Chad P. Wanke
Chairperson of the Board

ATTEST

Date: _____

By: _____
Kelly A. Lore, MMC
Clerk of the Board

**APPROVED AS TO FORM:
ALSTON & BIRD**

Date: _____

By: _____
Gregg J Loubier
Special Counsel

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Grace K. Leung
City Manager

ATTEST

Date: _____

By: _____
Leilani I. Brown
City Clerk

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

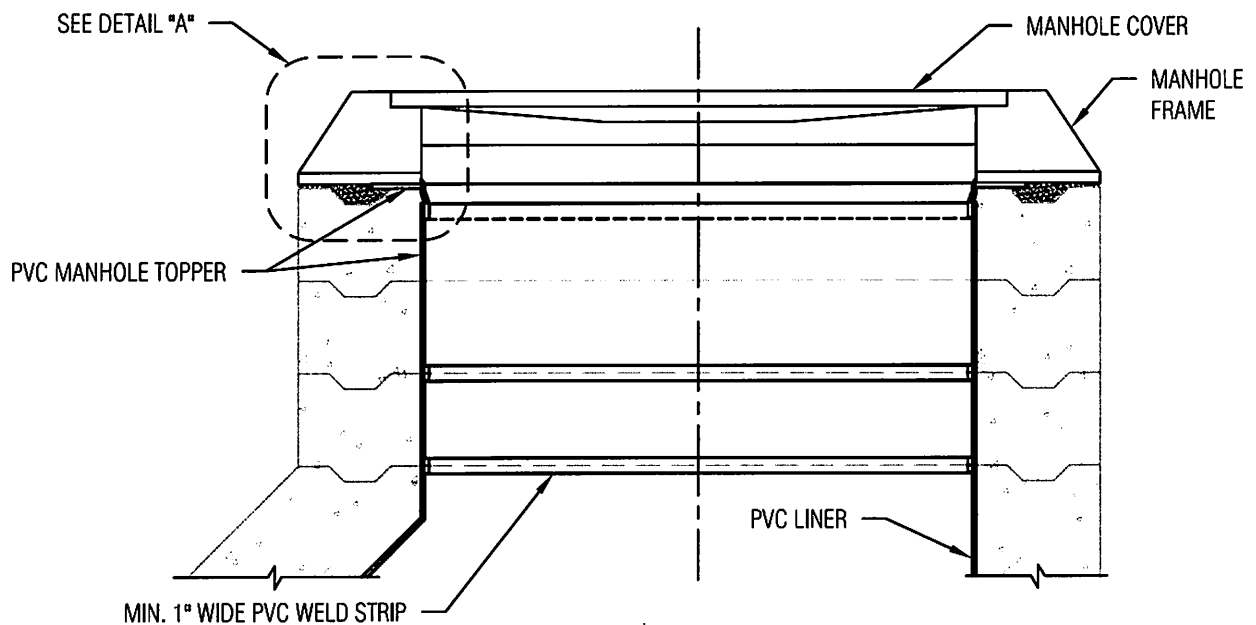
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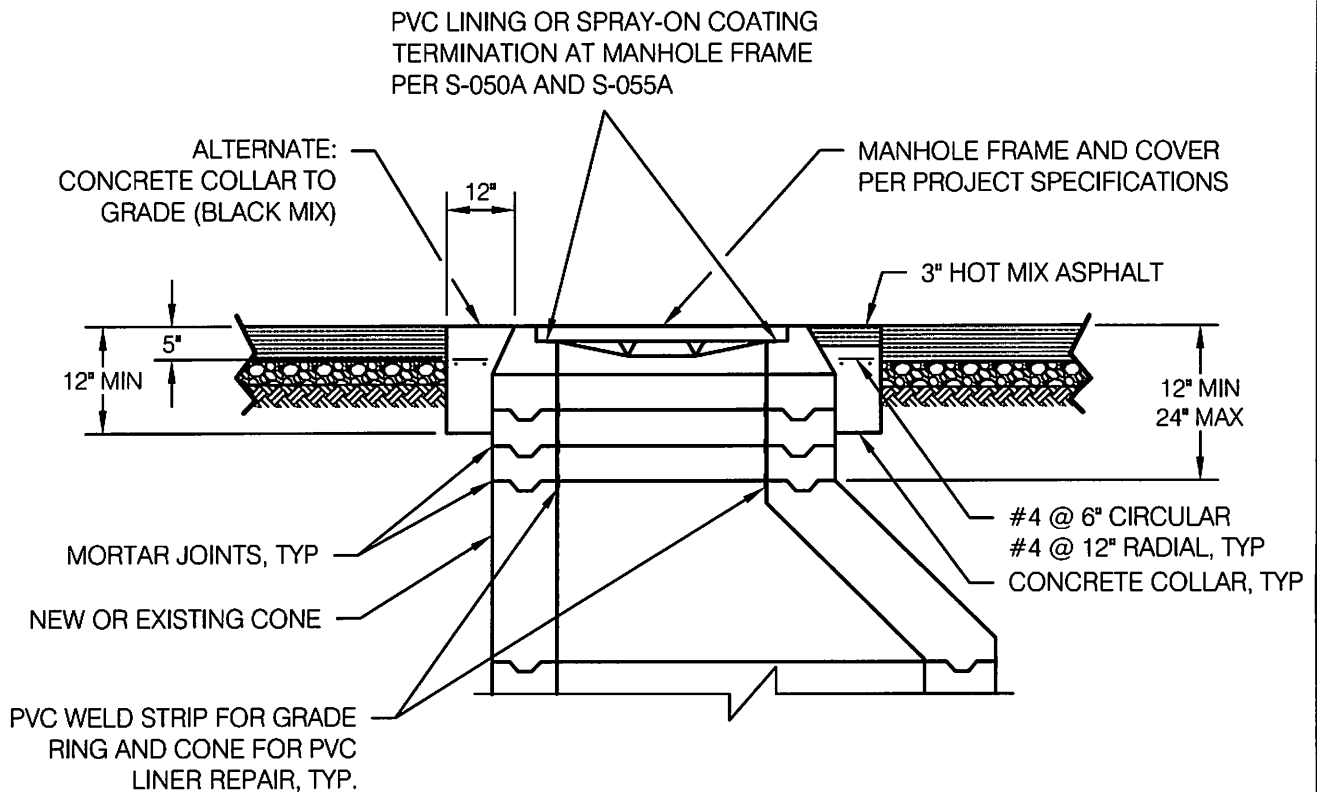
By:  _____
Aaron C. Harp
City Attorney

12/20/23 WC

EXHIBIT A

Standard Drawings





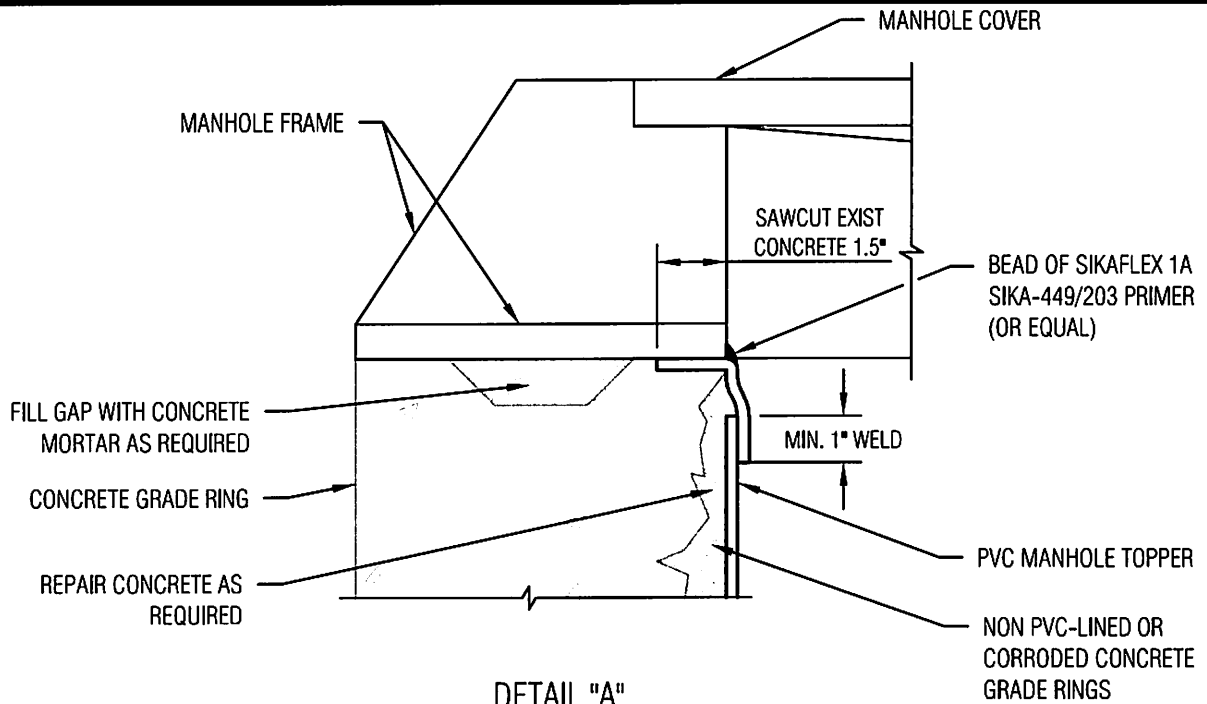
CROSS SECTION

NOTES:

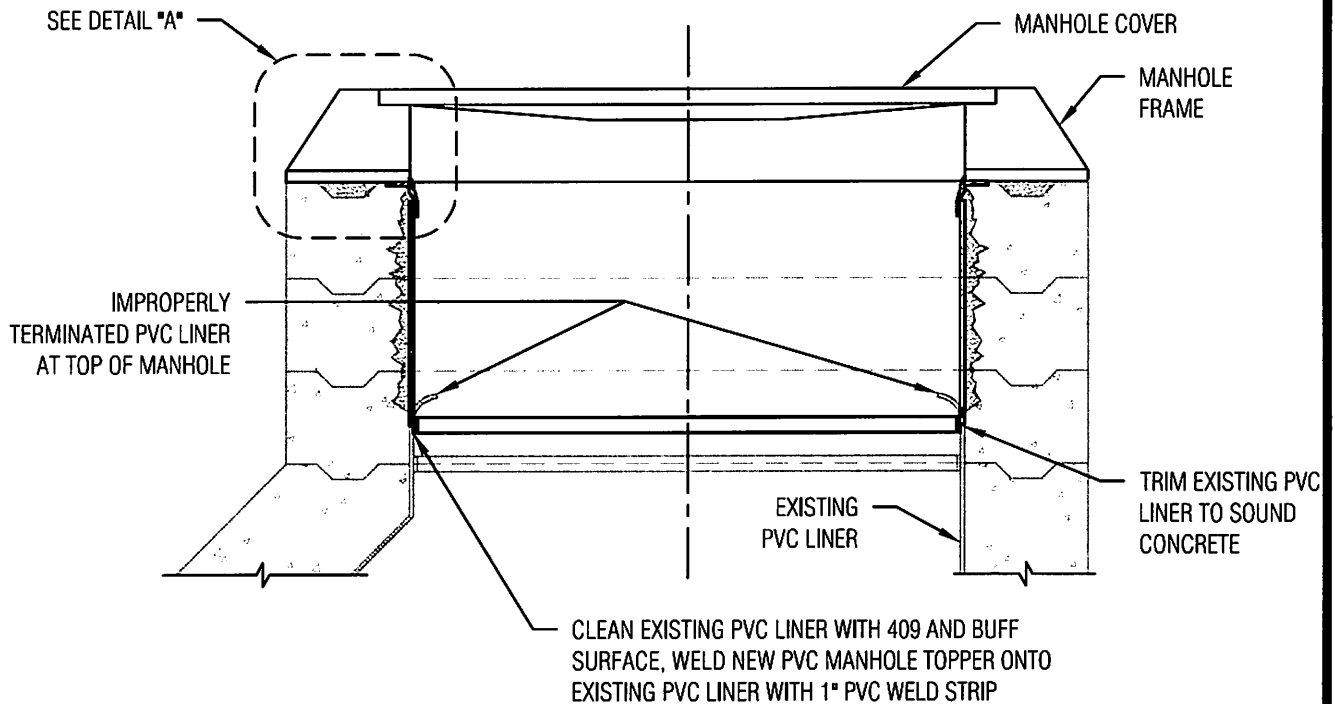
1. NEATLY REMOVE PAVEMENT AND AGGREGATE BASE AS NECESSARY TO MAKE ADJUSTMENT.
2. MAKE FINAL ADJUSTMENTS AT THE MORTAR JOINT BETWEEN THE FIRST AND SECOND GRADE RINGS. SET FLUSH WITH PAVEMENT TO 1/8" HIGH.
3. AT EXISTING MANHOLES, ADD OR REMOVE GRADE RINGS, REPAIR PVC OR SPRAYED LINER, AND SPARK TEST LINER FOR PINHOLES AS APPROVED BY THE ENGINEER. ADJUST HEIGHT AT MANHOLE RISER SECTIONS IF THE TOTAL HEIGHT OF GRADE RINGS WOULD EXCEED 24".
4. BACKFILL FLUSH WITH SURFACE OR BELOW PAVEMENT SURFACE AS REQUIRED BY GOVERNING AGENCY WITH 3250 PSI (CLASS B) QUICK-SETTING CONCRETE TO FORM COLLAR. EXPOSED CONCRETE SHALL BE BLACK IN COLOR.
5. FILL AREA ABOVE BELOW-GRADE COLLAR WITH AC WEARING SURFACE TO MATCH ADJACENT AC.
6. WHERE ODOR CONDITIONS EXIST OR WHERE DESIGNATED, SEAL MANHOLE RIM AND HOLES WITH DUCT-SEAL MASTIC. RE-SEAL IF EXISTING MANHOLE COVER WAS SEALED.

DWG: J:\CAD Standards\WFWP_Engineering Standard Drawings\REVISED\S-055 - MANHOLE ADJUSTMENT TO GRADE.dwg
DATE: Jun 08, 2022 9:43am

			ORANGE COUNTY SANITATION DISTRICT ORANGE COUNTY, CALIFORNIA APPROVED BY Millea, Kathleen Digitally signed by Millea, Kathleen Date: 2022.06.23 14:11:46 -0700 DIRECTOR OF ENGINEERING	MANHOLE ADJUSTMENT TO GRADE	NO SCALE
					STANDARD DWG.
1	EDAC	02/22/2017			
NO.	APPROVED	DATE			DATE
					S-055



DETAIL "A"



EXISTING MANHOLE PVC LINER DETAIL

NOTES:

1. AT EXISTING MANHOLES, ADD OR REMOVE GRADE RINGS, REPAIR PVC OR SPRAYED ON LINER, AND SPARK TEST LINER FOR PINHOLES AND "PROBE TEST" FOR WEAK WELDS AS APPROVED BY THE ENGINEER. ADJUST HEIGHT AT MANHOLE RISER SECTIONS IF THE TOTAL HEIGHT OF GRADE RINGS WOULD EXCEED 24 INCHES.
2. WHERE ODOR CONDITIONS EXIST OR WHERE DESIGNATED, SEAL MANHOLE RIM AND HOLES WITH DUCT-SEAL MASTIC. RE-SEAL IF EXISTING MANHOLE COVER WAS SEALED.

DWG: J:_CAD Standards\WFWPWP_Engineering Standard Drawings\REVISED-055A - PVC LINER REPAIR EXISTING MANHOLE.dwg
DATE: Jun 08, 2022 9:48am

			ORANGE COUNTY SANITATION DISTRICT ORANGE COUNTY, CALIFORNIA APPROVED BY Millea, Kathleen Digitally signed by Millea, Kathleen Date: 2022.06.23 14:13:12 -07'00' DIRECTOR OF ENGINEERING	PVC LINER REPAIR EXISTING CONCRETE MANHOLE	NO SCALE
					STANDARD DWG.
1	EDAC	02/22/2017			
NO.	APPROVED	DATE			DATE
					S-055A

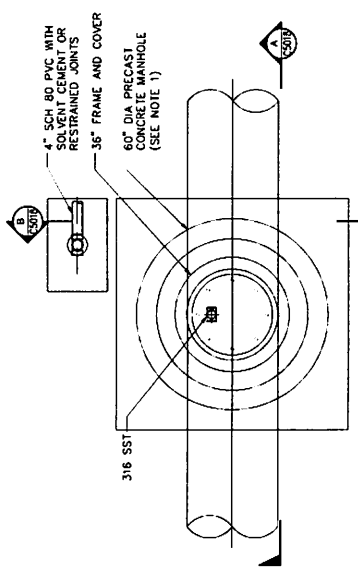
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KEY NOTES

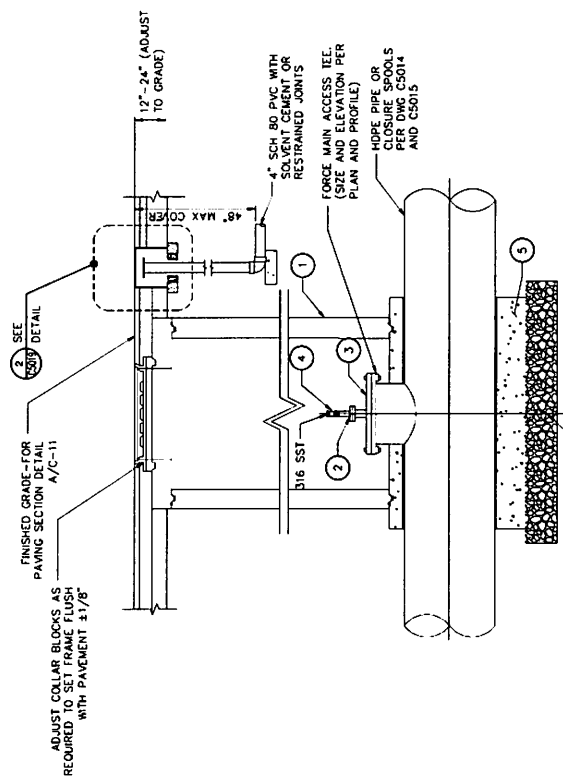
- 1 60" MANHOLE RISER. INSTALL PER DETAIL C5025A/C5025B.
- 2 316 SST WELDOLET NIPPLE.
- 3 316 SST BLIND FLANGE WITH LIFTING EYES.
- 4 3" FLANGED SST BALL VALVE, AMERICAN MODEL 4001, OR EQUAL.
- 5 SEE SECTION A/C5025A AND SECTION A/C5025B FOR CONCRETE ENCASMENT DETAIL.

SHEET NOTES

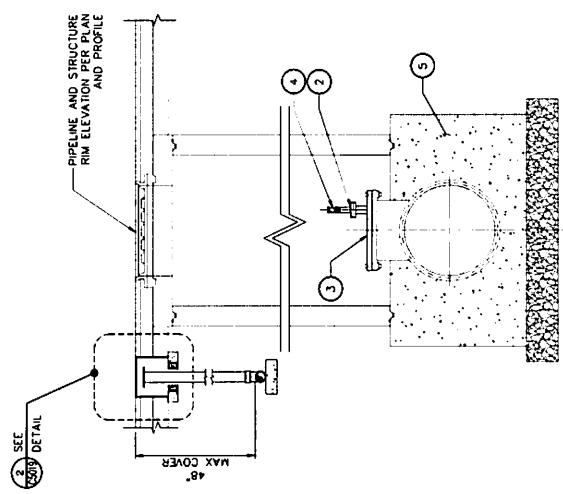
- 1. PRECAST MANHOLE RISERS AND GRADE RINGS SHALL BE RATED FOR 4000 PSI COMPRESSIVE STRENGTH. IMPACT LOADING SHALL BE RATED FOR 4000 PSI. RAM-NEK SEALANT, OR EQUAL.
- 2. PROVIDE BLIND FLANGE WITH 3" WELDED STEEL FLANGED NOZZLE FOR MANUAL AIR RELEASE ASSEMBLY WHERE SHOWN ON DRAWINGS. SEE PLAN AND PROFILE FOR LOCATIONS.
- 3. ALL VENT PIPING SHALL BE 316 SST INSIDE ACCESS MANHOLE.
- 4. SEE ACCESS STRUCTURE SCHEDULE ON DWG C5025C FOR MANHOLE STATIONING AND HAND HOLE PLACEMENT.



DETAIL 1
NO SCALE



SECTION A
NO SCALE



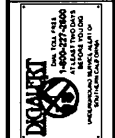
SECTION B
NO SCALE

RECORD DRAWING

THESE RECORD DRAWINGS HAVE BEEN PREPARED BASED ON INFORMATION PROVIDED BY OTHERS. THE ENGINEER HAS NOT VERIFIED THE ACCURACY OF THIS INFORMATION AND SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH MAY BE HEREIN AS A RESULT.

PROJECT NO.	5-60
DRAWING NO.	C5018
78 OF 109	

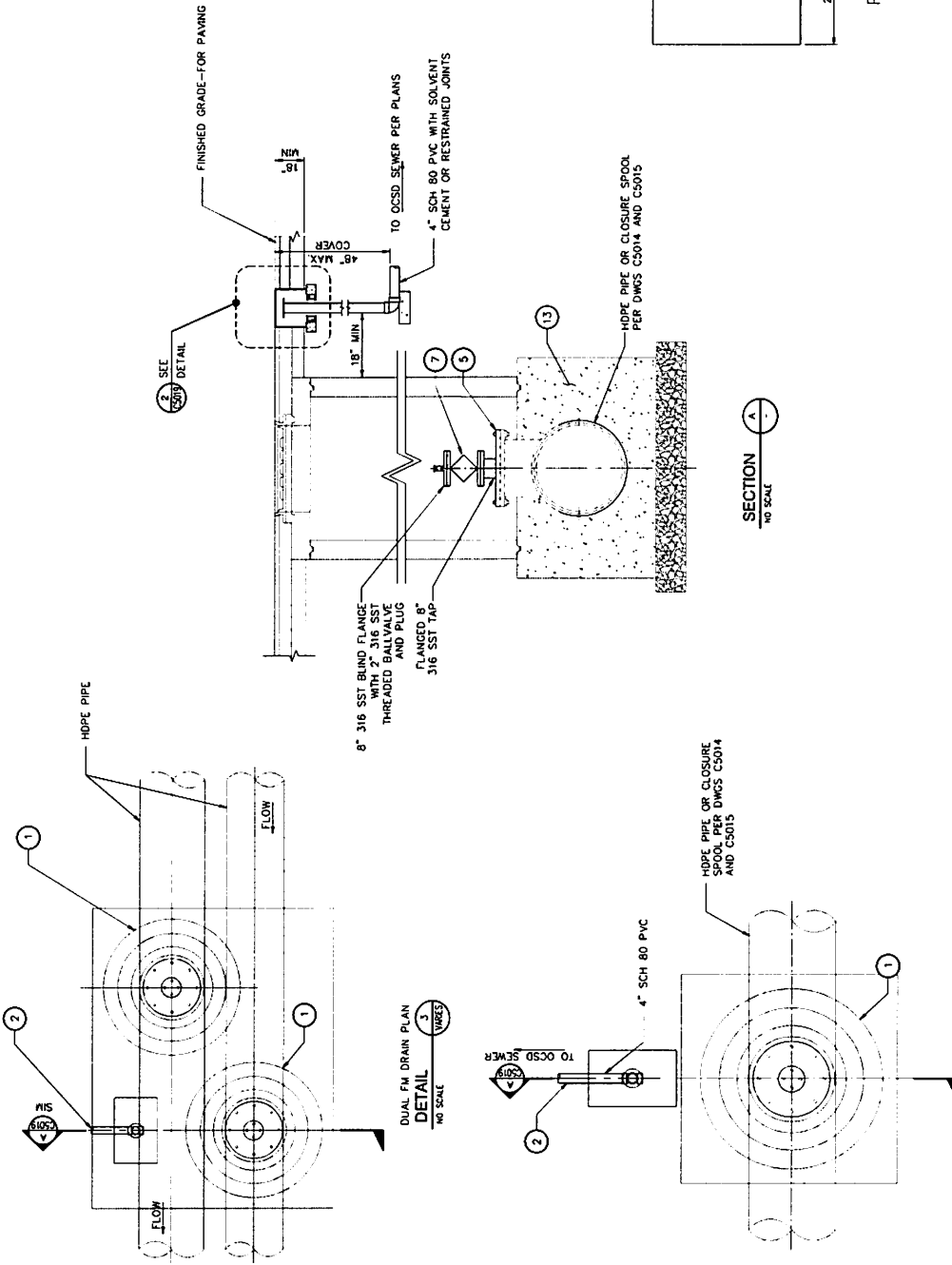
**ORANGE COUNTY
SANITATION DISTRICT**



THIS DRAWING WAS
DESIGNED BY: JAM
DRAWN BY: JBC
CHECKED BY: JBC
DATE: 11/11/11
SCALE: AS SHOWN
PROJECT: 5-60
SHEET: C5018

DATE	DESCRIPTION
11/11/11	DESIGNED BY: JAM
11/11/11	DRAWN BY: JBC
11/11/11	CHECKED BY: JBC
11/11/11	DATE: 11/11/11
11/11/11	SCALE: AS SHOWN
11/11/11	PROJECT: 5-60
11/11/11	SHEET: C5018

1 2 3 4 5 6 7 8 9 10



KEY NOTES

- 60" DIA MANHOLE PER DETAIL C5025A OR C5025B.
- ROUTE DRAIN PIPING TO OCSO SEWER MANHOLE. PROVIDE 2' MIN. COVER. CONSTRUCT PER DETAIL D/C5029.
- SST BLIND FLANGE WITH LIFTING EYES.
- 8" FLANGED CAST IRON FUSION BONDED LINED AND COATED FULL-PORT PLUG VALVE.
- CALTRANS APPROVED PRECAST TRAFFIC BOX 17" x 17" x 17" LARGES. COVER SHALL BE 18" MIN. OVER BOX OR EQUAL LONG AXIS OF VAULT TO PARALLEL ROADWAY CENTERLINE.
- CALTRANS APPROVED STEEL BOLT DOWN CHECKER PLATE VALVE COVER FOR PRECAST TRAFFIC BOX.
- 4" SCH 80 FLANGE AND PVC BLIND FLANGE WITH SST BOLTS, NUTS, AND WASHERS.
- 6" x 6" CLASS A CONCRETE FOOTING ALL AROUND VAULT BOTTOM.
- 3/4" CRUSHED DRAIN ROCK.
- SEE SECTION A/C5025A AND SECTION A/C5025B FOR CONCRETE ENCLOSURE DETAIL.

SHEET NOTES

- PRECAST MANHOLE RISERS AND GRADE RINGS SHALL BE RATED FOR HS20 CONTINUOUS TRAFFIC IMPACT LOADING. ALL JOINTS WITH RAM-NEK SEALANT, OR EQUAL.
- SEE ACCESS STRUCTURE SCHEDULE ON DWG C5025C FOR MANHOLE STATIONING AND HAND HOLE PLACEMENT.

PLAN

SECTION

DRAIN CONNECTION BOX

DETAIL 2 NO SCALE

RECORD DRAWING

THESE RECORD DRAWINGS HAVE BEEN PREPARED BASED ON INFORMATION PROVIDED BY OTHERS. THE ENGINEER HAS NOT VERIFIED THE ACCURACY OF THIS INFORMATION AND SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS WHICH MAY BE HEREIN AS A RESULT.

PROJECT NO.	5-60
DRAWING NO.	C5019
79 of 108	

ORANGE COUNTY
SANITATION DISTRICT

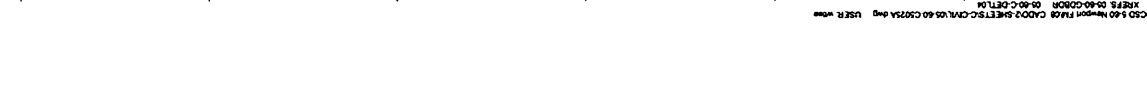
Brown and Caldwell

THIS DRAWING WAS
FOR CONSTRUCTION ON
THE PROJECT AND IS
NOT TO BE REPRODUCED
WITHOUT THE WRITTEN
CONSENT OF BROWN AND
CALDWELL, INC.

DESIGNED BY: JME
DRAWN BY: JCL
CHECKED BY: JBS
LINE 8.2 INCHES
AT FULL SIZE
(IF NOT 7-Scale ACCORDINGLY)

MARK	DESCRIPTION	DATE	APPR.

SINGLE FM DRAIN PLAN
DETAIL 1 NO SCALE



DATE: Jan 13, 2017 1:45pm
DWC: P1 Projects:162213-0

DATE: JAN 13, 2017 7:46am	DWG: A-1	FILE: 112215.D	DESCRIPTION	DATE / APPR.	DESIGNED BY: <u>MM</u> DRAWN BY: <u>JEC</u> CHECKED BY: <u>MB</u> THIS DRAWING WAS FORWARDED TO THE FOR CONSTRUCTION ON X0714 AND SEALED BY DATE 07/27/2006 FOR THE STATE OF CALIFORNIA. NO ENGINEER IN THE STATE OF CALIFORNIA NO. C01471	UNLESS INDICATED BY THIS SIZE UNITS: INCHES (IF NOT 7-SCALE ACCORDINGLY)	Brown and Caldwell DO NOT SCALE	UNIVERSITY MICROFILMS SERIALS ACQUISITION 300 N ZEEB RD ANN ARBOR MI 48106 TEL: 734 763 7400 FAX: 734 763 7100 	ORANGE COUNTY SANITATION DISTRICT NEWPORT FORCE MAIN REHABILITATION DUAL FM ACCESS STRUCTURE DETAIL	PROJECT NO. DRAWING NO.	5-60 C5025B 66 of 109
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