SEWER RELOCATION AGREEMENT BETWEEN THE ORANGE COUNTY SANITATION DISTRICT AND MIDWAY CITY SANITARY DISTRICT

THIS SEWER RELOCATION AGREEMENT ("<u>Agreement</u>"), is made and entered into on this _____ day of _____, 2020 by and between the ORANGE COUNTY SANITATION DISTRICT, a County Sanitation District ("<u>OCSD</u>"), and MIDWAY CITY SANITARY DISTRICT, a Sanitation District under the Sanitary District Act of 1923 ("<u>MCSD</u>"). OCSD and MCSD are sometimes hereinafter individually referred to as "<u>Party</u>" and hereinafter collectively referred to as "<u>Parties</u>."

RECITALS

WHEREAS, OCSD is a duly organized County Sanitation District existing pursuant to the County Sanitation District Act, California Health and Safety Code section 6300, *et seq.* (the "Act"), providing for the ownership, operation, and maintenance of wastewater collection, treatment, and disposal facilities within Orange County, California;

WHEREAS, MCSD is likewise a Sanitation District existing under the Act, providing sewer and solid waste services to the residents and businesses of the cities of Westminster and Midway, California;

WHEREAS, OCSD owns, operates and maintains sewer facilities including, but not limited to, force mains and siphon outlet structures located beneath Westminster Boulevard in the Cities of Seal Beach and Westminster;

WHEREAS, as part of the Western Regional Sewers Program, OCSD intends to replace and reconfigure approximately three miles of dual force mains beneath Westminster Boulevard from Seal Beach Boulevard in the City of Seal Beach to Rancho Road/Hammon Place in the City of Westminster (the "<u>Westminster Location</u>") because the existing sewer facilities in the Westminster Location are aging and in need of replacement (the "<u>Project</u>");

WHEREAS, MCSD owns, operates, and maintains certain sewer facilities beneath the Westminster Location including a force main that connects to OCSD's sewer facilities at OCSD siphon outlet structure KNT0275-0065, which needs to be replaced, relocated and extended as a result of the Project;

WHEREAS, OCSD has agreed to do the following: demolish the existing MCSD force main currently connected to OCSD's sewer facilities at OCSD siphon outlet structure KNT0275-0065; demolish the existing MCSD manhole; construct replacement MCSD force mains consisting of two (2) concrete encased 12" PVC DR 14 pipes with restrained ductile iron fittings; construct a new MCSD manhole; construct a new concrete encased 15" VCP gravity sewer to connect the new MCSD manhole to the existing OCSD siphon outlet structure KNT0275-0060; and perform any related design, trenching, bedding, excavation, demolition, construction, and any other work necessary to properly and safely complete the foregoing (collectively, the "Work") in accordance with the tentative plans attached to this Agreement as Exhibit "A" (the

"<u>Tentative Plans</u>"), as they may be modified by the Approved Plans and Specifications (as defined below); and

WHEREAS, OCSD agrees to: (a) be responsible for the design, management, and construction of the Work, which includes any demolition, abandonment, removal, replacement, and/or relocation of any existing sewer facilities necessary to complete the Work; and (b) pay all costs and expenses related to the Work subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereto agree as follows:

<u>Section 1</u>: <u>Recitals</u>. The Recitals above are deemed true and correct, are hereby incorporated into this Agreement by this reference, as though fully set forth herein, and each Party to this Agreement acknowledges and agrees that it is bound by the same.

<u>Section 2</u>: <u>Elements of Agreement</u>. OCSD and MSCD will work cooperatively together so that the Work can be completed in a manner that minimizes the cost to and impact on the public. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.

Section 3: OCSD's Specific Obligations.

- A. OCSD shall (and shall cause its agents and contractors to) comply with all applicable laws, regulations, and ordinances in connection with performing the Work.
- B. OCSD will enter into and administer contracts for the design services needed for the Work, which includes contracting with the necessary engineering consultant(s) to accomplish the design efforts, and OCSD assumes full responsibility for the design and construction services necessary to complete the Work.
- C. OCSD shall promptly inform MCSD of any proposed changes to the construction contract as it relates to the Work. Copies of proposed changes to the construction contract affecting some or all of MCSD's facilities will be provided to MCSD within five (5) working days after OCSD's receipt thereof.
- D. OCSD will submit prepared plans and specifications for the design and construction of the Work for review, comment, and written approval by MCSD, such approval not to be unreasonably withheld, conditioned, or delayed. MCSD shall notify OCSD, in writing, of its approval or withholding of approval of the plans and specifications within ten (10) calendar days after MCSD's receipt of the proposed plans and specifications from OCSD. If MCSD does not approve such proposed plans and specifications, MCSD will in such written notice provide OCSD

with a reasonably-detailed statement of its basis for denial, whereupon OCSD shall require its hired consultant to correct the plans and specifications to MCSD's reasonable satisfaction. The final plans and specifications approved in writing by MCSD shall be referred to hereinafter as the "<u>Approved Plans and Specifications</u>".

- E. OCSD shall be responsible for advertising, awarding, and administering a contract for the construction of the Work, in conformance with all applicable laws governing construction of public works by OCSD. In connection with the foregoing, OCSD will issue a public works bid package as well as administer and enter into a construction contract to perform the Work in accordance with the Approved Plans and Specifications. OCSD shall ensure that the contractor for the Work has the appropriate license from the California State License Board and that such contractor complies with the prevailing wage laws including, but not limited to, California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"). Upon determination of the successful bidder, OCSD will submit such information to MCSD for their files.
- F. OCSD shall not accept any portion of the Work unless it has been previously inspected and approved in writing by MCSD. In connection therewith, OCSD will request, from time to time, that MCSD inspects and approves the Work or any portion thereof. Such request for inspection and approval shall be referred to herein as an "OCSD Inspection Request".
- G. OCSD will document and inform MCSD of the date of its final acceptance of the Work, and the date when the Notice of Completion is filed.
- H. OCSD shall prepare and submit, in the name of MCSD and with MCSD's prior approval and consent, any Trunk Sewer Connection Application and Permit required for MCSD to connect to OCSD's sewer facilities upon completion of the Work ("<u>Connection Permit</u>"). Any fees, expenses, or charges required in connection with preparing, submitting, and/or obtaining approval of the Connection Permit shall be paid by OCSD.
- I. OCSD, its agents, and contractors shall keep the Work free from any statutory or common law liens arising out of any Work performed, materials furnished, or obligations incurred by OCSD, its agents, or contractors in connection with the Work.

Section 4: MCSD's Specific Obligations.

A. MCSD will provide, at MCSD's sole expense, inspection services for the Work as it deems necessary to assure compliance with the Approved Plans and Specifications, including, but not limited to, shop drawing review and material inspection. In connection therewith, OCSD shall provide MCSD inspectors uninhibited access to the area of the Project where the Work is being performed to review, check and inspect the Work, and an adequate on-site work space to perform such services, provided that MCSD has given OCSD twenty-four (24) hours advance notice of its desire to inspect the Work. By no later than two (2) working days after any such inspection, MCSD will promptly notify OCSD in writing if any portion of the Work appears not to conform to the Approved Plans and Specifications, and OCSD shall cause its contractor to correct such non-conforming Work to be consistent with the Approved Plans and Specifications.

- B. MCSD will respond to any OCSD Inspection Request within two (2) working days and conduct the requested inspection within three (3) working days thereafter. If MCSD fails to respond to an OCSD Inspection Request or conduct the requested inspection within the respective time periods prescribed above, or if MCSD fails to notify OCSD that any portion of the Work appears not to conform to the Approved Plans and Specifications within two (2) working days after its inspection, the Work, in its then-current condition, shall be automatically deemed approved by MCSD.
- C. MCSD shall return comments to OCSD on all shop drawing submittals and change order requests and respond to OCSD's requests for information within three (3) working days from receipt of such submittals by MCSD; provided, however, that MCSD shall not unreasonably withhold, condition, or delay its approval of any change order proposed by OCSD that: (i) is required to perform the Work properly and/or to comply with any entitlement, permit, or approval for the Work issued, or to be issued, by any governmental body; and (ii) does not materially and adversely affect the function of MCSD's force mains, manhole, or related systems or equipment. If MCSD fails to respond to any shop drawings or change order submitted by OCSD within such three (3) working day period, the submitted shop drawings or change order, as applicable, shall automatically be deemed approved by MCSD. This provision shall not apply to review process for the plans and specifications.

<u>Section 5</u>: <u>Payment for Work</u>. OCSD shall pay 100% of the actual and necessary costs and expenses of the herein described Work. Notwithstanding the foregoing, OCSD shall not be responsible for any costs or expenses incurred by OCSD as a result of: (a) MCSD's failure to timely and fully comply with its obligations under this Agreement; (b) any change order required by MCSD that is not required to perform the Work properly, but is instead done for MCSD's convenience or to satisfy MCSD's preference; or (c) any losses, costs, damages, or liabilities arising from negligence or willful misconduct on the part of MCSD, its officers, agents, employees, or consultants.

<u>Section 6:</u> <u>Final Approval of Work.</u> Prior to MCSD's acceptance of the Work and OCSD's recordation of a Notice of Completion, MCSD shall review and provide written approval of the Work. When the Work is ready for MCSD's final inspection, OCSD shall notify MCSD of the same in writing, and MCSD shall make arrangements with OCSD to perform its final inspection of the Work within three working days following MCSD's receipt of such notice. MCSD's written approval shall only be withheld for Work not completed in accordance with the Approved Plans and Specifications. OCSD shall furnish MCSD with one set of record drawings for the completed Work and a copy of the recorded Notice of Completion. Upon MCSD's written approval, OCSD shall transfer to MCSD, and MCSD shall accept and assume ownership of and responsibility for operation, maintenance, upkeep, repair, and replacement of all improvements installed or constructed as part of the Work. OCSD shall, promptly following written request therefor from MCSD, deliver to MCSD any documents or instruments necessary to evidence or complete such transfer to MCSD.

<u>Section 7:</u> <u>Encroachment Permit(s)</u>. To the extent required by OCSD to perform the Work in accordance with the Approved Plans and Specifications, as determined in OCSD's sole and absolute discretion, OCSD agrees to acquire, at OCSD's sole cost and expense, any encroachment permit(s) in the name of either OCSD or MCSD, as appropriate. Notwithstanding the foregoing, OCSD shall not be responsible for the payment of any annual fees, costs or expenses required to be paid after the original acquisition of such encroachment permit(s) unless such encroachment permit(s) are in the name of OCSD. The Parties shall timely and fully cooperate with each other and shall execute such other and further documents and take such other and further actions as may be necessary or convenient to obtain any such encroachment permits.

Section 8: Indemnification.

- A. OCSD will, and it hereby does, indemnify, defend, and hold harmless MCSD, its elected and appointed officials, officers, agents, employees, and contractors from any and all actions, suits, claims, liability, or expense for death, injury, loss, or damage to persons or property that may arise or that are claimed to have arisen during or as a result of the Work performed by or on behalf of OCSD, its officers, agents, employees, or contractors, save and except to the extent that such action, suit, claim, liability, or expense is caused by or a result of any act, omission, or negligence of MCSD, its officers, agents, employees, or contractors.
- B. MCSD will, and it hereby does, indemnify, defend, and hold harmless OCSD, its elected and appointed officials, officers, agents, employees, and consultants, from any and all actions, suits, claims, liability or expense for death, injury, loss, or damage to persons or property that may arise or that are claimed to have arisen as a result of any act performed by MCSD, its officers, agents, employees, or contractors, with respect to the Work including in connection with the operation, maintenance, upkeep, repair, and/or replacement of the Work, save and except to the extent that such action, suit, claim, liability, or expense is solely caused by or a result of

any act, omission or negligence of OCSD, its officers, agents, employees, or contractors.

<u>Section 9.</u> <u>Term.</u> This Agreement will be in full force and effect until the specified obligations of both Parties have been fulfilled or until the Parties mutually agree to terminate this Agreement in writing.

<u>Section 10:</u> <u>Agents.</u> Any contractor or subcontractor performing or providing services in connection with the Work described herein on behalf of either Party will be conclusively deemed to be the servant and agent only of the Party that employed or contracted with said contractor or subcontractor, acting on behalf and within the scope of such contractor's or subcontractor's employment for said Party.

<u>Section 11:</u> <u>Notices.</u> All notices or other communications required or permitted hereunder will be in writing and will be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and will be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications will be addressed as follows:

To OCSD:	Orange County Sanitation District 10844 Ellis Avenue Fountain Valley, CA 92708 Attention: Justin Fenton, Sr. Engineer Phone: (714) 593-7386 E-mail: JFenton@ocsd.com
To MCSD:	Midway City Sanitary District 14451 Cedarwood Avenue Westminster, CA 92683 Attention: Ken Robbins, General Manager Phone: (714) 593-3553 E-mail: krobbins@mcsandst.com

<u>Section 12:</u> <u>Jurisdiction</u>. In the event of a dispute regarding performance or interpretation of this Agreement, the venue for any action to enforce or interpret this Agreement will lie in the Superior Court of California for Orange County.

<u>Section 13:</u> <u>Cooperation</u>. The Parties shall cooperate with each other to achieve the purpose of this Agreement and shall execute such other and further documents and take such other and further actions as may be necessary or convenient to fulfill their obligations described herein. The Parties further agree to use all reasonable efforts to cause the fulfillment of the conditions to the Parties' obligations hereunder and to obtain as promptly as possible all

approvals from each and every third party, whether private or governmental, required in connection with the Work contemplated by this Agreement.

<u>Section 14:</u> <u>No Third Party Beneficiaries</u>. This Agreement is entered into by and for MCSD and OCSD, and nothing herein is intended to establish rights or interests in individuals or entities not a party hereto.

<u>Section 15:</u> <u>Force Majeure</u>. Except for the payment of money, 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.

<u>Section 16:</u> <u>Governing Law</u>. This Agreement will be governed by the laws of the State of California.

<u>Section 17:</u> <u>Entire Agreement</u>. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations and agreements between the Parties pertaining to the subject matter hereof.

<u>Section 18:</u> <u>Waiver</u>. A waiver of a breach of the covenants, conditions, or obligations under this Agreement by either Party will not be construed as a waiver of any succeeding breach of the same or other covenants, conditions, or obligations of this Agreement.

<u>Section 19:</u> <u>Modification</u>. Alteration, change, or modification of this Agreement will be in the form of a written amendment, which will be signed by both Parties.

<u>Section 20:</u> <u>Severability</u>. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will continue in full force and effect.

<u>Section 21:</u> <u>Agreement Execution and Authorization</u>. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity on whose behalf he or she is executing this Agreement.

<u>Section 22:</u> <u>Counterparts Deemed Original</u>: This Agreement may be executed in one or more counterparts (including by e-mail, other electronic transmission, and/or facsimile), all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be one and the same original instrument.

[SIGNATURES ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

ORANGE COUNTY SANITATION DISTRICT

APPROVED AS TO FORM:

By____

David Shawver Date Chairperson, Board of Directors

By_____ Alston & Bird, LLP

By_____ Kelly Lore Date Clerk of the Board, Board of Directors

APPROVED AS TO FORM:

Special Counsel,

MIDWAY CITY SANITARY DISTRICT

By ____

Chi Charlie Nguyen, Date President, Board of Directors

By ______Rutan & Tucker LLP Special Counsel, Midway City Sanitary District

Orange County Sanitation District

By____

Secretary to the Board

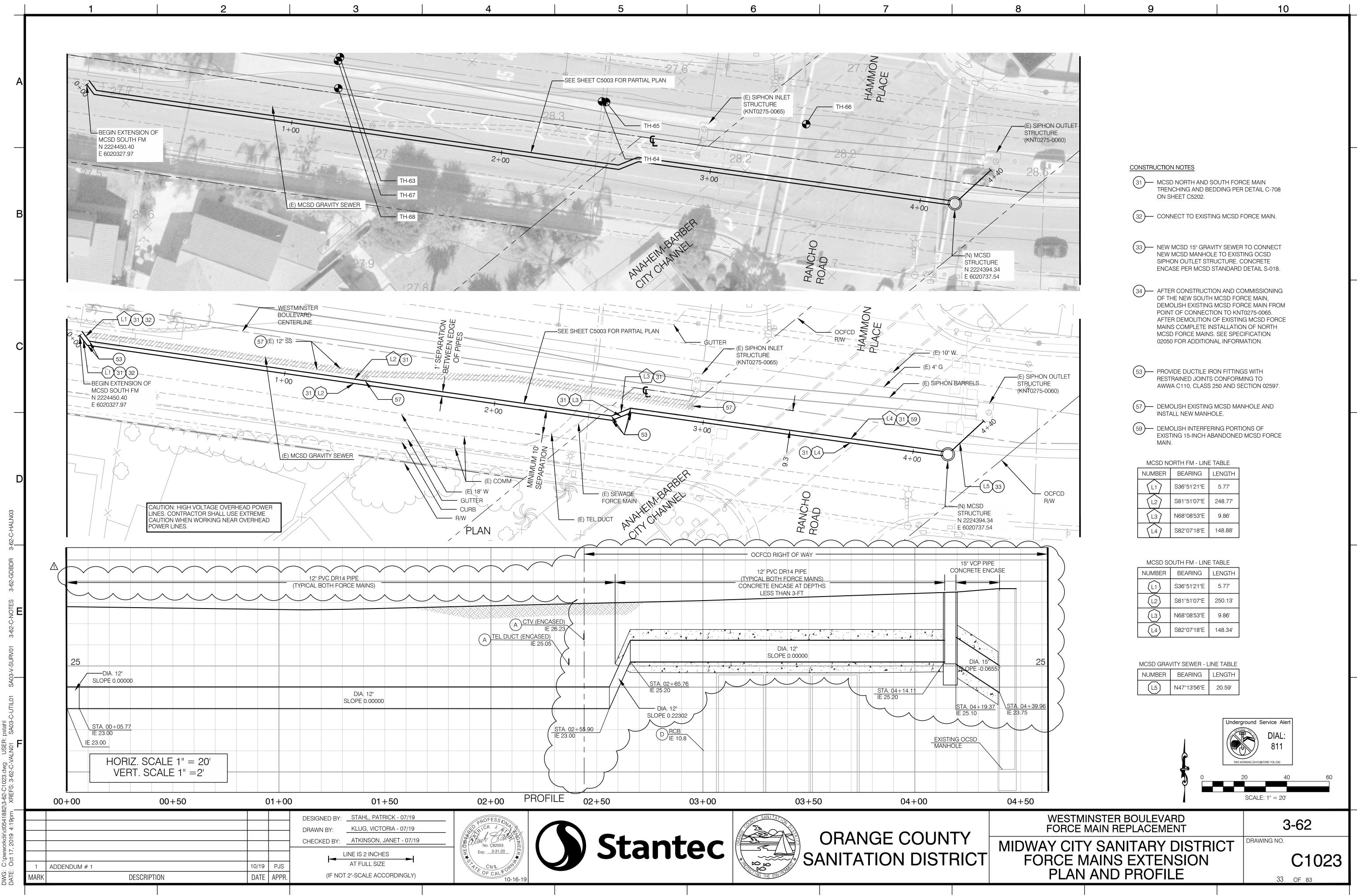
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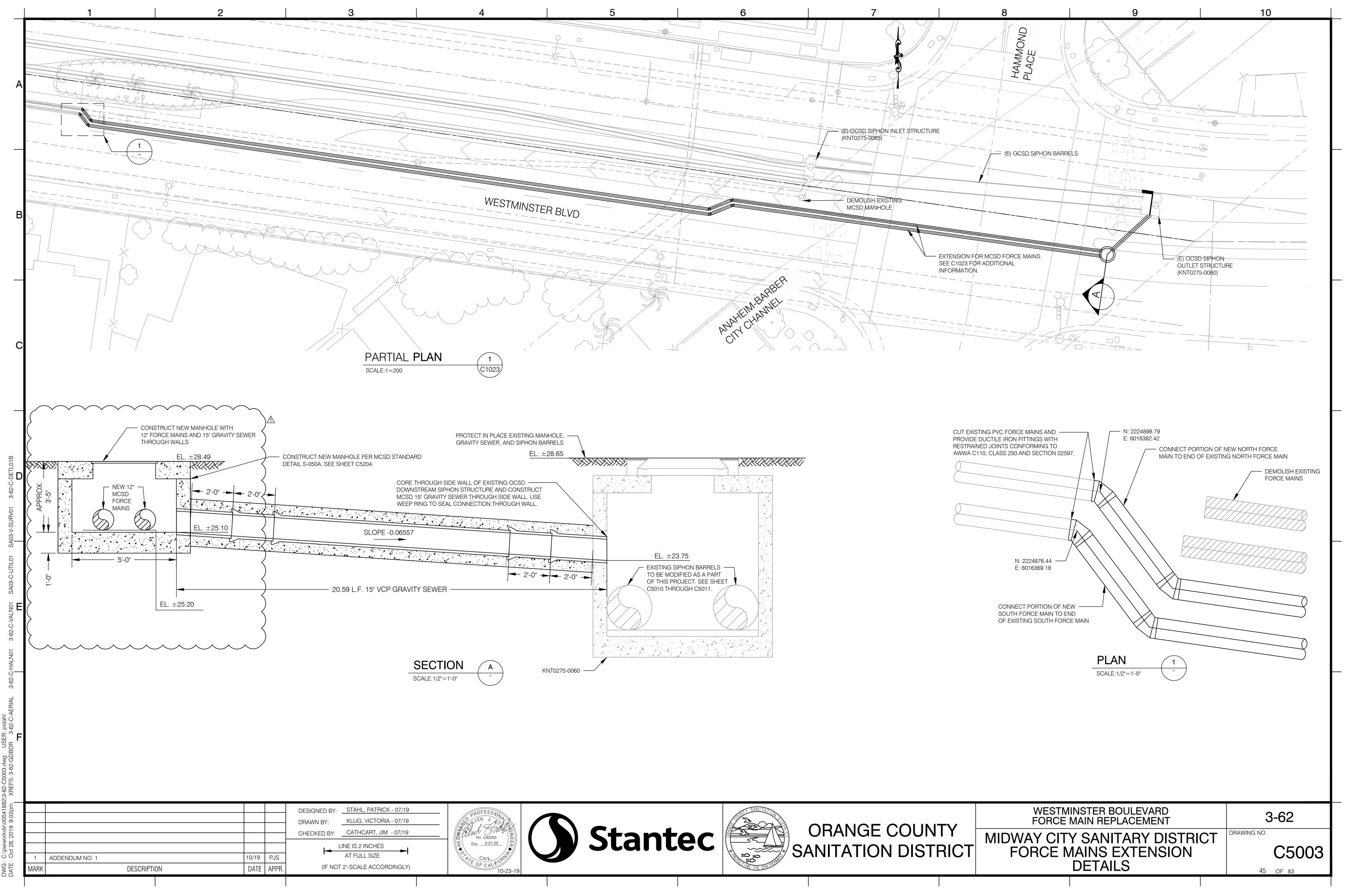
EXHIBIT "A"

Tentative Plans

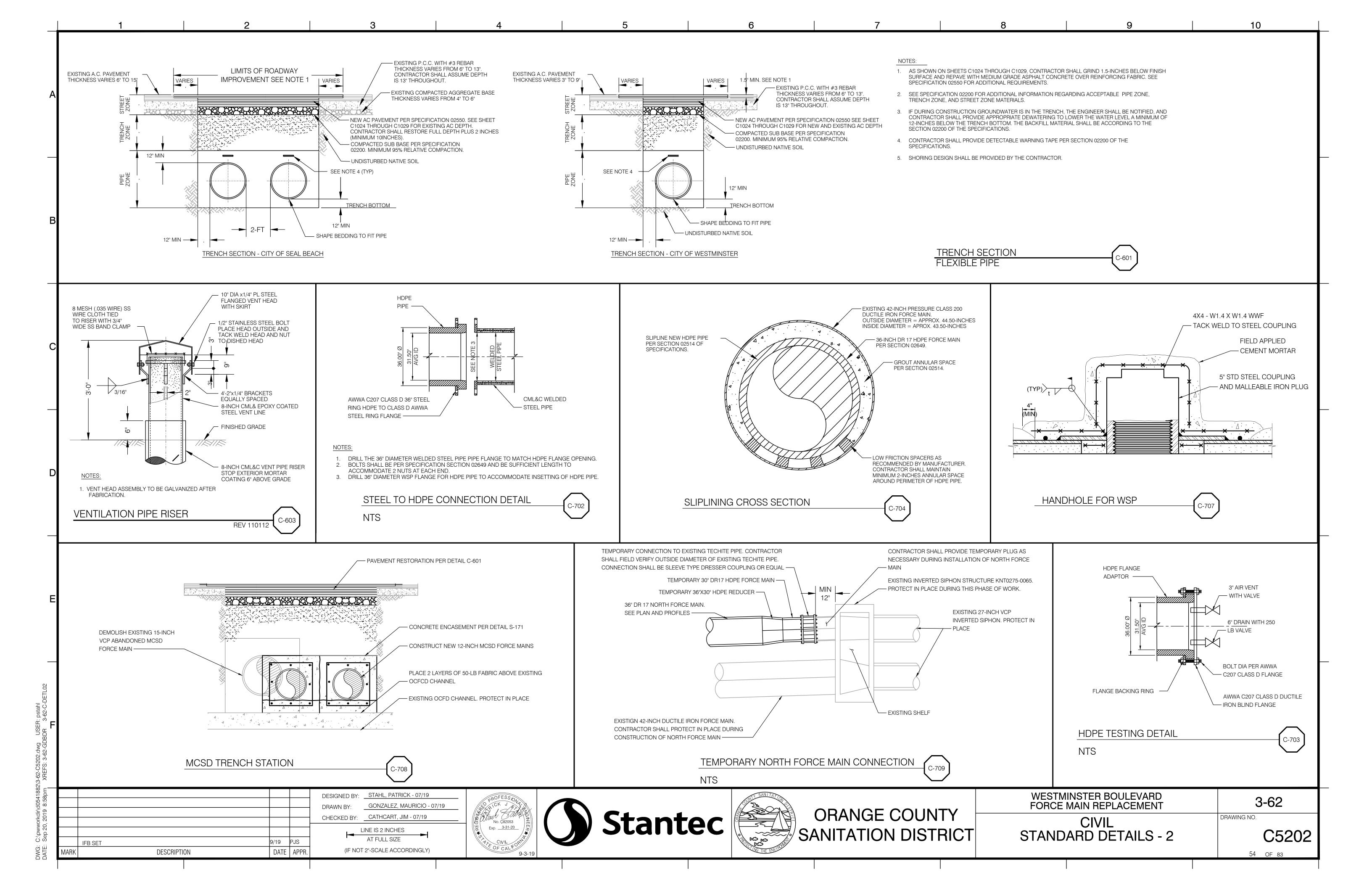
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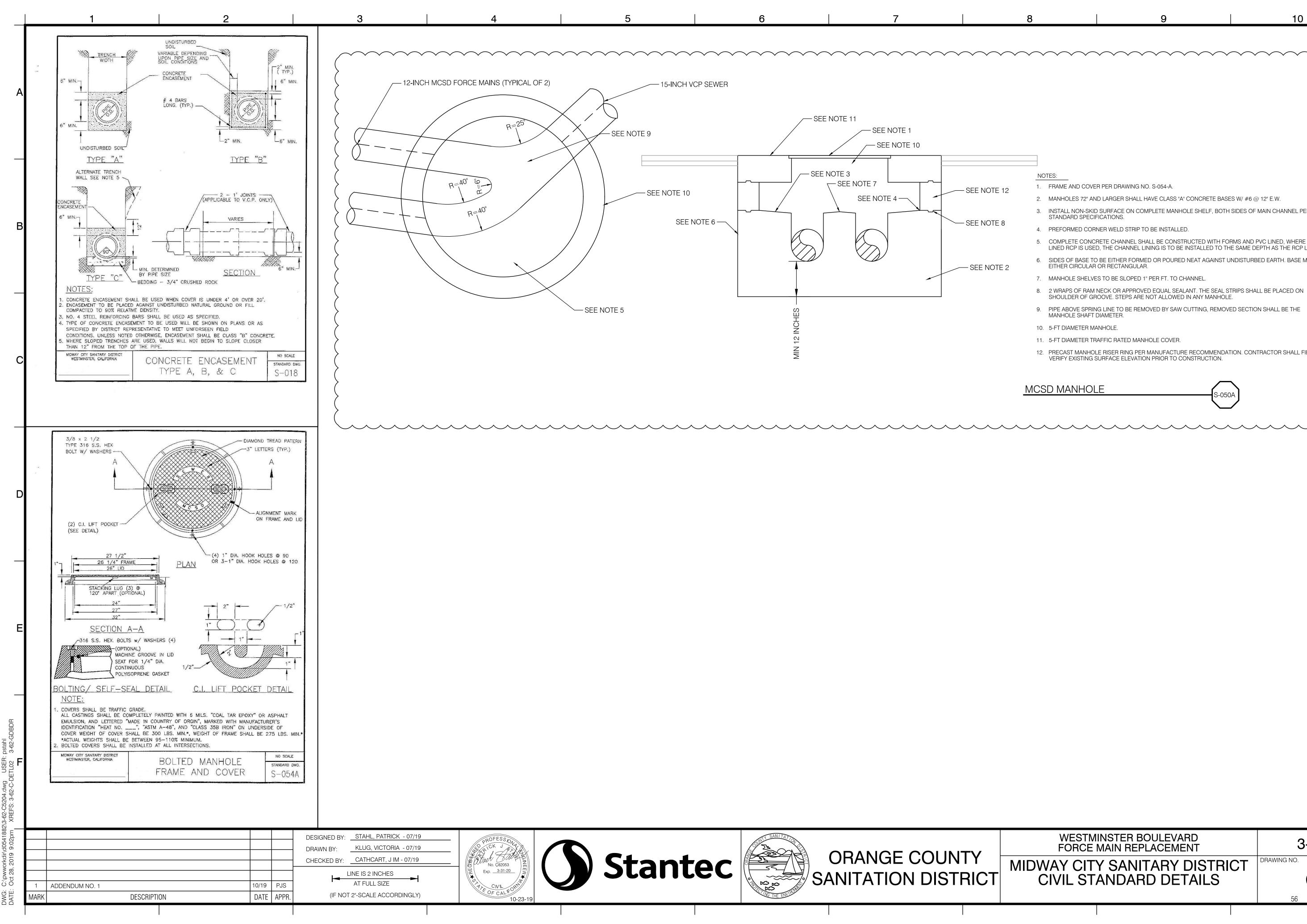






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	DTES:	$\langle$
1.	FRAME AND COVER PER DRAWING NO. S-054-A.	$\langle$
2.	MANHOLES 72" AND LARGER SHALL HAVE CLASS "A" CONCRETE BASES W/ #6 @ 12" E.W.	$\langle \rangle$
3.	INSTALL NON-SKID SURFACE ON COMPLETE MANHOLE SHELF, BOTH SIDES OF MAIN CHANNEL PER THE STANDARD SPECIFICATIONS.	$\langle$
4.	PREFORMED CORNER WELD STRIP TO BE INSTALLED.	$\langle \rangle$
5.	COMPLETE CONCRETE CHANNEL SHALL BE CONSTRUCTED WITH FORMS AND PVC LINED, WHERE PVC LINED RCP IS USED, THE CHANNEL LINING IS TO BE INSTALLED TO THE SAME DEPTH AS THE RCP LINING.	$\langle$
6.	SIDES OF BASE TO BE EITHER FORMED OR POURED NEAT AGAINST UNDISTURBED EARTH. BASE MAY BE EITHER CIRCULAR OR RECTANGULAR.	$\left\{ \right.$
7.	MANHOLE SHELVES TO BE SLOPED 1" PER FT. TO CHANNEL.	$\left\{ \right.$
8.	2 WRAPS OF RAM NECK OR APPROVED EQUAL SEALANT. THE SEAL STRIPS SHALL BE PLACED ON SHOULDER OF GROOVE. STEPS ARE NOT ALLOWED IN ANY MANHOLE.	$\left\{ \right\}$
9.	PIPE ABOVE SPRING LINE TO BE REMOVED BY SAW CUTTING, REMOVED SECTION SHALL BE THE MANHOLE SHAFT DIAMETER.	$\langle$
10.	5-FT DIAMETER MANHOLE.	$\langle \rangle$
11.	5-FT DIAMETER TRAFFIC RATED MANHOLE COVER.	)
12.	PRECAST MANHOLE RISER RING PER MANUFACTURE RECOMMENDATION. CONTRACTOR SHALL FIELD VERIFY EXISTING SURFACE ELEVATION PRIOR TO CONSTRUCTION.	$\left. \right\}$
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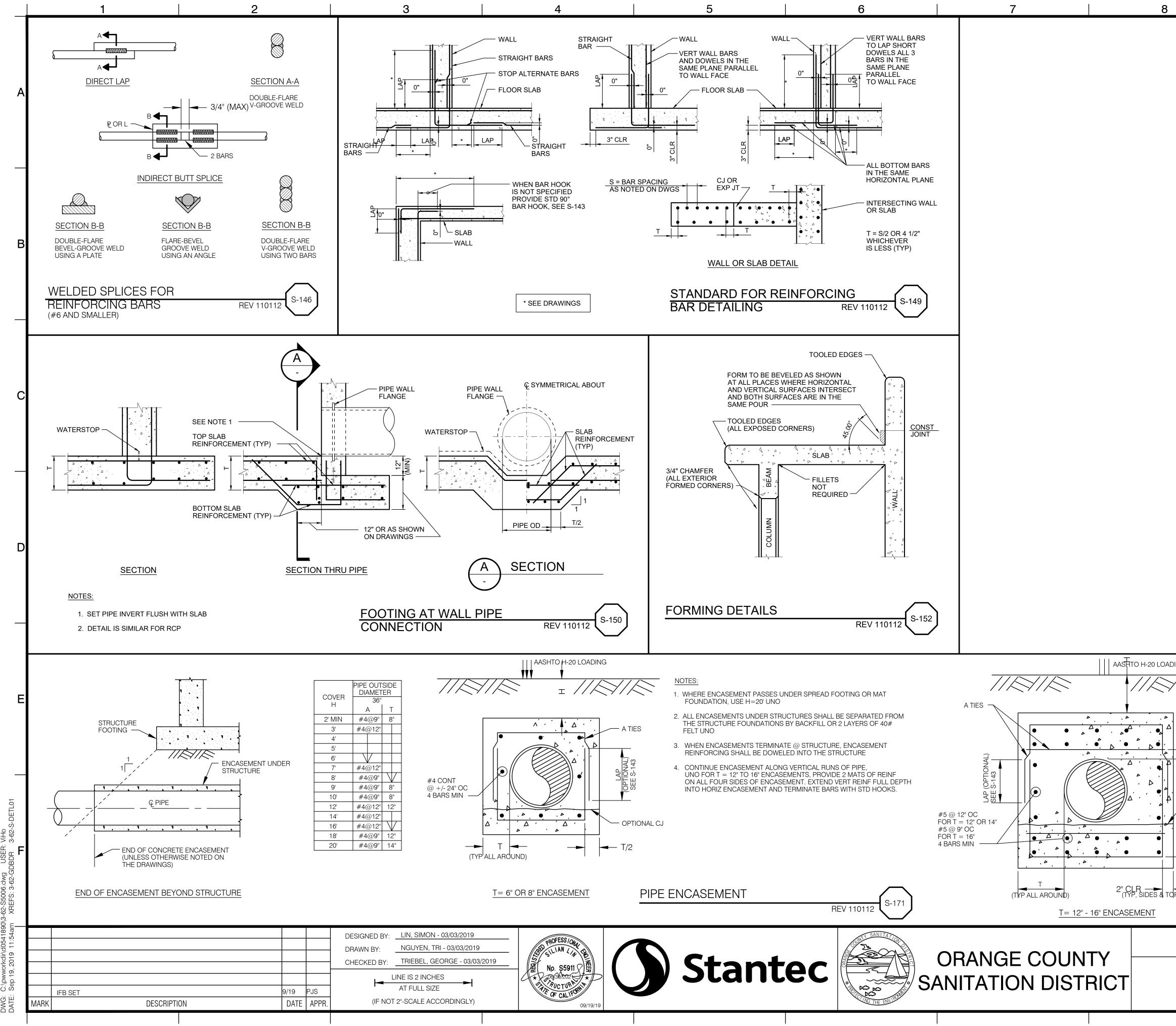
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