AGREEMENT FOR CONSTRUCTION AND DEDICATION OF A SEWER MAIN EXTENSION IN SANTA CLAUS LANE BETWEEN THE COUNTY OF SANTA BARBARA AND THE CARPINTERIA SANITARY DISTRICT

THIS AGREEMENT ("Agreement") is made by and between Carpinteria Sanitary District, a sanitary district organized under the provisions of the Health and Safety Code of the State of California ("District"), and the County of Santa Barbara, a political subdivision of the State of California ("County"). The Parties agree as follows:

1. Recitals

This Agreement is made with reference to the following facts and objectives:

- A. District operates a public wastewater collection and treatment system within the City of Carpinteria and portions of the unincorporated area of Santa Barbara County in California.
- B. County proposes to construct a public restroom within the public right-of-way of Santa Claus Lane. County desires that the restroom receive public sewer service from District and for this purpose is willing at its sole expense to design, plan, obtain permits for, finance, construct, and dedicate to the District an extension of the District's sanitary sewer system. Said extension will be from District's existing Manhole No. 5D-005 approximately 640 linear feet northwest within Santa Claus Lane. The extension requires installation of an 8-inch gravity sewer main, three manholes, a 6-inch sewer lateral and a property line cleanout (the "Sewer Facilities").
- C. The Parties enter into this Agreement with specific reference to the requirements of Government Code §§ 56654 and 56827 regarding initiation of reorganization of special districts; and 76 Cal.Op. Att'y. Gen. 227 (1993) regarding the waiver of protest rights in annexation proceedings; and
- D. The parties wish to establish their mutual understanding concerning the design and construction of the Project and the terms upon which District will accept County's offer to dedicate the completed Sewer Facilities for public use.

2. Design and Planning of the Project

A. <u>Design of Facilities</u>. County at its sole expense will cause the Sewer Facilities on Santa Claus Lane (collectively the "Project"), to be designed in conformity with District requirements and in full compliance with engineering standards established by District. The complete plan of design for the Project, certified by a Civil Engineer registered in the State of California, will be submitted to the District

for approval. County must make any reasonable changes to the Project plans required to bring the Project into compliance with District's standards and specifications. Upon determination by the District that the certified plans conform to all District standards and specifications, District will approve the plans and return them to County.

- B. <u>Design Immunity</u>. District acknowledges that the Sewer Facilities as depicted in attached Exhibit A, which is incorporated by reference, meet District requirements and standards. District's approval of County's plans does not constitute any warranty or guarantee by District concerning the design or performance of the Sewer Facilities and County is responsible for the construction as provided herein. This approval is intended to avail District of the immunities set forth in Government Code § 830.6.
- C. <u>Cost Estimates</u>. County at its sole expense will cause a registered Civil Engineer, licensed as such in the State of California, to furnish cost estimates for construction of the Sewer Facilities, which include the Civil Engineer's written certification that the Civil Engineer determined the estimated cost of constructing the Sewer Facilities in accordance with the approved plans and specifications, based upon accepted current building costs for the Carpinteria area (the "Cost Estimates"). The Cost Estimates are subject to District's review and approval.

3. Pre-Construction Obligations of the Parties

- A. LAFCO Petition. District is responsible for adopting a resolution pursuant to Government Code § 56654(a) proposing to the Santa Barbara Local Agency Formation Commission ("LAFCO") that the Project Area be reorganized and added to District's jurisdiction. County is the "lead agency" for purposes of the California Environmental Quality Act ("CEQA") and, at its sole expense, is responsible for preparing all materials required by LAFCO to complete the reorganization of District's boundaries. County is obligated to reimburse District for all administrative, legal, and consultant costs and expenses incurred by District associated with the LAFCO proceedings, as determined in District's sole discretion. This obligation survives termination of the Agreement.
- B. <u>LAFCO Approval Required.</u> The Parties acknowledge that no real property may be connected to the Sewer Facilities or discharge wastewater to District's wastewater collection system unless such property is annexed into the District's jurisdiction. Accordingly, should LAFCO disapprove of any reorganization, or if any approval fails to substantially meet the terms and conditions proposed by District, then either party may terminate this Agreement without further obligation except for such items surviving the termination of the Agreement.
- C. Waiver of Protest. County understands and agrees that this Section is intended to, and constitutes, a complete and irrevocable waiver of all rights to protest annexation of the Property to District's jurisdiction in accordance with the

- Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §§ 56000 et seq.), and any other applicable law
- D. <u>Permits and Approvals</u>. County is responsible for obtaining all required permits, licenses and entitlements before the start of construction at County's expense. County must obtain a construction permit from District and pay applicable fees. Copies of all permits must be furnished to District upon request.
- E. <u>Insurance</u>. County must require all Project contractor(s) and subcontractor(s) to carry and have in force at all times during the work valid insurance coverage pertaining to the work (including general liability, automobile liability, employer liability and workers' compensation coverage), in an amount(s) and form as required by law naming District as additional insured. Comprehensive general liability and automobile liability must be in the minimum amount of (\$2,000,000) per occurrence. Endorsements must be on ISO Form CG 20 10 11 85 or CG 20 10 11 88, or equivalent. County must furnish evidence of insurance coverage satisfactory to District before District issues construction permits for the work.
- F. <u>Plan Review and Inspection Fees</u>. District will determine applicable fees for plan review and construction inspection pursuant to District Ordinance No. 9 and generate a fee invoice. County to pay fees prior to issuance of a Sewer Construction Permit by the District.
- G. <u>Bonds</u>. Before commencing any work, County must provide or cause its general contractor to provide performance and payment (labor and material) bonds.
- H. <u>Project Manager</u>. County must designate a project manager and provide the name and contact information to District in advance of commencing construction. District's General Manager or designee will be the District's contact during the period of construction.
- I. <u>Timing of Construction</u>. District acknowledges that time is of the essence for County in undertaking and completing the Project. District will cooperate fully with County in developing a timetable for commencement and completion of construction and in assisting County to proceed at the earliest possible date.
- J. Release of Obligations. In the event that: (a) County, for any reason, is unable to commence Project construction at a time and in a manner which makes the Project feasible to County in County's sole discretion; or (b) Project construction commenced but is not completed at a time and in a manner which makes the Project feasible to County; then under either circumstance County may thereafter abandon the Project upon written notice to District. Upon District's receipt of such notice, this Agreement will terminate except that County must reimburse District for all costs arising from this Agreement that have accrued as of the date of District's receipt of such notice. If County abandons the Project pursuant to this paragraph after construction commences, County agrees at its sole expense to

restore the construction site to the condition the site was in immediately before the commencement of construction, to the extent reasonably possible, and to indemnify, defend and hold District harmless from any liability in accordance with this Agreement.

4. Construction

- A. <u>Notice of Commencement</u>. County must provide District with a written notice of commencement at least 48 hours before commencing construction on the Project.
- B. <u>Period of Construction</u>. The "Period of Construction" for the Project commences on the date when County's contractors first mobilize construction equipment and materials onto the Project Area and ends when County provides a notice of substantial completion in accordance with this Agreement.
- C. <u>Contractors</u>. County at its sole expense will cause the Project to be constructed by a contractor(s) licensed by the State of California to perform the work required, in this case a Class A General Engineering Contractor License County, through its contractor(s);, diligently perform the work in a good and workmanlike manner, in full compliance with local, state and federal laws, regulations, ordinances, permits, licenses, entitlements and guidelines (including District's) pertaining thereto, including those relating to the health and safety of workers on the Project.
- D. Prevailing Wages. The Sewer Facilities constitute a "public work" as that term is used in the California Labor Code. Pursuant to Labor Code § 1720, and as specified in 8 California Code of Regulations § 16000, County shall require its contractors and subcontractors to comply with all applicable prevailing wage requirements. In accordance with Labor Code § 1773.2, copies of the prevailing rate of per diem wages are available at the website for State of California Prevailing wage determination at http://www.dir.ca.gov/DLSR/PWD.
- E. <u>Compliance with Approved Plans</u>. County at its sole expense must cause all Project facilities to be built and installed in full compliance with the final plans and specifications as approved by District. Any changes in the plans or specifications requires advance approval from District's General Manager. In such case, County, at its sole expense, must furnish District with a revision of plans showing such modification.
- F. <u>Inspections</u>. All work by contractor(s) may be inspected by District at County's cost. All work must be left open and uncovered until the work is approved by District. County, at its sole expense, will cause its contractor(s) to promptly remove, replace, correct or modify any work identified by District or any other agency with jurisdiction to be out of compliance with applicable requirements or with approved Project plans and specifications. County will pay District for

- District's actual costs for inspection of any work requiring observation or oversight that is conducted either inside or outside a normal 8-hour workday or on Saturdays, Sundays and District holidays.
- G. Notice of Completion. County will provide District with a notice of substantial completion of the Project, and District will complete its final inspection of the Project within 10 business days of receiving such notice. If District finds any portion of the work out of compliance with approved plans and specifications, District will provide written notice of defects to County, and County must correct the defects immediately. District is under no obligation to accept County's offer to dedicate the Sewer Facilities unless District confirms that the Sewer Facilities are constructed in accordance with the approved plans and specifications, as they may be modified pursuant to this Agreement. Should District fail to conduct a final inspection within 10 business days after actually receiving notice of substantial completion, District's right to final inspection is waived.

5. Dedication and Acceptance

- A. <u>As-Built Plans</u>. After District's satisfactory final inspection, if any, and a notice of completion is recorded, County at its sole expense will provide District with one original mylar, two print copies and one electronic copy of final "as built" plans for the Sewer Facilities.
- Offer to Dedicate. County at its sole expense will prepare and deliver to District, in forms acceptable to District, instruments that offer to dedicate and convey to District the whole of the Sewer Facilities, together with all easements and rights of way as may be necessary to ensure access to and maintenance of the Sewer Facilities. The Sewer Facilities do not include any improvements on private property constructed as part of the Project.
- B. <u>Guarantees, Repair and Replacement</u>. In its offer to dedicate, County must represent, warrant and guarantee that the materials and the workmanship used in the construction of the Sewer Facilities are good and workmanlike and otherwise fully meet the requirements of this Agreement. County must obtain from each of its contractors a warranty against defects for a one year period after the Notice of Completion is filed. Should a defect in the materials or workmanship become evident within one year, County shall require its contractors to remedy the defect pursuant to such warranties.
- C. Acceptance of Offer to Dedicate. If the Sewer Facilities are completed in accordance with approved plans and specifications, as they may be modified pursuant to this Agreement, and provided that County complied with all its material obligations to District including, without limitation, ensuring LAFCO's approval for reorganization in accordance with applicable law, District will accept County's offer to dedicate the Sewer Facilities for public use. Upon District's acceptance of County's offer to dedicate, the Sewer Facilities become District's

property.

6. County Compliance with District Fee Requirements

County will pay District all fees required for the Sewer Facilities including, without limitation, the design, planning, permitting, and construction of the Project and dedication of the Sewer Facilities. County to reimburse District for administrative activity and inspections pursuant to this Agreement. Additionally, County will pay District the following:

- A. Pursuant to Ordinance No. 16, when District issues a sewer construction permit to County, County will pay a Development Impact Fee (DIF) to the District.
- B. Pursuant to Ordinance No. 15, County will pay sanitary sewer charges for the County restroom that may be due for the current year at the time of District's acceptance of the Sewer Facilities.

7. District's Obligation to Provide Service

- A. <u>Can and Will Serve Letter</u>. District will furnish an appropriate letter to County indicating that District has capacity for wastewater collection and treatment to serve the public restroom and District will serve the restroom that is connected to District's wastewater system.
- B. <u>Service Classification</u>. After District accepts the Sewer Facilities, District will provide wastewater collection and treatment service through the Sewer Facilities under District's rules and regulations and subject to the payment of sewer service charges and other fees as provided by District for like classes and customers.

8. Indemnification and Transfer of Risk

- A. DISTRICT shall defend, indemnify, and hold COUNTY, its officers, officials, employees, agents, or volunteers harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, officials employees, agents or volunteers.
- B. COUNTY shall defend, indemnify, and hold DISTRICT, its officers, officials, employees, agents, or volunteers harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of COUNTY, its officers, officials employees, agents or volunteers.

- C. For purposes of this section "District" includes District's elected and appointed officials, employees, agents, and representatives
- D. County agrees and understands that its violation of any Labor Code provision regarding payment of prevailing wages can result in fines or damages being levied against District. County specifically agrees that the indemnification and defense obligations set forth in this Section include District's payment of any fines, penalties, or damages that might arise out of this Agreement or the public works contract administering construction of the Project related to Labor Code requirements.
- E. The Parties agree that this section will remain in full force and effect for 10 years following District's acceptance of the Sewer Facilities.
- F. County expressly agrees that this release, waiver, and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.

9. Miscellaneous Provisions

- A. Relationship of Parties. Nothing in this Agreement may be construed to make District a partner or joint venturer with County; or render District liable for the debts or obligations of County or render County liable for the debts or obligations of District.
- B. <u>Notices</u>. Unless otherwise provided, all notices herein required must be in writing and delivered in person or sent by expedited mail service or certified mail, postage prepaid. Notices required to be given to District will be addressed as follows:

General Manager Carpinteria Sanitary District 5300 Sixth Street Carpinteria, CA 93013

Notices required to be given to the County will be addressed as follows:

Christian Doolittle, Project Manager
County of Santa Barbara Public Works Department
Transportation Division – Engineering Section
123 E. Anapamu Street
Santa Barbara, CA 93101

Notices are deemed delivered three days after mailing in accordance with the provisions of this section. Any party may change such address by notice in writing to the other party and, thereafter notices will be addressed and transmitted to the new address.

- C. <u>Binding Effect</u>. The rights and the obligations set forth herein binds and inures to the benefit of all heirs, successors and assigns of the Parties.
- D. <u>Headings</u>. The headings provided in this Agreement are for convenience only and are not intended to augment or interpret the legally binding provisions.
- E. <u>Severability</u>. If any provision of this Agreement, or portion of it, or the application of it, to any person or circumstance, is to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement will not be affected. It will not be deemed that any such invalid provision affects the consideration for this Agreement. Each provision of this Agreement is valid and enforceable to the fullest extent permitted by law.
- F. <u>Interpretation and Governing Law</u>. This Agreement is governed by and construed in accordance with the laws of the State of California. Any litigation arising out of this Agreement must be filed and heard in the County of Santa Barbara. This Agreement was negotiated at arm's length, and the parties had ample opportunity to review its contents with legal counsel. Therefore, the rule of construction which provides that ambiguities in an agreement are construed against the drafter of the document have no application in the interpretation of this Agreement.
- G. <u>Integration; Amendment</u>. There are no other agreements, understandings, representations or warranties by or among the parties with respect to the subject matter of this Agreement except as expressly set forth in this Agreement. This Agreement may be amended or modified only by a writing executed by each party to this Agreement. District's General Manager is authorized to execute any such amendment.
- H. <u>Further Assurances</u>. Each party agrees to execute, acknowledge and deliver such other and further documents as may be necessary or appropriate to carry out the purposes and intent of this Agreement.
- I. <u>Assignment</u>. This Agreement may not be assigned or otherwise transferred by County without District's prior written consent, which District in its sole discretion and without penalty may withhold.
- J. Warranty of Authority. Each party represents and warrants to each other party that the person executing this Agreement on its behalf has full authority and power to execute and enter into this Agreement for that respective party. Upon execution by all parties, this Agreement becomes binding and enforceable

- according to its terms.
- K. <u>Electronic Signatures</u>. In accordance with Government Code §16.5, the Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by electronic transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.
- L. <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which constitutes an original and all of which taken together constitutes one agreement.
- M. <u>Term.</u> Except as otherwise provided, the term of this Agreement expires 13 months after District accepts the Sewer Facilities from County.

IN WITNESS WHEREOF, District and County have executed this Agreement as of the date first written above.

CARPINTERIA SAMI ARY DISTRICT
President, Board of Directors
ATTEST:
Secretary, Board of Directors
APPROVED AS TO FORM:
My/Mc
Karl H. Berger Legal Counsel for the District
APPROVED AS TO ADMINISTRATION:

General Manager

Agreement For Construction And Dedication Of A Sewer Main Extension In Santa Claus Lane between the County of Santa Barbara and Carpinteria Sanitary District

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

RECOMMENDED FOR APPROVAL:

Scott D. McGolpin Director of Public Works

Department Head

ATTEST:

Mona Miyasato County Executive Officer Clerk of the Board

Deputy Clerk

COUNTY OF SANTA BARBARA:

Das Williams

By:

Date:

By:

APPROVED AS TO FORM:

Rachel Van Mullem **County Counsel**

By: **Deputy County Counsel** APPROVED AS TO ACCOUNTING FORM:

DocuSigned by:

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Chair, Board of Supervisors

Betsy M. Schaffer, CPA

Auditor-Controller

Deputy

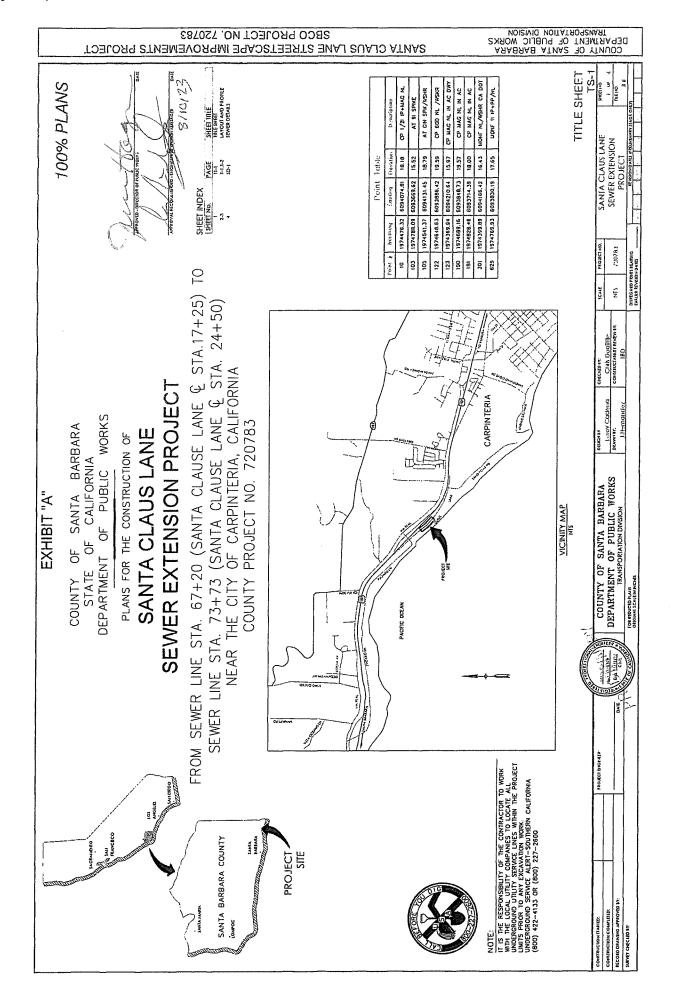
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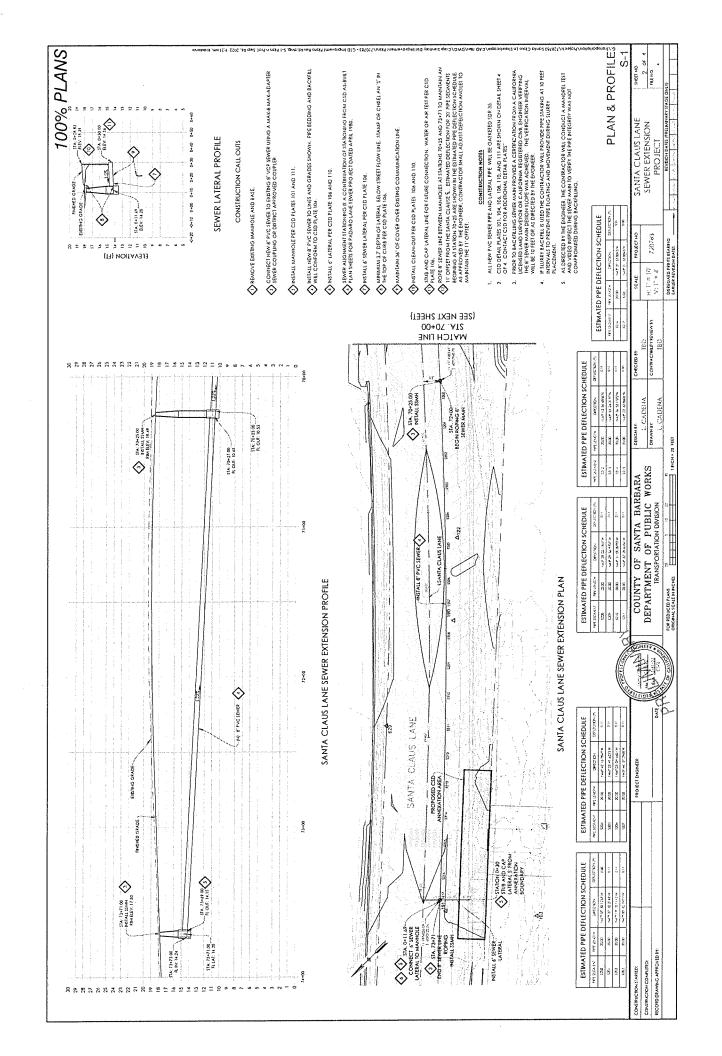
Greg Milligan Risk Manager

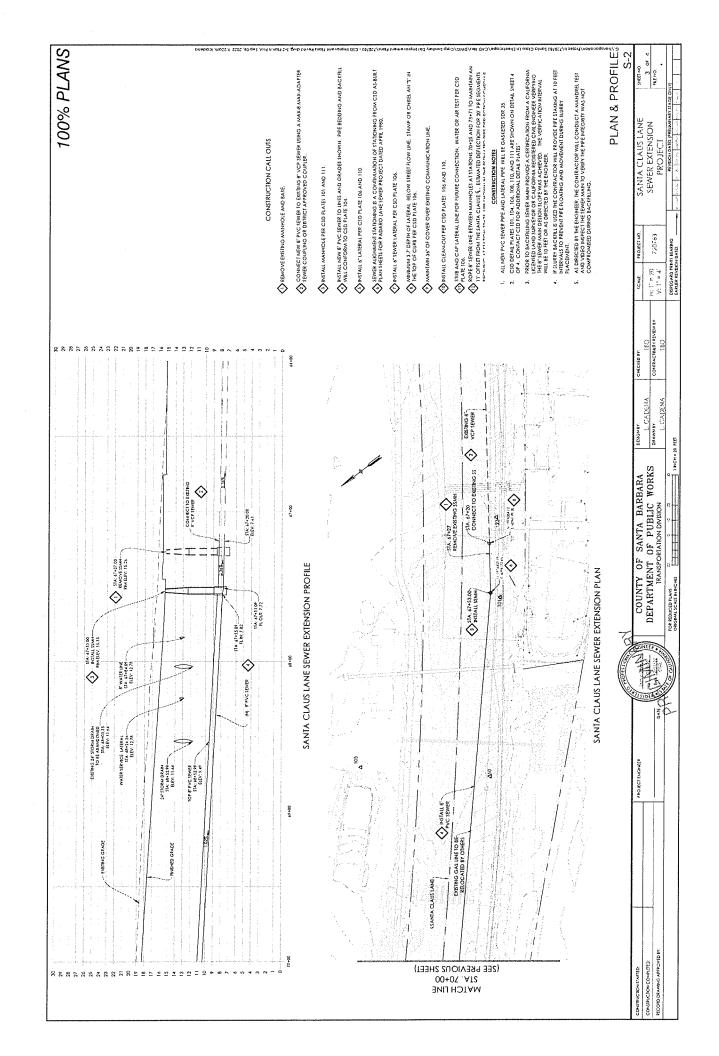
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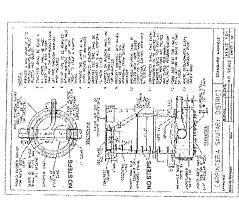
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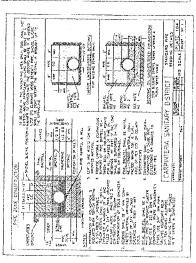
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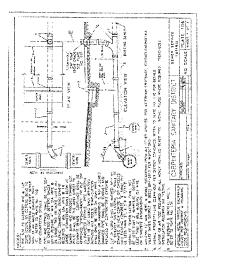


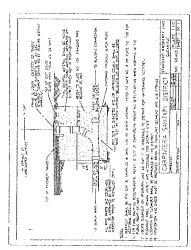










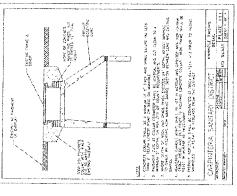


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