

RELEASE AND SETTLEMENT AGREEMENT

Effective July 1, 2018, the parties to this Agreement, Morgan Contracting, Inc. ("Morgan"), Polk County, Iowa ("Polk County"), and the City of Ankeny ("Ankeny") (collectively, the "Parties"), agree as follows:

WHEREAS, on or about July 28, 2009, the parties entered into a series of contracts for the construction of certain sanitary sewer projects, including the Rock Creek Trunk Sewer Project (hereinafter "Rock Creek Trunk Sewer and Rock Creek Lateral Sewer Project") (the "Project"), located within the City of Ankeny, included in such contracts was the maintenance Bond No. 6645764-001 issued by Safeco Insurance Company of America ("Safeco") as surety for work performed by Morgan;

WHEREAS, on or about December 9, 2013, Polk County issued a certificate of completion to indicate final acceptance of the Rock Creek Trunk Sewer and Rock Creek Lateral Sewer Project;

WHEREAS, by letter dated December 7, 2017, the City of Ankeny made a claim on Bond No. 6645764-0001 and for breach of contract by Morgan claiming that Morgan and Safeco were obligated to repair or remedy certain alleged defects in the Project;

WHEREAS, the Parties, given the expense and inconvenience of litigation, wish to resolve any and all disputes between them;

WHEREFORE, the Parties agree as follows:

1. Further Work. Morgan, through its contractor J&K Contracting, L.L.C. ("J&K"), will perform certain repairs to the Project as set forth in Exhibit 1 attached hereto, without cost to Polk County or Ankeny ("Further Work"). Ankeny has prepared a "Revised Set of Plans" which provide the specifications for the Further Work, attached hereto as Exhibit 2 and incorporated as though set forth fully herein. The Further Work will commence on or about July 30, 2018. All

Further Work must be completed in accordance with the Revised Set of Plans and be in accordance with all requirements of SUDAS standards, including the City of Ankeny Supplemental Specifications to SUDAS.

2. Acceptance. Upon satisfactory completion and final inspection of the Further Work, Polk County and the City of Ankeny will issue a Letter of Acceptance and Final Inspection in form and content the same as that attached hereto as Exhibit 2.

3. Non-Admission. This Agreement does not constitute an admission by any Party of any violation of any law or statute and the Parties agree that neither this Agreement nor the furnishing of consideration shall be deemed or construed for any purposes as evidence or an admission of liability or wrongful conduct of any kind.

4. Mutual Releases In consideration of and in return for the promises and covenants undertaken herein by the Parties, and for other good and valuable consideration, receipt of which is hereby acknowledged, upon satisfactory completion, final inspection and acceptance of the Further Work, the Parties shall acknowledge full and complete satisfaction of and do hereby release, absolve, and discharge each other, as well as each Party's sureties, contractors, subcontractors, parents, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their partners, trustees, directors, officers, agents, attorneys, servants, past and present, and each of them (hereinafter "Releasees") from any and all claims, demands, liens, actions, suits, causes of action, appeals, obligations, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether known or unknown to the Parties which they now own or hold or have at any time owned or held as against Releasees, or any of them, arising from acts committed or omitted up to and including the date of execution of this Agreement (collectively, the "Released Claims"). Until satisfactory completion, final inspection and

acceptance of the Further Work is reached, Ankeny does not release any other Party or Releasees from any and all claims, demands, liens, actions, suits, causes of action, appeals, obligations, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether known or unknown related to the Further Work to be performed by Morgan through J&K. **Any Release given by the City of Ankeny under this Paragraph shall not go into effect until after issuance of the final inspection and written acceptance of the Further Work or, stated in the alternative, any Release given by the City of Ankeny under this Paragraph shall only be deemed effective upon satisfactory completion, final inspection and issuance of written final acceptance by the City of Ankeny of the Further Work.**

5. Due Authority. Each Party respectively warrants and represents, which warranty and representation shall survive the date of this Agreement, that: (i) it has good right, title and authority to enter into this Agreement and perform its respective obligations hereunder; (ii) the execution and delivery hereof by the individuals set forth below, and the consummation of the transactions herein provided, have been duly authorized and approved by the governing body and/or individuals of each such Party and that no other authorization or approvals were or are required to bind each such Party; and (iii) this Agreement, upon execution and delivery by the individuals set forth below, will constitute a valid and binding obligation, enforceable against each such party in accordance with its terms.

6. Costs and Attorney's Fees. The Parties will bear their own litigation costs and attorneys' fees. However, the prevailing party in any dispute involving this Agreement shall be entitled to their reasonable attorneys' fees and costs.

7. Severability. If any provision of this Agreement or application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can

be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable.

8. Voluntary Agreement. The Parties have reviewed this Agreement with their attorneys. The Parties hereto acknowledge each has read this Agreement, that each fully understands their rights, privileges, and duties under the Agreement, and that each enters this Agreement freely and voluntarily.

9. Electronic Signatures. Any signature page delivered by email (.pdf) or facsimile shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto. Any person who delivers a facsimile or PDF signature page agrees to later deliver an original signature page to any party who requests it.

10. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties with respect to any and all disputes or claims that they have, or could have, against each other as of the date this Agreement is executed, and supersedes all other agreements between the Parties with regard to such disputes or claims. This Agreement shall not be changed unless in writing and signed by all Parties.

11. Choice of Law. This Agreement is to be interpreted pursuant to the laws of the state of Iowa.

12. Counterparts. This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means shall be effective for all purposes hereunder to the same extent as original signatures, all of which when taken together shall constitute the Agreement of the parties.

13. Further Assurances. The Parties to this Agreement agree to take such additional action and execute such additional documents as the other Parties may reasonably request in order

to effectuate the intent and purposes of this Agreement.

14. Construction and Incorporation of Recitals. The Parties have participated jointly in the negotiation and drafting of this Agreement, and, in the event of an ambiguity or a question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Each of the Recital paragraphs above are incorporated into this Agreement as if fully set forth herein. Terms used in the Agreement that are defined in the Recital paragraphs shall have the meanings ascribed to them therein.

15. Forum and Venue. In the event of any dispute between the Parties hereto concerning the performance or breach of any provision of this Agreement, the Parties hereto agree that they shall submit such dispute exclusively to the federal or state court located in Polk County, Iowa, and that such courts shall have subject matter and personal jurisdiction with regard to any such dispute arising out of this Agreement and the Claims.

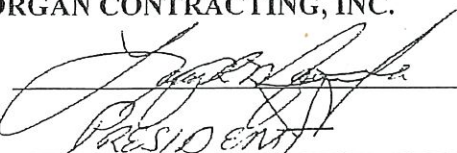
We have read the foregoing Agreement and we accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

IN WITNESS HEREOF, the Parties hereto have duly executed this Agreement and Release effective as of the date first above written.

MORGAN CONTRACTING, INC.

By: _____

Its: _____


PRESIDENT

DATE: _____

POLK COUNTY, IOWA

By: _____

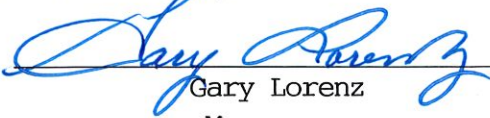
Its: _____

DATE: _____

8/28/18

[Signature]
Chairperson

CITY OF ANKENY, IOWA

By: 
Gary Lorenz
Its: Mayor

DATE: August 20, 2018



(Sheet D2.01) 16G 26 Plan Number 2-3/2-2 Concern 15% sag at 67'

- (1) The sag at this location is a marginal 10% sag in a single piece of pipe and would not be fixable. You would not be able to get the belly out and if you rotated pipe it would create a high spot which would create a new problem. We will chase this, and it is already functioning.

Please plan to excavate and repair this sag.

(Sheet D2.01) 16G 26 Plan Number 2-3/2-2 15% sag at 95'

- (2) The sag at this location is a marginal 10% sag single piece of pipe and would not be fixable. You would not be able to get the belly out and if you rotated pipe it would create a high spot which would create a new problem. We would chase this, and it is already functioning.

Please plan to excavate and repair this sag.

(Sheet D2.01) 16G 26 Plan Number 2-3/2-2 20% sag at 187'-214'

- (3) This spot will need to be dug up and the two joints that are low will need to be raised to minimize the sag. OK.

(Sheet D2.01) 16G 25 Barrels sections leaking

- (4) This concern will be addressed by sealing up barrel sections and prevent infiltration. OK.

(Sheet D4.15) 17G 92 Plan Number 4-32/4-26 20% sag at 60'-68' at lateral

- (5) This spot will need addressed by digging up the location and adjusting the joints to minimize the sag. (Sheet D4.16) 17G 92 Plan Number 4-32/4-26 15% sag at 104'-116' Do not excavate as we do not wish to disrupt this property.

- (6) This spot will need addressed by digging up service and raising it to minimize the sag. The service looks to be the low spot. Do not excavate as we do not wish to disrupt this property.

(Sheet D4.16) 17G 92 Plan Number 4-32/4-26 15% sag at 210'-220'

- (7) This spot will need dug up and the offset joint at 215' will need to be addressed which will minimize the sag from 210'-220'. Do not excavate as we do not wish to disrupt this property.

Sheet D4.16) 17G 92 Plan Number 4-32/4-26 offset up 215'

EXHIBIT

1

(8) This spot will get resolved while doing 17G 92 Plan Number 4-32/4-26 sag at 210'-220' Please install interior pipe patch to provide smooth transition for offset joint.

(Sheet D4.03) 17G 76 Plan Number 4-11/4-10 Separated joint/infiltrating 131'

(9) The separated joint described will be fixed using a packer ball to seal up joint infiltrating at 131' Please install interior pipe patch to provide smooth transition for offset joint.

(Sheet D4.03) 17G 76 Plan Number 4-11/4-10 Offset large down 150'

(10) A fix is not warranted at this location there is no restriction or infiltration and is a functioning system. The offset is due to the connection at the drop where we went from 0% grade to 2% grade which is why there is an offset in the joint. The drop was done per spec 20' piece of DIP out of tee on drop which is level due to MJ tee and the pipe that was connected was running at a 2.00% Please install interior pipe patch to provide smooth transition for offset joint. If this cannot be patched please excavate to repair offset joint.

(Sheet D3.02) 16G 38 Plan Number 3-3/3-2 120' offset/infiltrating close to lateral at 2 o'clock

(11) The minor offset will need addressed because of the infiltration the joint and infiltration will be fixed using a packer ball. Please install interior pipe patch to provide smooth transition for offset joint.

(Sheet D3.02) 16G 38 Plan Number 3-3/3-2 offset down at 126 close to lateral at 11 o'clock/infiltrating

(12) The minor offset will need addressed because of the infiltration the joint and infiltration will be fixed using a packer ball. Please install interior pipe patch to provide smooth transition for offset joint.

(Sheet D3.02) 16G 38 Plan Number 3-3/3-2 Offset up 11'

(13) A fix is not warranted at this location. The offset pipe is due to a romax connection there is no restriction with the flow line and there is no infiltration and is functioning. OK.

(Sheet D4.12) 17G 97 Plan Number 4-28/4-27 Offset down 13' ductile to PVC

(14) A fix is not warranted at this location, there is no restriction or infiltration and is a functioning system. The minor separation on the bottom of the connection is at the drop connection where the drop is at 0% and the pipe is at a .5% grade. OK.



(Sheet D4.13) 17G 97 Plan Number 4-28/4-27 15% sag at lateral 343'

- (15) A fix is not warranted at the lateral. The MJ fittings are built with a slight belly in the fitting and the PVC pipe and MJ FL do not match 100% and it is a functioning system. **The sag runs from before the joint and continues beyond the joint so the sag is not caused from the MJ joint, please excavate and repair this sag.**

(Sheet D4.13) 17G 97 Barrels Sections leaking

- (16) This concern will be addressed by sealing up barrel sections and prevent infiltration. **OK.**

(Sheet D4.08) 17G 87 Plan Number 4-10/4-22 10% sag at 183'-190'

- (17) A fix is not warranted 99% of the sag is 5% which is with-in sudas specs **OK.**

(Sheet D4.08) 17G 87 Plan Number 4-10/4-22 10% sag at 119'

- (18) A fix is not warranted 99% of the sag is 5% which is with-in sudas specs. **OK.**

(Sheet D3.03) 16G 14 Plan Number 3-4/Existing Offset down 183'

- (19) A fix is not warranted at this location. There is no blockage or infiltration and is a functioning system. The offset is due to making the connection to the drop connection. You are going from a pipe that has 15% grade on it to a drop connection that is per sudas spec at basically 0% there is going to be offset joints when no bends where allowed. **Please install interior pipe patch to provide smooth transition for offset joint.**

(Sheet D3.03) 16G 14 Plan Number 3-4/Existing separated joint 196' soil visible

- (20) This will be fixed using a packer ball due to soil being visible. **Please install interior pipe patch to provide smooth transition for offset joint.**

(Sheet D4.05) 17G 80 Plan Number 4-15/4-14 Offset down 133'

- (21) A fix is not warranted at this location. There is no restriction or infiltration and it is functioning with no issues. **OK.**

(Sheet D4.05) 17G 80 Expose manhole at surface and fix invert to provide positive flow

- (22) This concern will be addressed by grinding down the invert to get positive flow. **A smooth flow line from pipe invert to pipe invert must be maintained to fix this issue.**

(Sheet D4.14) 17G 95 Plan Number 4-29/4-27 Offset up 167' ductile to PVC

(23) A fix is not warranted at this location. There is no flow line restrictions or infiltration and is functioning. The joint only looks off set because the flow lines match but the inside diameter of the two pipes are not the same, dis-similar pipe, the DIP inside diameter is larger than the truss pipe. OK.

(Sheet 6.04) 18G 32 Plan Number 6-5/6-4 10% sag at lateral 70'

(24) A fix is not warranted at this location. The MJ tee is made with a slight dip in the flow line it has no infiltration or restrictions and is functioning 99% of the sag is 5% or less which is with-in sudas specs. OK.

(Sheet D6.04) 18H 22 Plan Number 6-6/6-5 offset down 420' ductile to ductile

(25) A fix is not warranted at this location. There is no restrictions or infiltration and is functioning with less than 3/8 of an inch offset OK.

(Sheet D6.01) 18H 24 stub Plan Number 6-8/Existing offset up 23' ductile to PVC

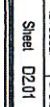
(26) A fix is not warranted at this location. There is no flow line restrictions or infiltration. The flow line on the DIP and Truss pipe match the reason they look offset is because of dis-similar pipe. OK.

(Sheet D3.06) 16G 32 Manhole Holding water in invert and barrel section leaking

(27) This concern will be addressed by grinding down the invert to get positive flow. Also, the barrel section will be fixed to not allow any infiltration. OK.



Our Pipe ID	Plan Numbers	Inspection Direction	Picture	Issue or Concern
166 26a	2-3 / 2-2	Downstream	2	15% sag at 67'
166 26b	2-3 / 2-2	Downstream	3	15% sag at 95'
166 26c	2-3 / 2-2	Downstream	4	20% sag at 187'-214'
176 92a	4-32 / 4-26	Downstream	16	20% sag at 60'-68' at lateral
176 92b	4-32 / 4-26	Downstream	17	15% sag at 104'-116' lateral in middle
176 92c	4-32 / 4-26	Downstream	18	15% sag at 210'-220'
176 92d	4-32 / 4-26	Downstream	19	Offset up 215'
176 76a	4-11 / 4-10	Downstream	12	Separated joint/infiltrating 131'
176 76b	4-11 / 4-10	Downstream	13	Offset large down 150' stops camera.
166 38a	3-3 / 3-2	Upstream	10	120' offset up/ infiltrating close to lateral at 2 O'clock
166 38b	3-3 / 3-2	Upstream	11	Offset down at 126' close to lateral at 11 O'clock/ infiltrating.
176 97a	4-28 / 4-27	Upstream	21	Offset down 13' ductile to PVC
176 97b	4-28 / 4-27	Upstream	25	15% sag at lateral 343'
176 87a	4-10 / 4-22	Downstream	15	10% sag at 183'-190'
166 14a	3-4 / existing	Downstream	26	10% sag at 119'
166 14b	3-4 / existing	Downstream	6	Offset large down 183'
176 80a	4-15 / 4-14	Upstream	7	Separated joint 196' soil visible
176 95a	4-29 / 4-27	Upstream	27	Offset down 133'
186 32a	6-5 / 6-4	Downstream	20	Offset up 167' ductile to PVC
186 22a	6-5 / 6-5	Downstream	23	10% sag at lateral 70'
186 245tb	6-8 / existing	Upstream	24	Offset up 23' ductile to PVC
166 38c	3-3 / 3-2	Upstream	9	Offset up 11'
Manholes				
166 32				
176 80				
166 25				
176 97				
89				Holding water in invert and barrel section leaking.
14				Expose manhole at surface and fix invert to provide positive flow.
89				Barrel sections leaking.
89				Barrel sections leaking.
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AREA 2 - NW COUNTRY CLUB DR. PLAN AND PROFILE

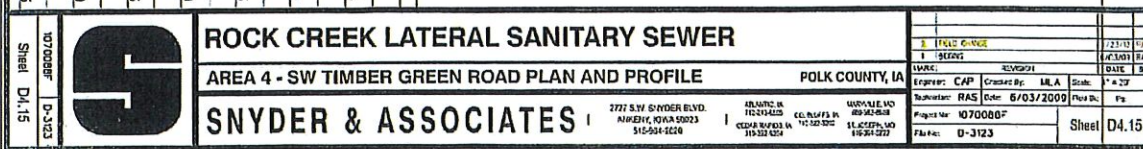
POLK COUNTY, IA

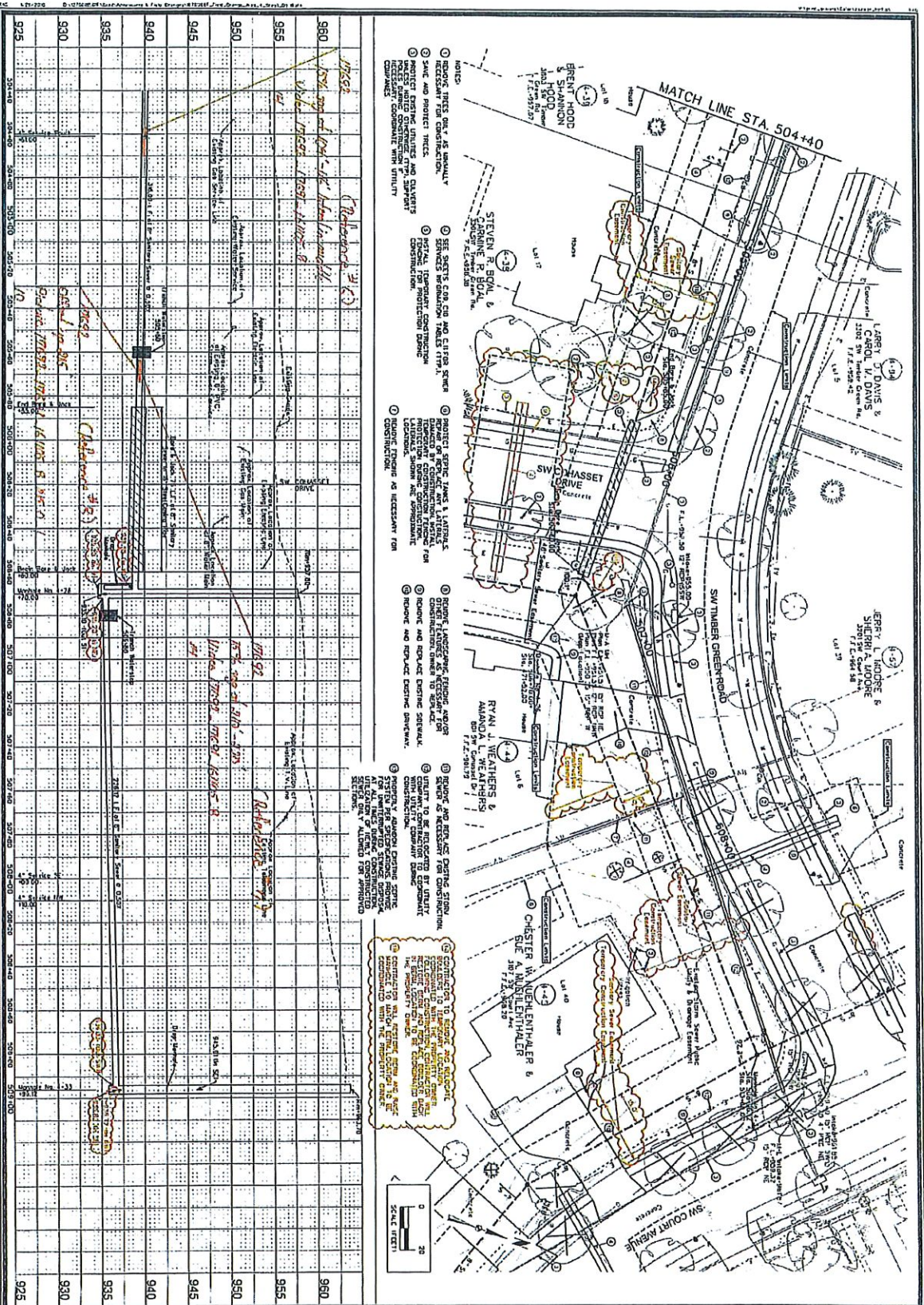
SNYDER & ASSOCIATES


2727 S.W. SNYDER BLVD
ASKEHY, IOWA 50073
615-564-2020

ATLANTA, GA 404-243-4205	CHICAGO, IL 312-329-5202	MINNEAPOLIS, MN 612-338-4100
DETROIT, MI 313-362-1224	PHILADELPHIA, PA 215-382-1222	ST. LOUIS, MO 314-241-1222

2	FILED 00001	1/12/00	11/12/00
1	00000	6/03/99	6/03/99
NAME	REVISION	DATE	BY
Engineer: CAP	Checked By: MJA	Scale: 1" = 20'	
Inspector: RAS	Date: 6/03/2009	Plot: Bk. #2	
Project No: 107008BF		Sheet D2.01	
File No: D-3123			







Sheet D4.16

ROCK CREEK LATERAL SANITARY SEWER

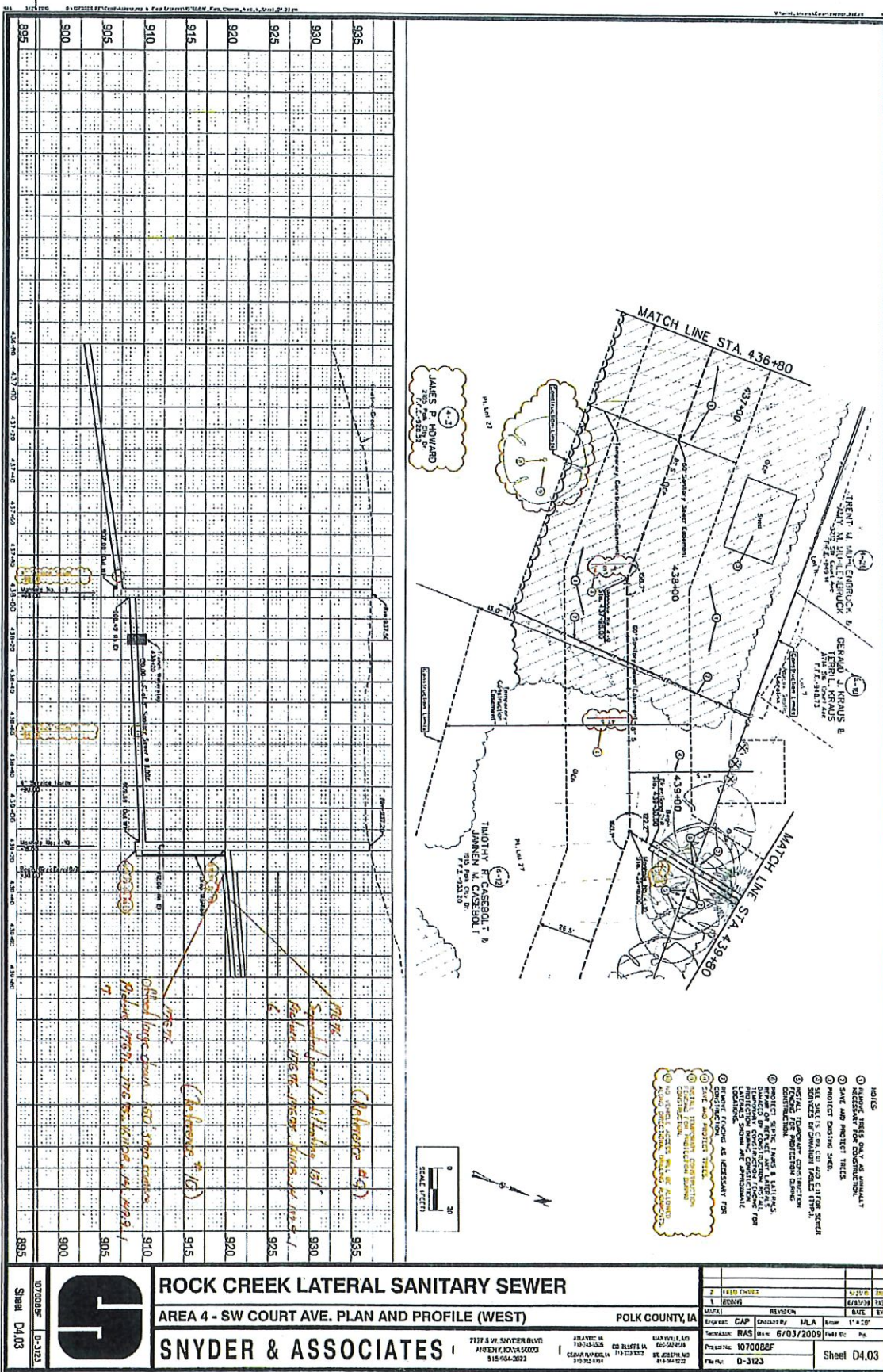
AREA 4 - SW TIMBER GREEN ROAD PLAN AND PROFILE

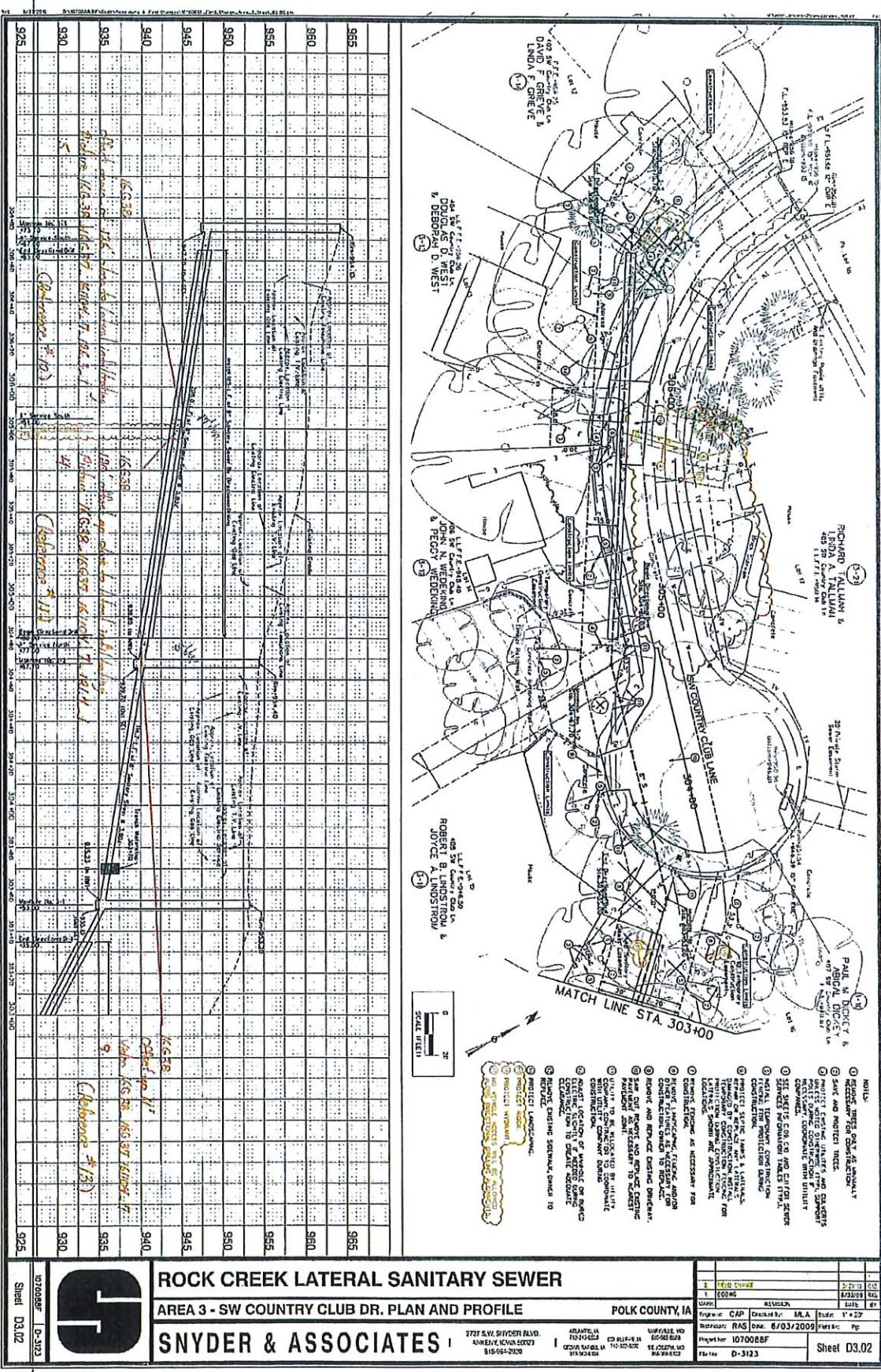
SNYDER & ASSOCIATES

2121 SW SNYDER BLVD.
JACKSON, MISSISSIPPI 39203
601-955-0000

POLK COUNTY, IA

DATE: 6/03/2009
DRAWN BY: CAP
CHECKED BY: RAS
DESIGNED BY: RAS
PROJECT NO: 0700088F
SHEET NO: D-3123





ROCK CREEK LATERAL SANITARY SEWER

AREA 3 - SW COUNTRY CLUB DR. PLAN AND PROFILE

POLK COUNTY, IA

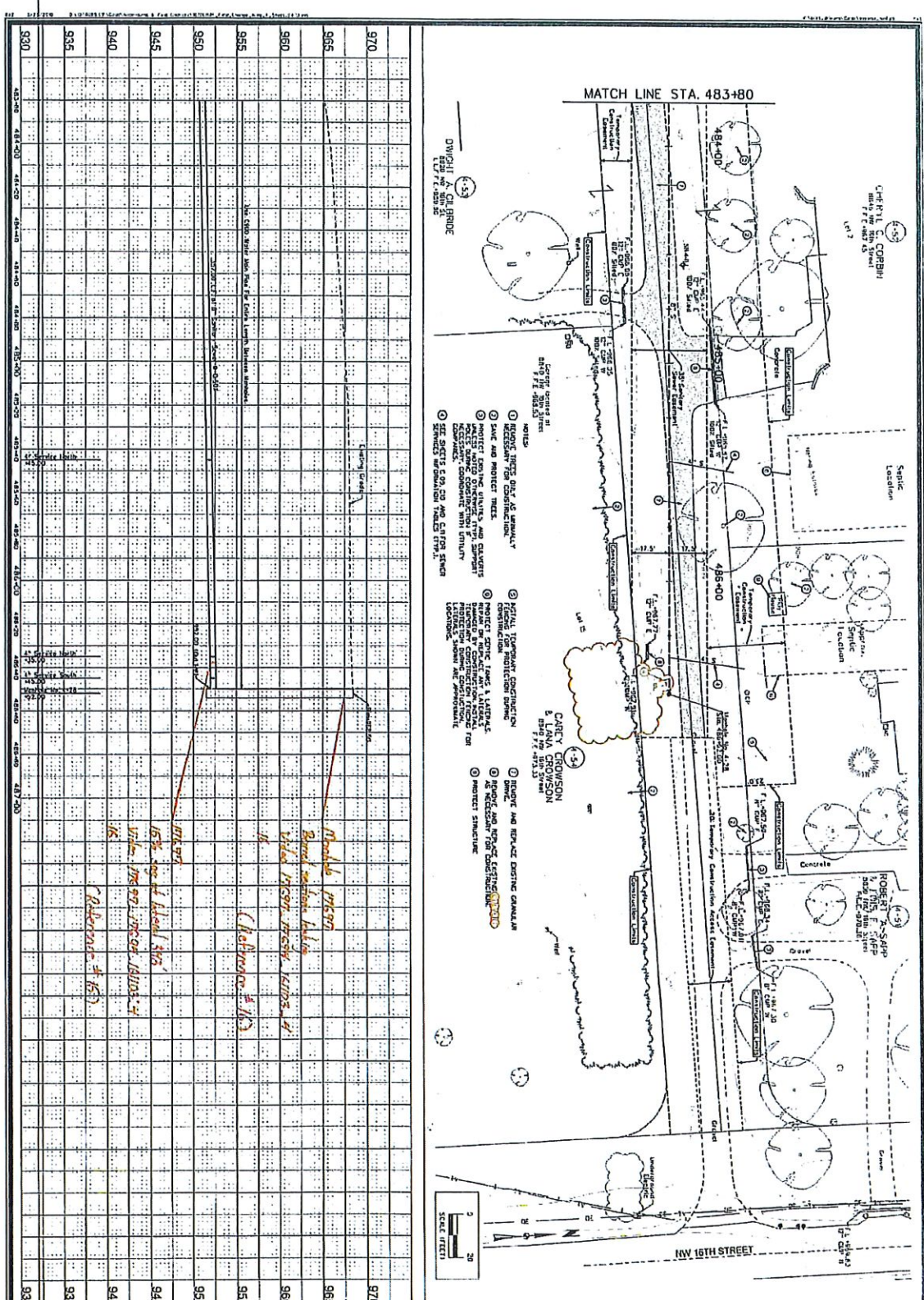
SNYDER & ASSOCIATES


7721 S.W. 10TH BLVD.
DAVENPORT, IOWA 52002
515-271-5515

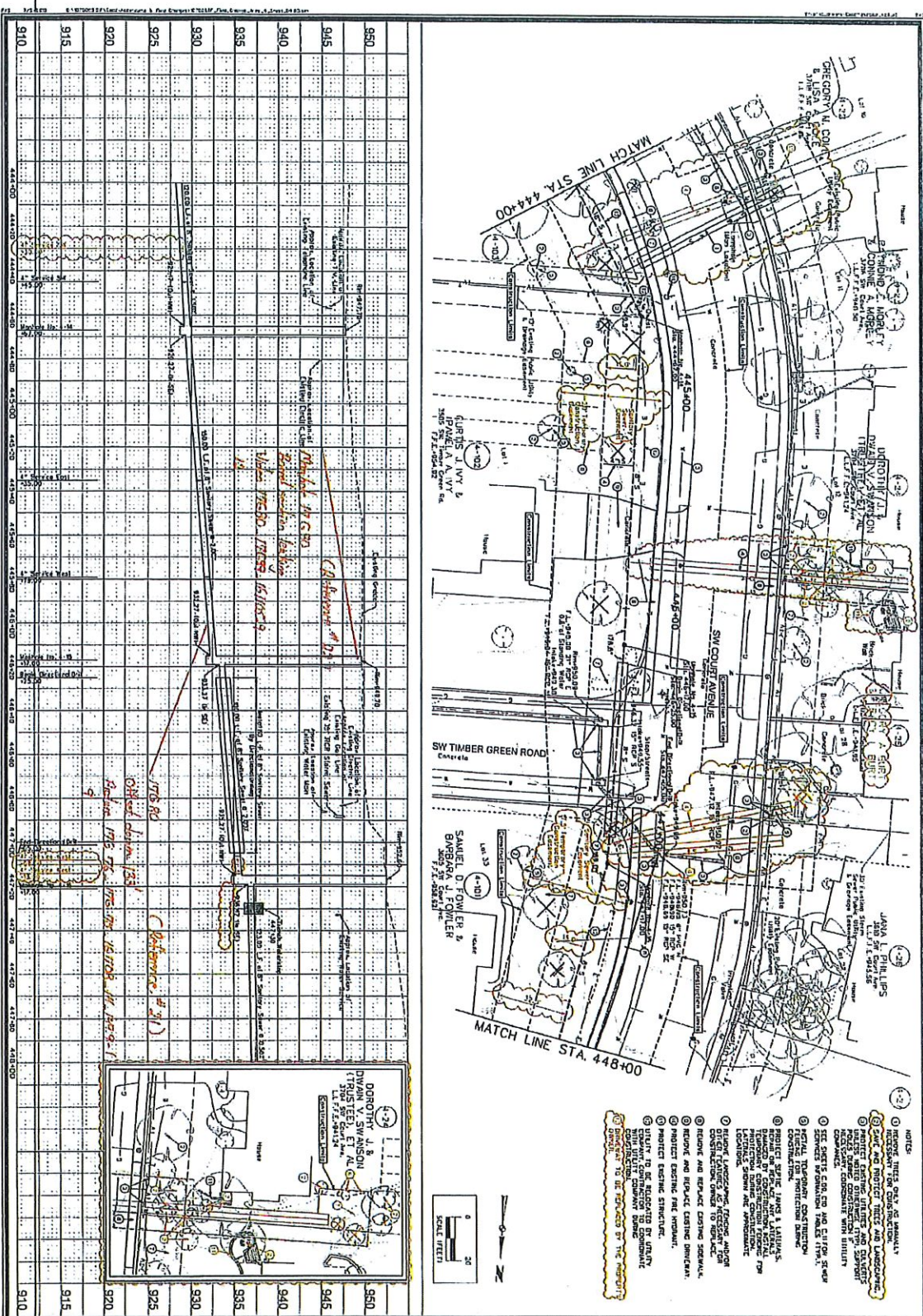
ATLANTA, GA 30303
TEL: 404-525-1100
FAX: 404-525-1101


PROJECT NO. 1070088F
DATE: 6/03/2009
SHEET: D-3123

Sheet D3.02



	ROCK CREEK LATERAL SANITARY SEWER AREA 4 - COHASSET DR. PLAN AND PROFILE (EAST)		POLK COUNTY, IA	
	SNYDER & ASSOCIATES		2727 S.W. SNYDER BLVD. DES MOINES, IA 50319 515-261-2330	
	PROJECT NO. 070080F SHEET NO. D-13		DATE: 6/03/2009 SCALE: 1" = 20'	
	SHEET D4.13		PROJECT NO. 070080F SHEET NO. D-13	





Sheet D4.05

ROCK CREEK LATERAL SANITARY SEWER

AREA 4 - SW COURT AVE. PLAN AND PROFILE (WEST)

SNYDER & ASSOCIATES

POLK COUNTY, IA

2727 S.W. SNYDER BLVD.
ALBUQUERQUE, NM 87105
505-261-1111

ALBUQUERQUE, NM 87105
505-261-1111

PROJECT NO. 10700088F

DATE 6/03/2009

FILE NO. D-3123



AREA 4 - COHASSET DR. PLAN AND PROFILE (SE)

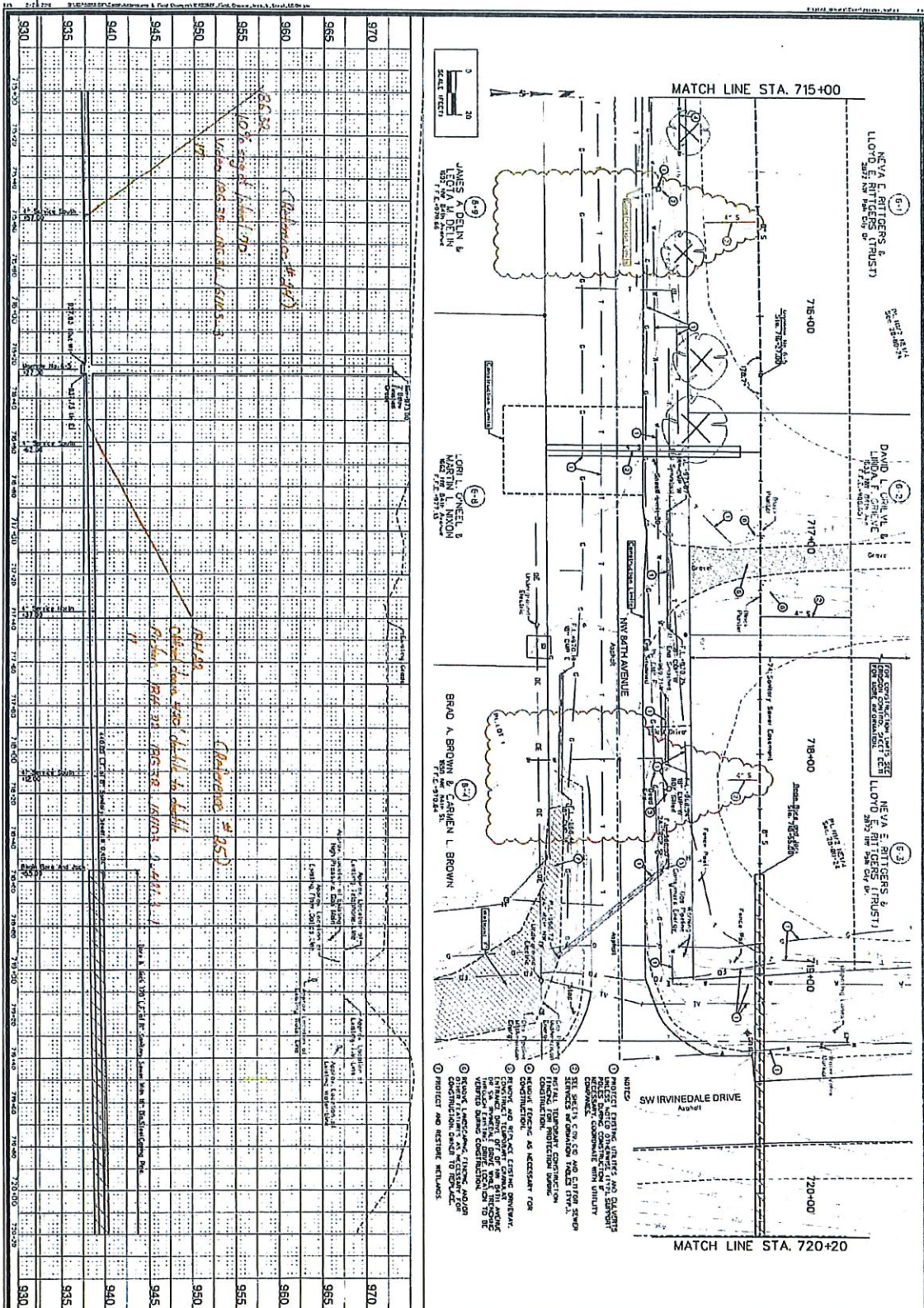
SNYDER & ASSOCIATES


2727 S.W. SANDER BLVD.
MURFREESBORO, TENN 37055
515-554-2073

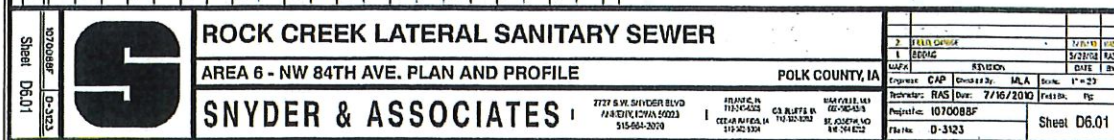
POLK COUNTY, IA

MAJRS		REVISION	
Chk Per. CAP	Chk'd By	MLA	
Technician RAS	DTE 6/03/2009		
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File No: D-3123			

Sheet D4.14



		ROCK CREEK LATERAL SANITARY SEWER AREA 6 - NW 84TH AVE. PLAN AND PROFILE SNYDER & ASSOCIATES		POLK COUNTY, IA 2217 S.W. SNYDER BLVD. ANKENY, IOWA 50009 515-954-2900		PROJECT NO. 1070088F SHEET NO. D6.04 DATE: 6/03/2009 DESIGNED BY: CAP CHECKED BY: RAS PROJECTED BY: CAP SCALE: 1" = 20' SHEET: 1 OF 1	
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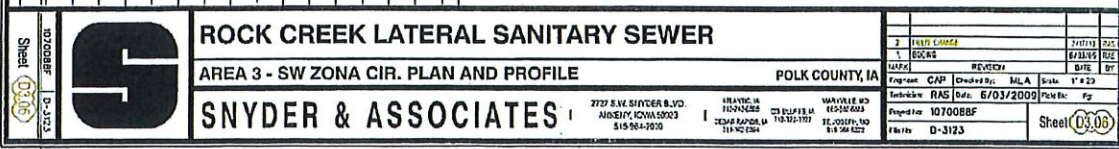


EXHIBIT 2

LETTER OF ACCEPTANCE AND FINAL INSPECTION

Pursuant to the Agreement between Morgan Contracting, LLC, Polk County, Iowa, and City of Ankeny, Iowa, effective July 1, 2018, and incorporated herein by reference, regarding the ROCK CREEK TRUNK SEWER AND ROCK CREEK LATERAL SEWER PROJECT, this is to declare that the Further Work on the ROCK CREEK TRUNK SEWER AND ROCK CREEK LATERAL SEWER PROJECT has been completed to the satisfaction of the Parties. We hereby acknowledge acceptance of the Further Work by this letter.

Respectfully submitted,

POLK COUNTY, IOWA

By: _____

Its: _____

Date: _____

CITY OF ANKENY, IOWA

By: _____

Its: _____

Date: _____