

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Dave Klotzle, City Engineer/Public Works Director 
Prepared by: Al Gali, Assistant Engineer 

DATE: July 11, 2012 (CC Meeting of 07/18/12)

SUBJECT: Consider Award of Contract for the 2012 Pavement Rehabilitation – Project 8002 and a Resolution Amending the Fiscal Year 2012/13 Budget to Appropriate Funds from HUT 2103 Fund (2606) for Additional Construction Costs for the 2012 Pavement Rehabilitation – Project 8002

BACKGROUND

One method the City uses for pavement maintenance is the periodic application of a protective slurry seal to the pavement surface of residential streets in the City. The program's objective is to maintain a bi-annual program (construct a project every other year) in which each project addresses approximately one-third of the residential streets in the City. Therefore, every residential street in the City should be slurry sealed once every six (6) years. The last pavement maintenance program was constructed in FY 2009/10.

On June 6, 2012, the City Council approved the plans and specifications for the 2012 Pavement Rehabilitation Project, and authorized staff to advertise for construction bids.

DISCUSSION

A. Scope of Work

The proposed project will include two types of pavement rehabilitation: a) Type II Slurry for some streets, and b) an Asphalt Rubber Aggregate Membrane (ARAM) surface for others. Prior to the application of slurry seal and ARAM, all pavement cracks 1/8th-inch and wider will be sealed. The slurry seal portion of the project will include the application of Type II Slurry and the re-stripping of all affected

streets subsequent to the application of slurry seal.

The ARAM pavement surface is a type of a cape seal requiring three steps: A) the application of an asphalt-rubber binder which is sprayed onto the existing pavement, followed immediately by B) the spreading of a pre-coated rubber/gravel aggregate which is then "rubber-tire" rolled and embedded into the asphalt-rubber binder, followed seven days later by C) a Type II Slurry Seal. The asphalt-rubber binder includes material from recycled tires. An ARAM pavement surface is typically used to improve deteriorated pavement at a lower cost than the traditional asphalt overlay or pavement reconstruction.

Manhole and water valve covers will be adjusted to the new pavement surface as required. An agreement between the City and Ventura County Waterworks District No. 1 provides that the District will reimburse the City for the costs to adjust their sewer manholes and water valve covers.

The streets included in the 2012 Pavement Rehabilitation Project are shown on the maps (Attachment 1), and listed in the charts (Attachment 2).

B. Bid Results and Analysis

Thirteen construction firms obtained the plans and specifications. Of that number, two bids were received and opened on July 10, 2012. The low bidder is Manhole Adjusting, Inc. of Pico Rivera, California. The low bidder possesses the necessary qualifications and experience to perform the work and additionally, is a responsive and responsible bidder.

A summary of the bid results is listed as follows:

No.	Bidder	Bid
1	Manhole Adjusting, Inc.	\$870,196.00
2	All American Asphalt	\$985,000.00

The detailed analysis of bids is attached (Attachment 3). The Engineer's estimate is \$700,000.00.

C. Project Schedule

The anticipated project schedule is as follows:

Award of Construction Contract	07/18/2012
Notice to Proceed	08/13/2012
Project Completion	10/12/2012

D. Project Administration and Inspection

Project administration will be performed by City staff with construction inspection to be provided by a consultant. Staff solicited proposals from several qualified inspection consultants and has selected BTC Labs – Vertical Five to provide the inspection services. The City Manager will award a consultant agreement for these services to BTC Labs – Vertical Five in an amount not to exceed \$50,000.00.

E. Environmental Determination

A notice of exemption for Categorical Exemption for this project has been filed with the County Clerk's Office in accordance with the California Environmental Quality Act.

FISCAL IMPACT

1. Project Cost Estimate

A summary of the total project cost estimate is as follows:

<u>Description</u>	<u>Estimated Cost</u>
Design (In-House)	\$ -
Construction	
Bid Amount	\$ 870,196.00
10% Contingency	\$ 87,000.00
Construction Total	<u>\$ 957,196.00</u>
Inspection	\$ 50,000.00
Project Total	<u>\$ 1,007,196.00</u>
Waterworks District Reimbursement	<u>\$ (59,625.00)</u>
Total Cost to City	<u>\$ 947,571.00</u>

2. Funding Sources

Recycled Tire Grant: Staff applied for and received a \$54,000.00 grant from the California Department of Resources Recycling and Recovery (CalRecycle) for the use of recycled tires in a rubberized asphalt rehabilitation project. CalRecycle will reimburse the City \$1.00 for each square yard of pavement rehabilitated with the ARAM process. The expected reimbursement from CalRecycle is \$54,000.00.

Other Funds: A combination of Fund 2606 – HUT 2103, Fund 2610 – Proposition 42, Traffic Congestion Relief, and Fund 2611 – Proposition 1B, Local Street and Road Funding will fund the remainder of the project.

The Fiscal Year 2012/13 Capital Improvements Budget includes \$825,000.00 for the construction and inspection of this project. Since the Waterworks District reimbursement will occur at the completion of the project, an additional \$183,991.00 is required to fund the construction of the project. A budget line item adjustment will be processed to move the \$1,795.00 of Fund 2611 funds from inspection to construction. A resolution amending the budget (Attachment 4) is required to appropriate the additional \$182,196.00 from Fund 2606 – HUT 2103 which will result in a projected fund balance of \$303,980.35 on June 30, 2013. The proposed revisions to the FY 2012/13 budget are summarized below:

Fund	Current FY 12/13 Budget (\$)	Proposed Change (\$)	Proposed FY 12/13 Budget (\$)
Construction			
2606: HUT 2103	313,770.00	182,196.00	495,966.00
2609: CalRecycle Tire Grant	54,000.00		54,000.00
2610: Prop 42 - Traffic Congest. Relief	405,435.00		405,435.00
2611: Prop 1B - Streets & Roads		1,795.00	1,795.00
Construction Total	773,205.00	183,991.00	957,196.00
Inspection			
2606: HUT 2103	50,000.00		50,000.00
2611: Prop 1B - Streets & Roads	1,795.00	(1,795.00)	
Total	825,000.00	182,196.00	1,007,196.00

STAFF RECOMMENDATION (ROLL CALL VOTE)

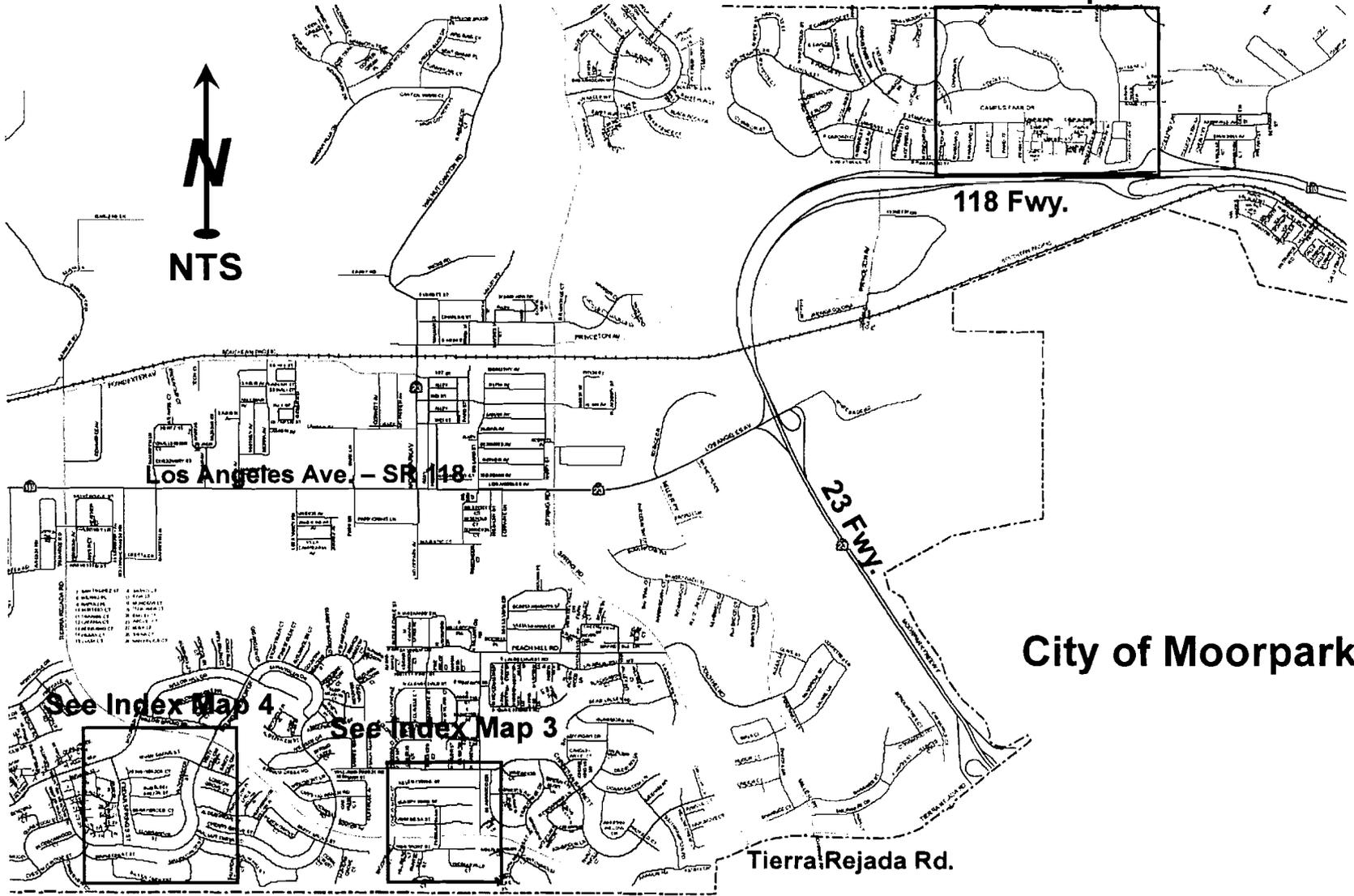
1. Award a construction contract to Manhole Adjusting, Inc., and authorize the City Manager to execute the construction contract in the amount of \$870,196.00 for the subject project.
2. Authorize the City Manager to amend the construction contract for project contingencies in an amount not to exceed \$87,000 if and when the need arises for extra work and services.
3. Authorize the City Manager to award a consultant agreement to BTC Labs - Vertical Five for construction inspection services in an amount not to exceed \$50,000.00 subject to final language approval by the City Manager and City Attorney.
4. Adopt Resolution 2012 - _____ amending the Fiscal Year 2012/13 budget to appropriate \$182,196.00 from HUT 2103 Fund (2606) for additional construction costs for the subject project.

Attachments:

- 1 – Pavement Rehabilitation Location Maps
- 2 – List of Streets
- 3 – Bid Analysis
- 4 – Resolution 2012 - _____
- 5 – Construction Contract

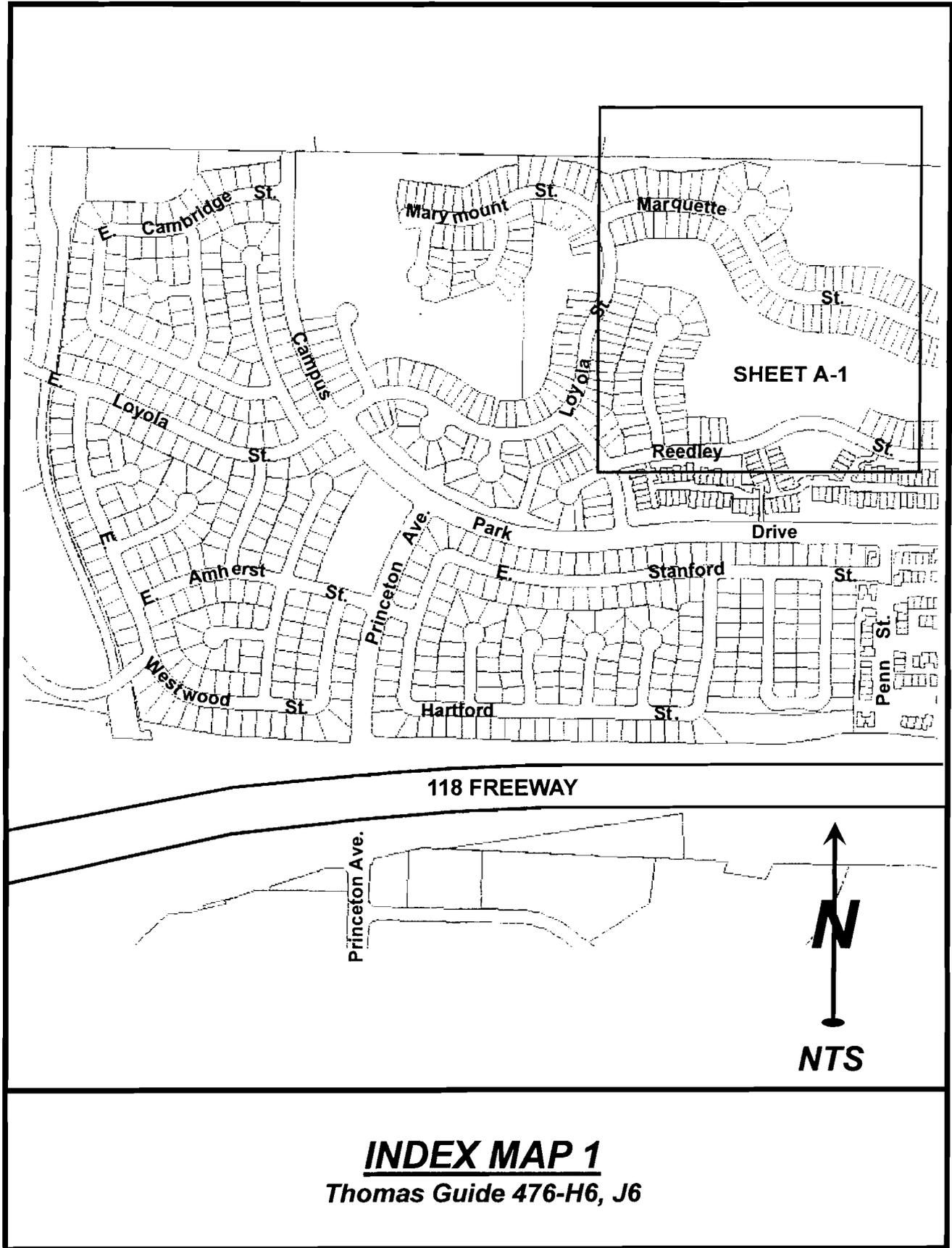
MPK 12-02 -- 2012 Pavement Rehabilitation Project Location Map

See Index Map 1 & 2

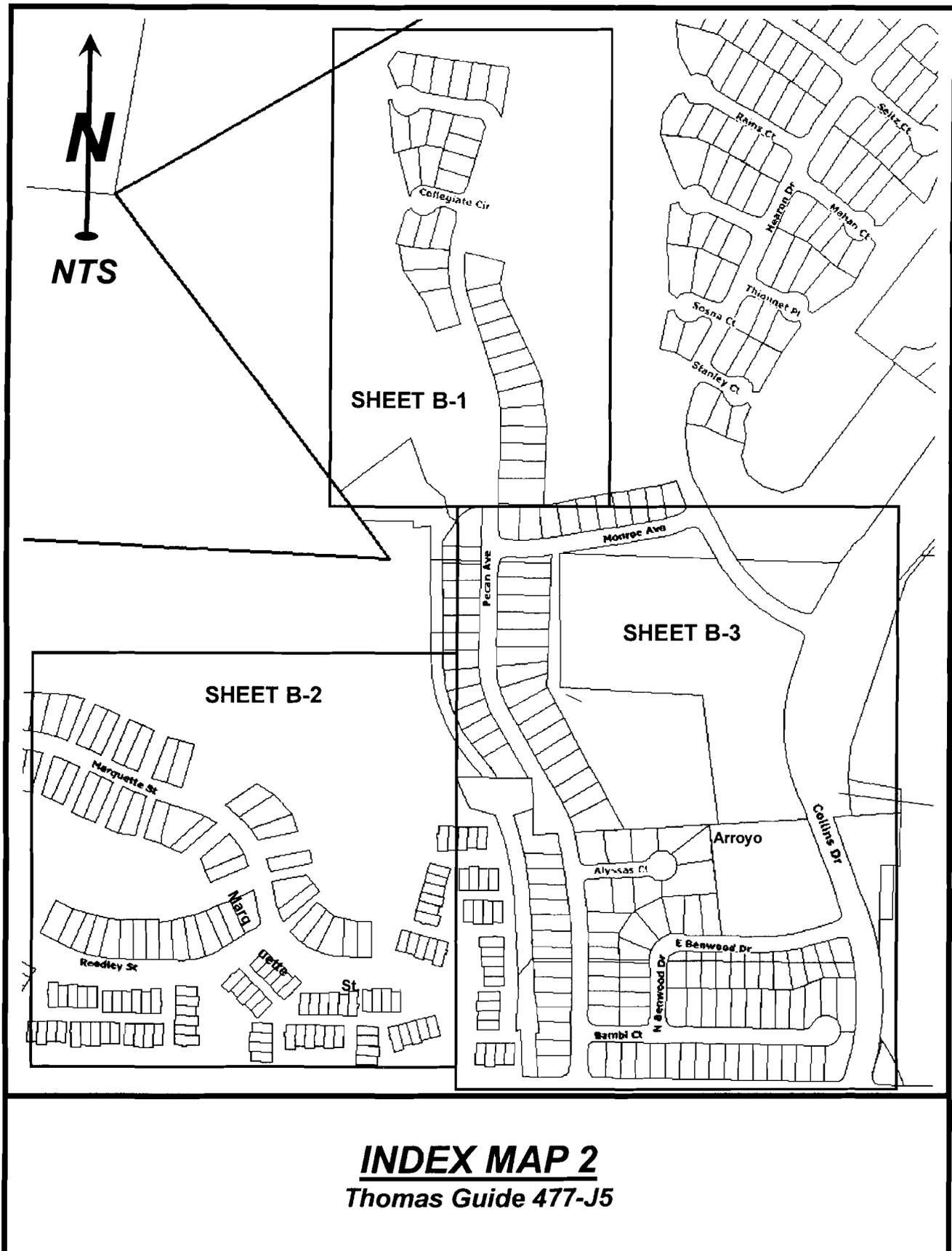


City of Moorpark

MPK 12-02 -- 2012 Pavement Rehabilitation Project

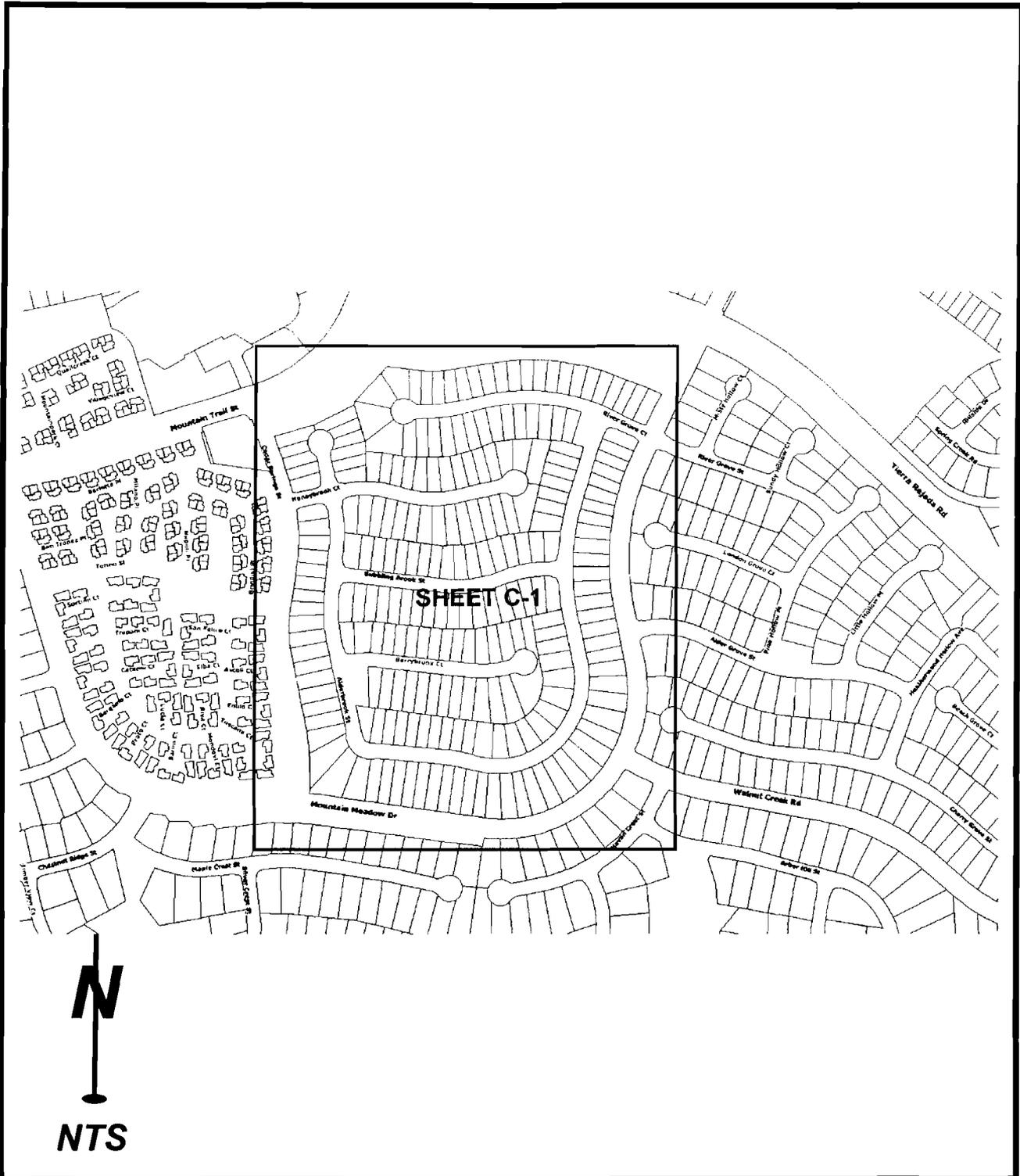


MPK 12-02 -- 2012 Pavement Rehabilitation Project



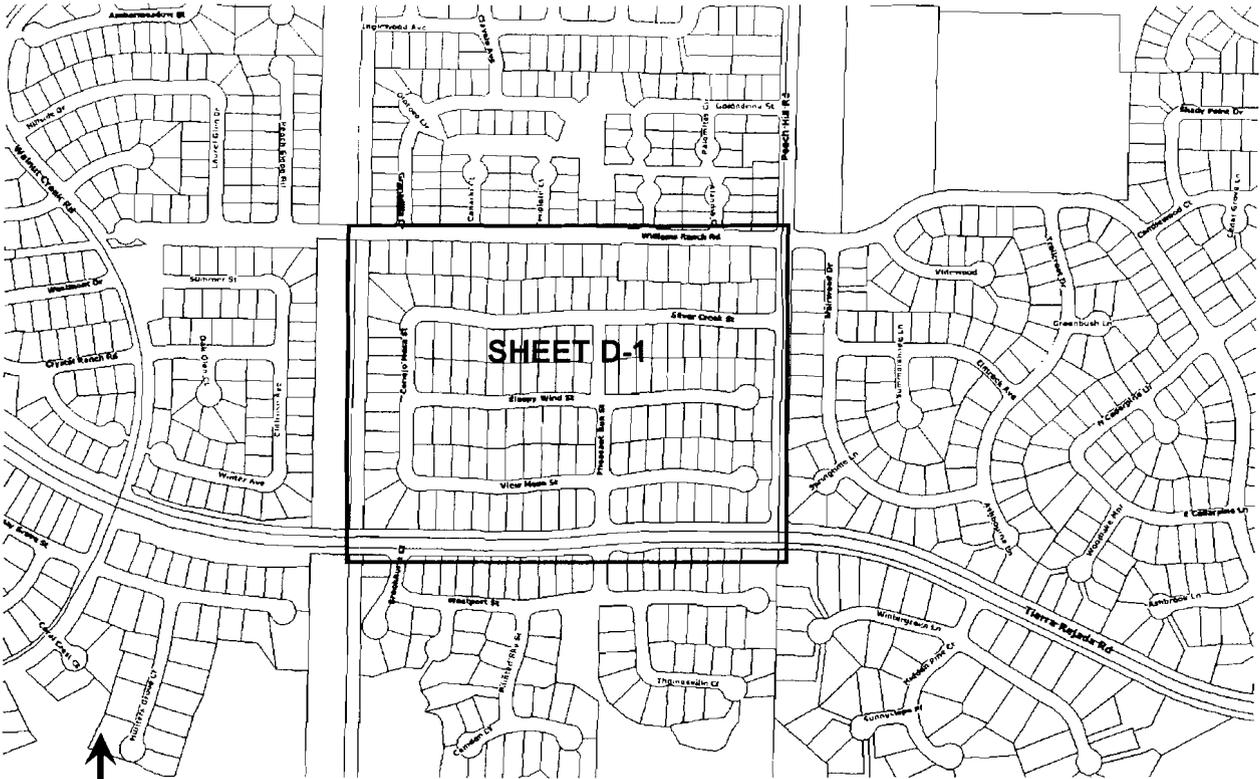
INDEX MAP 2
Thomas Guide 477-J5

MPK 12-02 -- 2012 Pavement Rehabilitation Project



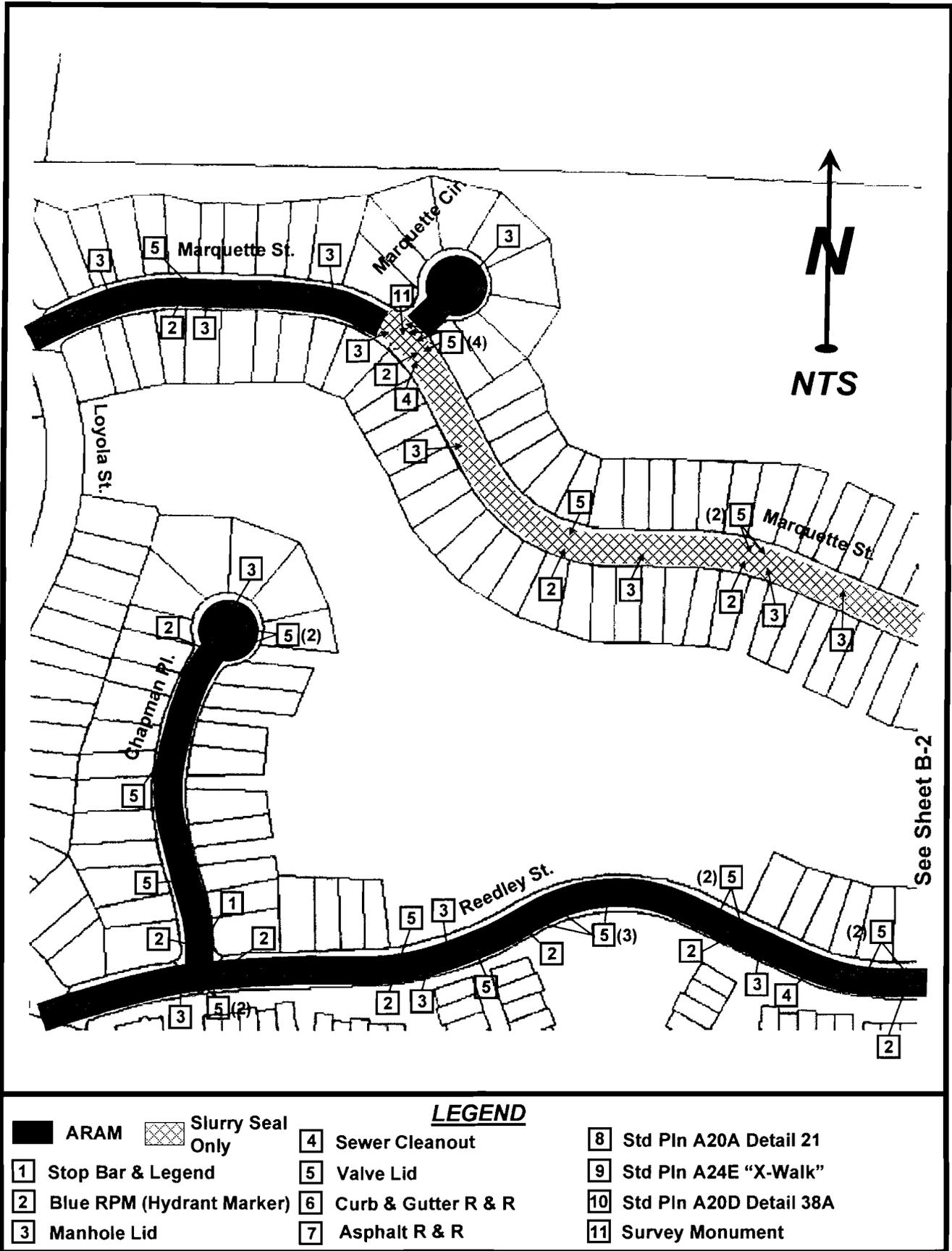
INDEX MAP 3
Thomas Guide 496-C3, C4, D3, D4

MPK 12-02 -- 2012 Pavement Rehabilitation Project



INDEX MAP 4
Thomas Guide 496-E3, E4

MPK 12-02 -- 2012 Pavement Rehabilitation Project

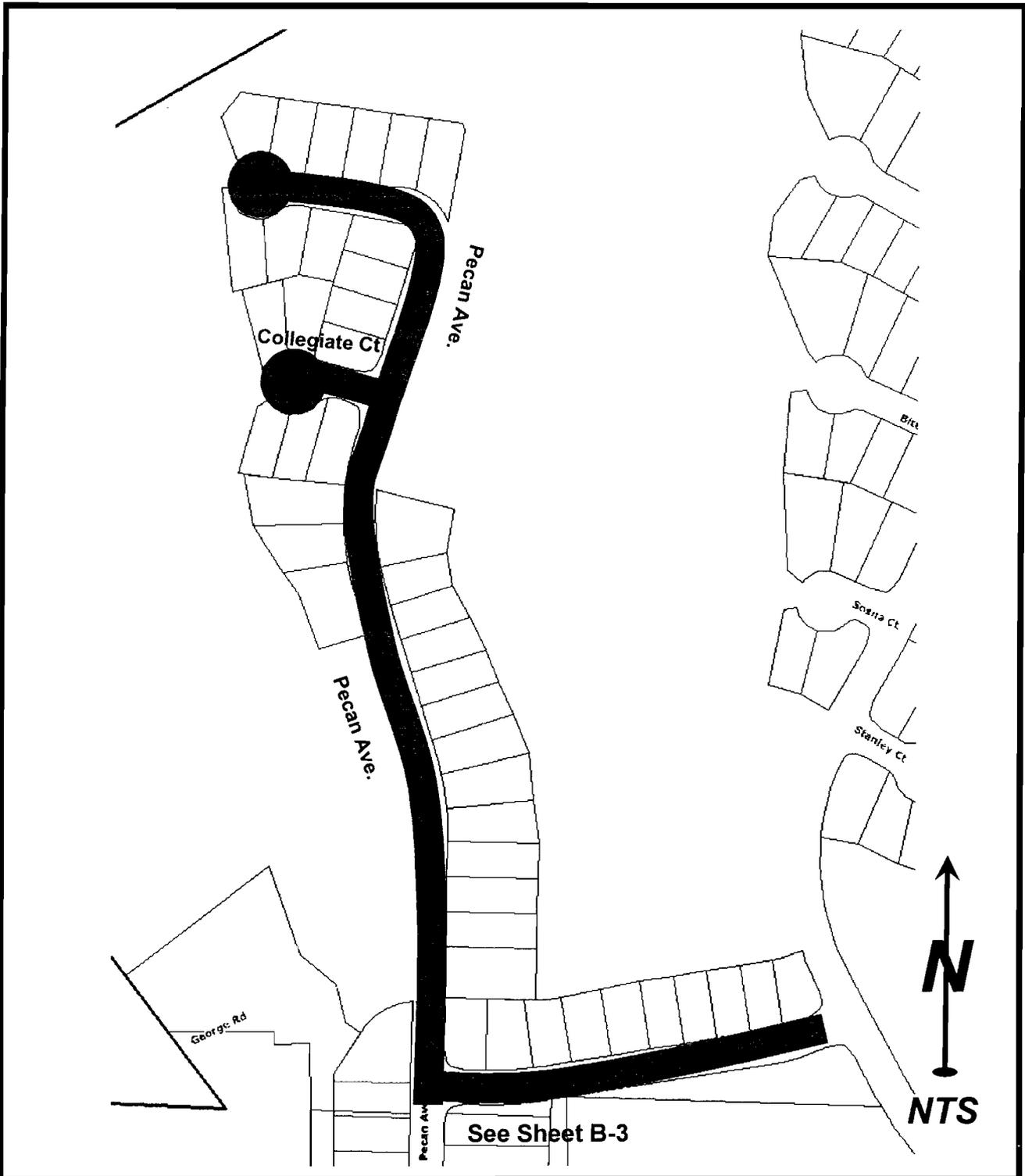


LEGEND

- | | | | |
|-----------------------------|-----------------------|-------------------------|----------------------------|
| ARAM | Slurry Seal Only | 4 Sewer Cleanout | 8 Std Pln A20A Detail 21 |
| 1 Stop Bar & Legend | 5 Valve Lid | 9 Std Pln A24E "X-Walk" | 10 Std Pln A20D Detail 38A |
| 2 Blue RPM (Hydrant Marker) | 6 Curb & Gutter R & R | 11 Survey Monument | |
| 3 Manhole Lid | 7 Asphalt R & R | | |

Sheet A-1

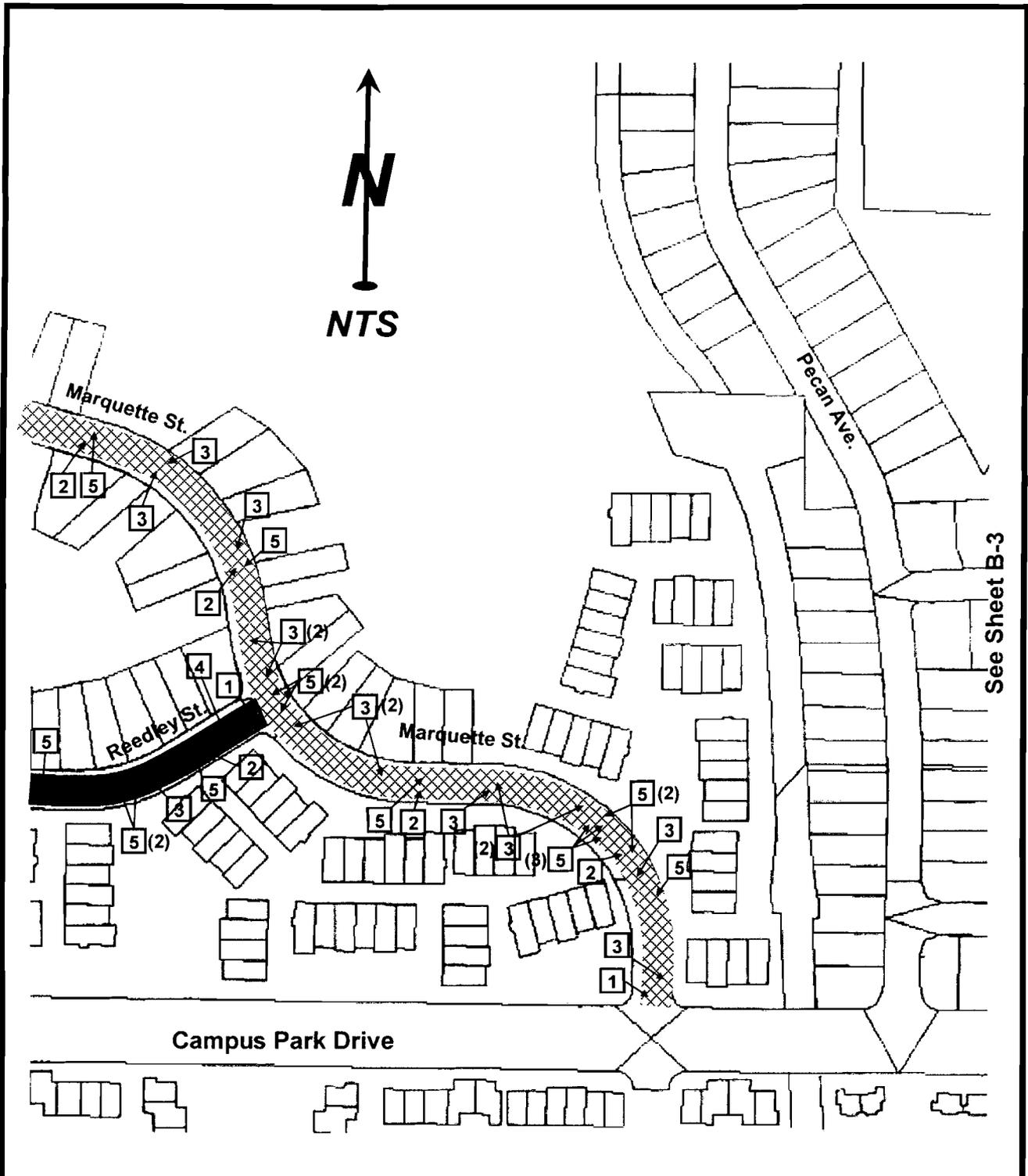
MPK 12-02 -- 2012 Pavement Rehabilitation Project



LEGEND					
 ARAM	 Slurry Seal Only	 4 Sewer Cleanout	 8 Std Pln A20A Detail 21		
 1 Stop Bar & Legend	 5 Valve Lid	 9 Std Pln A24E "X-Walk"			
 2 Blue RPM (Hydrant Marker)	 6 Curb & Gutter R & R	 10 Std Pln A20D Detail 38A			
 3 Manhole Lid	 7 Asphalt R & R	 11 Survey Monument			

Sheet B-1

MPK 12-02 -- 2012 Pavement Rehabilitation Project

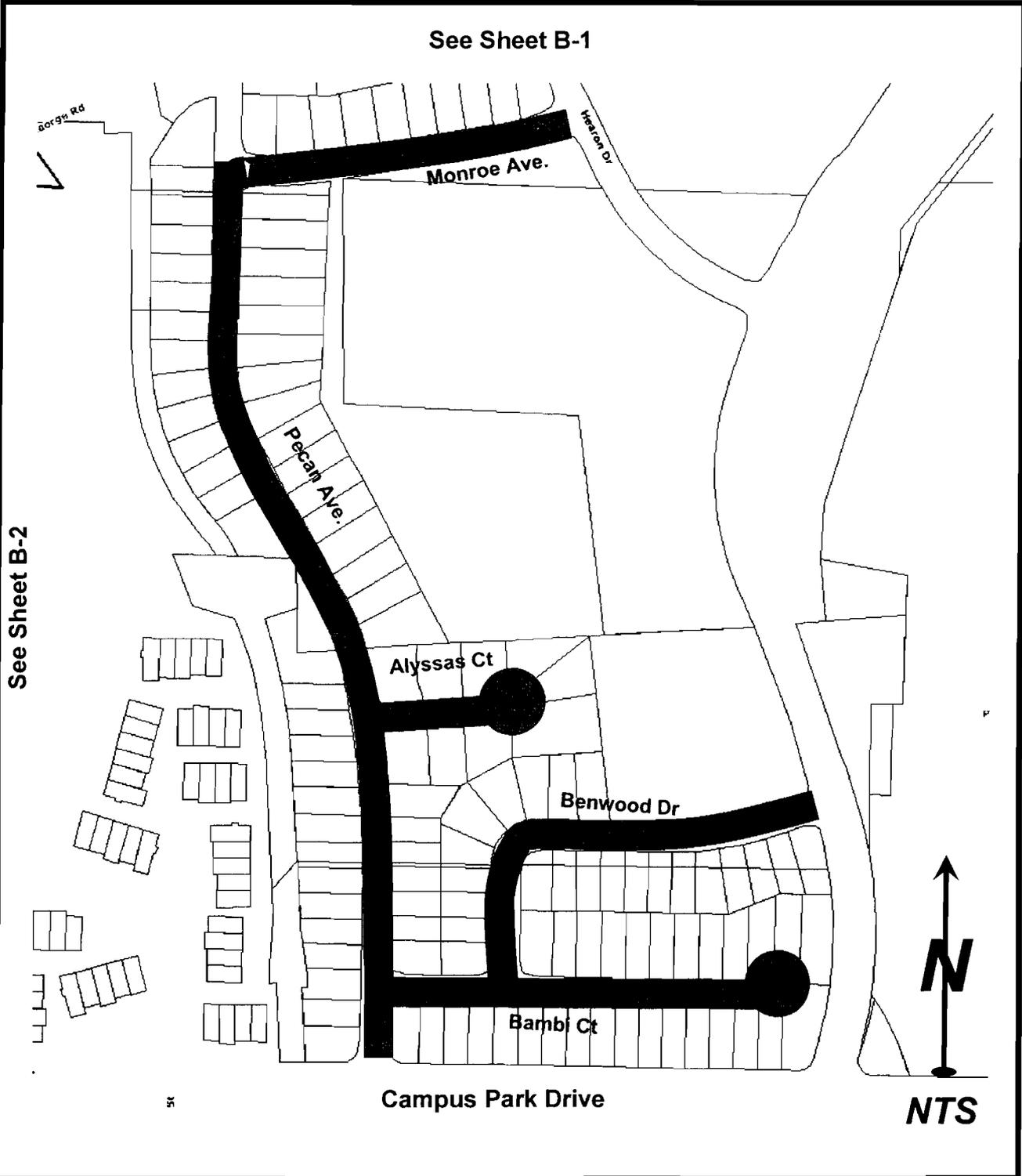


See Sheet B-3

LEGEND					
ARAM	Slurry Seal Only	Sewer Cleanout	Std Pln A20A Detail 21		
Stop Bar & Legend	Valve Lid	Curb & Gutter R & R	Std Pln A24E "X-Walk"		
Blue RPM (Hydrant Marker)	Asphalt R & R	Std Pln A20D Detail 38A	Survey Monument		
Manhole Lid					

Sheet B-2

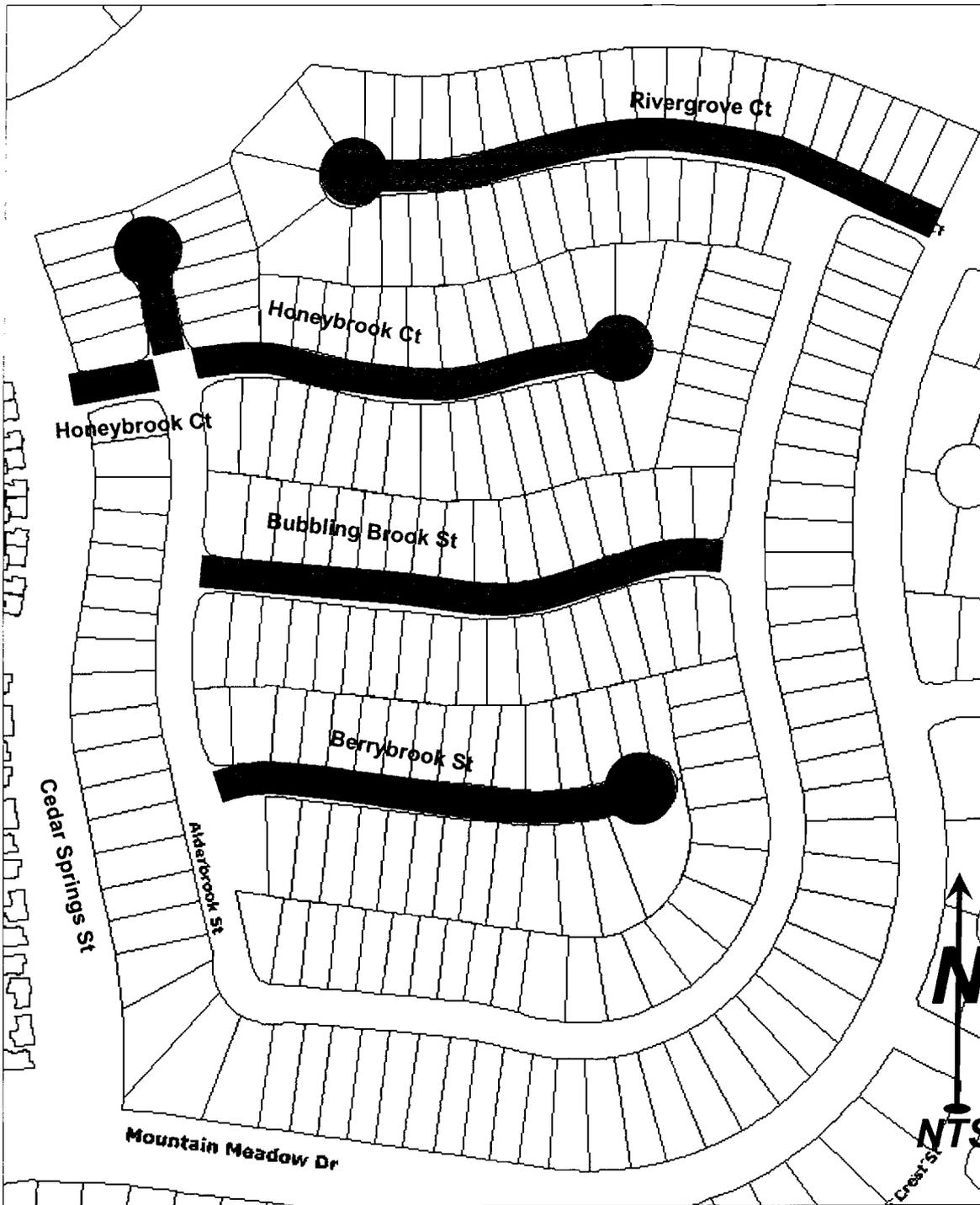
MPK 12-02 -- 2012 Pavement Rehabilitation Project



LEGEND		
ARAM	Slurry Seal Only	Sewer Cleanout
Stop Bar & Legend	Valve Lid	Std PIn A20A Detail 21
Blue RPM (Hydrant Marker)	Curb & Gutter R & R	Std PIn A24E "X-Walk"
Manhole Lid	Asphalt R & R	Std PIn A20D Detail 38A
		Survey Monument

Sheet B-3

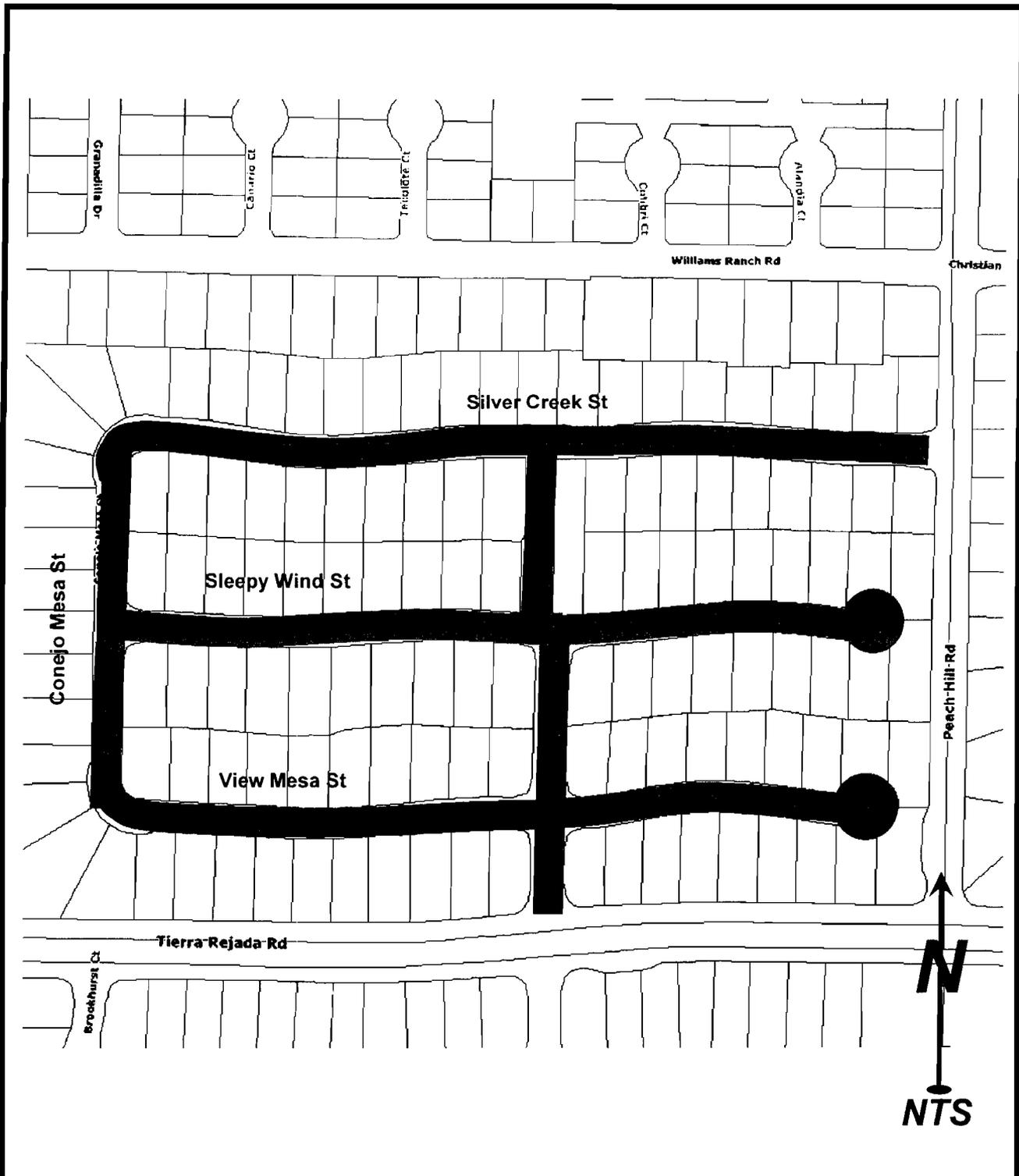
MPK 12-02 -- 2012 Pavement Rehabilitation Project



LEGEND					
 ARAM	 Slurry Seal Only	 4 Sewer Cleanout	 8 Std Pln A20A Detail 21		
 1 Stop Bar & Legend	 5 Valve Lid	 9 Std Pln A24E "X-Walk"	 10 Std Pln A20D Detail 38A		
 2 Blue RPM (Hydrant Marker)	 6 Curb & Gutter R & R	 11 Survey Monument			
 3 Manhole Lid	 7 Asphalt R & R				

Sheet C-1

MPK 12-02 -- 2012 Pavement Rehabilitation Project



LEGEND		
ARAM	Slurry Seal Only	Sewer Cleanout
Stop Bar & Legend	Valve Lid	Std Pln A20A Detail 21
Blue RPM (Hydrant Marker)	Curb & Gutter R & R	Std Pln A24E "X-Walk"
Manhole Lid	Asphalt R & R	Std Pln A20D Detail 38A
		Survey Monument

Sheet D-1

2012 ARAM and Slurry

List of Streets					Pavement Quantities							Striping, Manholes & Valves									
Street	From	To	Map Pg. No.	Trash Day	ARAM	SLURRY	Dimension (L)	Dimension (W)	Culdesac (Dia)	SF	ELT (Type 2 Slurry)	SY (ARAM)	Stop Bar & Legend	Center Line	Crosswalk	Arrows	Manholes	Valves	Blue RPM	Curb & Gutter R&R	AC R & R
Area 1																					
Chapman Pl	Reedley St	End (N)	A-1	Th	X		530	32	77	21,614		2,402	1	0	0	0	1	4	2	0	0
Marquette Cir	Marquette St	End (N)	A-1	Th	X		50	32	100	9,450		1,050	0	0	0	0	1	0	0	0	0
Marquette St	Loyola St	Marquette Cir	A-1	Th	X		645	40	0	25,800		2,867	0	0	0	0	4	1	1	0	0
Marquette St	Marquette Cir	Campus Park Dr	B-2	Th		X	2,540	40	0	101,600	78.2		1	0	0	0	16	19	7	0	0
Reedley St	Julliard Ave	Marquette St	A-1	Th	X		1,900	36	0	68,400		7,600	2	0	0	0	5	17	6	0	0
Sub-Total										226,864		13,918									
Area 2																					
Bambi Ct	Pecan Ave	end	B-3	M	X		800	32		25,600		2,844	1	0	1	0					
Benwood Dr	Bambi Ct	Collins Dr	B-3	M	X		850	32		27,200		3,022	2	0	0	0					
Alyssas Ct	Pecan Ave	end	B-2	M		X	300	32		9,600	7.4		1	0	0	0					
Monroe Ave	Pecan Ave	Collins Dr	B-1	M	X		630	32		20,160		2,240	2	0	2	0					
Pecan Ave	Campus Park	Monroe Ave	B-3	M	X		1,700	40		68,000		7,556	2	0	1	0					
Pecan Ave	Monroe Ave	end	B-1	M	X		1,600	32		51,200		5,689	0	0	1	0			1		
Collegiate Ct	Pecan Ave	end	B-1	M	X		200	32		6,400		711	1	0	0	0			0		
Sub-Total										208,160		22,062									
Area 3																					
Silver Creek St	Conejo Mesa St	Peach Hill Rd	D-1	M	X		1,320	32		42,240		4,693	1	0	0	0			1		
Conejo Mesa St	Siver Creek St	View Mesa St	D-1	M	X		600	32		19,200		2,133	0	0	0	0					
Sleepy Wind St	Conejo Mesa St	Pheasant Run St	D-1	M	X		700	32		22,400		2,489	1	0	0	0			1		
Sleepy Wind St	Pheasant Run St	end	D-1	M	X		600	32		19,200		2,133	0	0	0	0			1		
View Mesa St	Conejo Mesa St	Pheasant Run St	D-1	M	X		700	32		22,400		2,489	1	0	0	0					
View Mesa St	Pheasant Run St	end	D-1	M	X		600	32		19,200		2,133	1	0	0	0			1		
Pheasant Run St	Tierra Rejada Rd	Sleepy Wind St	D-1	M	X		450	32		14,400		1,600	2	0	0	0					
Sub-Total										159,040		17,671									
Area 4																					
Rivergrove St	Mt Meadow Dr	end	C-1	T	X		900	32		28,800		3,200	1	0	0	0	7	3	3	0	0
Honeybrook Ct	Cedar Spring	end	C-1	T	X		800	32		25,600		2,844	1	0	0	0	3	1	2	0	0
Bubbling Brook St	Alderbrook St	Alderbrook St	C-1	T	X		730	32		23,360		2,596	2	0	0	0	2	2	2	0	0
Berry Brook Ct	Alderbrook St	end	C-1	T	X		670	32		21,440		2,382	1	0	0	0	3	1	1	0	0
Sub-Total										99,200		11,022									
Total										693,264	86	64,674	24	0	5	0	42	48	29	0	0
										SF	ELT	SY	EA	LF	EA	EA	EA	EA	EA	LF	SF

2012 Pavement Rehabilitation							
Owner: City of Moorpark							
Bid Opening: 07/10/12				* marks an allowance		Engineer's Estimate	
Schedule of Work							
<i>Item #</i>	<i>Item Code</i>	<i>Item Description</i>	<i>Quantity</i>	<i>Unit of Measure</i>	<i>Unit Price</i>		<i>Item Total</i>
1	702-6	TRAFFIC CONTROL	1	LS	\$15,000.00		\$15,000.00
2	703-2	STORMWATER POLLUTION CONTROL PLAN	1	LS	\$6,000.00		\$6,000.00
3	704-4	PAVEMENT SURFACE PREP	1	LS	\$30,000.00		\$30,000.00
4	705-2	CAPE SEAL (ARAM)	71000	SY	\$6.00		\$426,000.00
5	707-5	SLURRY (TYPE II)	90	ELT	\$100.00		\$9,000.00
6	708-6	R&R 4" A/C	0	SF			\$0.00
7	709-4	R&R CONCRETE CURB/GUTTER	0	LF			\$0.00
8	710-7	STRIPING & PAVEMENT MARKERS	1	LS	\$20,000.00		\$20,000.00
9	711-3	ADJUST MANHOLE FRAME & COVER	84	EA	\$300.00		\$25,200.00
10	711-3	ADJUST VALVE COVER	113	EA	\$300.00		\$33,900.00
11	711-3	ADJUST SURVEY MONUMENT COVER	9	EA	\$300.00		\$2,700.00
12	711-3	ADJUST SEWER CLEAN-OUT	4	EA	\$300.00		\$1,200.00
13	712-2	RELEASE ON CONTRACT	1	LS	\$1.00		\$1.00
Bid List Total							\$569,001.00
Total Bid Amount							\$569,001.00
Listed Subs							

MANHOLE ADJUSTING INC		all american asphalt	
9500 Beverly Road Pico Rivera, CA 90660 US Bidder Status: Valid		400 e sixth street corona, CA 92879 Bidder Status: Valid	
<i>Unit Price</i>	<i>Item Total</i>	<i>Unit Price</i>	<i>Item Total</i>
\$30,000.00	\$30,000.00	\$80,599.00	\$80,599.00
\$7,000.00	\$7,000.00	\$20,000.00	\$20,000.00
\$39,500.00	\$39,500.00	\$40,000.00	\$40,000.00
\$9.44	\$670,240.00	\$10.00	\$710,000.00
\$360.00	\$32,400.00	\$320.00	\$28,800.00
	\$0.00		\$0.00
	\$0.00		\$0.00
\$20,960.00	\$20,960.00	\$35,000.00	\$35,000.00
\$320.00	\$26,880.00	\$450.00	\$37,800.00
\$345.00	\$38,985.00	\$250.00	\$28,250.00
\$310.00	\$2,790.00	\$350.00	\$3,150.00
\$360.00	\$1,440.00	\$350.00	\$1,400.00
\$1.00	\$1.00	\$1.00	\$1.00
	\$870,196.00		\$985,000.00
	\$870,196.00		\$985,000.00
BC Traffic 2990 E. La Jolla St. Anaheim, CA 92806 License No: 877686 C-31 Striping		BC Traffic 2990 E. La Jolla St. Anaheim, CA 92806 License No: 877686 Striping & Marking	
Pavement Coating 10240 San Sevaine Mira Loma, 91752 License No: 303609A Slurry Seal		MANHOLE ADJUSTING INC 9500 Beverly Road Pico Rivera, CA 90660 License No: 398443 ARAM	
Rubberized Crack Filler Sealant, Inc. 800 E Walnut Ave Fullerton, CA 92831 License No: 484758 C-32 Crack Seal			

RESOLUTION NO. 2012 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2012/13 BUDGET TO APPROPRIATE FUNDS FROM HUT 2103 FUND (2606) FOR ADDITIONAL CONSTRUCTION COSTS FOR THE 2012 PAVEMENT REHABILITATION (PROJECT 8002)

WHEREAS, on June 20, 2012, the City Council adopted the Operating and Capital Improvements Projects budget for Fiscal Year 2012/2013; and

WHEREAS, the adopted budget includes the 2012 Pavement Rehabilitation Capital Improvement Project 8002 with a total appropriation of \$825,000; and

WHEREAS, a staff report has been presented to the City Council requesting a budget adjustment increase of \$182,196.00 from HUT 2103 Fund (2606); and

WHEREAS, the same staff report recommended moving \$1,795.00 of Prop 1B-Local Streets & Roads Fund (2611) from the construction inspection expenditure account (9650) to the construction of streets expenditure account (9640); and

WHEREAS, Exhibit "A", attached hereto and made a part hereof, describes said budget amendment and its resultant impact to the budget line items.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That a budget amendment in the aggregate increase of \$182,196.00 as more particularly described in Exhibit "A", is hereby approved.

SECTION 2. That a budget transfer totaling \$1,795.00 as more particularly described in Exhibit "A", is hereby approved.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 18th day of July, 2012.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachment: Exhibit 'A': Appropriation and Budget Detail

EXHIBIT "A"

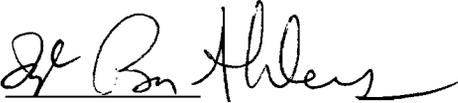
**BUDGET AMENDMENT FOR
HUT 2103 FUND (2606) AND PROP 1B-LOCAL STREETS AND ROADS FUND (2611)
TO INCREASE FUNDING FOR THE 2012 PAVEMENT
REHABILITATION (PROJECT 8002)
FY 2012-2013**

FUND ALLOCATION FROM:

Fund	Account Number	Amount
HUT 2103	2606-5500	\$ 182,196.00
Prop 1B-Local Streets and Roads	2611-5500	\$ -
Total		\$ 182,196.00

DISTRIBUTION OF APPROPRIATION TO EXPENSE ACCOUNTS:

Account Number	Current Budget	Revision	Amended Budget
2606.8310.8002.9640	\$ 313,770.00	\$ 182,196.00	\$ 495,966.00
2611.8310.8002.9640	\$ -	\$ 1,795.00	\$ 1,795.00
2611.8310.8002.9650	\$ 1,795.00	\$ (1,795.00)	\$ -
Total	\$ 315,565.00	\$ 182,196.00	\$ 497,761.00

Finance Approval: 

**AGREEMENT BETWEEN THE CITY OF MOORPARK AND
AGREEMENT BETWEEN THE CITY OF MOORPARK AND
MANHOLE ADJUSTING CONTRACTORS, INC., FOR
2012 PAVEMENT REHABILITATION
SPECIFICATION NO. MPK 12-03**

THIS AGREEMENT is made and effective as of the ____ day of _____, 2012, between the City of Moorpark, a municipal Corporation (“City”) and Manhole Adjusting Contractors, Inc., a corporation (“Contractor”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for construction services; and

WHEREAS, Contractor specializes in providing such services and has the proper work experience, certifications and background to carry out the duties involved; and

WHEREAS, Contractor has submitted to City a Proposal dated July 10, 2012, which is attached hereto as Exhibit B; and.

WHEREAS, the City Council of the City of Moorpark at a meeting held on the 18th day of July, 2012 authorized the City Manager to enter into this Agreement after public bidding in accordance with California Public Code Section 20160, et seq.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises herein stated, the parties hereto agree as follows:

1. TERM

The term of the Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with Exhibit B, unless this Agreement is terminated or suspended pursuant to Article 6 herein.

2. SCOPE OF SERVICES

City does hereby retain Contractor in a contractual capacity to provide construction services, as set forth in Exhibit B: Contractor’s Proposal, dated July 10, 2012, which exhibit is attached hereto and incorporated herein by this reference as though set forth in full and hereinafter referred to as the “Proposal.” Where said Scope of Services is modified by this Agreement, or in the event there is a conflict between the provisions of said Scope of Services and this Agreement, the language contained in this Agreement shall take precedence.

Contractor shall perform the tasks described and set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full.

Compensation for the services to be performed by Contractor shall be in accordance with Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full. Compensation shall not exceed the rates or total contract value (\$870,196.00) as stated in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, without the written authorization of the City Manager of the City of Moorpark. Payment by City to Contractor shall be in accordance with the provisions of Article 5, of this Agreement.

3. PERFORMANCE

Contractor shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

4. CITY MANAGEMENT

The individual directly responsible for Contractor's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Contractor shall be Manhole Adjusting Contractors, Inc., and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Contractor and City, shall be Dave Klotzle, City Engineer/Public Works Director or his designee.

5. PAYMENT

The City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed eight-hundred, seventy thousand, one-hundred, ninety-six dollars and zero cents (\$870,196.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

Contractor will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be

made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Contractor's fees it shall give written notice to Contractor within (30) days of receipt of any disputed fees set forth on the invoice.

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Contractor may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination. In the event of such termination or suspension, Contractor shall be compensated for such services up to the date of termination or suspension. Such compensation for work in progress shall be prorated as to the percentage of progress completed at the date of termination or suspension.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Article 5 herein.

7. DEFAULT OF CONTRACTOR

The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

If the City Manager or his/her delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have thirty (30) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. LIQUIDATED DAMAGES

If the Contractor fails to complete the work, or any portion thereof, within the time period required by Article 2 herein or as duly extended in writing by the City Manager, he/she shall forfeit and pay to the City of Moorpark, as liquidated damages, the sum of five hundred dollars (\$500.00) per day for each calendar day the work, or portion thereof, remains uncompleted after the above specified completion date. Liquidated damages shall be deducted from any payments due or to become due to the Contractor under the terms of this contract. [Govt C. Sec. 53069.85] Progress payments made by the City after the above specified completion date shall not constitute a waiver of liquidated damages by the City.

9. OWNERSHIP OF DOCUMENTS

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

10. INDEMNIFICATION AND HOLD HARMLESS

Contractor hereby assumes liability for and agrees to defend (at Indemnitees' option), indemnify, protect and hold harmless City and its Project Contractors, and Engineers, officers, agents, and employees ("Indemnitees") from and against any and all claims, charges, damages, demands, actions, proceedings, losses, stop notices, costs, expenses (including attorneys' fees), judgments, civil fines and penalties, liabilities of any kind or nature whatsoever, which may be sustained or suffered by or

secured against the Indemnitees arising out of or encountered in connection with this Agreement or the performance of the work including, but not limited to, death of or bodily injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused, in whole or in part, by any negligent or other act or omission of Contractor, its officers, agents, employees or Subcontractors including but not limited to, liability arising from:

- a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractor;
- b) Any operation conducted upon or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractors under or pursuant to the provisions of this Agreement or otherwise;
- c) Any act, omission or negligence of Contractor, its officers, agents, employees, or Subcontractors;
- d) Any failure of Contractor, its officers, agents, or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; and
- e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in Sub-sections a, b, c, and d, existing or conducted upon or arising from the use or occupation by Contractor on any other premises in the care, custody and control of City.

Contractor's obligations under this Section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity

obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section.

Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or section.

This Indemnity shall survive termination of the Agreement or Final Payment hereunder. This Indemnity is in addition to any other rights or remedies that the Indemnities may have under the law or under any other Contract Documents or Agreements. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, in its sole discretion, reserve, retain, or apply any monies to the Contractor under this Agreement for the purpose of resolving such claims; provided, however, City may release such funds if the Contractor provides City with reasonable assurance of protection of the Indemnitees' interests. City shall, in its sole discretion, determine whether such assurances are reasonable.

11. INSURANCE

Contractor shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full.

12. INDEPENDENT CONTRACTOR

Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

13. LEGAL RESPONSIBILITIES

The Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

14. ANTI DISCRIMINATION

Neither the Contractor, nor any subcontractor under the Contractor, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code. The Contractor shall have responsibility for compliance with this Section. [Labor Code Sec. 1735]

15. UNDUE INFLUENCE

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Contractor, or any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

17. CONFLICT OF INTEREST

Contractor covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Contractor further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or Sub-Contractor. Contractor further covenants that Contractor has not contracted with nor is performing

any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Contractor and/or its Sub-Contractors shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, while under contract with the City of Moorpark and for a one-year time period following termination of this Agreement.

18. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
(805) 517-6200

To: John Corcoran, President
Manhole Adjusting Contractors, Inc.
9500 Beverly Road
Pico Rivera, CA 90660
(323) 558-8000

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

19. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City of Moorpark in order that proper steps may be taken to have the change reflected in the Contract Documents.

20. ASSIGNMENT

Contractor shall not assign this Agreement or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that Contractor is uniquely qualified to perform the services provided for in this Agreement.

21. LICENSES

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

22. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

23. COST RECOVERY

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

24. ARBITRATION

Cases involving a dispute between City and Contractor may be decided by an arbitrator if both sides agree in writing, with costs proportional to the judgment of the arbitrator.

25. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

26. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, and Exhibits hereof.

27. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Manager.

28. TIME OF COMPLETION

City and Contractor agree that time is of the essence in this Agreement. City and Contractor further agree that Contractor's failure to perform on or at the times set forth in this Agreement will damage and injure City, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, City and Contractor agree that any failure to perform by Contractor at or within the times set forth herein shall result in liquidated damages of five hundred dollars (\$500.00) per day for each and every day such performance is late. City and Contractor agree that such sum is reasonable and fair. Furthermore, City and Contractor agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

29. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

30. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

31. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of obligations hereunder.

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

CITY OF MOORPARK

CONTRACTOR NAME

By: _____
Steven Kueny, City Manager

By: _____
John Corcoran, President

Date: _____

Date: _____

Attest:

Maureen Benson, City Clerk

Date: _____