

SOUTH PLACER MUNICIPAL UTILITY DISTRICT

STAFF REPORT

To: Board of Directors

From: Eric Nielsen, District Engineer

Cc: Herb Niederberger, General Manager

Subject: Resolution 19-17, Approve Deferred Remedial Action Agreement with Newcastle Fire District for Newcastle Fire Station Project

Meeting Date: September 5, 2019

The Newcastle Fire District (Fire District), a California Fire Protection District, is in the process of constructing a new fire station. Phase I of the fire station project consisted of substantial grading and preparation of the site. Phase I also included construction of new sewer in preparation of Phase II improvements. The Phase I sewer improvements were accepted by the District on September 6, 2018. During warranty CCTV inspection on July 16, 2019, a SPMUD crew observed a section of pipe that was damaged (i.e., deformed) as a result of the substantial grading activities performed during Phase I of the project. SPMUD informed the Fire District of the need to repair the damaged pipe on July 17, 2019. The Fire District requested a deferment of the remedial action to repair the damaged pipe since Phase II of their project will allow for the damaged pipe to be abandoned. Phase II of the project is scheduled to begin in the spring of 2020.

Recommendation

Staff requests the Board adopt Resolution 19-17 authorizing the General Manager to execute the deferred remedial action agreement with Newcastle Fire District.

Strategic Plan Goal

This action is consistent with SPMUD Strategic Plan Goals:

Goal 1.1: Engage customers and stakeholders and promote public participation to determine expectations and deliver excellent customer service.

Related District Ordinances and Policies

This action relates to the following SPMUD Ordinances and Policies:

Ordinance 18-01: SPMUD Sewer Code

Fiscal Impact

This agreement has no fiscal impact on the District.

Attachments:

- Resolution 19-17 – Deferred Remedial Action Agreement between the South Placer Municipal Utility District and the Newcastle Fire District
- Deferred Remedial Action Agreement between South Placer Municipal Utility District and Newcastle Fire District

CONSENT AND DEFERRED REMEDIAL ACTION AGREEMENT

This Consent and Deferred Remedial Action Agreement (“Agreement”) is made and entered into to be effective as of the _____ day of _____, 2019 (the “Effective Date”) by and between the South Placer Municipal Utility District (“SPMUD”), a California Municipal Utility District, and the Newcastle Fire Protection District, a California Fire Protection District (“Fire District”). SPMUD and Fire District may sometimes be referred to individually as “Party” or collectively as “Parties” throughout this Agreement.

RECITALS

WHEREAS, Fire District owns the real property upon which a new fire station is being constructed, located in Newcastle, California and identified in the Official Records of the County of Placer at APN _____ (hereinafter the “Property”), as shown in Exhibit “A” attached hereto, which Property is located within the exterior boundaries of the South Placer Municipal Utility District (“SPMUD”); and

WHEREAS, Fire District engaged a contractor to construct a fire station on the Property. Upon the completion of the grading of the Property in the first phase of the construction of the fire station, it was discovered that the grading by the Fire District contractor caused a deformation in an existing SPMUD main line (the “Sewer Main”) adjacent to and underlying the Property. A map depicting the portion of the damaged segment is attached hereto as Exhibit “B”; and

WHEREAS, the Fire District acknowledges the deformation in the Sewer Main was caused by grading of the Property, and accepts responsibility for the correction and repair of the deformation in the SPMUD main line at no cost to SPMUD and to be liable for the repair and/or replacement of the damaged SPMUD main line and all attendant costs associated therewith; and

WHEREAS, Fire District accepts full responsibility for the deformation in the SPMUD Sewer Main, and agrees to repair and/or replace said line where damaged in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, it is hereby agreed by and between SPMUD and the Fire District as follows:

1. Recitals

The Recitals herein are expressly made part of this Agreement.

2. Agreement to Repair and/or Replace Damaged SPMUD Sewer Main

Fire District agrees to repair and/or replace the damaged segment of the SPMUD Sewer Main to SPMUD’s satisfaction, in accordance with SPMUD specifications then in effect, by no later than July 31, 2021, concurrently with Fire District’s completion of the Phase II sewer portion of the project. The construction of Phase II and requirements therefore are described in Exhibit “C” hereto. Said repair and/or replacement of the Sewer Main shall be at no charge to SPMUD. Whether the

Sewer Main may be repaired, or shall require replacement, is within the sole and exclusive discretion of SPMUD, and Fire District agrees to be bound by SPMUD's determination in that regard.

3. SPMUD Repair and/or Replacement of the Sewer Main

If the Fire District fails to repair and/or replace the Sewer Main as provided herein, SPMUD may undertake to perform such work on its own, and shall charge Fire District for all costs associated with said repair and/or replacement. Fire District agrees to be responsible for the payment to SPMUD of any and all costs so incurred and to make payment to SPMUD within 30 days' of receipt of SPMUD's demand for payment.

4. SPMUD May Collect Sewer Fees and Charges

SPMUD shall be entitled to charge fees and other charges to the extent permitted by law to provide sewer services to the Property consistent with fees and other charges to provide services to the overall service area of the SPMUD. These fees, rates and charges, including regional and local connection fees and participation fees, are established pursuant to SPMUD ordinances and resolutions, adopted by SPMUD pursuant to the authority vested in it by the Municipal Utility SPMUD Act, California Public Utilities Code section 11501 *et seq.* The Property and Fire District shall be bound by all such SPMUD ordinances, resolutions and regulations, including, but not limited to, the imposition of penalties, interest and liens on the Property in the event of non-payment or late payment.

5. Recording; Binding on Successors and Assigns

A copy of this Agreement shall be recorded in the Official Records of the County of Placer within ten (days) after the Parties execute the Agreement, and thereafter SPMUD shall provide Fire District with a copy of the recorded Agreement. The provisions of this Agreement shall constitute covenants which shall run with the Property and shall be binding upon and benefit the Parties and their successors and assigns.

6. Miscellaneous

6.1 Entire Agreement

This Agreement (including the Exhibits hereto) constitutes the entire understanding and agreement of the Parties relating to the SPMUD's agreement regarding the subject matter hereof.

6.2 Waiver

No waiver of any right or remedy by a Party with respect to any occurrence or event under this Agreement shall constitute a continuing waiver or be deemed a waiver of any right or remedy in respect to any other or subsequent occurrence or event.

6.3 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

6.4 Severability

If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished.

6.5 Amendments

All amendments to this Agreement shall be in writing and, if approved, must be signed by all Parties.

6.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.7. Authority to Execute Agreement

The person or persons executing this Agreement on behalf of Fire District warrants and represents that they have the authority to execute this Agreement and the authority to bind Fire District to the performance of its obligations hereunder.

6.8. Consent

Where consent or approval of a Party hereto is required or necessary under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

6.9. Interpretation of Agreement

The Parties hereto have been represented by legal counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against the drafting party shall apply to interpretation or enforcement hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend, or affect the meaning of the provision to which they pertain.

6.10. No Joint Venture or Partnership

SPMUD and Fire District hereby renounce the existence of any form of joint venture, partnership or other association between SPMUD and Fire District, and agree that nothing in this Agreement or in any document executed in conjunction with this Agreement shall be construed as creating any such relationship between SPMUD and Fire District.

6.11. Indemnity.

Fire District shall indemnify, defend and hold SPMUD and SPMUD's managers, officers, directors, agents and employees and their respective successors and assigns, free and harmless of and from any and all losses, costs, liabilities, claims, judgments, liens, damages and expenses, including, without limitation, reasonable attorneys', experts' and investigation fees and costs, arising out of or in any way related to injury to or death of persons or damage to any of SPMUD's sewer lines, infrastructure or equipment arising out of or in any way related to the repair or replacement of the Sewer Main or any other activity which causes damage to any SPMUD facility.

6.12. Attorney s' Fees.

Should any legal action be brought by any party for breach of this Agreement or to enforce any provisions herein, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, and other costs as may be fixed by the Court. Attorneys' fees shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary costs incurred in the litigation.

6.13. Covenant of Good Faith and Fair Dealing

No Party shall do anything which shall have the effect of injuring the right of another Party to receive the benefits of this Agreement or to do anything which would render its performance under this Agreement impossible. Each Party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

6.14. Partial Invalidity Due to Governmental Action

In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement, or formal action of any governmental jurisdiction other than SPMUD, prevent compliance with one or more provisions of this Agreement, the Parties agree that the provisions of this Agreement shall be modified or suspended only to the minimum extent necessary to comply with such laws or regulations.

6.15. Further Actions and Instruments

The Parties agree to provide reasonable assistance to each other and cooperate to carry out the intent and fulfill the provisions of this Agreement. Each of the Parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

6.16. No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right or action based upon any provision of this Agreement.

6.17. Venue

Any action arising out of this Agreement shall be brought in the Superior Court of Placer County, California, regardless of where else venue may lie.

6.18. Time is of the Essence

Time is of the essence of each and every provision of this Agreement.

6.19. Notices

All notices required or provided under this Agreement shall be in writing and shall be sent by (i) U.S. mail first class postage prepaid with return receipt requested, (ii) by overnight courier or hand delivery, or (iii) by facsimile with original forwarded by U.S. mail, addressed as follows, with any email copies provided to the email addresses below:

Notice to the SPMUD: South Placer Municipal Utility District
 Attention: General Manager
 5807 Springview Drive
 Rocklin, CA 95677
 Telephone: (916) 786-8555
 Facsimile: (916) 786-8553

Notice to Fire District: Newcastle Fire District
 Attention: Fire Chief
 P.O. Box 262
 Newcastle, CA 95658
 Telephone: (530) 878-0405
 Facsimile: (530) 878-0959

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first set forth above.

“SPMUD”

SOUTH PLACER MUNICIPAL UTILITY DISTRICT

ATTEST:

By: _____
SPMUD Secretary

By: _____
General Manager

APPROVED AS TO FORM:

By: _____
SPMUD General Counsel

“FIRE DISTRICT”

NEWCASTLE FIRE DISTRICT, a
California Fire Protection District

By: _____

Name: _____

Its: _____

Exhibits:

- A.
- B.
- C.

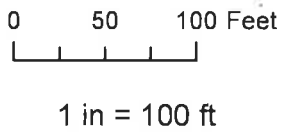
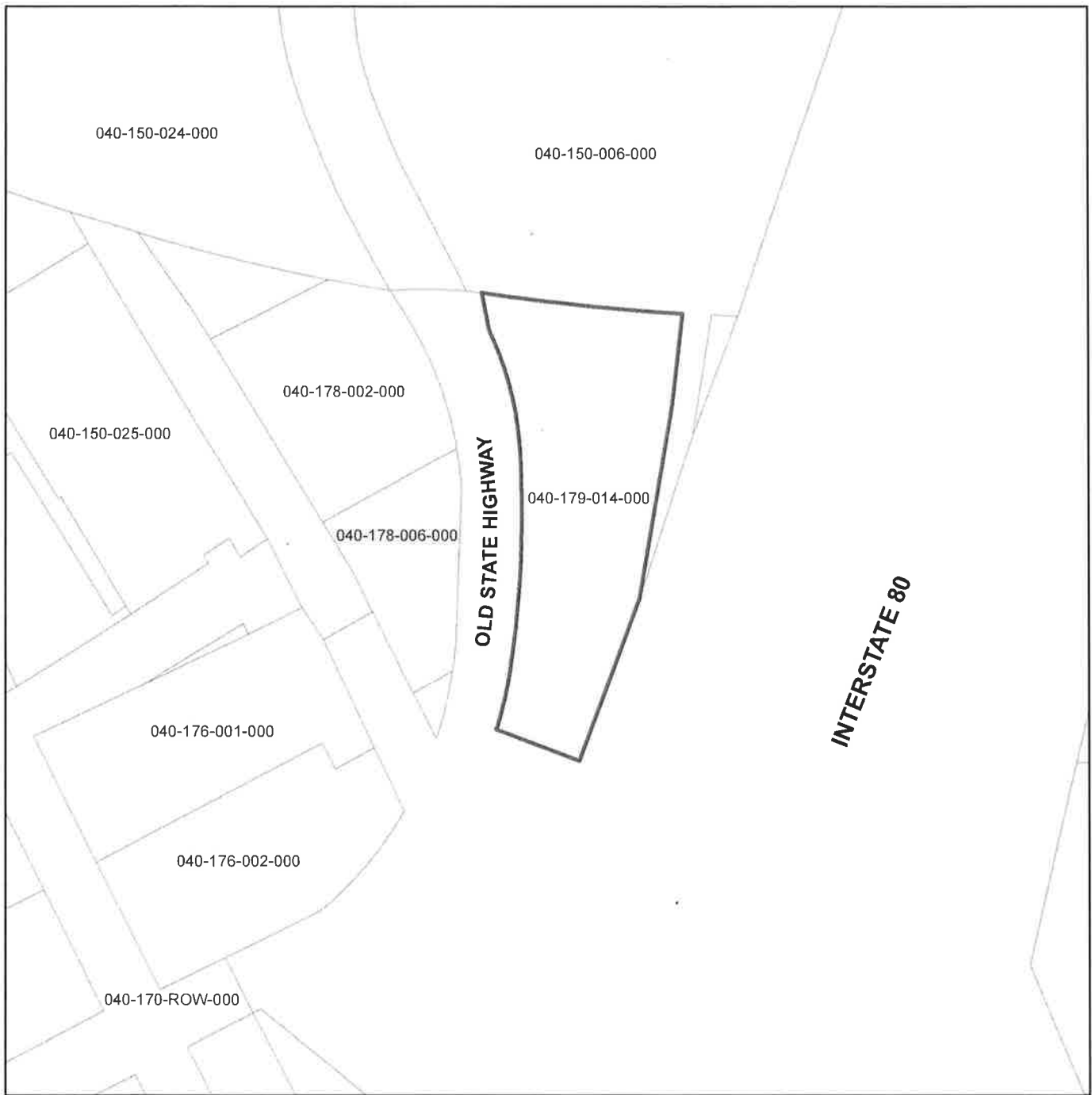


Exhibit A
Newcastle Fire Station
461 Main St
APN: 040-179-014-000



Date: 8/23/2019
 Author: Curtis Little



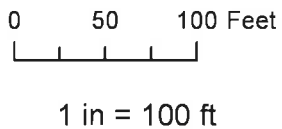
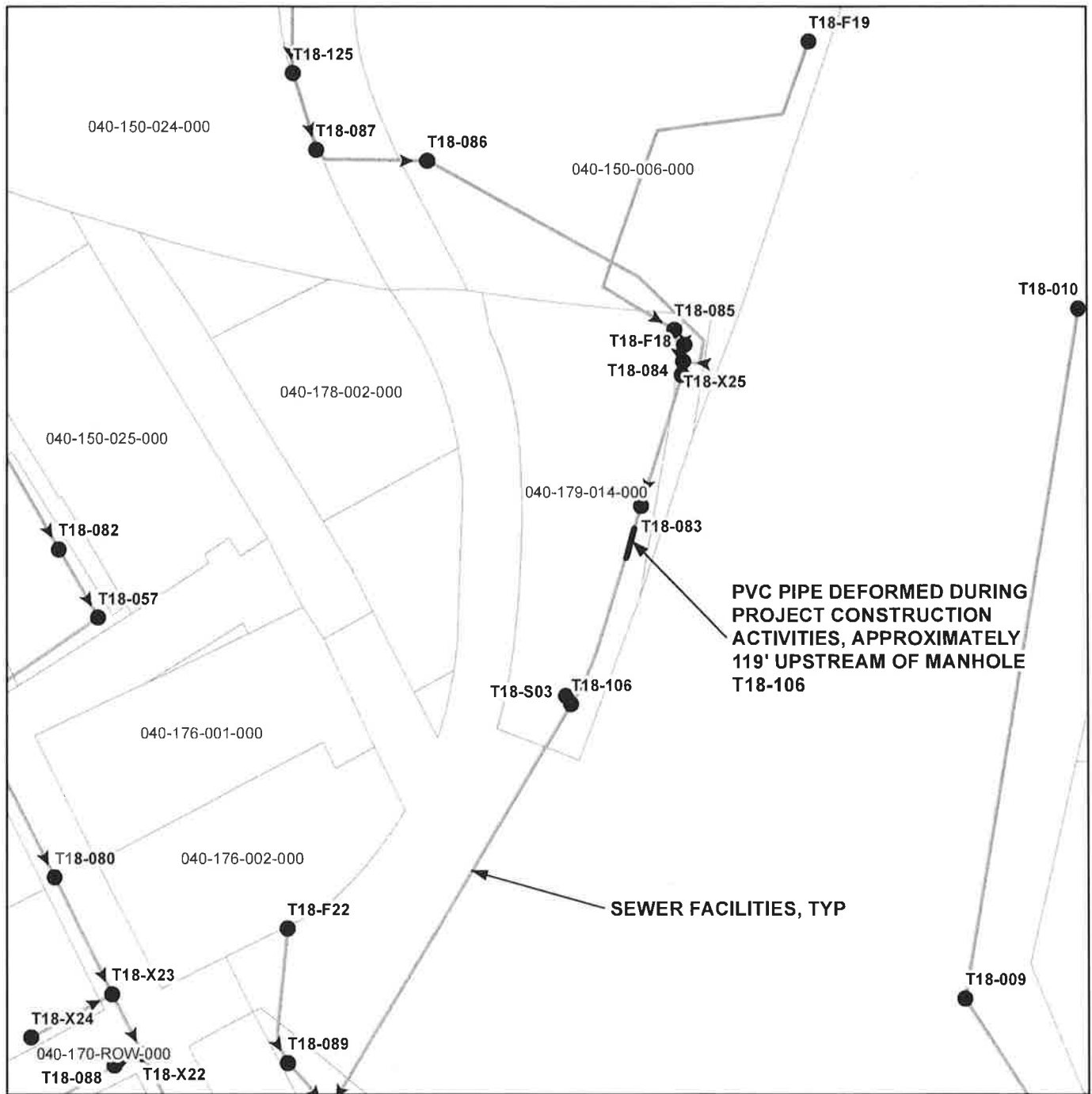


Exhibit B
Newcastle Fire Station
461 Main St
APN: 040-179-014-000



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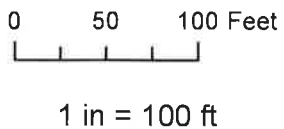
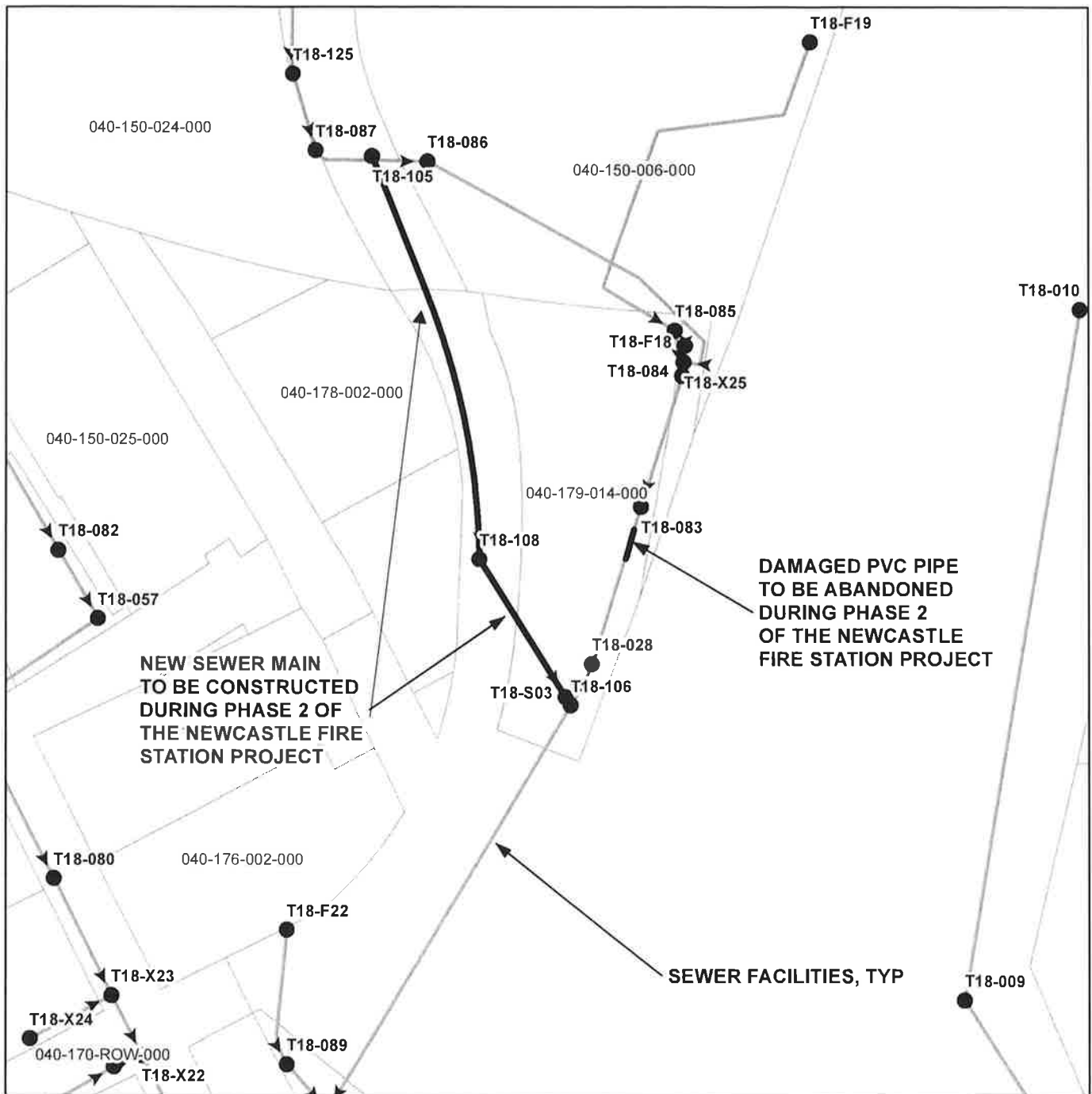


Exhibit C
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