AGREEMENT FOR USE OF RECYCLED WATER BETWEEN MONTE VISTA WATER DISTRICT AND CITY OF MONTCLAIR

This Agreement for Use of Recycled Water ("<u>Agreement</u>") is entered into this _____ day of _____, 20__ ("Agreement Date") between the Monte Vista Water District ("<u>District</u>") and the City of Montclair ("<u>City</u>"). For purposes of this Agreement, District and City may be referred to herein individually as a "<u>Party</u>" and collectively as the "<u>Parties</u>."

RECITALS

- A. District provides retail municipal water service to land within its boundaries and owns and operates infrastructure to effectuate service of said water. On August 8, 2007, District adopted Ordinance No. 31 ("District Ordinance"), which establishes procedures, specifications, and limitations for the safe and orderly development and operation of recycled water facilities and systems within the District's service area, and to adopt rules and regulations controlling such use. This Agreement is intended to comply with the District Ordinance.
- B. The City is constructing recycled water pipeline and appurtenances within the District's service area to serve City-owned properties and rights-of-way. The pipeline and appurtenances are "Onsite Facilities" as defined in the District Ordinance and are shown on the City's as-built drawings or facility plans attached as **Exhibit "1"**. Both the On-site Facilities and the City's construction of the Onsite Facilities are governed by the District Ordinance and applicable local, State, and Federal laws.
- C. Prior to the Agreement Date, City completed and submitted a Recycled Water Service Application ("<u>Application</u>") to District, which is attached as **Exhibit "2"** and incorporated as part of this Agreement.
- D. City intends to obtain recycled water from the Inland Empire Utilities Agency and to distribute said water through the On-site Facilities.
- E. A copy of the Title 22 Engineering Report ("<u>Engineering Report</u>"), approved by the State Water Resources Control Board ("<u>SWRCB</u>"), is attached as **Exhibit "3"** and incorporated as part of this Agreement.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted, the Parties agree as follows:

1. <u>On-Site Facilities</u>. The City shall construct all On-site Facilities necessary for the use of recycled water in compliance with the Engineering Report, District Ordinance, and all other applicable laws, rules, and regulations. No changes in the proposed On-site Facilities shall be undertaken without the prior amendment of this Agreement and written consent of the District and SWRCB.

- 2. <u>Rules and Regulations</u>. The City shall utilize recycled water in compliance with the District Ordinance, such rules and regulations as may be established and amended by the District from time to time, and all applicable local, State, and Federal laws, rules, and regulations controlling the use of recycled water.
- 3. <u>On-Site Supervisor</u>. The On-Site Recycled Water Supervisor ("<u>Supervisor</u>") shall be designated by the City as the person responsible for the proper use of recycled water and the operation and maintenance of the On-site Facilities. The Supervisor shall receive a minimum of four (4) hours of approved training. The City shall notify the District immediately when there is a change of Supervisor.
- 4. <u>Cross-Connections</u>. The City's On-site Facilities shall be inspected for Cross-Connections, as defined in the District Ordinance, and approved by the District prior to activation of the recycled water service.
- 5. <u>Signs and Identifiers</u>. The City shall be responsible for providing and maintaining approved recycled water use signage and other recycled water system identification as provided in the Engineering Report and the District Ordinance. The City shall promptly replace or repair, at its sole cost and expense, any damaged or missing recycled water signs or recycled water system identifiers.
- 6. <u>Right to Inspect</u>. The City hereby grants to the District the right to enter upon City's property at reasonable times and intervals for the purpose of inspecting the On-site Facilities.
- 7. <u>Penalties</u>. The City hereby understands and acknowledges the penalties for violation of any term of this Agreement and/or provision in the District Ordinance and/or any applicable laws and regulatory agency's requirements.
- 8. <u>Damage to District Facilities</u>. City hereby agrees that it will assume all responsibility for damages and charges to District facilities within and adjacent to the On-site Facilities caused by City, and any person, firm, or corporation working for, on behalf of, or by direction of City in the construction of the On-site Facilities.

GENERAL PROVISIONS

- 9. <u>Incorporation of Recitals</u>. The Recitals set forth above are true and correct and incorporated into this Agreement.
- 10. <u>Defense and Indemnification</u>. City shall indemnify, hold harmless, and defend District and its respective elected officials, officers, volunteers, agents, attorneys, and employees from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from City's construction of the On-Site Facilities or performance or non-performance (actual or alleged) of this Agreement (with the exception of the sole negligence or willful misconduct by the District, or its elected officials, officers, volunteers, agents and employees).
- 11. <u>Resolution of Disputes</u>. If any dispute shall arise with respect to this Agreement and is not otherwise resolved by the parties hereto, then such dispute shall be determined by a general judicial reference pursuant to California Code of Civil Procedure Sections 638 et seq. in the County of San Bernardino, before one general referee. This is a waiver of any right that may exist to a jury trial.

The Parties shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. The referee shall be a retired judge who has served in either the California Superior Court or Federal Court in Orange County, California with substantial experience in the type of matter in dispute and without any relationship to either Party, unless the Parties agree otherwise.

All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by the Parties. However, the referee shall have the power to reallocate such fees and costs among the Parties in the referee's final ruling.

- 12. <u>Attorneys' Fees and Costs</u>. In the event that a Party brings an action relating to or arising from this Agreement, the prevailing Party in such action shall be entitled to recover from the other Party its reasonable attorneys' fees and costs.
- 13. <u>Governing Law</u>. The Parties hereby agree that this Agreement is to be governed under the laws of the State of California and construed according to its plain meaning as if drafted by both City and District. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Bernardino.
- 14. <u>Cancellation or Amendment</u>. This Agreement may be unilaterally cancelled or amended by the District if one or more of the following conditions occur:
 - a. A significant change of either volume or use of recycled water by the City which results in damage to the operation of the District's Recycled Water Distribution Program;
 - b. A change in the City's On-site Facilities without prior District and SWRCB approval; or
 - c. A material violation by the City of the District Ordinance.

This Agreement may be bilaterally modified or amended only if the amendment is made in writing and signed by both Parties.

- 15. <u>Term.</u> This Agreement shall be operable for ten (10) years from the Agreement Date. District and City will negotiate in good faith thereafter to make necessary changes to conform this Agreement to then existing District standards, practices, and policies.
- 16. <u>Waiver</u>. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with other terms and provisions contained in this Agreement.
- 17. <u>Severability</u>. Should any provision of this Agreement be determined to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.
- 18. <u>No Third-Party Beneficiaries</u>. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party hereto, and the Parties hereto expressly disclaim any such third-party benefit.

- 19. <u>Successors and Assigns</u>. The terms, conditions, and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.
- 20. <u>Further Cooperation</u>. The Parties agree to execute, acknowledge if appropriate, and deliver any and all documents and cooperate in performing any and all acts in any commercially reasonable manner as may be necessary to carry out the intent of this Agreement as set forth in the Recitals and implement the terms and conditions of this Agreement.
- 21. <u>Complete Agreement</u>. This Agreement contains the entire agreement between the Parties and supersedes and replaces any and all prior negotiations and agreements between the Parties, whether written or oral.
- 22. <u>Counterparts</u>. This Agreement may be executed in counterparts (signatures may be by facsimile or electronic mail), each of which is hereby declared to be an original. All, however, shall constitute but one and the same Agreement.

By signing this Agreement both Parties agree they will comply with the terms and conditions of the Agreement.

Monte Vista Water District		City of Montclair	
Ву:			
	Justin M. Scott-Coe, General Manager	Javier "John" Dutrey, Mayor City Council	
		ATTEST:	
Ву:		By:	
	Sandra S. Rose, President Board of Directors	Andrea M. Phillips, City Clerk	
APPROVED AS TO FORM:		APPROVED AS TO FORM	
Ву:		By:	
	Andrew B. Gagen, Legal Counsel Kidman Gagen Law LLP	Diane Evans Robbins, City Attorney Robbins & Holdaway	

Exhibit 1

Facility Plans

See Exhibit 3 Page 7

Exhibit 2



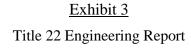
RECYCLED WATER SERVICE APPLICATION

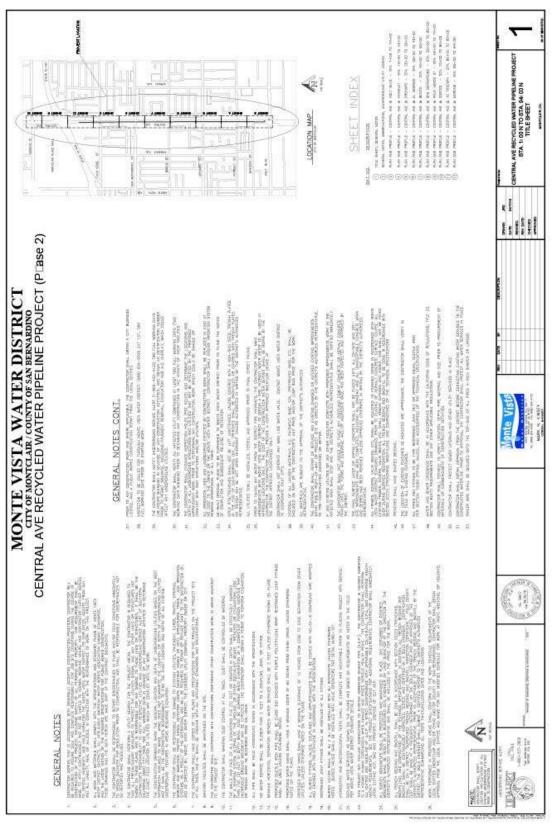
(To be completed by Owner or Recycled Water User)

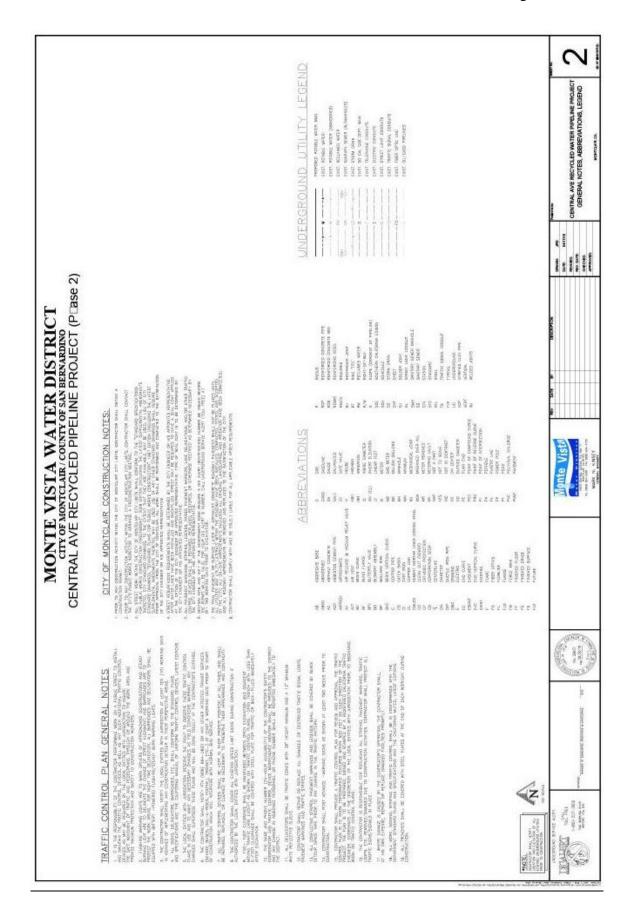
Applicant hereby requests the use of recycled water, as delivered to and distributed by Monte Vista Water District. The applicant hereby agrees to design and operate their recycled water facilities in accordance with the Ordinances, Resolutions, Rules and Regulations of Monte Vista Water District, and in accordance with applicable Federal, State and local ordinances, regulations, and other requirements. The Recycled Water User agrees to prepare and submit a Title 22 Engineering Report to the California Department of Public Health as a condition of being granted service. Final Engineering Report approval is required to enter into a Recycled Water Use Agreement with the District.

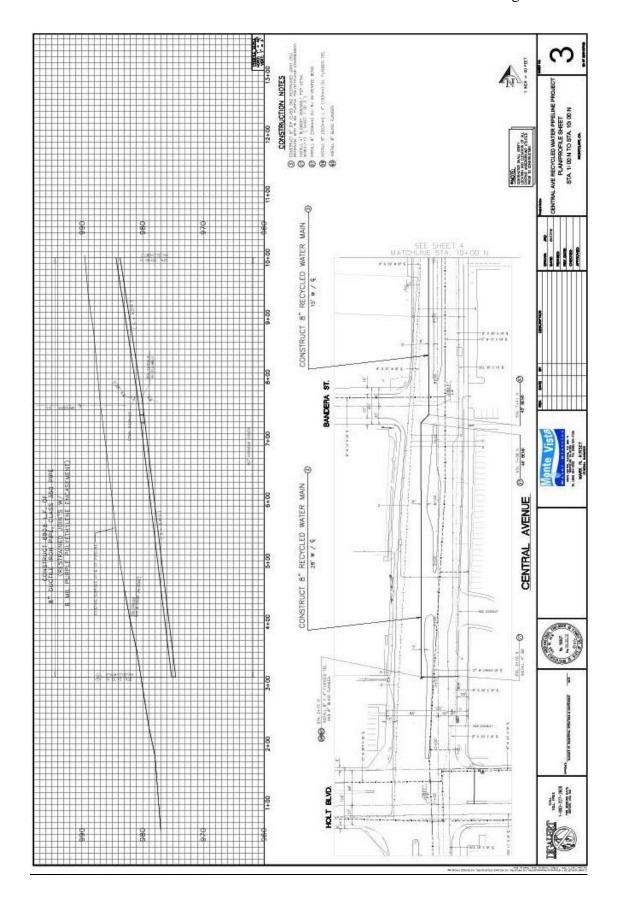
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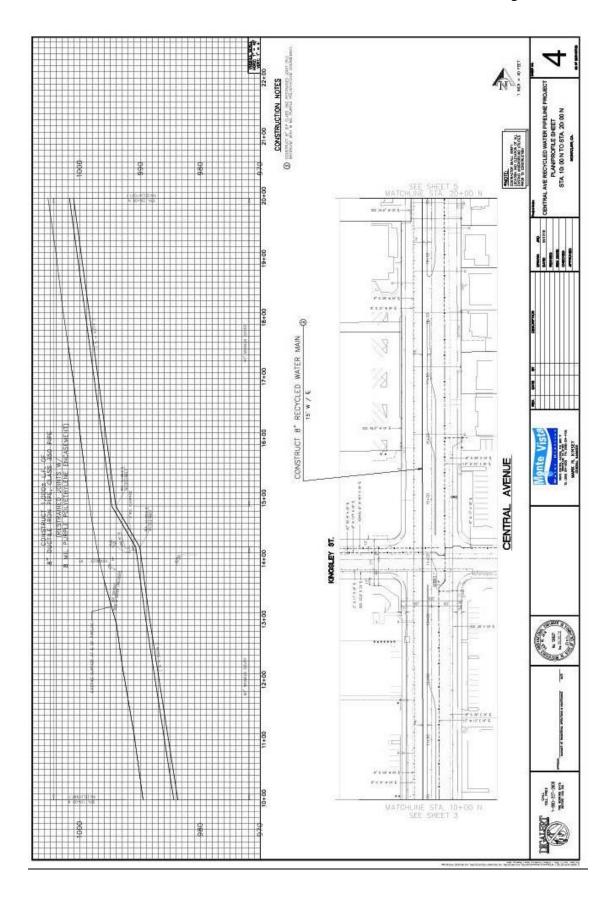
General Information
User Name
User Address
User Telephone/Fax
Owner of Property (if different)
Owner's Address
Owner's Telephone/Fax
Onsite Supervisor Title
Supervisor Work Phone After-Hours Phone
Property Location (Street Address)
Property Use
Property Description (Describe Facilities)
Intended Use for Recycled Water
Proposed Number of Service Connections inch
Estimated Average Annual Use gallons ÷ 325,851 = acre-feet per ye
Time of use for recycled water will be from to daily.
For Irrigation Use
Total Irrigated Area (per this Application) acres Projected Monthly Usage gallo
Proposed Average Application Rategpm Duration hours
Maximum Flow Rategpm Durationhours
For Process Use
Average Demandgpm Peak Demandgpm
Daily Shift gallons Projected Monthly Usage gallo
Required Documents (attached or prior submittals)
□ "As-Built" Drawings or Proposed Facility Plans □ Map or Description of Proposed Meter Location
Authorized Signatu

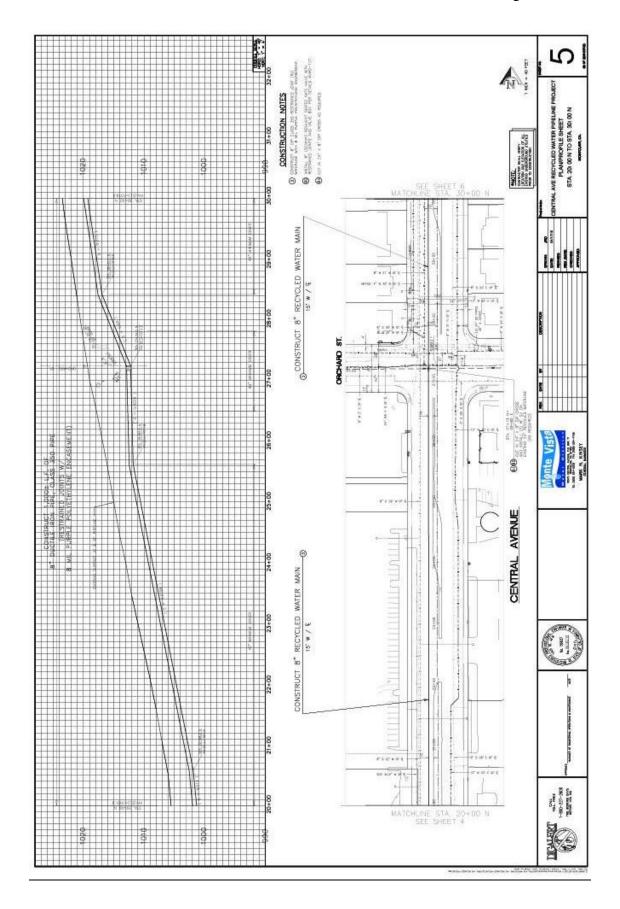


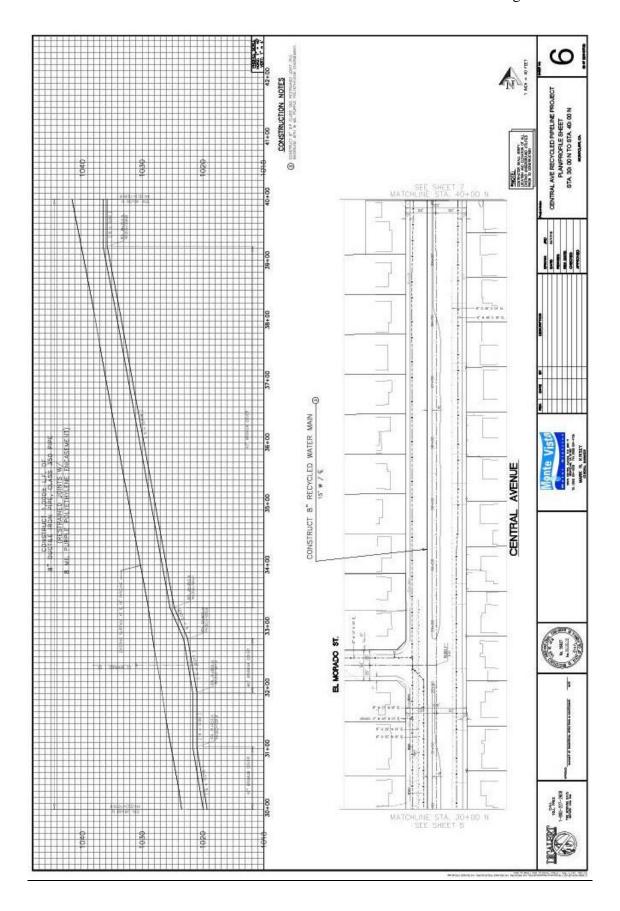


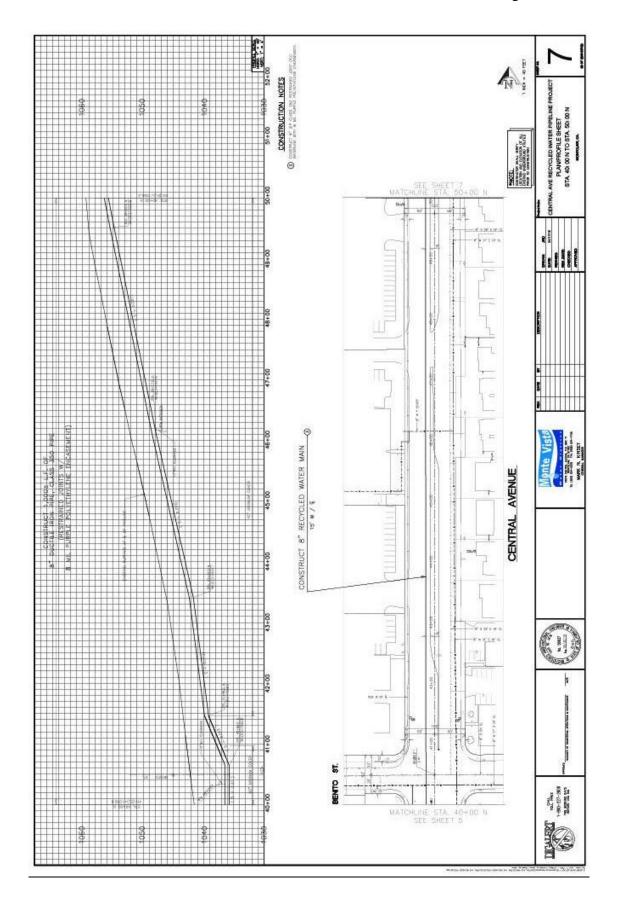


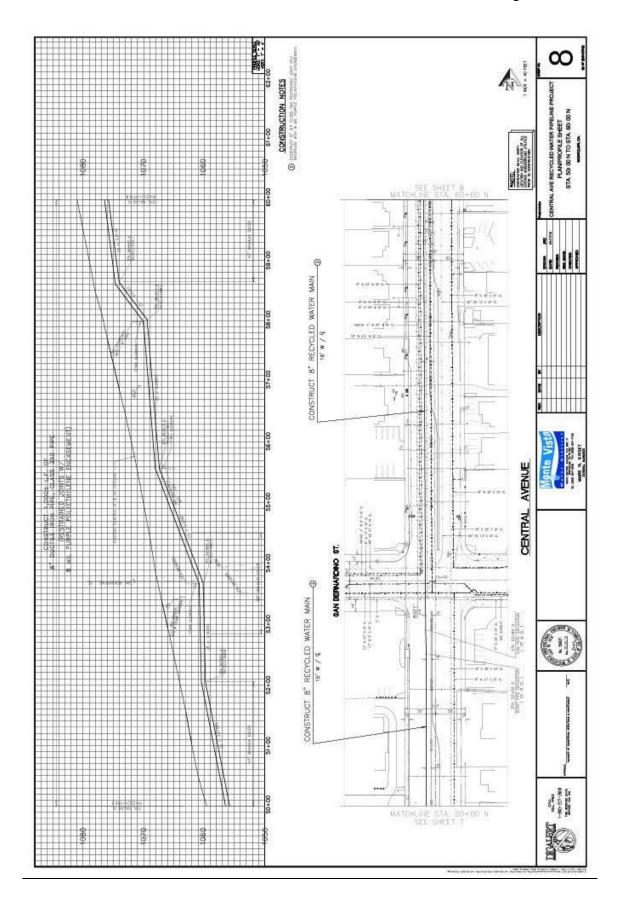


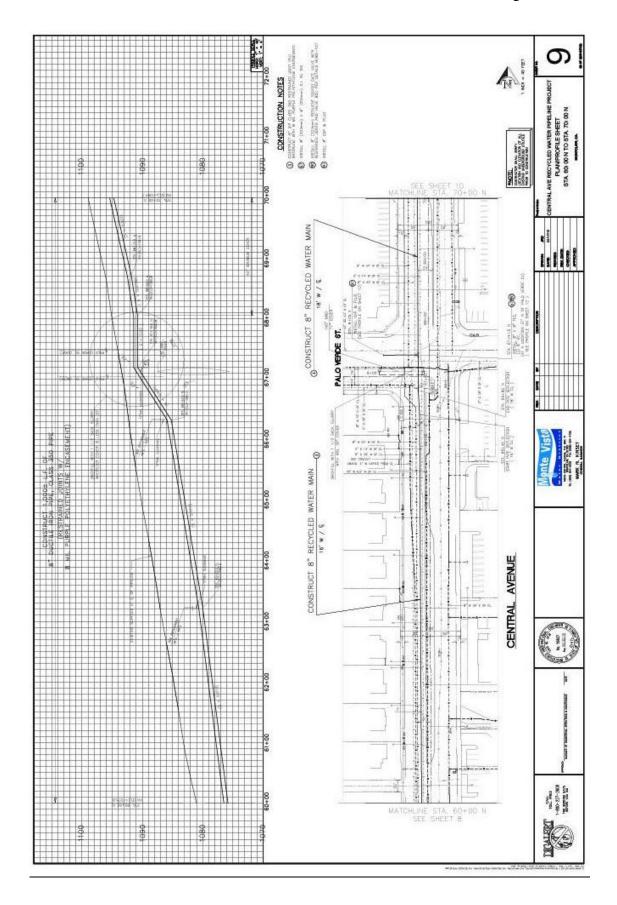


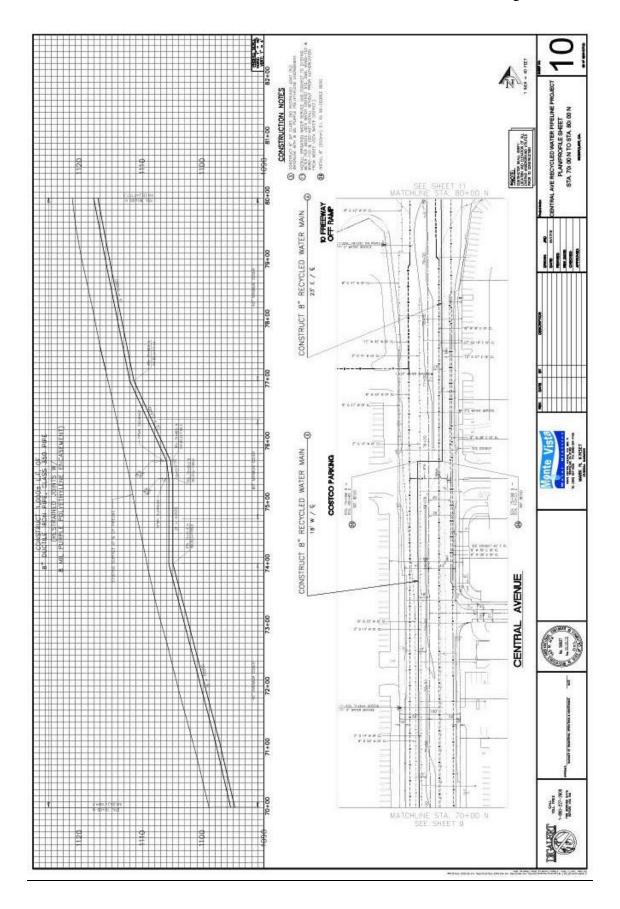


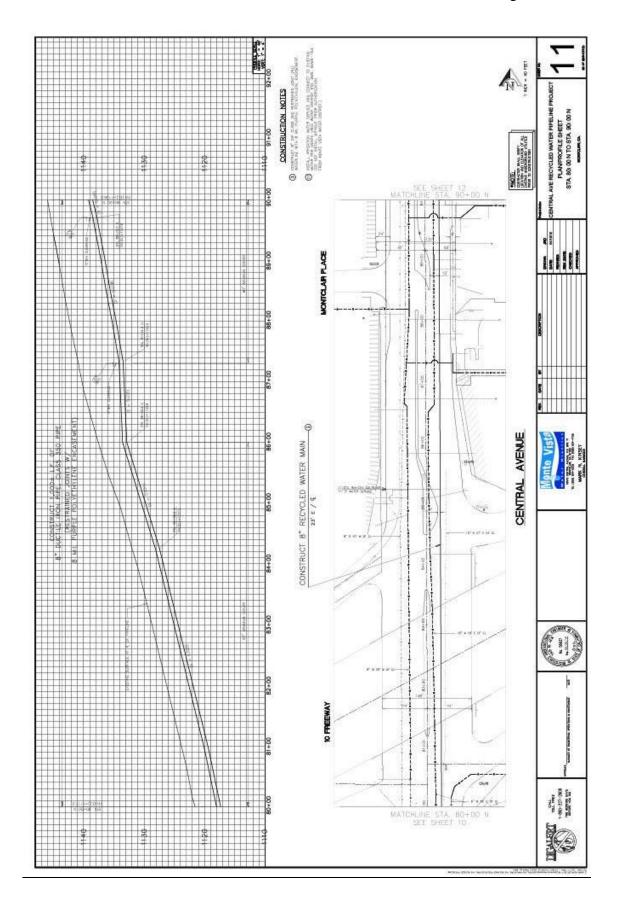


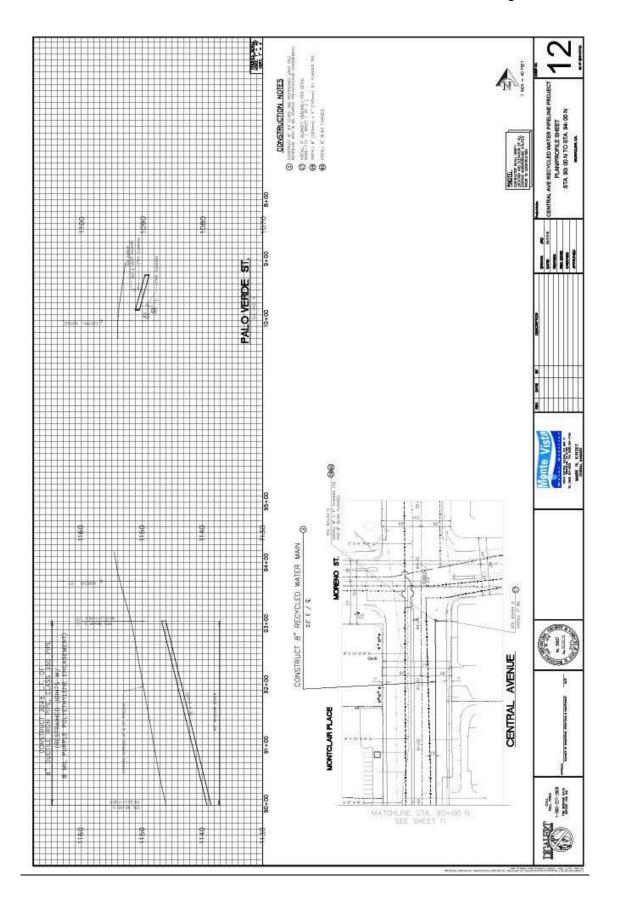








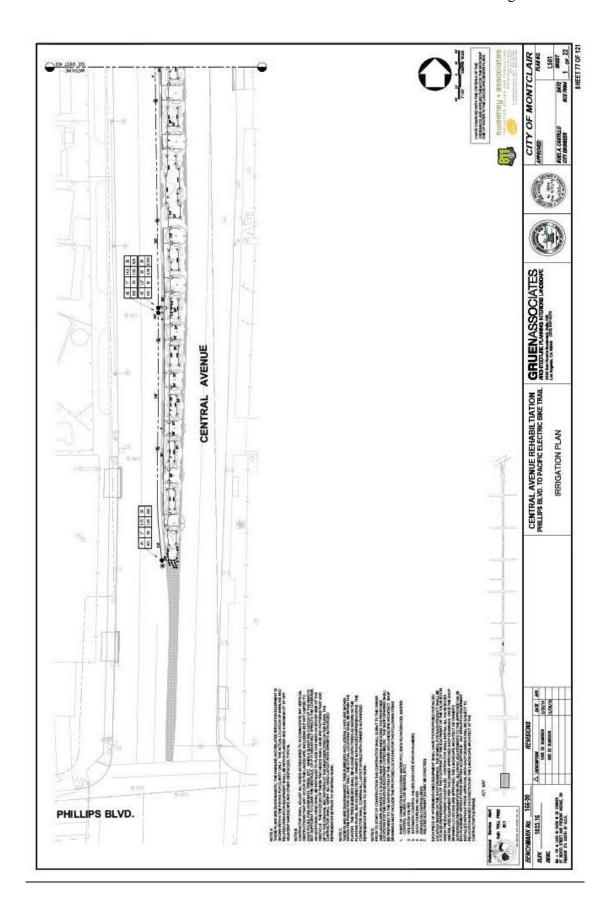


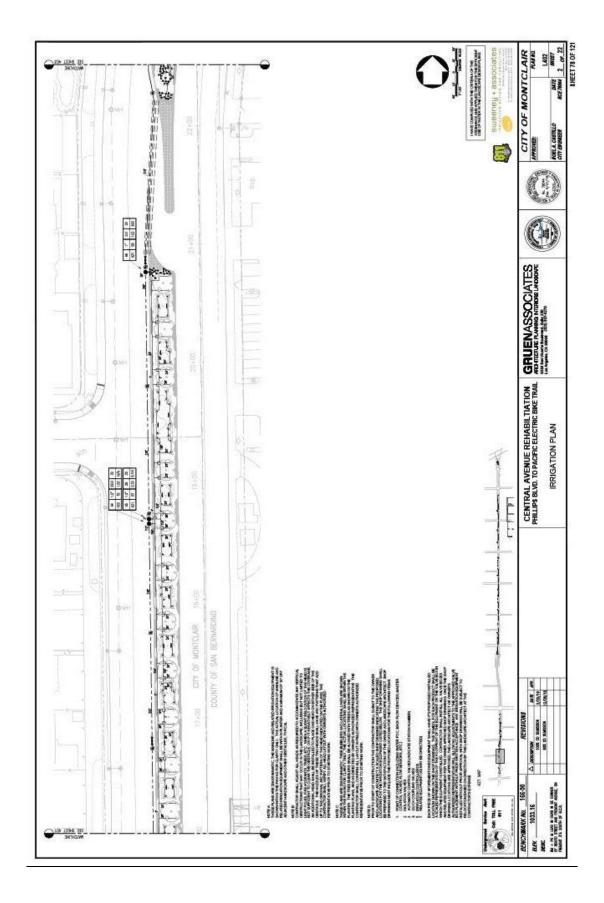


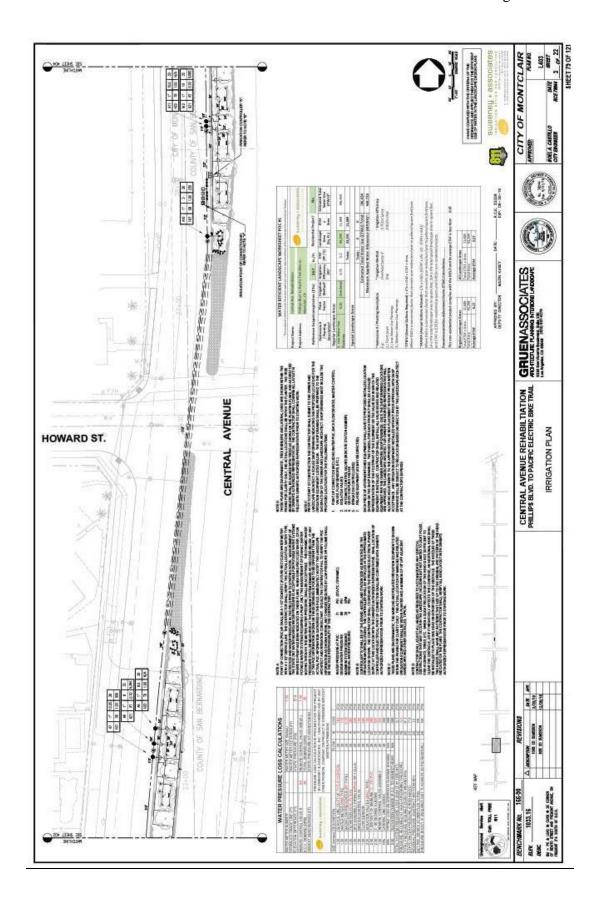
Appendix B

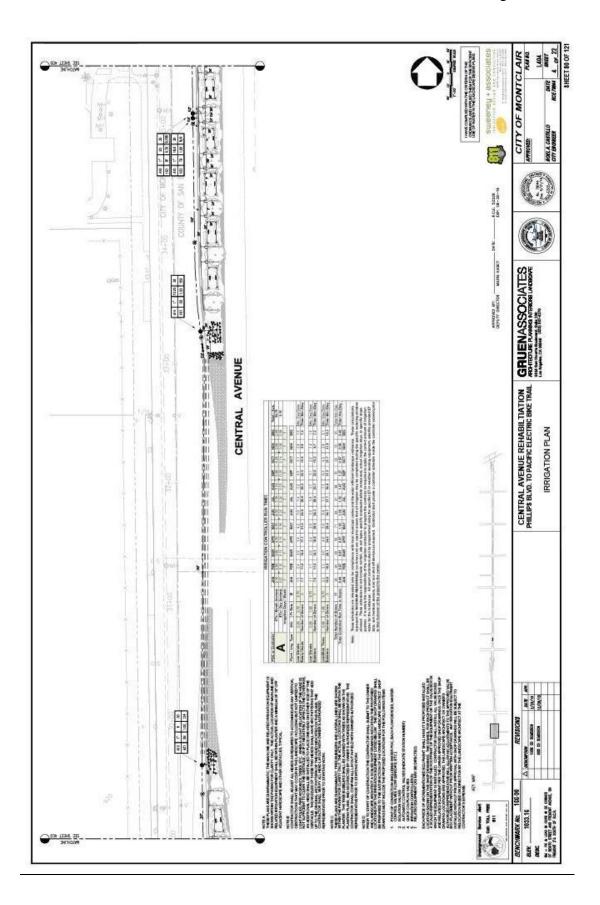
Central Avenue Rehabilitation Irrigation Plans

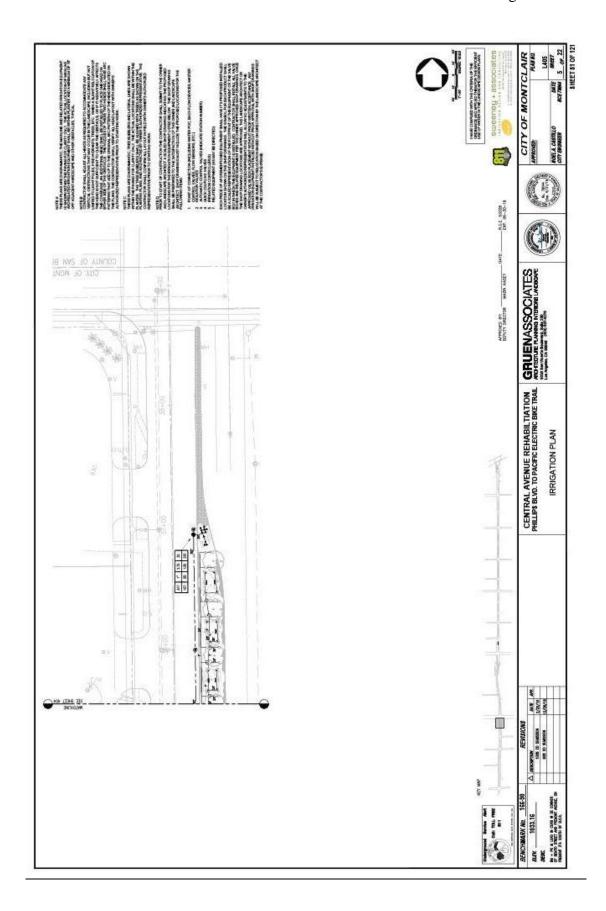


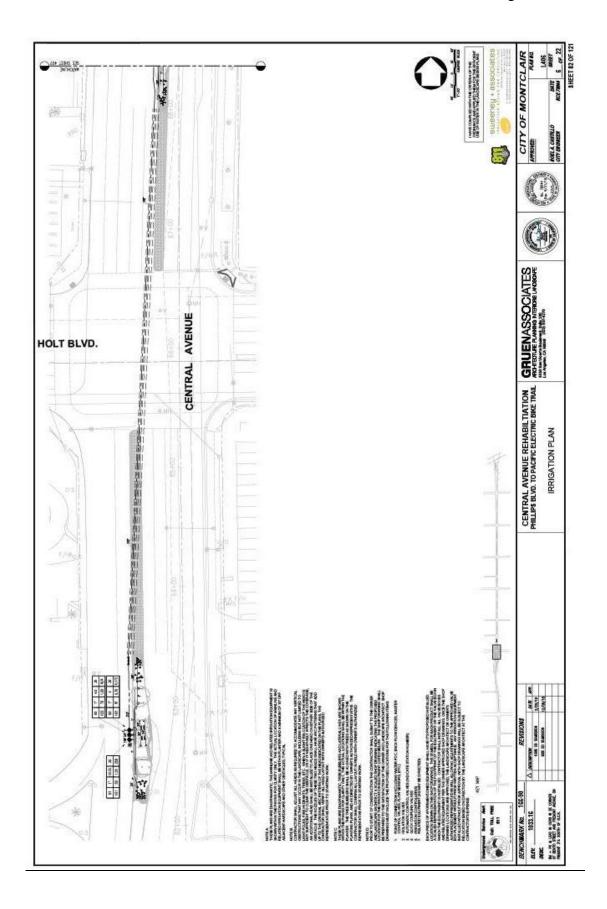


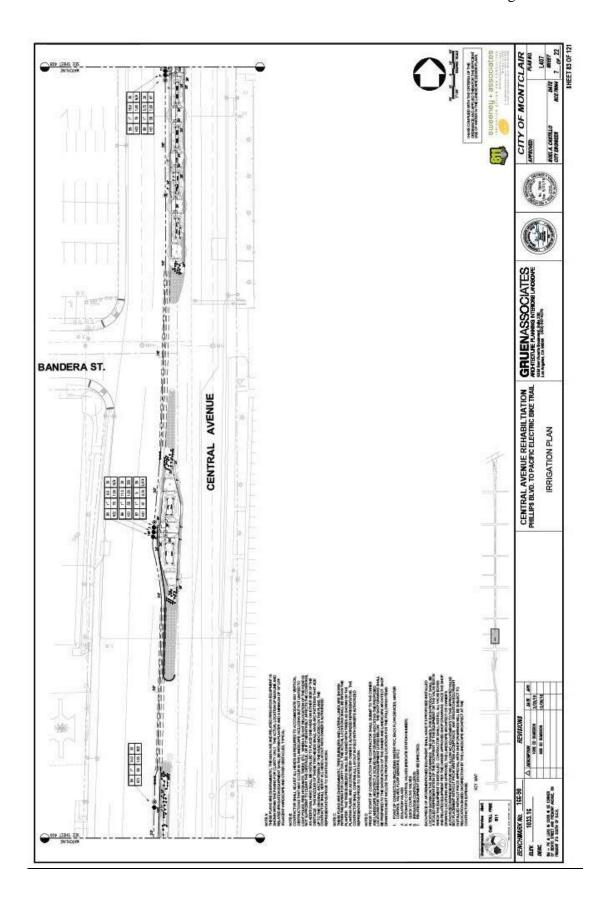


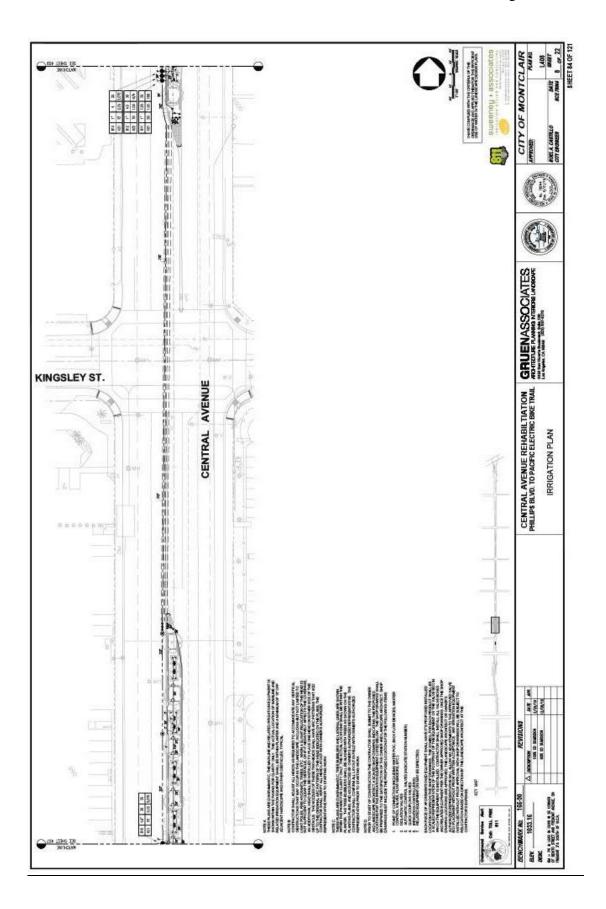


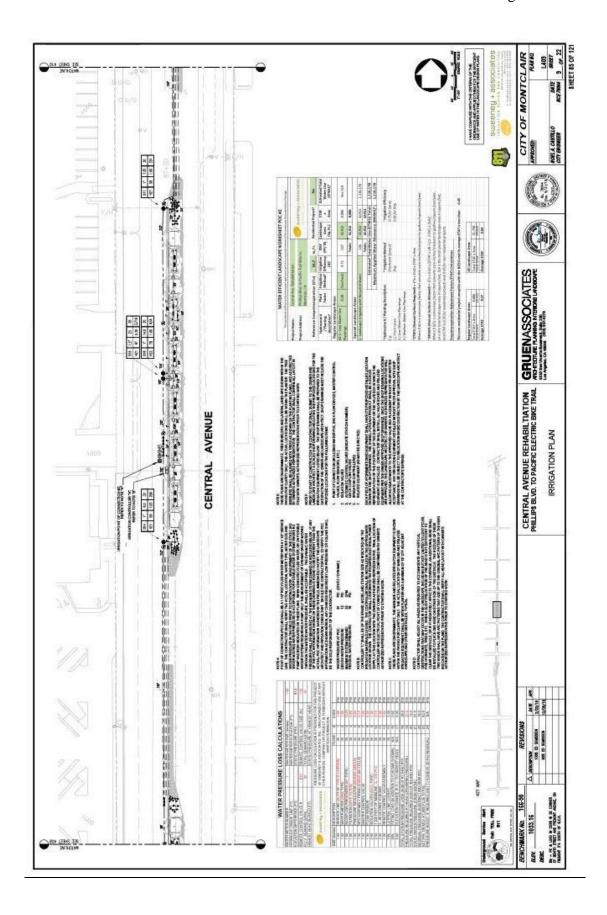


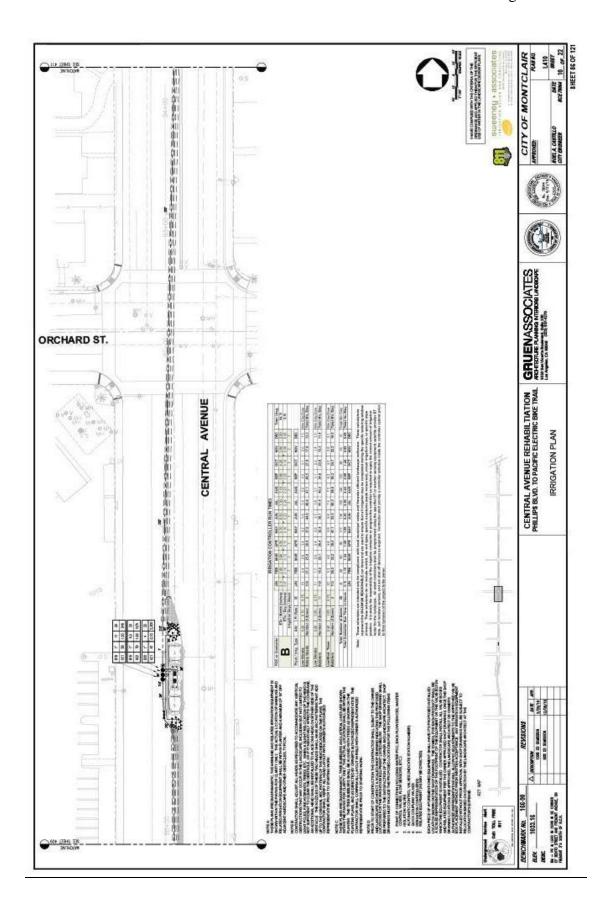


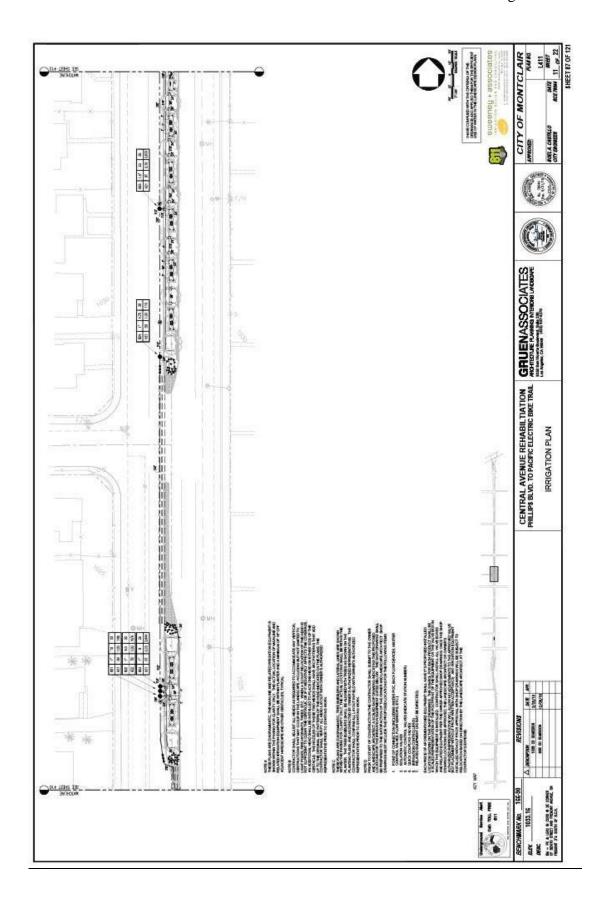


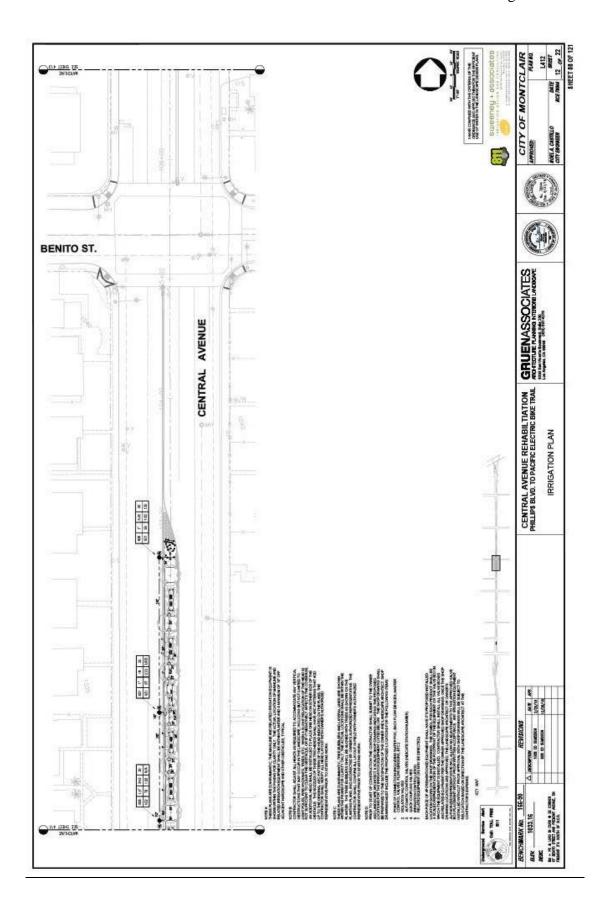


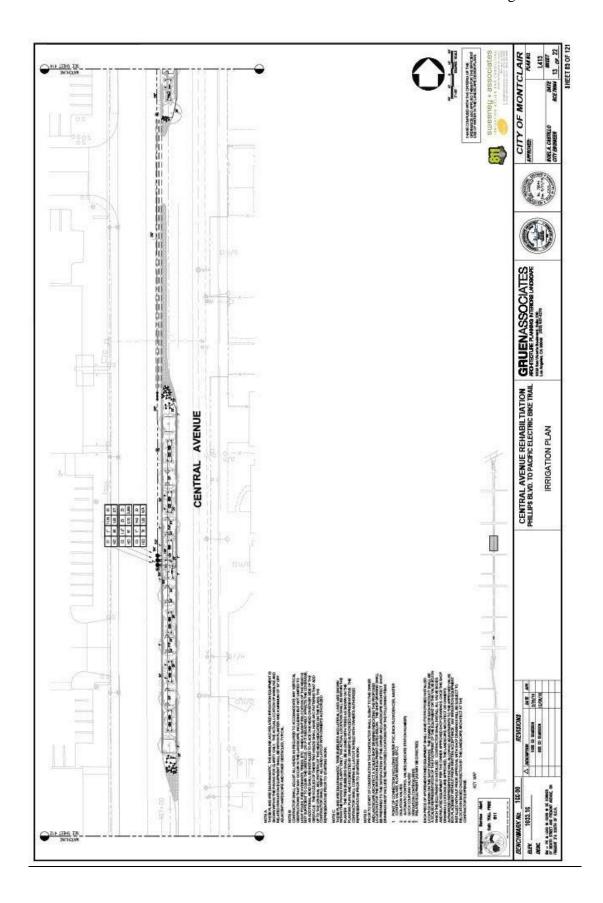


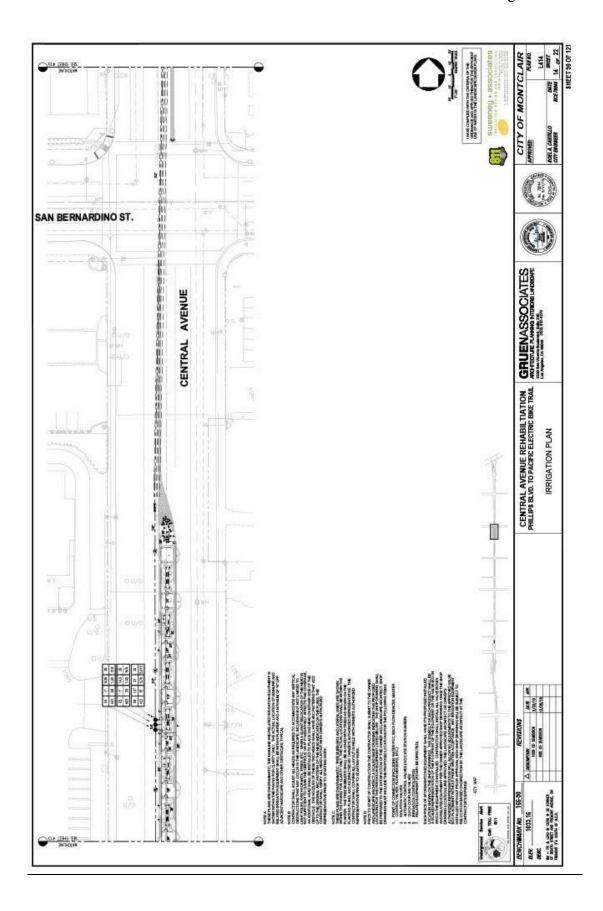


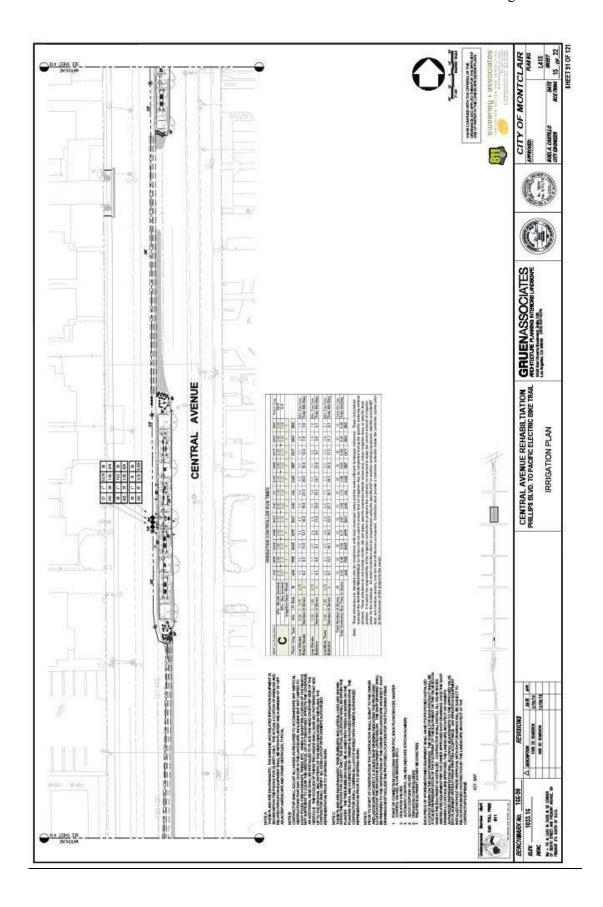


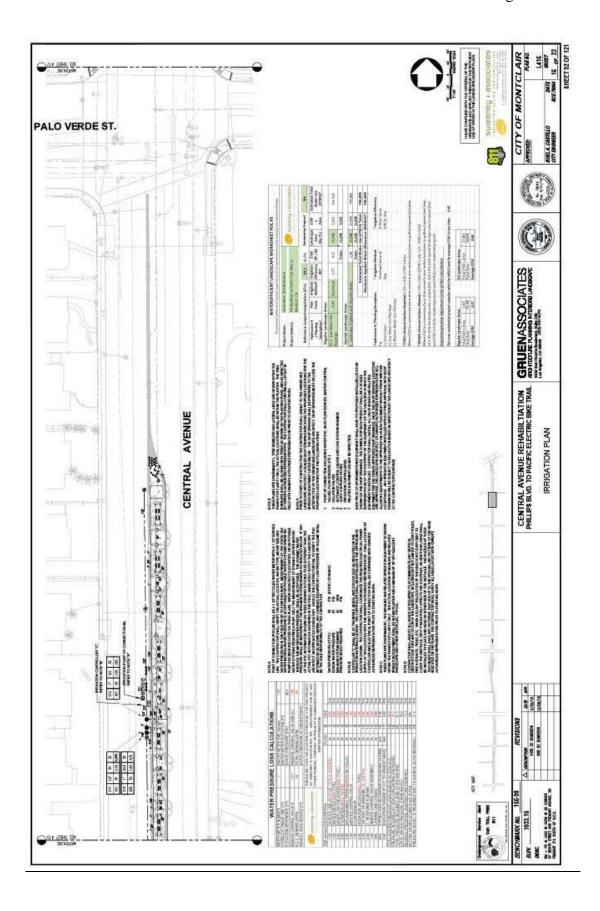


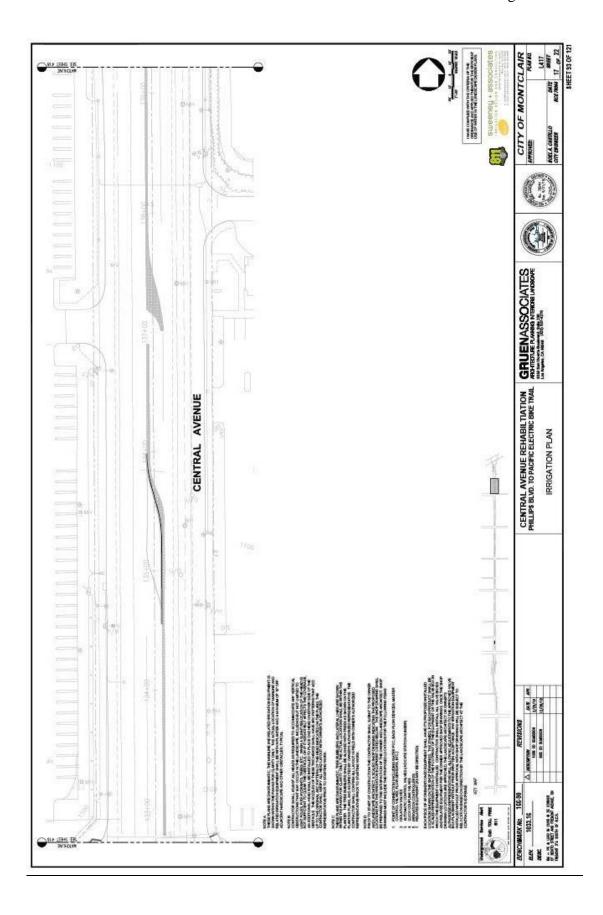


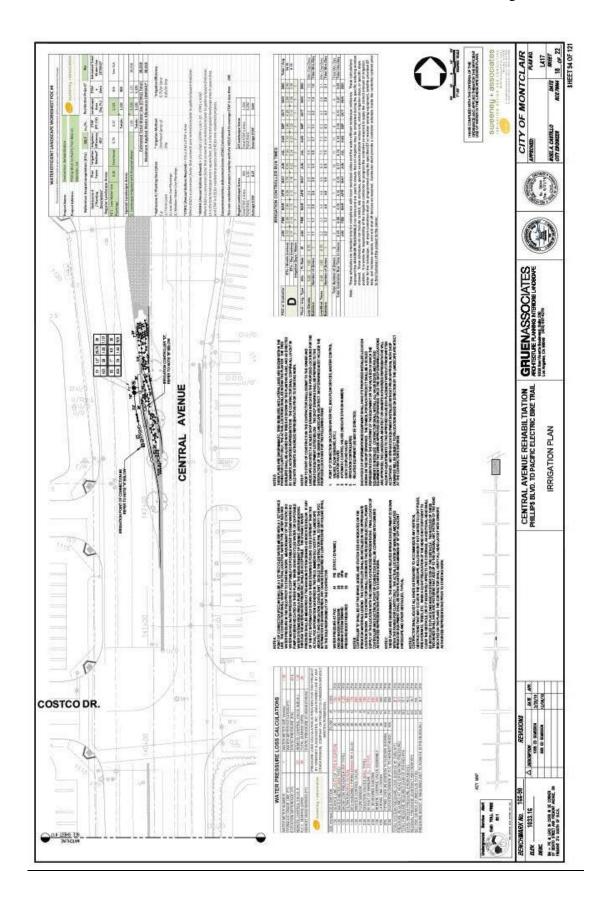


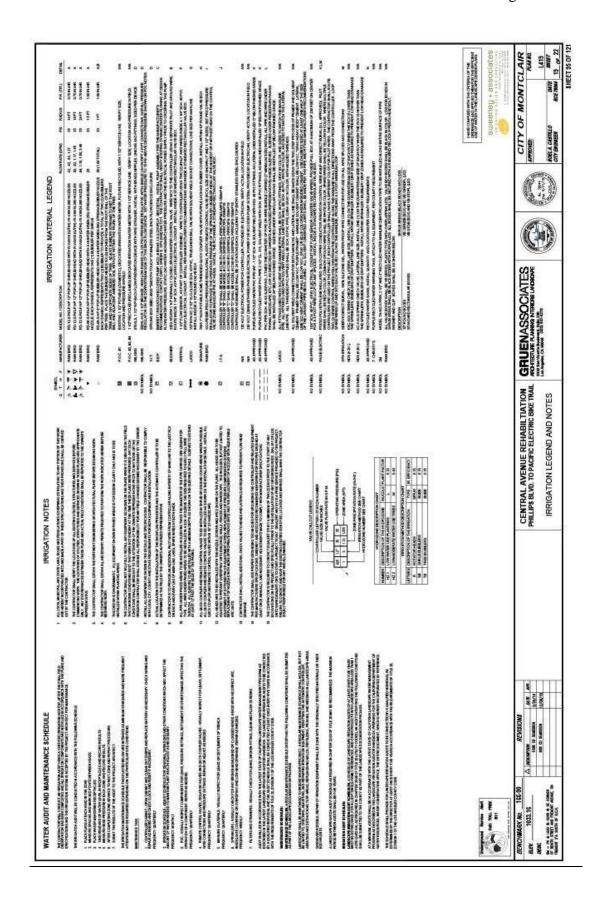


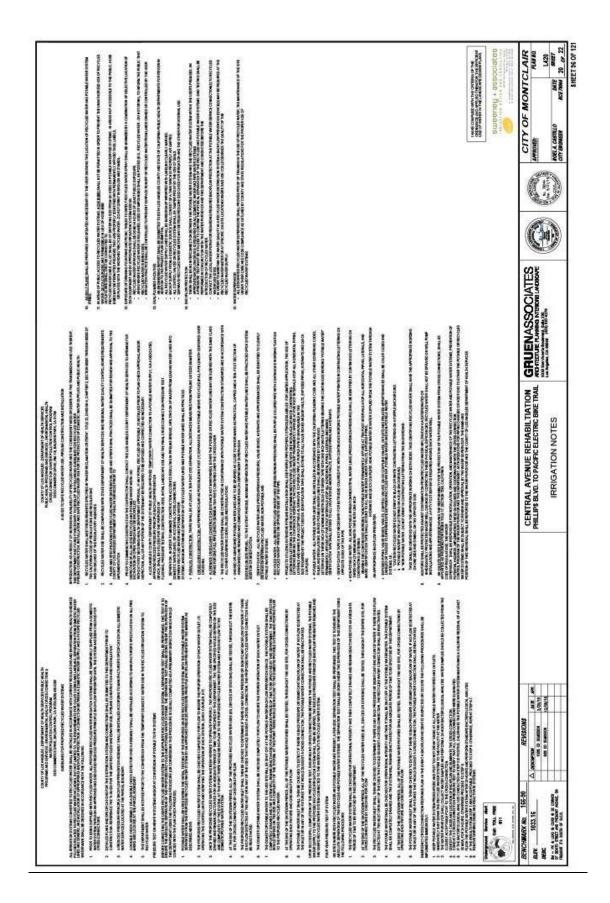


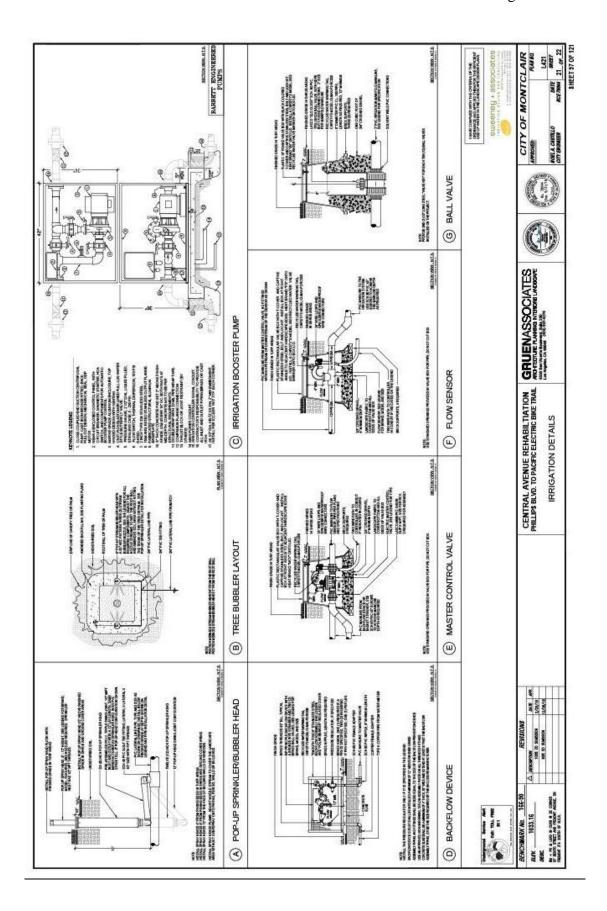


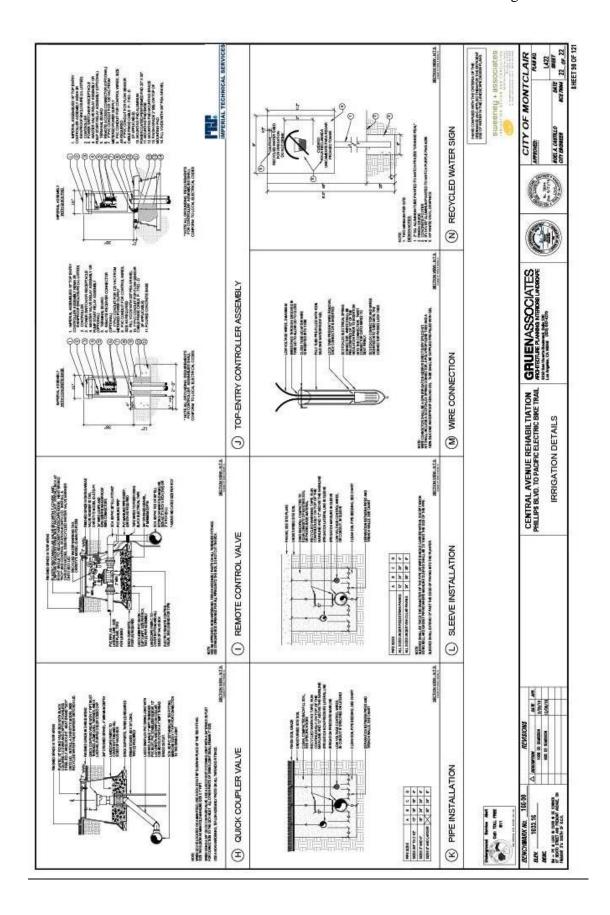












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