

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

202B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
June 22, 2010

SUBJECT: Menifee – Hawthorne Avenue Storm Drain, Stage 1
Project No. 4-0-00163
Amended and Restated Cooperative Agreement

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement between the District, the County of Riverside and the City of Menifee; and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which the District is to construct the Menifee – Hawthorne Avenue Storm Drain, Stage 1 project.

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA

Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Alex Gann

County Executive Office Signature

FORM APPROVED BY COUNTY COUNCIL
BY:
NEAL R. KIPNIS DATE

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: 3rd

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.2

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Menifee – Hawthorne Avenue Storm Drain, Stage 1
Project No. 4-0-00163
Amended and Restated Cooperative Agreement

SUBMITTAL DATE: June 22, 2010
Page 2

BACKGROUND: (continued)

The original agreement between the District and County Transportation (Transportation) was adopted by the Board on September 16, 2008. The City of Menifee (City) was incorporated on October 1, 2008, and has subsequently assumed many of the responsibilities formerly performed by Transportation. The amended and restated Agreement transfers certain maintenance responsibilities to the City and officially relieves Transportation of any responsibilities in the original Agreement.

The District is funding all storm drain and construction inspection costs. Upon completion of project construction, the District will assume ownership, operation and maintenance of the mainline storm drain.

The City is granting the District the necessary rights to construct, operate and maintain the project within City street rights of way and, upon completion of project construction, will assume ownership, operation and maintenance of the project's associated laterals, catch basins and connector pipes located within City street rights of way.

County Counsel has approved the Agreement as to legal form and the City has executed the Agreement. A companion item appears on the Transportation Department's agenda this same date.

AD:bjj

**AMENDED AND RESTATED
COOPERATIVE AGREEMENT**

Contract No. 10-05-017

Riverside Co. Transportation

Menifee-Hawthorne Avenue Storm Drain, Stage 1
(Project No. 4-0-00163-01)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE, hereinafter called "CITY", the COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT, hereinafter called "TRANSPORTATION", hereby agree as follows:

RECITALS

A. DISTRICT has planned and budgeted for the construction of the Menifee – Hawthorne Avenue Storm Drain, Stage 1, hereinafter called "DISTRICT DRAINAGE FACILITY".

B. DISTRICT DRAINAGE FACILITY is located in the CITY and consists of approximately 3,800 lineal feet of underground concrete pipe and associated inlet and outlet structures, as shown in concept in red on Exhibit "A" attached hereto and made a part hereof.

C. Associated with the construction of DISTRICT DRAINAGE FACILITY is the construction of certain drop inlets, connector pipes and laterals, hereinafter called "CITY DRAINAGE FACILITIES".

D. DISTRICT DRAINAGE FACILITY and CITY DRAINAGE FACILITIES are hereinafter altogether called "PROJECT".

E. DISTRICT is willing to construct PROJECT at its sole cost and expense provided CITY (i) grants DISTRICT the right to construct and inspect PROJECT within CITY rights of way; (ii) grants DISTRICT the right to operate and maintain DISTRICT DRAINAGE FACILITY within CITY rights of way; and (iii) upon completion of PROJECT construction, assumes ownership and responsibility for operation and maintenance of CITY DRAINAGE FACILITIES.

1 F. CITY will benefit from DISTRICT construction of PROJECT through
2 reduced maintenance of CITY roads and improved traffic safety during periods of flooding.
3 Therefore, CITY is willing to (i) grant DISTRICT the right to construct and inspect PROJECT;
4 (ii) grant DISTRICT the right to operate and maintain DISTRICT DRAINAGE FACILITY
5 within CITY rights of way; and (iii) upon completion of PROJECT construction, assume
6 ownership and responsibility for the operation and maintenance of CITY DRAINAGE
7 FACILITIES.

8
9 G. On September 16, 2008, DISTRICT and TRANSPORTATION entered
10 into a previous Agreement, hereinafter called "PREVIOUS AGREEMENT", pertaining to
11 Menifee - Hawthorne Avenue Storm Drain, Stage 1 and the construction, inspection and
12 acceptance of DISTRICT DRAINAGE FACILITIES, COUNTY DRAINAGE FACILITIES and
13 APPURTENANCES associated with PROJECT. However, DISTRICT has not commenced
14 construction of PROJECT. Consequently, DISTRICT has not accepted DISTRICT
15 DRAINAGE FACILITIES for ownership, operation and maintenance, TRANSPORTATION
16 has not accepted COUNTY DRAINAGE FACILITIES and APPURTENANCES for ownership,
17 operation and maintenance as set forth in PREVIOUS AGREEMENT.

18
19 H. CITY was incorporated on October 1, 2008, and has subsequently assumed
20 many of the responsibilities formerly performed by TRANSPORTATION.

21 I. DISTRICT, CITY, and TRANSPORTATION mutually desire and agree
22 that the provisions of this agreement shall supersede all provisions of PREVIOUS
23 AGREEMENT.

24
25 J. It is in the public interest to proceed with the construction of PROJECT as
26 set forth herein.

1 NOW THEREFORE, DISTRICT, CITY and TRANSPORTATION hereby agree
2 as follows:

3 SECTION I

4 DISTRICT shall:

5 1. Prepare plans and specifications for PROJECT, hereinafter called
6 "IMPROVEMENT PLANS", in accordance with DISTRICT and CITY standards.

7 2. Provide CITY an opportunity to review and approve IMPROVEMENT
8 PLANS prior to DISTRICT advertising for construction bids.

9 3. Secure all necessary licenses, permits and rights of entry as may be needed
10 for the construction, operation and maintenance of PROJECT.

11 4. Obtain duly executed Irrevocable Offer(s) of Dedication to the public for
12 flood control and drainage purposes, including ingress and egress, for the rights of way for the
13 construction, inspection, operation and maintenance of PROJECT, as shown in concept cross-
14 hatched in red on Exhibit "B" attached hereto and made a part hereof.

15 5. Record the Irrevocable Offer(s) of Dedication provided pursuant to Section
16 I.4.

17 6. Construct PROJECT pursuant to a public works contract, funded,
18 administered and inspected by DISTRICT, and pay all costs for the design, construction,
19 contract administration, construction surveys and construction inspection, and other costs of
20 PROJECT not specifically agreed to by CITY herein.

21 7. Relocate all sanitary sewers and all other utilities at DISTRICT'S own
22 expense which must be relocated and cannot be ordered relocated by CITY at the utility
23 company's expense.
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1 8. Upon acceptance of PROJECT construction as being complete, accept
2 ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE
3 FACILITY.

4 9. Upon DISTRICT acceptance of PROJECT construction as being complete,
5 provide CITY with duplicate "as-built" mylar prints of CITY DRAINAGE FACILITIES.

6 SECTION II

7 CITY shall:

8
9 1. Accept the dedication of Hawthorne Street on behalf of the public for street
10 and utility purposes to allow DISTRICT to construct, inspect, operate and maintain DISTRICT
11 DRAINAGE FACILITY within CITY rights of way.

12 2. Grant DISTRICT, by execution of this Agreement, the right to construct
13 PROJECT and inspect, operate and maintain DISTRICT DRAINAGE FACILITY within CITY
14 rights of way.

15 3. Order the relocation of all utilities installed by permit or franchise within
16 CITY rights of way which conflict with the construction of PROJECT and must be relocated at
17 the utility company's expense.

18 4. Issue, at no cost to DISTRICT or DISTRICT'S contractor, the necessary
19 encroachment permit(s) for required work within CITY rights of way.

20 5. Accept ownership and responsibility for the operation and maintenance of
21 CITY DRAINAGE FACILITIES upon notification by DISTRICT of PROJECT construction as
22 being complete.
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SECTION III

TRANSPORTATION shall:

1. Not have any responsibilities under this Agreement and be relieved of all responsibilities set forth in PREVIOUS AGREEMENT.

SECTION IV

It is further mutually agreed:

1. All construction work involved with PROJECT shall be inspected by DISTRICT and shall not be deemed complete until approved and accepted as complete by DISTRICT.

2. CITY personnel may observe and inspect all work being done on PROJECT, but shall provide any comments to DISTRICT personnel who shall be solely responsible for all communications with DISTRICT'S contractor.

3. CITY shall indemnify, defend, save and hold harmless DISTRICT and County of Riverside (including their respective officers, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY (including its officers, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees; and (d) any other element of any kind or nature whatsoever.

DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, employees, agents, representatives, independent contractors and subcontractors) from

1 any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of
 2 or in any way relating to DISTRICT (including its officers, Board of Supervisors, elected and
 3 appointed officials, employees, agents, representatives, independent contractors and
 4 subcontractors) actual or alleged acts or omissions related to this Agreement, performance under
 5 this Agreement or failure to comply with the requirements of this Agreement, including but not
 6 limited to: (a) property damage; (b) bodily injury or death; (c) payment of attorney's fees; and
 7 (d) any other element of any kind or nature whatsoever.

8
 9 4. Any notices sent or required to be sent to either party shall be mailed to the
 10 following addresses:

11 RIVERSIDE COUNTY FLOOD CONTROL
 12 AND WATER CONSERVATION DISTRICT
 13 1995 Market Street
 14 Riverside, CA 92501

CITY OF MENIFEE
 29714 Haun Drive
 Menifee, CA 92117
 Attn: City Manager

14 COUNTY OF RIVERSIDE
 15 Post Office Box 1090
 16 Riverside, CA 92502-1090
 17 Attn: Transportation Department

18 5. This Agreement is to be construed in accordance with the laws of the State
 19 of California.

20 6. This Agreement is the result of negotiations between the parties hereto and
 21 with the advice and assistance of their respective counsel. No provision contained herein shall
 22 be construed against DISTRICT solely because, as a matter of convenience, it prepared this
 23 Agreement in final form.

24 7. Any waiver by DISTRICT or by CITY of any breach by the other of any
 25 one or more of the terms of this Agreement shall not be construed to be a waiver of any
 26 subsequent or other breach of the same or of any other term thereof. Failure on the part of
 27 DISTRICT or of CITY to require from the other exact, full and complete compliance with any
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1 terms of this Agreement shall not be construed as in any manner changing the terms hereof, or
2 estopping DISTRICT or CITY from enforcement hereof.

3 8. If any provision of this Agreement is held by a court of competent
4 jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared
5 severable and shall be given full force and effect to the extent possible.

6 9. This Agreement is intended by the parties hereto as their final expression
7 with respect to the matters herein, and is a complete and exclusive statement of the terms and
8 conditions thereof. This Agreement shall not be changed or modified except by the written
9 consent of both parties hereto.
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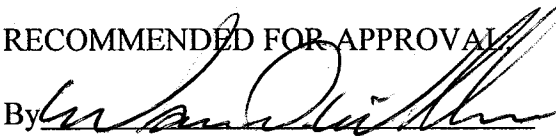
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

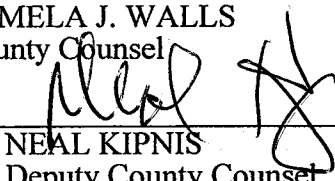
RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

By _____
MARION ASHLEY, Chairman
Board of Supervisors, Riverside County
Flood Control and Water Conservation District

APPROVED AS TO FORM:

ATTEST:


PAMELA J. WALLS
County Counsel
By 
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

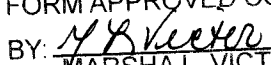
COUNTY OF RIVERSIDE

By 
JUAN C. PEREZ
Director of Transportation

By _____
MARION ASHLEY, Chairman
County of Riverside Board of Supervisors

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

FORM APPROVED COUNTY COUNSEL
BY:  6/2/10
MARSHAL VICTOR DATE

By _____
Deputy

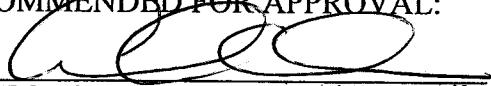
(SEAL)

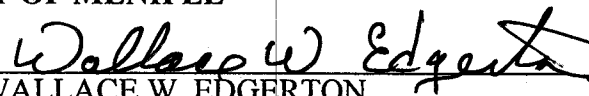
Restated and Amended Cooperative Agreement:
Menifee - Hawthorne Avenue Storm Drain
Project No. 4-0-00163-01
1/20/10
AD:blj

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RECOMMENDED FOR APPROVAL:


CITY OF MENIFEE


By 
GEORGE W. WENTZ TONY ELMU
City Manager INTERIM

By 
WALLACE W. EDGERTON
Mayor

APPROVED AS TO FORM:

ATTEST:

By 
ELIZABETH MARTYN
City Attorney

KATHY BENNETT
City Clerk
By 

(SEAL)

Restated and Amended Cooperative Agreement:
Menifee - Hawthorne Avenue Storm Drain
Project No. 4-0-00163-01
1/20/10
AD:blj

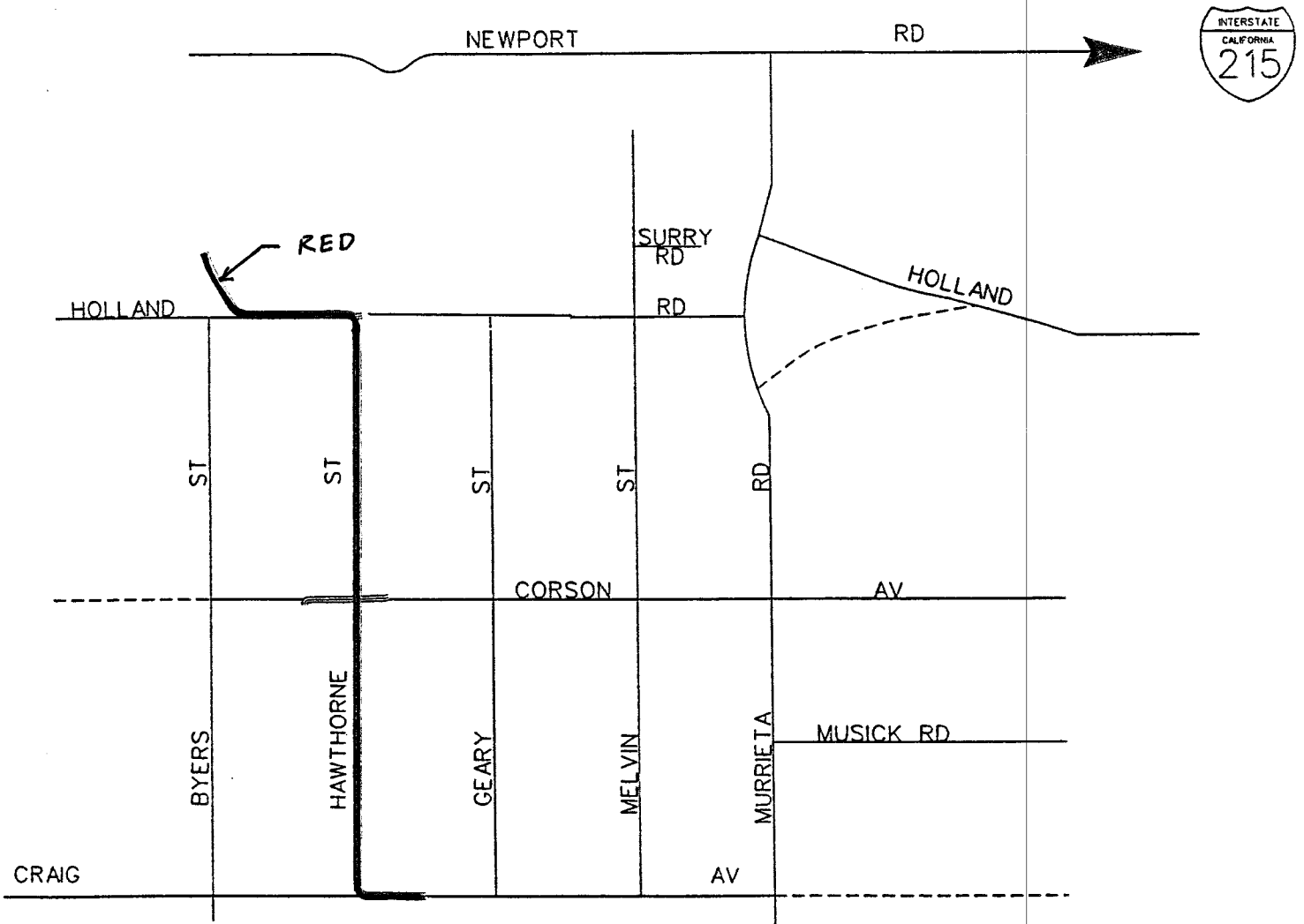
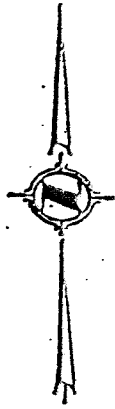


EXHIBIT "A"

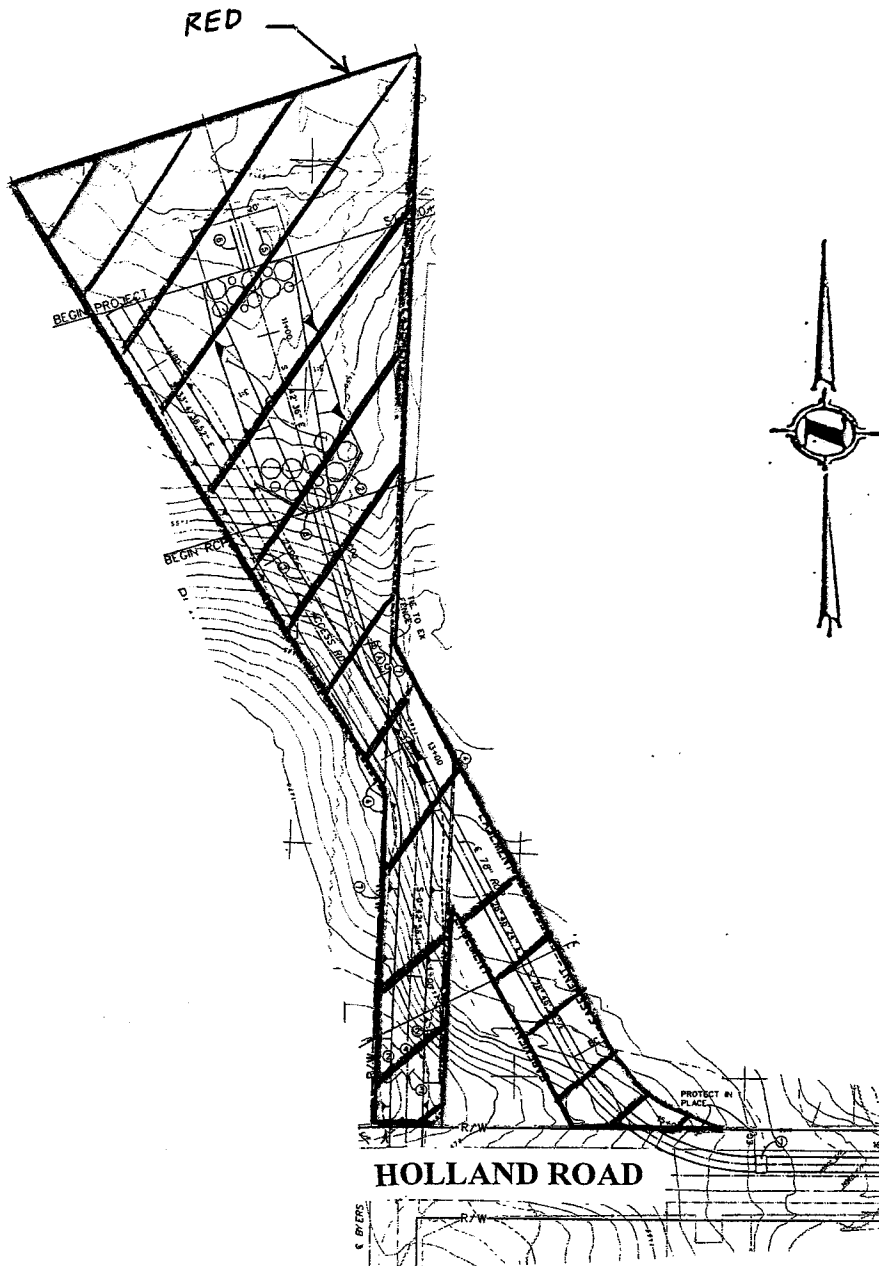


EXHIBIT "B"
1 OF 2

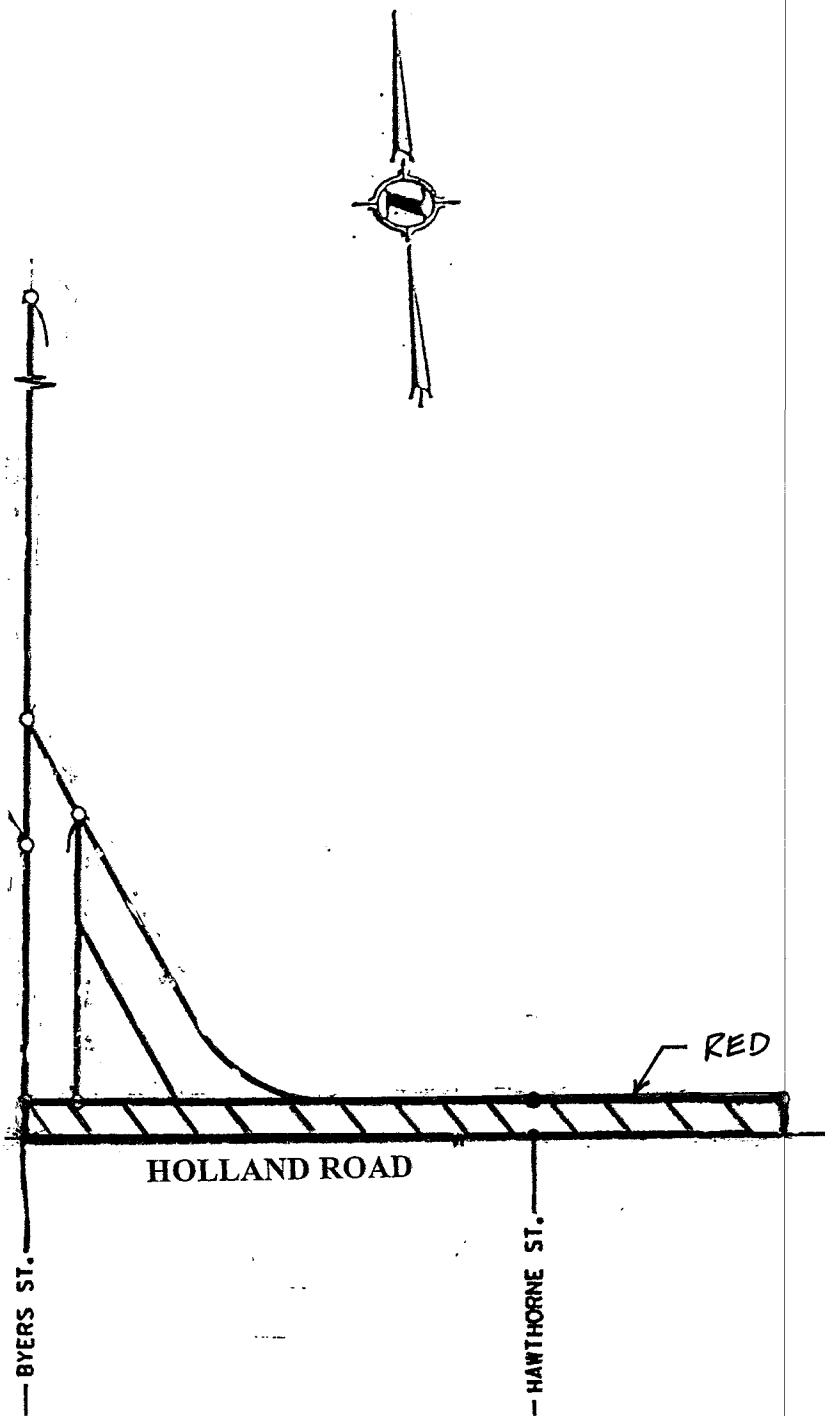


EXHIBIT "B"
2 OF 2