

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

228



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
September 28, 2010

SUBJECT: Cooperative Agreement
Moreno MDP Line F, Stage 3, Moreno MDP Line D, Moreno MDP Line D-5
Moreno MDP Line D-6, Moreno – Line F Sinclair Street Storm Drain
Project Nos. 4-0-00752-03, 4-0-00749, 4-0-00741, 4-0-00742, 4-0-00743
Parcel Map 35629 (Moreno Valley)

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the City of Moreno Valley (City), and HF Logistics-SKX T1, LLC, HF Logistics-SKX T2, LLC, Highland Fairview Partners I, Highland Fairview Partners II, Highland Fairview Partners III, and Highland Fairview Partners IV (Developers); and authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which certain stormwater drainage facilities, required as a condition for approval of Parcel Map 35629, are to be constructed by the Developers and inspected, operated and maintained by the District and City.

Continued on Page 2

Warren D. Williams
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: N/A	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*
Alex Gann
County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Neal R. Kipnis*
DATE: _____
NEAL R. KIPNIS

Departmental Concurrence

- Consent
- Policy
- Consent
- Policy

Dept Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: | District: 5th | Agenda Number: **11.2**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

SUBJECT: Cooperative Agreement
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Parcel Map 35629 (Moreno Valley)

SUBMITTAL DATE: September 28, 2010
Page 2

BACKGROUND: (continued)

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection of the referenced facilities.

Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the flood control facilities. The City will assume ownership, operation and maintenance of the catch basins, connector pipes and laterals located within their rights of way.

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs will accrue to the District.

County Counsel has approved the Agreement as to legal form and the Developer has executed the Agreement.

KEC:blj

COOPERATIVE AGREEMENT

Moreno MDP Line F, Stage 3

Moreno MDP Line D

Moreno MDP Line D-5

Moreno MDP Line D-6

Moreno – Line F Sinclair Street Storm Drain

(Project Nos. 4-0-00752-03, 4-0-00749, 4-0-00741, 4-0-00742, 4-0-00743)

(Parcel Map No. 35629)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MORENO VALLEY, hereinafter called "CITY", and HF LOGISTICS-SKX T1, LLC, a Delaware limited liability company, HF LOGISTICS-SKX T2, LLC, a Delaware limited liability company, HIGHLAND FAIRVIEW PARTNERS I, a California general partnership, HIGHLAND FAIRVIEW PARTNERS II, a California general partnership, HIGHLAND FAIRVIEW PARTNERS III, a California general partnership, and HIGHLAND FAIRVIEW PARTNERS IV, a California general partnership, hereinafter together called "DEVELOPERS", hereby agree as follows:

RECITALS

A. DEVELOPERS have submitted for approval Parcel Map No. 35629 in the City of Moreno Valley and as a condition for approval DEVELOPERS must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPERS' planned development; and

B. The required flood control facilities include construction of approximately 5,116 lineal feet of underground storm drain system, hereinafter called "DISTRICT DRAINAGE FACILITIES, as shown in concept in red on Exhibit "A" attached hereto and made a part hereof; and

1 C. Also associated with the construction of DISTRICT DRAINAGE
2 FACILITIES is the construction of inlets, catch basins, laterals and connector pipes located
3 within CITY'S right of way, hereinafter called "APPURTENANCES". Together, DISTRICT
4 DRAINAGE FACILITIES and APPURTENANCES are hereinafter called "PROJECT"; and

5 D. DEVELOPERS and CITY desire DISTRICT to accept ownership and
6 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
7 Therefore, DISTRICT must review and approve DEVELOPERS' plans and specifications for
8 PROJECT and subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES;
9 and
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11 E. DEVELOPERS and DISTRICT desire CITY to accept ownership and
12 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY
13 must review and approve DEVELOPERS' plans and specifications and subsequently inspect the
14 construction of PROJECT; and
15

16 F. DISTRICT is willing to (i) review and approve DEVELOPERS' plans and
17 specifications for PROJECT, (ii) inspect the construction of DISTRICT DRAINAGE
18 FACILITIES, and (iii) accept ownership and responsibility for the operation and maintenance of
19 DISTRICT DRAINAGE FACILITIES, provided DEVELOPERS (i) comply with this
20 Agreement, (ii) pay DISTRICT the amounts specified herein to cover DISTRICT'S plan review
21 and construction inspection costs, (iii) construct PROJECT in accordance with plans and
22 specifications approved by DISTRICT and CITY, (iv) obtain all necessary permits, regulatory
23 permits, licenses and rights of entry as set forth herein, (v) accept ownership and responsibility
24 for the operation and maintenance of PROJECT following completion of PROJECT
25 construction until such time as DISTRICT accepts ownership and responsibility for the
26 operation and maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts
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1 ownership and responsibility for the operation and maintenance of APPURTENANCES, and
2 (vi) obtain and convey to DISTRICT the necessary rights of way for the inspection, operation
3 and maintenance of DISTRICT DRAINAGE FACILITIES as set forth herein; and

4 G. CITY is willing to (i) review and approve plans and specifications prepared
5 by DEVELOPERS for PROJECT, (ii) inspect the construction of APPURTENANCES, (iii)
6 accept and hold faithful performance and payment bonds submitted by DEVELOPERS for
7 DISTRICT DRAINAGE FACILITIES, (iv) grant DISTRICT the right to inspect, operate and
8 maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way, (v) consent to the
9 recordation and conveyance of Irrevocable Offer(s) of Dedication furnished by DEVELOPERS
10 as provided herein, and (vi) accept ownership and responsibility for the operation and
11 maintenance of APPURTENANCES, provided PROJECT is constructed in accordance with
12 plans and specifications approved by DISTRICT and CITY.
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15 NOW, THEREFORE, the parties hereto mutually agree as follows:

16 SECTION I

17 DEVELOPERS shall:

18 1. Prepare PROJECT plans and specifications, as shown in DISTRICT
19 Drawing No. 4-1007 hereinafter called "IMPROVEMENT PLANS", in accordance with
20 DISTRICT and CITY standards, and submit to DISTRICT and CITY for their review and
21 approval.
22

23 2. Continue to pay DISTRICT, within thirty (30) days after receipt of
24 periodic billings from DISTRICT, any and all such amounts as are deemed reasonably
25 necessary by DISTRICT to cover DISTRICT'S costs associated with the review of
26 IMPROVEMENT PLANS, the review and approval of all right of way and conveyance
27 documents, and with the processing and administration of this Agreement. Additionally, deposit
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1 with CITY, any and all such amounts as are deemed reasonably necessary by CITY to cover
2 CITY'S costs associated with the review of IMPROVEMENT PLANS, the review and approval
3 of all right of way and conveyance documents, and with the processing and administration of
4 this Agreement.

5 3. Deposit with DISTRICT (Attention: Business Office – Accounts
6 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
7 DRAINAGE FACILITIES construction as set forth in Section I.8., the estimated cost of
8 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
9 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the
10 County of Riverside, including any amendments thereto, based upon the bonded value of
11 DISTRICT DRAINAGE FACILITIES to be inspected, operated and maintained by DISTRICT.
12 Additionally, deposit with CITY (Attention: Public Works/Land Development), at the time of
13 providing written notice to DISTRICT of the start of PROJECT construction as set forth in
14 Section I.8., the estimated cost of providing construction inspection in an amount as determined
15 and approved by CITY in accordance with the most recent City Code and Fee Resolution of
16 CITY, including any amendments thereto.

17 4. [This Section Intentionally Left Blank.]

18 5. Secure, at its sole cost and expense, all necessary licenses, agreements,
19 permits and rights of entry as may be needed for the construction, inspection, operation and
20 maintenance of DISTRICT DRAINAGE FACILITIES. DEVELOPERS shall furnish
21 DISTRICT, at the time of providing written notice to DISTRICT of the start of construction as
22 set forth in Section I.8., with sufficient evidence of DEVELOPERS having secured such
23 necessary licenses, agreements, permits and rights of entry, as determined and approved by
24 DISTRICT.

1 6. Furnish DISTRICT with copies of all permits, approvals or agreements
2 required by any Federal or State resource and/or regulatory agency for the construction,
3 operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include
4 but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional
5 Water Quality Control Board, California State Department of Fish and Game and State Water
6 Resources Control Board.

7 7. Provide CITY, prior to providing written notice to DISTRICT of the start
8 of construction as set forth in Section I.8., with a faithful performance bond in the amount of
9 one hundred percent (100%) of the estimated cost for construction of DISTRICT DRAINAGE
10 FACILITIES as determined by DISTRICT and a material and labor payment bond in the
11 amount of fifty percent (50%) of the estimated cost for construction of the DISTRICT
12 DRAINAGE FACILITIES as determined by DISTRICT. The surety, amount and form of the
13 bonds shall be subject to the approval of DISTRICT and CITY. The bonds shall remain in full
14 force and effect until DISTRICT DRAINAGE FACILITIES are accepted by DISTRICT as
15 complete; at which time the faithful performance bond amount may be reduced to ten percent
16 (10%) for a period of one year to guarantee against any defective work, and the Material and
17 Labor security will be released after a period of ninety (90) days if there are no liens against the
18 project for payment of materials or labor.

19 8. Notify DISTRICT in writing (Attention: Administrative Services Section),
20 at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE
21 FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE
22 FACILITIES for any reason whatsoever, until DISTRICT has issued to DEVELOPERS a
23 written Notice to Proceed authorizing DEVELOPERS to commence construction of DISTRICT
24 DRAINAGE FACILITIES.

25 9. Grant DISTRICT and CITY, by execution of this Agreement, the right to
26 enter upon DEVELOPERS' property where necessary and convenient for the purpose of gaining
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1 access to, and performing inspection service for, the construction of DISTRICT DRAINAGE
2 FACILITIES and APPURTENANCES, respectively, as set forth herein.

3 10. Obtain and provide DISTRICT, at the time of providing written notice to
4 DISTRICT of the start of construction of DISTRICT DRAINAGE FACILITIES as set forth in
5 Section I.8., with duly executed Irrevocable Offers(s) of Dedication to the public for flood
6 control and drainage purposes, including ingress and egress, for the rights of way deemed
7 necessary by DISTRICT for the construction, inspection, operation and maintenance of
8 DISTRICT DRAINAGE FACILITIES, as shown in concept shaded in green on Exhibit "B"
9 attached hereto and made a part hereof. The Irrevocable Offer(s) of Dedication shall be in a
10 form approved by DISTRICT and shall be executed by all legal and equitable owners of the
11 property described in the offer(s).
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13 11. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of
14 Dedication as set forth in Section I.10., with Preliminary Reports on Title dated not more than
15 thirty (30) days prior to date of submission of all the property described in the Irrevocable
16 Offer(s) of Dedication.
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18 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
19 the start of construction as set forth in Section I.8., with a complete list of all contractors and
20 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the
21 corresponding license number and license classification of each. At such time, DEVELOPERS
22 shall further identify in writing their designated superintendent for DISTRICT DRAINAGE
23 FACILITIES construction.
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25 13. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
26 the start of construction as set forth in Section I.8., a construction schedule which shall show the
27 order and dates in which the DEVELOPERS or DEVELOPERS' contractor proposes to carry on
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1 the various parts of work, including estimated start and completion dates. As construction of
2 DISTRICT DRAINAGE FACILITIES progresses, DEVELOPERS shall update said
3 construction schedule as requested by DISTRICT.

4 14. Furnish DISTRICT with final mylar IMPROVEMENT PLANS and assign
5 their ownership to DISTRICT at the time DISTRICT approves and signs said final mylar
6 IMPROVEMENT PLANS, and prior to the start of DISTRICT DRAINAGE FACILITIES
7 construction.

8 15. Not permit any change to or modification of the IMPROVEMENT PLANS
9 without the prior written permission and consent of DISTRICT.

10 16. Comply with all Cal/OSHA safety regulations including regulations
11 concerning confined space and maintain a safe working environment for DEVELOPERS' and
12 DISTRICT employees on the site.

13 17. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
14 the start of construction as set forth in Section I.8., with a confined space entry procedure
15 specific to DISTRICT DRAINAGE FACILITIES. The procedure shall comply with
16 requirements contained in California Code of Regulations, Title 8 Section 5158, Other Confined
17 Space Operations, Section 5157, Permit Required Confined Space and DISTRICT Confined
18 Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT
19 prior to the issuance of a Notice to Proceed.

20 18. During the construction period of DISTRICT DRAINAGE FACILITIES,
21 provide Workers' Compensation Insurance in an amount required by law. A certificate of said
22 insurance policy shall be provided to DISTRICT, the County of Riverside and CITY at the time
23 of providing written notice pursuant to Section I.8.

1 19. Commencing on the date notice is given pursuant to Section I.8. and
2 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES for operation and
3 maintenance:

4 (a) Provide and maintain or cause its contractor(s) to provide and
5 maintain comprehensive liability insurance coverage which shall
6 protect DEVELOPERS from claim from damages for personal
7 injury, including accidental and wrongful death, as well as from
8 claims for property damage which may arise from DEVELOPERS'
9 construction of PROJECT or the performance of its obligations
10 hereunder, whether such construction or performance be by
11 DEVELOPERS, by any of its contractors, subcontractors, or by
12 anyone employed directly or indirectly by any of them. Such
13 insurance shall name DISTRICT, the County of Riverside and CITY
14 as additional insureds with respect to this Agreement and the
15 obligations of DEVELOPERS hereunder. Such insurance shall
16 provide for limits of not less than two million dollars (\$2,000,000)
17 per occurrence.

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20 (b) Cause its insurance carrier(s) or its contractor's insurance carrier(s),
21 who shall be authorized by the California Department of Insurance to
22 transact the business of insurance in the State of California, to furnish
23 DISTRICT, the County of Riverside and CITY, at the time of
24 providing written notice to DISTRICT of the start of construction as
25 set forth in Section I.8., with certificate(s) of insurance and applicable
26 policy endorsements showing that such insurance is in full force and
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1 effect and that DISTRICT, the County of Riverside and CITY are
2 named as additional insureds with respect to this Agreement and the
3 obligations of DEVELOPERS hereunder. Further, said certificate(s)
4 shall state that the issuing company shall give DISTRICT, the County
5 of Riverside and CITY sixty (60) days written notice in the event of
6 any cancellation, termination, non-renewal or reduction in coverage
7 of the policies evidenced by the certificate(s). In the event of any
8 such cancellation, termination, non-renewal or reduction in coverage,
9 DEVELOPERS shall, forthwith, secure replacement insurance
10 meeting the provisions of this paragraph.
11

12 Failure to maintain the insurance required by this paragraph shall be
13 deemed a material breach of this Agreement and shall authorize and constitute authority for
14 DISTRICT, at its sole discretion, to proceed to perform the remaining work pursuant to Section
15 IV.3.
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17 20. Construct or cause to be constructed, PROJECT at DEVELOPERS' sole
18 cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT
19 PLANS.

20 21. Accept sole responsibility for the adjustment of all DISTRICT
21 DRAINAGE FACILITIES' manhole rings and covers located within DISTRICT
22 EASEMENTS which must be performed at such time(s) that the finished grade along and
23 above the underground portions of DISTRICT DRAINAGE FACILITIES are improved,
24 repaired, replaced or changed. It being further understood and agreed that any such
25 adjustments shall be performed at no cost to DISTRICT.
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1 22. Within two (2) weeks of completing PROJECT construction, provide
2 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
3 construction is substantially complete and requesting that DISTRICT conduct a final inspection
4 of DISTRICT DRAINAGE FACILITIES.

5 23. Upon completion of PROJECT construction, and upon acceptance by CITY
6 of all street rights of way deemed necessary by DISTRICT and CITY for the operation and
7 maintenance of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE
8 FACILITIES for ownership, operation and maintenance, convey, or cause to be conveyed to
9 DISTRICT flood control easement(s), including ingress and egress, in a form approved by
10 DISTRICT, for the rights of way as shown in concept shaded in green on Exhibit "B".

12 24. [This Section Intentionally Left Blank.]

13 25. At the time of recordation of the conveyance document(s) as set forth in
14 Section I.23.(ii), furnish DISTRICT with policies of title insurance, each in the amount of not
15 less than fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each
16 easement parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said
17 property as being free and clear of all liens, encumbrances, assessments, easements, taxes and
18 leases (recorded or unrecorded), except those which, in the sole discretion of DISTRICT, are
19 deemed acceptable.
20

21 26. Accept ownership and sole responsibility for the operation and maintenance
22 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation
23 and maintenance of DISTRICT DRAINAGE FACILITIES and CITY accepts ownership and
24 responsibility for operation and maintenance of APPURTENANCES. Further, it is mutually
25 understood by the parties hereto that prior to DISTRICT acceptance of ownership and
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1 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES,
2 PROJECT shall be in a satisfactorily maintained condition as solely determined by DISTRICT.

3 27. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
4 completion of DISTRICT DRAINAGE FACILITIES, all costs and reasonable expenses and
5 fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all
6 such costs, expenses and fees shall be computed as costs and included in any judgment
7 rendered.
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9 28. Upon completion of construction of PROJECT, but prior to DISTRICT
10 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
11 DEVELOPERS' civil engineer of record or construction civil engineer of record, duly registered
12 in the State of California, shall provide DISTRICT a redlined "record drawing" copy of
13 IMPROVEMENT PLANS. After DISTRICT approval of the redlined "record drawing"
14 drawings, DEVELOPERS' engineer shall schedule with DISTRICT a time to transfer the
15 redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the
16 engineer shall review, stamp and sign the original IMPROVEMENT PLANS "RECORD
17 DRAWING".
18

19 29. Ensure that all work performed pursuant to this Agreement by
20 DEVELOPERS, their agents or contractors is done in accordance with all applicable laws and
21 regulations, including but not limited to all applicable provisions of the Labor Code, Business
22 and Professions Code, and Water Code. DEVELOPERS shall be solely responsible for all costs
23 associated with compliance with applicable laws and regulations.
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SECTION II

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DISTRICT shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of DISTRICT DRAINAGE FACILITIES construction.
2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT'S final approval.
3. Upon execution of this Agreement, record or cause to be recorded, a copy of this Agreement in the Official Records of the Riverside County Recorder.
4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPERS pursuant to Section I.10.
5. Inspect DISTRICT DRAINAGE FACILITIES construction.
6. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents and the processing and administration of this Agreement.
7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete, submit a final cost statement to DEVELOPERS. If the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse DEVELOPERS the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPERS shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT DRAINAGE FACILITIES, within thirty (30) days after receipt of billing from DISTRICT.

1 8. Accept ownership and sole responsibility for the operation and maintenance
2 of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT acceptance of PROJECT
3 construction as being complete, (ii) recordation of all conveyance documents described in
4 Section I.23., and (iii) acceptance by CITY of all necessary street rights of way as deemed
5 necessary by DISTRICT and CITY for the operation and maintenance of PROJECT.

6 9. Provide CITY with a reproducible duplicate copy of "as-built"
7 IMPROVEMENT PLANS upon DISTRICT acceptance of DISTRICT DRAINAGE
8 FACILITIES as being complete.
9

10 SECTION III

11 CITY shall:

12 1. Review and approve IMPROVEMENT PLANS prior to the start of
13 PROJECT construction.

14 2. Accept the CITY and DISTRICT approved faithful performance and
15 payment bonds submitted by DEVELOPERS as set forth in Section I.7., and hold said bonds as
16 provided herein.
17

18 3. Inspect construction of APPURTENANCES.

19 4. Consent, by execution of this Agreement, to the recording of any
20 Irrevocable Offer(s) of Dedication furnished by DEVELOPERS pursuant to this Agreement.

21 5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication
22 as set forth herein, and any other outstanding offers of dedication necessary for the construction,
23 inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES, and, convey
24 sufficient rights of way to DISTRICT to allow DISTRICT to construct, inspect, operate and
25 maintain DISTRICT DRAINAGE FACILITIES.
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6. Grant DISTRICT, by execution of this Agreement, the right to construct, inspect, operate and maintain DISTRICT DRAINAGE FACILITIES within CITY rights of way.

7. Accept ownership and sole responsibility for the operation and maintenance of APPURTENANCES upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete.

8. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION IV

It is further mutually agreed:

1. All work involved with DISTRICT DRAINAGE FACILITIES shall be inspected by DISTRICT and shall not be deemed complete until approved and accepted in writing as complete by DISTRICT.

2. CITY and DEVELOPERS' personnel may observe and inspect all work being done on DISTRICT DRAINAGE FACILITIES, but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with the DEVELOPERS' contractor(s) during the construction of DISTRICT DRAINAGE FACILITIES.

3. DEVELOPERS shall complete construction of DISTRICT DRAINAGE FACILITIES within twelve (12) consecutive months after execution of this Agreement and within one hundred eighty (180) consecutive calendar days after commencing work on

1 DISTRICT DRAINAGE FACILITIES. It is expressly understood that since time is of the
2 essence in this Agreement, failure of DEVELOPERS to perform the work within the agreed
3 upon time shall constitute authority for DISTRICT to perform the remaining work and require
4 DEVELOPERS' surety to pay to CITY the penal sum of any and all bonds. In which case,
5 CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

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7 4. DEVELOPERS shall not request DISTRICT to accept any portion or
8 portions of DISTRICT DRAINAGE FACILITIES or CITY to accept any portion or portions of
9 APPURTENANCES prior to the completion of PROJECT construction.

10 5. DISTRICT shall endeavor to issue DEVELOPERS a Notice to Proceed
11 within twenty (20) days of receipt of DEVELOPERS' complete written notice as set forth in
12 Section I.8.; however, DISTRICT'S construction inspection staff is limited and, therefore, the
13 issuance of a Notice to Proceed is subject to staff availability.

14
15 In the event DEVELOPERS wish to expedite issuance of a Notice to
16 Proceed, DEVELOPERS may elect to furnish an independent qualified construction inspector at
17 DEVELOPERS' sole cost and expense. DEVELOPERS shall furnish appropriate
18 documentation of the individual's credentials and experience to DISTRICT for review and, if
19 appropriate, approval. DISTRICT shall review the individual's qualifications and experience
20 and, upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall
21 be authorized to act on DISTRICT'S behalf on all DISTRICT DRAINAGE FACILITIES
22 construction and quality control matters. If DEVELOPERS' initial construction inspection
23 deposit furnished pursuant to Section I.3. exceeds ten thousand dollars (\$10,000.00), DISTRICT
24 shall refund to DEVELOPERS up to eighty percent (80%) of DEVELOPERS' initial inspection
25 deposit within forty-five (45) days of DISTRICT'S approval of DEPUTY INSPECTOR;
26 however, a minimum balance of ten thousand dollars (\$10,000.00) shall be retained on account.
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1 6. DISTRICT DRAINAGE FACILITIES construction work shall be on a five
2 (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT
3 designated legal holidays, unless otherwise approved in writing by DISTRICT. If
4 DEVELOPERS feel it necessary to work more than the normal forty (40) hour work week or on
5 holidays, DEVELOPERS shall make a written request for permission from DISTRICT to work
6 the additional hours. The request shall be submitted to DISTRICT at least seventy-two (72)
7 hours prior to the requested additional work hours and state the reasons for the overtime and the
8 specific time frames required. The decision of granting permission for overtime work shall be
9 made by DISTRICT at its sole discretion and shall be final. If permission is granted by
10 DISTRICT, DEVELOPERS will be charged the cost incurred at the overtime rates for
11 additional inspection time required in connection with the overtime work in accordance with
12 Ordinance Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

14 7. DEVELOPERS shall indemnify and hold harmless DISTRICT and CITY
15 (including their agencies, districts, special districts and departments, their respective directors,
16 officers, Board of Supervisors, elected and appointed officials, employees, agents and
17 representatives) from any liability, claim, damage, proceeding or action, present or future, based
18 upon, arising out of or in any way relating to DEVELOPERS' (including its officers, employees,
19 subcontractors and agents) actual or alleged acts or omissions related to this Agreement,
20 performance under this Agreement, or failure to comply with the requirements of this
21 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)
22 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth
23 Amendment of the United States Constitution or any other law, ordinance or regulation caused
24 by the diversion of waters from the natural drainage patterns or the discharge of drainage within
25 or from PROJECT; or (d) any other element of any kind or nature whatsoever.

1 DEVELOPER shall defend, at its sole expense, including all costs and fees
2 (including but not limited to attorney fees, cost of investigation, defense and settlements or
3 awards), DISTRICT and CITY (including their agencies, districts, special districts and
4 departments, their respective directors, officers, Board of Supervisors, elected and appointed
5 officials, employees, agents and representatives) in any claim, proceeding or action for which
6 indemnification is required.

7
8 With respect to any of DEVELOPERS' indemnification requirements, DEVELOPERS
9 shall, at its sole cost, have the right to use counsel of their own choice and shall have the right to
10 adjust, settle or compromise any such claim, proceeding or action without the prior consent of
11 DISTRICT and CITY; provided, however, that any such adjustment, settlement or compromise
12 in no manner whatsoever limits or circumscribes DEVELOPERS' indemnification obligations
13 to DISTRICT or CITY.

14 DEVELOPERS' indemnification obligations shall be satisfied when DEVELOPERS
15 have provided to DISTRICT and CITY the appropriate form of dismissal (or similar document)
16 relieving DISTRICT or CITY from any liability for the claim, proceeding or action involved.

17
18 The specified insurance limits required in this Agreement shall in no way limit or
19 circumscribe DEVELOPERS' obligations to indemnify and hold harmless DISTRICT and
20 CITY from third party claims.

21 In the event there is conflict between this section and California Civil Code Section
22 2782, this section shall be interpreted to comply with Civil Code 2782. Such interpretation shall
23 not relieve the DEVELOPERS from indemnifying DISTRICT or CITY to the fullest extent
24 allowed by law.

25
26 8. Any waiver by DISTRICT or by CITY of any breach of any one or more of
27 the terms of this Agreement shall not be construed to be a waiver of any subsequent or other
28

1 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
2 require exact, full and complete compliance with any terms of this Agreement shall not be
3 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
4 enforcement hereof.

5 9. DISTRICT and CITY each pledge to cooperate in regard to the operation
6 and maintenance of their respective facilities as set forth herein and to discharge their respective
7 maintenance responsibilities in an expeditious fashion so as to avoid the creation of any
8 nuisance condition or undue maintenance impact upon the others' facilities.

10 10. This Agreement is to be construed in accordance with the laws of the State
11 of California.

12 11. Any and all notices sent or required to be sent to the parties of this
13 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

14 RIVERSIDE COUNTY FLOOD CONTROL
15 AND WATER CONSERVATION DISTRICT
16 1995 Market Street
17 Riverside, CA 92501
18 Attn: Administrative Services

CITY OF MORENO VALLEY
Post Office Box 88005
Moreno Valley, CA 92552-0805
Attn: Public Works Director

19 HF LOGISTICS-SKX T1, LLC
20 14225 CORPORATE WAY
21 MORENO VALLEY CA 92553
22 Attn: Brian Hixson

HF LOGISTICS-SKX T2, LLC
14225 CORPORATE WAY
MORENO VALLEY CA 92553
Attn: Brian Hixson

23 12. Any action at law or in equity brought by any of the parties hereto for the
24 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of
25 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
26 waive all provisions of law providing for a change of venue in such proceedings to any other
27 county.
28

1 13. This Agreement is the result of negotiations between the parties hereto, and
2 the advice and assistance of their respective counsel. The fact that this Agreement was prepared
3 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty
4 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT
5 prepared this Agreement in its final form.

6 14. The rights and obligations of DEVELOPERS shall inure to and be binding
7 upon all heirs, successors and assignees.

8 15. DEVELOPERS shall not assign or otherwise transfer any of its rights,
9 duties or obligations hereunder to any person or entity without the written consent of the other
10 parties hereto being first obtained. In the event of any such transfer or assignment,
11 DEVELOPERS expressly understand and agree that they shall remain liable with respect to any
12 and all of the obligations and duties contained in this Agreement.

13 16. The individual(s) executing this Agreement on behalf of DEVELOPERS
14 hereby certify they have the authority within their respective company(ies) to enter into and
15 execute this Agreement, and have been authorized to do so by any and all boards of directors,
16 legal counsel, and or any other board, committee or other entity within their respective
17 company(ies) which have the authority to authorize or deny entering this Agreement.

18 17. This Agreement is intended by the parties hereto as a final expression of
19 their understanding with respect to the subject matter hereof and as a complete and exclusive
20 statement of the terms and conditions thereof and supersedes any and all prior and
21 contemporaneous agreements and understandings, oral or written, in connection therewith. This
22 Agreement may be changed or modified only upon the written consent of the parties hereto.

23 //

24 //

25

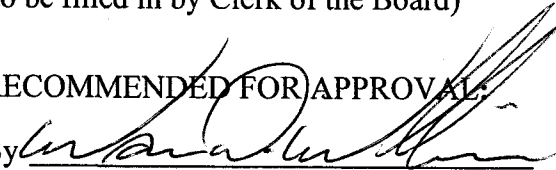
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

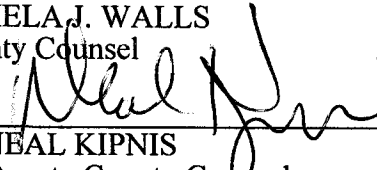
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

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)

Cooperative Agreement: PM 35629
Moreno MDP Line F, Stage 3, Moreno MDP Line D, Moreno MDP Line D-5
Moreno MDP Line D-6, and Moreno – Line F Sinclair Street Storm Drain
Project Nos. 4-0-00752-03, 4-0-00749, 4-0-00741, 4-0-00742, 4-0-00743
KEC:blj
5/20/10

RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

By *Chris*
Public Works Director/City Engineer

By *Concetta Flutignon*
Mayor

MS

APPROVED AS TO FORM:

ATTEST:

By *Burdick*
City Attorney

City Clerk
By *Jane Halberd*

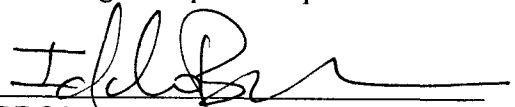
(SEAL)

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Cooperative Agreement: PM 35629
Moreno MDP Line F, Stage 3, Moreno MDP Line D, Moreno MDP Line D-5
Moreno MDP Line D-6, and Moreno – Line F Sinclair Street Storm Drain
Project Nos. 4-0-00752-03, 4-0-00749, 4-0-00741, 4-0-00742, 4-0-00743
KEC:blj
5/20/10

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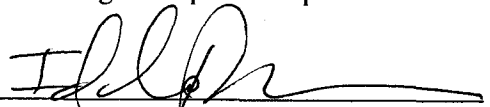
HIGHLAND FAIRVIEW PARTNERS I
a California general partnership

By 
IDDO BENZEEVI, President


HIGHLAND FAIRVIEW PARTNERS II
a California general partnership

By 
IDDO BENZEEVI, President

HIGHLAND FAIRVIEW PARTNERS III
a California general partnership

By 
IDDO BENZEEVI, President

HIGHLAND FAIRVIEW PARTNERS IV
a California general partnership

By 
IDDO BENZEEVI, President

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: PM 35629
Moreno MDP Line F, Stage 3, Moreno MDP Line D, Moreno MDP Line D-5
Moreno MDP Line D-6, and Moreno – Line F Sinclair Street Storm Drain
Project Nos. 4-0-00752-03, 4-0-00749, 4-0-00741, 4-0-00742, 4-0-00743
KEC:blj
5/20/10

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside }

On 6.1.10 before me, Lorinne J. Phillips, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Iddo Benzzevi
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Lorinne J. Phillips
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: COOPERATIVE AGREEMENT
 Document Date: 6.1.10 Number of Pages: 23 + EXH. A (1) EXH. B (8)

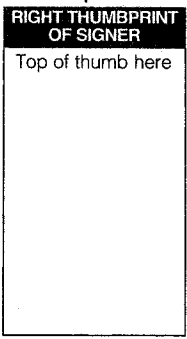
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: IDDO BENZZEVI Signer's Name: _____

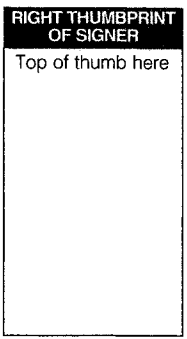
Corporate Officer — Title(s): PRES. & CEO Corporate Officer — Title(s): _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____




Signer Is Representing: _____

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HF LOGISTICS-SKX T1, LLC
a Delaware limited liability company

By: HF LOGISTICS-SKX, LLC
a Delaware limited liability company,
its Sole Member


By: HF Logistics I, LLC
a Delaware limited liability company,
its Managing Member

By: 
IDDO BENZEEVI, President and Chief
Executive Officer

HF LOGISTICS-SKX T2, LLC
a Delaware limited liability company

By: HF LOGISTICS-SKX, LLC,
a Delaware limited liability company,
its Sole Member

By: HF Logistics I, LLC
a Delaware limited liability company,
its Managing Member

By: 
IDDO BENZEEVI, President and Chief
Executive Officer

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

Cooperative Agreement: PM 35629
Moreno MDP Line F, Stage 3, Moreno MDP Line D, Moreno MDP Line D-5
Moreno MDP Line D-6, and Moreno – Line F Sinclair Street Storm Drain
Project Nos. 4-0-00752-03, 4-0-00749, 4-0-00741, 4-0-00742, 4-0-00743
KEC:blj
5/20/10

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

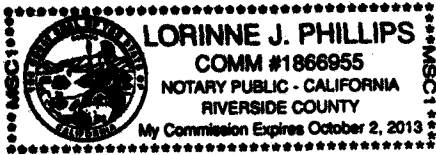
State of California

County of Riverside }

On 6.1.10 before me, Lorinne J. Phillips, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Iddo Benzgeri
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: Lorinne J. Phillips
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: COOPERATIVE AGREEMENT

Document Date: 6.1.10 Number of Pages: 23 + EXH. A (11) + EXH. B (8)

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: IDDO BENZGERI Signer's Name: _____

Corporate Officer — Title(s): PRES. & CEO Corporate Officer — Title(s): _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

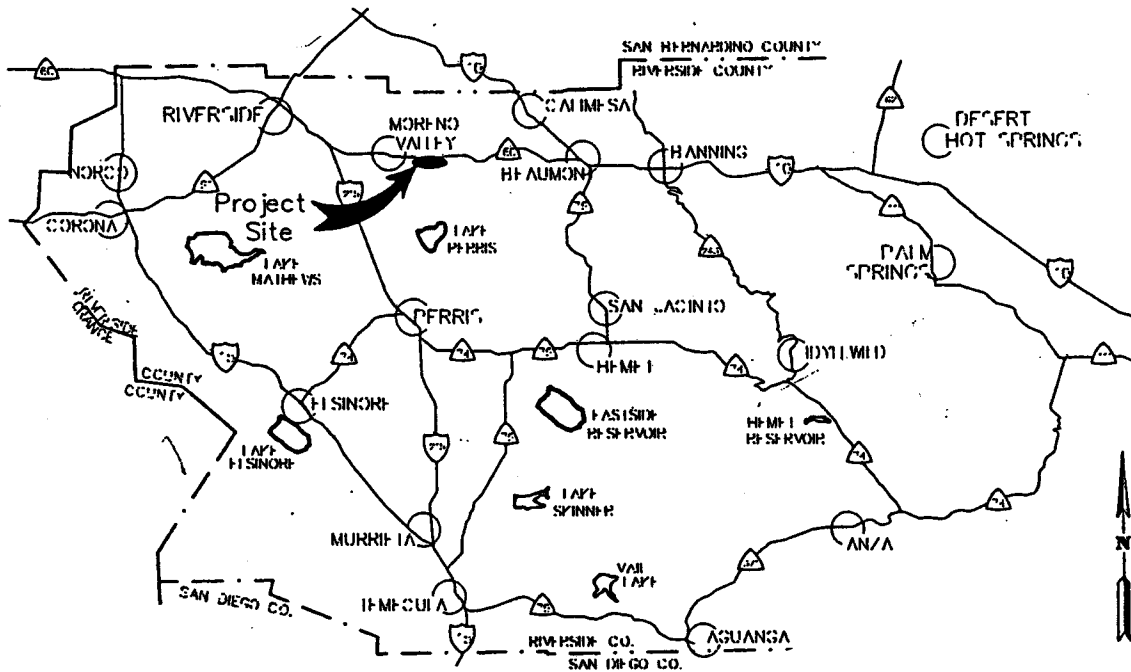
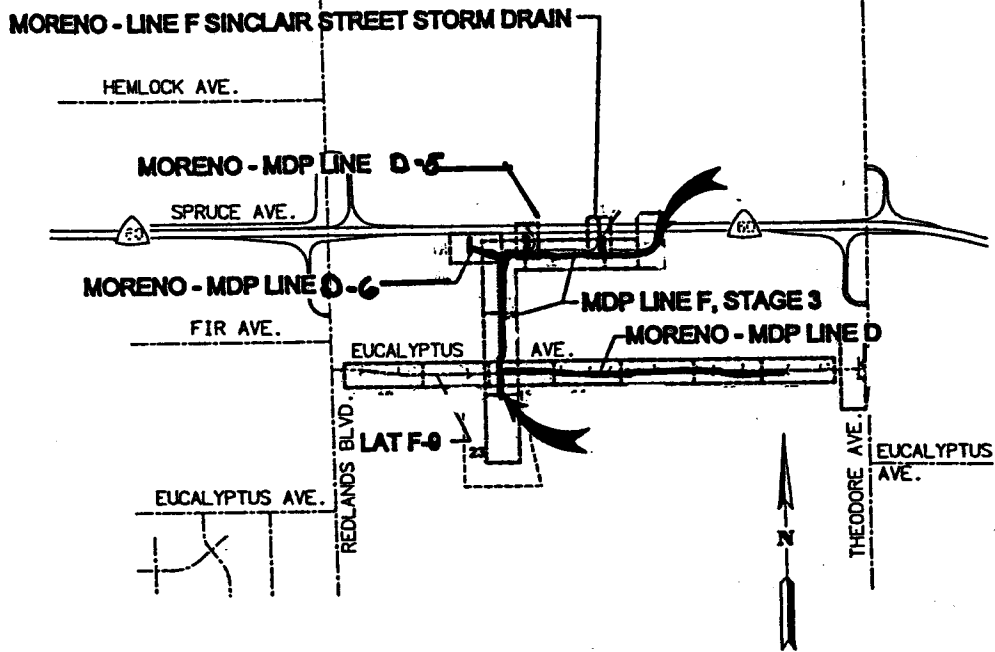
RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer Is Representing: _____

Exhibit A



Cooperative Agreement
 Parcel Map 35629
 Project Numbers: 4-0-00752-03, 4-0-00749,
 4-0-00741, 4-0-00742, 4-0-00743
 1 of 11

Exhibit A

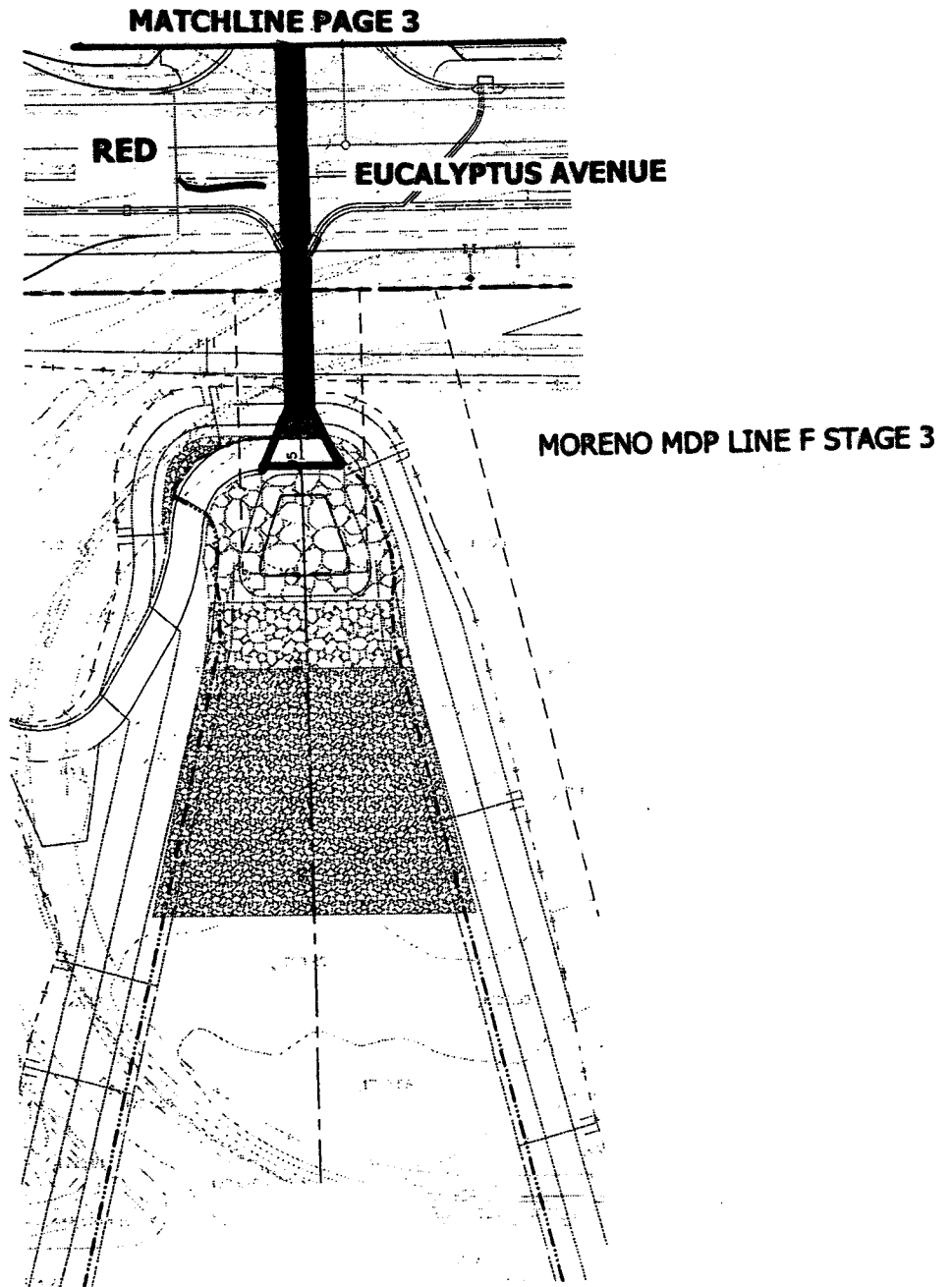


Exhibit A

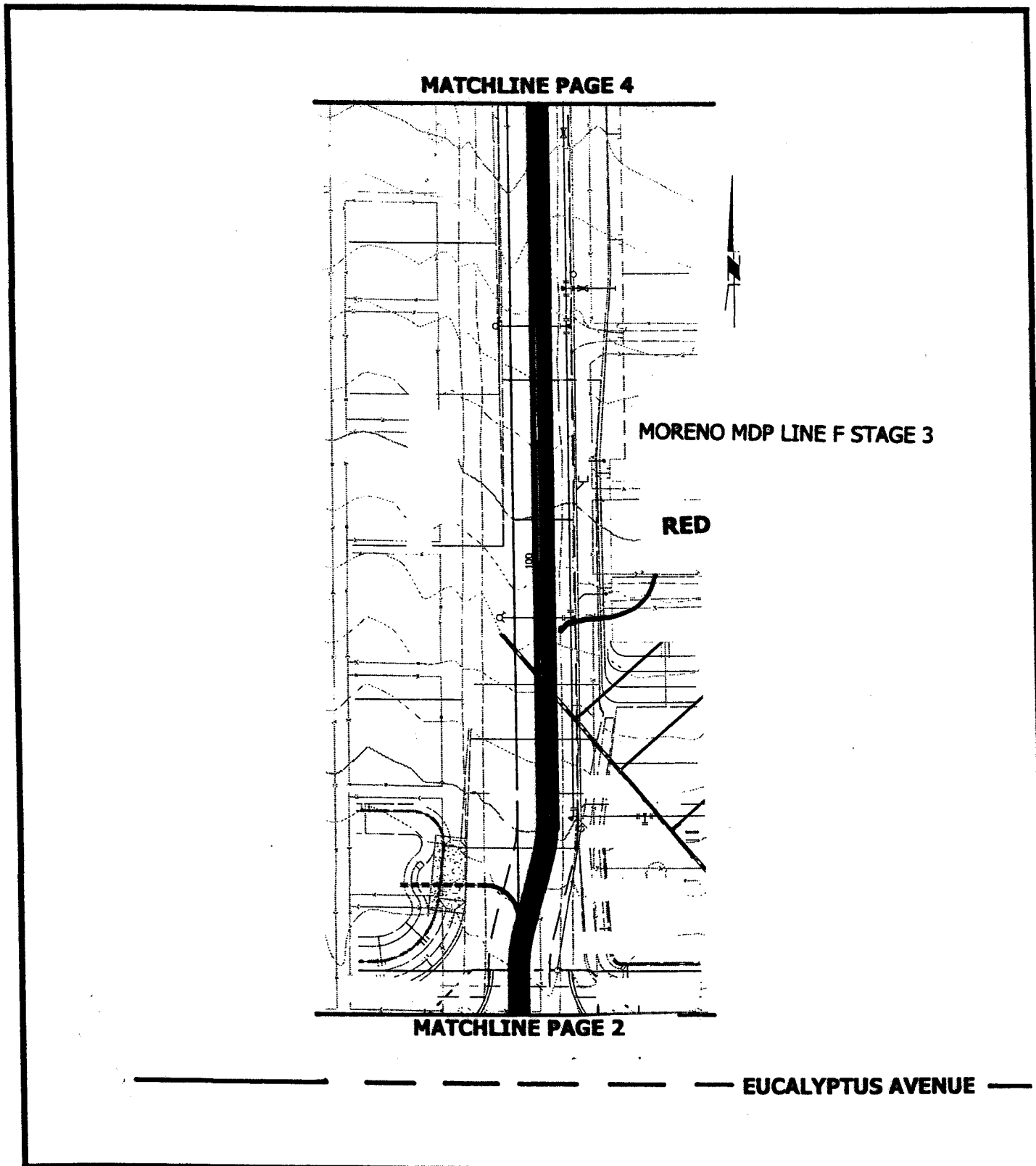


Exhibit A

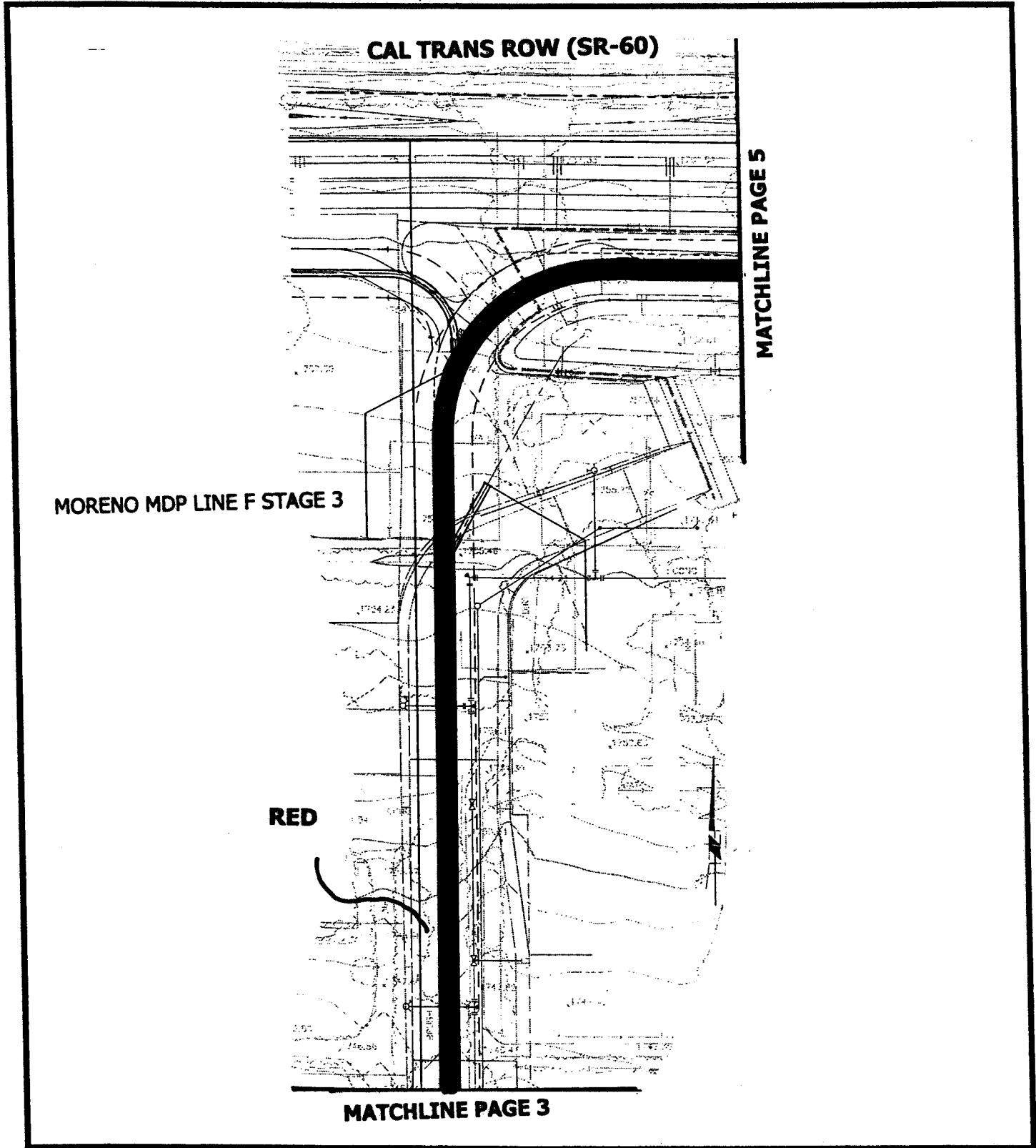
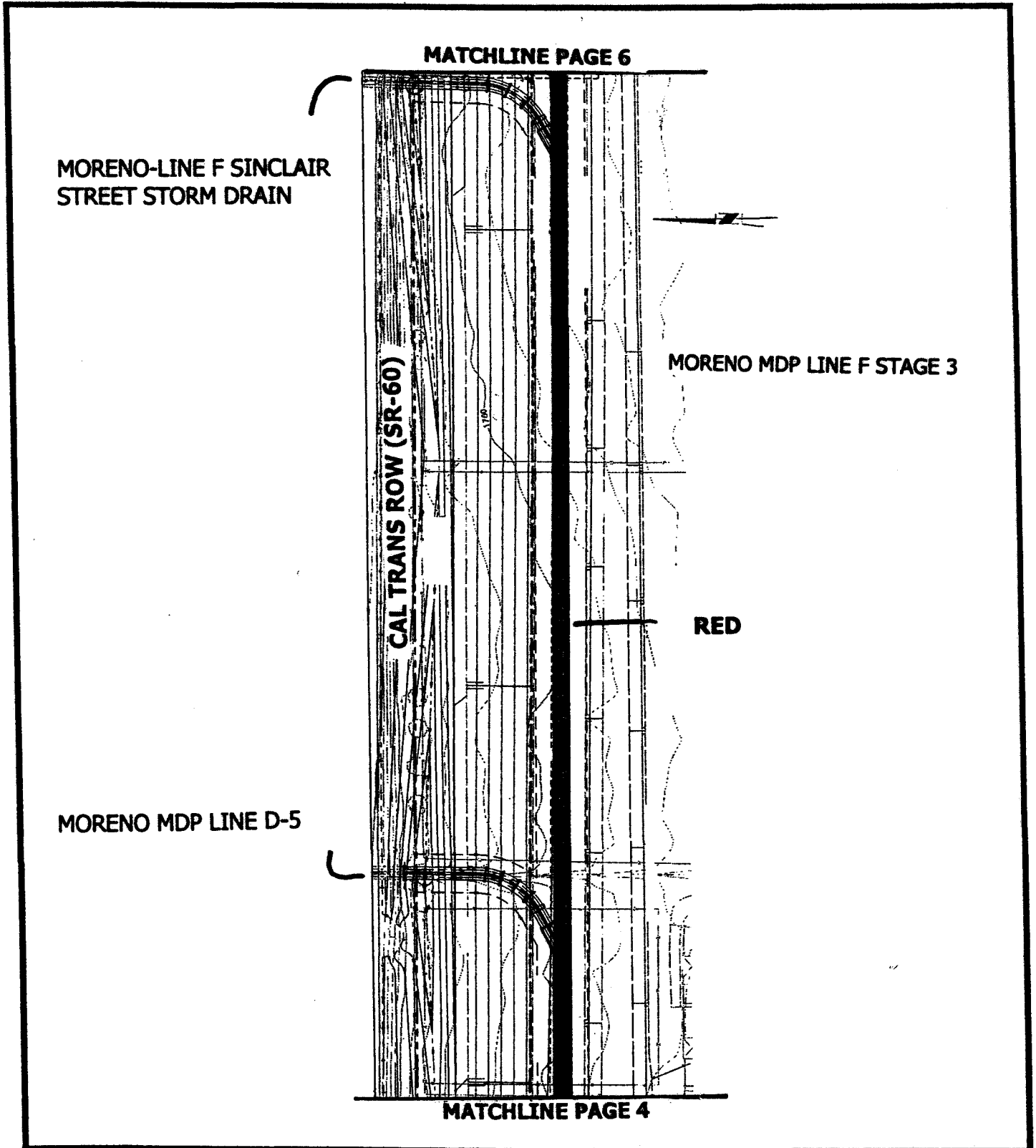


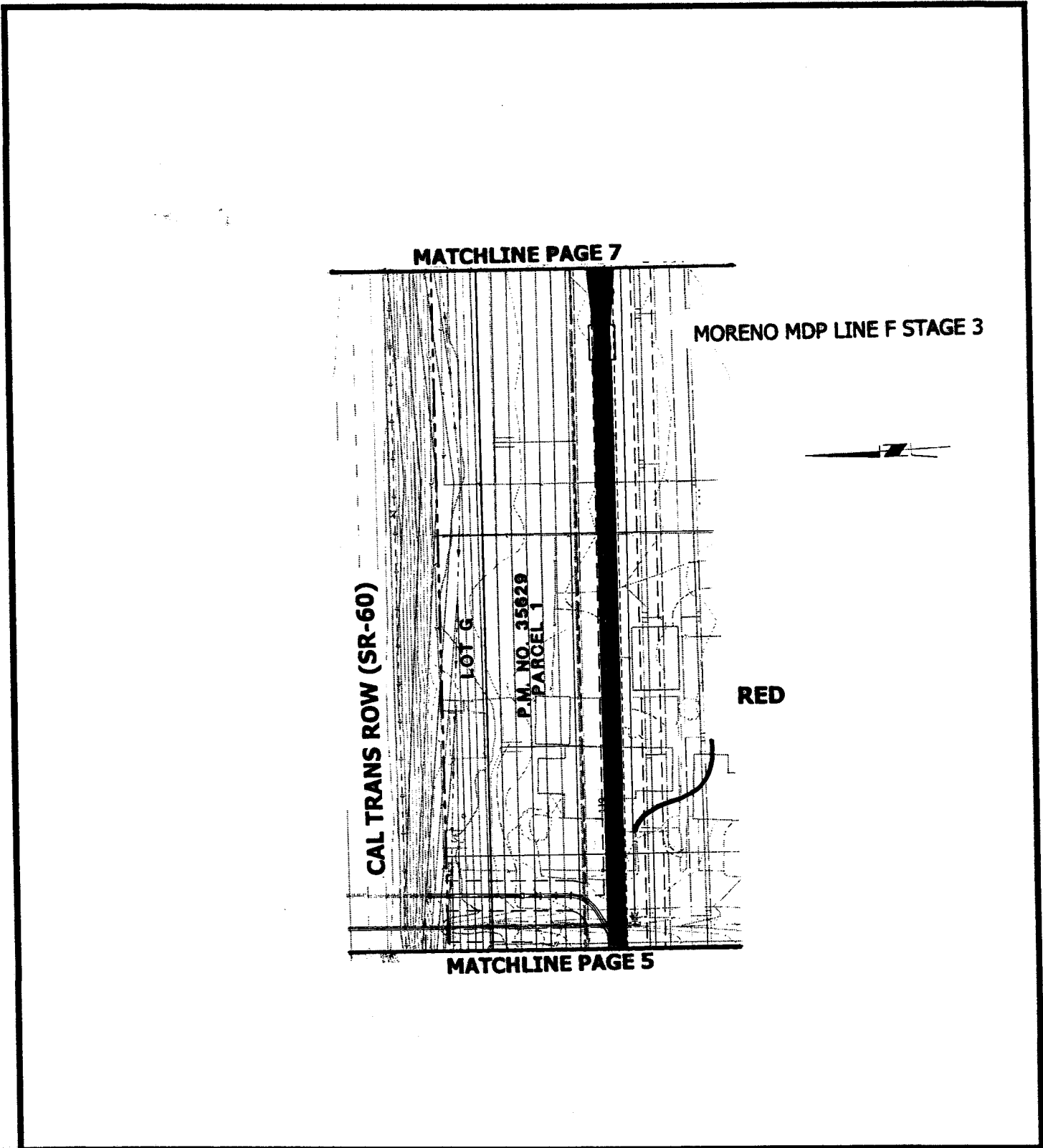
Exhibit A



Cooperative Agreement
Parcel Map 35629

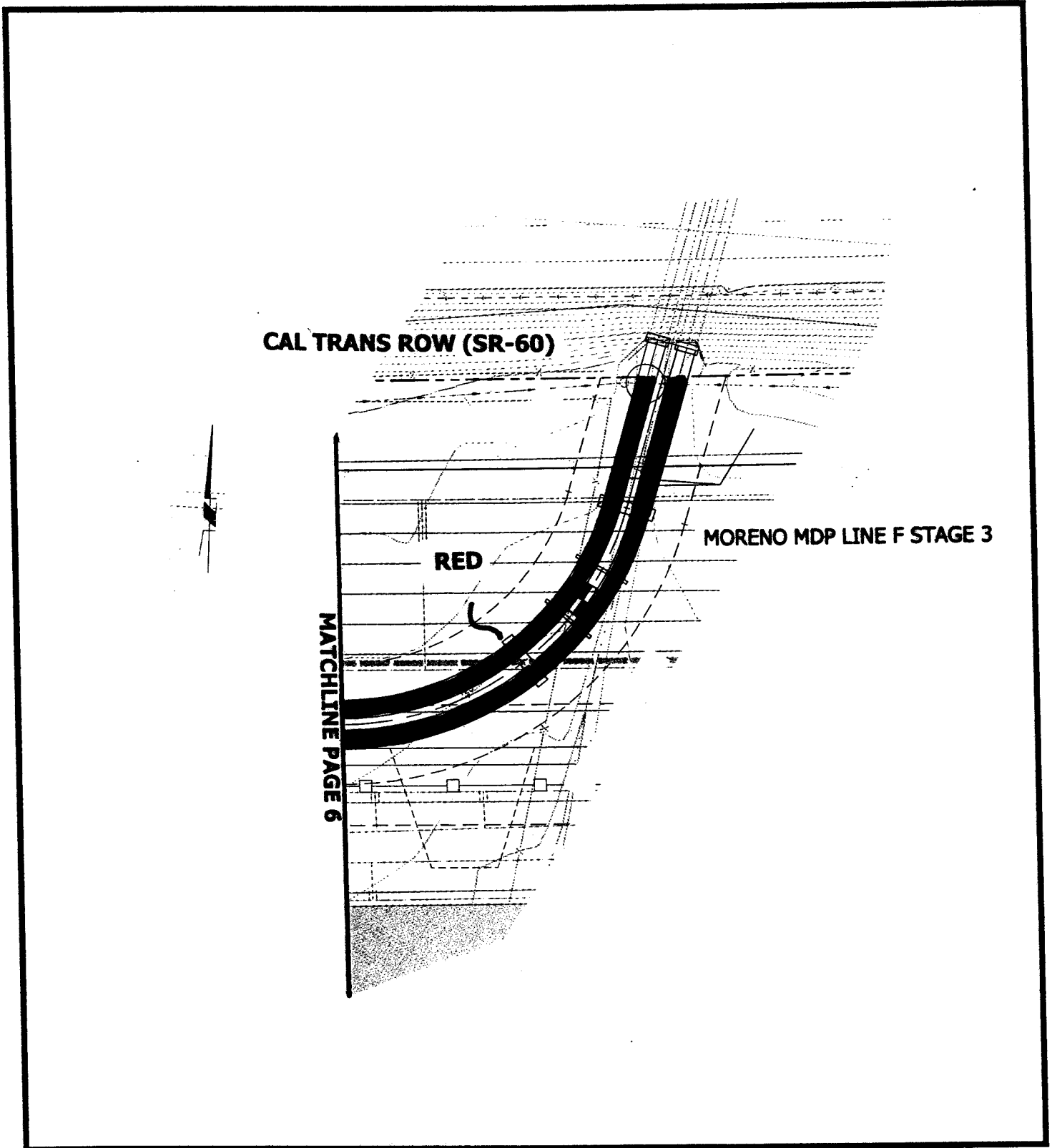
Project Numbers: 4-0-00752-03, 4-0-00749,
4-0-00741, 4-0-00742, 4-0-00743

Exhibit A



Cooperative Agreement
Parcel Map 35629
Project Numbers: 4-0-00752-03, 4-0-00749,
4-0-00741, 4-0-00742, 4-0-00743
6 of 11

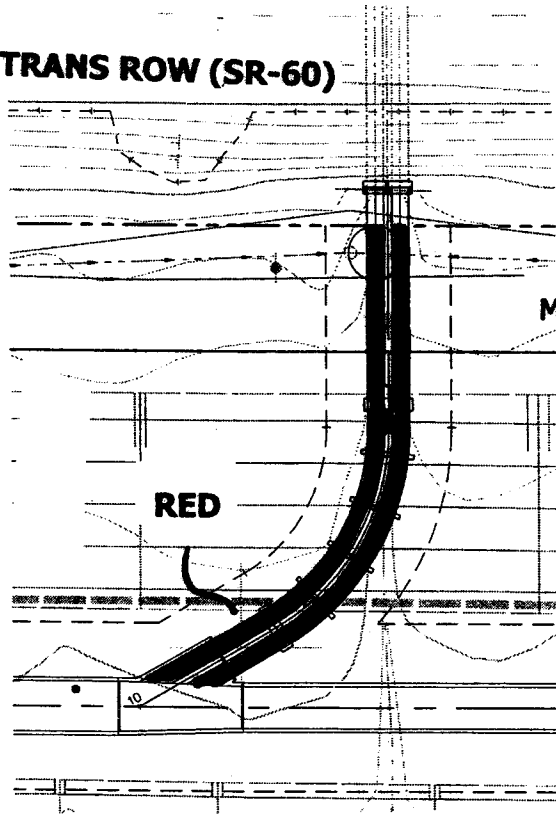
Exhibit A



Cooperative Agreement
Parcel Map 35629
Project Numbers: 4-0-00752-03, 4-0-00749,
4-0-00741, 4-0-00742, 4-0-00743
7 of 11

Exhibit A

CAL TRANS ROW (SR-60)



MORENO MDP LINE D-5

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Exhibit A

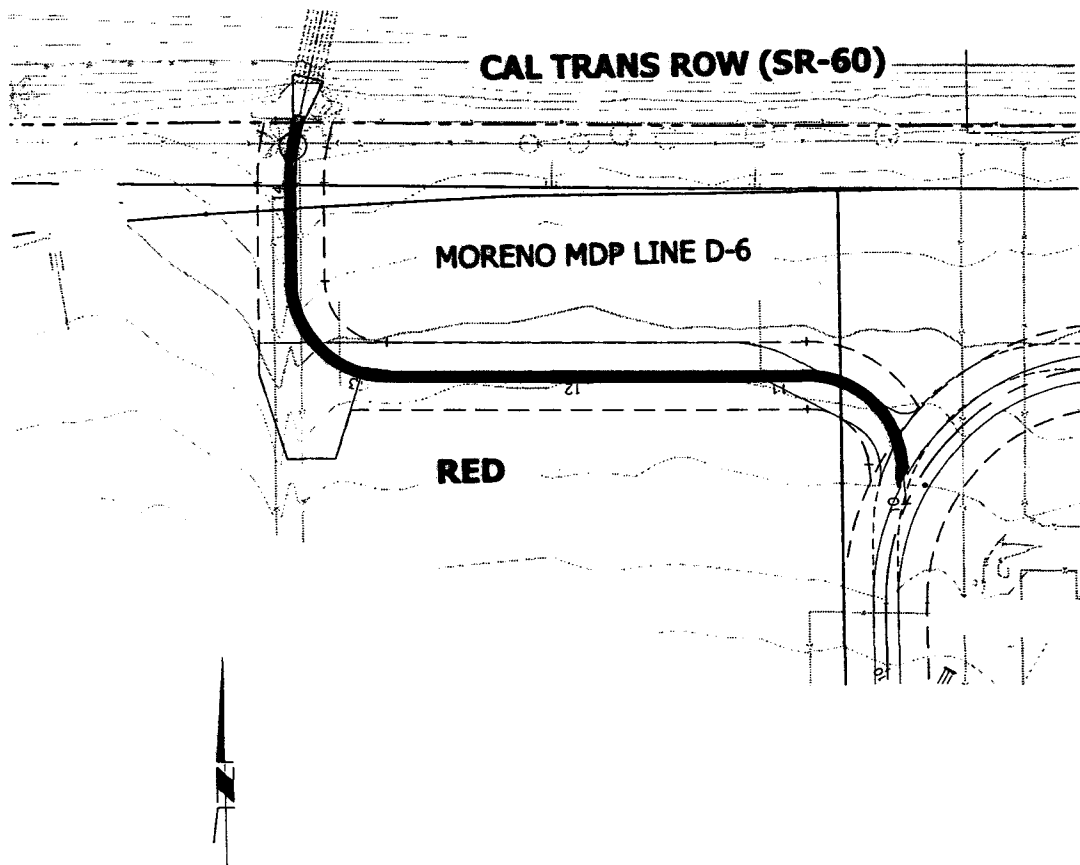
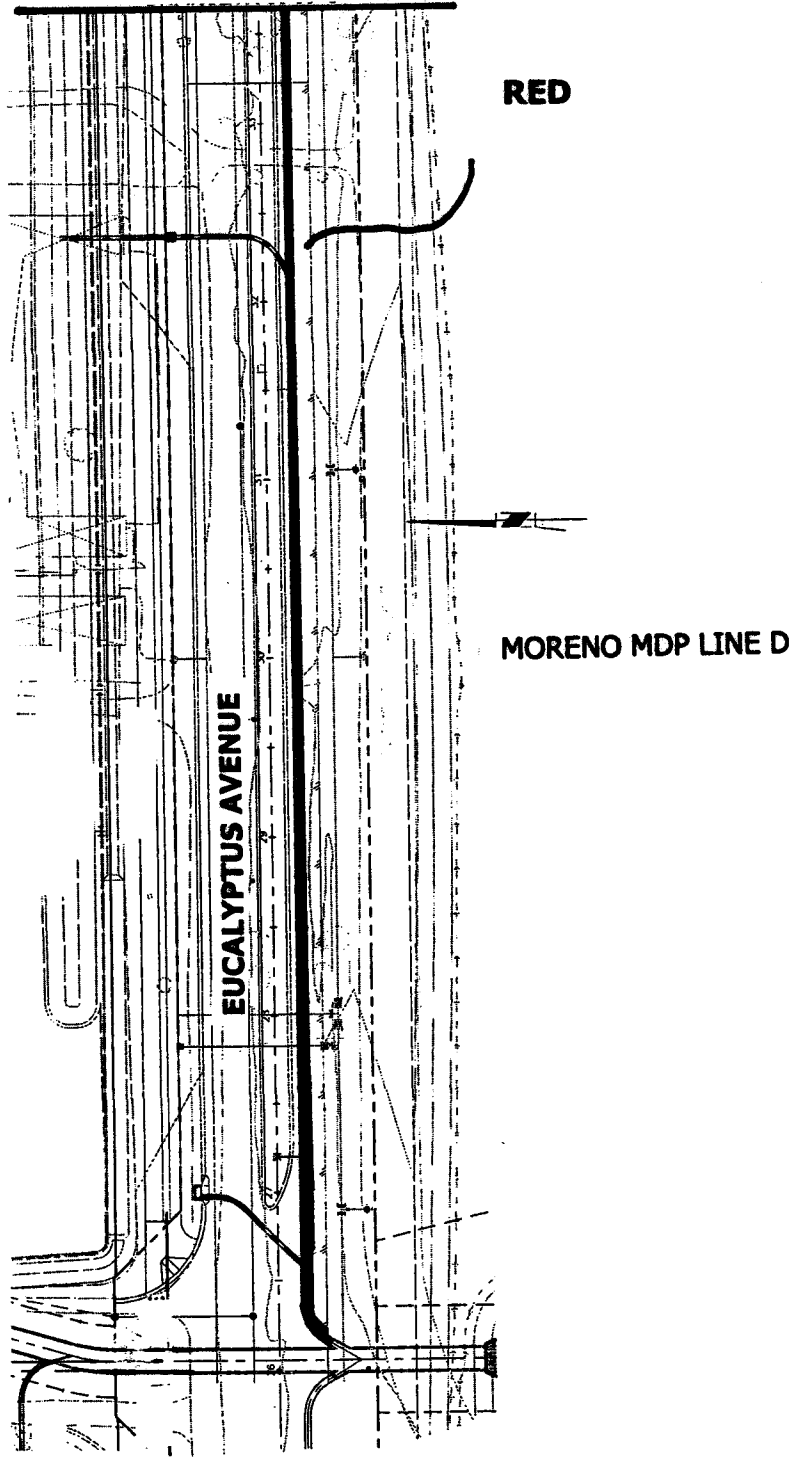


Exhibit A

MATCHLINE PAGE 11



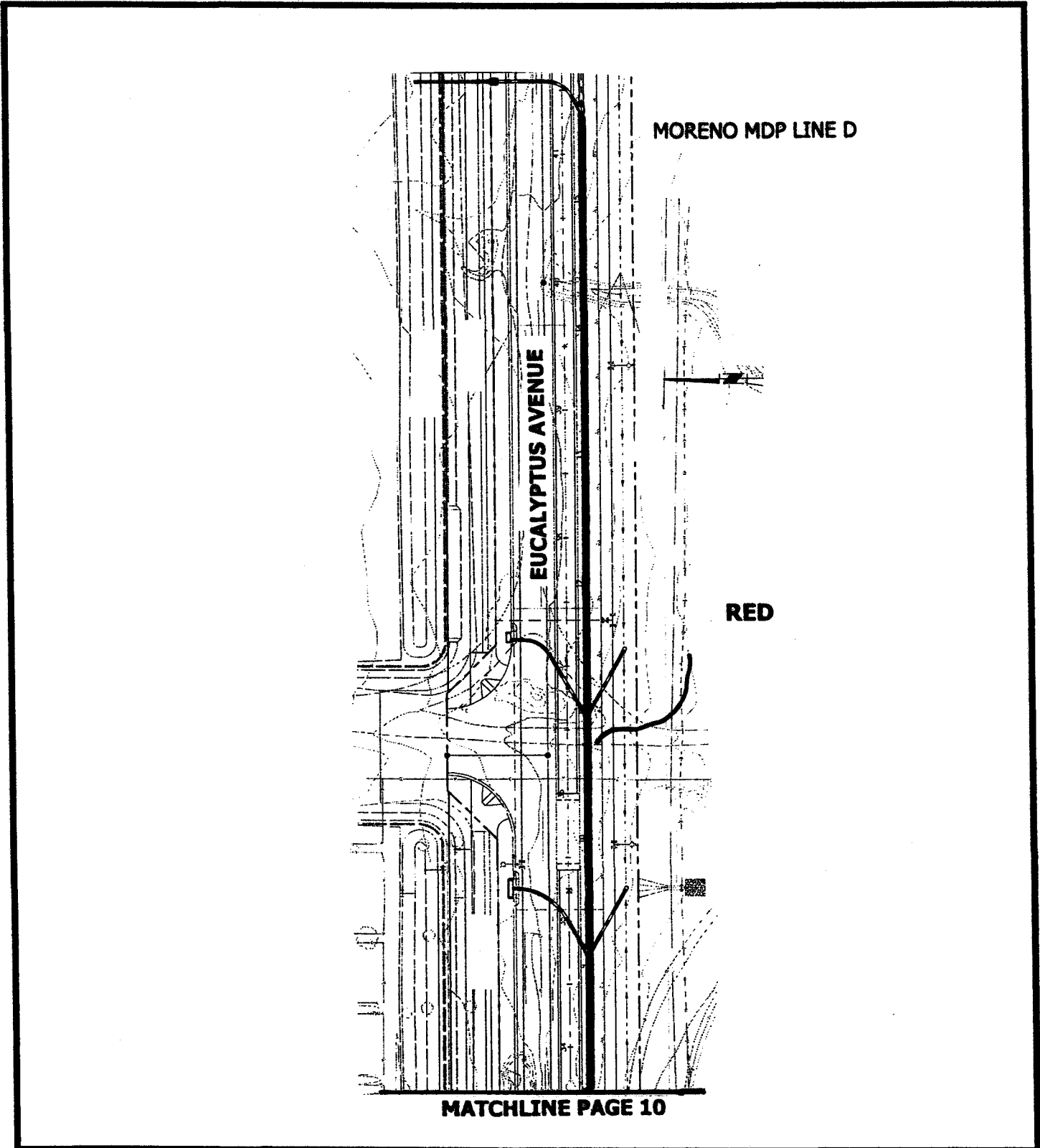
Cooperative Agreement

Parcel Map 35629

Project Numbers: 4-0-00752-03, 4-0-00749,
4-0-00741, 4-0-00742, 4-0-00743

10 of 11

Exhibit A



MATCHLINE PAGE 10

Exhibit B

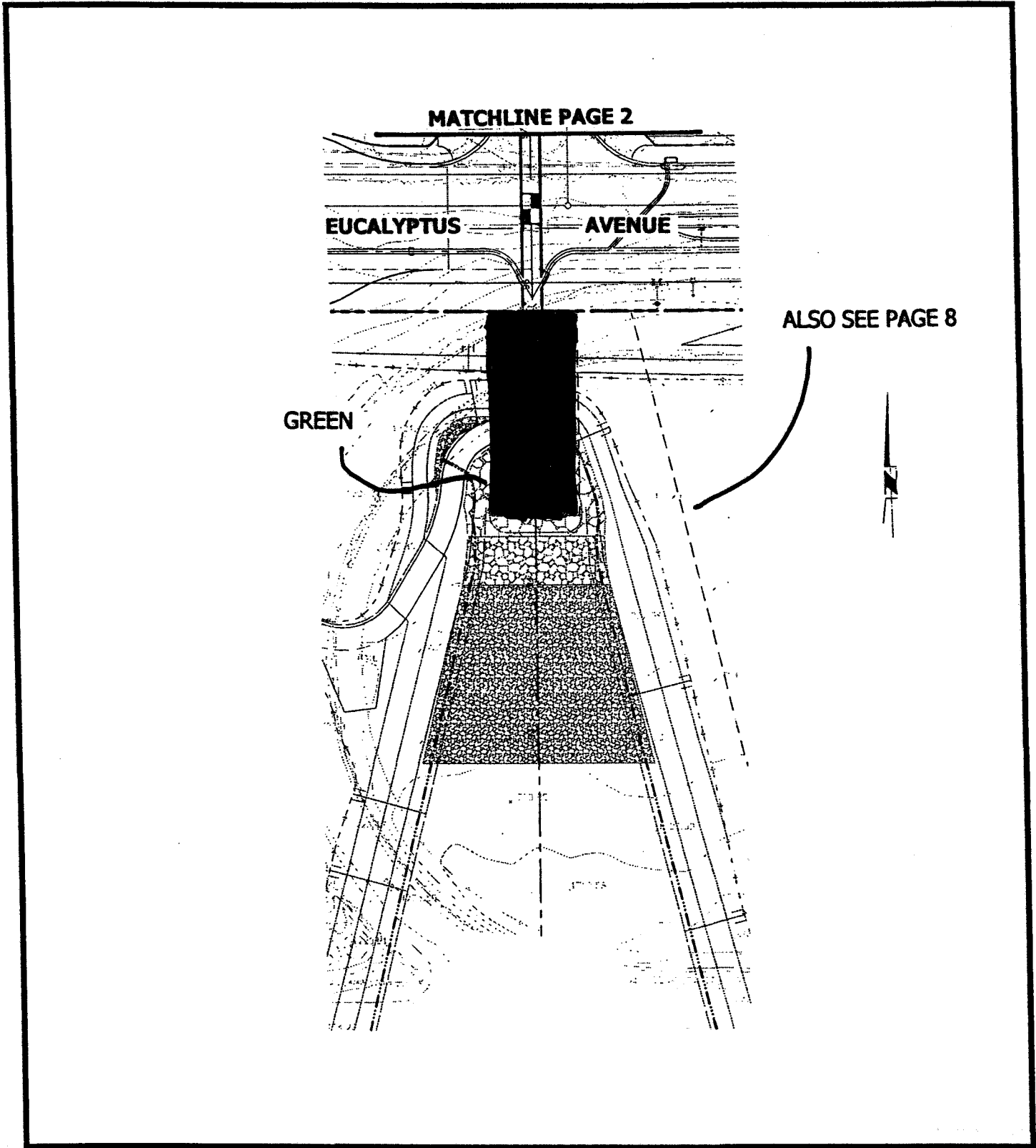
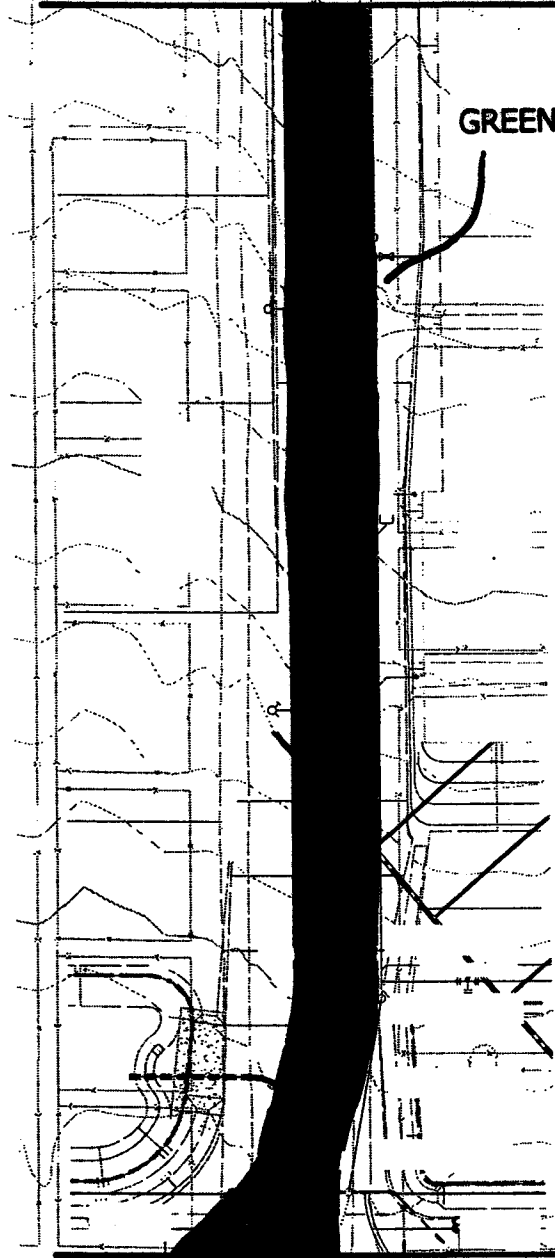


Exhibit B

MATCHLINE PAGE 3



MATCHLINE PAGE 2

Exhibit B

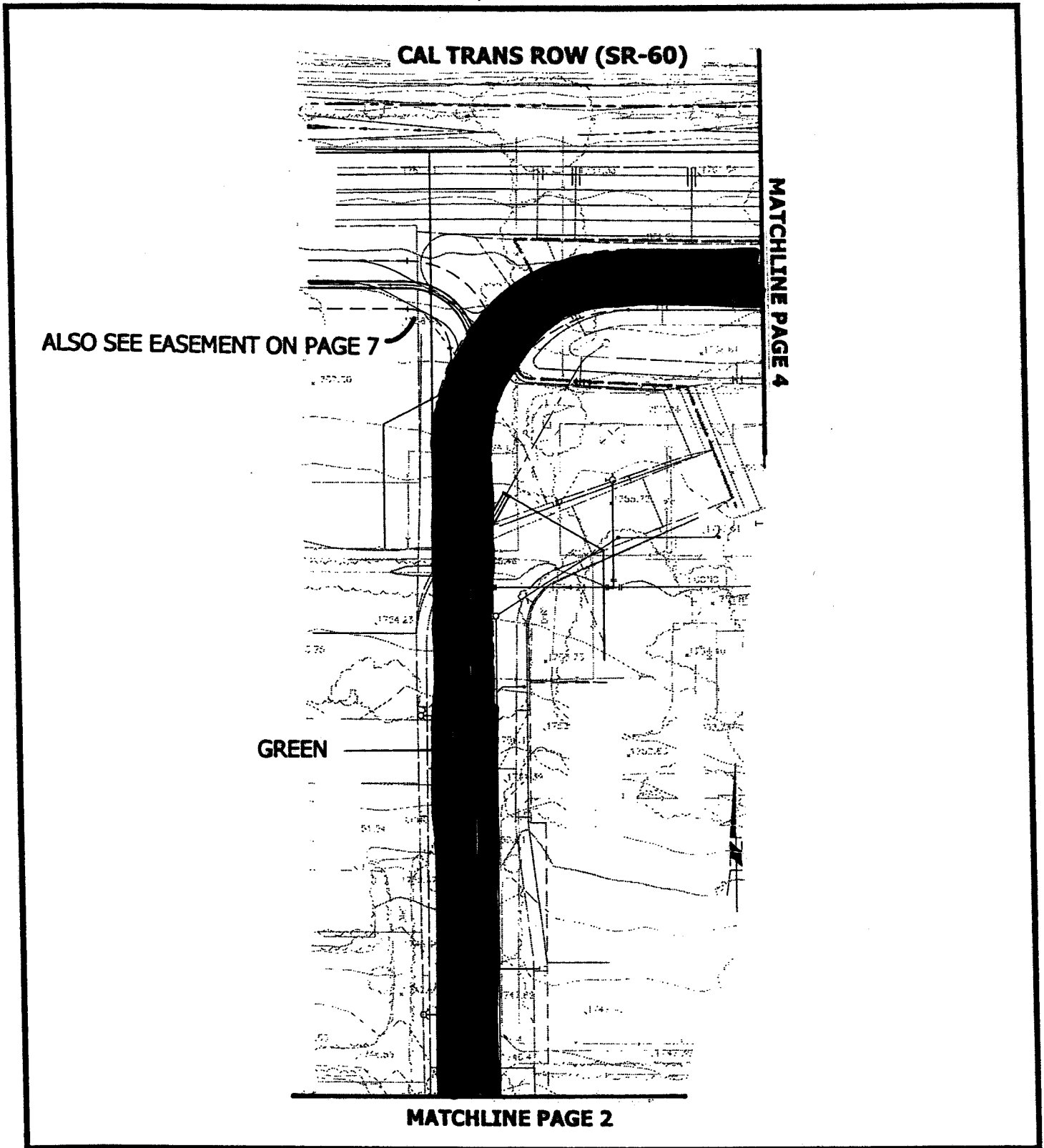


Exhibit B

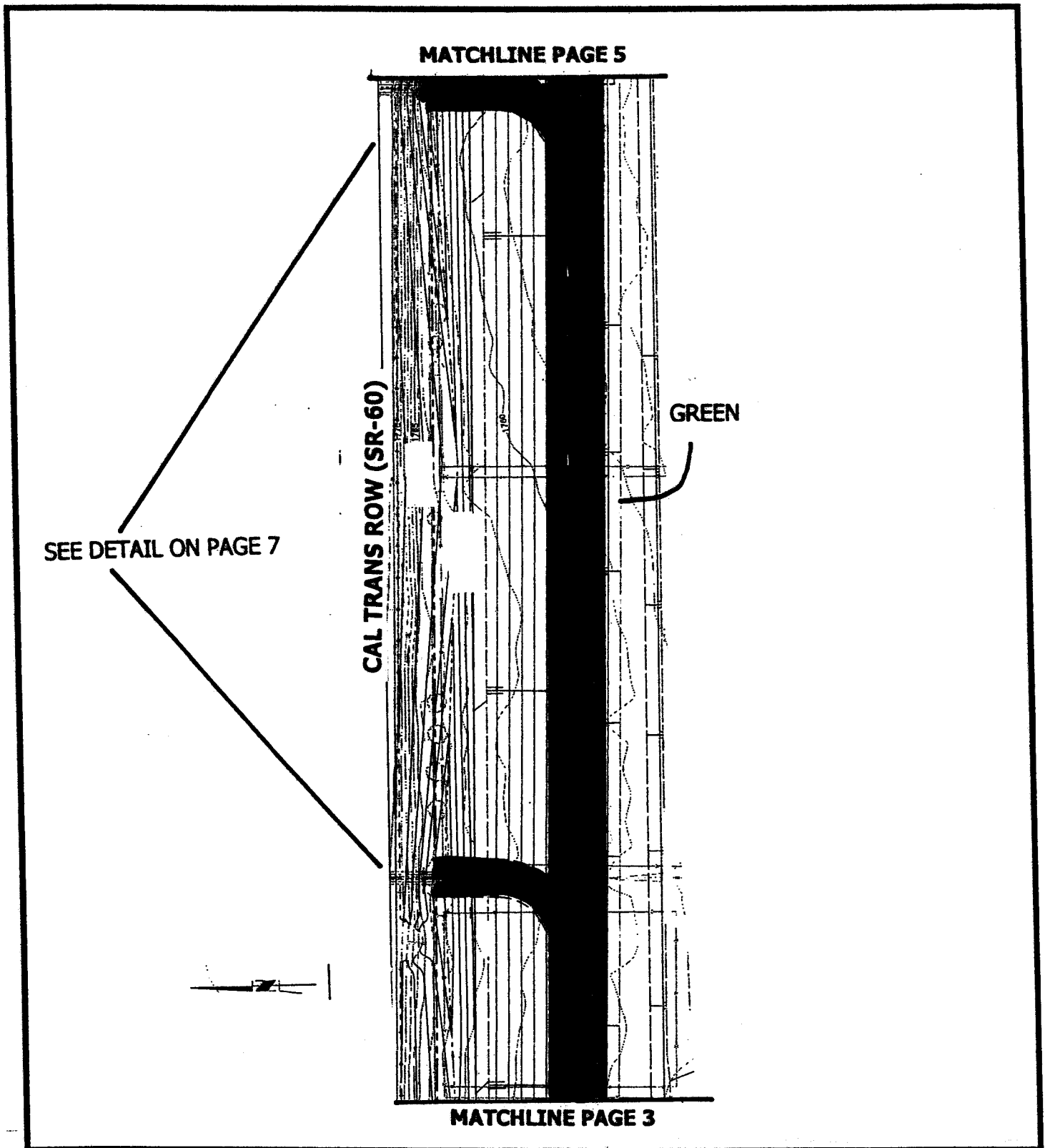


Exhibit B

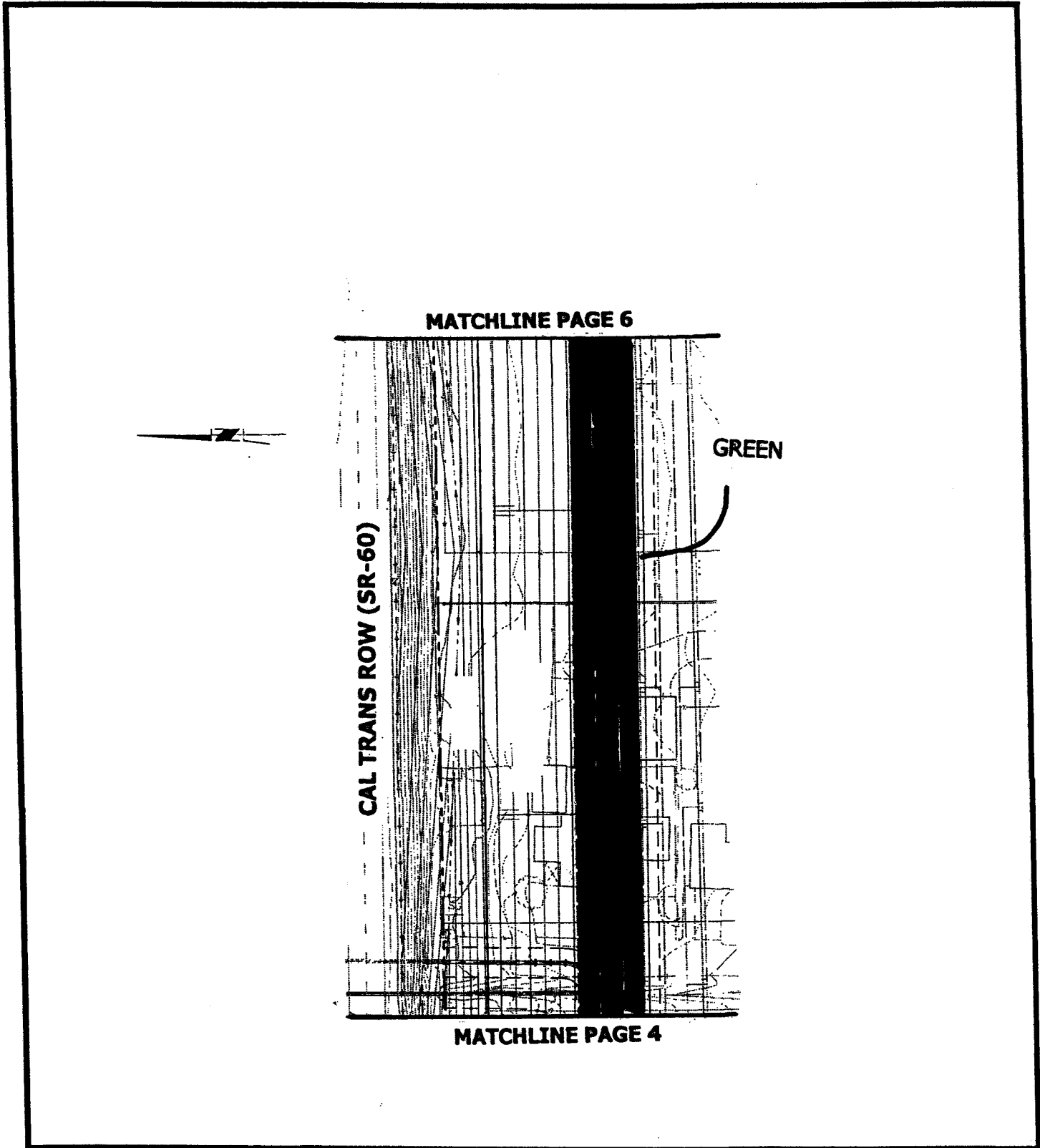


Exhibit B

CAL TRANS ROW (SR-60)

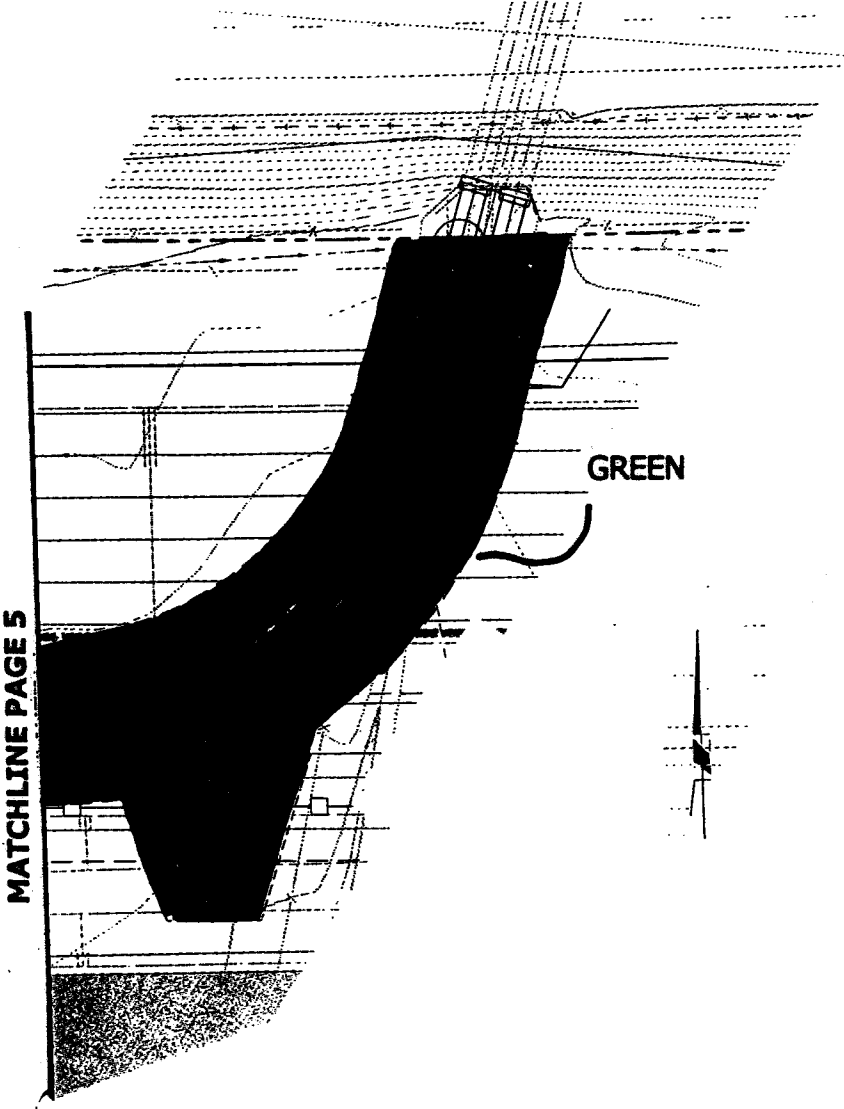


Exhibit B

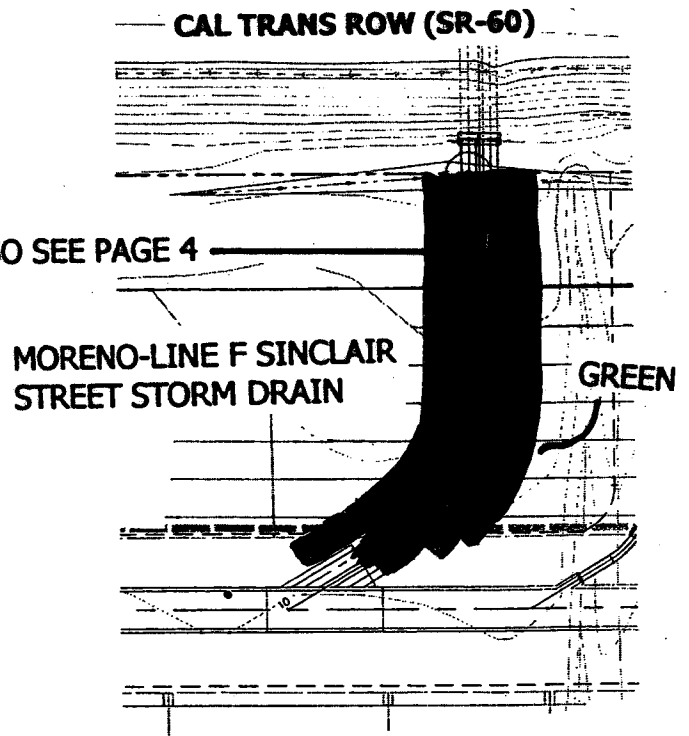
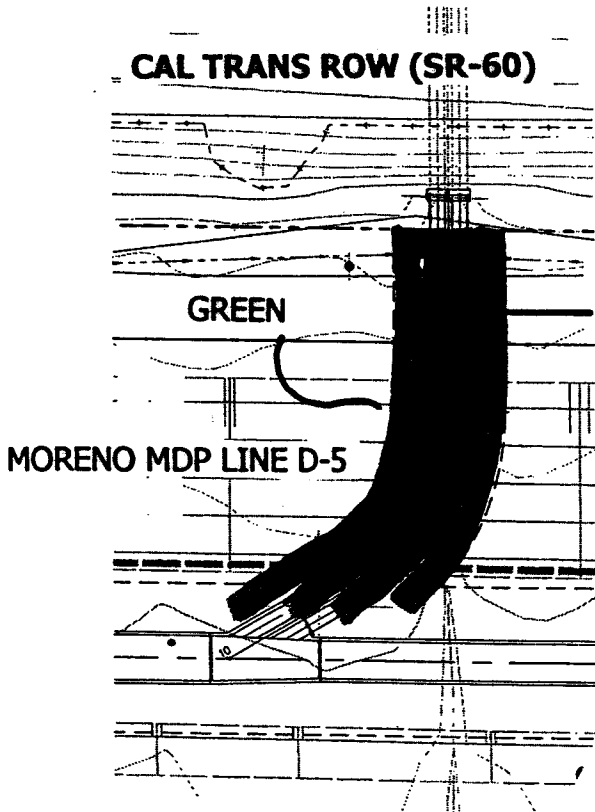
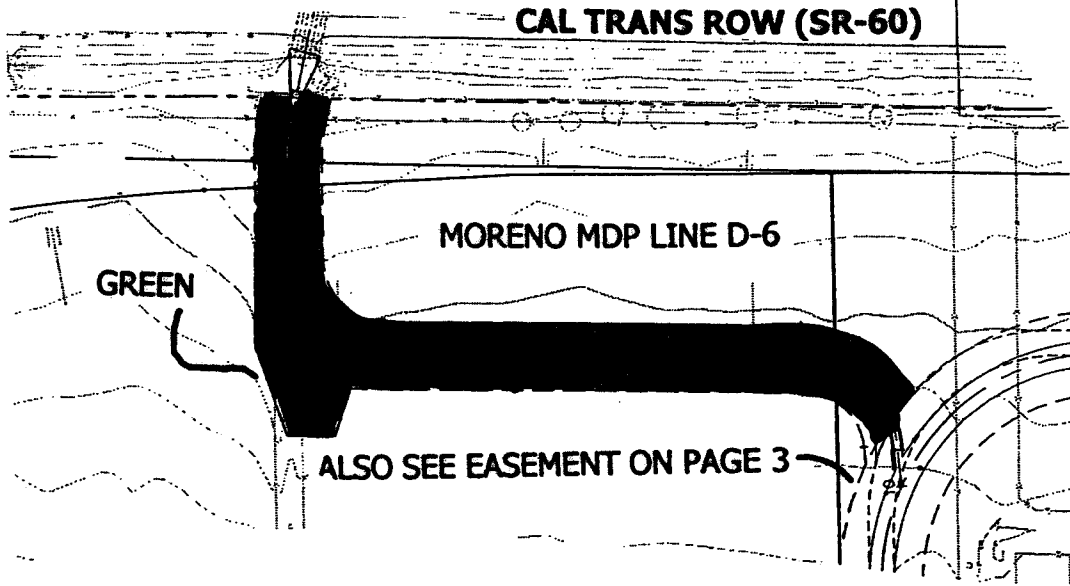


Exhibit B

