

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

303B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
June 26, 2012

SUBJECT: Menifee Valley – Eaton Lane Storm Drain
Menifee Valley – Quilt Way Storm Drain
Project Nos. 4-0-00390 and 4-0-00398
Tract Nos. 30142 and 30142-2
Cooperative Agreement
District 3/District 5

RECOMMENDED MOTION:

Approve the Cooperative Agreement between the District, the City of Menifee (City), and KB Home Coastal, Inc. (Developer) 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 flood control facilities, required as a condition for approval of Tract Nos. 30142 and 30142-2, are to be constructed by the Developer and inspected, operated and maintained by the District and City.

Continued on Page 2

KEC:bjp

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:
Michael R. Shetler

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:
NEAL RIPINS DATE

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

Prev. Agn. Ref.: | **District:** 3rd/5th | **Agenda Number:** 11.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

SUBJECT: Menifee Valley – Eaton Lane Storm Drain
Menifee Valley – Quilt Way Storm Drain
Project Nos. 4-0-00390 and 4-0-00398
Tract Nos. 30142 and 30142-2
Cooperative Agreement
District 3/District 5

SUBMITTAL DATE: June 26, 2012

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 associated with Tract Nos. 30142 and 30142-2.

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 road culverts, catch basins, inlets and outlets, laterals and connector pipes located within its rights of way.

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

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

KEC:bjp

COOPERATIVE AGREEMENT

Menifee Valley- Eaton Lane Storm Drain
Menifee Valley – Quilt Way Storm Drain
Project Nos. 4-0-00390 and 4-0-00398
(Tract Nos. 30142 and 30142-2)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the CITY OF MENIFEE, hereinafter called "CITY", and KB HOME COASTAL, INC., a California corporation, hereinafter called "DEVELOPER", hereby agree as follows:

RECITALS

A. DEVELOPER has submitted for approval Tract Nos. 30142 and 30142-2 located in the city of Menifee and as a condition for approval DEVELOPER must construct certain flood control and drainage facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The required facilities include: 1) approximately 1,431 lineal feet of underground storm drain including a certain inlet and outlet structure, hereinafter called "LINE A" as shown in concept in red on Exhibit "A" attached hereto and made a part hereof, and 2) approximately 2,051 lineal feet of underground storm drain system including certain a inlet structure, hereinafter called "LINE B", as shown in concept in green on Exhibit "A". LINE A and LINE B are hereinafter altogether called "DISTRICT DRAINAGE FACILITIES"; and

C. LINES A and B connect to separate underground storm drain facilities, hereinafter called "STAGE ONE", constructed by DEVELOPER pursuant to the provisions of a certain Amended and Restated Cooperative Agreement (recorded as Document No. 2011-0286885) of the official records of the County of Riverside, hereinafter called "STAGE ONE AGREEMENT", and

D. STAGE ONE has not been accepted by DISTRICT for ownership, operation and maintenance pursuant to the terms and conditions of said STAGE ONE AGREEMENT; and

E. Associated with the construction of DISTRICT DRAINAGE FACILITIES is the construction of certain catch basins, connector pipes and laterals located within CITY held

1 easements or rights of way, hereinafter called "APPURTENANCES". DISTRICT DRAINAGE
2 FACILITIES and APPURTENANCES are hereinafter collectively called "PROJECT"; and

3 F. DEVELOPER and CITY desire DISTRICT to accept ownership and
4 responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES.
5 Therefore, DISTRICT must review and approve DEVELOPER'S plans and specifications and
6 subsequently inspect the construction of DISTRICT DRAINAGE FACILITIES; and

7 G. DEVELOPER and DISTRICT desire CITY to accept ownership and
8 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY must
9 review and approve DEVELOPER'S plans and specifications and subsequently inspect the
10 construction of APPURTENANCES; and

11 NOW, THEREFORE, the parties hereto mutually agree as follows:

12 SECTION I

13 DEVELOPER shall:

14 1. Prepare plans and specifications for PROJECT, hereinafter called
15 "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and
16 submit to DISTRICT and CITY for their review and approval.

17 2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic
18 billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by
19 DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS,
20 review and approval of right of way and conveyance documents, and with the processing and
21 administration of this Agreement.

22 3. Deposit with DISTRICT (Attention: Business Office - Accounts
23 Receivable), at the time of providing written notice to DISTRICT of the start of DISTRICT
24 DRAINAGE FACILITIES construction as set forth in Section I.8., the estimated cost of
25 providing construction inspection for DISTRICT DRAINAGE FACILITIES, in an amount as
26 determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749,

1 including any amendments thereto, of the County of Riverside, based upon the bonded value of
2 DISTRICT DRAINAGE FACILITIES.

3 4. Secure, at its sole cost and expense, all necessary licenses, agreements,
4 permits and rights of entry as may be needed for the construction, inspection, operation and
5 maintenance of PROJECT. DEVELOPER shall furnish DISTRICT and CITY, at the time of
6 providing written notice to DISTRICT of the start of construction as set forth in Section I.8. or
7 not less than twenty (20) days prior to recordation of the final map for Tract Nos. 30142 or
8 30142-2, whichever occurs first, with sufficient evidence of DEVELOPER having secured such
9 necessary licenses, agreements, permits and rights of entry, as determined and approved by
10 DISTRICT.

11 5. Furnish DISTRICT with copies of all permits, approvals or agreements
12 required by any Federal or State various resource and/or regulatory agency for the construction,
13 operation and maintenance of PROJECT. Such documents include but are not limited to those
14 issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board,
15 California State Department of Fish and Game and State Water Resources Control Board.

16 6. Provide CITY, at the time of providing written notification to DISTRICT of
17 the start of construction as set forth in Section I.8., or not less than twenty (20) days prior to
18 recordation of the final map for Tract Nos. 30142 or 30142-2, whichever occurs first, with
19 faithful performance and payment bonds, each in the amount of one hundred percent (100%) of
20 the estimated cost for construction of PROJECT as determined by DISTRICT and CITY. The
21 surety, amount and form of the bonds shall be subject to the approval of DISTRICT and CITY.
22 The bonds shall remain in full force and effect until PROJECT is accepted by DISTRICT as
23 complete, at which time the bond amount may be reduced to ten percent (10%) for a period of
24 one year to guarantee against any defective work, labor or materials.

25 7. Grant DISTRICT and CITY, by execution of this Agreement, the right to
26 enter upon DEVELOPER'S property where necessary and convenient for the purpose of gaining
27 access to and performing inspection service for the construction of PROJECT as set forth herein.
28

1 8. Notify DISTRICT in writing (Attention: Administrative Services) at least
2 twenty (20) days prior to the start of construction of DISTRICT DRAINAGE FACILITIES.
3 Construction shall not begin on any element of DISTRICT DRAINAGE FACILITIES for any
4 reason whatsoever, until DISTRICT has issued to DEVELOPER a written Notice to Proceed
5 authorizing DEVELOPER to initiate construction.

6 9. Obtain and provide DISTRICT, at the time of providing written notification
7 to DISTRICT of the start of construction as set forth in Section I.8. herein, or not less than
8 twenty (20) days prior to the recordation of the final map for Tract Nos. 30142 or 30142-2,
9 whichever occurs first, with duly executed Irrevocable Offer(s) of Dedication to the public for
10 flood control and drainage purposes, including ingress and egress, for the rights of way deemed
11 necessary by DISTRICT for the construction, inspection, operation and maintenance of
12 DISTRICT DRAINAGE FACILITIES as shown in concept, cross-hatched in blue and outlined
13 in purple on Exhibit "B" attached hereto and made a part hereof. The Irrevocable Offer(s) of
14 Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and
15 equitable owners of the property described in the offer(s).

16 10. Furnish DISTRICT, when submitting the Irrevocable Offer(s) of Dedication
17 as set forth in Section I.9., with Preliminary Reports on Title dated not more than thirty (30) days
18 prior to date of submission for all the property described in the Irrevocable Offer(s) of
19 Dedication.

20 11. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
21 the start of construction as set forth in Section I.8., with a complete list of all contractors and
22 subcontractors to be performing work on DISTRICT DRAINAGE FACILITIES, including the
23 corresponding license number and license classification of each. At such time, DEVELOPER
24 shall further identify in writing its designated superintendent for construction of DISTRICT
25 DRAINAGE FACILITIES.

26 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of
27 the start of construction as set forth in Section I.8., a construction schedule which shall show the
28

1 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry on the
2 various parts of work, including estimated start and completion dates. As the construction
3 progresses, DEVELOPER shall update said construction schedule as requested by DISTRICT.

4 13. Furnish DISTRICT with the final mylar PROJECT plans, approved by
5 DISTRICT and CITY as appropriate, and assign their ownership to DISTRICT prior to the start
6 of construction of DISTRICT DRAINAGE FACILITIES.

7 14. Comply with all Cal/OSHA safety regulations including regulations
8 concerning confined space and maintain a safe working environment for DEVELOPER, CITY
9 and DISTRICT employees on the site.

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

17 16. Not permit any change to or modification of IMPROVEMENT PLANS
18 without the prior written permission and consent of DISTRICT.

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

22 18. Commencing on the date notice is given pursuant to Section I.8. and
23 continuing until DISTRICT accepts DISTRICT DRAINAGE FACILITIES as complete for
24 ownership, operation and maintenance:

- 25 (a) Provide and maintain or cause its contractor(s) to provide and maintain
26 comprehensive liability insurance coverage which shall protect
27 DEVELOPER from claims and damages for personal injury, including
28

1 accidental and wrongful death, as well as from claims for property
2 damage which may arise from DEVELOPER'S construction of
3 PROJECT or the performance of its obligations hereunder, whether
4 such construction or performance be by DEVELOPER, by any of its
5 contractors, subcontractors, or by anyone employed directly or
6 indirectly by any of them. Such insurance shall name DISTRICT and
7 CITY as additional insureds with respect to this Agreement and the
8 obligations of DEVELOPER hereunder. Such insurance shall provide
9 for limits of not less than two million dollars (\$2,000,000) per
10 occurrence.

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



1 Failure to maintain the insurance required by this paragraph shall be deemed
2 a material breach of this Agreement and shall authorize and constitute authority for DISTRICT,
3 at its sole discretion, to proceed to perform the remaining work pursuant to Section IV.3.

4 19. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole
5 cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

6 20. Upon completion of construction of PROJECT, but prior to DISTRICT
7 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
8 convey, or cause to be conveyed to DISTRICT flood control easement(s), including ingress and
9 egress, in a form approved by DISTRICT, to:

- 10 a. the rights of way as shown in concept cross-hatched in blue on Exhibit
11 "B"; and
12 b. a blanket right of ingress and egress as shown in concept outlined in
13 purple on Exhibit "B".

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

20 22. Within two weeks of completing PROJECT construction, provide
21 DISTRICT with written notice (Attention: Contract Administration Section) that PROJECT
22 construction is substantially complete and requesting that DISTRICT conduct a final inspection
23 of DISTRICT DRAINAGE FACILITIES.

24 23. Accept ownership and sole responsibility for the operation and maintenance
25 of PROJECT until such time as i) both DISTRICT and CITY accept their respective ownership
26 and responsibility for operation and maintenance of STAGE ONE pursuant to the terms and
27 conditions of said STAGE ONE AGREEMENT, ii) DISTRICT accepts ownership and
28

1 responsibility for operation and maintenance of DISTRICT DRAINAGE FACILITIES, and iii)
2 CITY accepts ownership and responsibility for operation and maintenance of
3 APPURTENANCES. Further, it is mutually understood by the parties hereto that prior to
4 DISTRICT acceptance of ownership and responsibility for the operation and maintenance of
5 DISTRICT DRAINAGE FACILITIES, PROJECT shall be in a satisfactorily maintained
6 condition as mutually agreed by DISTRICT and CITY.

7 24. Pay, if suit is brought upon this Agreement or any bond guaranteeing the
8 completion of PROJECT, all costs and reasonable expenses and fees, including reasonable
9 attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees
10 shall be computed as costs and included in any judgment rendered.

11 25. Upon completion of construction of PROJECT but prior to DISTRICT'S
12 acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance,
13 DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered
14 in the State of California, shall provide DISTRICT a redlined "RECORD DRAWING" copy of
15 plans for PROJECT. After DISTRICT approval of the redlined RECORD DRAWING,
16 DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes
17 onto DISTRICT original mylars at DISTRICT'S office, after which, the engineer shall review,
18 stamp and sign said original mylars RECORD DRAWING.

19 26. Ensure that all work performed pursuant to this Agreement by
20 DEVELOPER, its 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 and
22 Professions Code, and Water Code. DEVELOPER shall be sole responsible for all costs
23 associated with compliance with applicable laws and regulations.

24 SECTION II

25 DISTRICT shall:

26 1. Review and approve IMPROVEMENT PLANS prior to the start of
27 DISTRICT DRAINAGE FACILITIES construction.
28

1 2. Provide CITY an opportunity to review and approve IMPROVEMENT
2 PLANS prior to DISTRICT'S final approval.

3 3. Upon execution of this Agreement, record or cause to be recorded, a copy of
4 this Agreement in the Official Records of the Riverside County Recorder.

5 4. Record, or cause to be recorded, the Irrevocable Offer(s) of Dedication
6 provided by DEVELOPER pursuant to Section I.9.

7 5. Inspect the construction of DISTRICT DRAINAGE FACILITIES.

8 6. Keep an accurate accounting of all DISTRICT costs associated with the
9 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and
10 conveyance documents and the processing and administration of this Agreement.

11 7. Keep an accurate accounting of all DISTRICT construction inspection costs,
12 and within forty-five (45) days after DISTRICT acceptance of DISTRICT DRAINAGE
13 FACILITIES construction as being complete, submit a final cost statement to DEVELOPER. If
14 the deposit, as set forth in Section I.3. exceeds such costs, DISTRICT shall reimburse
15 DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of
16 DISTRICT DRAINAGE FACILITIES construction as being complete. If at any time the costs
17 exceed the deposit or are anticipated by DISTRICT to exceed the deposit, DEVELOPER shall
18 pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete
19 DISTRICT DRAINAGE FACILITIES, within thirty (30) days after receipt of billing from
20 DISTRICT.

21 8. Accept ownership and responsibility for the operation and maintenance of
22 DISTRICT DRAINAGE FACILITIES, upon (i) DISTRICT and CITY acceptance of their
23 respective roles and responsibilities for the ownership, operation and maintenance of STAGE
24 ONE pursuant to the provisions of the STAGE ONE AGREEMENT, (ii) DISTRICT acceptance
25 of PROJECT construction as complete, (iii) recordation of all conveyance documents described
26 in Section I.20., and (iv) acceptance by CITY of all street rights of way as deemed necessary by
27 DISTRICT and CITY for the operation and maintenance of PROJECT.
28

SECTION IV

1
2 It is further mutually agreed:

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

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

10 3. DEVELOPER shall commence construction of DISTRICT DRAINAGE
11 FACILITIES within twenty-four (24) months after execution of this Agreement and shall
12 complete construction within ninety (90) consecutive calendar days after commencing work on
13 DISTRICT DRAINAGE FACILITIES. It is expressly understood that failure of DEVELOPER
14 to complete the construction work within the said ninety (90) consecutive calendar days shall
15 constitute authority for DISTRICT to perform the remaining work and require DEVELOPER'S
16 surety to pay to CITY the penal sum of any and all bonds. In which case, CITY shall
17 subsequently reimburse DISTRICT for DISTRICT costs incurred.

18 4. If DEVELOPER fails to commence construction of DISTRICT
19 DRAINAGE FACILITIES within twenty-four (24) months after execution of this Agreement,
20 then DISTRICT reserves the right to withhold issuance of the Notice to Proceed pending a
21 review of the existing site conditions as they exist at the time DEVELOPER provides written
22 notification to DISTRICT of the start of construction as set forth in Section I.8. In the event of a
23 change in the existing site conditions that materially affects PROJECT function or DISTRICT'S
24 ability to operate and maintain DISTRICT DRAINAGE FACILITIES, DISTRICT may require
25 DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT.

26 5. Except as otherwise provided herein, DISTRICT shall endeavor to issue
27 DEVELOPER a Notice to Proceed within twenty (20) days of receipt of DEVELOPER'S
28

1 complete written notice as set forth in Section I.8.; however, DISTRICT'S construction
2 inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff
3 availability.

4 In the event DEVELOPER wishes to expedite issuance of a Notice to
5 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at
6 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation
7 of the individual's credentials and experience to DISTRICT for review and, if appropriate,
8 approval. DISTRICT shall review the individual's qualifications and experience and, upon
9 approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be
10 authorized to act on DISTRICT'S behalf on all PROJECT construction and quality control
11 matters. If DEVELOPER'S initial construction inspection deposit furnished pursuant to Section
12 I.3. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to
13 eighty percent (80%) of DEVELOPER'S initial inspection deposit within forty-five (45) days of
14 DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand
15 dollars (\$10,000) shall be retained on account.

16 6. Construction of DISTRICT DRAINAGE FACILITIES shall be on a five (5)
17 day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT designated
18 legal holidays, unless otherwise approved in writing by DISTRICT. If DEVELOPER feels it is
19 necessary to work more than the normal forty (40) hour work week or on holidays,
20 DEVELOPER shall make a written request for permission from DISTRICT to work the
21 additional hours. The request shall be submitted to DISTRICT at least 72 hours prior to the
22 requested additional work hours and state the reasons for the overtime and the specific time
23 frames required. The decision of granting permission for overtime work shall be made by
24 DISTRICT at its sole discretion and shall be final. If permission is granted by DISTRICT,
25 DEVELOPER will be charged the cost incurred at the overtime rates for additional inspection
26 time required in connection with the overtime work in accordance with Ordinance Nos. 671 and
27 749, including any amendments thereto, of the County of Riverside.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. DEVELOPER shall not request DISTRICT or CITY to accept any portion of DISTRICT DRAINAGE FACILITIES or APPURTENANCES for operation and maintenance until DISTRICT determines that construction of PROJECT is complete in accordance with Section II.8. herein.

8. DEVELOPER shall indemnify and hold harmless DISTRICT and CITY (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DEVELOPER'S (including its officers, employees, subcontractors and agents) 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) liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance or regulation caused by the diversion of waters from the natural drainage patterns or the discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature whatsoever.

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

With respect to any of DEVELOPER'S indemnification requirements, DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such claim, proceeding or action without the prior consent of DISTRICT and CITY; provided, however, that any such adjustment, settlement

1 or compromise in no manner whatsoever limits or circumscribes DEVELOPER'S
2 indemnification obligations to DISTRICT or CITY.

3 DEVELOPER'S indemnification obligations shall be satisfied when
4 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal (or
5 similar document) relieving DISTRICT or CITY from any liability for the claim, proceeding or
6 action involved.

7 The specified insurance limits required in this Agreement shall in no way
8 limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless DISTRICT
9 and CITY from third party claims.

10 In the event there is conflict between this section and California Civil Code
11 Section 2782, this section shall be interpreted to comply with California Civil Code Section
12 2782. Such interpretation shall not relieve the DEVELOPER from indemnifying DISTRICT or
13 CITY to the fullest extent allowed by law.

14 9. Any waiver by DISTRICT or CITY of any breach of any one or more of the
15 terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach
16 of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require
17 exact, full and complete compliance with any terms of this Agreement shall not be construed as
18 in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement
19 hereof.

20 10. If any provision in this Agreement is held by a court of competent
21 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless
22 continue in full force without being impaired or invalidated in any way.

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

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

27
28

1 RIVERSIDE CITY FLOOD CONTROL
2 AND WATER CONSERVATION DISTRICT
3 1995 Market Street
4 Riverside, CA 92501

CITY OF MENIFEE
29714 Haun Drive
Menifee, CA 92586
Attn: City Manager

3 KB HOME COASTAL, INC.
4 36310 Inland Valley Drive
5 Wildomar, CA 92595
6 Attn: Tim Roberts

7 13. Any action at law or in equity brought by any of the parties hereto for the
8 purpose of enforcing a right or rights provided for by this Agreement, shall be tried in a court of
9 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
10 waive all provisions of law providing for a change of venue in such proceedings to any other
11 county.

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

17 15. The rights and obligations of DEVELOPER shall inure to and be binding
18 upon all heirs, successors and assignees.

19 16. DEVELOPER shall not assign or otherwise transfer any of its rights, duties
20 or obligations hereunder to any person or entity without the written consent of the other parties
21 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER
22 expressly understands and agrees that it shall remain liable with respect to any and all the
23 obligations and duties contained in this Agreement.

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

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

6 //

7 //


8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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:

PAMELA J. WALLS
County Counsel

ATTEST:
KECIA HARPER-IHEM
Clerk of the Board

By 
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

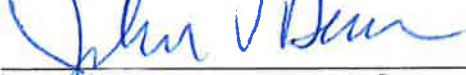
(SEAL)


Cooperative Agreement: Tract Nos. 30142 and 30142-2
KEC:blj
1/5/12

RECOMMENDED FOR APPROVAL:

CITY OF MENIFEE

1
2 By 
3 DON ALLISON
4 City Engineer

By 
John V. Denver
Mayor

5
6
7 By 
8 Joseph W. Fletcher
9 Interim City Attorney

ATTEST:
KATHY BENNETT
City Clerk

By 

(SEAL)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 Cooperative Agreement: Tract Nos. 30142 and 30142-2
27 KEC:blj
28 1/5/12

KB HOME COASTAL, INC.
a California corporation

By 

MICHAEL H. FREEMAN, JR.
Vice President
Land and Planning

(NOTARY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cooperative Agreement: Tract Nos. 30142 and 30142-2
KEC:blj
1/5/12

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

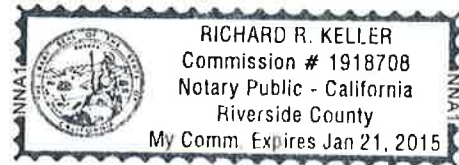
State of California }

County of Riverside }

On February 8, 2012 before me, Richard R. Keller, Notary Public, personally appeared Michael H. Freeman, Jr., 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.



Richard R. Keller

(SEAL)

Exhibit A

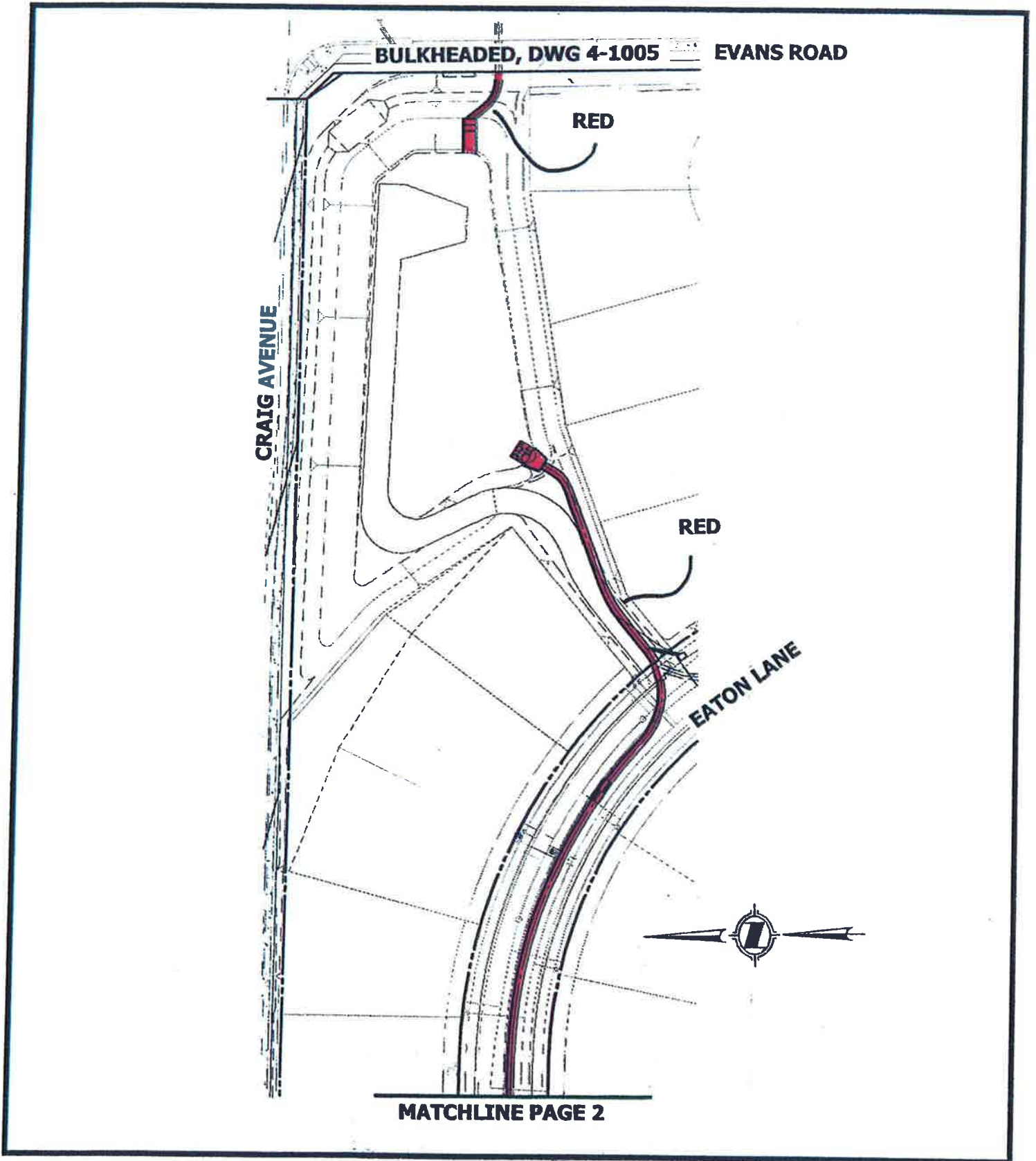


Exhibit A

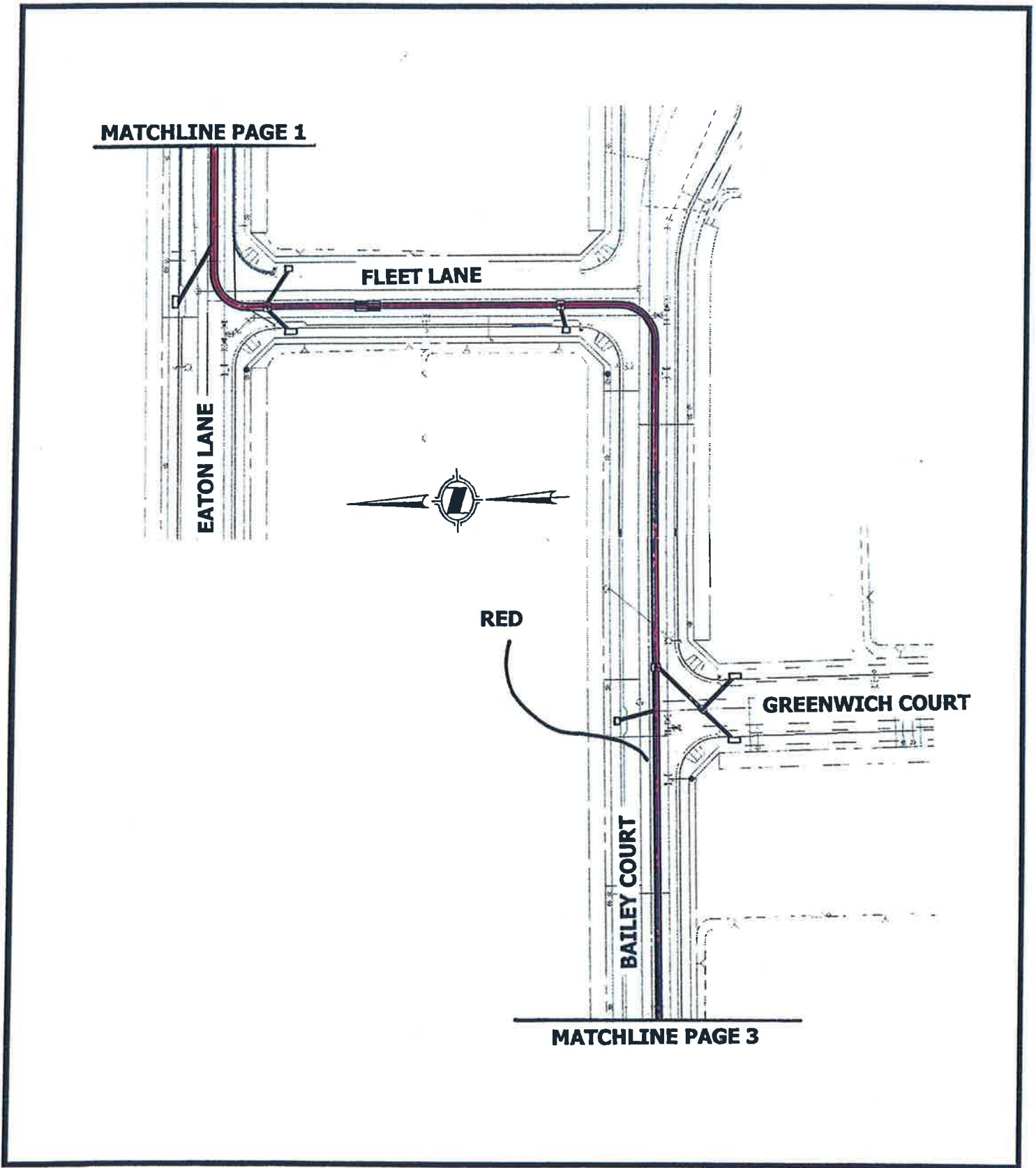


Exhibit A

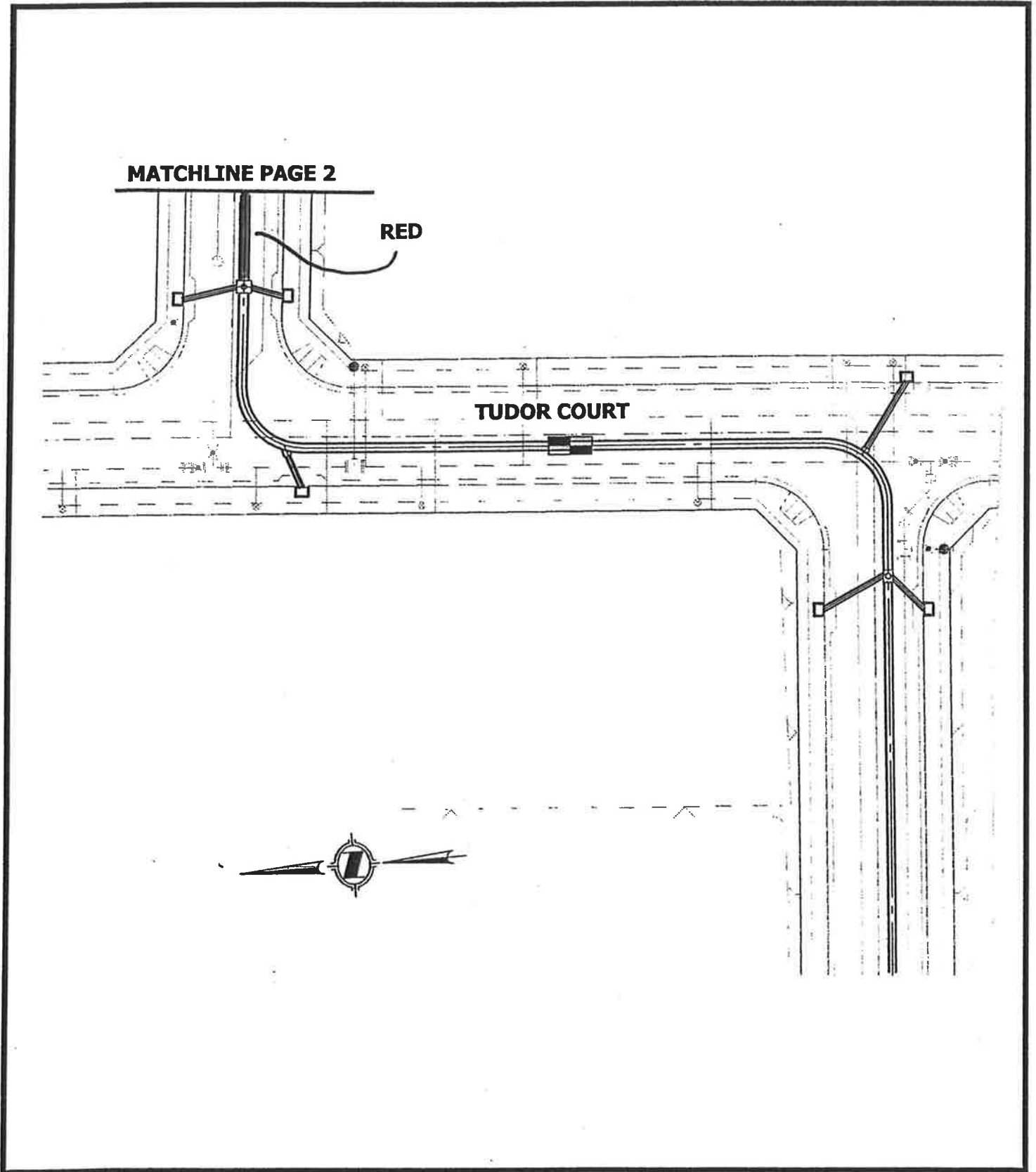


Exhibit A

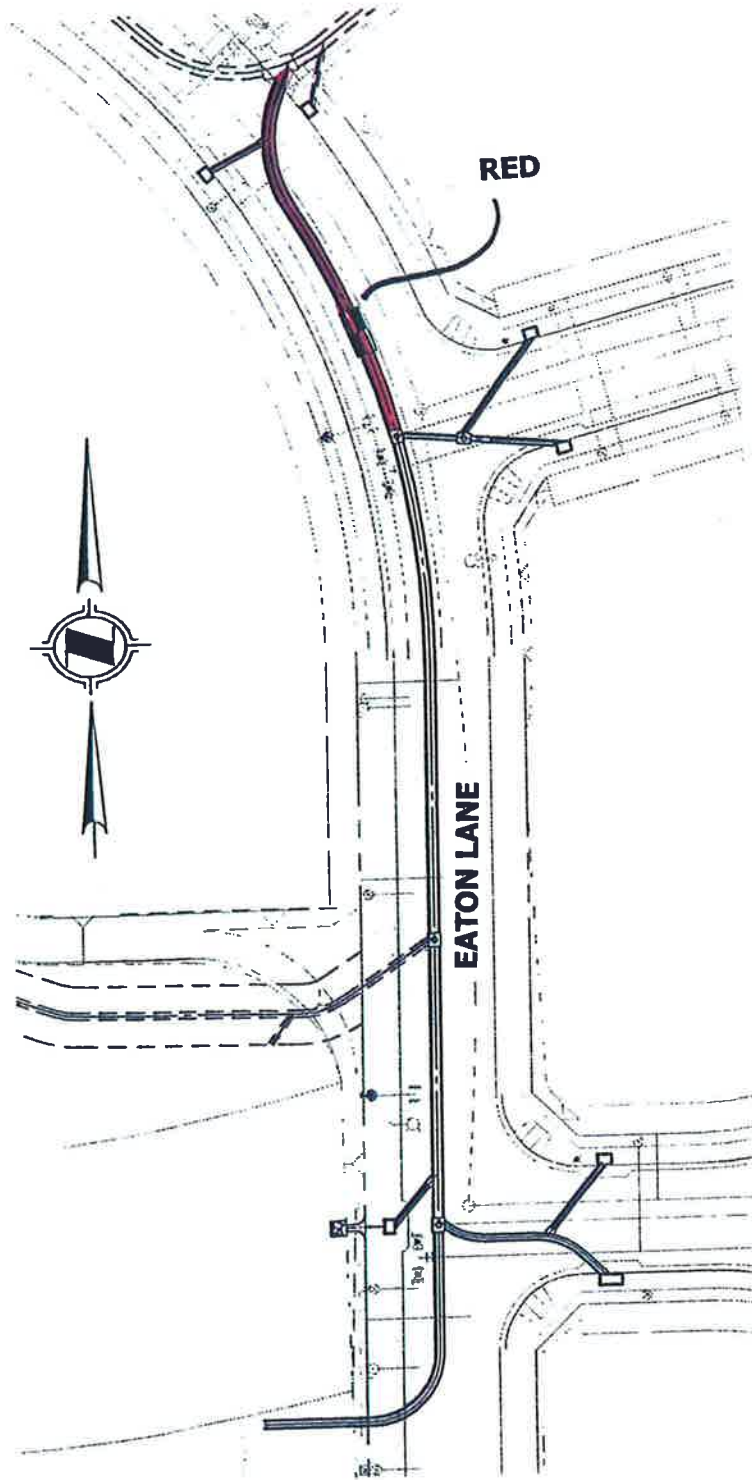


Exhibit A

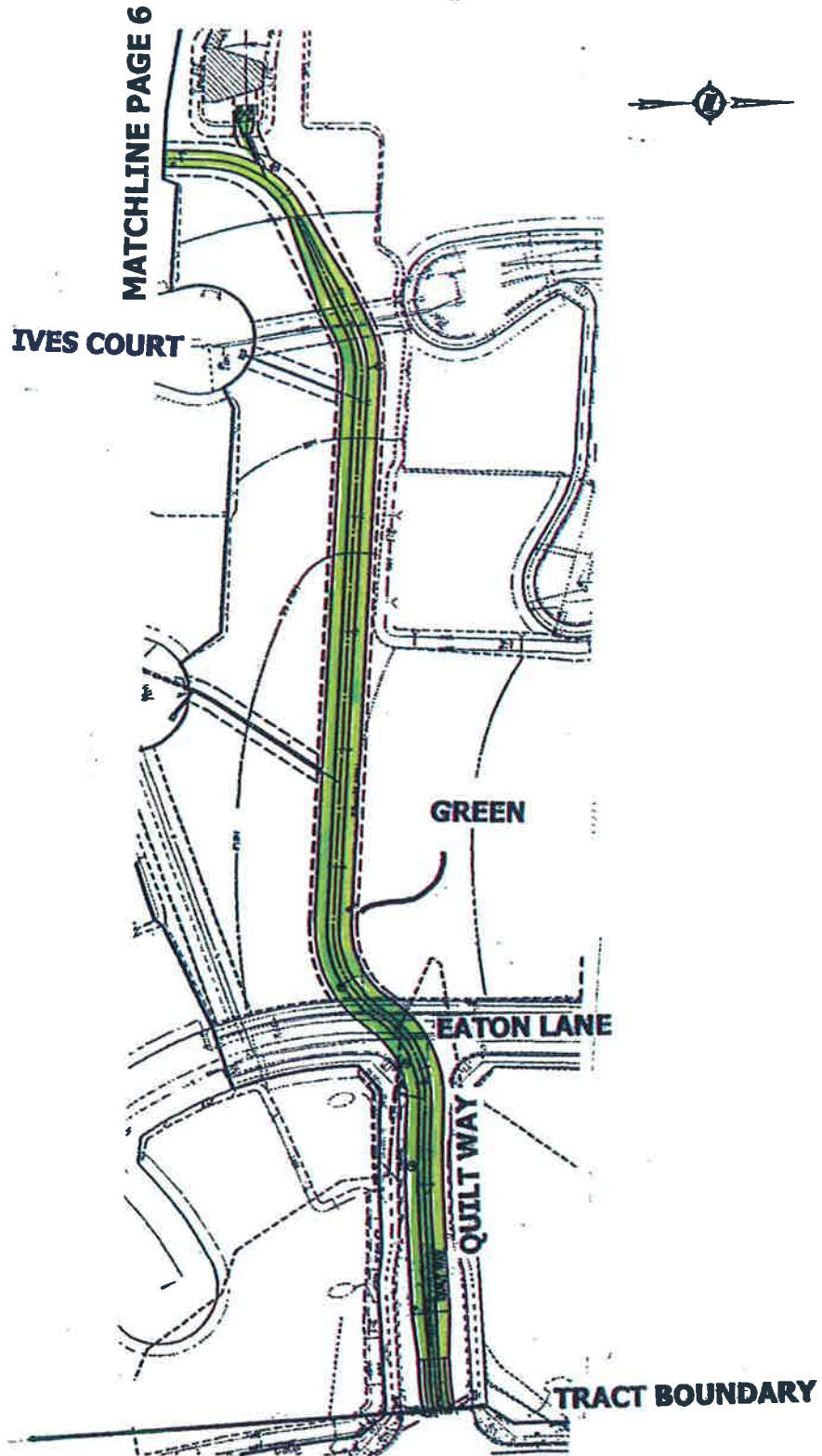


Exhibit A

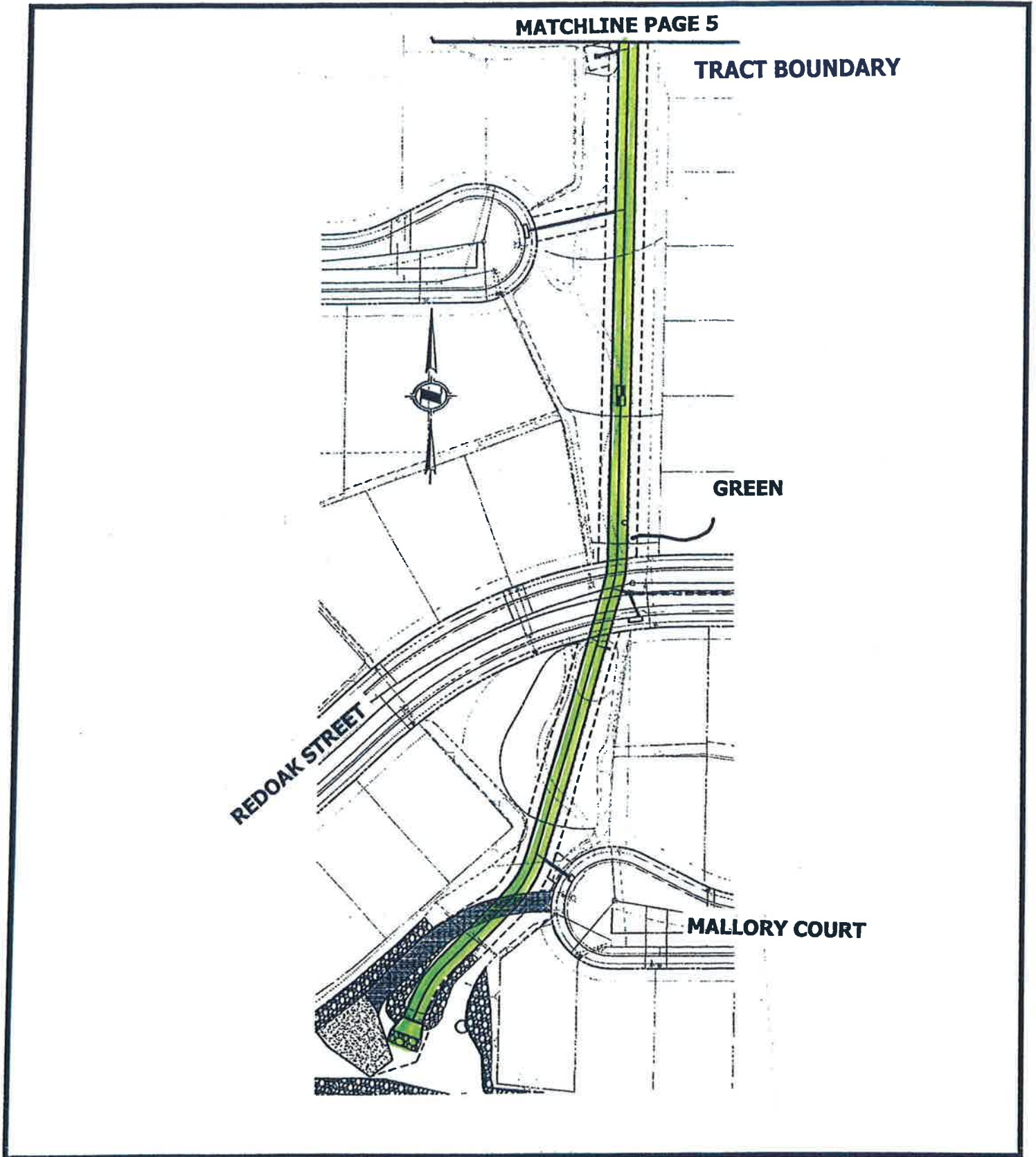


Exhibit B

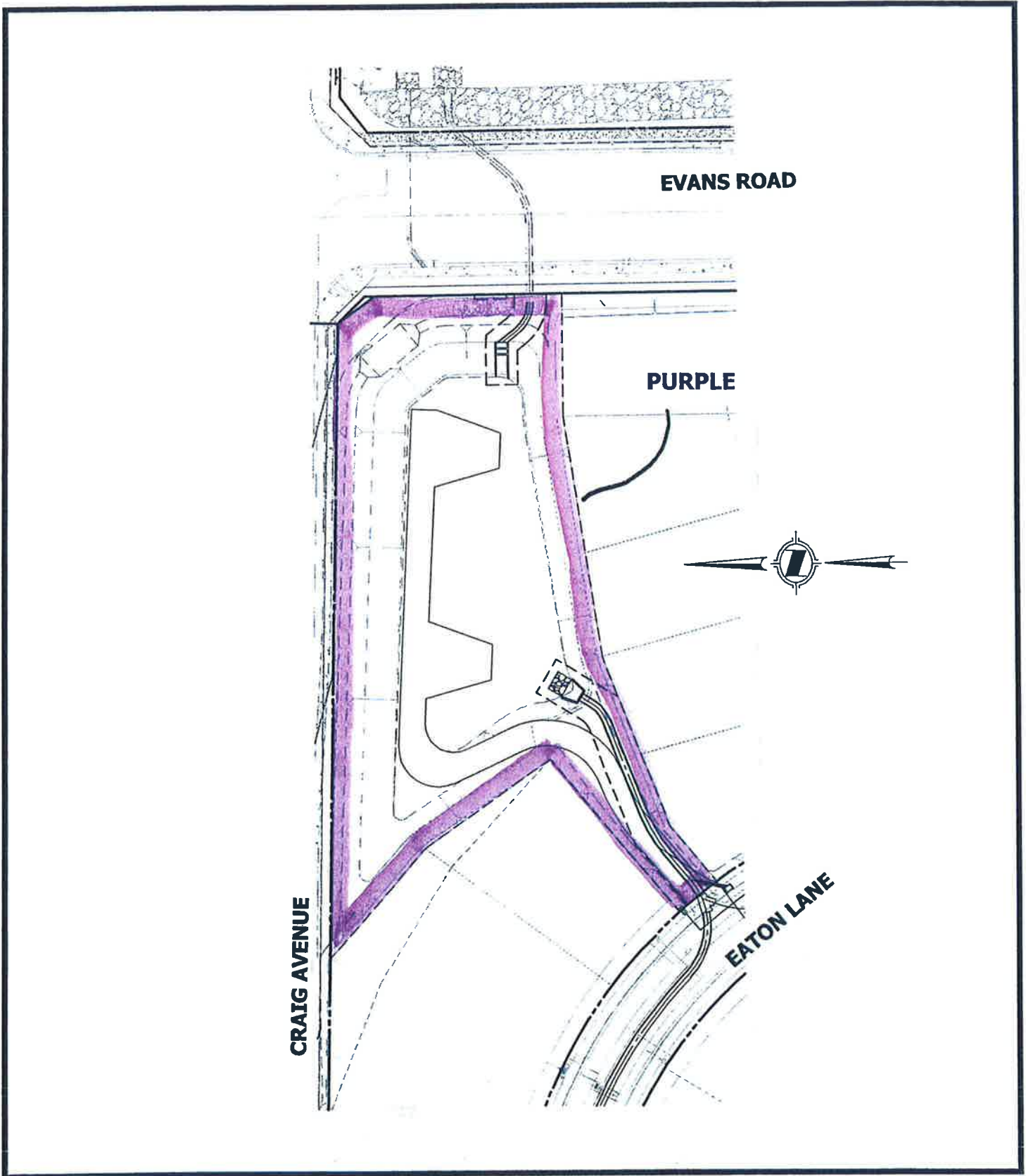
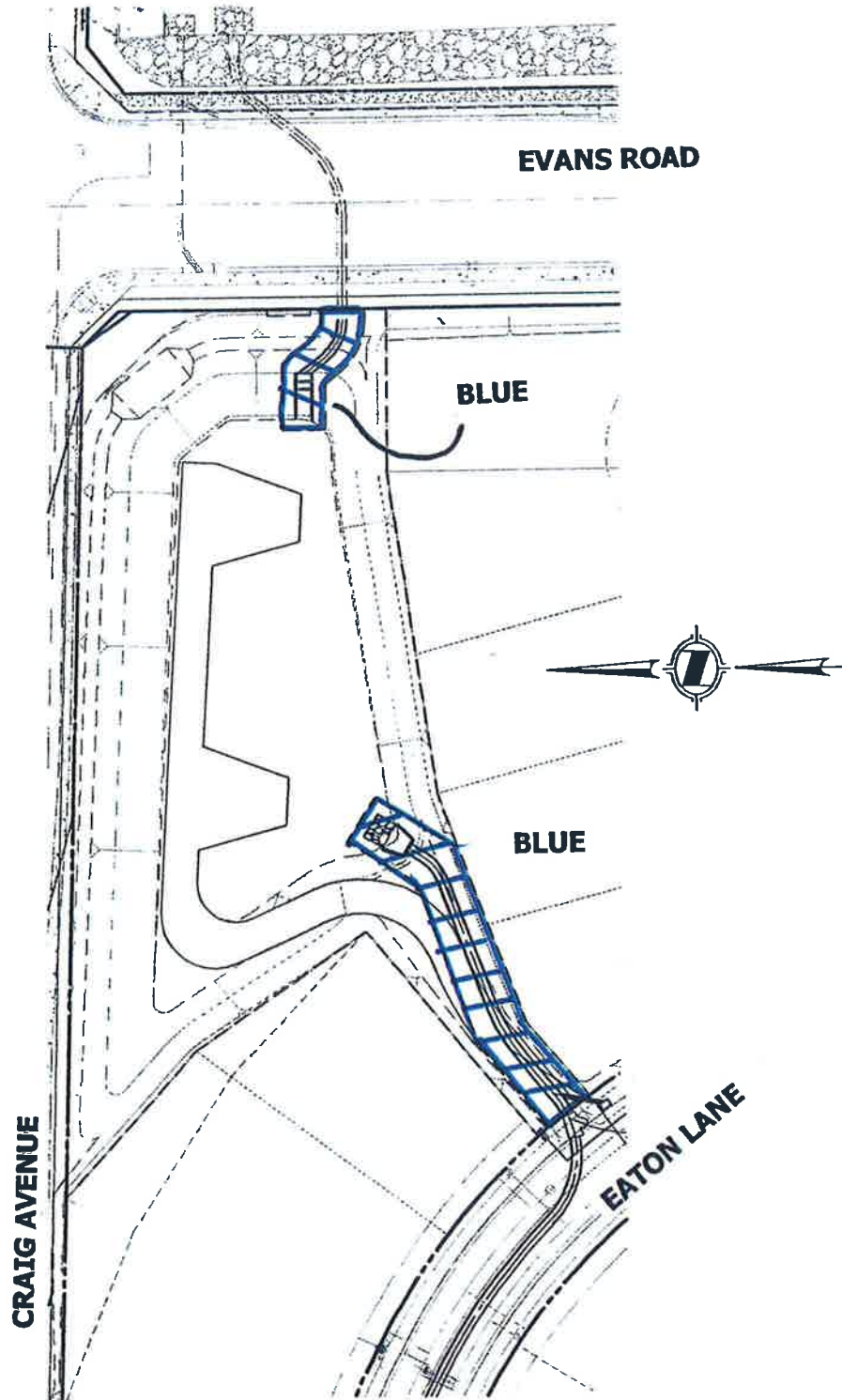


Exhibit B



1/10/16 2:00 PM

Exhibit B

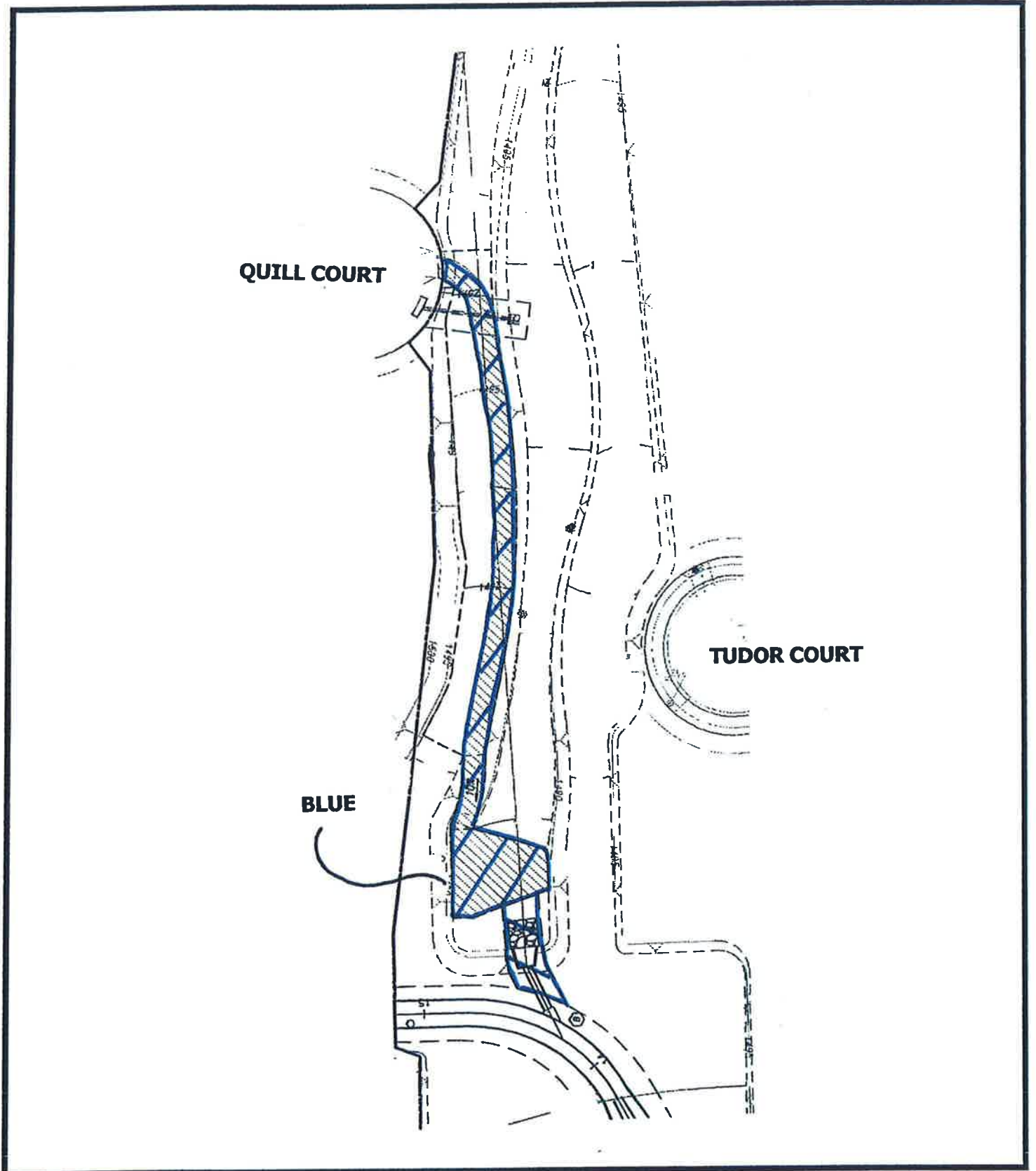


Exhibit B

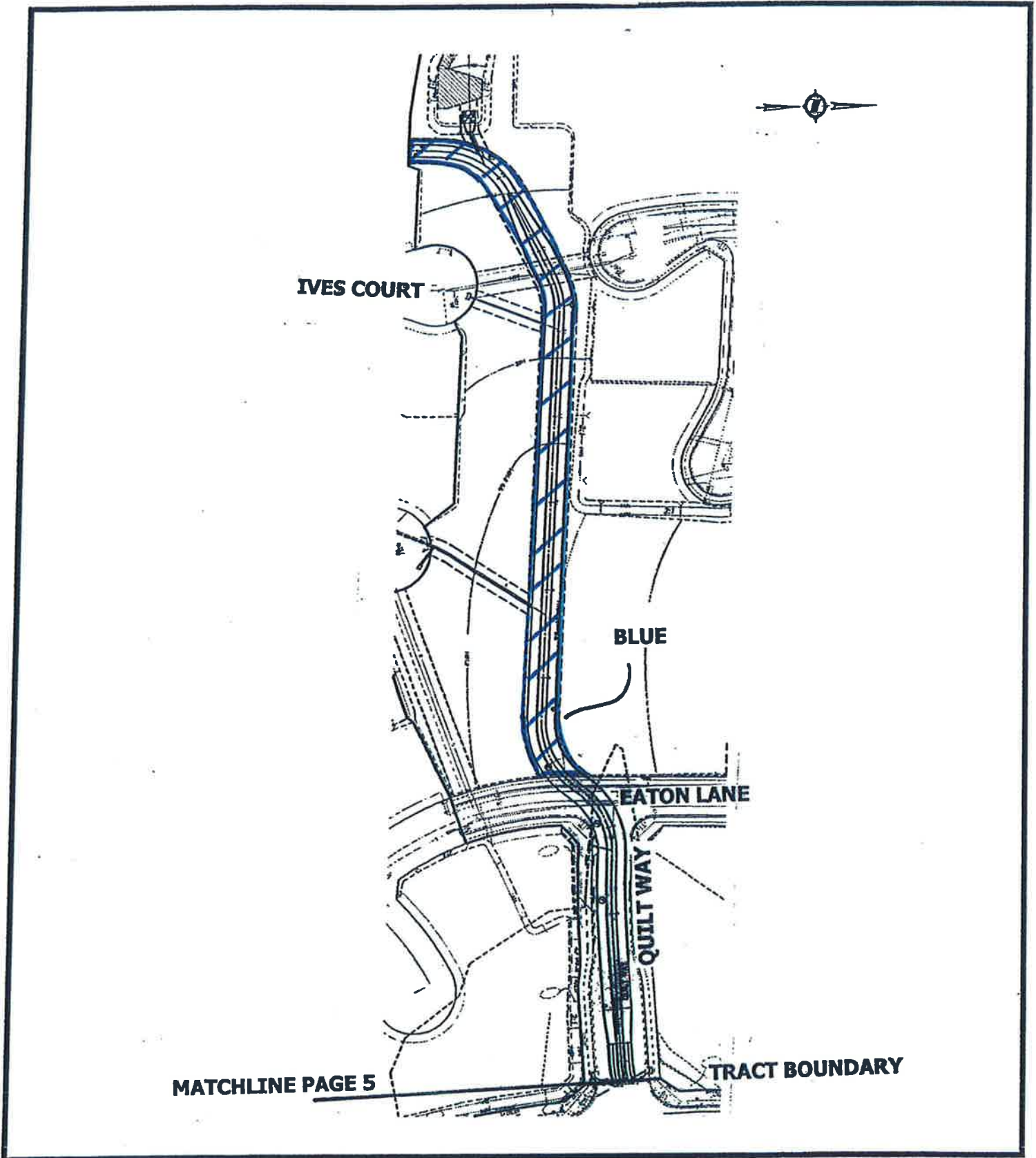


Exhibit B

-MATCHLINE PAGE 4

