



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

914 B

FISCAL PROCEDURES APPROVED
JEANINE J. REY, FINANCE DIRECTOR
BY: Jeanine J. Rey 8/22/2012
JEANINE J. REY

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
September 11, 2012

SUBJECT: Little Lake MDP Line B, Stage 1 and a portion of MDP Line B-4
Project No. 4-0-00265
Cooperative Agreement
District 3 / District 3

RECOMMENDED MOTION:

1. Approve the Cooperative Agreement (Agreement) between the District and Lake Hemet Municipal Water District (LHMWD); and
2. Authorize the Chairman to execute the Agreement on behalf of the District.

BACKGROUND:

See Page 2

FINANCIAL:

See Page 2

TNK:bjj

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$435,660	In Current Year Budget:	Yes
	Current F.Y. County Cost:	\$0	Budget Adjustment:	No
	Annual Net District Cost:	\$0	For Fiscal Year:	2012-2013

SOURCE OF FUNDS: 25140 947460 527980 – Zone 4 –Contracts

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
Michael R. Shetler

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis DATE

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

Prev. Agn. Ref.:

District: 3rd / 3rd

Agenda Number:

11.4

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

SUBJECT: Little Lake MDP Line B, Stage 1 and a portion of MDP Line B-4
Project No. 4-0-00265
Cooperative Agreement
District 3 / District 3

SUBMITTAL DATE: September 11, 2012

Page 2

BACKGROUND:

The purpose of this Agreement is to contract with LHMWD to perform the administration, engineering and construction of utility relocations in support of the District's proposed Little Lake MDP Line B storm drain project.

The Agreement sets forth the terms and conditions by which LHMWD will relocate approximately 1,760 lineal feet of 8-inch water main line and approximately 550 lineal feet of 8-inch sewer main line (Project) in an expedited manner. Since LHMWD has established its prior rights, District is responsible for the necessary utility relocations. If District designed the relocation, it would delay the construction of Project by four months. District will benefit from LHMWD's expertise in design and relocation of its facilities. Upon completion of Project, the Little Lake MDP Line B Storm Drain construction may begin.

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

FINANCIAL:

Funds for the Agreement are included in the District's Zone 4 Construction Contracts budget for FY 2012-2013. Sufficient funds will be included in the District's proposed future budget as appropriate.

The amounts referenced herein are based upon the maximum amount of the Agreement. Actual costs will be determined based upon actual invoices received but not to exceed the aggregate contract amount.

TNK:blj:rlp

COOPERATIVE AGREEMENT

1 Little Lake MDP Line B, Stage 1 and a portion of MDP Line B-4
2 Project No. 4-0-00265

3 The RIVERSIDE COUNTY FLOOD CONTROL AND WATER
4 CONSERVATION DISTRICT, hereinafter called "DISTRICT", and the LAKE HEMET
5 MUNICIPAL WATER DISTRICT, hereinafter called "LHMWD", hereby agree as follows:

6 **RECITALS**

7
8 A. DISTRICT has budgeted for and plans to design and construct the Little
9 Lake Master Drainage Plan (MDP) Line B Stage 1 and a portion of Line B-4, hereinafter called
10 "STORM DRAIN". When completed, the STORM DRAIN will provide improved drainage and
11 flood protection for the immediate adjacent area located within the City of Hemet; and

12 B. The proposed STORM DRAIN will consist of approximately 4,800 lineal
13 feet of reinforced concrete box and 130 lineal feet of reinforced concrete pipe as well as all
14 associated catch basins and connector pipes. The proposed STORM DRAIN will outlet into
15 DISTRICT'S existing Meridian Street Channel near Southhampton Court, thence commence
16 southerly along Park Avenue and Meridian Street. The STORM DRAIN construction will
17 terminate approximately 250 feet south of Caltrans' right-of-way (Florida Avenue) along
18 Meridian Street. In order for the proposed STORM DRAIN to be constructed, various utility
19 relocations will be necessary including a water line and a sewer line owned by LHMWD; and

20
21 C. The required water line and sewer line relocation project includes all
22 administration, engineering, design plans, specifications, labor, equipment, material, remodeling
23 of house services and incidentals required for the complete design and construction of
24 approximately 1,760 feet of 8-inch water line and approximately 550 feet of 8-inch sewer utility
25 main line as shown in the attached Exhibit "A", hereinafter referred to as the
26 "RELOCATIONS"; and
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1 D. In conjunction with RELOCATIONS, LHMWD plans to construct
2 additional improvements hereinafter referred to as "BETTERMENTS". Together,
3 BETTERMENTS and RELOCATIONS are hereinafter referred to as PROJECT; and

4 E. In the spirit of mutual cooperation, LHMWD is willing to absorb the
5 design and administration costs for RELOCATIONS. DISTRICT will bear responsibility for all
6 direct construction costs associated with RELOCATIONS including any unforeseen conditions
7 that cause additional work related to RELOCATIONS. LHMWD will bear the cost of all
8 BETTERMENTS; and

9 F. DISTRICT acknowledges that LHMWD has superior rights, and that all
10 costs associated with the necessary RELOCATIONS are DISTRICT'S responsibility; and

11 G. DISTRICT has included the sum of four hundred thirty five thousand six
12 hundred sixty dollars (\$435,660) in its Fiscal Year 2012-2013 budget, for the purpose of
13 contributing funds to LHMWD'S construction of RELOCATIONS hereinafter called
14 "DISTRICT'S TOTAL CONTRIBUTION". The DISTRICT'S TOTAL CONTRIBUTION shall
15 be as follows:
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17 i.) One hundred percent (100%) of the bid contract price for the
18 RELOCATIONS, hereinafter called "RELOCATION BID", estimated to be three hundred thirty
19 five thousand six hundred sixty dollars (\$335,660).
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21 ii.) One hundred percent (100%) of construction contract change order cost,
22 in the event of changed or unforeseen field conditions during construction related to
23 RELOCATIONS. The sum of all DISTRICT approved change orders shall not exceed one
24 hundred thousand dollars (\$100,000).
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26 iii.) In the event that unforeseen circumstances result in escalation of
27 RELOCATIONS cost beyond that provided herein, pursuant to the acknowledgment of
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1 responsibility in RECITALS F above, DISTRICT is willing to bring an amended reimbursement
2 agreement to its Board of Supervisors for approval.

3 H. DISTRICT'S TOTAL CONTRIBUTION, which includes both
4 RELOCATION BID and the sum of all DISTRICT approved change orders, shall not exceed
5 four hundred thirty five thousand six hundred sixty dollars (\$435,660); and

6 I. DISTRICT is willing to make an initial contribution to LHMWD,
7 hereinafter called "INITIAL CONTRIBUTION", of an amount equal to fifty percent (50%) of
8 the RELOCATION BID; and

9 J. The purpose of this Agreement is to memorialize the mutual
10 understandings by and between LHMWD and DISTRICT with respect to the construction,
11 engineering, and administration required to complete the necessary RELOCATIONS in support
12 of the DISTRICT'S STORM DRAIN project.

13 NOW, THEREFORE, in consideration of the preceding recitals and the mutual
14 covenants hereinafter contained, the parties hereto mutually agree as follows:
15

16 **SECTION I**

17 LHMWD shall:

- 18 1. Prepare all necessary plans and specifications for the PROJECT,
19 hereinafter called "IMPROVEMENT PLANS", at its sole cost and expense.
- 20 2. Provide DISTRICT an opportunity to review and approve
21 IMPROVEMENT PLANS and PROJECT contract documents prior to advertising for
22 construction bids.
- 23 3. Advertise, award and administer a public works construction contract for
24 the PROJECT at its sole cost and expense.
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1 4. Structure PROJECT construction contract to distinguish costs directly
2 associated with RELOCATIONS from those associated with BETTERMENTS.

3 5. Construct or cause to be constructed, PROJECT pursuant to an LHMWD
4 administered contract in accordance with DISTRICT approved IMPROVEMENT PLANS.

5 6. Prior to awarding a public works construction contract for the PROJECT,
6 provide DISTRICT with seven (7) calendar days following construction bid opening to review
7 and approve or reject bids for construction of PROJECT. DISTRICT may only reject bids
8 found by DISTRICT to be either (i) unreasonably high, or (ii) unbalanced such that the burden
9 of the overall construction cost is unduly shifted from BETTERMENTS to RELOCATIONS.
10 DISTRICT shall not unreasonably withhold its approval of PROJECT construction contract.

11 7. [THIS SECTION INTENTIONALLY LEFT BLANK]

12 8. Upon award of construction contract for PROJECT, invoice DISTRICT for
13 INITIAL CONTRIBUTION amount.

14 9. In the event changed or unforeseen field conditions are encountered during
15 construction that warrant additional work associated with RELOCATIONS, submit a written
16 request to DISTRICT for approval prior to authorizing such construction.

17 10. Keep an accurate accounting of all actual construction costs associated
18 with PROJECT and provide DISTRICT with a final accounting of RELOCATIONS cost,
19 including DISTRICT approved contract change orders, when invoicing DISTRICT for
20 remaining lump sum portion of DISTRICT'S TOTAL CONTRIBUTION.

21 11. Upon acceptance of PROJECT construction as being complete, provide
22 DISTRICT with a copy of the recorded Notice of Completion and a reproducible copy of
23 PROJECT "as-built" IMPROVEMENT PLANS.
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1 12. Cover all expenses incurred for the construction of the PROJECT, prior to
2 receiving final lump sum payment of DISTRICT'S TOTAL CONTRIBUTION.

3 13. Upon completion of PROJECT construction and settlement of any
4 outstanding claims, provide DISTRICT with a final invoice (Attention: Mike Wong) for
5 remaining lump sum portion of DISTRICT'S TOTAL CONTRIBUTION for the
6 RELOCATIONS. The invoice shall include a detailed breakdown of all actual construction
7 costs including but not limited to payment vouchers, DISTRICT approved change orders and
8 other such construction contract documents as may be necessary, to establish the DISTRICT'S
9 TOTAL CONTRIBUTION for the RELOCATIONS.
10

11 14. Upon completion of PROJECT construction, LHMWD shall own, operate,
12 and maintain the PROJECT.

13 15. Endeavor to complete construction of PROJECT before February 28, 2013
14 unless any delays are caused by the DISTRICT, work stoppages, force majeure, inability to
15 obtain material, and acts of God.
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17 SECTION II

18 DISTRICT shall:

19 1. Review and approve IMPROVEMENT PLANS prior to LHMWD'S final
20 approval. DISTRICT shall endeavor to respond to LHMWD within seven (7) calendar days.

21 2. Within seven (7) calendar days following LHMWD'S opening bids for
22 PROJECT construction, review and approve or reject RELOCATION BID. DISTRICT may
23 reject RELOCATION BID if it determines that i) the costs for RELOCATIONS is unreasonably
24 high, or ii) PROJECT construction cost is disproportionally shifted from BETTERMENTS to
25 RELOCATIONS. DISTRICT shall not unreasonably withhold its approval of RELOCATION
26 BID.
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1 3. Within five (5) working days following the receipt of LHMWD's written
2 request pursuant to Section I.9., review and approve or disapprove said request.

3 4. Provide its first lump sum payment to LHMWD in the amount of fifty
4 percent (50%) of the RELOCATION BID within thirty (30) days of receipt of LHMWD'S
5 invoice.

6 5. Upon completion of PROJECT construction and settlement of any
7 outstanding claims, receipt of LHMWD'S recorded Notice of Completion and a copy of the "as-
8 built" IMPROVEMENT PLANS, provide the second and final lump sum payment to LHMWD
9 for the balance of the DISTRICT'S TOTAL CONTRIBUTION for the RELOCATIONS within
10 thirty (30) days of receiving LHMWD'S final invoice.
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12 **SECTION III**

13 It is further mutually agreed:

14 1. Except as otherwise provided herein, all construction work involved with
15 PROJECT shall be inspected by LHMWD and shall not be deemed complete until approved and
16 accepted as complete by LHMWD.
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18 2. Contractor's actual bid prices for work associated with RELOCATIONS
19 shall establish RELOCATION BID amount.

20 3. In the event that any claim or legal action is brought against DISTRICT, in
21 connection with this Agreement and based upon the actual or alleged acts or omissions of
22 LHMWD, its officers, employees, consultant, contractors or agents, including but not limited to
23 claims or legal action related to design, construction or failure of PROJECT, LHMWD shall
24 defend, indemnify and hold DISTRICT harmless therefrom without cost to DISTRICT. This
25 shall include providing DISTRICT with legal representation and paying for related costs for any
26 such claim or legal action, and payment of any settlement or judgment on behalf of DISTRICT,
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1 all at no cost to DISTRICT. Upon LHMWD'S failure to do so, DISTRICT shall be entitled to
2 recover from LHMWD all of its costs and expenses, including, but not limited to, reasonable
3 attorneys' fees.

4 4. In the event that any claim or legal action is brought against LHMWD, in
5 connection with this Agreement and based upon the actual or alleged acts or omissions of
6 DISTRICT, its officers, employees, consultant, contractors or agents, including but not limited
7 to claims or legal action related to design, construction or failure of PROJECT, DISTRICT shall
8 defend, indemnify and hold LHMWD harmless therefrom without cost to LHMWD. This shall
9 include providing LHMWD with legal representation and paying for related costs for any such
10 claim or legal action, and payment of any settlement or judgment on behalf of LHMWD, all at
11 no cost to LHMWD. Upon DISTRICT'S failure to do so, LHMWD shall be entitled to recover
12 from DISTRICT all of its costs and expenses, including, but not limited to, reasonable attorneys'
13 fees.
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15 5. In the event of any arbitration, action or suit brought by either LHMWD or
16 DISTRICT against the other party by reason of any breach on the part of the other party of any
17 of the covenants and agreements set forth in this Agreement, or any other dispute between
18 DISTRICT and LHMWD concerning this Agreement, the prevailing party in any such action or
19 dispute, by a final judgment or arbitration award, shall be entitled to have and recover from the
20 other party all costs and expenses or claims, including but not limited to, attorneys' fees and
21 expert witness fees. This section shall survive any termination of this Agreement.
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23 6. If any provision in this Agreement is held by a court of competent
24 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
25 continue in full force without being impaired or invalidated in any way.
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1 7. This Agreement is to be construed in accordance with the laws of the State
2 of California. Neither LHMWD nor DISTRICT shall assign this Agreement without the written
3 consent of the other party.

4 8. This Agreement is made and entered into for the sole protection and benefit
5 of the parties hereto. No other person or entity shall have any right of action based upon the
6 provisions of this Agreement.

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

10 RIVERSIDE COUNTY FLOOD CONTROL	LAKE HEMET MUNICIPAL
AND WATER CONSERVATION DISTRICT	WATER DISTRICT
11 1995 Market Street	26385 Fairview Avenue
Riverside, CA 92501	Hemet, CA 92544
12 Attn: Mike Wong	Attn: Thomas W. Wagoner

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

18 11. Any waiver by DISTRICT or LHMWD of any breach by any other party
19 of any provision of this Agreement shall not be construed to be a waiver of any subsequent or
20 other breach of the same or any other provision hereof. Failure on the part of DISTRICT or
21 LHMWD to require from any other party exact, full and complete compliance with any of the
22 provisions of this Agreement shall not be construed as in any manner changing the terms hereof,
23 or estopping DISTRICT or LHMWD from enforcing this Agreement.

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

4 13. The term of this Agreement shall commence on the date the Agreement is
5 executed by both parties and end on June 30, 2013.

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

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(to be filled in by the Clerk of the Board)

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

RECOMMENDED FOR APPROVAL:

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 R. KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Cooperative Agreement
Little Lake MDP Line B, Stage 1, Line B-4
08/08/12
TNK:rlp

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RECOMMENDED FOR APPROVAL

LAKE HEMET MUNICIPAL WATER DISTRICT

By Thomas W. Wagoner
THOMAS W. WAGONER
General Manager

By Frank D. Gorman
FRANK D. GORMAN
President, LHMWD Board of Directors

APPROVED AS TO FORM:

ATTEST:

By Joseph Wojcik
JOSEPH WOJCIK
District General Counsel

By Karen Hornbarger
KAREN HORNBARGER
Assistant Board Secretary

(SEAL)

Cooperative Agreement
Little Lake MDP Line B, Stage 1, Line B-4
08/08/12
TNK:

EXHIBIT A
APPROXIMATE LIMITS OF EXISTING
8" SEWER & 8" WATER LINE
TO BE RELOCATED

- 8-Inch Sewer Line
- - - - 8-Inch Water Line
- * Utility relocations shall include all house services remodeling

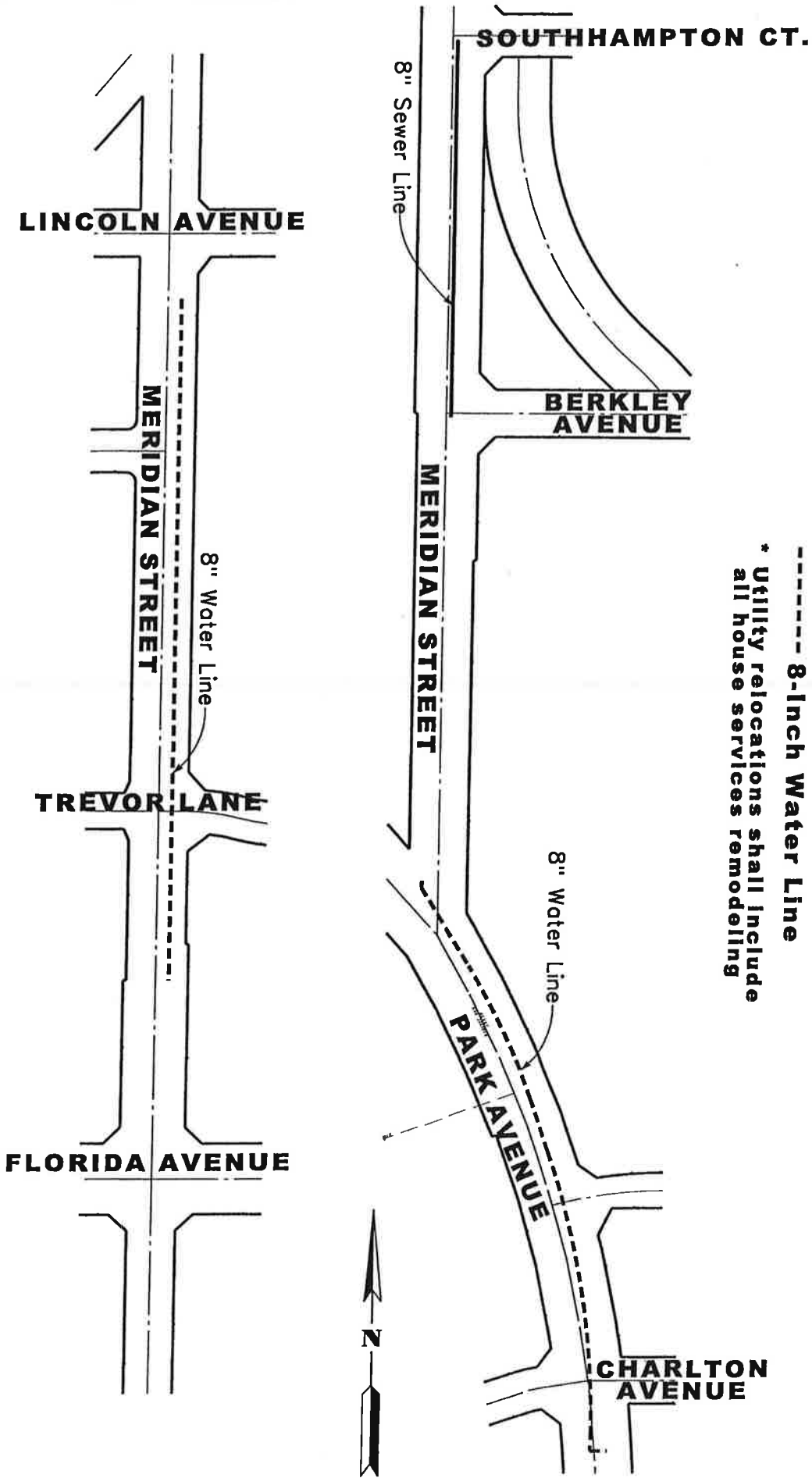


EXHIBIT "A"