



Interoffice Memorandum

November 16, 2020

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "Raymond Hanson" with "for" written below it.

**SUBJECT: BCC Agenda Item – Consent Agenda
December 1, 2020 BCC Meeting
First Amendment to Utility Line Construction Reimbursement
Agreement for Village I Phase 3
Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

On December 18, 2018, the County and BB Groves, LLC; Withers, LLC; and Columnar Partnership Holding I, LLC (collectively, the “developer”) entered into the Utility Line Construction Reimbursement Agreement for Village I Phase 3 (the “agreement”) for the developer to oversize utilities along Avalon Road. The agreement was approved prior to the final design of the oversized pipelines, and the developer cost was based on the developer’s engineer’s preliminary estimate.

The developer’s final design of the pipelines includes additional pipe lengths and increased pipe sizes within the Village I Phase 3 limits. In addition, as a result of the developer’s final design, the developer agreed to pay the County for increased costs to the developer sized pipelines that are included in previous Village I reimbursement agreements.

This first amendment to the agreement amends the utility work and the oversized utility work, and increases the developer cost and the letter of credit amount.

The County Attorney’s Office staff has reviewed the first amendment to the agreement and finds it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval and execution of First Amendment to Utility Line Construction Reimbursement Agreement for Village I Phase 3 by and among Orange County; BB Groves, LLC; Withers, LLC; and Columnar Partnership Holding I, LLC to amend the utility work and the oversized utility work, and to increase the developer cost and the letter of credit amount.

District 1.

**FIRST AMENDMENT TO UTILITY LINE CONSTRUCTION REIMBURSEMENT
AGREEMENT FOR VILLAGE I PHASE 3**

THIS FIRST AMENDMENT TO UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR VILLAGE I PHASE 3 (the “Amendment”) is made and entered into as of the date of last execution below (the “Effective Date”), by and among ORANGE COUNTY, a charter county and political subdivision of the State of Florida (the “COUNTY”), whose address is 201 South Rosalind Avenue, Orlando, Florida 32801; BB GROVES, LLC, doing business in Florida as B BANK GROVES, LLC, a Delaware limited liability company (“BB GROVES”), whose address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225; WITHERS, LLC, doing business in Florida as WITHERS PROPERTIES, LLC, a Delaware limited liability company (“WITHERS”), whose address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225; and COLUMNAR PARTNERSHIP HOLDING I, LLC, an Indiana limited liability company (“COLUMNAR”), whose address is 6442 Commerce Park Drive, Suite 2, Ft. Myers, Florida 33966. BB GROVES, WITHERS, and COLUMNAR are collectively referred to in this Amendment as the “DEVELOPER.” Hereinafter, the COUNTY and the DEVELOPER may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, on December 18, 2018, the Parties entered into that certain Utility Line Construction Reimbursement Agreement for Village I Phase 3 (the “Agreement”); and

WHEREAS, the MUP has been revised by the DEVELOPER to increase the diameter of a portion of the DEVELOPER’s wastewater force main and reclaimed water main and to lengthen the DEVELOPER’s wastewater force main required to serve wastewater and reclaimed water to the Project; and

WHEREAS, the estimated Developer Cost for “The Utility Line Construction Reimbursement Agreement for a Portion of the Northeast PD (Parcel 27 Phase IA Off-Site)” dated March 20, 2018 and “The Utility Line Construction Reimbursement Agreement for the Jaffers PD” dated December 18, 2018 increased by a combined total of Sixty-Eight Thousand Nine Hundred Twenty-One and 00/100 Dollars (\$68,921.00), (the “Village I Developer Cost Adjustment”); and

WHEREAS, the County will allow the Developer to include the Village I Developer Cost Adjustment as part of the Developer Cost in this Amendment; and

WHEREAS, the Parties wish to amend the Agreement to revise (i) the definitions of the Utility Work, Oversized Utility Work, and Developer Cost, (ii) the amount of the Letter of Credit, and (iii) **Exhibit “B”** and **Exhibit “C.”**

NOW, THEREFORE, in consideration of the mutual covenants contained in this Amendment, and for other good and valuable consideration, the receipt of which is acknowledged by the Parties, the Parties agree as follows:

SECTION 1. RECITALS INCORPORATED. All of the recitals set forth above are true and correct, and are incorporated in and made a part of this Amendment by this reference.

SECTION 2. DEFINITIONS. Defined (capitalized) terms used in this Amendment, but not defined in this Amendment, have the meanings given to such terms by the Agreement.

SECTION 3. DEVELOPER COST. The term “Developer Cost” is hereby amended to mean the sum of the Booster Pump Stations Cost, the COUNTY-approved selected bid amount for the Utility Work, and the Village I Developer Cost Adjustment.

SECTION 4. UTILITY WORK. As a result of the revision to the MUP by the DEVELOPER, the definition of the Utility Work is hereby amended to mean 1,744 linear feet of 12-inch PVC water main, 1,690 linear feet of 16-inch ductile iron water main, 853 linear feet of 16-inch HDPE water main, 2,698 linear feet of 12-inch PVC wastewater force main, 1,320 linear feet of 16-inch PVC wastewater force main, 110 linear feet of 20-inch HDPE force main, 1,727 linear feet of 12-inch PVC reclaimed water main, 1,861 linear feet of 16-inch ductile iron reclaimed water main, 330 linear feet of 16-inch HDPE reclaimed water main, and 523 linear feet of 20-inch HDPE reclaimed water main.

SECTION 5. OVERSIZED UTILITY WORK. As a result of the revision to the MUP by the DEVELOPER, the definition of the Oversized Utility Work is hereby amended to mean 3,434 linear feet of a 24-inch ductile iron water main, 853 linear feet of 30-inch HDPE water main, 4,018 linear feet of 16-inch PVC wastewater force main, 110 linear feet of 20-inch HDPE force main, 568 linear feet of 20-inch ductile iron reclaimed water main, 157 linear feet of 24-inch ductile iron reclaimed water main, 2,863 linear feet of 30-inch ductile iron reclaimed water main, and 71 linear feet of 36-inch HDPE reclaimed water main.

SECTION 6. TOTAL COST ADJUSTMENT. The term “Total Cost Adjustment” means the sum of the Booster Pump Stations Cost and the Village I Developer Cost Adjustment. The Agreement is hereby amended to replace those instances of the term Booster Pump Stations Cost in Section 2.4, Section 5, and Section 6 with the term Total Cost Adjustment.

SECTION 7. MODIFICATIONS TO SECTION 6 OF THE AGREEMENT. Section 6 of the Agreement is hereby amended and restated in its entirety to read as follows:

SECTION 6. LETTER OF CREDIT

A **Letter of Credit** in a form substantially similar to the draft letter of credit attached as **Exhibit "D"** of this Agreement and acceptable to the COUNTY is required as part of this Agreement for the duration of the DEVELOPER's obligations under this Agreement. The Letter of Credit must be drawn on a financial institution having an office for the Letter of Credit presentation in either Orange, Seminole, or Osceola counties, and the financial institution must be on the State of Florida approved "Qualified Public Depositories" list for local governments, as identified in Chapter 280, Florida Statutes. The DEVELOPER will provide the Letter of Credit to the COUNTY prior to the approval of the Construction Plans in the amount of Five Hundred Eighty-Four Thousand Five Hundred Forty and 00/100 Dollars (\$584,540.00), which sum represents the estimated amount of the True-Up Fee. In the event the COUNTY or a third party operating pursuant to a separate agreement with the COUNTY commences construction of the Oversized Utility Work pursuant to Section 5.5, and if the COUNTY has not agreed to recover the Total Cost Adjustment from such third party, then, upon completion of the Oversized Utility Work by the COUNTY or such third party as evidenced by issuance of a certificate of completion for such work, the COUNTY may draw upon the Letter of Credit and the DEVELOPER is obligated to pay to the COUNTY the cost difference, if any, between the Total Cost Adjustment and the penal amount of the Letter of Credit, prior to any development within the Property connecting to water, wastewater, or reclaimed water utilities. The COUNTY shall return the Letter of Credit to the DEVELOPER or the issuing bank (at the DEVELOPER's option) upon the DEVELOPER's payment of the True-Up Fee to the COUNTY in accordance with this Agreement.

In the event the Oversized Utility Work is performed by the COUNTY or a third party pursuant to Section 5.5 prior to the DEVELOPER issuing the Letter of Credit to the COUNTY pursuant to this Section 6, then the DEVELOPER shall pay the Total Cost Adjustment to the COUNTY prior to any development within the Property connecting to water, wastewater, or reclaimed water utilities, unless the COUNTY has agreed to recover the Total Cost Adjustment from a third party.

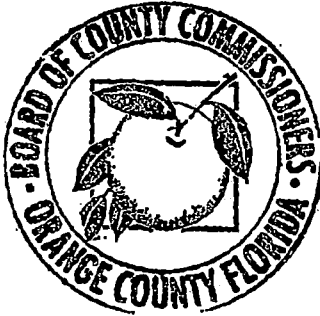
SECTION 8. EXHIBITS. Exhibit "B" and Exhibit "C" of the Agreement are hereby amended and replaced in their entirety with the versions of Exhibit "B" and Exhibit "C" attached to this Amendment.

SECTION 9. RECORDING. The Parties agree that an executed copy of this Amendment, including the Exhibits attached hereto, shall be recorded by the DEVELOPER at the DEVELOPER's expense in the Public Records of Orange County, Florida.

SECTION 10. RATIFICATION; CONFLICT. Except as specifically modified and amended by this Amendment, the Agreement remains in full force and effect and is ratified and confirmed by the Parties. In the event of a conflict between the express terms of the Agreement, and this Amendment, the terms and provisions of this Amendment shall control and be given effect.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the dates indicated below by their duly authorized representatives.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: 12/01/20

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Print Name: **Katie Smith**

WITNESSES:

Melody F. Ellsperman
Print Name: Melody F. Ellsperman
Donna M. Bush
Print Name: Donna M. Bush

BB GROVES, LLC, a Delaware limited liability company doing business in Florida as B BANKS GROVES, LLC, a Delaware limited liability company

By: [Signature]
Name: Daniel A. Traylor
Title: Manager
Date: 10/29/2020

STATE OF INDIANA
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 29th day of October, 2020 by Daniel A. Traylor, as Manager of BB GROVES, LLC, a Delaware limited liability company doing business in Florida as B BANK GROVES, LLC, on behalf of such company, who is personally known to me or has produced _____ as identification.

(Notary Stamp)



MARGARET A. BERNICK
Resident of Vanderburgh County, IN
Commission Expires: August 24, 2024

[Signature]
Signature of Notary Public
Print Name: Margaret A. Bernick
Notary Public, State of Indiana
Commission Expires: 08/24/2024; Comm. 688951

WITNESSES:

WITHERS, LLC, a Delaware limited liability company doing business in Florida as WITHERS PROPERTIES, LLC, a Delaware limited liability company

Melody F. Ellsperman
Print Name: Melody F. Ellsperman

Donna M. Bush
Print Name: Donna M. Bush

By: CH II WITHERS, LLC, a Delaware limited liability company

By: [Signature]
Name: Daniel A. Traylor
Title: Manager
Date: 10/29/2020

STATE OF INDIANA
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 29th day of October, 2020, by Daniel A. Traylor, as Manager of CH II WITHERS, LLC, a Delaware limited liability company, as Manager of WITHERS, LLC, a Delaware limited liability company doing business in Florida as WITHERS PROPERTIES, LLC, on behalf of such company, who is personally known to me or has produced _____ as identification.

(Notary Stamp)
 MARGARET A. BERNICK
Resident of Vanderburgh County, IN
Commission Expires: August 24, 2024

[Signature]
Signature of Notary Public
Print Name: Margaret A. Bernick
Notary Public, State of Indiana
Commission Expires: 08/24/2024; Comm. 688951

WITNESSES:

COLUMNAR PARTNERSHIP HOLDING I, LLC an Indiana limited liability company

Melody F. Ellsperman
Print Name: Melody F. Ellsperman

Donna M. Bush
Print Name: Donna M. Bush

By: COLUMNAR HOLDINGS, LLC, an Indiana limited liability company, its sole Member

By: [Signature]
Name: Daniel A. Traylor
Title: President
Date: 10/29/2020

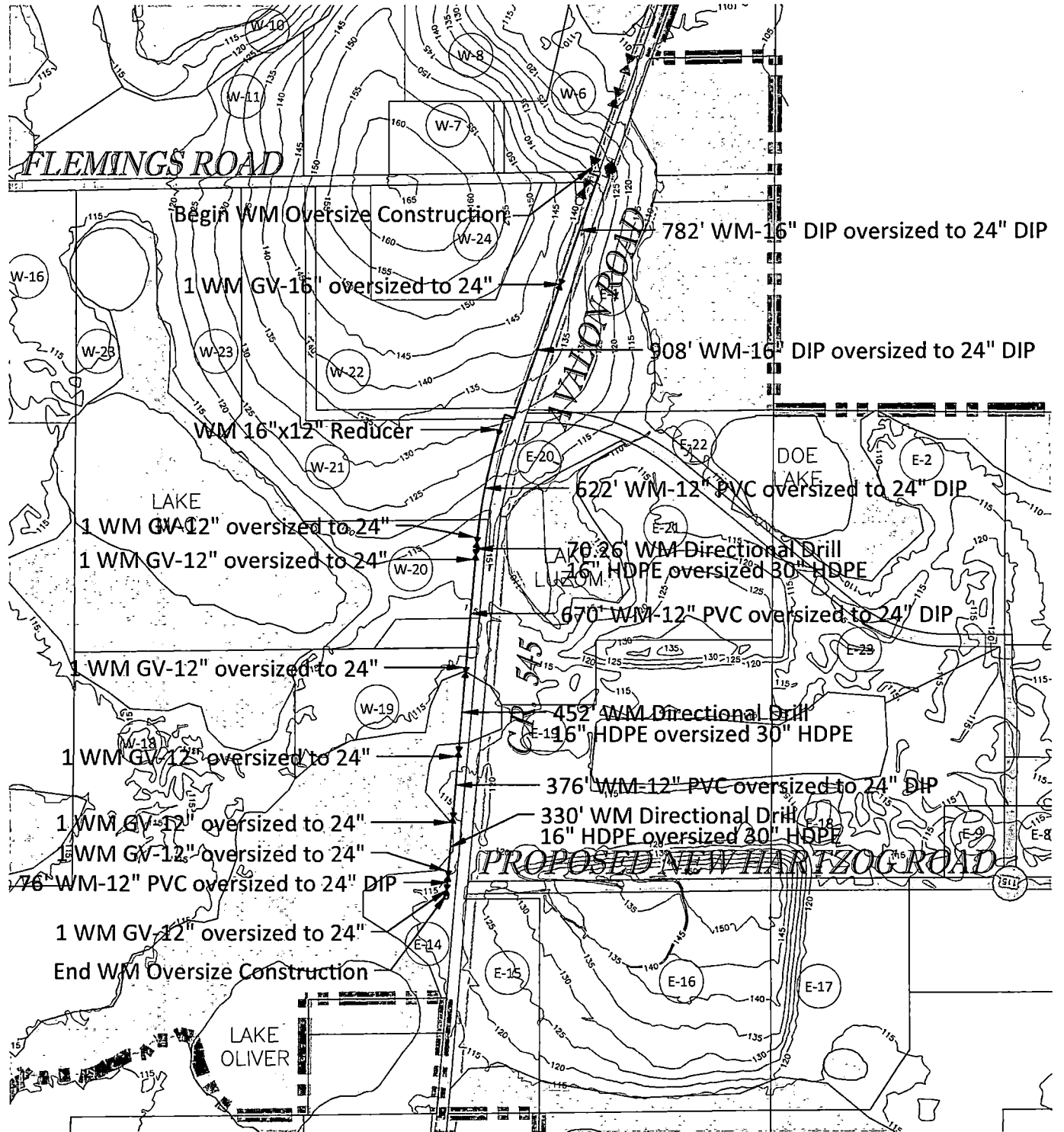
STATE OF INDIANA
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 29th day of October, 2020, by Daniel A. Traylor, as President of COLUMNAR HOLDINGS, LLC, an Indiana limited liability company, the sole Member of COLUMNAR PARTNERSHIP HOLDING I, LLC, an Indiana limited liability company, on behalf of such company, who is personally known to me or has produced _____ as identification.

(Notary Stamp)
MARGARET A. BERNICK
Resident of Vanderburgh County, IN
Commission Expires: August 24, 2024

[Signature]
Signature of Notary Public
Print Name: Margaret A. Bernick
Notary Public, State of Indiana
Commission Expires: 08/24/2024; Comm. 688951

EXHIBIT "B"
 OVERSIZED UTILITY WORK
 WATER MAIN



Village I Phase 3 Oversized Water Main

Offsite Improvements

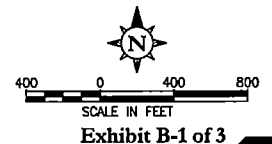
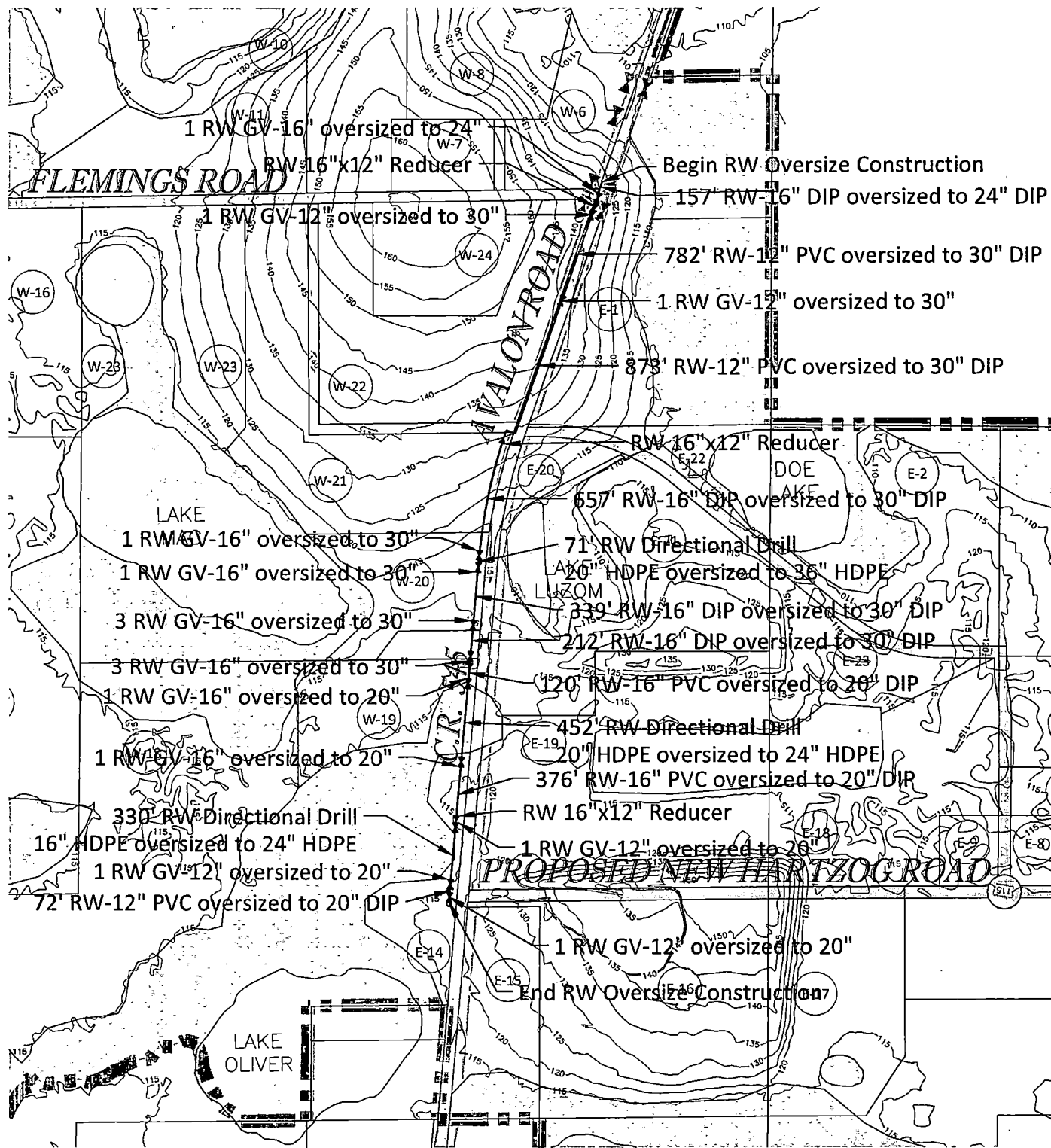


EXHIBIT "B"
 OVERSIZED UTILITY WORK
 RECLAIMED WATER MAIN



Village I Phase 3 Oversized Reclaimed Water Main

Offsite Improvements

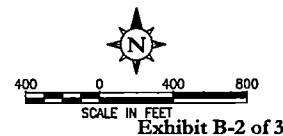
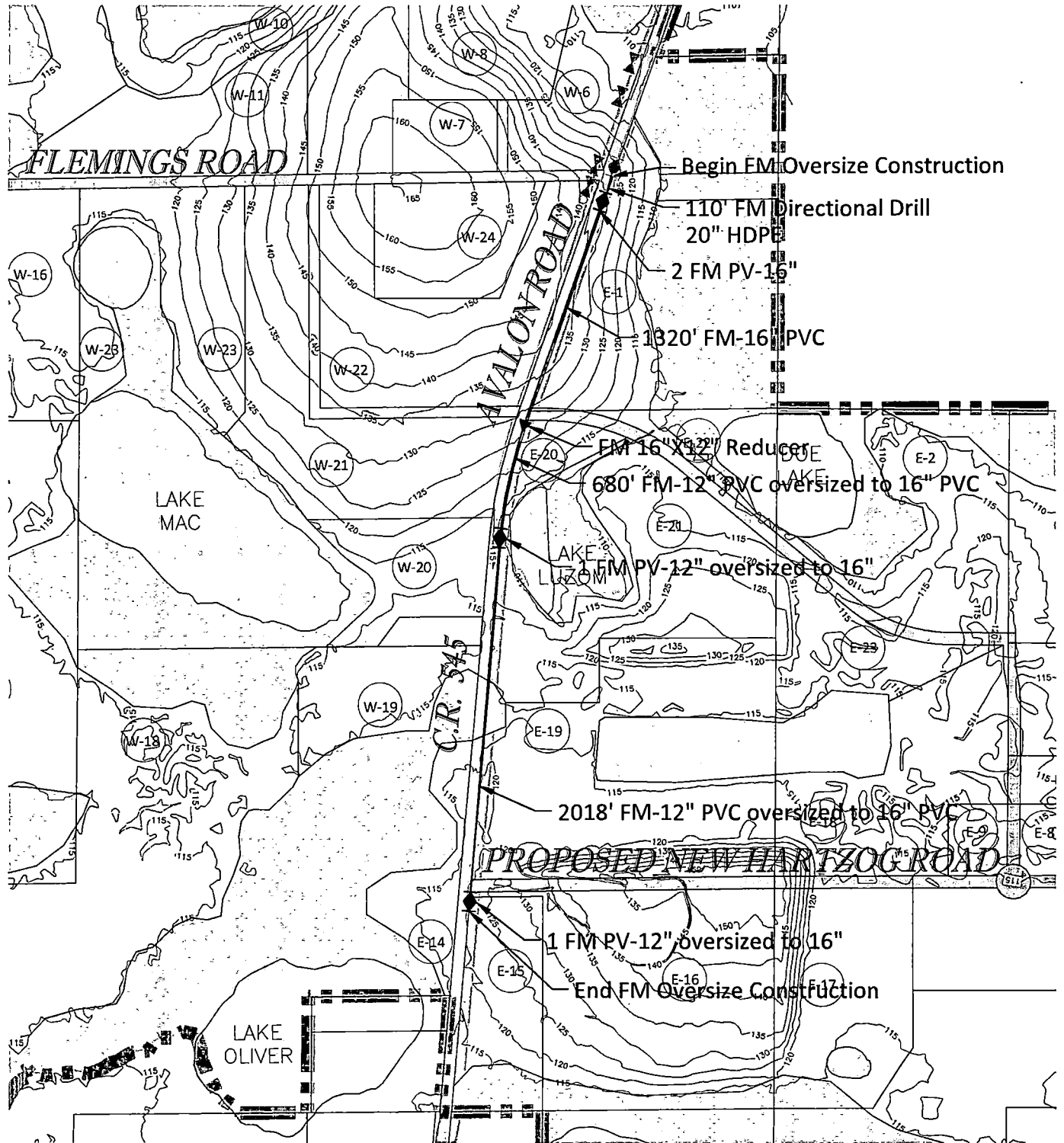


EXHIBIT "B"
 OVERSIZED UTILITY WORK
 FORCE MAIN



Village I Phase 3 Oversized Force Main
Offsite Improvements

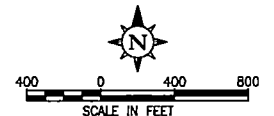


EXHIBIT "C 1 of 1"
VILLAGE I PHASE 3 OFFSITE IMPROVEMENTS
OVERSIZE AGREEMENT
STANDARD BID FORM AND PAY ITEMS - POTABLE WATER, RECLAIMED WATER AND FORCE MAIN

| "Oversized Utility Work" and "Developer Sized Utility Work" | | | | |
|--|----------|------|------------|-------|
| Description | Quantity | Unit | Unit Price | Total |
| Oversized Utility Work | | | | |
| Maintenance Guarantee | | LS | | |
| P&P Bond | | LS | | |
| 30" HDPE WM - Directional Drill | | LF | | |
| 24" DIP WM | | LF | | |
| 24" WM Gate Valve | | EA | | |
| WM Pipe Fittings and Restraints | | LF | | |
| WM Testing and Chlorination | | LF | | |
| 20" DIP RW | | LF | | |
| 24" HDPE RW - Directional Drill | | LF | | |
| 24" DIP RW | | LF | | |
| 30" DIP RW | | LF | | |
| 36" HDPE RW - Directional Drill | | LF | | |
| 20" RW Gate Valve | | EA | | |
| 24" RW Gate Valve | | EA | | |
| 30" RW Gate Valve | | EA | | |
| RW Pipe Fittings and Restraints | | LF | | |
| RW Testing | | LF | | |
| 20" HDPE FM - Directional Drill | | LF | | |
| 16" PVC FM | | LF | | |
| 16" FM Plug Valve | | EA | | |
| FM Pipe Fittings and Restraints | | LF | | |
| FM Testing | | LF | | |
| Oversized Utility Work Total | | | | |
| Developer Sized Utility Work | | | | |
| Maintenance Guarantee | | LS | | |
| 16" HDPE WM - Direction Drill | | LF | | |
| 16" DIP WM | | LF | | |
| 12" PVC WM | | LF | | |
| 16" WM Gate Valve | | EA | | |
| 12" WM Gate Valve | | EA | | |
| WM Pipe Fittings and Restraints | | LF | | |
| WM Testing and Chlorination | | LF | | |
| 20" HDPE RW - Directional Drill | | LF | | |
| 16" HDPE RW - Directional Drill | | LF | | |
| 16" DIP RW | | LF | | |
| 12" PVC RW | | LF | | |
| 16" RW Gate Valve | | EA | | |
| 12" RW Gate Valve | | EA | | |
| RW Pipe Fittings and Restraints | | LF | | |
| RW Testing | | LF | | |
| 20" HDPE FM - Directional Drill | | LF | | |
| 16" PVC FM | | LF | | |
| 12" PVC FM | | LF | | |
| 16" FM Plug Valve | | EA | | |
| 12" FM Plug Valve | | EA | | |
| FM Pipe Fittings and Restraints | | LF | | |
| FM Testing | | LF | | |
| Developer Sized Utility Work Total | | | | |
| Developer Credit for Potable Watermain Booster Pump | | | | |
| Developer Credit for Reclaimed Watermain Booster Pump | | | | |
| Village I Developer Cost Adjustment | | | | |
| Developer Sized Utility Work Total | | | | |
| Oversized Utility Work Total Developer Sized Utility Work Total "Oversizing Cost" | | | | |

Note: The potable watermain, forcemain and reclaimed watermain's installation prices per linear foot include all installation costs, backfill, compaction and restoration. All cost came from a local contractor at the time of this cost opinion.