



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 3

**DATE:** March 18, 2019

**TO:** Mayor Jerry L. Demings  
and the  
Board of County Commissioners

**THROUGH:** Paul Sladek, Manager *PS*  
Real Estate Management Division

**FROM:** Elizabeth Price Jackson, Senior Title Examiner *EB*  
Real Estate Management Division *for BJ*

**CONTACT PERSON:** Paul Sladek, Manager

**DIVISION:** Real Estate Management  
Phone: (407) 836-7090

**ACTION REQUESTED:** Approval and execution of Interlocal Agreement between Orange County, Florida and City of Apopka, Florida regarding Reimbursement for Oversizing Utility Line Construction for Camp Joy at Kelly Park

**PROJECT:** Camp Joy Sewer and Sanitary Force Main  
District 2

**PURPOSE:** To reimburse the County for the cost of oversized utility facilities requested by the City of Apopka to accommodate future development in connection with the County's park improvements.

**ITEM:** Interlocal Agreement between Orange County, Florida and City of Apopka, Florida regarding Reimbursement for Oversizing Utility Line Construction for Camp Joy at Kelly Park

**APPROVALS:** Real Estate Management Division  
County Attorney's Office  
Capital Projects Division  
Parks and Recreation Division  
Risk Management Division

**REMARKS:**

The County is converting the Camp Joy at Kelly Park property (Park) from a private water well and septic tank system to a public water and wastewater service provided by the City of Apopka (Apopka). Apopka requested that the County oversize the water main through the Park to better serve areas within Apopka's service area. Pursuant to this Interlocal Agreement, Apopka will reimburse the County for the cost differential for the oversizing of the water pipes.

**INTERLOCAL AGREEMENT**

*between*

**ORANGE COUNTY, FLORIDA**

*and*

**CITY OF APOPKA, FLORIDA**

*regarding*

**REIMBURSEMENT FOR OVERSIZING UTILITY LINE CONSTRUCTION  
FOR CAMP JOY AT KELLY PARK**

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THIS INTERLOCAL AGREEMENT (the "Agreement") is made and entered into as of the date of last execution below (the "Effective Date") by and between the CITY OF APOPKA, a Florida municipal corporation, whose address is P. O. Drawer 1229, Apopka, Florida 32704 (the "CITY") and 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. Hereinafter, the CITY and the COUNTY may be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

**WHEREAS**, this Interlocal Agreement is entered into pursuant to the home-rule powers granted to the COUNTY and the CITY under the Constitution and laws of the State of Florida, including, but not limited to, the powers granted under the Florida Interlocal Cooperation Act contained in Section 163.01, Florida Statutes; and

WHEREAS, the COUNTY is the fee simple owner of certain real property located in unincorporated Orange County, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof by this reference (the "Property"); and

WHEREAS, the COUNTY intends to convert the Property from private well and septic tank usage to water and wastewater service (the "Project"); and

WHEREAS, in order to proceed with the Project, it will be necessary to obtain water and wastewater service to the Property; and

WHEREAS, the Project is located entirely within the CITY'S service territory and the CITY is the appropriate service provider with jurisdiction over the Project; and

WHEREAS, the COUNTY, in order to deliver water service to the Project, requires 2,714 linear feet of 4-inch water main (the "Utility Work"); and

WHEREAS, the CITY, in order to better serve areas within its service territory, requests that the COUNTY construct a 6-inch water main along the same route as depicted in **Exhibit**

“B” attached hereto and made a part hereof by this reference, with the 6-inch water main hereinafter called the “Oversized Utility Work;” and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which (i) the COUNTY shall construct the Oversized Utility Work requested by the CITY, and (ii) the CITY shall reimburse the COUNTY for the cost differential between the Oversized Utility Work and the Utility Work, as more particularly set forth below; and

WHEREAS, the CITY finds the expenditure of funds in the achievement of the objectives of this Agreement to be in the public interest,

NOW, THEREFORE, in consideration of the premises hereof and the mutual covenants set forth herein, the Parties hereby agree as follows:

**SECTION 1. RECITALS INCORPORATED.**

All of the recitals set forth above are true and correct, and are incorporated herein and made a part hereof by this reference.

**SECTION 2. PREPARATION OF CONSTRUCTION PLANS, BIDS. AND CONTRACT.**

2.1 On October 18, 2018, the COUNTY issued IFB No. Y19-711-RC for the Oversized Utility Work (the “IFB”). The IFB was based on plans and specifications (“Construction Plans”) for the Oversized Utility Work.

2.2 On December 4, 2018 the COUNTY opened sealed bids in accordance with County procurement procedures for the Oversized Utility Work based on the Construction Plans.

2.3 The COUNTY has selected the bid of the lowest responsive and responsible bidder for the Oversized Utility Work and provided the City the bidder’s cost differential for the Oversized Utility Work attached hereto as **Exhibit “C”** and made a part hereof by this reference (the “Cost Differential”).

2.4 The COUNTY shall ensure that the construction contract(s) provide(s) a maintenance guarantee pursuant to Section 7.2 of this Agreement for the work performed, which maintenance guarantee shall be in force and effect for a period of one (1) year from the date on which the CITY accepts ownership and maintenance responsibility for the Oversized Utility Work to be located in right-of way of Baptist Camp Road as depicted in **Exhibit “B”**.

2.5 The COUNTY shall ensure that the construction contract(s) contain(s) a performance bond and a payment bond pursuant to Section 7 of this Agreement. Each bond shall be in the amount of the value of the construction contract. The performance bond shall ensure that the construction contractor fully, promptly, and faithfully performs the contract and all obligations thereunder. The payment bond shall ensure that the construction contractor shall

promptly make payment to all persons supplying services, labor, material, or supplies used directly or indirectly by the contractor, or any subcontractor(s) in the prosecution of the work provided for in the contract.

**SECTION 3. PERMITS.**

The COUNTY shall apply for and obtain all necessary governmental permits and approvals for the Oversized Utility Work. The CITY agrees to cooperate and assist the COUNTY in its obtaining of all necessary permits related to the Oversized Utility Work. The COUNTY shall promptly deliver to the CITY copies of all applicable permits prior to commencement of construction.

**SECTION 4. COMMENCEMENT OF WORK.**

After the execution of this Agreement, issuance of all required permits, and the CITY'S receipt of the required items as stated herein, the COUNTY will commence the Oversized Utility Work, based upon the Construction Plans and permits for the same.

**SECTION 5. PAYMENT OF COSTS.**

The COUNTY and the CITY agree to pay for the Oversized Utility Work as follows:

5.1 The COUNTY shall pay for the design, engineering, surveying, geotechnical engineering, environmental work, permitting, bidding, inspection, construction, construction administration, maintenance guarantee, final testing, certification costs and fees for the Oversized Utility Work. The CITY shall reimburse the COUNTY for the cost difference between the final, CITY approved cost actually incurred for the Oversized Utility Work and the selected bid amount for the Utility Work, with this cost difference being called the "Oversizing Cost." In no case shall the CITY'S reimbursement obligation to the COUNTY exceed an Oversizing Cost of Twenty-Seven Thousand Seventy and 00/100 Dollars (\$27,070.00).

5.2 The CITY shall reimburse the COUNTY in one lump sum after all of the following events have occurred:

- A. Receipt by the CITY of a written reimbursement request from the COUNTY.;
- B. Inspection, approval, and acceptance by the CITY of the completed Oversized Utility Work;
- C. Receipt by the CITY of the maintenance guarantee and bill of sale as described in Section 7 of this Agreement; and
- D. Receipt by the CITY of copies of such contracts, final release of liens, itemized invoices and other documents evidencing the costs of and complete payment for the Oversized Utility Work, including any retainage.

5.3 In the event the CITY raises any objections to any fee or cost set forth in the reimbursement request or supporting documentation, the disputed amount will be withheld from payment and the undisputed amount shall be paid in accordance with this Section.

**SECTION 6. DISPUTES.**

All claims, disputes and other matters in question between the Parties arising out of, or relating to, this Agreement or its performance or breach (a "Dispute") shall be resolved in the following order: (a) good-faith negotiation, (b) mediation, and then (c) judicial resolution. The process of "good-faith negotiations" requires each Party to set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The good-faith negotiations shall include at least one meeting of representatives of the Parties. The Party-representative shall have authority to resolve the Dispute.

**SECTION 7. PERFORMANCE AND PAYMENT BONDS: MAINTENANCE GUARANTEE: AND BILL OF SALE.**

7.1 Prior to commencing the construction, the COUNTY shall cause its general contractor to obtain and deliver to the COUNTY and the CITY a payment bond and a performance bond, as referenced in Section 2.6 of this Agreement, , pursuant to Section 255.05, Florida Statutes, as it may be amended. The payment and performance bonds shall name the CITY as Dual-Obligee and be assignable to the CITY following acceptance by the City of the Oversized Utility Work to be dedicated to the CITY. The surety company issuing the payment bond and the performance bond shall meet the following qualifications:

- A. Surety must be licensed to do business in the State of Florida, maintain an AVI or better rating with AMBest or an equivalent rating agency and shall comply with the provisions of Section 255.05, Florida Statutes.
- B. Surety must be listed on the most recent version of the U.S. Department of Treasury Fiscal Service, Bureau of Financial Management, Circular 570 entitled; "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."
- C. All bonds/surety instruments shall be originals and issued by a producing agent with the authority to issue said bonds/surety instruments on behalf of the surety company. Attorneys-in-fact who sign bonds/surety instruments must attach with each bond/surety instrument a certified and effectively dated copy of their power of attorney. Agents of surety companies must list their name, address, and telephone number on all bonds/surety instruments.

7.2 The COUNTY shall cause its general contractor to provide a maintenance guarantee in the form of a maintenance bond in favor of the COUNTY and CITY in an amount equal to ten (10%) percent of the Costs of the Oversized Utility Work. The purpose of the maintenance guarantee is to guarantee the materials, workmanship, structural integrity,

functioning, and maintenance of the Oversized Utility Work. The surety company issuing the maintenance bond shall meet the qualifications set forth in Section 7.1 of this Agreement. If the maintenance guarantee is provided in the form of an irrevocable letter of credit, 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 shall be on the State of Florida approved “qualified public depositories” list for local governments, as identified in Chapter 280, Florida Statutes. The maintenance guarantee shall be in a form acceptable to the CITY.

7.3 Prior to the CITY’S issuance of the certificate of completion for the Oversized Utility Work, the COUNTY shall deliver to the CITY a bill of sale in favor of the CITY, and a maintenance guarantee provided herein for the Oversized Utility Work located in Baptist Camp Road right-of way as depicted in **Exhibit “B”**, at which time the CITY shall be deemed to have accepted the dedication of and ownership and operational responsibility for such dedicated portion.

## **SECTION 8. INDEMNIFICATION.**

Each party agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys’ fees) arising from the indemnifying party’s own negligent acts or omissions, or those negligent acts or omissions of the indemnifying party’s officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party’s negligent performance under this Agreement. Each party’s indemnification is expressly limited to the amounts set forth in Section 768.28(5), Florida Statutes as amended by the Florida State Legislature. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability of any kind for the acts, omissions, and/or negligence of the other party, its officers, officials, employees, agents, or contractors.

## **SECTION 9. INSURANCE.**

Prior to commencing any portion of the Oversized Utility Work and throughout the course of construction of the Oversized Utility Work, the COUNTY shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified below and shall furnish to the CITY evidence of such insurance including endorsements prior to commencement of construction.

(i) Workers’ compensation insurance with statutory workers’ compensation limits and no less than One Million and 00/100 Dollars (\$1,000,000.00) for Employer’s Liability with a waiver of subrogation in favor of the CITY, its consultants, agents, employees and officials.

(ii) Commercial general liability insurance for all operations including, but not limited to contractual, products and completed operations and personal injury with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and an aggregate limit of at least twice the per occurrence limit.

(iii) Business automobile liability insurance for all owned, hired, or non-owned vehicles with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

(iv) Professional Liability (errors and omissions) for engineering design in amounts not less than One Million and 00/100 Dollars (\$ 1,000,000.00) per occurrence.

The CITY shall be specifically named (scheduled) as an additional insured on all policies except for workers' compensation coverage.

All coverage shall be primary and not contributory with any insurance or self-insurance maintained by the CITY. The COUNTY shall provide the CITY notice of any material change, cancellation, non-renewal of any policy required herein at least thirty (30) days prior to the occurrence thereof.

**SECTION 10. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS.**

If for any reason during the term of this Agreement, local, regional or state governments or agencies (other than the CITY) shall fail to issue necessary permits or fail to grant necessary-approvals for the Oversized Utility Work, after the COUNTY has complied with all conditions precedent to receipt of such permits, to the extent that the requirements necessary to obtain such permits or approvals shall affect the ability of the COUNTY or the CITY to perform any of the terms thereof, this Agreement shall be renegotiated by the Parties hereto to the extent reasonably feasible to cause the Oversized Utility Work to comply with said requirements.

**SECTION 11. TERM: LIMITATION OF LIABILITY,**

11.1 The term of this Agreement shall be five (5) years from the Effective Date. In the event the COUNTY has not, by the second anniversary of the Effective Date of this Agreement, let a contract for the construction of the Oversized Utility Work, the CITY may terminate this Agreement upon thirty (30) days' notice to the COUNTY.

11.2 The CITY and COUNTY expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies as provided herein. Except as otherwise provided herein, in redress for the failure of either Party to perform its obligations under this Agreement, the Parties shall have only the following remedies available against each other:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of the COUNTY or the CITY; or



(iv) any combination of the foregoing.

Both Parties hereto expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by the other. Both Parties expressly agree that each shall bear the cost of its own attorney's fees for any action arising out of or in connection with this Agreement. Both Parties waive their respective rights to trial by jury.

**SECTION 12. COMPLIANCE WITH LAWS AND REGULATION.**

In performing pursuant to the Agreement, each Party hereto will abide by the respective statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such Party.

**SECTION 13. NOTICE.**

Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (i) hand delivered to the official hereinafter designated, or (ii) three (3) days after the date on which deposited in the United States mail, postage prepaid, certified mail return receipt requested, and addressed to a Party at the address set forth opposite the Party's name below, or such other address as the Party shall have specified by written notice to the other Party delivered in accordance herewith.

If to the CITY:           City of Apopka  
                                  120 East Main Street  
                                  Apopka, Florida 32703  
                                  Attn:

With copy to:           City of Apopka  
                                  120 East Main Street  
                                  Apopka, Florida 32703  
                                  Attn: City Attorney

If to the COUNTY:      Orange County Capital Projects Division  
                                  Attn: Manager  
                                  400 East South Street, 5<sup>th</sup> Floor  
                                  Orlando, Florida 32801

                                  Orange County Parks & Recreation Division  
                                  Attn: Manager  
                                  4801 West Colonial Drive  
                                  Orlando, Florida 32808  
With a copy to:        Orange County Administrator  
                                  P. O. Box 1393  
                                  Orlando, Florida 32802

**SECTION 14.**            **ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the Parties to be bound thereby.

**SECTION 15.**            **TIME IS OF THE ESSENCE.**

Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

**SECTION 16,**            **NON-WAIVER.**

No consent or waiver, expressed or implied, by either Party, to or of any breach or default of the other Party, with regard to the performance by said other Party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver, to or of, any other breach or default in the performance of that Party, of the same or of any other objection of performance incumbent upon that Party. Failure on the part of either Party to complain of any act or failure to act on the part of the other Party in default, irrespective of how long the failure continues, shall not constitute a waiver by that Party of its rights and any remedies that exist under this Agreement, at law, or in equity.

**SECTION 17.**            **CONSTRUCTION OF AGREEMENT.**

This Agreement shall not be construed against either Party on the basis of it being the drafter of the Agreement. The Parties agree that both herein played an equal part in negotiating the terms and conditions of this Agreement. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

**SECTION 18.**            **REASONABLE APPROVAL.**

In those instances in this Agreement in which a Party's approval, consent or satisfaction is required and a time period is not specified, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

**SECTION 19.**            **PUBLIC RECORDS.**

The COUNTY will allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and which have been made or received by the COUNTY in conjunction with this Agreement. Nothing herein contained shall require the COUNTY to allow public access to any financial information not pertaining specifically to the Construction Plans, or to any proprietary information.

**SECTION 20.**            **RECORDS AND AUDITS.**

The COUNTY will maintain all documents pertaining to this Agreement in accordance with Florida Public Records law, Chapter 119, Florida Statutes.

**SECTION 21.**            **EQUAL OPPORTUNITY EMPLOYMENT.**

The COUNTY agrees that it will not discriminate and will provide in all contracts that its contractors will not discriminate against any employee or applicant for employment under this Agreement because of race, color, religion, sex, age, or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

**SECTION 22.**            **SEVERABILITY.**

If any part of this Agreement is found invalid or unenforceable by any court, such validity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

**SECTION 23.**            **ASSIGNMENT.**

The rights and obligations of the COUNTY hereunder are not covenants running with the land and shall only be binding upon and exercisable by the COUNTY (and not any successor in title to any portion of the Property). Neither the CITY nor the COUNTY may assign its rights hereunder without the prior written consent of the other party. Failure to comply with this section may result in immediate termination of this Agreement.

**SECTION 24.**            **DISCLAIMER OF THIRD PARTY BENEFICIARIES.**

No right or cause of action shall accrue upon or by reason of this Agreement, to or for the benefit of any third party not a formal party hereto. The Parties agree that this section shall not be applied to provisions of this Agreement to situations where the Parties have authorized one Party to be a third party beneficiary to the construction, design, or other agreement authorized herein or any assignee under this Agreement.

**SECTION 25.**            **GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and construed in accordance with laws of the State of Florida, without giving effect to any choice of law rules thereof which may direct the application of laws of another jurisdiction. The venue for any mediation or judicial proceedings shall be Orange County, Florida.

**SECTION 26.**            **LAND USE AND OTHER REGULATORY APPROVALS.**

This Agreement shall not be construed as granting or assuring or indicating any further grant of

any land use, zoning, subdivision, density or development approvals, permissions or rights with respect to the Project. Nor shall this Agreement be deemed to reduce, eliminate, derogate from, or otherwise adversely affect any such approvals, permissions, or rights.

**SECTION 27.**            **NON-APPROPRIATION.**

In accordance with the Florida Constitution and other applicable state and local laws, including but not limited to Section 129.07, Florida Statutes, the obligations of the CITY in this Agreement are subject to sufficient budgeted CITY funds being available in each CITY budget year to achieve the purposes of this Agreement.

**SECTION 28.**            **FURTHER DOCUMENTATION.**

The Parties agree that from time to time and following a request therefore by a Party, each Party shall properly execute and deliver to the other Party such other documents and instruments reasonably necessary to effectuate the obligations of each Party hereunder.

***(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)***

**IN WITNESS WHEREOF**, the Parties have hereto caused these presents to be executed as of the dates indicated below.

(Official Seal)

**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

BY: *Jerry L. Demings*  
Jerry L. Demings  
Orange County Mayor

DATE: 9/20/19

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

BY: *Katie Smith*  
Deputy Clerk  
**Katie Smith**  
Printed Name



CITY OF APOPKA, a Florida municipal corporation

By: Bryan Nelson  
Bryan Nelson  
Mayor

[Signature]  
Witness

Steven Van Camp  
Printed Name

[Signature]  
Witness

Linda E Goff

Approved as to form and legality for the Execution by a signatory of the City of Apopka

Legal Counsel  
By: [Signature]  
Printed Name Joseph K. Byrd

Title: City Attorney

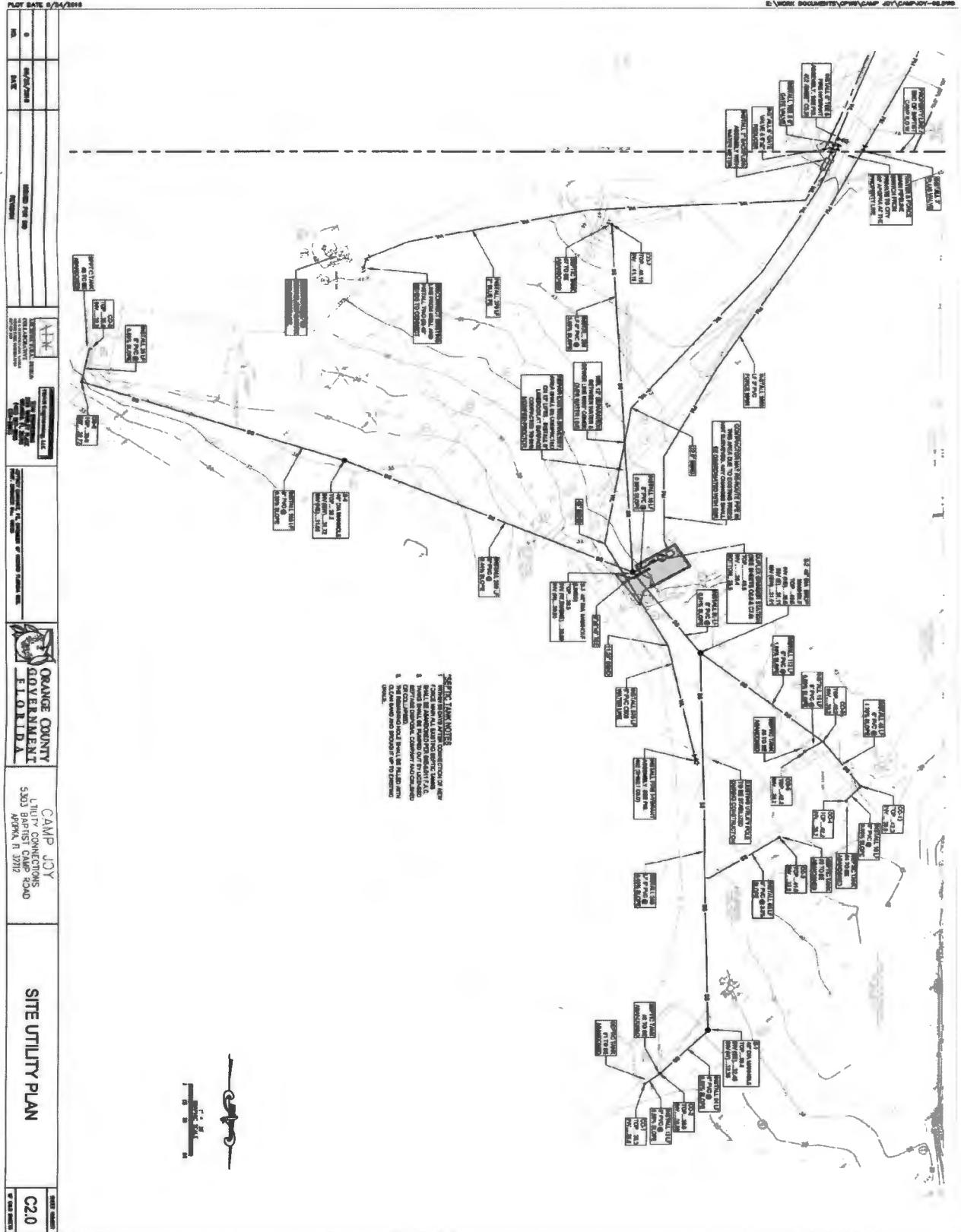
Date: 3/6/19

**Exhibit "A"**  
**The Property**

Property Appraiser's Parcel ID No. 10-20-28-0000-00-006

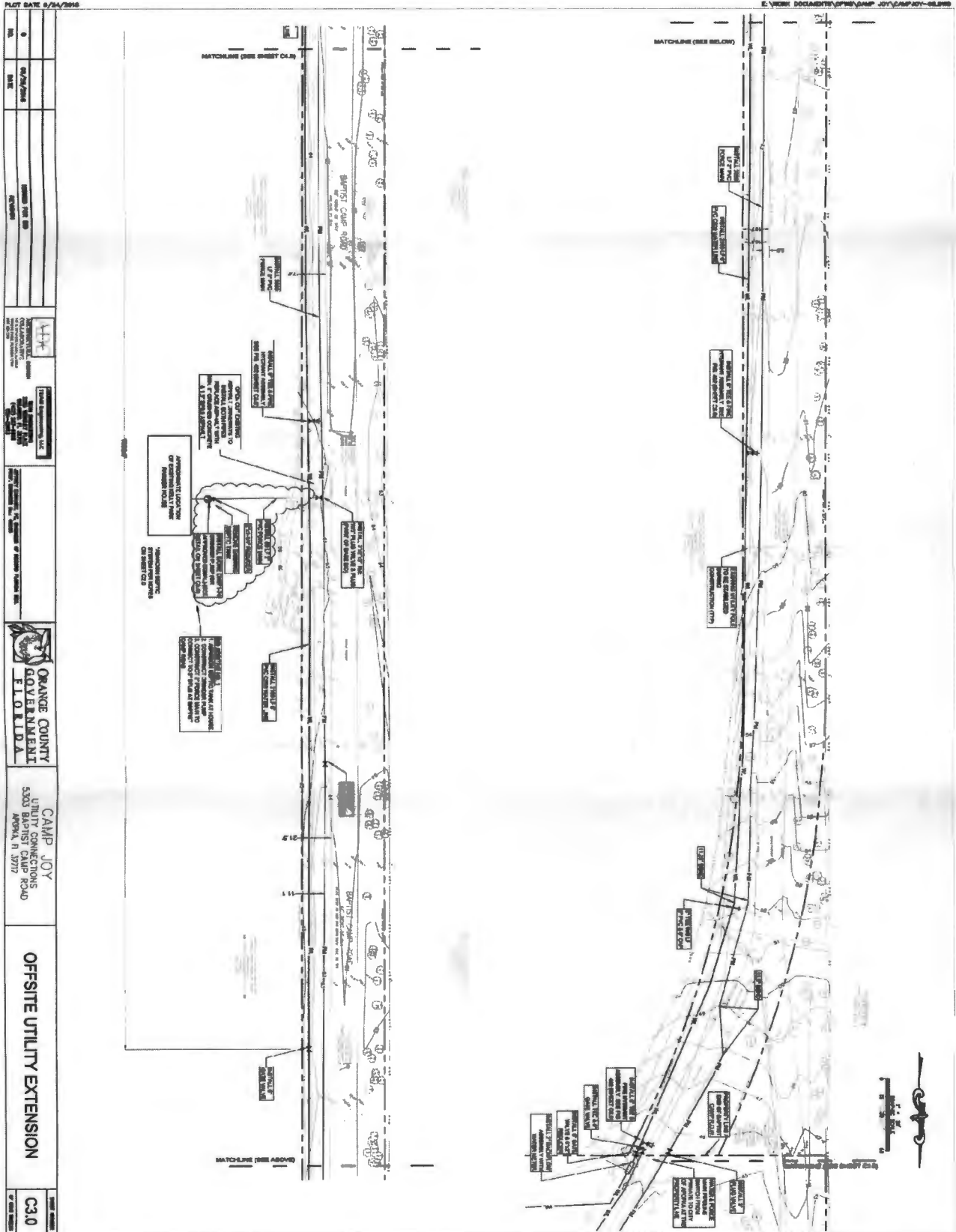
The Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 10, Township 20 South, Range 28 East, LESS that portion thereof lying North and East of Rock Springs Run, also LESS the North 100 feet of the above lands lying West of Rock Springs Run, all lying and being in Orange County, Florida.

# Exhibit "B" Oversized Utility Work



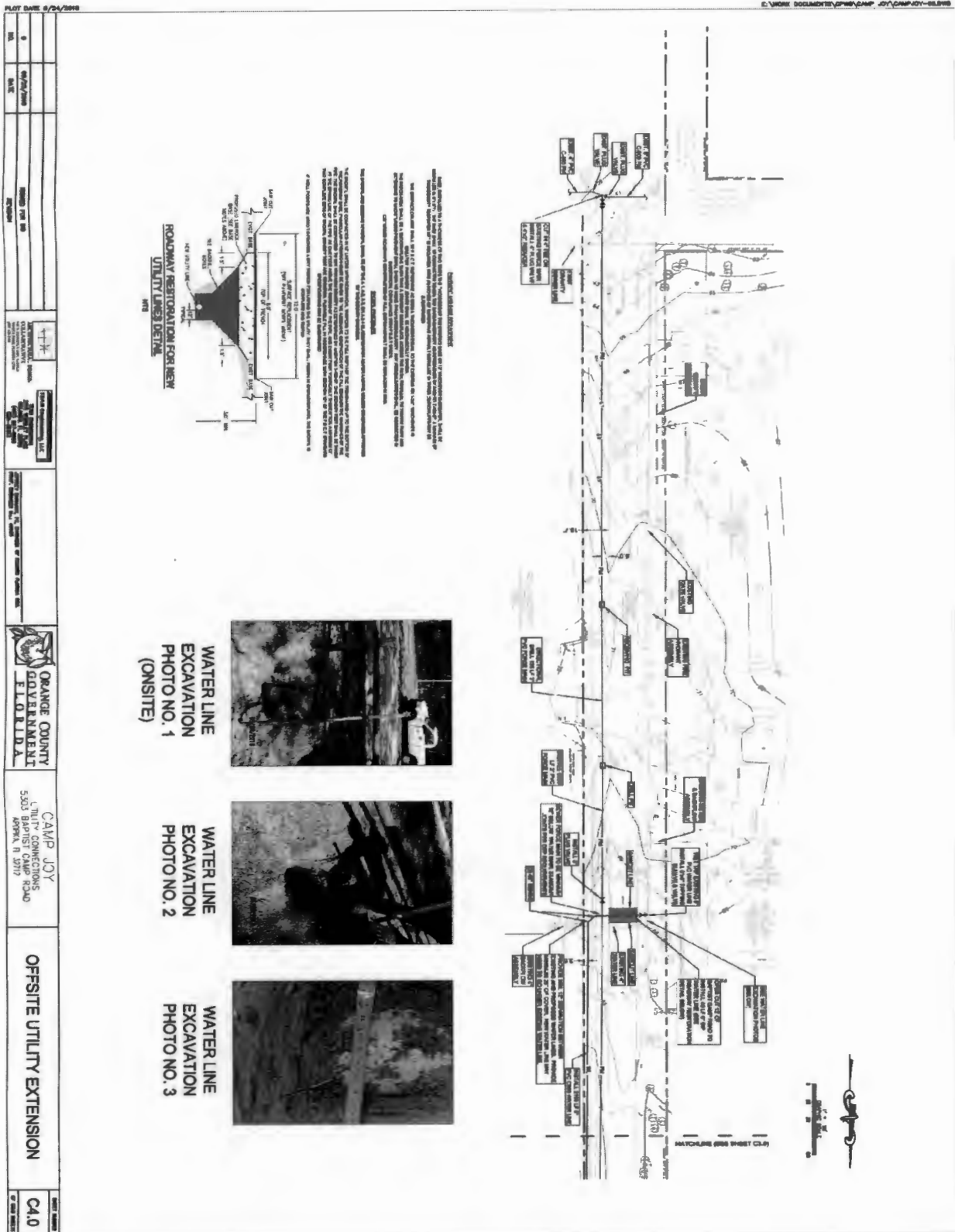


# Exhibit "B" Oversized Utility Work (Cont'd)



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200	8/24/2016

## Exhibit "B" Oversized Utility Work (Cont'd)



**Exhibit "C"**  
**Cost Differential**

Camp Joy Water and Wastewater Improvements  
Oversize Agreement  
Water Main and Fire Hydrants

Oversized Utility Work				
Description	Quantity	Unit	Unit Price	Total
Oversized Utility Work				
Pipe - 6" PVC C900 - Trenched (material cost only)	2,714	LF	\$ 4.65	\$12,620.10
Pipe - 4" PVC C900 - Trenched (material cost only) - Deduct	2,714	LF	\$ 2.15	(\$5,835.10)
Off-Site Fire Hydrant Assembly (Include all misc. accessories)	3	Each	\$ 3,348.33	\$10,044.99
			Oversizing Cost	\$16,829.99