



Interoffice Memorandum

December 2, 2019

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

FROM: Joseph Kunkel, P.E., Director, Public Works Department

Handwritten signature of Joseph Kunkel in black ink.

CONTACT PERSON: Michael J. Drozeck, P. E., CFM, Manager 
Stormwater Management Division

PHONE NUMBER: (407) 836-7945

SUBJ: Resolution to transfer the Lee Road Weir and Lake Killarney drain wells to the City of Winter Park

At the request of the City of Winter Park, Orange County entered into negotiations for the transfer of ownership of six drain wells and one weir structure and associated outfall pipe from County to City control.

The City of Winter Park desires to have ownership of the six drain wells and the weir structure and outfall pipe for the purpose of flood control and management of the water level of Lake Killarney. Direct management of the structures by the City of Winter Park will benefit the properties within the Lake Killarney watershed and is in the interest of the public.

An Interlocal Agreement was negotiated between the two entities that reflects the desire of the City of Winter Park to own, operate, control, maintain, and repair or replace the weir structure, associated outfall pipe, and the six drain wells located at Lake Killarney. Winter Park's City Council approved the Interlocal Agreement on October 14, 2019.

The Public Works Department has determined that the structures at Lake Killarney are no longer needed for County purposes.

Action Requested: Approval and execution of (1) Resolution of the Orange County Board of County Commissioners regarding authorization to convey certain county personal property interests in Lee Road weir and Lake Killarney drain wells to City of Winter Park, Florida; (2) Bill of Sale; and (3) Interlocal Agreement between Orange County, Florida and City of Winter Park, Florida regarding transfer of Lee Road weir and six drain wells. All Districts

MD/JC/mh

BILL OF SALE

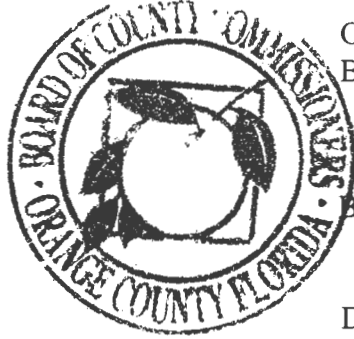
KNOW ALL MEN BY THESE PRESENTS:

That **ORANGE COUNTY**, a charter county and political subdivision of the state of Florida (the "COUNTY"), for and in consideration of the sum of One Hundred Dollars (\$100.00) in lawful money (and other good and valuable considerations, the receipt and adequacy of which is hereby acknowledged) to it paid by **CITY OF WINTER PARK**, a Florida municipal corporation (the "CITY") has granted, bargained, sold, transferred, set over and delivered, and by these presents does hereby grant, bargain, sell, transfer, set over and deliver unto the CITY, its successors and assigns, the assets more particularly described on the attached **Exhibit "A"** (hereinafter the "Assets").

TO HAVE AND TO HOLD the same unto the CITY, its successors and assigns forever.

And the COUNTY, for itself and its successors, hereby covenants to and with CITY, its successors and assigns, that it is the lawful owner of the Assets; that they are free from all liens and encumbrances; that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the COUNTY hereby executes this Bill of Sale on the date set forth below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor
Date: 17 Dec 19

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

By: *Craig A. Stopyska*
for Deputy Clerk

Date: DEC 17 2019

EXHIBIT "A"

That certain water control structure commonly referred to as the Lee Road Weir, on property in or adjacent to Lake Killarney in Winter Park, Florida on Orange County Property Appraiser Parcel No. 01-22-29-5224-00-046 (1740 Lee Road), Parcel No. 01-22-29-5224-00-110 (1746 Lee Road) and Parcel No. 01-22-29-5224-00-048 (1750 Lee Road) together with the associated outfall pipe, and

Six drain wells on property in or adjacent to Lake Killarney within unincorporated Orange County that are located in the right of way of Killarney Drive just to the south and west of Orange County Property Appraiser Parcel No. 02-22-29-2996-00-001 also known as 2299 Roxbury Road, together with the associated in-flow pipes and pipes connecting the wells.

Attached hereto as Exhibit "B" is a diagram that depicts the drain wells, in-flow pipes and pipes connecting the wells.

Attached hereto as Exhibit "C" is an aerial photograph of the Property in which five of the six drain wells are visible with a view of the sixth drain well partially obstructed by palm trees.

EXHIBIT "C"



INTERLOCAL AGREEMENT

between

ORANGE COUNTY, FLORIDA

and

CITY OF WINTER PARK, FLORIDA

regarding

TRANSFER OF LEE ROAD WEIR AND SIX DRAIN WELLS

**Approved by the Orange County
Board of County Commissioners**

DEC 17 2019, 2019

**Approved by the City of Winter Park
City Council**

October 14, 2019

INTERLOCAL AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
CITY OF WINTER PARK, FLORIDA
regarding
TRANSFER OF LEE ROAD WEIR AND SIX DRAIN WELLS

THIS INTERLOCAL AGREEMENT (“**AGREEMENT**”) is made and entered into by and between **Orange County**, a charter county and political subdivision of the State of Florida (the “**County**”), and the **City of Winter Park, Florida**, a municipal corporation created and existing under the laws of the State of Florida (the “**City**”).

RECITALS

WHEREAS, the County has authority pursuant to Section 125.01, Florida Statutes, to enter into agreements; and

WHEREAS, the City has authority pursuant Section 166.021, Florida Statutes, to enter into agreements; and

WHEREAS, the County and the City have authority pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements; and

WHEREAS, the County owns and operates a water control structure commonly referred to as the Lee Road Weir, on property in or adjacent to Lake Killarney within the City limits at 1740 Lee Road, 1746 Lee Road, and 1750 Lee Road, Winter Park, Florida (the “**Weir**”); and

WHEREAS, the County owns and operates six drain wells on property in or adjacent to Lake Killarney within unincorporated Orange County (the “**Drain wells**”), as more particularly described in **Exhibit “A,”** attached hereto and incorporated herein by reference; and

WHEREAS, the conveyance and transfer of real or personal property of the County to a

municipality of this state is governed by Section 125.38, Florida Statutes; and

WHEREAS, the City desires that the County transfer jurisdiction of the Weir, including the associated outfall pipe, and the Drain wells for the purposes of flood control and management of the water level of Lake Killarney for the benefit of the properties within the watershed that drains to Lake Killarney; and

WHEREAS, accordingly, the City desires to own, operate, control, maintain, repair, and replace the Weir, and its associated outfall pipe, and the Drain wells; and

WHEREAS, the County is willing to transfer jurisdiction and relinquish ownership of the Weir, the associated outfall pipe, and the Drain wells so that the City can own, operate and maintain them, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Recitals.

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Sale and Purchase of Assets of the County. The County agrees to sell and the City agrees to purchase the Weir, including the associated outfall pipe, and the Drain wells (together the Weir, the outfall pipe, and the Drain wells are referred to as "the Assets"). The City shall assume authority over, ownership of, and responsibility for, the Assets at its sole cost and expense, and the County shall have no further interest in or liability for the same, except as otherwise provided in this Agreement. The City, having had the opportunity to inspect the Assets prior to conveyance, accepts the Assets in their "AS IS" and "WHERE IS" condition, with no warranties whatsoever, except as otherwise provided in this Agreement.

4. **Purchased Assets.** Upon receipt of payment of the purchase price pursuant to Section 5 below, the County shall sell, transfer, convey and deliver to the City and the City shall purchase and accept all of the right, title and interest in and to the Assets.

5. **Purchase Price and Payment.** Within thirty days of the Effective Date, the City shall pay the County, and the County agrees to accept One Hundred Dollars (\$100.00) as the purchase price for the Assets (the "Assets' Purchase Price"). The Parties agree that the Assets' Purchase Price shall be paid in U.S. dollars.

6. **Inspections.** The City may inspect the Assets prior to purchase of the Assets. All inspections of the Assets by the City or its representatives performed pursuant to this Agreement shall not materially interfere with the operation of the Assets or the day-to-day activities of the County's personnel, and the City agrees to indemnify and hold the County harmless from any third-party claims, actions, liabilities, losses, expenses, damages, fees, costs, or fines, including costs and attorney's fees at trial and appeal, which the County incurs (for personal injury or property damage) arising from or related to the inspection of the Assets pursuant to this Agreement by the City, its agents, contractors, representatives and/or employees. This section shall survive the expiration or termination of this Agreement.

7. **All Necessary Governmental Permits and Approvals.** At or before the transfer of the Assets to the City, the County shall cooperate with the City to obtain all necessary governmental permits and approvals (collectively "Permits"), if any, such that the City can operate the Assets. The County agrees to expeditiously process the City's application for any and all Permits. The County agrees to waive any County application fees for the Permits required for the City to operate, maintain, repair, use, and otherwise deal with the Drain wells in the manner and for the purposes the City deems appropriate. The City is permitted to perform routine

maintenance of the Drain wells without obtaining a right of way utilization permit from the County. This provision survives transfer and delivery of the Assets to the City and the closing of the transaction contemplated by this Agreement.

8. Conduct Pending Asset Transfer. The County agrees to the following conditions during the period beginning on the Effective Date and ending on the date of the transfer and delivery of the Assets:

8.1 Business Conduct. Except as otherwise consented to in writing by the City, whose consent shall not be unreasonably withheld, delayed or conditioned, for the period beginning on the Effective Date and ending on the date of delivery of the Assets, the County shall:

- a. Operate the Assets in the usual, regular and ordinary course and nevertheless comply with all applicable governmental requirements and law;
- b. Maintain all of the Assets' material structures, equipment, permits and other tangible personal property and fixtures in good repair, order and condition, except for depletion, depreciation, ordinary wear and tear and damage by unavoidable casualty;
- c. Advise the City of any material change which adversely affects the operation of the Assets

8.2 Risk of Loss. The County shall bear the risk of loss, damage or destruction of the Assets by fire or other casualty prior to and including the date of transfer and delivery of the Assets to the City, unless the loss, damage, or destruction of the Assets is due, in whole or in part, to the acts or omissions of the City, its employees, contractors, or invitees. If any portion of the Assets is damaged by fire, act of God or other casualty before the delivery to the City, and such damage has not been repaired, or provision made for such repair, by the County, the City

shall have the option of: (1) taking the Assets as is, without reduction in price, or (2) electing not to purchase the particular asset subject to the capital loss.

8.3 No Transfers or Encumbrances. From and after the Effective Date, County will not dispose of, hypothecate or encumber any of the Assets, without the prior written consent of the City, which shall not unreasonably be withheld, with the exception of any transactions occurring in the ordinary course of County's business.

9. Deliverables from the County. The following documents shall be delivered by the County to the City no later than the date of transfer and delivery of the Assets to the City:

a. Bills of sale and other documents of assignment and transfer, if any, for all Assets:

b. Copies of all permits, governmental authorizations and approvals, together with applicable permit applications for or transfer approvals from any and all agencies that have issued said permits, authorizations, and approvals:

c. Such other instruments and documents as may be reasonably required in order to transfer ownership and possession of the Assets to the City; provided that none of such documents shall result in any additional liability, financial or otherwise, on the part of the County not otherwise provided for in this Agreement;

d. A copy of the Resolution from the Board of County Commissioners required by section 125.38, Florida Statutes.

10. Deliverables from the City. The following documents shall be delivered by the City to the County no later than the thirty days after the Effective Date and prior to transfer and delivery of the Assets to the City:

- a. A City warrant or check to the County in the amount due to the County as provided in Section 5 herein;
- b. A copy of a resolution or minutes of the City approving this transaction, if not previously delivered to the County.
- c. Such other instruments and documents as may be reasonably required in order to transfer ownership and possession of the Assets to the City.

11. Miscellaneous.

11.1. Validity. The County and the City each represents, warrants, and covenants to and with the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. Also, the County and the City each hereby represents, warrants and covenants to and with the other that this Agreement has been validly approved by its respective governing body, and that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other parties hereto).

11.2 Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with their respective legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

11.3 Headings. The headings or captions of sections or subsections used in this Agreement are merely for the convenience of the parties for reference only and are not intended

to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

11.4. Severability. The provisions of this Agreement are declared by the parties to be severable only to the extent that the remaining provisions can effectuate the purpose and intent of the parties.

11.5. Governing Law; Venue; Attorney's Fees and Costs.

a. This Agreement shall be governed by and construed in accordance with laws of the State of Florida.

b. Venue for any action arising out of or related to this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit in Orange County, Florida.

c. In the event a party deems it necessary to take legal action to enforce any provisions of this Agreement, each party shall bear its own attorney's fees and costs at both the trial and appellate levels.

11.6 Entire Agreement. This Agreement, along with any exhibits, constitutes the entire Agreement between the parties regarding the subject matter hereof. Any prior oral or written agreements or understandings of any kind between the parties relating to the subject matter hereof are null and void and of no further effect.

11.7. Amendments. This Agreement may be amended only by express written instrument approved by the Board of County Commissioners of the County and the City Council of the City, and executed by the authorized officers of each party.

11.8 No Waiver of Regulatory Jurisdictions. This Agreement, nor any provision hereof, shall be construed as a waiver of any regulatory jurisdiction of the County that exists on the Effective Date or at any other time thereafter.

11.9 Assignment. Neither party may sell, assign or transfer this Agreement or any interest it may have hereunder, without prior written approval of the other party, such approval to be not unreasonably withheld, and provided that any such assignment shall not unreasonably interfere with the rights of the non-assigning party hereunder. All covenants, terms, conditions, and provisions of this Agreement shall be binding upon the parties hereto and shall extend to and be binding upon the successors and permitted assigns of the parties hereto.

11.10 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.

11.11. Notices. Any notice required to be given or otherwise given by one party to the other party shall be in writing and shall be deemed delivered when given by hand delivery; five (5) days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail; and addressed as follows:

If to the County: Director, Orange County Public Works Department
4200 South John Young Parkway
Orlando, Florida 32839

With a copy to: County Administrator
Orange County Administration Center
201 South Rosalind Avenue
Orlando, Florida 32802

If to the City: Director, Public Works
City of Winter Park
401 South Park Avenue
Winter Park, Florida 32789

With a copy to: City Manager
City of Winter Park

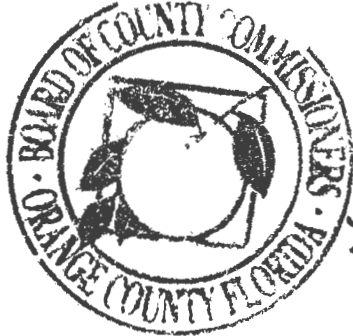
401 South Park Avenue
Winter Park, Florida 32789

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified. Either party may change its designated official or address for receipt of notice by giving notice of such change to the other party in the manner provided in this section.

12. Effective Date. This Agreement shall become effective on the date of execution by the County or the date of execution by the City, whichever date is later.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year indicated below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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

Date: 17 Dec 19

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

By: *Craig A. Stopyla*
fo Deputy Clerk

CITY OF WINTER PARK, FLORIDA
By: City Council

By: *Steve Leary*
Steve Leary, Mayor

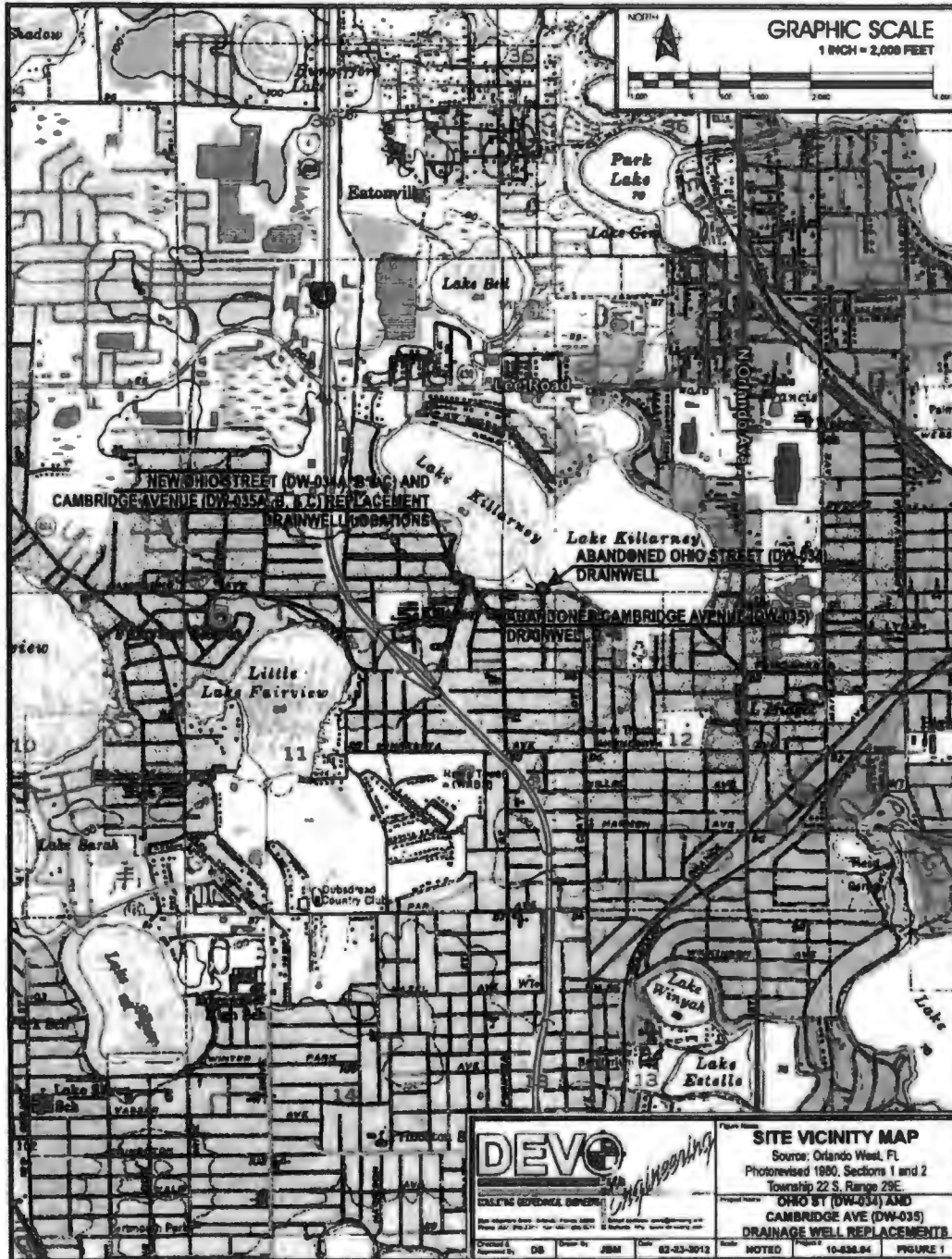
Date: October 23, 2019

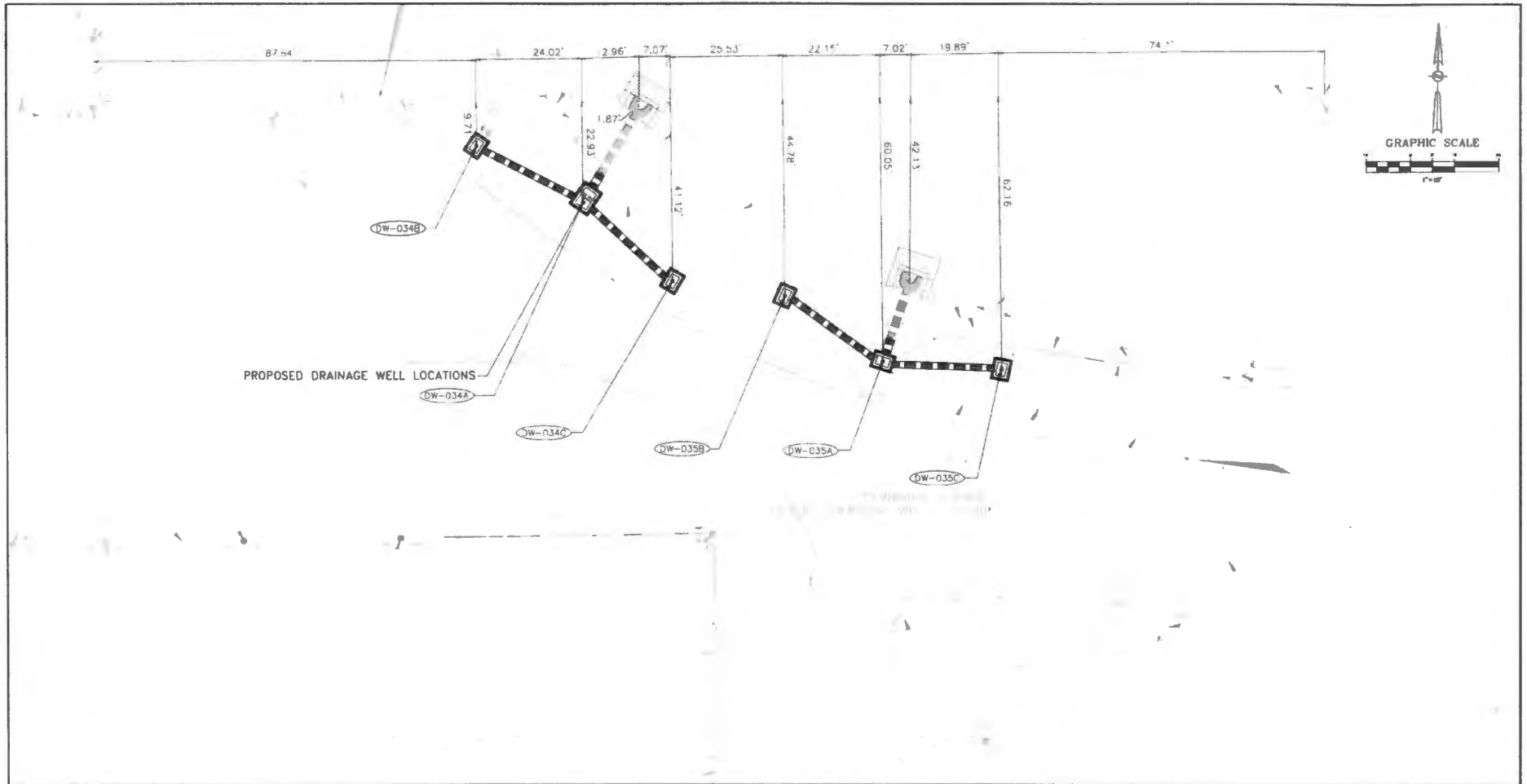
ATTEST:

By: *Rene Cranis*
City Clerk

EXHIBIT "A"

Location Of Lake Killarney Drain Wells





PROPOSED DRAINAGE WELL LOCATIONS

LEGEND

- DW-035A PROPOSED DRAINAGE WELL STRUCTURE
- EXISTING DRAINAGE WELL STRUCTURE
- TW-1 TEST WELL LOCATION

NOTE:

1 ALL DIMENSIONS ARE PERPENDICULAR AND PARALLEL TO THE PROPERTY LINE HAVING A BEARING OF N89°21'11" E.

DATE	REVISIONS	BY	CHECKED

OHIO STREET DW-034 &
CAMBRIDGE AVENUE DW-035
DRAINAGE WELLS REPLACEMENT
ORANGE COUNTY, FLORIDA

DEVO Engineering
CONSULTING ENGINEERING

**PROPOSED DRAINAGE WELLS
SITE LOCATION PLAN**

DESIGNED BY SJB	DRAWN BY VP	CHECKED BY SJB/CS	APPROVED BY CS
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PROJECT NO.	15-002
SCALE	1" = 40'
DATE	FEBRUARY 2012
REVISION	5
DATE	2 of 14

100% SUBMITTAL - FOR CONSTRUCTION