

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: September 16, 2024
RE: **Participation and Reimbursement Agreement with Arrowrock IV Hamilton Road LLC for Water Utilities System Extension**

Attached for your consideration is a Participation and Reimbursement Agreement with Arrowrock IV Hamilton Road LLC (the "Developer") for the design, construction, and dedication of a water utility system extension (an 8-inch water main) in connection with a new commercial development located at 4141 Hamilton Road, Lakeland, Florida.

To address the existing dead-end 8-inch water main on Anchucha Drive and to create a looped system that minimizes service disruptions during emergency maintenance, Water Utilities has determined that it would be beneficial to extend the water system while the development is under construction.

Pursuant to the Agreement, the City will reimburse the Developer for the necessary construction costs associated with extending the existing 8-inch water main approximately 360 feet westward, connecting it to the proposed 12-inch water main along Hamilton Road, which is being constructed as part of this development. The Developer's Engineer of Record obtained three competitive bids detailing the cost of the water main extension, and the City will reimburse the Developer based on the lowest bid.

Upon completion of the improvements, and after inspection, testing, and certification by the Project's Engineer, along with approval from Water Utilities and the Florida Department of Environmental Protection, the City will assume ownership and responsibility for the permanent maintenance and operation of the extended facilities. Arrowrock IV Hamilton Road LLC will provide a standard one-year warranty from the date of dedication for all systems transferred to the City.

The total, not-to-exceed cost for this reimbursement agreement is \$132,135.00, which is included in the Water Utilities FY2024 budget.

It is recommended that the City Commission approve and authorize the appropriate City officials to execute the attached Participation and Reimbursement Agreement with Arrowrock IV Hamilton Road LLC, along with any other documents necessary to finalize this project.

Attachments

PARTICIPATION AND REIMBURSEMENT AGREEMENT FOR WATER UTILITIES SYSTEM EXTENSION

THIS AGREEMENT is entered into _____, by the **CITY OF LAKELAND, FLORIDA**, a Florida municipal corporation, located at 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (the "City"), and **ARROWROCK IV HAMILTON ROAD, LLC**, a Delaware Limited Liability Company, with offices located at 135 N. Meramec Avenue, Suite 600, St. Louis, MO 63105 ("Developer"), the Developer and City agree as set forth below.

WHEREAS, Developer is the owner and developer of real property in the City of Lakeland, Polk County, Florida, more particularly described on **Exhibit "A"** attached hereto and incorporated by reference (the "Developer's Property") and is commonly known as and sometimes referred to as "Hamilton Road Industrial" ("Developer's Project").

WHEREAS, Developer's Project is located at 4141 Hamilton Rd., Lakeland, FL 33811 and the Developer intends to design, construct, and dedicate a potable water main connecting to the City's water system.

WHEREAS, the City has determined that in order to provide adequate service to future nearby developments and accommodate growth in the surrounding service area, it would be beneficial for the water main to be extended and to connect to the City's system providing a looped system.

WHEREAS, the City recognizes the advantages of collaborating in the extension of the Developer's proposed potable water system, including compensating the Developer for essential construction expenses associated with the increased service capacity from the Developer's system.

WHEREAS, the Developer has agreed to provide to the City all permits, licenses, easements, and rights-of-way necessary for the construction, maintenance and operation of the System.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. **General Project Scope**. The Developer will design and install a water main extension and necessary facilities and appurtenances, to provide a loop connection of the potable water system requested by the City.
2. **Design Approvals**. The Developer shall provide the design and field construction layout, subject to approval by the City.
3. **Permitting and Easements**. The Developer shall obtain all permits, licenses, easements, and rights- of-way and provide legal descriptions for the easements to be dedicated to the City. New easements and rights-of-way shall be provided to the City only to the extent that the proposed facilities are not located within existing City or state easements or rights-of-way.

4. **Calculation of Reimbursement Cost.** The cost to reimburse will be the difference between the cost of the engineered base case that fully meets the Developer's needs for its current site development plan and the cost of the engineered looped system that meets the City's request. The scope of work for site improvements were solicited as turnkey with the engineered base case embedded in those costs. As such, the Developer's Engineer of Record prepared an itemized cost differential, attached hereto as **Exhibit "B"**, between the Developer's original designed capacity and the upsized capacity requested by the City.
5. **Reimbursement.** The City shall, within forty-five (45) days of satisfaction by the Developer of the conditions precedent in Paragraphs 6 and 7 of this Agreement, reimburse the Developer for the agreed cost. The reimbursement shall not exceed \$132,135.00. The Agreement is not a general obligation of the City. In the event this Agreement extends beyond the current fiscal year, no liability will be incurred by the City, or any department, beyond the funds annually appropriated, budgeted, and available for this purpose, which are subject to the discretion of the City Commission.
6. **Conditions for Reimbursement.** The conditions precedent to reimbursement shall be satisfied and documents delivered to the City:
 - a. The Developer shall provide, to the City's satisfaction, a complete water system, including, but not limited to:
 - i. utility infrastructure
 - ii. FDEP clearance
 - iii. Completion of field work
 - iv. Closure of right-of-way permits
 - v. Systems Value Forms
 - vi. Letter of Intent
 - vii. Certificate of Dedication
 - viii. As-built drawings, and
 - ix. Any other documents required by the City.
 - b. This list is not all inclusive, but illustrates the basic items accomplished in the normal course of a project. After all project requirements have been met, the reimbursement will be released. These are the same requirements that are a condition of normal utility service.
7. **Dedication.** Upon completion, inspection and successful testing of the improvements provided for in this agreement, and following receipt of a letter of certification and record drawings (As-Built) from the Engineer of Record for the project, and subject to necessary approvals from Water Utilities Director or Designee and the Florida Department of Environmental Protection, the City shall accept for ownership, perpetual maintenance and operation the upgraded facilities lying within dedicated easements and/or City or state rights-of-way.
8. **Fees and Costs.** All Impact Fees, connection fees, and other charges related to the provision of water and sewer services in effect at the time each individual unit in the development is connected, will prevail and shall not be affected by this Agreement.

9. **Commencement of Performance.** If physical installation of the water system herein contemplated does not commence within one (1) year from the date of full execution of this Agreement by both parties, this Agreement shall be null and void. Once commenced, construction of the system shall continue with due diligence until completed.
10. **Amendments.** Any modifications or amendments to this Agreement shall be in writing, duly executed by both parties.
11. **Binding upon Successors.** This Agreement shall be binding upon and shall inure to the successors and assigns of the parties hereinabove named.
12. **Notices.** Notices required to be given by either party under this Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or by hand delivery:

For Developer:

ARROWROCK IV HAMILTON ROAD, LLC
135 N. Meramec Avenue, Suite 600 St. Louis, MO 63105
314-584-6285
emcgowan@summitstl.com

For City:

City of Lakeland Water Utilities
Attention: Director of Water Utilities 501 East Lemon Street
Lakeland, Florida 33801-5050
Telephone: (863) 834-8316
Email: waterutilitiesnewdev@lakelandgov.net

With a copy to:

City Attorney's Office
City Hall
228 S. Massachusetts Ave.
Lakeland, Florida 33801-5050
Telephone: (863) 834-6010

13. **Public Records.**
 - a. With respect to the services performed pursuant to this Agreement, Developer shall comply with the requirements of the Florida Public Records Law as specifically set forth in Florida Statute 119.0701.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT:

PHONE: 863-834-6264
E-MAIL: KEVIN.COOK@LAKELANDGOV.NET
ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT
228 S. MASSACHUSETTS AVE.
LAKELAND, FLORIDA 33801

- b. In accordance with Section 119.0701, *Florida Statutes*, the Developer shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Developer shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Developer shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Developer does not transfer the records to the City. Developer shall, upon completion of the contract and dedication, transfer, at no cost, to the City all public records in possession of the Developer or keep and maintain public records required by the City to perform services pursuant to the contract. If the Developer transfers all public records to the City upon completion of the contract, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the contract, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- c. The failure of Developer to comply with Chapter 119, *Florida Statutes*, and/or the provisions set forth in this Article shall be grounds for immediate unilateral termination of the Agreement by the City; the City shall also have the option to withhold compensation due Developer until records are received as provided herein.
14. **Governing Law & Venue.** This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida, without regard to such state's choice of law provisions which may dictate that the law of another jurisdiction shall apply. Venue shall be Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa Division.
15. **Sovereign Immunity.** Nothing in this Agreement shall be deemed to waive the sovereign immunity protections provided City pursuant to Florida law. Notwithstanding anything to the contrary set forth in this Agreement, City's obligation to indemnify Developer, if any, for any reason or purpose, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes (2023). This Paragraph shall survive the termination of this Agreement.
16. **Headings.** Paragraph headings are for the convenience of the Parties only and are not to be construed as part of this Agreement.

17. **Severability.** In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the Parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.
18. **Entire Agreement.** This Agreement, including Exhibits, Schedules, attachments, and appendices attached hereto, constitutes the entire agreement between City and Developer with respect to this Agreement as well as the Services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.
19. **Warranties.**
- a. Upon the date that the City accepts the system from the Developer, Developer shall provide a full one (1) year warranty against defects in material, workmanship, and damage caused by defects in material and workmanship. The warranty shall cover all portions of the system(s) as installed. Any defects found during this period shall be the responsibility of the developer to correct. In the event the City is required to make the repairs, the Developer hereby agrees to pay the cost of such repairs.
 - b. Developer warrants that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound engineering practices and procedures; and shall conform to the customary standards of care, skill, and diligence appropriate to the nature of the services rendered.
 - c. Developer further warrants that if any part of the work requires exploratory testing or work that would require disruption or destruction of property, Developer shall first notify the City, and Developer shall replace or restore the property in like kind and with the City's approval.
 - d. Should any Work done during the warranty period require correction because of faulty workmanship or materials; or should the materials as supplied or as installed by Developer require corrective work the City shall notify the Developer and proceed as follows:
 - i. If the City's time schedule permits, the Developer will be allowed to perform the corrective work and shall be responsible for all such costs. The Developer has the right to perform the work under protest and recover time and cost impacts if evidence prevails in the favor of the Developer. The Developer shall exercise due care to ensure the lowest possible expense with an obligation to mitigate.
 - ii. If the City's time schedule does not permit or if the Developer refuses or neglects to take immediate action, the City shall have the right to perform the corrective work, exercising due care to ensure the lowest possible expense with an obligation to mitigate, and the Developer shall reimburse the City for the cost of the corrective work.
 - e. Developer warrants that the personnel furnishing such services shall be fully qualified and competent to perform the services assigned to them, including possessing the appropriate license or certification if required.

- f. Subject to the provisions of this Section, should Developer breach the warranties set forth herein, City shall have such remedies as may be provided at law or equity. Without limiting the generality of the foregoing, if prior to the expiration of one (1) year from the date Developer completes its services under this Agreement entered into hereunder, Developer's services are noncomplying, defective, or otherwise improperly performed and City notifies Developer in writing that a defect, error, omission or noncompliance has been discovered in Developer's services, Developer shall, at the option of City: (a) correctly re-perform such noncomplying, defective, or otherwise improperly performed services at no additional cost to City; (b) refund the amount paid by City attributable to such noncomplying, defective, or otherwise improperly performed services.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year shown below, and the signatories do hereby confirm that the governing or managing body of each party has approved the content, form and manner of execution of this Agreement.

OWNER:
CITY OF LAKELAND

DEVELOPER:
ARROWROCK IV Hamilton Road, LLC
a Delaware limited liability company

BY: _____
H. William Mutz, Mayor

By: Arrowrock US Industrial Fund IV, LP
a Delaware limited partnership
Its: sole member

ATTEST: _____
Kelly S. Koos, City Clerk

By: Arrowrock US Industrial Fund IV GP, LLC
a Delaware limited liability company
Its: general partner

By: Summit Realty Ventures, LLC,
a Missouri limited liability company
Its: sole member

By: _____
Print Name: John S. Ross Jr.
As Its: Manager
Date: _____

ATTEST: _____

NAME: _____

Approved as to form and correctness:
_____, 20__.

Palmer C. Davis, City Attorney

Exhibit A

Reference: **Project Name: Hamilton Road Industrial**
 COL/WE Project # 2022-05-002D

Summary:

The City of Lakeland, Water Utilities has completed the evaluation of your (3) submitted competitive bids for the differential cost of upsizing the pump station and associated facilities based on your approved design plans, signed and sealed on 6/24/2024. The total contribution share from Water Utilities is \$132,135.00, based on the lowest of the (3) bids. As is our normal practice, Water Utilities will reimburse ARROWROCK IV HAMILTON ROAD, LLC these funds in the form of a check at the end of the project, upon acceptance of the system by Water Utilities.

Attached Files:

Selected Bid

Approved plan



TIGER CONTRACTING, LLC
 2830 Drane Field Road
 Lakeland, FL 33811
 Contact: Alvin Mulford
 PH: 863-904-2983
 Cell : 863-585-5949

BID PROPOSAL AGREEMENT REVISED

Quote To: Ordner Construction Company
Attn: Jeff Hagen
Address: 1600 Executive Dr. Suite 100 Duluth, GA 30096
Phone: 678-380-7400
Cell:
Email: jhagen@ordner.com

Date/Quote #: 7/24/2024
Project Name: Hamilton Rd. Industrial Anchuca Rd Waterline
Engineer: Kimley Horne
Location: Hamilton Rd. Lakeland FL
Plan Date: Received 3/18/24 Dated 3/2024
Rev/Add: Revision #13 3/7/24 & Revision #14 Dated 4/8/24

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Anchuca Rd Waterline				
Off-Site Water Main Anchuca Drive				
Mobilization	1	LS	\$ 8,625.00	\$ 8,625.00
Maintenance of Traffic	1	LS	\$ 2,675.00	\$ 2,675.00
Silt Fence Install/Remove	700	LF	\$ 3.70	\$ 2,590.00
Construction Layout	1	LS	\$ 2,300.00	\$ 2,300.00
Locate Existing Utilities	1	LS	\$ 2,875.00	\$ 2,875.00
Connect To Existing 8" Stubout	1	EA	\$ 3,820.00	\$ 3,820.00
16" Jack & Bore (Sta 7+35)	40	LF	\$ 1,045.00	\$ 41,800.00
8" DR18 PVC in Casing Pipe (Sta 7+35)	60	LF	\$ 82.00	\$ 4,920.00
8" DR18 PVC Water	360	LF	\$ 49.00	\$ 17,640.00
8" MJ Fittings	1	LS	\$ 6,120.00	\$ 6,120.00
8" Joint Restraints	24	EA	\$ 275.00	\$ 6,600.00
Air Release Valve in Vault	1	EA	\$ 14,300.00	\$ 14,300.00
8" Gate Valve	1	EA	\$ 3,080.00	\$ 3,080.00
Regrade Disturbed Area's	1500	SY	\$ 5.75	\$ 8,625.00
Permanent Sample Points	1	EA	\$ 1,440.00	\$ 1,440.00
Sod Disturbed Area's	1500	SY	\$ 3.15	\$ 4,725.00
Sub-Total Off-Site Water Main Anchuca Drive				\$ 132,135.00
GRAND TOTAL : ANCHUCA ROAD WATERLINE EXTENSION				\$ 132,135.00

NOTES:

- 1) All bonds, fees, builders risk insurance, and permits, are excluded.
- 2) No hazardous material removal is included
- 3) No Unforeseen underground conflicts, debris, HAZMAT, obstructions, utility relocations, ect... are included.
- 5) This bid proposal is based on prices quoted at the date of this bid proposal. If price increases occur beyond the date of this bid, a change order will be submitted for the price increase that has occurred.
- 6) General Contractor will be responsible to furnish and pay for Tiger Contracting Construction water for this project.
- 7) This bid is based on plans by Kimley Horn dated 3/2004 with latest revision #14 4/8/24.
- 8) Tiger Contracting has not included any work for relocation of any existing utilities that may be in conflict with the proposed work.
- 9) CEI and Geotech Testing is not included in this bid.
- 10) SWPPP reporting and monitoring is not included in this bid.
- 11) We have included construction layout and as-built's for Tiger Contracting's work only.
- 12) Sod has been included for Off-Site Utility on Anchuca Drive & Hamilton Road area's that have been disturbed.
- 13) Any conflicting power poles are not included in this bid.
- 14) Night time work is not included in this bid. If required it will be at additional cost to this bid.
- 15) Traffic Control costs that have been included in this bid is based on Lane Closure of Anchuca Drive.

ACCEPTANCE OF PROPOSAL/REQUEST:

This proposal/request includes all labor, materials, and equipment necessary to perform the above work scope in accordance with standard workman-like practices. All payments shall be made on a monthly basis in full within fifteen calendar days of invoice, unless otherwise agreed upon in writing, with no retainage held. A late charge of 1.5% will be assessed monthly for any payment(s) not received within the specified period above. No allowance has been made for any delays outside the control of Tiger Contracting, LLC such as, but not limited to, material availability, strikes, and weather, etc

and weather, etc...

I hereby certify that I am capable of authorizing and accepting this proposal/request and all conditions contained herein. I do hereby notify Tiger Contracting, LLC of my acceptance of this proposal/request in full, and without limitation, and hereby direct you to proceed with the immediate preparation and installation of the work contained herein.

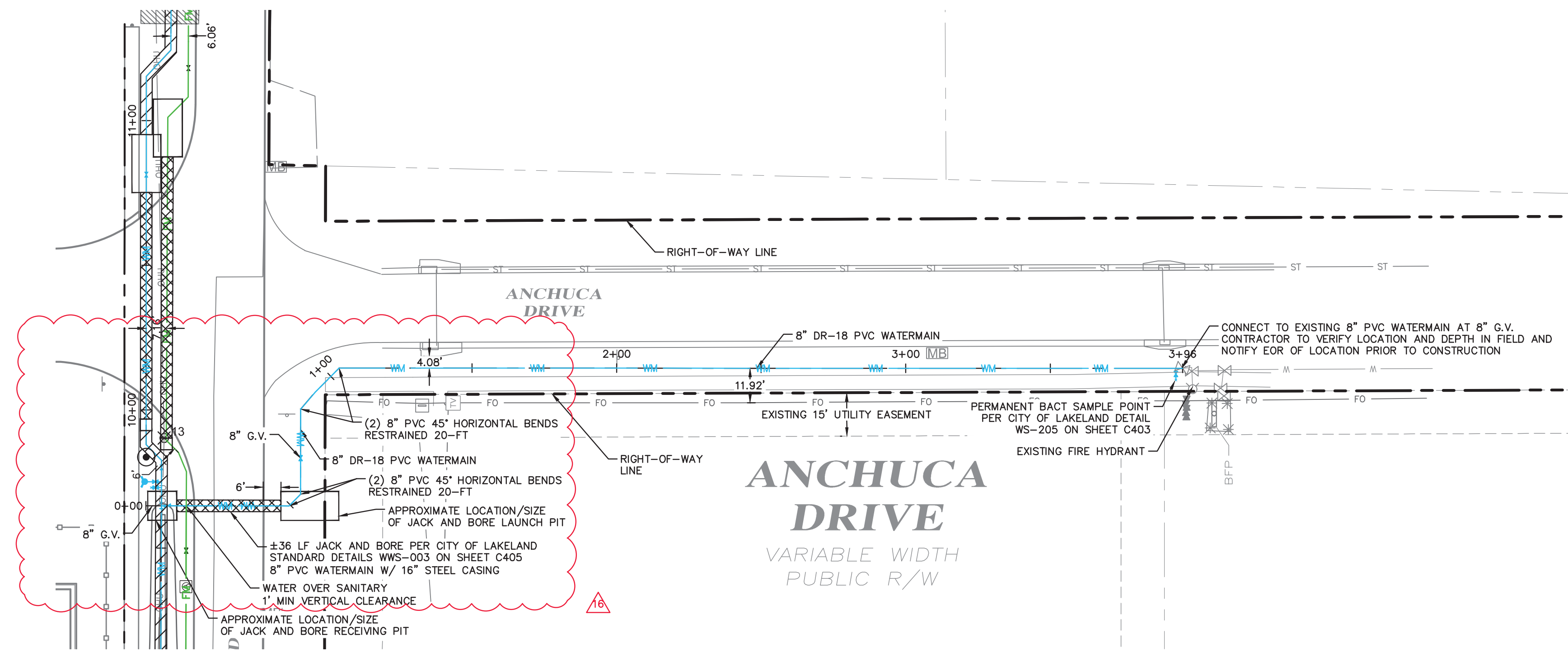
Signature _____

Printed Name _____

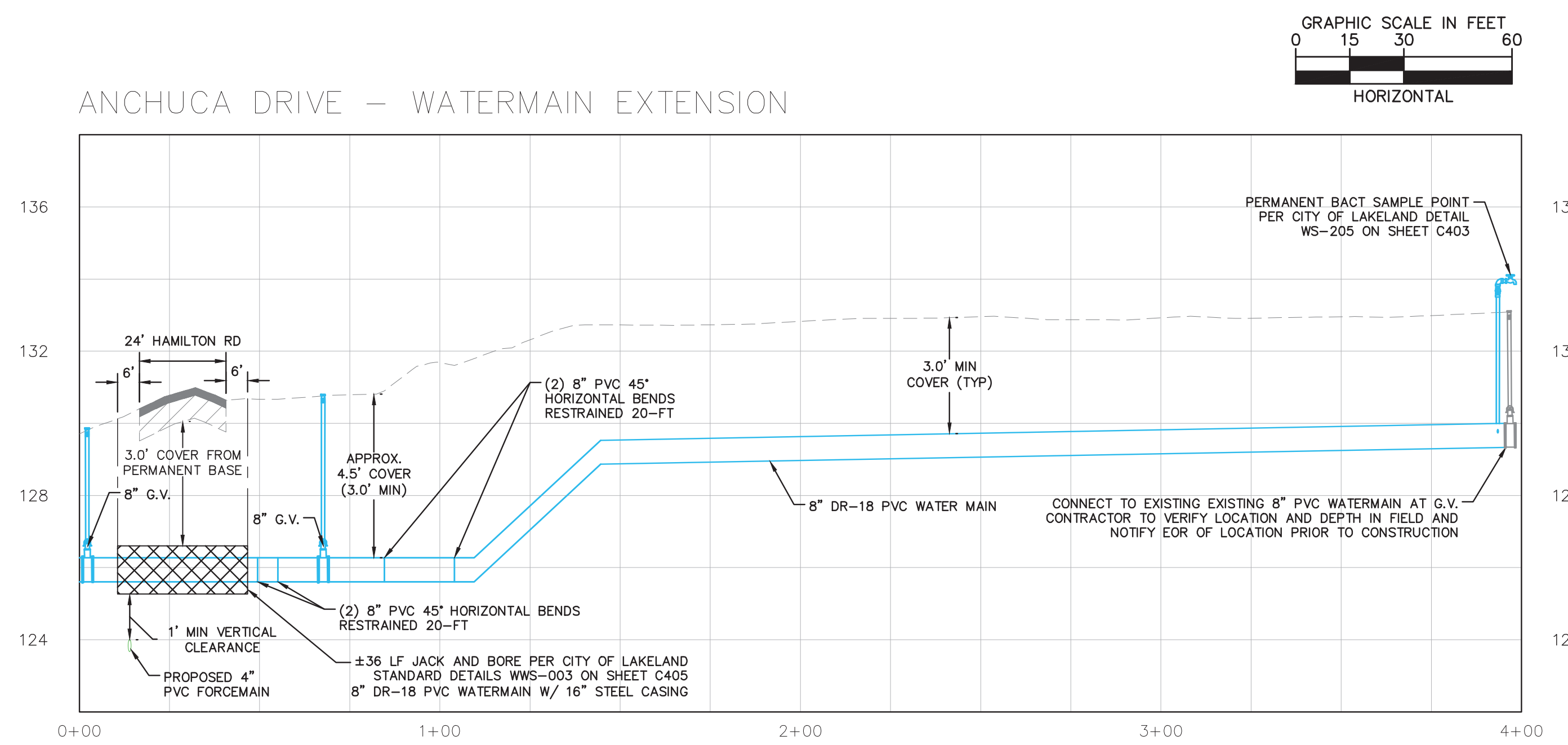
Title _____

Date _____

Plotted By: J. L. Connor - Sheet: Set-Hamilton Road Industrial - L040411 WATERMAIN PROFILE - ANCHUCA DRIVE - August 29, 2024 - 02:27:28pm - K:\Vok_civil\046569003 - Hamilton road industrial full civil\CADD\CONSTR\C408 OFFSITE UTILITY PLAN AND PROFILE.dwg
 This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

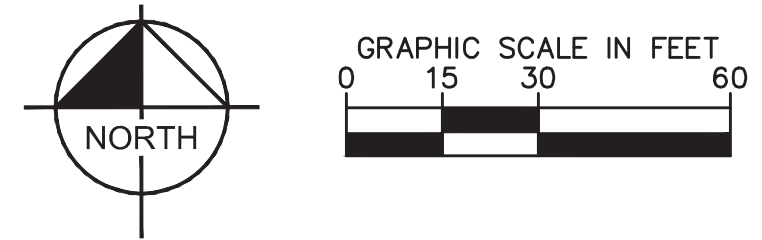


ANCHUCA DRIVE - WATERMAIN EXTENSION



NOTES:

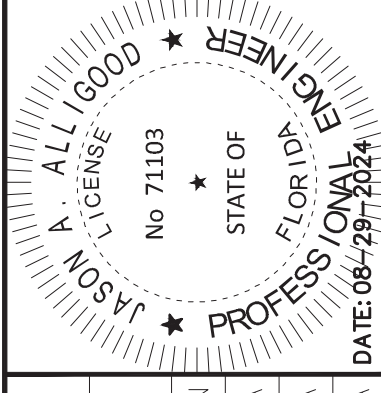
1. PVC PIPE TO BE BLUE IN COLOR OR BLUE-STRIPED IF USING HDPE.
2. PIPING UNDER ROADWAYS MUST BE INSTALLED WITHIN A CASING IN ACCORDANCE WITH DETAIL WWS-003.
3. MINIMUM HORIZONTAL SEPARATION OF 10 FT BETWEEN WATER MAIN AND FORCE MAIN.
4. MINIMUM VERTICAL SEPARATION OF 1.5 FT FOR ALL UTILITY CROSSING OF PROPOSED FORCE MAIN.
5. CONTRACTOR TO USE CAUTION WHEN CONSTRUCTING NEAR EXISTING UTILITIES. CONTRACTOR TO HAND DIG AS NECESSARY.
6. CONTRACTOR TO VERIFY LOCATION AND DEPTH OF EXISTING UTILITIES PER CITY OF LAKELAND STANDARDS.
7. CONTRACTOR TO SUBMIT DIRECTIONAL DRILL CALCULATIONS TO ENGINEER OF RECORD (EOR) FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
8. CONTRACTOR TO SUBMIT A FRAC OUT PLAN FOR APPROVAL BY EOR AND CITY.
9. CONTRACTOR TO PROVIDE DIRECTIONAL DRILL LOGS TO EOR AND CITY FOR REVIEW AND APPROVAL.
10. CONTRACTOR TO PROVIDE THE EOR AND CITY WITH A DETAILED CONSTRUCTION PHASING PLAN, MAINTENANCE OF TRAFFIC PLAN, AND PEDESTRIAN CONTROL PLAN (IF NECESSARY) FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.
11. CONTRACTOR TO REFER TO CITY OF LAKELAND DIRECTIONAL BORE STANDARDS FOR DESIGN REQUIREMENTS.



THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY JASON A. ALLGOOD, P.E. #71103. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

No.	REVISIONS	DATE	BY
1	JACK AND BORE REVISION	08-29-24	JAA
2	HDD REVISIONS PER CITY	08-28-24	JAA
3	RESTRAINT REVISIONS, ETC. PER CITY	08-20-24	JAA
4	PER CITY PRECON/COUNTY RAA #1	07-29-24	JAA
5	PER FIRE COMMENTS	07-22-24	JAA
6	SANITARY AND STORM REVISIONS	04-08-24	JAA
7	FOR CONSTRUCTION	03-07-24	JAA

Kimley >>> Horn
 © 2024 KIMLEY-HORN AND ASSOCIATES, INC.
 109 SOUTH KENTUCKY AVENUE, LAKELAND, FL 33801
 PHONE: 883-701-8702
 WWW.KIMLEY-HORN.COM CA 00000696

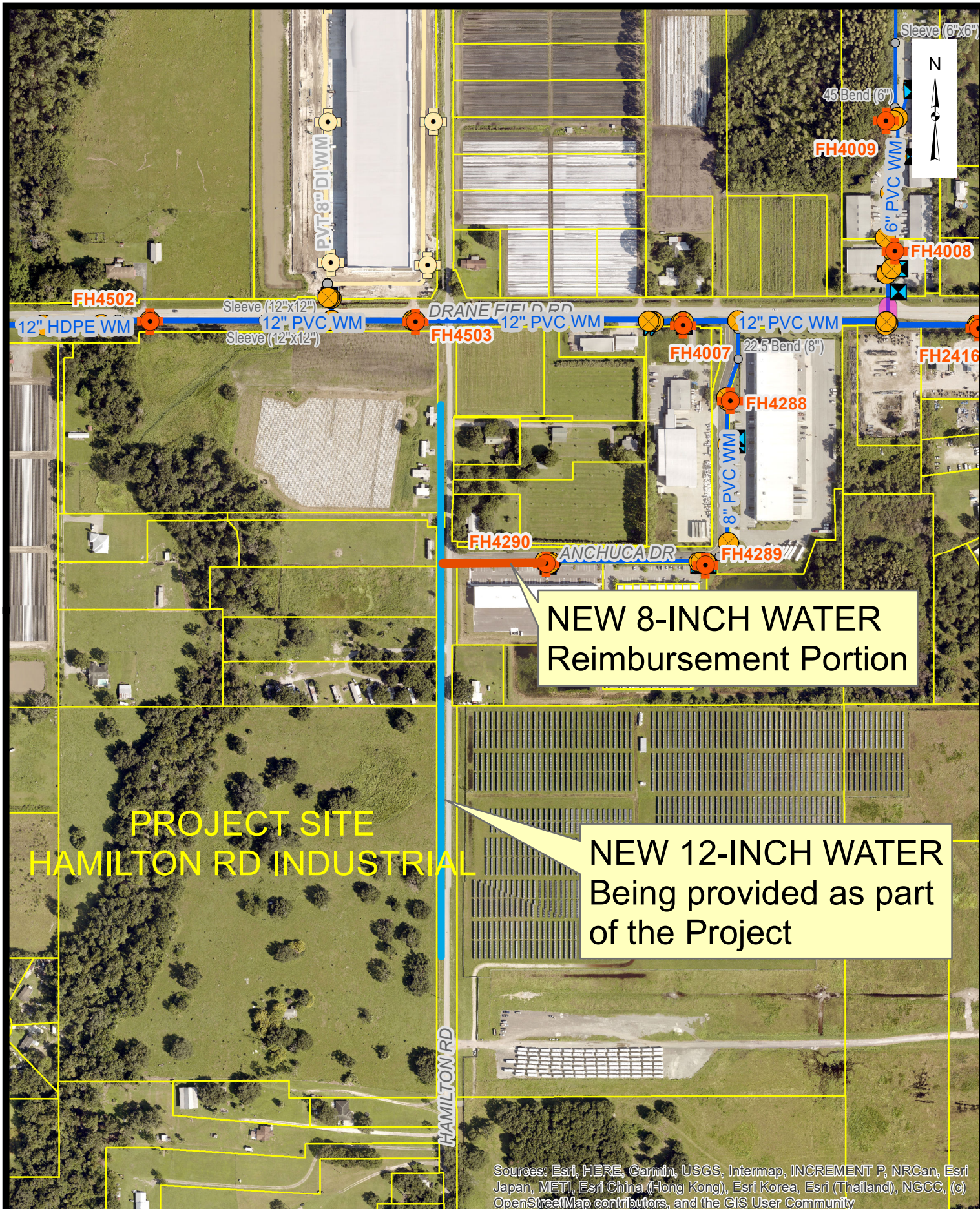


KHA PROJECT	046569003
DATE	MAR 2024
SCALE	AS SHOWN
DESIGNED BY	KHA
DRAWN BY	KHA
CHECKED BY	JAA
DATE	08-29-2024

**WATERMAIN PROFILE
 - ANCHUCA DRIVE**

HAMILTON ROAD
 INDUSTRIAL
 PREPARED FOR
 SUMMIT REAL ESTATE GROUP
 POLK COUNTY FLORIDA

SHEET NUMBER
C411



**PROJECT SITE
HAMILTON RD INDUSTRIAL**

**NEW 8-INCH WATER
Reimbursement Portion**

**NEW 12-INCH WATER
Being provided as part
of the Project**

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community



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