

CONSENT TO LAND DEVELOPMENT AND USE OF REAL PROPERTY

THIS CONSENT TO LAND DEVELOPMENT AND USE OF REAL PROPERTY (the “Consent”) is entered into this ___ day of _____, 2025, by and between the City of Fellsmere, Florida (the “City”), a municipal corporation validly formed and existing under the laws of the State of Florida, and Indian River County, Florida, a political subdivision of the State of Florida (the “Holder”).

WITNESSETH

WHEREAS, the City plans to construct for the general public’s use a twelve-foot-wide stabilized sidewalk from Broadway to the western boundary of the St. Sebastian River Preserve State Park, a distance of approximately 8,200 linear feet, on real property commonly referred to as the “Rail Trail,” which is more particularly described and depicted in the legal description and sketch of the project area attached hereto as Exhibit “A” and by this reference made a part hereof (the “Project Area”); and

WHEREAS, while the City is the fee-simple owner of the lands within the Project Area, Holder maintains some reserved right, title, or interest in, on, under, or across such lands or in lands immediately adjacent to the Project Area; and

WHEREAS, notwithstanding such right, title, or interest, Holder consents to the City’s land development activities and use of the Project Area as more particularly set forth in this Consent.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, the parties hereby promise and covenant on behalf of themselves, tenants in common, joint tenants, and all heirs, assigns, successors in interest and legal representatives, as follows:

1. **Recitals**. The foregoing recitals are true and correct, and made a part hereof.
2. **Irrevocable**. The consent and approval given by Holder to the land development and use of the lands within Project Area contemplated by this Consent are irrevocable.
3. **Sovereign Immunity**. Nothing contained in this Consent shall be construed as a waiver or attempted waiver of immunity from, or limitation of, liability the City or the Holder has under the Doctrine of Sovereign Immunity under the Florida Constitution and Florida Statutes, including but not limited to, Section 768.28 Florida Statutes, as amended. In the event any claim or lawsuit is brought against the City and/or the Holder, the City and/or Holder shall not be liable to pay a claim or a judgment by any one person or entity or any claim or judgment or portions thereof which when totaled with all other claims or judgments paid arising out of the same incident or occurrence, which exceeds the amount

of liability as set forth in Section 768.28 Florida Statutes, provided that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s). Nothing in this Consent shall be construed as consent by the City and/or the Holder to be sued by third parties in any matter whether arising out of this Consent or anything else whatsoever.

4. **Severability.** If any term, condition, or provision in this Consent is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Consent. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
5. **Entire Agreement.** This Consent (including the Exhibits and any addenda hereto signed by all parties) contains the entire agreement of the parties with respect to the subject matter of this Consent and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.
6. **Permitting.** Nothing herein shall be interpreted or construed to exempt or absolve the City or any other person or entity from the County's permitting requirements in connection with the Project Area.
7. **Legal Description.** This Consent is not the County's verification of the accuracy of the Project Area legal description.

IN WITNESS WHEREOF, the parties have executed this Consent on the date(s) indicated below.

CITY OF FELLSMERE

By: _____
Jessica Salgado, Mayor

INDIAN RIVER COUNTY, FLORIDA

By: _____
Joseph E. Flescher, Chairman

ATTEST: Ryan Butler,
Clerk of Court and Comptroller

By: _____
Deputy Clerk

Approved as to form and legal sufficiency.

By: _____
Jennifer W. Shuler, County Attorney

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN A PORTION OF THE "FELLSMERE RAILROAD" RIGHT OF WAY PARCEL LYING AND SITUATED IN PART OF THE "PLAT OF FELLSMERE FARMS COMPANY'S SUBDIVISION OF ALL UNSURVEYED PART OF TOWNSHIP 31 SOUTH OF RANGE 37 EAST IN ST. LUCIE COUNTY, STATE OF FLORIDA", AS RECORDED IN PLAT BOOK 2, PAGES 1 AND 2, ST. LUCIE COUNTY, FLORIDA, (NOW INDIAN RIVER COUNTY, FLORIDA) BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

COMMENCING AT THE POINT OF INTERSECTION OF NORTHEAST CORNER OF TRACT 1447, OF SAID PLAT OF FELLSMERE FARMS COMPANY'S SUBDIVISION, AND THE SOUTH RIGHT OF WAY LINE OF SAID ABANDONED "FELLSMERE RAILROAD"; THENCE ALONG THE SOUTH RIGHT OF WAY LINE OF SAID ABANDONED RAILROAD RIGHT OF WAY, SOUTH 87°21'13" EAST, A DISTANCE OF 87.70 FEET TO A POINT; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, NORTH 02°38'47" EAST, A DISTANCE OF 46.83 FEET TO THE POINT OF BEGINNING; THENCE NORTH 87°02'36" WEST, A DISTANCE OF 30.80 FEET; THENCE NORTH 87°21'13" WEST, A DISTANCE OF 3,057.38 FEET TO A POINT OF TANGENTIAL CURVE, THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 412.00 FEET, A DISTANCE OF 16.47 FEET THROUGH A CENTRAL ANGLE OF 02°17'26", WITH A CHORD BEARING NORTH 89°12'30" WEST AND A CHORD DISTANCE OF 16.47 FEET TO A TANGENT LINE; THENCE NORTH 85°03'47" WEST, A DISTANCE OF 133.89 FEET TO A POINT OF TANGENTIAL CURVE, THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 15.99 FEET THROUGH A CENTRAL ANGLE OF 02°17'26", WITH A CHORD BEARING NORTH 86°12'30" WEST AND A CHORD DISTANCE OF 15.99 FEET TO A TANGENT LINE; THENCE NORTH 87°21'13" WEST, A DISTANCE OF 153.67 FEET TO A POINT ON THE EAST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3641, PAGE 1284, PUBLIC RECORDS OF INDIAN RIVER COUNTY FLORIDA, SAID POINT ALSO BEING POINT "A"; THENCE NORTH 00°30'02" EAST, A DISTANCE OF 12.01 FEET; THENCE SOUTH 87°21'13" EAST, A DISTANCE OF 153.88 FEET TO A POINT OF TANGENTIAL CURVE, THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 412.00 FEET, A DISTANCE OF 16.47 FEET THROUGH A CENTRAL ANGLE OF 02°17'26", WITH A CHORD BEARING SOUTH 86°12'30" EAST AND A CHORD DISTANCE OF 16.47 FEET TO A TANGENT LINE; THENCE SOUTH 85°03'47" EAST, A DISTANCE OF 133.89 FEET TO A POINT OF TANGENTIAL CURVE, THENCE SOUTHEASTERLY ALONG THE ARC OF

LEGAL CONTINUES ON PAGE 2

NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD WORK, VIEWING OF SUBJECT PROPERTY OR MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON.

NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHT-OF-WAY AND /OR EASEMENTS OF RECORD

THOMAS P. KIERNAN
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA CERTIFICATE NO. 6199

SIGNATURE DATE

Sheet 1 of 7



**CULPEPPER &
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STATE OF FLORIDA BOARD OF PROFESSIONAL
ENGINEERS AUTHORIZATION NO. 4286

LEGAL DESCRIPTION

FELLSMERE - RAILS TRAILS

DATE: 6-13-24

DRAWN LEH

SCALE: N/A

JOB No. 22-075

EXHIBIT A

LEGAL DESCRIPTION CONTINUED:

SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 15.99 FEET THROUGH A CENTRAL ANGLE OF $02^{\circ}17'26''$, WITH A CHORD BEARING SOUTH $86^{\circ}12'30''$ EAST AND A CHORD DISTANCE OF 15.99 FEET TO A TANGENT LINE; THENCE SOUTH $87^{\circ}21'13''$ EAST, A DISTANCE OF 3,057.62 FEET; THENCE SOUTH $87^{\circ}02'36''$ EAST, A DISTANCE OF 30.03 FEET; THENCE SOUTH $01^{\circ}01'08''$ EAST, A DISTANCE OF 12.03 FEET TO THE POINT OF BEGINNING;

PARENT PARCEL LIES WITHIN ORB 3095, PAGE 1399

TOGETHER WITH,

PARCEL 2

COMMENCING AT SAID POINT "A"; THENCE DEPARTING SAID EAST LINE, NORTH $87^{\circ}21'13''$ WEST, A DISTANCE OF 100.07 FEET TO A POINT ON THE WEST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3641, PAGE 1284, SAID POINT BEING POINT "B"; THENCE ALONG SAID WEST LINE, NORTH $00^{\circ}30'02''$ EAST, A DISTANCE OF 12.01 FEET; THENCE DEPARTING SAID WEST LINE, SOUTH $87^{\circ}21'13''$ EAST, A DISTANCE OF 100.07 FEET TO A POINT ON SAID EAST LINE; THENCE ALONG SAID EAST LINE, SOUTH $00^{\circ}30'02''$ WEST, A DISTANCE OF 12.01 FEET TO THE POINT OF BEGINNING;

PARENT PARCEL LIES WITHIN ORB 3641, PAGE 1284

TOGETHER WITH,

PARCEL 3

COMMENCING AT SAID POINT "B"; THENCE DEPARTING SAID WEST LINE, NORTH $87^{\circ}21'13''$ WEST, A DISTANCE OF 1,908.25 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF WILLOW STREET, SAID POINT ALSO BEING POINT "C"; THENCE ALONG SAID EAST RIGHT OF WAY LINE NORTH $00^{\circ}30'08''$ EAST, A DISTANCE OF 12.01 FEET; THENCE DEPARTING SAID EAST RIGHT OF WAY LINE, SOUTH $87^{\circ}21'13''$ EAST, A DISTANCE OF 640.18 FEET; THENCE NORTH $02^{\circ}38'47''$ EAST, A DISTANCE OF 35.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID "FELLSMERE RAILROAD" RIGHT OF WAY; THENCE ALONG SAID NORTH RIGHT OF WAY LINE, SOUTH $87^{\circ}21'13''$ EAST, A DISTANCE OF 8.00 FEET; THENCE DEPARTING SAID NORTH RIGHT OF WAY LINE, SOUTH $02^{\circ}38'47''$ WEST, A DISTANCE OF 35.00 FEET; THENCE SOUTH $87^{\circ}21'13''$ EAST, A DISTANCE OF 1,241.48 FEET; THENCE SOUTH $00^{\circ}30'02''$ WEST, A DISTANCE OF 12.01 FEET TO THE POINT OF BEGINNING;

PARENT PARCEL LIES WITHIN ORB 3095, PAGE 1399

TOGETHER WITH,

PARCEL 4

COMMENCING AT SAID POINT "C"; THENCE DEPARTING SAID EAST RIGHT OF WAY LINE OF WILLOW STREET, NORTH $87^{\circ}21'13''$ WEST, A DISTANCE OF 60.04 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SAID WILLOW STREET, ALSO BEING THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, NORTH $87^{\circ}21'13''$ WEST, A DISTANCE OF 2,155.72 FEET TO A POINT OF TANGENTIAL CURVE, THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 28.50 FEET THROUGH A CENTRAL ANGLE OF $04^{\circ}04'55''$, WITH A CHORD BEARING NORTH $89^{\circ}23'41''$ WEST AND A CHORD DISTANCE OF 28.49 FEET TO A TANGENT LINE; THENCE SOUTH $88^{\circ}33'52''$ WEST, A DISTANCE OF 62.91

LEGAL CONTINUES ON PAGE 3

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ENGINEERS AUTHORIZATION NO. 4286

LEGAL DESCRIPTION

FELLSMERE - RAILS TRAILS

DATE: 6-13-24

DRAWN LEH

SCALE: N/A

JOB No. 22-075

EXHIBIT A

LEGAL DESCRIPTION CONTINUED:

FEET TO A POINT OF TANGENTIAL CURVE, THENCE NORTHWESTERLY ALONG THE ARC OF A SAID CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 200.00 FEET, A DISTANCE OF 14.25 FEET THROUGH A CENTRAL ANGLE OF 04°04'55", WITH A CHORD BEARING NORTH 89°23'41" WEST AND A CHORD DISTANCE OF 14.25 FEET TO A TANGENT LINE; THENCE NORTH 87°21'13" WEST, A DISTANCE OF 377.83 FEET; THENCE SOUTH 02°38'47" WEST, A DISTANCE OF 42.36 FEET TO A POINT OF TANGENTIAL CURVE, THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 4.00 FEET, A DISTANCE OF 3.30 FEET THROUGH A CENTRAL ANGLE OF 47°17'34", WITH A CHORD BEARING SOUTH 21°00'00" EAST AND A CHORD DISTANCE OF 3.21 FEET TO A TANGENT LINE; THENCE SOUTH 44°38'47" EAST, A DISTANCE OF 2.51 FEET TO A POINT ON SAID SOUTH RIGHT OF WAY LINE OF "FELLSMERE RAILROAD" RIGHT OF WAY; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE, NORTH 87°21'13" WEST, A DISTANCE OF 7.99 FEET TO A POINT OF NON-TANGENTIAL CURVE; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 10.00 FEET, A DISTANCE OF 4.83 FEET THROUGH A CENTRAL ANGLE OF 27°39'48", WITH A CHORD BEARING NORTH 11°11'08" WEST AND A CHORD DISTANCE OF 4.78 FEET TO A TANGENT LINE; THENCE NORTH 02°38'47" EAST, A DISTANCE OF 42.36 FEET; THENCE NORTH 87°21'13" WEST, A DISTANCE OF 24.89 FEET; THENCE NORTH 02°38'47" EAST, A DISTANCE OF 8.00 FEET; THENCE SOUTH 87°21'13" EAST, A DISTANCE OF 403.99 FEET TO A POINT OF TANGENTIAL CURVE, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 200.00 FEET, A DISTANCE OF 23.68 FEET THROUGH A CENTRAL ANGLE OF 06°46'57", WITH A CHORD BEARING NORTH 89°15'18" EAST AND A CHORD DISTANCE OF 23.66 FEET TO A TANGENT LINE; THENCE NORTH 85°51'50" EAST, A DISTANCE OF 49.12 FEET TO A TANGENTIAL CURVE, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 400.00 FEET A DISTANCE OF 47.35 FEET THROUGH A CENTRAL ANGLE OF 06°46'57", WITH A CHORD BEARING NORTH 89°15'18" EAST AND A CHORD DISTANCE OF 47.32 FEET TO A TANGENT LINE; THENCE SOUTH 87°21'13" EAST, A DISTANCE OF 2,145.83 FEET TO A POINT ON SAID WEST RIGHT OF WAY LINE OF WILLOW STREET; THENCE ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00°30'08" WEST, A DISTANCE OF 12.01 FEET AND THE POINT OF BEGINNING.

PARENT PARCEL LIES WITHIN ORB 3095, PAGE 1399 AND DEDICATIONS PER ORB 2993, PAGE 304, AND ORB 2993, PAGE 308

TOTAL LANDS CONTAINING 2.2± ACRES, MORE OR LESS

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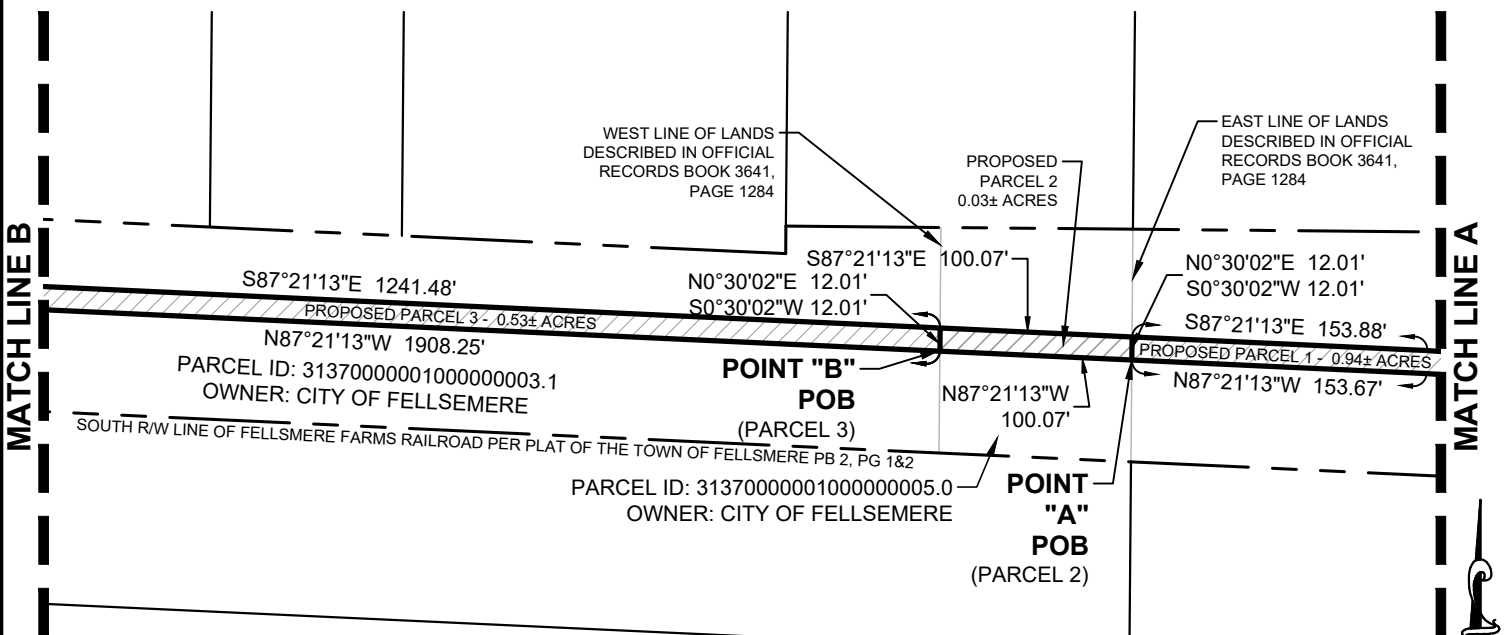
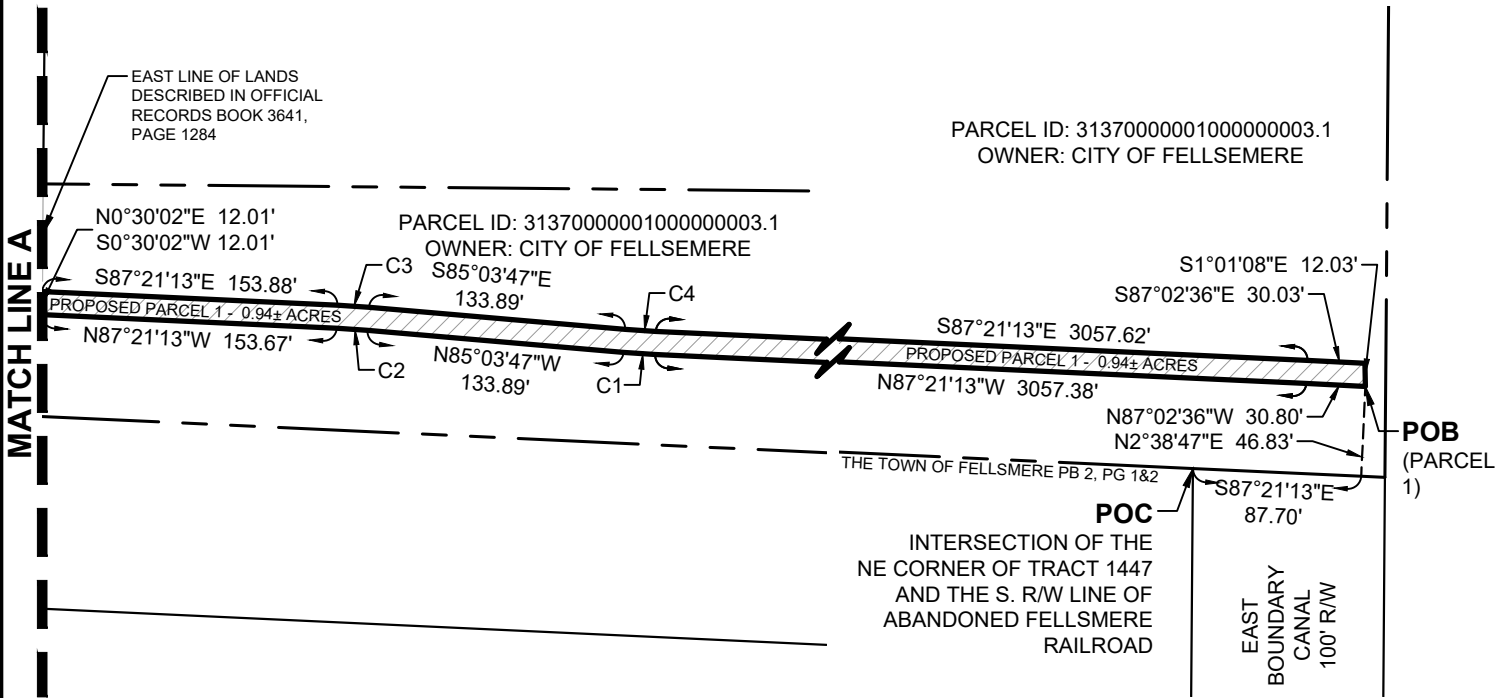
LEGAL DESCRIPTION

FELLSMERE - RAILS TRAILS

DATE: 6-13-24	DRAWN LEH
SCALE: N/A	JOB No. 22-075

EXHIBIT A

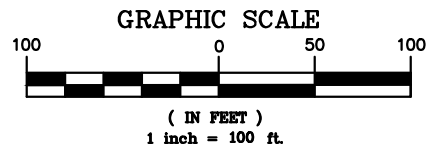
THIS IS NOT A SURVEY



LEGEND

- ORB = OFFICIAL RECORDS BOOK
- PB = PLAT BOOK
- PG = PAGE
- POC = POINT OF COMMENCEMENT
- POB = POINT OF BEGINNING
- R/W = RIGHT OF WAY

NOTE: BEARINGS SHOWN HEREON ARE RELATIVE TO THE SOUTH LINE OF FELLSEMERE FARMS RAILROAD PER PLAT BOOK 2, PAGE 1 & 2, HAVING A BEARING OF SOUTH 87°21'13" EAST



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GRAPHICS

FELLSEMERE - RAILS TRAILS

DATE: 6-13-24

DRAWN LEH

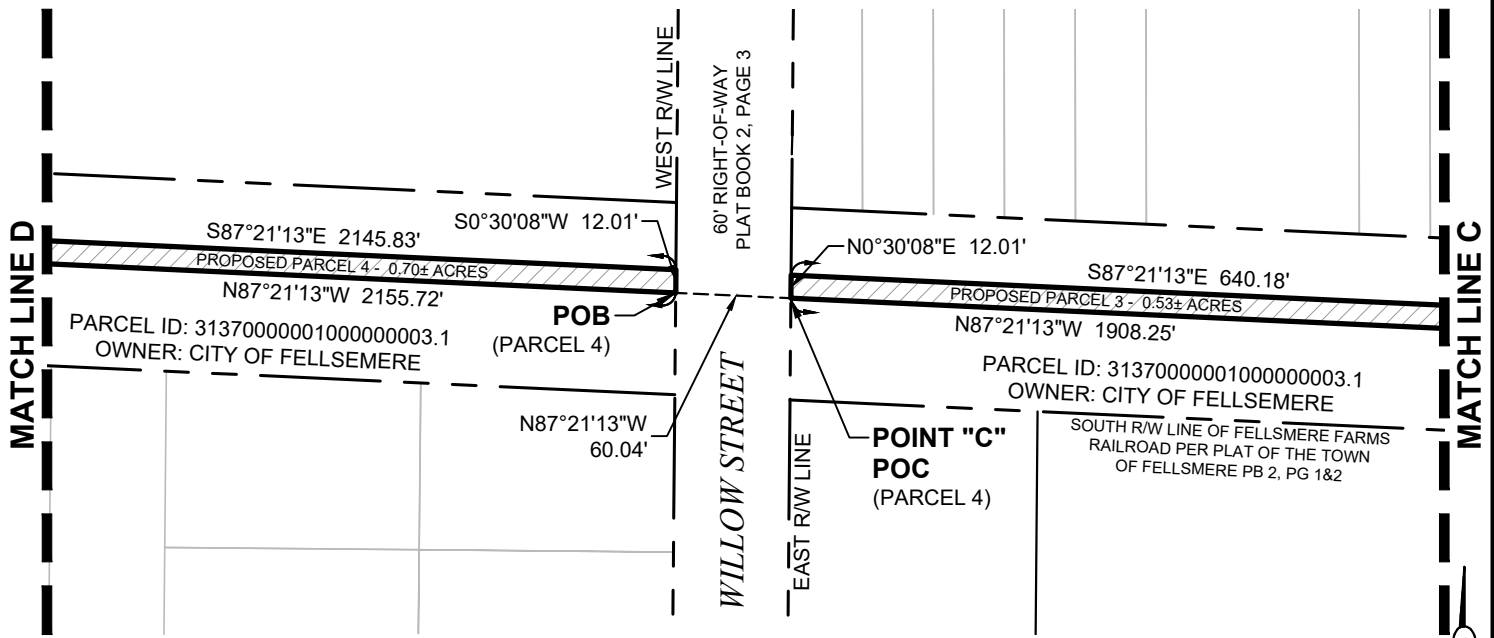
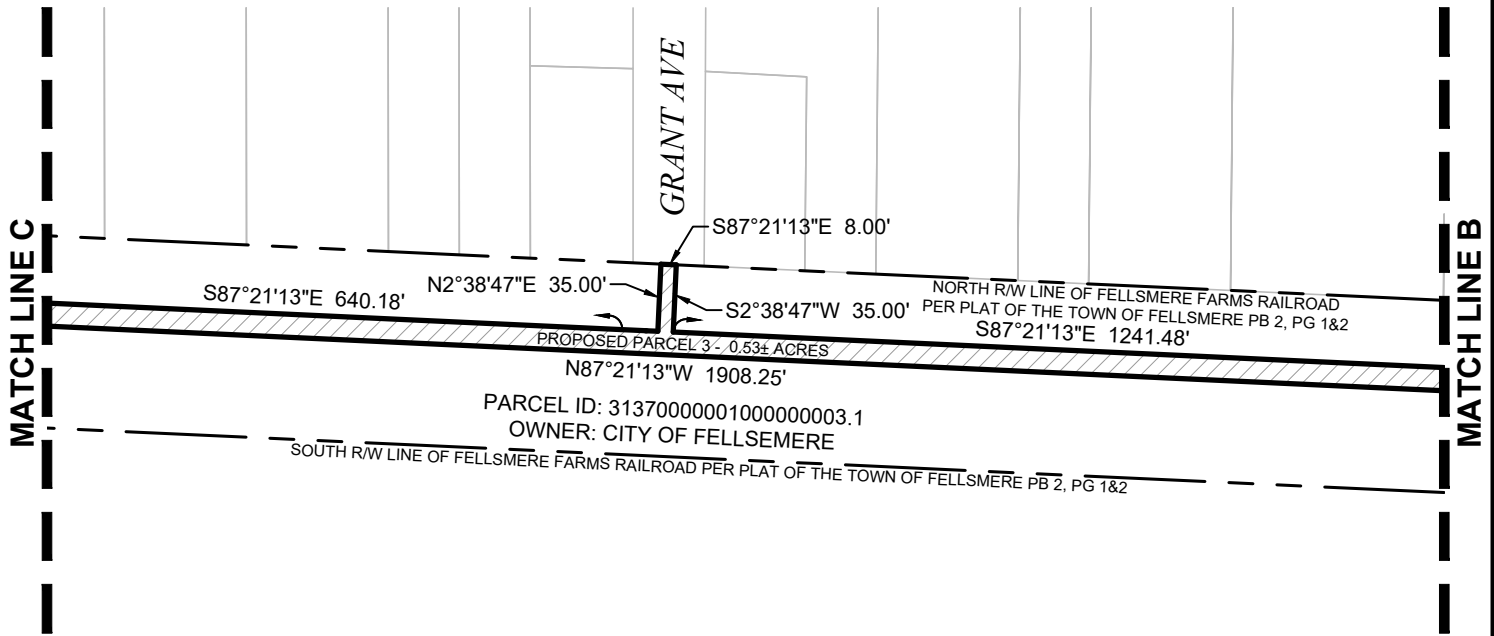
SCALE: 1" = 100'

JOB No. 22-075

P:\Proj\2022\22-075 Fellsmere - Rails Trails Sidewalk Design\Survey\22-075 S&D.dwg Plotted: 9/18/24 By: JONATHAN JONES Layout: GRAPHICS 1

EXHIBIT A

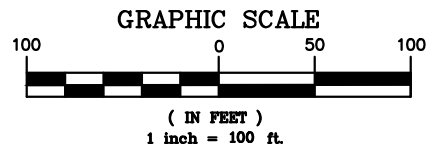
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Sheet 5 of 7



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GRAPHICS

FELLSEMERE - RAILS TRAILS

DATE: 6-13-24

DRAWN LEH

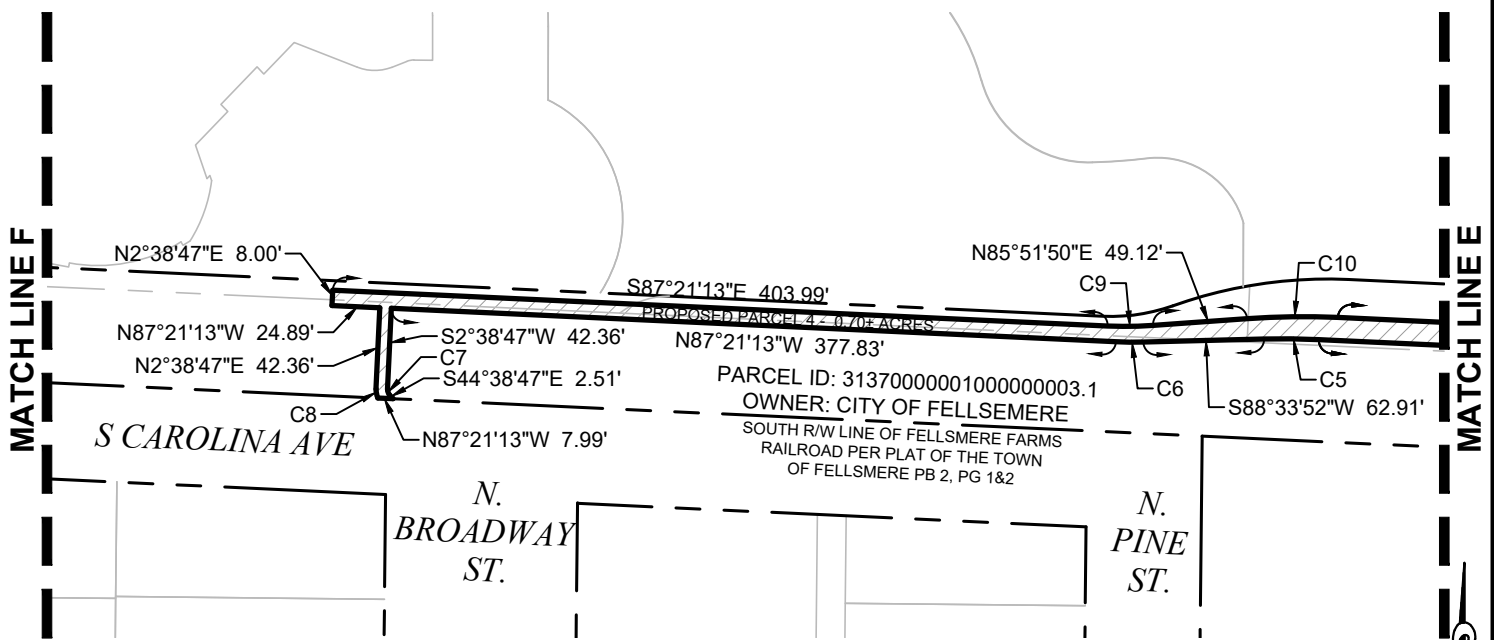
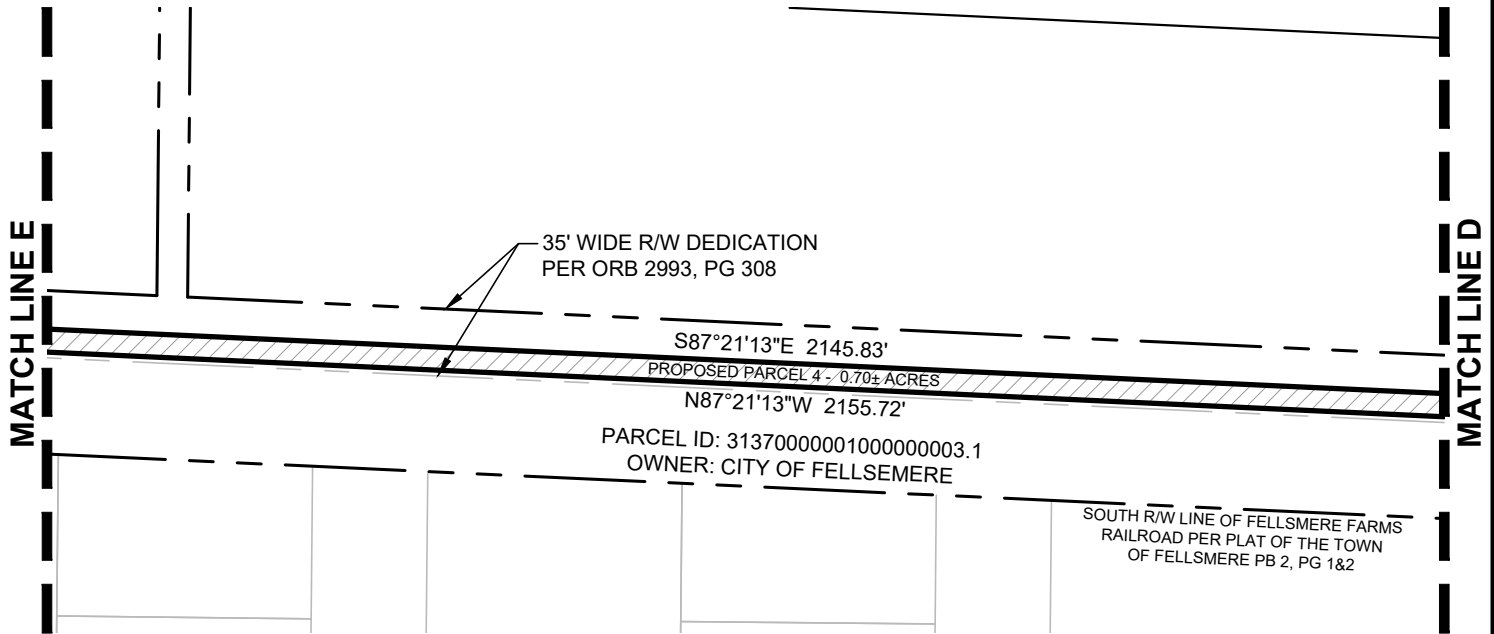
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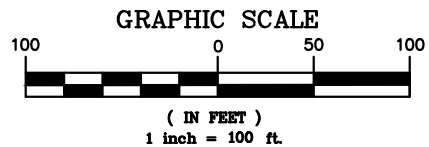
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Sheet 6 of 7



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GRAPHICS

FELLSEMERE - RAILS TRAILS

DATE: 6-13-24

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SCALE: 1" = 100'

JOB No. 22-075

EXHIBIT A

THIS IS NOT A SURVEY

Curve Table					
Curve	Length	Radius	Delta	Chord	Chord Length
C1	16.47	412.00	002°17'26"	N86°12'30"W	16.47
C2	15.99	400.00	002°17'26"	N86°12'30"W	15.99
C3	16.47	412.00	002°17'26"	S86°12'30"E	16.47
C4	15.99	400.00	002°17'26"	S86°12'30"E	15.99
C5	28.50	400.00	004°04'55"	N89°23'41"W	28.49
C6	14.25	200.00	004°04'55"	N89°23'41"W	14.25
C7	3.30	4.00	047°17'34"	S21°00'00"E	3.21
C8	4.83	10.00	027°39'48"	N11°11'08"W	4.78
C9	23.68	200.00	006°46'57"	N89°15'18"E	23.66
C10	47.35	400.00	006°46'57"	N89°15'18"E	47.32

Sheet 7 of 7



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CURVE TABLE

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