



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Add-On

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J.4.

3/7/2023

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### **Subject:**

Approval Re: Locally Funded Agreement with Florida Department of Transportation and Resolution for the Ellis Road Widening - District 5

### **Fiscal Impact:**

\$1,760,764.00 is provided by the September 14, 2021 allocation of American Rescue Plan Act (ARPA) funds.

### **Dept/Office:**

Public Works Department/Finance and Contracts Administration

### **Requested Action:**

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Locally Funded Agreement with the Florida Department of Transportation and Resolution for the St. Johns Heritage Parkway at Ellis Road (Ellis Road Widening) in the amount of \$1,760,764. It is further requested the Board authorize the County Manager to approve any necessary Budget Change Requests associated with this action.

### **Summary Explanation and Background:**

The Florida Department of Transportation (F.D.O.T.) agreed to undertake the Right of Way Acquisitions for St. Johns Heritage Parkway/Ellis Road from John Rodes Boulevard to west of Wickham Road (Ellis Road Widening). The County desires to assist in funding the project through the contribution of funds to F.D.O.T. to acquire certain real property interests necessary to provide for stormwater treatment and facilities as a part of the project. The County funds, in the amount of \$1,760,764, were approved by the Board on September 14, 2021 in the allocation of American Rescue Plan Act (ARPA) funds. Applicable federal requirements must be met by F.D.O.T. to obligate and expend the ARPA funds.

### **Clerk to the Board Instructions:**

Please return the Agreement and Resolution to the Public Works Department for further execution by F.D.O.T.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## CONTRACT REVIEW AND APPROVAL FORM

### SECTION I - GENERAL INFORMATION

1. Contractor: N/A		2. Amount: \$1,760,764	
3. Fund/Account #: ARPA		4. Department Name: Public Works	
5. Contract Description: Locally Funded Agreement with FDOT re: Ellis Road Widening Parcels			
6. Contract Monitor: Jeanette Scott		8. Contract Type:  INTERGOVT/STATE	
7. Dept/Office Director: Marc Bernath			
9. Type of Procurement: Other			

### SECTION II - REVIEW AND APPROVAL TO ADVERTISE

#### APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

### SECTION III - REVIEW AND APPROVAL TO EXECUTE

#### APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Thomas-Wood, Tammy <small>Digitally signed by Thomas-Wood, Tammy DN: cn=Thomas Wood, o=County of Brevard, ou=Public Works, email=Thomas.Wood@brevard.net, c=US</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseesse, Alexander <small>Digitally signed by Esseesse, Alexander Date: 2023.02.06 11:23:26 -05'00'</small>

### SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

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Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
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COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Watson, Michael <small>Digitally signed by Watson, Michael Date: 2023.02.08 08:01:46 -05'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseesse, Alexander <small>Digitally signed by Esseesse, Alexander Date: 2023.02.06 11:23:26 -05'00'</small>

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**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

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User Agency	<input type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wall, Katherine <small>Digitally signed by Wall, Katherine Date: 2023.02.07 08:17:05 -05'00'</small>
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseesse, Alexander <small>Digitally signed by Esseesse, Alexander Date: 2023.02.06 11:23:26 -05'00'</small>

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March 8, 2023

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director

**RE:** Item J.4., Approval of Locally Funded Agreement with Florida Department of Transportation (FDOT) and Resolution for the Ellis Road Widening

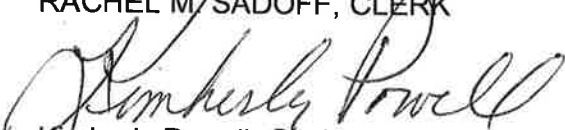
The Board of County Commissioners, in regular session on March 7, 2023, adopted Resolution No. 23-024, for the St. Johns Heritage Parkway at Ellis Road; approved and authorized the Chair to execute the Agreement with FDOT for the Ellis Road widening in the amount of \$1,760,764; and authorized the County Manager to approve any necessary Budget Change Requests associated with this action. Enclosed is the fully-executed Resolution and an executed copy of the Agreement.

**Upon execution by all parties, please return a fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

Encls. (2)

cc: Contracts Administration  
Finance  
Budget

<b>Agency: Brevard County</b> <b>Vendor No.: F596000523164</b>	<b>Fund: LF</b> <b>Contract Amount: \$1,760,764.00</b>	<b>Financial Project No.: 426905-4-4B/42/43/45-01</b>
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**LOCALLY FUNDED AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
BREVARD COUNTY**

This **AGREEMENT**, made and entered into \_\_\_\_\_,  
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an  
Executive Agency of the State of Florida, (hereinafter referred to as the "DEPARTMENT") and  
BREVARD COUNTY, a Political Subdivision of the State of Florida, (hereinafter referred to as  
the "LOCAL GOVERNMENT"),

**WITNESSETH:**

WHEREAS, the Parties have been granted specific legislative authority to enter into this  
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached  
hereto as Exhibit "C", and made apart hereof, has authorized its officers to execute this  
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year  
Work Program, to undertake the project described as: "Right of Way Acquisitions for St. Johns  
Heritage Parkway/Ellis Road from John Rodes Boulevard to west of Wickham Road", said  
project being known as Financial Project Number (FPN) 426905-4-4B/43/45-01, hereinafter  
referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the  
DEPARTMENT'S Adopted Work Program; and

WHEREAS, the Parties have previously entered into an Off System Right of Way  
Acquisition Agreement by and between the DEPARTMENT, LOCAL GOVERNMENT, and the  
City of West Melbourne for the Project whereby DEPARTMENT is to acquire the necessary right  
of way for the Project; and

WHEREAS, the LOCAL GOVERNMENT desires to assist in funding the Project through  
the contribution of funds to the DEPARTMENT to acquire certain real property interests  
necessary to provide for stormwater treatment and facilities as a part of the Project; and

WHEREAS, the implementation of the Project is and remains in the interests of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to provide the funds for: Right of Way acquisition for Parcels 106, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149 – which are specifically related to stormwater management for the Project, in Fiscal Year 2022/2023, said Project being known as FPN 426905-4B43/45-01, and said improvements shall hereinafter be referred to as the “Additional Right of Way Acquisition”; and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the Additional Right of Way Acquisition in a cost-effective manner, the LOCAL GOVERNMENT desires to have said Additional Right of Way Acquisition to be a part of the Project and to provide funding to the DEPARTMENT to be used for the Additional Right of Way Acquisition as described in “Exhibit A”; and

WHEREAS, the LOCAL GOVERNMENT has determined that funds derived from the Coronavirus State and Local Fiscal Recovery Funds, received pursuant to the American Rescue Plan Act, are eligible to be used for the acquisition of certain parcels that are necessary for stormwater management and facilities for the Project; and

WHEREAS, the LOCAL GOVERNMENT shall be responsible for ensuring the funding requirements are met;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part upon advanced written notice to the LOCAL GOVERNMENT if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall cause the Additional Right of Way Acquisitions described in Exhibit “A” to be incorporated into the DEPARTMENT’S activities of the Right of Way Acquisitions for St. Johns Heritage Parkway/Ellis Road from John Rodes Boulevard to west of Wickham Road and to be acquired as a part of said Project.

3. The DEPARTMENT shall be responsible to acquire, clear, and certify the Right-of-Way necessary to construct the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be

performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the Right of Way phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the Additional Acquisitions exceeds **\$1,760,764.00 (One Million Seven Hundred Sixty Thousand Seven Hundred Sixty-Four Dollars and No/100)**. This amount is based on the Estimate, Exhibit "B" attached hereto. The DEPARTMENT'S performance and obligation to acquire the Right of Way for the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The LOCAL GOVERNMENT agrees that it will, **within at least fourteen (14) calendar days of the execution of this Agreement**, furnish the DEPARTMENT a lump sum contribution in the amount of **\$1,760,764.00 (One Million Seven Hundred Sixty Thousand Seven Hundred Sixty-Four Dollars and No/100)** to be used for the estimated Project cost for locally funded project number 426905-4-4B/42/43/45-01. The DEPARTMENT may utilize this contribution for payment of the cost of the Project.

(C) If the actual cost of the Additional Acquisitions is less than the funds provided, the excess will be applied to other phases on the Project.

(D) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit.

(E) The DEPARTMENT and the LOCAL GOVERNMENT agree that the lump sum contribution shall be an asset of the DEPARTMENT and that it constitutes a full and final payment for the cost of the work, without any requirement for a subsequent accounting for the use of the contribution.

(F) Contact Persons:

**DEPARTMENT**

District 5 Local Programs  
719 South Woodland Boulevard, M.S. 4-520  
DeLand, Florida 32720-6834



(386) 943-5153

D5-LocalPrograms@dot.state.fl.us

**LOCAL GOVERNMENT**

Tammy Thomas-Wood

Public Works Operations Manager

Brevard County

2725 Judge Fran Jamieson Way

Viera, Florida 32940

(321) 617-7202

Tammy.Thomas-Wood@brevardfl.gov

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The LOCAL GOVERNMENT and the DEPARTMENT shall each be solely responsible for the negligent or wrongful acts of its respective employees and agents acting within the scope of their employment. Further, each party shall bear its own costs of every name and description, including attorneys' fees, arising from, or relating to personal injury and damage to real or personal tangible property allege to be caused in whole or in part by its employees and agents action within the scope of their employment. However, nothing contained herein shall constitute a waiver by the LOCAL GOVERNMENT and the DEPARTMENT of its sovereign immunity or waiver or modification Section 768.28, Florida Statutes.

11. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:


(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

*The remainder of this page intentionally left blank.*

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on  
MARCH 7, 2023, and the DEPARTMENT has executed this Agreement on  
\_\_\_\_\_.

**BREVARD COUNTY**

By:   
Name: Rita Pritchett  
Title: Chair

As approved by the Board on 3/7/2023

Attest:

  
Rachel Sadoff, Clerk of the Court

Legal Review:

  
LOCAL GOVERNMENT Attorney

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Executive Secretary

Legal Review:

\_\_\_\_\_  
DEPARTMENT Attorney

Financial Provisions Approval by  
Department of Comptroller on:

July 8, 2019

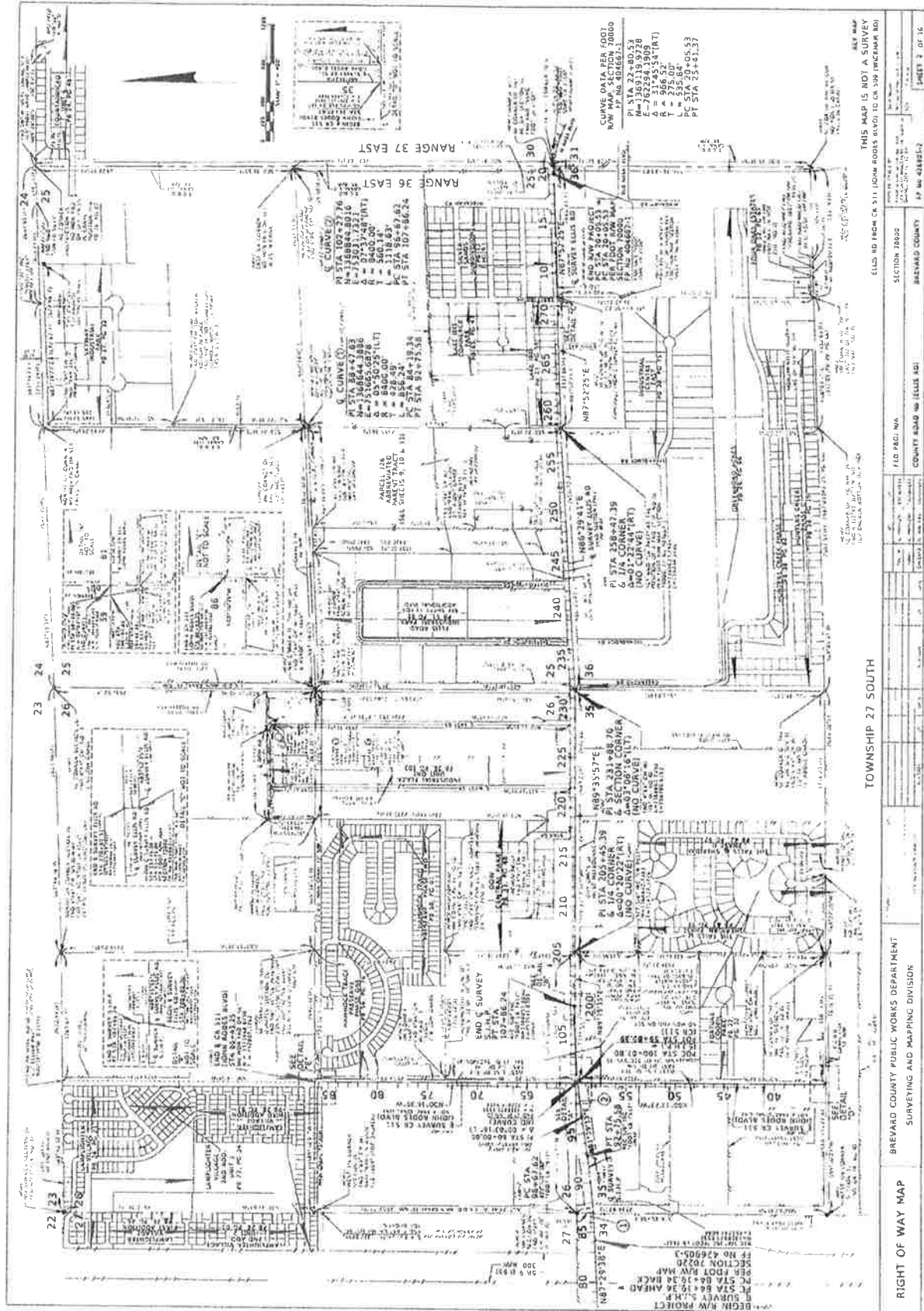
**EXHIBIT "A"**  
**SCOPE OF SERVICES**

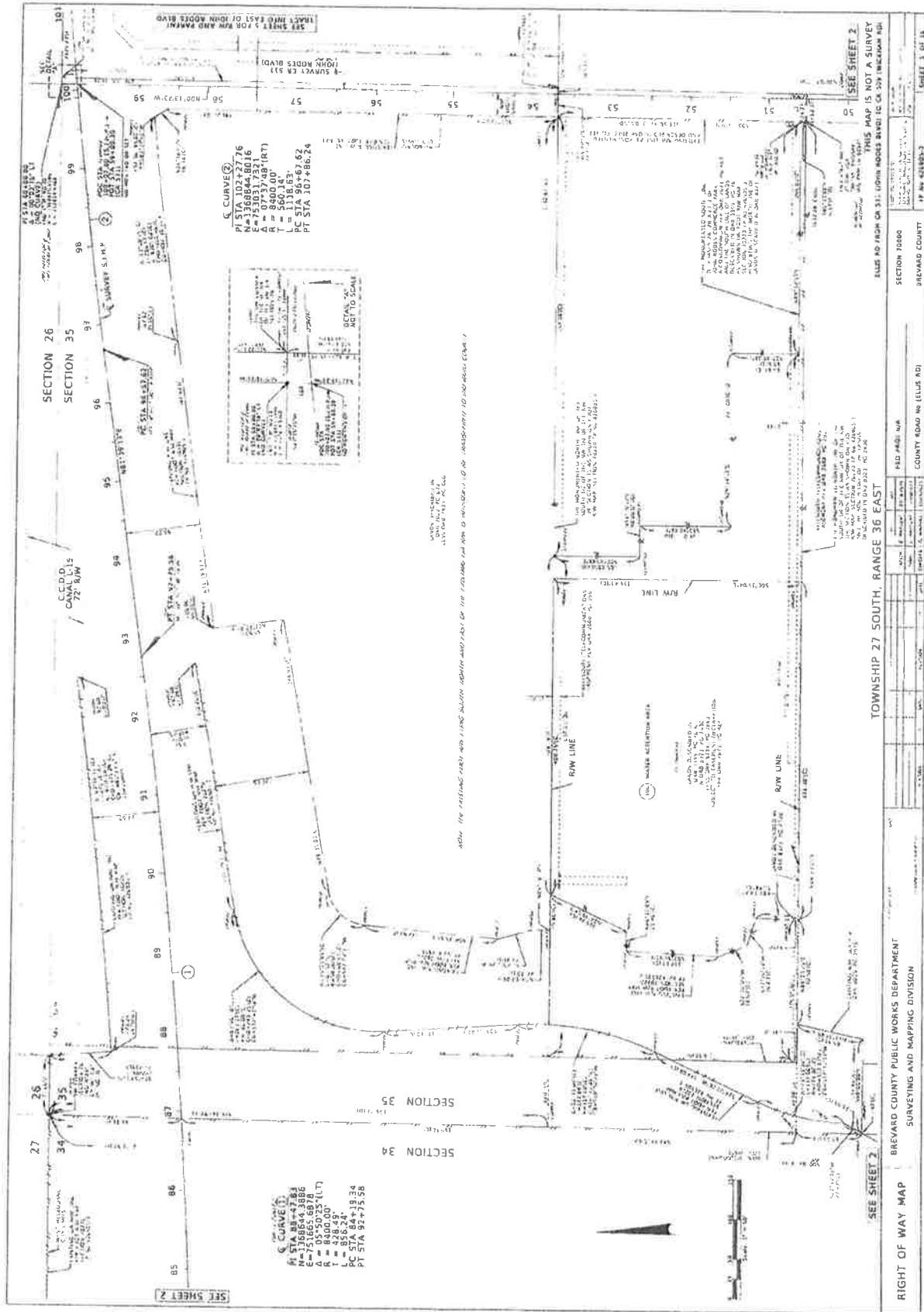
The DEPARTMENT has committed to performing the Right of Way acquisition phase for the LOCAL GOVERNMENT using federal funding for Project FM# 426905-4-43-01 (St. Johns Heritage Parkway/Ellis Road from John Rodes Boulevard to west of Wickham Road) located in Brevard County, Florida, a Project not on the State Highway System. For the LOCAL GOVERNMENT to meet all federal requirements and be eligible for obtaining federal funds if they become available for other phases of the Project, the Right of Way acquisition phase must be performed in accordance with federal requirements. Since the LOCAL GOVERNMENT does not have the resources to perform this phase of the Project, the DEPARTMENT has agreed to fund and perform all required services associated with the acquisition of right of way for the Project. Additionally, the LOCAL GOVERNMENT, by the terms of this agreement, commits to providing local funds, derived from the Coronavirus State and Local Fiscal Recovery Funds that were received pursuant to the American Rescue Plan Act, for the acquisition of certain parcels as described herein that are necessary for stormwater management and facilities for the Project. Such funds shall not be used for costs incurred before March 3, 2021, must be obligated by December 31, 2024, and expended by December 31, 2026. The DEPARTMENT will use reasonable efforts to expend all of the local funds consistent with the dates herein indicated but DEPARTMENT shall not bear any responsibility if all of the local funds are not obligated or expended by the dates stated.

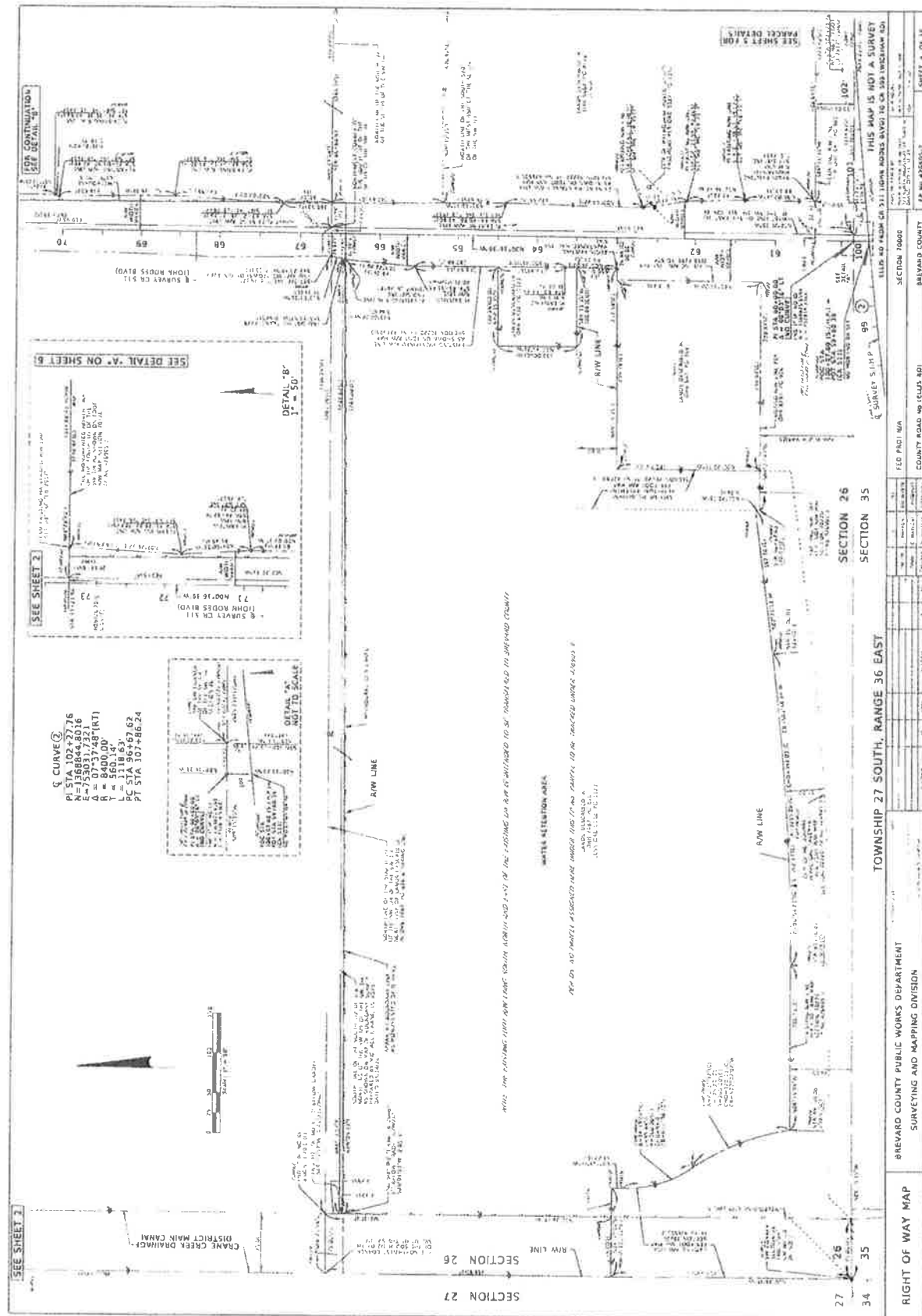
The DEPARTMENT will acquire Parcel 106 in the name of Brevard County and Parcels 135-149 in the name of the City of West Melbourne. To the extent possible, DEPARTMENT will utilize the local funds provided pursuant to this Agreement to acquire the Additional Right of Way Acquisition. The DEPARTMENT will take all steps necessary to certify that the Additional Right of Way Acquisition is "clear", which includes demolition of any structures and removal of any improvements that are located within the area of acquisition. Once the DEPARTMENT certifies that all right of way has been acquired and cleared and the Project is certified as clear by the DEPARTMENT'S Right of Way Manager, the respective LOCAL GOVERNMENT will be solely responsible to ensure maintenance of all of the right of way for Ellis Road, including all parcels and all right of way acquired pursuant to this Agreement unless and until some of the real property is transferred or conveyed to another local government.

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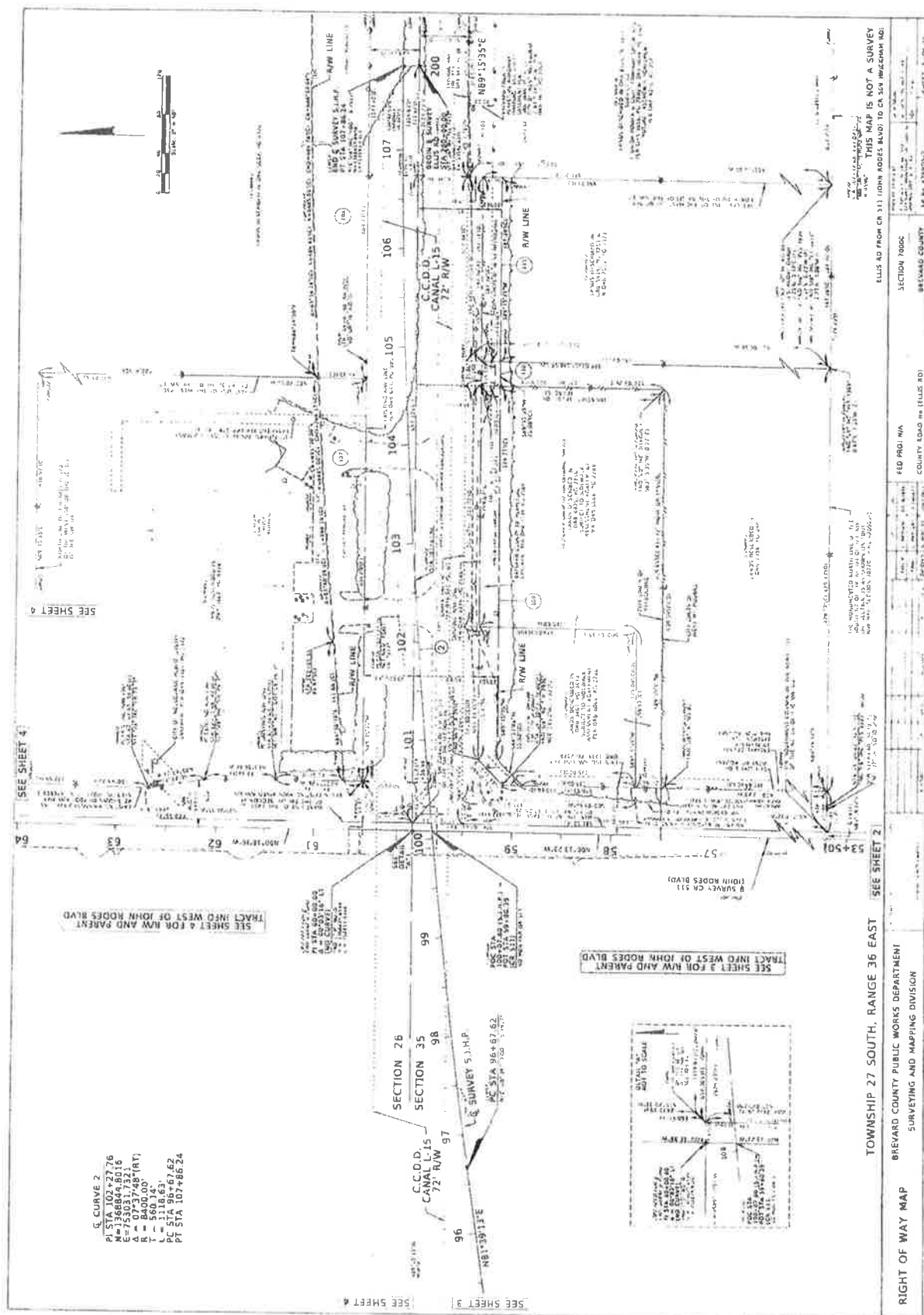
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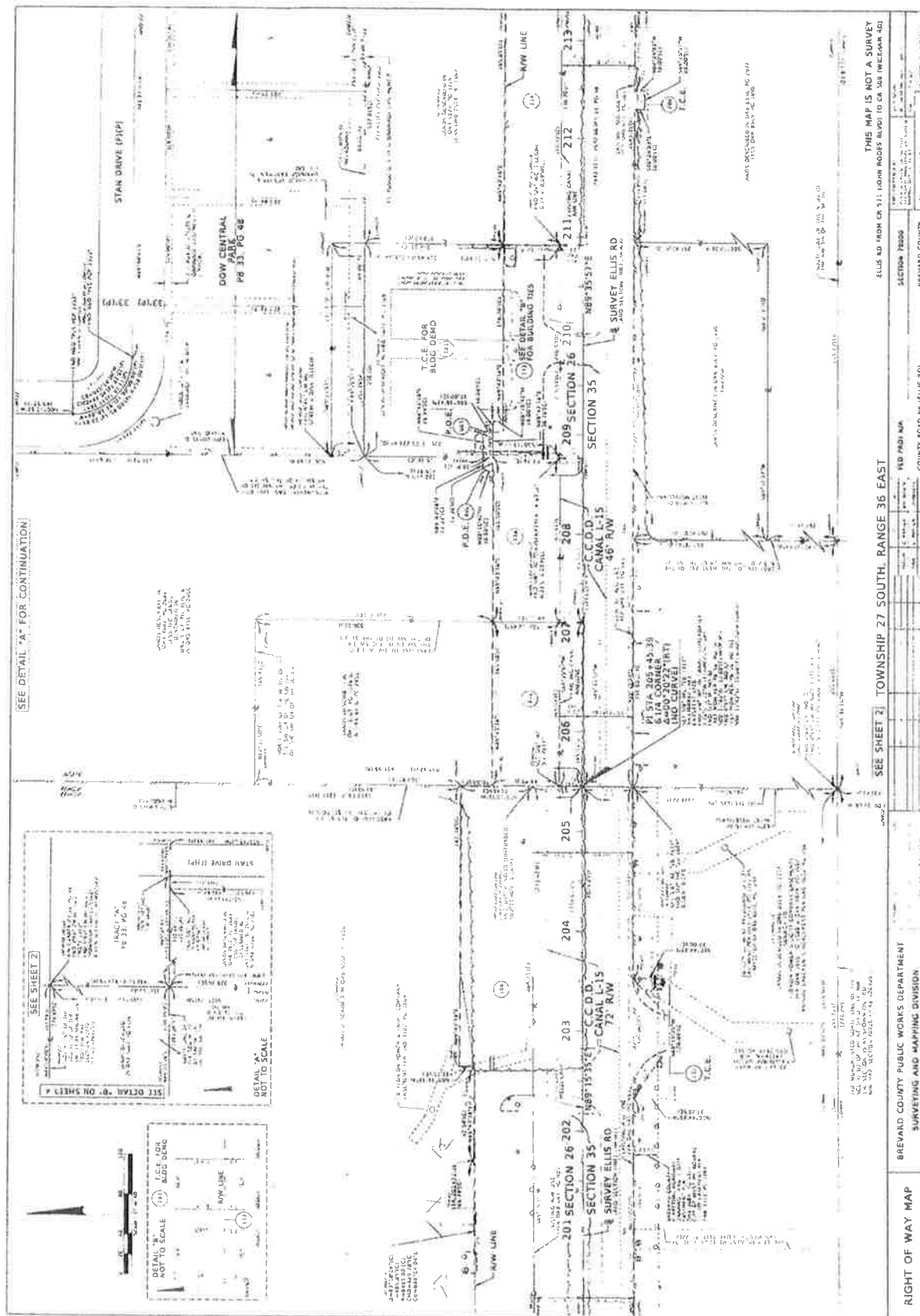


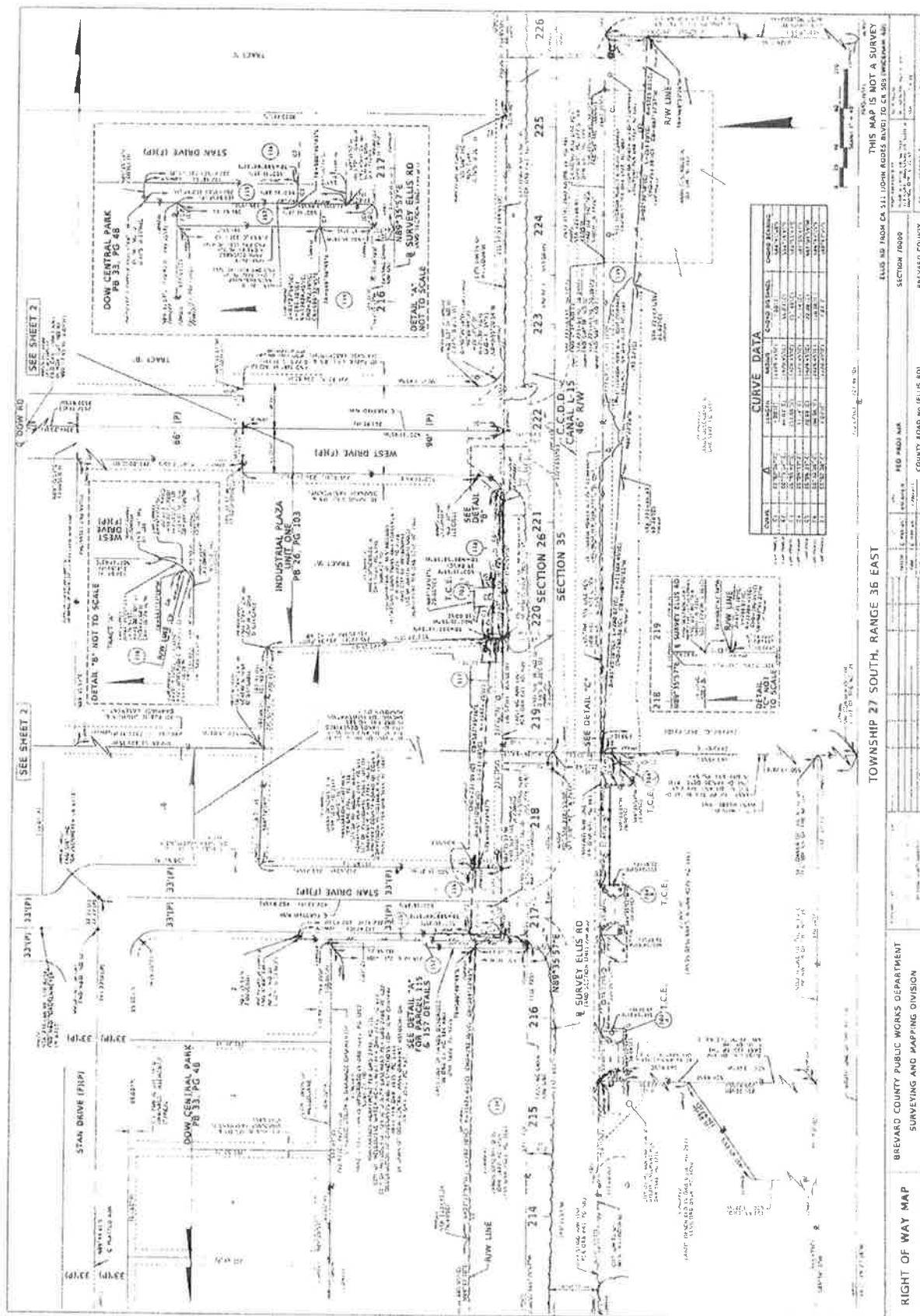


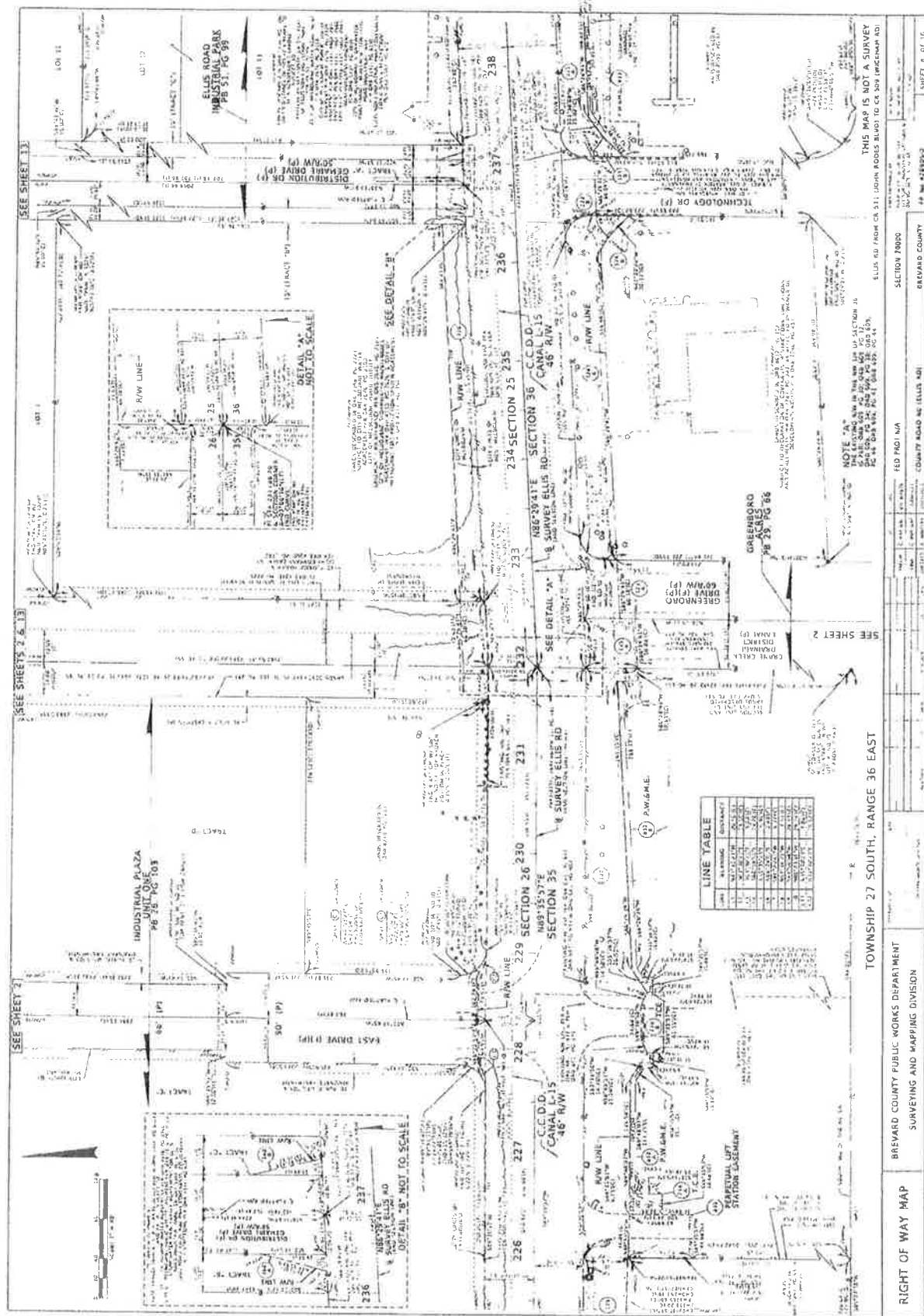




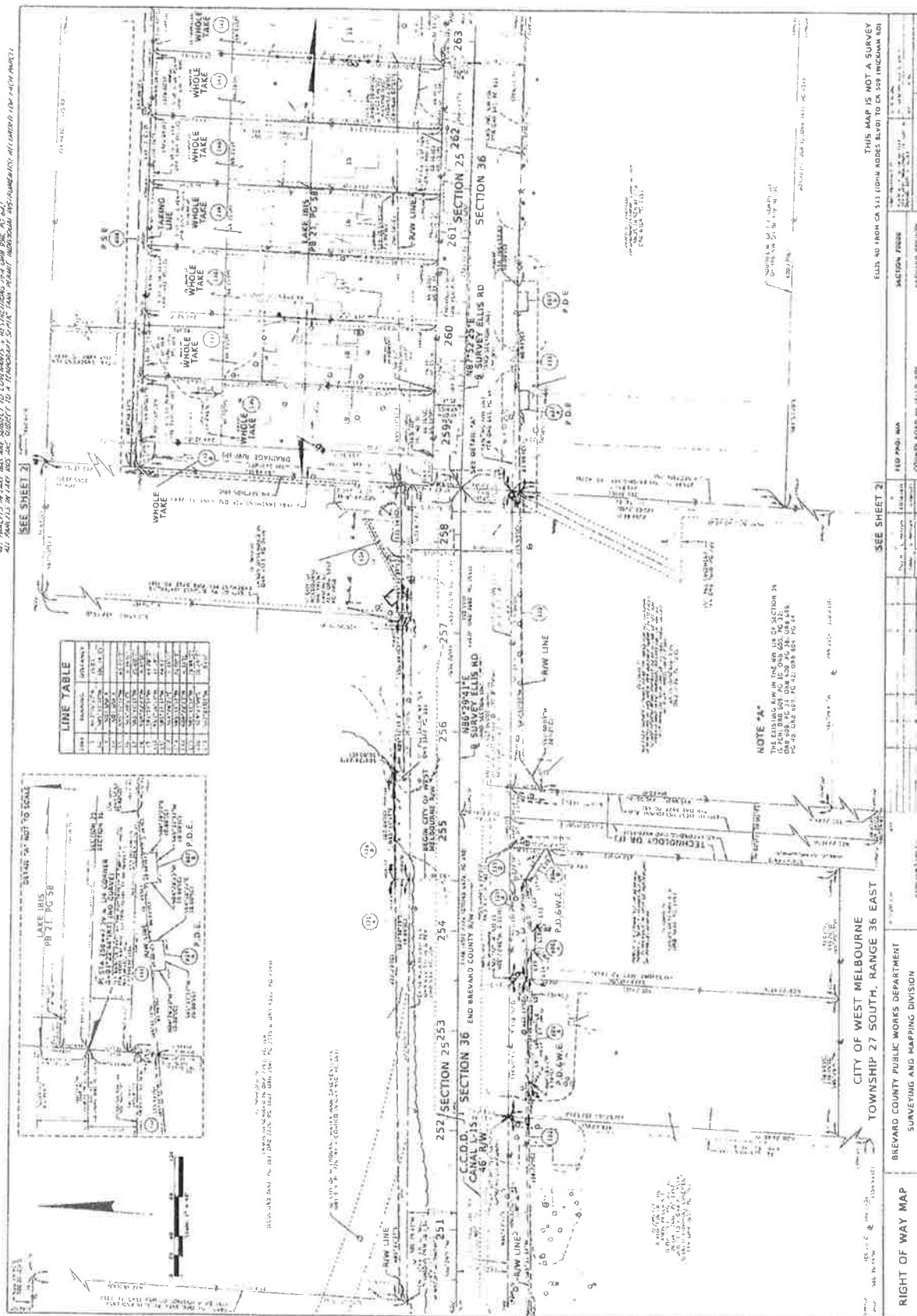




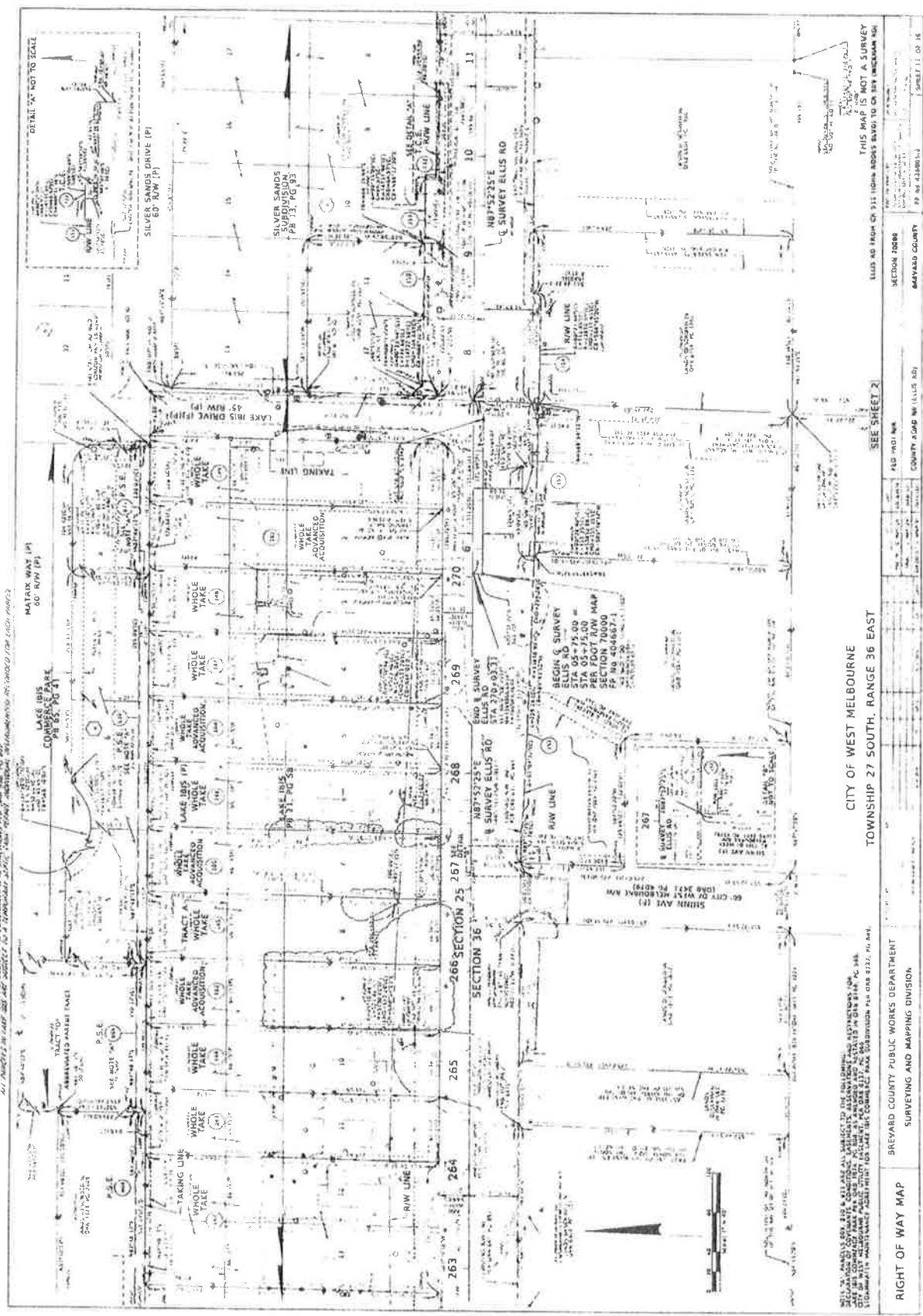


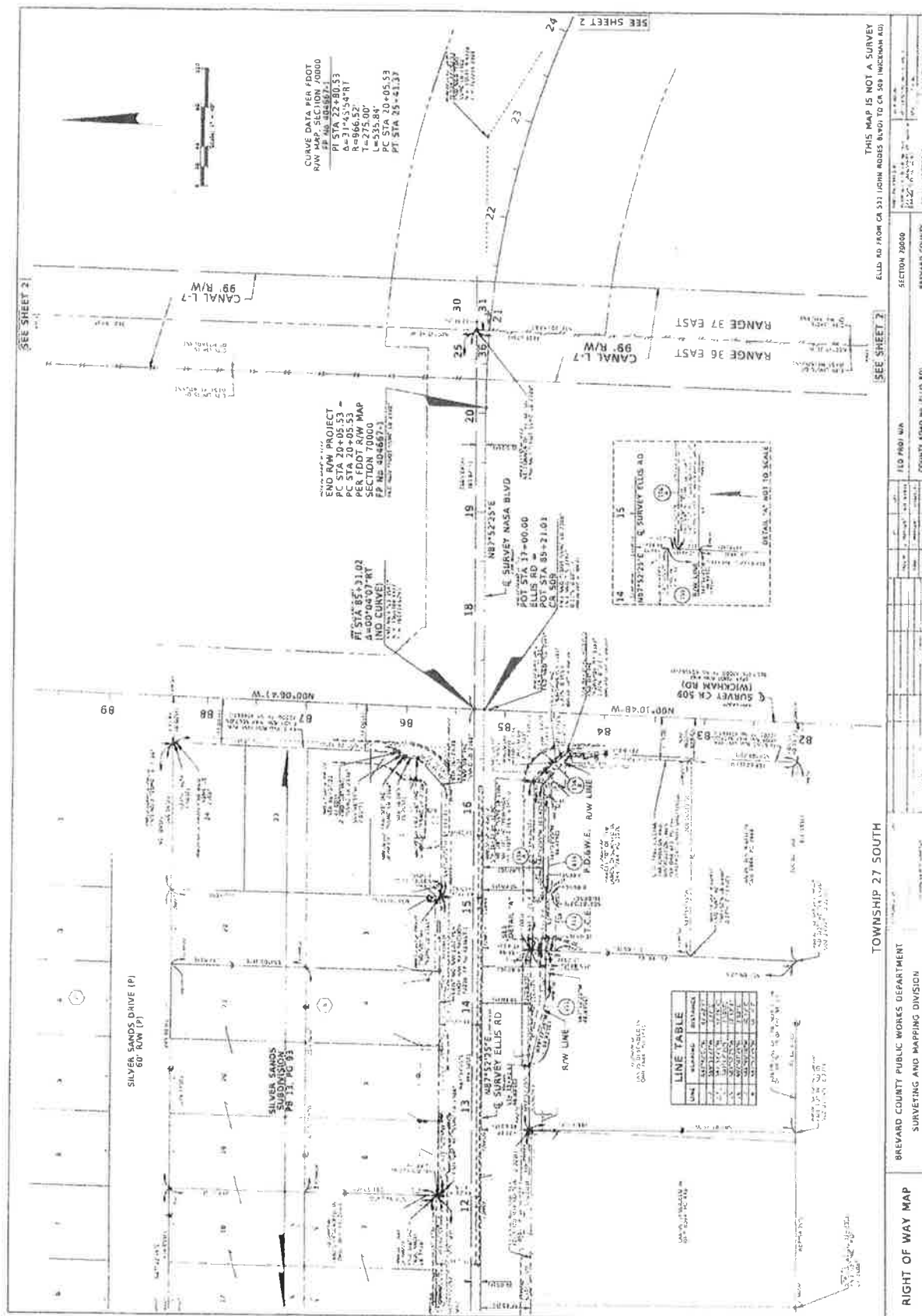




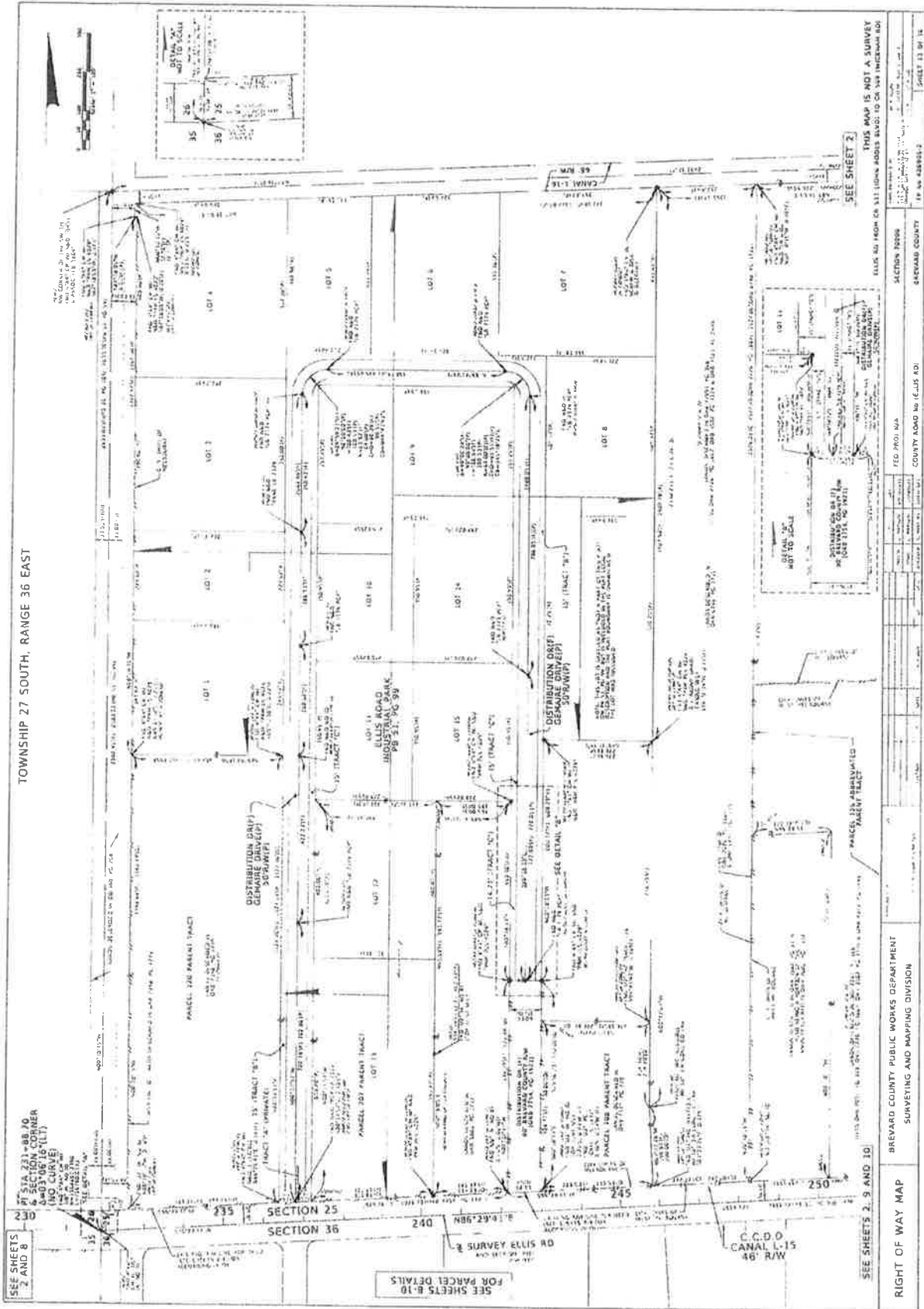


















**EXHIBIT "B"****ESTIMATE**

<b>St. Johns Heritage Parkway/Ellis Road</b>	<b>TOTAL COST</b>
Right of Way Phase 4B/42/43/45	\$35,156,681.00
Right of Way Local Funds	\$1,760,764.00
<b>TOTAL</b>	<b>\$36,917,445.00</b>

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**EXHIBIT "C"**

**RESOLUTION**

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

**RESOLUTION NO. 2023- 024**

**A Resolution authorizing the execution of Locally Funded Agreement with the Florida Department of Transportation for the St. Johns Heritage Parkway at Ellis Road (Ellis Road Widening)**

**Whereas**, the State of Florida, Department of Transportation, ("F.D.O.T.") and Brevard County desire to facilitate the widening of Ellis Road, ("Project"); and

**Whereas**, Brevard County desires to assist in funding the Project through the contribution of funds in the amount of \$1,760,764.00 to F.D.O.T. to acquire certain real property interests necessary to provide for stormwater treatment and facilities as a part of the Project; and

**Whereas**, the F.D.O.T. has requested Brevard County to execute and deliver to the F.D.O.T. the Locally Funded Agreement for the aforementioned Project, FM 426905-4-4B/42/43/45-01.

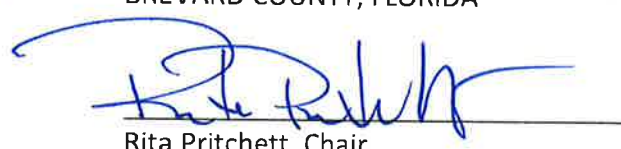
**Now, therefore, be it resolved** by Brevard County, through Rita Pritchett, Chair of the Board of County Commissioners of Brevard County, Florida, who is hereby authorized to make, execute, and deliver to the F.D.O.T. the Locally Funded Agreement for the aforementioned Project, FM 426905-4-4B/42/43/45-01.

**DONE AND RESOLVED** this 7th day of March, 2023.

ATTEST:

  
\_\_\_\_\_  
Rachel Sadoff, Clerk of the Court

BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Rita Pritchett, Chair