

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Contract for Sale and Purchase: Right-of-Way for Lincoln Heights Drainage Improvement Project

DEPARTMENT: Public Works **DIVISION:** Roads - Stormwater

AUTHORIZED BY: *W. Gary Johnson* **CONTACT:** Mark Flomerfelt, P.E. **EXT.** 5710
W. Gary Johnson, P.E., Director *Michael K. Arnold, Division Manager*

Agenda Date <u>12/20/05</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute the Contract for Sale and Purchase for the property described in the contract and depicted in the attached maps as; all of Parcel ID #341930502-0K00-0000, a portion of Parcel ID #3419305AK-0B00-037A and a portion of Parcel ID #3419305AK-0B00-0350.

District 5: Commissioner Carey (Mark Flomerfelt)

BACKGROUND:

The enclosed contract for sale and purchase reflects the purchase of property required for the Lincoln Heights Drainage Improvement Project. The property is approximately 3.1 acres in size and the total purchase price is \$120,000. Closing will be scheduled within 30 days of contract execution.

Acquisition of this property will allow the future construction of a stormwater pond serving the Lincoln Heights area. Funds for this property purchase are currently allocated in the 05/06 budget, within the right-of-way account for CIP No. 209108 (Lincoln Heights).

Attachments: Contract for Sale and Purchase
Parcel Map
Aerial Map

Reviewed by:	<u><i>LF</i></u>
Co Atty:	<u><i>LF</i></u>
DFS:	<u> </u>
Other:	<u> </u>
DCM:	<u><i>LF</i></u>
CM:	<u><i>LF</i></u>
File No.	<u>CPWS02</u>

CONTRACT FOR SALE AND PURCHASE

PARTIES: Lars J. Eriksson, whose address is 1200 Albright Road, Sanford, Florida 32771, hereinafter referred to as the SELLER, and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as BUYER, hereby agree that the SELLER shall sell and the BUYER shall buy the property hereafter described upon the terms and conditions set forth herein.

TERMS OF THE CONTRACT FOR SALE AND PURCHASE

THE PARTIES hereby agree that the SELLER shall sell and the BUYER shall buy the Property described herein upon the terms and conditions which include the negotiated Standards for Real Estate Transactions set forth in this contract.

1. LOCATION/LEGAL DESCRIPTION.

The Property consists of all of Parcel 4 and that part of Parcels 3 and 5 lying south of the north line of Lincoln Heights Section Two as extended due west, as those Parcels 3, 4 and 5 are described in that certain deed recorded in Official Record Book 5722 at page 1103 of the public records of Seminole County wherein Seller is the Grantee and Utilities, Inc., is the Grantor.

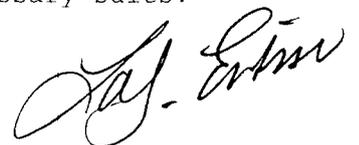
The parties agree to substitute a metes and bounds description prepared by a registered surveyor when same is completed.

The above property does not constitute the homestead of the Seller.

2. PURCHASE PRICE: \$ 120,000.00 . Payment is to be made at Closing. If payment is desired to be made in cash by wire transfer as directed by the SELLER; the SELLER must give the BUYER all account information at least twenty-four (24) hours in advance of Closing in order to implement a wire transfer.

3. TITLE EVIDENCE: Within fifteen (15) days after execution of this Agreement by SELLER and BUYER, BUYER shall obtain an ALTA Form B Marketability title insurance commitment agreeing to issue to BUYER, upon recording of the deed(s), an Owner's policy of title insurance in the amount of the purchase price, insuring title of the BUYER to the Property, subject only to liens, encumbrances, exceptions or qualifications set forth specifically in this Contract and all others, if any, shall be discharged by SELLER at or before Closing. BUYER shall have 10 days from date of receiving evidence of title to examine same. If title is found defective, BUYER shall, within 5 days thereafter, notify SELLER in writing specifying any defect.

If said defect(s) render title unmarketable, SELLER shall have 5 days from receipt of notice within which to remove said defect(s) and, if SELLER is unsuccessful in removing them within said time, BUYER shall have the option of either (1) accepting the title as it then is, or (2) canceling this Agreement whereupon each party shall be released, as to one another, of all further obligations under the Contract; provided, however, that SELLER agrees he will, if title is found to be unmarketable, use and exercise diligent efforts to correct the defect(s) in title within the time provided therefore including, but not limited to, the bringing of necessary suits.



4. **CONTRACT DATE:** The effective date of this Agreement shall be the date that the last party executes same.

5. **CLOSING DATE:** This contract shall be closed and the deeds and other Closing papers shall be delivered on or before thirty (30) days from the Contract Date, unless extended by the parties, and SELLER agrees to deliver possession on the date of Closing. Time is of the essence as to the Closing date.

6. **RESTRICTIONS, EASEMENTS, LIMITATIONS AND ENVIRONMENTAL MATTERS:** The BUYER shall take title subject to: zoning, restrictions, prohibitions and other requirements imposed by governmental authority restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record, taxes for year of Closing and subsequent years, provided, however, that none of the foregoing or any other restriction shall prevent use of the property for a drainage facility.

7. **OCCUPANCY:** SELLER represents that there are no parties in occupancy other than SELLER and that the Property shall not be rented or occupied beyond Closing. SELLER agrees to deliver occupancy of Property at time of Closing. If occupancy is to be delivered prior to Closing, Buyer assumes all risk of loss to Property from date of occupancy, shall be responsible and liable for maintenance thereof from said date, and shall be deemed to have accepted the Property, real and personal, in its existing condition as of time of taking occupancy unless otherwise noted in writing.

8. **ASSIGNABILITY:** BUYER may assign this Contract or any right derived thereunder to any other state, and/or local governmental agency.

9. **TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions inserted herein or attached hereto as Addenda, if any, shall control all printed provisions in conflict therewith if initialed by both parties.

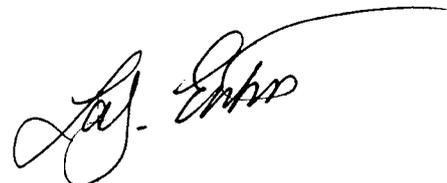
10. **SPECIAL CLAUSES:**

I. BUYER shall not be responsible for any brokerage fees or commissions. SELLER shall be responsible for the payment of all real estate commissions that result from this transaction.

II. SELLER shall fully comply with the provisions of Section 286.23, Florida Statutes. Attached hereto as Exhibit "2" is a form affidavit to be used for such compliance. SELLER warrants that no persons, firms, corporations or other entities are entitled to a real estate commission or other fees as a result of this Agreement or subsequent Closing. SELLER shall indemnify and hold BUYER harmless from any and all such claims, whether disclosed or undisclosed.

III. This transaction is under threat of condemnation as BUYER requires the Property for a public works project and was prepared to pursue condemnation of same if this agreement had not been reached.

IV. SELLER warrants that there is a legal ingress and egress for the Property over public roads or valid, recorded easements that benefit the Property.

A handwritten signature in black ink, appearing to read "L. J. [unclear]", is written in the bottom right corner of the page.

V. BUYER is aware that there were Level 1 and Level 2 environmental assessments performed on the Property and has received a copy of each. SELLER shall provide an affidavit, in the form attached hereto as Exhibit "1", regarding the environmental conditions of the Property since the time that SELLER has owned the Property.

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. **EVIDENCE OF TITLE:** See paragraph 3. above.

B. **EXISTING MORTGAGES:** SELLER shall furnish a statement from the mortgagee(s), if any, setting forth principal balance, method of payment, interest rate and whether the mortgage(s) is/are in good standing. The SELLER shall cause all mortgages to be released and/or satisfied prior to or at Closing as to the Property.

C. **SURVEY:** The BUYER may have surveys of the Property accomplished at its expense. The SELLER agrees to provide to the BUYER, at no expense, a copy of any and all existing surveys on the Property over which the SELLER exercises ownership, control or dominion. If the survey, certified by registered Florida surveyor, shows any encroachment of said Property or that improvements intended to located on the Property in fact encroach on lands of others, or violate any of the Contract covenants, the same shall be treated as a title defect. SELLER agrees that from the date this Agreement is executed by SELLER, BUYER and its agents, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with this Agreement.

D. **LIENS:** SELLER shall, both as to the Property and personalty being sold hereunder, furnish to BUYER at time of Closing, an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of liens or potential lienors known to SELLER and further attesting that there have been no improvements to the Property for 90 days immediately preceding date of Closing. If the Property has been improved within said time, SELLER shall deliver releases or waivers of all mechanic's liens, executed by general contractors, subcontractors, suppliers, and materialmen, in addition to a SELLER's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further reciting that in fact all bills for work to the Property which could serve as a basis for a mechanic's lien have been paid or will be paid at Closing.

E. **PLACE OF CLOSING:** Closing shall be held at the Office of the Seminole County Attorney, or such other office as the County Attorney may direct.

F. **TIME:** Time is of the essence of this Contract. Any reference herein to time periods of less than 6 days shall in the computation thereof exclude Saturdays, Sundays and legal holidays including County holidays, and any time period provided for herein which shall be on a Saturday, Sunday or legal holiday including County holidays shall extend to 5:00 p.m. of the next full County business day.

G. **DOCUMENTS FOR CLOSING:** SELLER is responsible for providing fully executed and/or recordable documents, including but not limited to, deed(s), mechanic's and/or construction lien affidavit(s), estoppel letter(s), mortgage satisfaction(s) and/or release(s), satisfaction(s) of judgment(s),



Court Order(s), and any and all corrective instrument(s) that may be required in connection with perfecting the title all of which shall survive Closing. Copies of the proposed Closing documents shall be exchanged at least 5 working days prior to Closing. The Statutory Warranty Deed, in addition to all common law covenants shall include the covenant of further assurances. All grantors shall be deemed to be subject to enforcement or action as to each and every covenant.

H. EXPENSES: As this is under threat of condemnation, there are no State documentary stamps required to be affixed to the deed. The costs of recording any and all corrective instruments shall be paid by SELLER (See, Section 201.01, Florida Statutes). BUYER shall pay all costs of providing an Owner's Title Insurance Commitment and the Owner's Title Insurance Policy, as outlined in item A above. BUYER shall pay all costs of recording the deeds of conveyance.

I. PRORATION OF TAXES (REAL AND PERSONAL): Taxes shall be prorated based on the current year's tax. If Closing occurs at a date when the current year's millage is not fixed, and a current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's taxes; provided, however, that if there are complete, improvements on the Property by January 1st of the year of Closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration homestead exemption, if any. However, any tax proration; based on an estimate may, at request of either party to the transaction, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is set forth in the Closing statement. If proration would result in BUYER paying less than 1/12th of the year's taxes, SELLER shall pay all taxes without proration.

J. SPECIAL ASSESSMENT LIENS: Any and all certified, confirmed and ratified special assessment liens as of the date of Closing shall be paid by SELLER. Pending liens as of date of Closing shall be assumed by BUYER; provided, however, that where the improvement has been substantially completed as of the Effective Date, such pending lien shall be considered as certified, confirmed or ratified and SELLER shall, at Closing, be charged an amount equal to the last estimate by the public body, of the assessment for the improvement. If "BUYER" is subject to such matters as a governmental entity all matters subsequent to Closing shall be applicable only if applicable to such an entity.

K. PERSONAL PROPERTY AND MATERIALS INSPECTION, REPAIR: Ownership of the real property, personal property or any other property located on the Property shall be transferred to the BUYER by means of an absolute Bill of Sale or by means of the deed of conveyance, as the case may be. SELLER shall remove all personal property not sold to BUYER from the Property prior to the Closing.

L. RISK OF LOSS: If the real property, personal property and materials mentioned in Standard K are damaged by fire or other casualty prior to Closing, costs of restoration shall be an obligation of the SELLER and Closing shall proceed pursuant to the terms of this Contract with the costs therefore escrowed at Closing. In the event the costs of repair or



restoration exceeds 3% of the total purchase price, BUYER shall have the option of either taking the property as is, together with either the insurance proceeds payable by virtue of such loss or damage, if any, or of canceling this Contract.

M. MAINTENANCE: Notwithstanding provisions of Standard F, between the Effective Date and the Closing date, personal property referred to in Standard L and the real property shall be fully maintained by SELLER, ordinary wear and tear excepted. BUYER or BUYER's designee will be permitted access for inspection prior to Closing.

N. ESCROW: Only the Clerk of the Circuit Court (Finance) for Seminole County shall serve as escrow agent, should an escrow agent be required as part of this transaction. The Clerk shall promptly deposit and hold all funds deposited in escrow and disburse same subject to clearance thereof in accordance with terms and conditions of an escrow agreement. In the event of doubt as to her duties or liabilities, the escrow agent may in her sole discretion, continue to hold the monies which are the subject to escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto. In the event of any suit wherein escrow agent interpleads the subject matter of this escrow, the escrow agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing party.

All parties agree that the escrow agent shall not be liable to any party or person whomsoever for misdelivery to BUYER or SELLER of monies subject to this escrow, unless such misdelivery shall be due to willful breach the escrow agreement or gross negligence on the part of the escrow agent.

O. DEFAULT WAIVER: If BUYER fails to perform this Contract within the time specified, SELLER, at its option, may proceed at law or in equity to enforce its legal rights under this Contract. If, for any reason other than failure of SELLER to render title marketable after diligent effort, SELLER fails, neglects or refuses to perform this Contract, the BUYER may seek specific performance without thereby waiving any action for damages resulting from Seller's breach. Failure of BUYER to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect.

P. CONTRACT RECORDABLE, PERSONS BOUND AND NOTICE: This Contract shall be recorded in the Board of County Commissioner's public records and not recorded in the official land records. This Contract shall bind and inure to the benefit of the parties hereto and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice given by or to the attorney for either party shall be as effective as if given by or to said party. The agreements expressed herein shall survive Closing.

Q. PRORATIONS AND INSURANCE: Taxes, assessments, rent, interest, insurance and other expenses and revenue of the Property shall be prorated as of date of Closing under the provisions of this Contract. BUYER shall have the option of taking over any existing policies of insurance on the Property, if assumable, in which extent premiums shall be prorated. The cash at Closing shall be decreased as may be required by said prorations. All

A handwritten signature in black ink, appearing to be "J. S. Smith", is written over the page number.

references in this Contract to prorations as of date of Closing will be deemed "date of occupancy" if occupancy occurs prior to Closing, unless otherwise provided for herein.

R. CONVEYANCE: SELLER shall convey title to the Property by Statutory Warranty Deed as described in item 1(b) above, which shall include all common law covenants of title and seisin which deed shall also include the covenant of further assurances and title shall be conveyed free and clear of all liens and encumbrances subject only to matters contained in Paragraph 6 hereof and those otherwise accepted in writing by BUYER. The deed(s) must be in a form that will provide for insuring marketable title in accordance with the terms of this Contract.

S. HAZARDOUS MATERIALS/POLLUTION: BUYER shall have the right, prior to Closing, to come upon the Property with its employees, engineers and other personnel to inspect and conduct testing upon the Property. If BUYER determines that the Property contains any hazardous wastes or materials or environmental contamination, or has been used as a hazardous waste or chemical storage facility or dumpsite or as a garbage dump or landfill site, BUYER may elect to cancel this Agreement. This Agreement is specifically made contingent upon the respective Property being free of contamination and as represented above.

T. SURVIVAL: Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that SELLER's representations, warranties, covenants and agreements shall survive Closing and all of the same shall not merge into the Deed(s) to be given by SELLER but shall be independently actionable. The covenants, warranties, representations, indemnities and undertakings of SELLER set forth in this Agreement shall survive the Closing, the delivery and recording of the deed and possession of the Property. All elements of this Agreement are consideration relative to this purchase and sale.

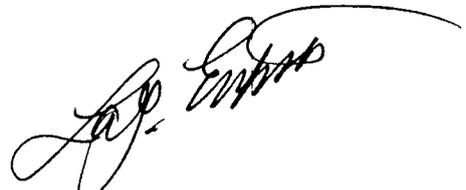
U. AGREEMENT EFFECTIVE: This Agreement or any modifications, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until it has been executed by all of the parties hereto.

V. ADDENDUM: Any addendum attached hereto that is signed by the parties shall be deemed a part of this Agreement.

W. NOTICE: Whenever a party desires or is required to give notice unto the other, it must be given by written notice, and either delivered personally or mailed to the appropriate address indicated on the first page of this Agreement, or such other address as is designated in writing by a party to this Agreement.

X. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Y. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Contract. No modification or change in this Contract

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shall be valid or binding upon the parties unless in writing and executed by the parties to be bound thereby.

IN WITNESS WHEREOF, the parties hereto have made and executed this Option Contract for Sale and Purchase on the date written below.

WITNESSES

SELLER


Print Name: Damon Fields


Lars J. Eriksson

Print Name: _____

Dated this 3rd day of November,
2005.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of County
Commissioners of Seminole County,
Florida

By: _____
Carlton Henley, Chairman

Date: _____

For the use and reliance of Seminole
County only.
Approved as to form
and legal sufficiency.

As authorized for execution
by the Board of County
Commissioners at their

2005, regular meeting.

County Attorney

EXHIBIT "1"

SEMINOLE COUNTY GOVERNMENT
CONTRACT FOR SALE AND PURCHASE

HAZARDOUS MATERIALS OR WASTE
AND ENVIRONMENTAL
CONTAMINATION AFFIDAVIT

(STATE OF)
(COUNTY OF)

COMES NOW, LARS J. ERIKSSON, as SELLER and, pursuant to the Contract For Sale and Purchase between SELLER and SEMINOLE COUNTY, a political subdivision of the State of Florida (BUYER), dated November 3rd, 2005, swears and affirms that the following facts are true:

(1) That he is the owner of the property as described in the above-referenced Contract For Sale And Purchase.

(2) There are no facts known to the SELLER materially affecting the value of the real property which is the subject of the above-referenced Contract. There are no liabilities associated with the Property which have been observed by or which are known to the SELLER. To the best of SELLER's knowledge and belief, there are no hazardous materials or wastes or any other form of environmental contamination located upon or within the Property.

(3) With respect to the use of the Property since SELLER acquired it:

A. SELLER represents and warrants that he has not used the Property and has not allowed others to use the Property for activity which uses, stores or dumps environmental contaminants, toxic chemicals, hazardous substances (including hazardous wastes) or substances likely to infiltrate the soil or groundwater. SELLER further represents and warrants that the Property has not been used during his ownership thereof as a garbage dump or landfill area.

B. SELLER represents and warrants that the Property has not been/is not now in violation of any Federal, State or local law, rule, ordinance or regulation relating to hazardous substances or hazardous wastes, or including, but not limited to, soil and groundwater conditions.

C. SELLER has obtained any and all necessary permits, registrations, approvals and licenses necessary to generate, manufacture, transport, treat, store, handle, dispose or process any of the materials and substances referred to herein.

D. SELLER warrants that no Federal, State, or local government agency has filed any lien with regard to the Property.



(4) To the best of SELLER's knowledge and belief, there is no environmental condition, situation or incident on, at or concerning or in any way related to the property that could possibly give rise to any type of action, proceeding or investigation under any law, rule, regulation or common law theory.

(5) There are no underground storage tanks of any type or of any sort or similar lines or facilities located in anyway on the property.

(6) The property is not identified on the current or proposed (a) National Priorities List under 40 C.F.R. Part 300, Appendix B; (b) Comprehensive Environmental Response Compensation, and Liability Inventory System ("CERCLIS"); or (c) any list maintained by any Federal, State, or local authority relating in any way to environmental contamination.

(7) There are no impending changes or events that will substantially affect the property's compliance with environmental legal requirements or the ability to obtain and maintain in effect the non-violation status of the property.

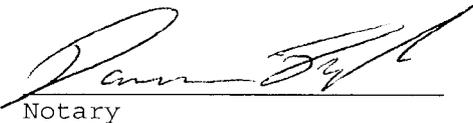
FURTHER AFFIANT SAYETH NAUGHT.

LARS J. ERIKSSON



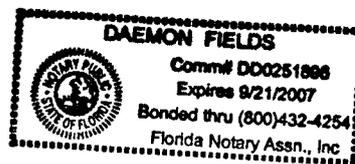
(STATE OF)
(COUNTY OF)

The foregoing instrument was acknowledged before me this 3rd day of November, 2005, by Lars J. Eriksson, who is personally known to me or has produced _____ as identification and who did take an oath.



Notary

Daemon Fields
Print Notary Name



Notary Public in and For the County
and State Aforementioned
My Commission No. DD0251896
My Commission Expires: 9/21/2007

EXHIBIT " 2 "

AFFIDAVIT OF INTEREST IN REAL PROPERTY- F.S. 286.23(2)

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered into this ____ day of _____, 2005 for the sole purpose of compliance with Section 286.23(2) of the Florida Statutes.

The undersigned hereby swears and affirms that the following is true:

The name(s) and address(es) of the Grantor(s) of the before named real property is/are:

Lars J. Eriksson, 1200 Albright Road, Sanford, Florida 32771

The names(s) and address(es) of every person having a beneficial interest in the above named real property that is the subject to negotiations for purchase by Seminole County, a political subdivision of the State of Florida is/are:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

7. Additional Names and Addresses attached as Exhibit "B" (if any).

FURTHER AFFIANT SAYETH NAUGHT

Signed, sealed and delivered in our presences:

Print Name: _____

Lars J. Eriksson

Lars J. Eriksson

Print Name: _____

(STATE OF _____)

(COUNTY OF _____)

The foregoing instrument was acknowledged before me this 3rd day of November, 2005, by Lars J. Eriksson, who is personally known, to me or has produced _____ as identification and who did take an oath.

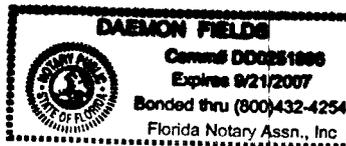
Notary Signature: *Daemon Fields*

Print Notary Name: Daemon Fields

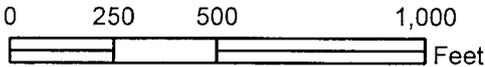
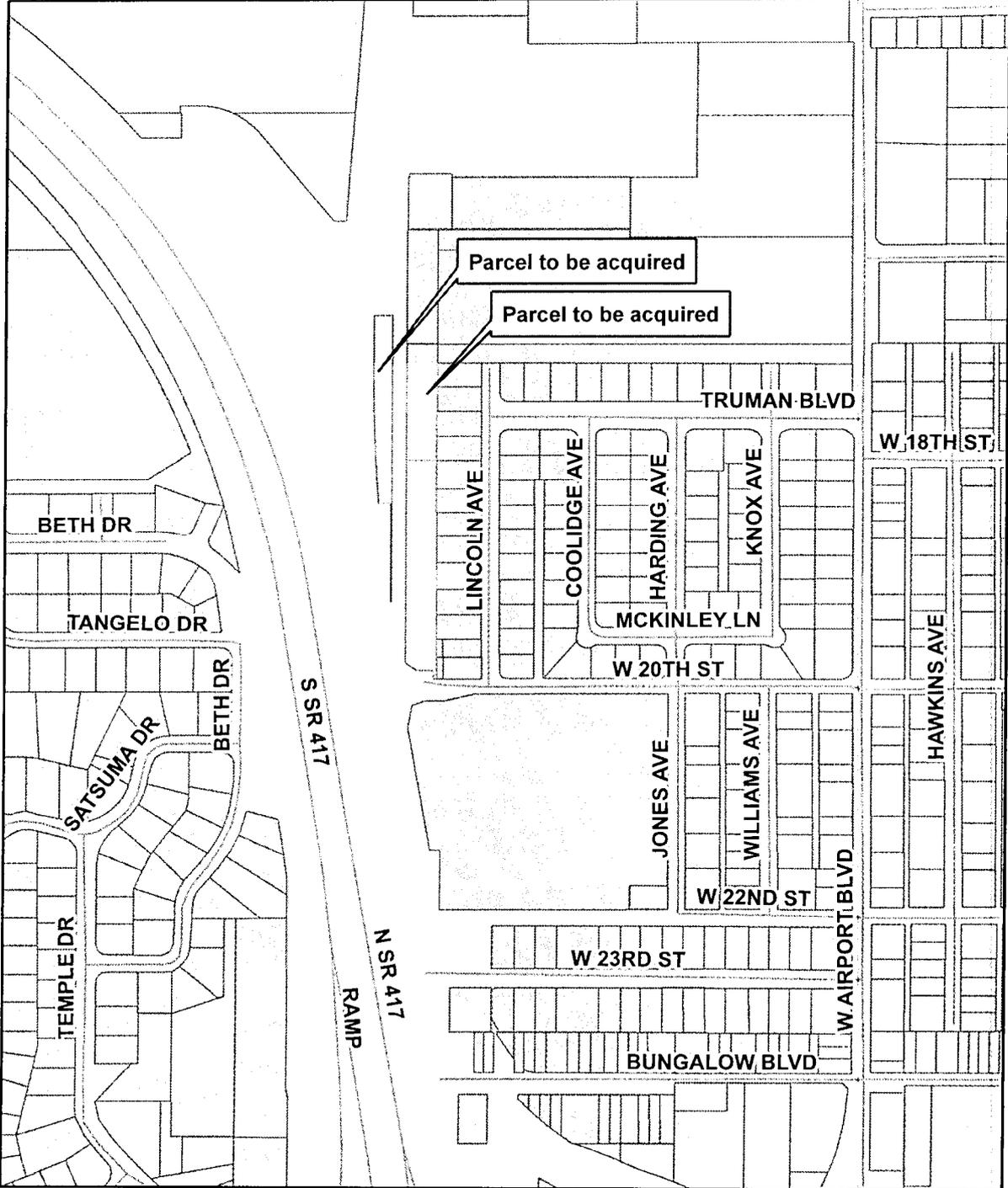
Notary Public in and for the County and State Aforementioned

My Commission Expires: 9/21/2007

Notary Seal:



Lincoln Heights Parcel Acquisition



Lincoln Heights Parcel Acquisition

