

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: April 3, 2023

RE: **Development Agreement with Prose Lakeland Owner, LLC**

Attached for your consideration is a Development Agreement between the City of Lakeland and Prose Lakeland Owner, LLC (Prose). Prose is developing a multi-family residential development consisting of 391 units on 22.87 acres located south of State Road 572 (Drane Field Road-South Parkway Frontage Road) and east of Pipkin Creek Road. Given the location of Prose's proposed development within a larger Planned Unit Development (PUD) within which the adjacent Lakeside Preserve single-family residential community is proposed, the PUD requires that both Prose and Lakeside Preserve establish and pay their fair share percentages for identified access and operational improvements at the State Road 572/Pipkin Creek Road intersection, including the signalization of the intersection. A separate Development Agreement with Pipkin Creek Properties, LLC, the developer of Lakeside Preserve, has been negotiated and is also included on this agenda to provide for Lakeside Preserve's share of the intersection improvement costs.

Inflated to Year 2027 values, the final cost estimate for the State Road 572/Pipkin Creek Road signalization project totals \$547,833.78. State Road 572 is operated by the Florida Department of Transportation and Pipkin Creek Road is operated by Polk County. Therefore, the final access and operational improvements at the subject intersection may be different from what is currently proposed once reviewed through the permitting processes for both agencies. Based on the uncertainty of the final mitigation project at the intersection and the expected construction schedules for the Prose and Lakeside Preserve developments, the attached Development Agreement requires Prose to pay the City its proportional share of the State Road 572/Pipkin Creek Road intersection improvements, to be included in a dedicated account for future implementation by the City in accordance with FDOT and County permitting requirements. The separate Development Agreement with Lakeside Preserve likewise requires the developer of Lakeside Preserve to deposit its proportional share with the City.

Under the attached Development Agreement, Prose will be required to take the following action:

1. Prior to first certificate of occupancy, Prose shall design, permit and construct required Pipkin Creek Road improvements at the site entrance according to plans that are approved and permitted by Polk County.
2. Within 90 days of the effective date of the Development Agreement, Prose shall pay its proportional share of the costs of the State Road 572/Pipkin Creek Road Traffic Signal, or a package of access/operational mitigation improvements of an equal cost as approved by FDOT and Polk County if a traffic signal is not approved. Prose's proportional share for the improvements has been calculated at \$186,263.49.
3. Prose's predecessors in interest have dedicated required right-of-way along Pipkin Creek Road (formerly named "South Pipkin Road") and Prose shall construct a sidewalk along the site's frontage.
4. Prose shall install a transit shelter on the State Road 572 or Pipkin Creek Road frontage at a location that is determined to be acceptable by the Lakeland Area Mass Transit District. The site plan that is currently under review shows a proposed transit shelter on Pipkin Creek Road, just north of the site driveway.

Upon satisfaction of the conditions of the proposed Development Agreement, the City will grant transportation concurrency for this development, resulting in vesting for 2,862 Daily and 219 PM Peak Hour Trips. If the State Road 572/Pipkin Creek Road Traffic Signal or equivalent access/operational mitigation improvements are not necessary or construction of these improvements has not commenced before December 31, 2035, the City will refund Prose's proportional share payment.

It is recommended that the City Commission approve the attached Development Agreement with Prose Lakeland Owner, LLC and authorize the appropriate City officials to execute the Agreement.

Attachment

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, effective as of the Effective Date (defined below) by and between Prose Lakeland Owner, LLC, a Delaware limited liability company (the “**Developer**”), and the City of Lakeland, a Florida municipal corporation (the “**City**”).

WHEREAS, the Developer proposes to develop real property generally located south of South Parkway Frontage Road and east of Pipkin Creek Road, as described in Exhibit A and as depicted in Exhibit B (the “**Property**”); and

WHEREAS, the City has approved the development of a community consisting of up to 391 multi-family dwelling units (the “**Project**”) pursuant to Ordinance No. 5931 (the “**PUD**”), as depicted in the site development plan attached to the PUD, and which includes an internal transportation plan with general location of proposed streets and pedestrian pathways, as depicted in Exhibit C; and

WHEREAS, the Developer is required to construct a southbound left turn lane on Pipkin Creek Road at the project entrance (the “**Project Entrance**”) pursuant to plans approved by Polk County (the “**Pipkin Creek Road Improvements**”) that Developer will be required to complete as a condition precedent to its receipt of a final certificate of occupancy for the Project; and

WHEREAS, the Developer provided the City with a traffic study prepared pursuant to Section 1.C.3.a of the PUD, which identified the Developer’s thirty-four percent (34%) fair share percentage (“**Developer’s Proportional Share**”) of the costs to implement access improvements at the Pipkin Creek Road/State Road 572 (Drane Field Road) intersection (the “**Intersection**”), assumed to consist of the installation of a traffic signal (the “**Traffic Signal**”) at the Intersection, based upon the final Project trip generation estimate as further described in the attached Exhibit D; and

WHEREAS, the Florida Local Government Development Agreement Act, Florida Statutes §§ 163.3220 - 163.3243, (the “**Act**”), authorizes local governments to enter into developmental agreements with developers to encourage a stronger commitment to comprehensive and capital facilities planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, to reduce the economic cost of development and to provide certainty to developers in the approval of development and assurances that they may proceed in accordance with existing laws and policies, subject to the conditions of such development agreements; and

WHEREAS, such development agreements strengthen the public planning process, encourage sound capital improvement planning and financing, assist in assuring there are adequate capital facilities for the development, encourage private participation and comprehensive planning and reduce the costs of development; and

WHEREAS, the Project is consistent with the City of Lakeland's Comprehensive Plan and Land Development Code; and

WHEREAS, the Project will comply with all applicable land development regulations in effect at the time of permitting unless otherwise provided herein; and

WHEREAS, the southwestern Lakeland area continues to face transportation challenges that could impact long-term growth potential if not addressed; and

WHEREAS, the Project will provide a major multi-family housing opportunity for City residents, and

WHEREAS, the Developer has agreed to assist the City to address the transportation impacts from the Project through the construction of the Pipkin Creek Road Improvements and the payment of Developer's Proportional Share of the costs of the Traffic Signal as determined from the traffic study, or payment of any other geometric or operational improvements of equal cost at the Intersection that is accepted by the Florida Department of Transportation and/or Polk County in the event that neither maintaining jurisdiction approves the installation of a Traffic Signal at the Intersection; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the City to facilitate the construction of the Traffic Signal by collecting Developer's Proportional Share of the costs of the Traffic Signal and the remaining proportional share from the adjoining single family developer as a condition of its certificates of occupancy.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

A. **Whereas Clauses.** The Whereas clauses set forth above are incorporated herein by reference and made a part of this Development Agreement.

B. **Purpose.** The purpose of this Development Agreement is to establish the respective rights and obligations of the Developer and the City.

C. **Developer Obligations.**

1. **Construction of Pipkin Creek Road Improvements.** Developer shall design, permit and construct the Pipkin Creek Road Improvements pursuant to the Plans. The construction of the Pipkin Creek Road Improvements shall be reviewed and approved by Polk County pursuant to the County's construction plan approval and permitting process outside of the scope of this Development Agreement. These improvements shall be completed prior to the first Certificate of Occupancy issuance.

2. Payment of Developer’s Proportional Share for Traffic Signal. Developer shall, within ninety (90) days after the Effective Date, pay the Developer’s Proportional Share of the costs for the Traffic Signal or package of access/operational mitigation improvements of an equal cost as approved by FDOT or Polk County. **Exhibit E** contains the signed and sealed engineer’s estimate to complete the signal installation, inflated to Year 2027 costs (\$547,833.78), with the Developer’s Proportional Share amounting to \$186,263.49 (the “**Developer’s Proportional Share Payment Amount**”).

3. Right-of-Way Dedication. Developer’s predecessors in title have dedicated the required right-of-way along South Pipkin Road pursuant to the requirements of the PUD (the “**Right-of-Way**”).

4. Sidewalk Construction. Developer shall construct a sidewalk on Pipkin Creek Road along the west Property boundary. This sidewalk shall be completed prior to the first Certificate of Occupancy issuance.

5. Satisfaction of PUD Conditions. The Developer shall have fully satisfied the transportation conditions set forth in Sections 1.B.9., 1.C.1. and 1.C.3 of the PUD (Ordinance Number 5931) upon the completion of Developer’s (a) payment of the Developer’s Proportional Share Payment Amount, (b) construction of the Pipkin Creek Road Improvements pursuant to the Plans, (c) construction of a sidewalk on South Pipkin Road along the west Property boundary, and (d) installation of a transit shelter along the site’s Pipkin Creek Road or South Parkway Frontage Road frontages at a location determined to be acceptable by the Lakeland Area Mass Transit District (LAMTD).

6. No Waiver. Developer acknowledges and agrees that the City’s willingness to enter into this Development Agreement shall not be construed as a waiver by the City of any applicable law, ordinance, rule, or regulation for the construction of the Project.

7. Notice Costs. The Developer will be responsible for and shall pay all costs related to providing notice and advertising this Development Agreement under Section 163.3225, Florida Statutes, and the recording of this Development Agreement.

D. **City Obligations.**

1. Concurrency. Subject to the Developer’s performance of its obligations set forth in this Development Agreement, the Project will be deemed to be approved for transportation concurrency. Concurrency for the Project for non-transportation matters shall be addressed at the final site plan approval for the Project.

2. Trip Vesting and Reserved Capacity. The Developer shall, upon payment of the Developer’s Proportional Share Payment Amount, and completion of the Pipkin Creek Road Improvements, Pipkin Creek Road sidewalk and transit shelter installation, be vested for 2862 Daily and 219 PM Peak Hour transportation trips associated with, and be provided reserved capacity for, the Project (the “**Vested Trips and Reserved Capacity**”).

3. Expiration of Vested Trips and Reserved Capacity. The Vested Trips and Reserved Capacity shall expire on December 31, 2027 (the “**Vesting Date**”), if the Developer

has not received the first building permit for a principal dwelling unit within 365 days of the Effective Date. The Vesting Date may be extended by written request to the City Manager (or the City Manager's designee) for one period of an additional five years, to December 31, 2032, if the Developer or its successors (a) are in compliance with this Development Agreement, and (b) acknowledge that the extension is requested due to an extended buildout schedule for the Project.

4. **Refund of Developer's Proportional Share.** If it is determined that the Traffic Signal or equivalent access/operational mitigation improvements are not necessary, or construction of the Traffic Signal or other mitigation improvements has not commenced on or before December 31, 2035, the City shall refund the Developer's Proportional Share to Developer.

5. **Impact Fees.** The Project shall be subject to City transportation impact fees as required by the City of Lakeland Transportation Impact Fee Ordinance No. 5535. These fees shall be due either in cash or third-party impact fee credits (including, without limitation, \$124,435.01 in impact fee credits from Jessica Butler and \$124,435.01 in impact fee credits from Sarah Fridovich, all of which have been confirmed as valid by the City) assigned by the eligible owner of those credits.

E. **Survival of Warranties, Representations.** The warranties, representations, covenants and obligations of the parties hereto shall be binding upon the parties and their respective successors in interest.

F. **Comprehensive Plan and Land Development Regulations.** The City's Comprehensive Plan has been found to be "in compliance" with Chapter 163, Florida Statutes, by the Florida Department of Economic Opportunity. The City has determined that the Project is consistent with its Comprehensive Plan and Land Development Regulations.

G. **Binding Effect.** The burdens of this Development Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all assignees or successors in interest to the parties of this Agreement. The Developer may assign the Vested Trips and Reserved Capacity to subsequent purchasers or developers of land within the Project by designating such assignees and the amount of the Vested Trips and Reserved Capacity to be assigned to them in writing with a copy provided to the Director of Community and Economic Development Department. Nothing regarding the Developer's right to assign the Vested Trips and Reserved Capacity shall affect the City's ability to enforce this Development Agreement or the terms of the Planned Unit Development zoning on the Project.

H. **Applicable Law; Jurisdiction; Venue.** This Development Agreement, and the rights and obligations of the City and the Developer hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. This Agreement may be enforced as provided in Florida Statutes § 163.3243. Pursuant to Florida Statutes § 163.3233(1), the City's laws and policies governing the development of the Project at the time of the execution of this Development Agreement shall govern the development of the Project for the duration of the Development Agreement. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Development Agreement, or the application thereof to any person or circumstances, shall to any extent be held

Lakeland, FL 33801

For the Developer: Robert Anderson, Member
Prose Lakeland Owner, LLC
222 West Comstock Avenue, Suite 115
Winter Park, Florida 32789

With a Copy to: Timothy F. Campbell, Esquire
Clark, Campbell, Lancaster, Workman & Airth, P.A.
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801

O. **Force Majeure**. All time periods or deadlines provided in this Agreement shall be automatically extended for delays caused by Acts of God, strikes, riots, hurricanes or other causes beyond the reasonable control of the affected party.

P. **Minor Non-Compliance**. The parties will not be deemed to have failed to comply with the terms of this Agreement in the event such non-compliance is of a minor or inconsequential nature.

Q. **Covenant of Cooperation**. The parties shall cooperate with and deal with each other in good faith in the performance of the provisions of this Agreement and in achieving the completion of development of the Project, including in processing future development approvals and amendments to this Agreement, and including Developer requests for extensions of this Agreement. Whenever an approval or consent is required under or contemplated by this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

(Signature Blocks on Following Pages)

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

Prose Lakeland Owner, LLC
A Delaware limited liability company

By: Prose Lakeland Investor Holdings, LLC
A Delaware limited liability company,
Its sole member

By: Prose Lakeland Alliance, LLC
A Delaware limited liability company,
Authorized member

By: _____
Robert Anderson, Member

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by Robert Anderson, on behalf of Prose Lakeland Owner LLC, a Delaware limited liability company, who is personally known to me or who produced _____ as identification.

(NOTARY SEAL)

Notary Public – State of Florida
Print Name: _____
My Commission Expires: _____

CITY COMMISSIONERS OF THE
CITY OF LAKELAND

By: _____
H. William Mutz, Mayor

Date: _____, 2023

Attest:

City Clerk

Approved as to Form and Correctness

Palmer C. Davis, City Attorney

EXHIBIT A

COMM NE COR OF NW1/4 OF SEC RUN S89-49-47W 375.99 FT S50-36-43E 392.76 FT
NWLY ALONG CURVE 193.91 FT N77-47-44W 401.01 FT NWLY ALONG CURVE 85.63
FT TO POB S 193.86 FT S24-29-27E 295.96 FT S29-16-38E 323.51 FT S54-50-03W 146.10
FT S89-49- 47W 1055 FT N29-33-14W 504.21 FT N27-20-55E 545.57 FT S86-28-48E 713.15
FT S00-00-03E 26.49 FT SELY 180.98 FT TO POB

EXHIBIT B

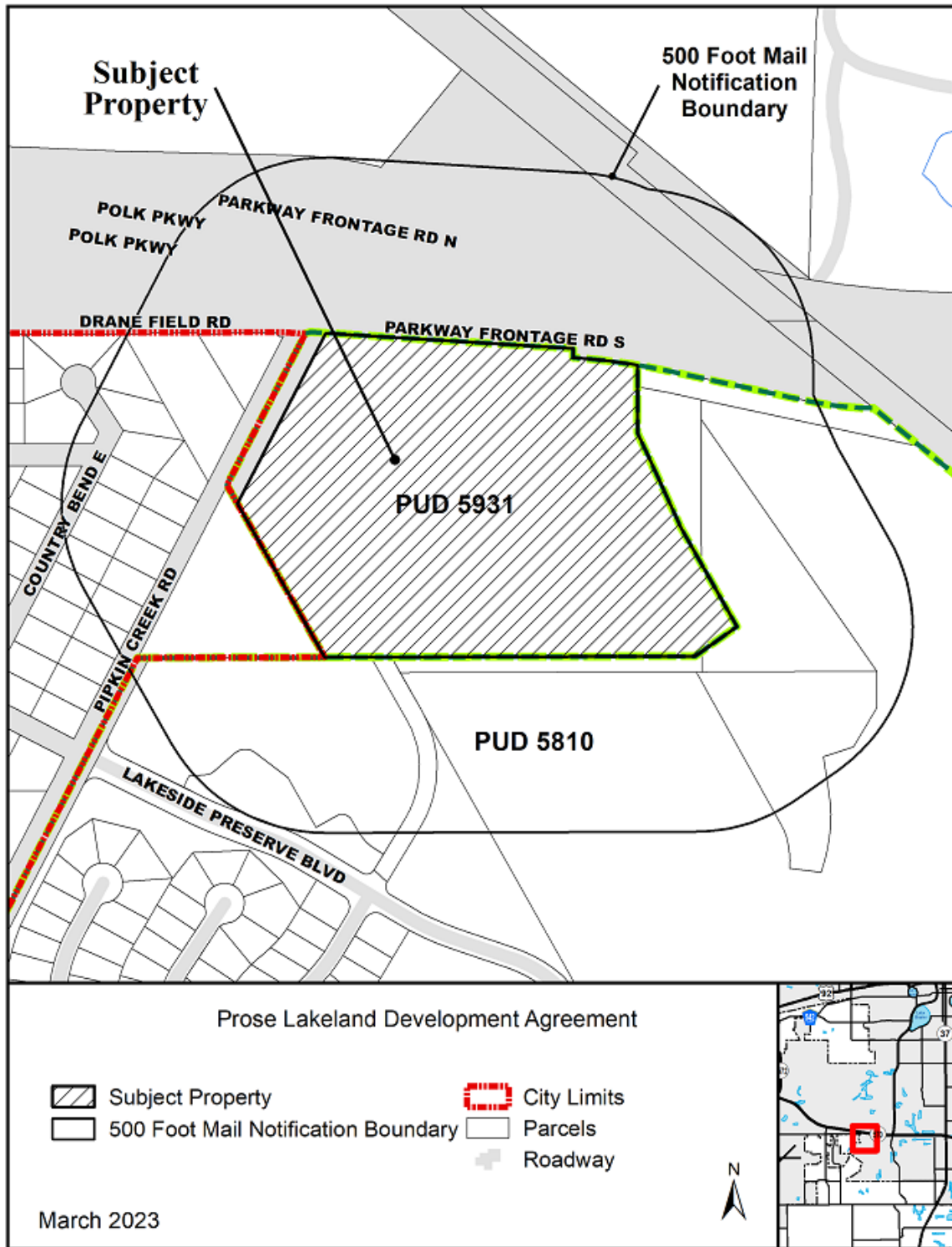
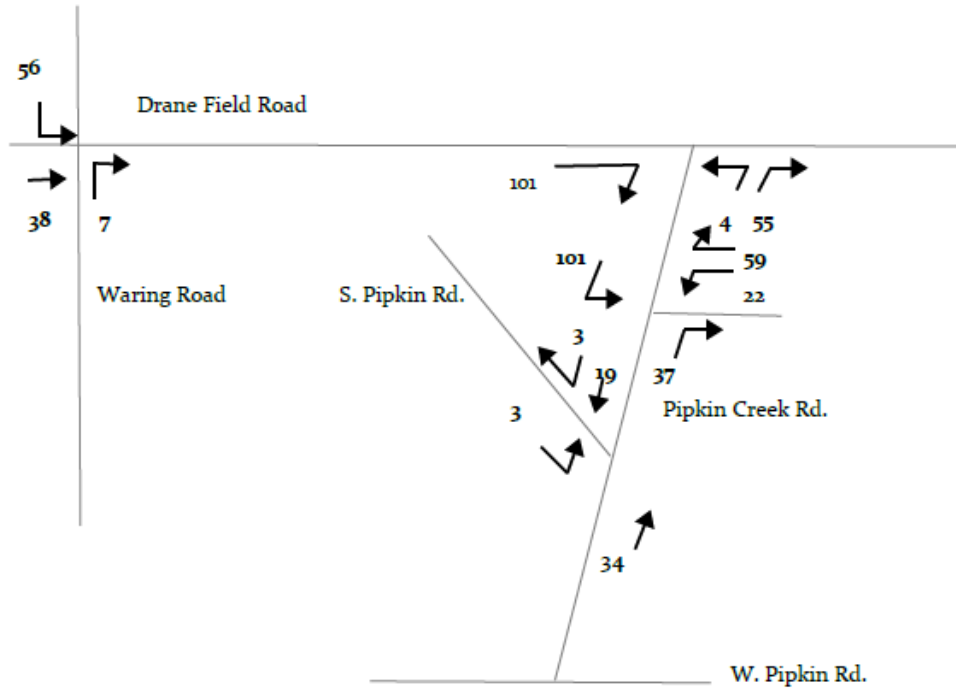


EXHIBIT D



PM PEAK HOUR PROJECT TRAFFIC DISTRIBUTION/ASSIGNMENT

EXHIBIT E

2.2 PRECISION AND ROUNDING

As a quick guide, all units are paid to the nearest whole number, except for: 0.1: Cubic Yard, Cubic Foot, Tons, MB Lumber 0.01; Acre, 0.001; Gross Mile Stripe

Exhibit C - Basis of Estimates & Cost Estimate

FIN. PROJECT: PIPKIN CREEK RD	DESCRIPTION: ENGINEER'S ESTIMATE OF PROBABLE COST	COUNTY: POLK	PROJECT NO.: 5722	DATE: 12/11/2022	UNIT PRICE	2022		INFLATION FACTOR	2027	
						TOTAL COST			TOTAL COST	
PAY ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY							
101-1	MOBILIZATION	LS	1	15%	\$ 37,652.12			-	\$ 43,450.55	
102-1	MAINTENANCE OF TRAFFIC	LS	1	15%	\$ 37,652.12				\$ 43,450.55	
630-2-11	CONDUIT, FURNISH & INSTALL, OPEN TRENCH	LF	90		\$ 18.22	\$ 1,639.80		1.154	\$ 1,892.33	
630-2-12	CONDUIT, FURNISH & INSTALL, DIRECTIONAL BORE	LF	562		\$ 32.76	\$ 18,411.12		1.154	\$ 21,246.43	
630-2-14	CONDUIT, FURNISH & INSTALL, ABOVEGROUND	LF	20		\$ 35.12	\$ 702.40		1.154	\$ 810.57	
632-2-1	SIGNAL CABLE- NEW OR RECONSTRUCTED INTERSECTION, FURNISH & INSTALL	PI	1		\$ 9,057.67	\$ 9,057.67		1.154	\$ 10,452.55	
635-2-11	PULL & SPLICE BOX, F&I, 13" x 24" COVER SIZE	EA	15		\$ 1,118.53	\$ 16,777.95		1.154	\$ 19,361.75	
639-1-122	ELECTRICAL POWER SERVICE, F&I, UNDERGROUND, METER PURCHASED BY CONTRACTOR	AS	1		\$ 3,947.68	\$ 3,947.68		1.154	\$ 4,555.62	
639-2-1	ELECTRICAL SERVICE WIRE, FURNISH & INSTALL	LF	50		\$ 15.88	\$ 794.00		1.154	\$ 916.28	
639-3-11	ELECTRICAL SERVICE DISCONNECT, F&I, POLE MOUNT	EA	1		\$ 1,757.07	\$ 1,757.07		1.154	\$ 2,027.66	
641-2-12	PRESTRESSED CONCRETE POLE, F&I, TYPE P-11 SERVICE POLE	EA	1		\$ 1,948.43	\$ 1,948.43		1.154	\$ 2,248.49	
* 649-21-4	STEEL MAST ARM ASSEMBLY, FURNISH AND INSTALL, DOUBLE ARM 40-30	EA	1		\$ 84,032.82	\$ 84,032.82		1.154	\$ 96,973.87	
650-1-34	VEHICULAR TRAFFIC SIGNAL, FURNISH & INSTALL, POLYCARBONATE, 3 SECTION, 1 WAY	AS	4		\$ 1,343.66	\$ 5,374.64		1.154	\$ 6,202.33	
660-1-110	LOOP DETECTOR INDUCTIVE, F&I, TYPE 10	EA	2		\$ 406.44	\$ 812.88		1.154	\$ 938.06	
660-2-102	LOOP ASSEMBLY, F&I, TYPE B	AS	2		\$ 1,082.45	\$ 2,164.90		1.154	\$ 2,498.29	
660-2-106	LOOP ASSEMBLY, F&I, TYPE F	AS	1		\$ 1,390.70	\$ 1,390.70		1.154	\$ 1,604.87	
663-1-111	SIGNAL PRIORITY AND PREEMPTION SYSTEM, F&I, OPTICAL, CABINET ELECTRONICS	EA	1		\$ 8,782.79	\$ 8,782.79		1.154	\$ 10,135.34	
663-1-112	SIGNAL PRIORITY AND PREEMPTION SYSTEM, F&I, OPTICAL, DETECTOR	EA	1		\$ 2,811.23	\$ 2,811.23		1.154	\$ 3,244.16	
670-5-111	TRAFFIC CONTROL ASSEMBLY, F&I, NEMA, 1 PREEMPTION	AS	1		\$ 41,841.62	\$ 41,841.62		1.154	\$ 48,285.23	
685-1-13	UNINTERRUPTIBLE POWER SUPPLY, FURNISH AND INSTALL, LINE INTERACTIVE WITH CABINET	EA	1		\$ 13,808.63	\$ 13,808.63		1.154	\$ 15,935.16	
700-1-60	SINGLE POST SIGN, REMOVE	AS	1		\$ 47.53	\$ 47.53		1.154	\$ 54.85	
700-5-22	INTERNALLY ILLUMINATED SIGN, FURNISH & INSTALL, OVERHEAD MOUNT, 12-18 SF	EA	3		\$ 4,708.14	\$ 14,124.42		1.154	\$ 16,299.58	
711-11-125	INTERNOPLASTIC, STANDARD, WHITE, SOLID, 24" FOR STOP LINE AND CROSSWALK	LF	12		\$ 5.95	\$ 71.40		1.154	\$ 82.40	
715-1-12	LIGHTING CONDUCTORS, F&I, INSULATED, NO B - 6	EA	618		\$ 2.71	\$ 1,674.78		1.154	\$ 1,932.70	
715-5-31	LUMINAIRE & BRACKET ARM- ALUMINUM, FURNISH & INSTALL NEW LUMINAIRE AND ARM ON EXISTING POLE	EA	1		\$ 2,437.92	\$ 2,437.92		1.154	\$ 2,813.36	
715-67-000	LIGHT POLE COMPLETE, INSTALL	EA	2		\$ 7,500.00	\$ 15,000.00		1.154	\$ 17,310.00	
715-500-1	POLE CABLE DISTRIBUTION SYSTEM, FURNISH AND INSTALL, CONVENTIONAL	EA	2		\$ 800.89	\$ 1,601.78		1.154	\$ 1,848.45	
CONSTRUCTION SUBTOTAL						\$ 326,318.41			\$ 376,571.44	
CEI COST (12% OF TOTAL COSTS)						\$ 39,158.21			\$ 45,188.57	
CONTINGENCY (15%)						\$ 48,947.76			\$ 56,485.12	
TRAFFIC SIGNAL WARRANT STUDY						\$ 9,000.00			\$ 9,000.00	
TRAFFIC SIGNAL + STREET LIGHTING DESIGN (INCLUDING SUBCONSULTANTS AND POST DESIGN SERVICES)						\$ 60,588.05			\$ 60,588.05	
ADMINISTRATIVE COST						\$ 0.00			\$ 0.00	
GRAND TOTAL WITH CONTINGENCY						\$ 484,012.43			\$ 547,833.78	

* Unit price for 40'-30" mast arm is not FDOT's in 6 month and 12 month unit price. Older unit price do not reflect today's price. A 40'-40" unit price has been shown above.