

CONDUIT SALES AND USE AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of June, 2018, by and between the City of Orlando, Florida, a municipal corporation existing under the laws of the State of Florida (“City”) and Central Florida Regional Transportation Authority d/b/a LYNX, hereinafter referred to as (“LYNX”), collectively the “Parties.”

RECITALS

WHEREAS, LYNX has completed construction of a utility infrastructure for the Parramore BRT Project in the Creative Village area, hereinafter identified as the (“Project”); and

WHEREAS, LYNX has constructed an underground communication duct bank system with multiple conduits to be utilized by the various utility providers desiring to install cable, equipment and facilities in the right-of-way around the area of the Project, hereinafter identified as the (“Duct Bank”); and

WHEREAS, the City wishes to purchase and acquire one (1) four inch conduit and associated pull boxes and equipment within the Duct Bank located along N. Terry Avenue from Amelia Street to Bentley Street and on W. Livingston Street from Terry Avenue to Bentley Street as more particularly depicted and described in Exhibit “A” attached hereto and incorporated herein by this reference, hereinafter identified as the “Conduit”; and

WHEREAS, LYNX has funded the construction of the Duct Bank upfront and shall be reimbursed a portion of the costs and expense by the City in exchange for the sale of the Conduit to the City, as set forth in Paragraph 4 of this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and given one to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and correct and are incorporated in this Agreement as if fully set forth herein.
2. LYNX, in consultation with participating utility providers, provided the design specifications and construction plans for the Project and development of the communications Duct Bank.
3. LYNX has constructed the Duct Bank, including the Conduit, as depicted on those certain “As-Built” plans and specifications in Exhibit “B” attached hereto and incorporated herein by this reference (the “Plans and Specifications”).

4. Purchase, Sale and the Closing.

a. Sale. LYNX hereby agrees to sell and convey the Conduit to the City, and the City hereby agrees to purchase and pay for the Conduit in accordance with the terms and subject to the conditions set forth in this Section.

b. Purchase Price. In consideration for the transfer of ownership of the Conduit, the City agrees to pay LYNX the sum of \$113,837.62 (the "Purchase Price"), as referenced in the invoices provided to the City as set forth in Exhibit "C" attached hereto and incorporated herein by reference, in cash or other immediately-available funds (i.e. federal reserve bankwire and/or locally drawn cashier's check), within thirty (30) days of final execution of this Agreement. The City's payment shall constitute acceptance of the Conduit in their "As-Is, Where-Is" condition.

c. Bill of Sale. Upon payment and within ten (10) business days thereafter, LYNX shall deliver ownership of the Conduit by executing a bill of sale in the form of Exhibit "D" attached hereto and incorporated herein by this reference (the "Bill of Sale"). The City through its Chief Procurement Officer, shall countersign the Bill of Sale to acknowledge the City's agreement with the terms and conditions contained therein. Upon delivery of the Bill of Sale, the City shall acquire exclusive legal title to the Conduit on the terms and conditions contained herein.

5. Construction, Installation, Maintenance, Repair and Replacement of Facilities. After sale, the City shall be responsible for repair and maintenance of the Conduit and related facilities constructed within the Duct Bank.

6. Representations and Warranties. Each of the Parties represents and warrants that it has full authority to negotiate, execute, deliver and perform this Agreement, that this Agreement does not conflict with any other document or agreement to which it is a party or is bound, that the signatory below has been authorized to execute this Agreement, and that this Agreement is fully enforceable in accordance with its terms.

7. **WARRANTIES. EXCEPT FOR THE WARRANTY OF GOOD TITLE AND AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES – EXPRESS OR IMPLIED – REGARDING THE CONDUIT OR ANY OTHER MATTERS CONTAINED IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.**

8. Severability and Replacement of Unenforceable Provisions. If any portion of this Agreement is rendered invalid or otherwise unenforceable under laws and regulations or by a governmental, legal or regulatory authority with jurisdiction over the Parties, then the remainder of this Agreement will continue in full force unless such continuance will deprive one of the Parties of a material benefit hereunder or frustrate the main purpose(s) of this Agreement.

9. Notices. Any notices which may be permitted or required hereunder shall be in

writing and shall be deemed to have been duly given as of the date and time the same are personally delivered; or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt is obtained. Notice must be addressed as follows in order to be effective (unless previously modified in writing by the Parties):

If to the City: Gil Sturgis
 Network Support Manager
 City of Orlando, 5th Floor
 400 South Orange Avenue
 Orlando, Florida 32801

and

Chief Procurement Officer
City of Orlando, 4th Floor
400 South Orange Avenue
Orlando, Florida 32801

If to LYNX:

Attn: _____

10. Force Majeure. Despite anything to the contrary in this Agreement, no Party will be liable or in default under this Agreement for any delay or failure of performance resulting directly from anything not caused by and beyond the reasonable control of the non-performing Party (a “Force Majeure Event”) including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; severe weather, earthquakes, or floods; fires or explosions; governmental action or regulation (except obligations to obtain and to maintain appropriate approvals as required in this Agreement); or strikes, lockouts, or other work interruptions or labor shortages; supplier shortages. The time for performance of a Party hereunder shall be extended commensurate with the duration of the Force Majeure Event.

11. Duration. The duration of this Agreement shall be as long as the above described Duct Bank exists and is in use by the parties. This Agreement may also be terminated by the mutual written agreement of the parties.

12. Miscellaneous Provisions.

a. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without application of conflicts of laws principles. The Parties hereto consent to personal jurisdiction and venue in the state and federal courts of Orange County, Florida.

b. Neutral Interpretation. Each Party to this Agreement acknowledges and agrees that it has had a full and fair opportunity to read and review all the terms herein; that it has had a full and fair opportunity to have this Agreement reviewed by independent legal counsel, and

that no provision of this Agreement is to be construed strictly, narrowly or against any Party on grounds of authorship or draftsmanship.

c. Survival. All terms and provisions of this Agreement shall expressly survive the Closing.

d. Headings. All headings used herein are strictly for the reference and convenience of the Parties, and shall be treated or construed as having any effect on the terms or provisions of this Agreement or the interpretation thereof.

e. Recitals and Exhibits. All recitals and exhibits are incorporated hereto and made a part hereof.

f. Counterparts. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be treated for all purposes as an original, and all of which together shall constitute one and the same agreement.

g. Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties regarding the subject matter herein and supersedes all prior understandings, negotiations or other agreements, whether verbal or written.

h. No Modification or Amendment. This Agreement may not be modified or amended except by separate writing executed by all Parties hereto, said separate writing then becoming part of this Agreement for all purposes.

i. Independent Contractor. The relationship between the Parties shall be that of independent contractor, and not as agent or principal, and no act or omission to act shall be construed to alter this relationship.

j. Waiver. Any failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

k. Remedies Cumulative. The exercise of any right or remedy herein provided shall be without prejudice to any other right or remedy provided herein, at law, or in equity.

l. Additional Actions and Documents. Each of the Parties hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its best efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

m. Time. If the last day permitted for the giving of any notice or the performance of any act required or permitted under this Agreement falls on a day that is not a Business Day, the time for the giving of such notice or the performance of such act will be extended to the next succeeding Business Day.

n. Authority to Execute. Each signatory hereunder warrants that it has the authority to bind the Party it represents.

IN WITNESS WHEREOF, the parties hereto have each executed this Agreement as of the day and year first written above.

The City of Orlando, Florida

By: _____

David Billingsley, CPSM, C.P.M.
Chief Procurement Officer

Date: _____

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

_____, 2018.

Assistant City Attorney
Orlando, Florida

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX

By: _____

Print Name: _____

Title: _____

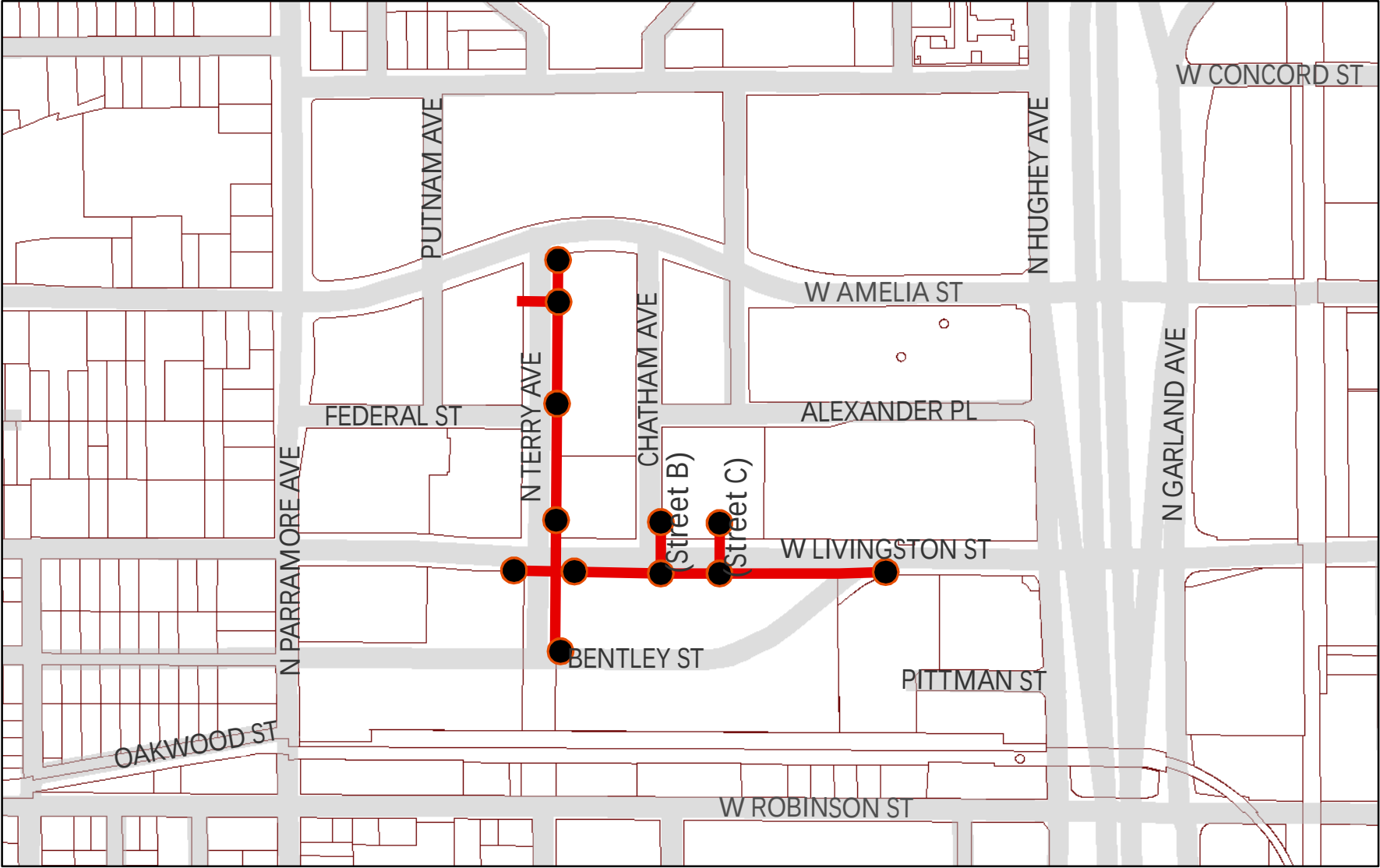
Date: _____

EXHIBIT A

CONDUIT

Exhibit A

City of Orlando Telecommunications Duct Banks



Legend



Duct Pull Box

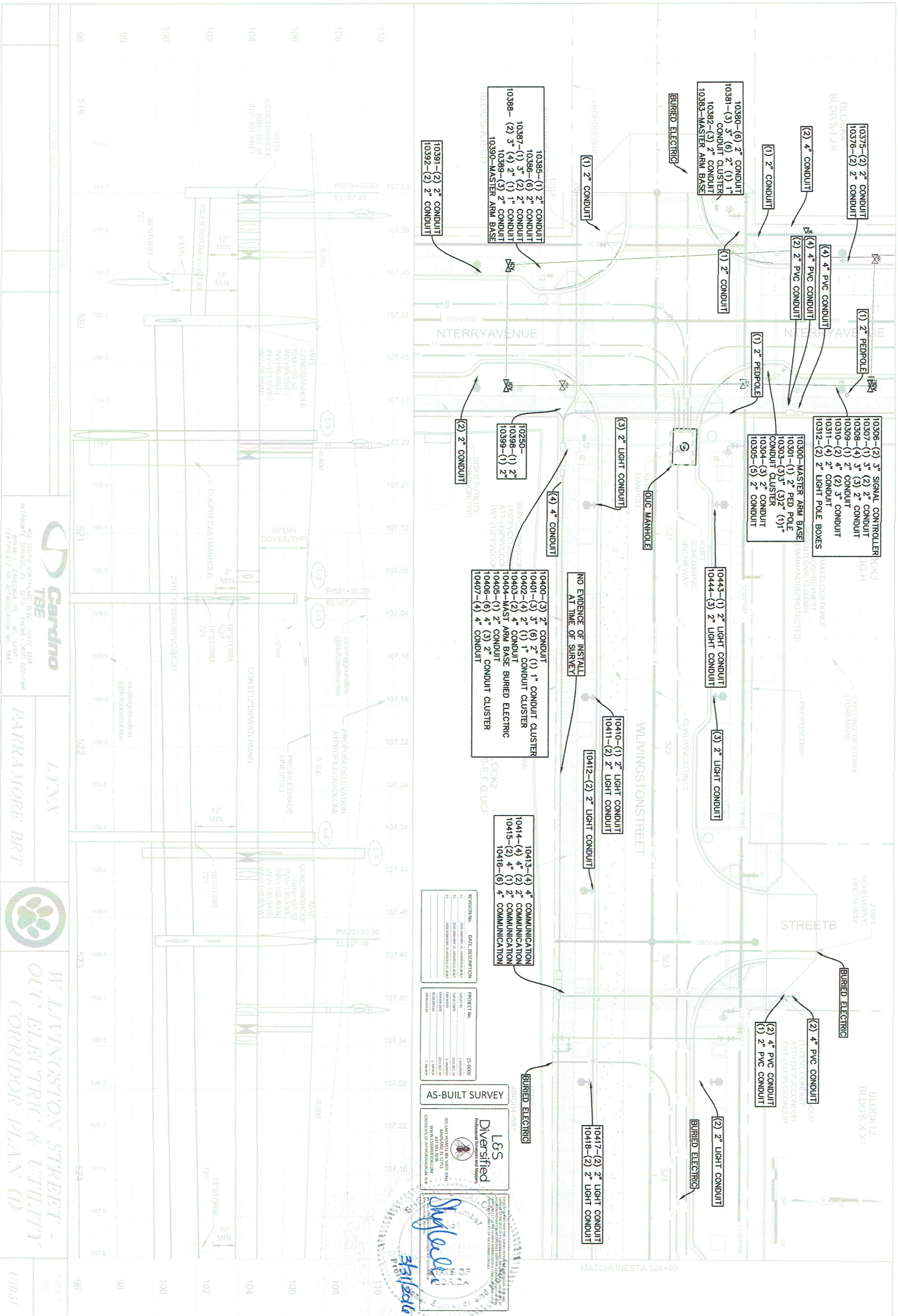


Duct (4 Inch)



EXHIBIT B

PLANS AND SPECIFICATIONS



REVISION NO.	DATE	DESCRIPTION
01	2018 JANUARY 11	PROPOSED BULK ELECTRICAL
02	2018 JANUARY 25	PROPOSED BULK ELECTRICAL
03	2018 FEBRUARY 28	PROPOSED BULK ELECTRICAL

PROJECT NO.	15-0002
SHEET NO.	1 OF 1
DATE	2015 DEC 01
DESIGNED BY	T. MURPHY
CHECKED BY	2015 DEC 01
APPROVED BY	1. MURPHY

AS-BUILT SURVEY

L&S Diversified
Professional Surveys and Mapping

405 EAST HENRIETTA RD. SUITE 200
MADISON, AL 37050
404.427.8333
WWW.LANDSURVEYING.COM

Sealed

3/31/2016

Cardno TBE

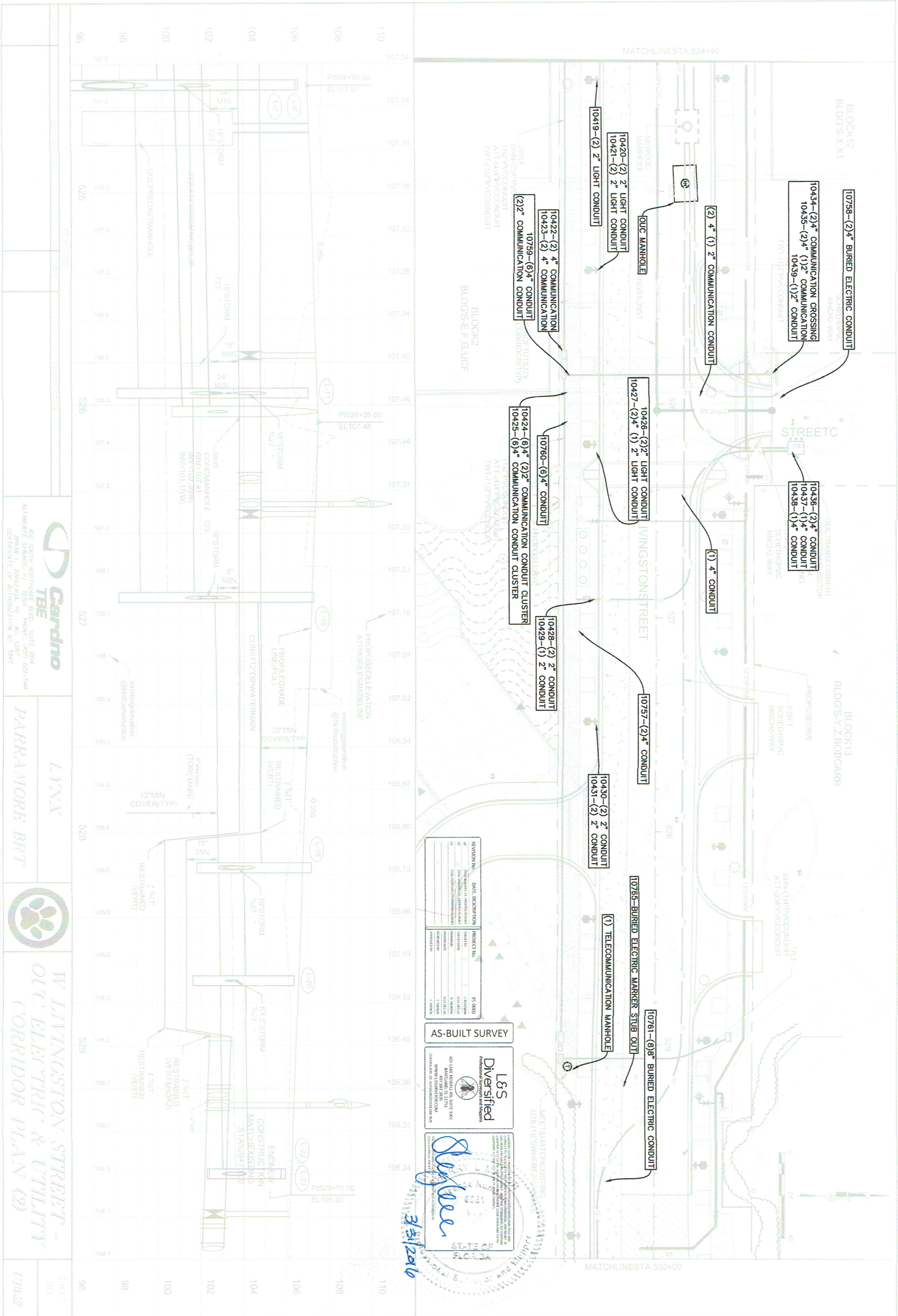
402 SOUTH WILLOW BLVD., SUITE 104
ALBUQUERQUE, NM 87102
PHONE: (505) 263-7144
CERTIFICATE OF AUTHORIZATION NO. 15843

LYNX

PARRAMORE BRT

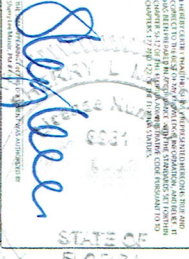


**W LIVINGSTON STREET -
OUC ELECTRIC & UTILITY
CORRIDOR PLAN (D)**



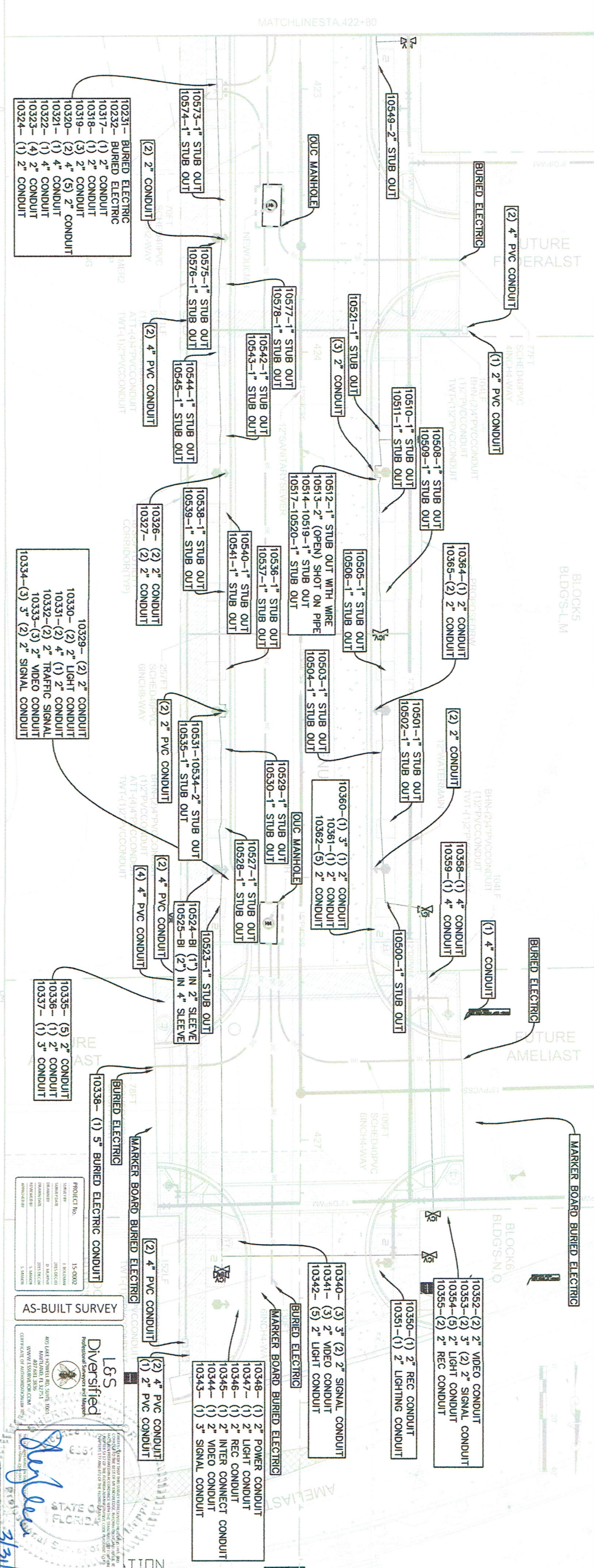
REVISION NO.	DATE, DESCRIPTION	PROJECT NO.
01	15-0000	
02	20th September 2015, 1st Revision	
03	20th September 2015, 2nd Revision	
04	20th September 2015, 3rd Revision	
05	20th September 2015, 4th Revision	
06	20th September 2015, 5th Revision	
07	20th September 2015, 6th Revision	
08	20th September 2015, 7th Revision	
09	20th September 2015, 8th Revision	
10	20th September 2015, 9th Revision	
11	20th September 2015, 10th Revision	

AS-BUILT SURVEY



LIVINGSTON STREET -
OUT ELECTRIC & UTILITY
CORRIDOR PLAN (2)

Sheet
NO.
11052



PROJECT No. 15-0002

DATE 03/31/2014

BY [Signature]

FOR [Signature]

AS-BUILT SURVEY

DATE 03/31/2014

BY [Signature]

FOR [Signature]

MARKER BOARD BURIED ELECTRIC

DATE 03/31/2014

BY [Signature]

FOR [Signature]

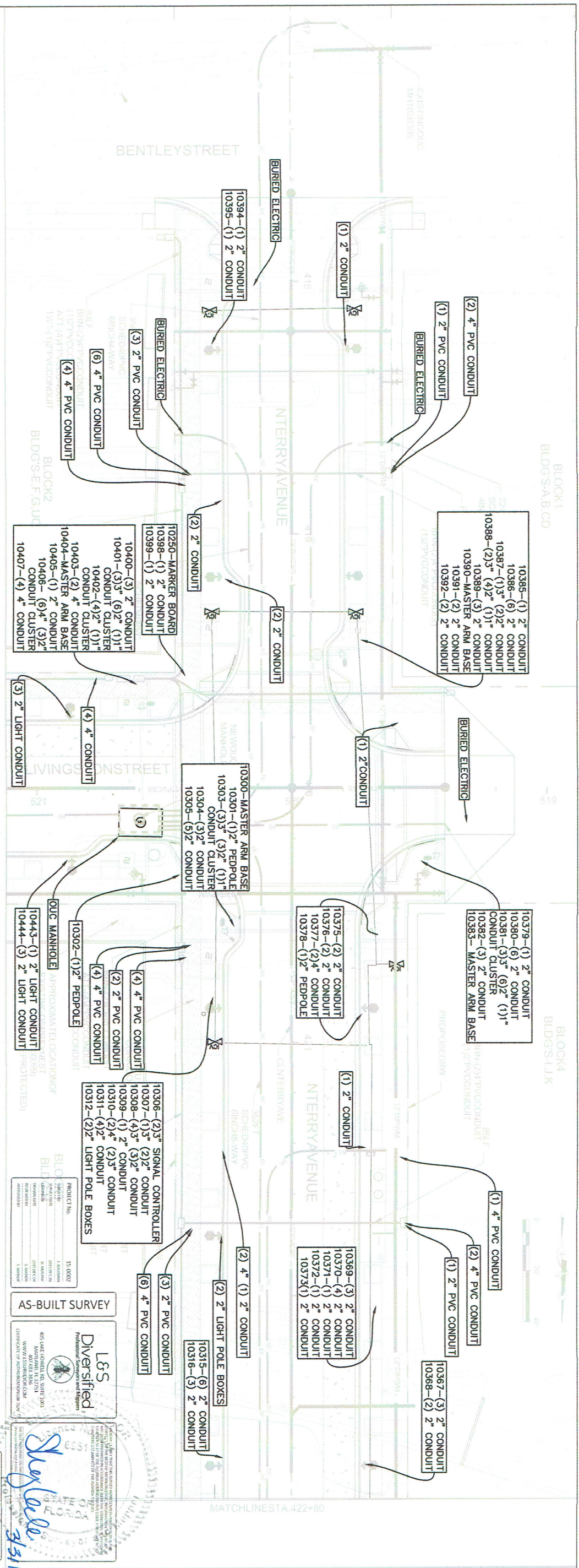
402 SOUTH WILLOW AVE., SUITE 100
ALBUQUERQUE, NM 87102
PHONE: 505.263.7444
FAX: 505.263.7445
WWW.CARDNO.COM

LYNX
PARRAMORE BRT

N TERRY AVENUE -
OUC ELECTRIC & UTILITY
CORRIDOR PLAN (2)

SHEET NO. 96

U10-49



402 SOUTH WATKINS BLVD., SUITE 200
ATLANTA, GA 30310
BRIAN L. ZANDER, PE, NO. 5887
CERTIFICATE OF AUTHORIZATION NO. 5887

PARRAMORE BRIDGE

N TERRY AVENUE -
OUC ELECTRIC & UTILITY
CORRIDOR PLAN (D)

PROJECT NO. 15-0002

DATE: 03/12/2016

BY: [Signature]

CHECKED: [Signature]

APPROVED: [Signature]

AS-BUILT SURVEY

DATE: 03/12/2016

BY: [Signature]

CHECKED: [Signature]

APPROVED: [Signature]

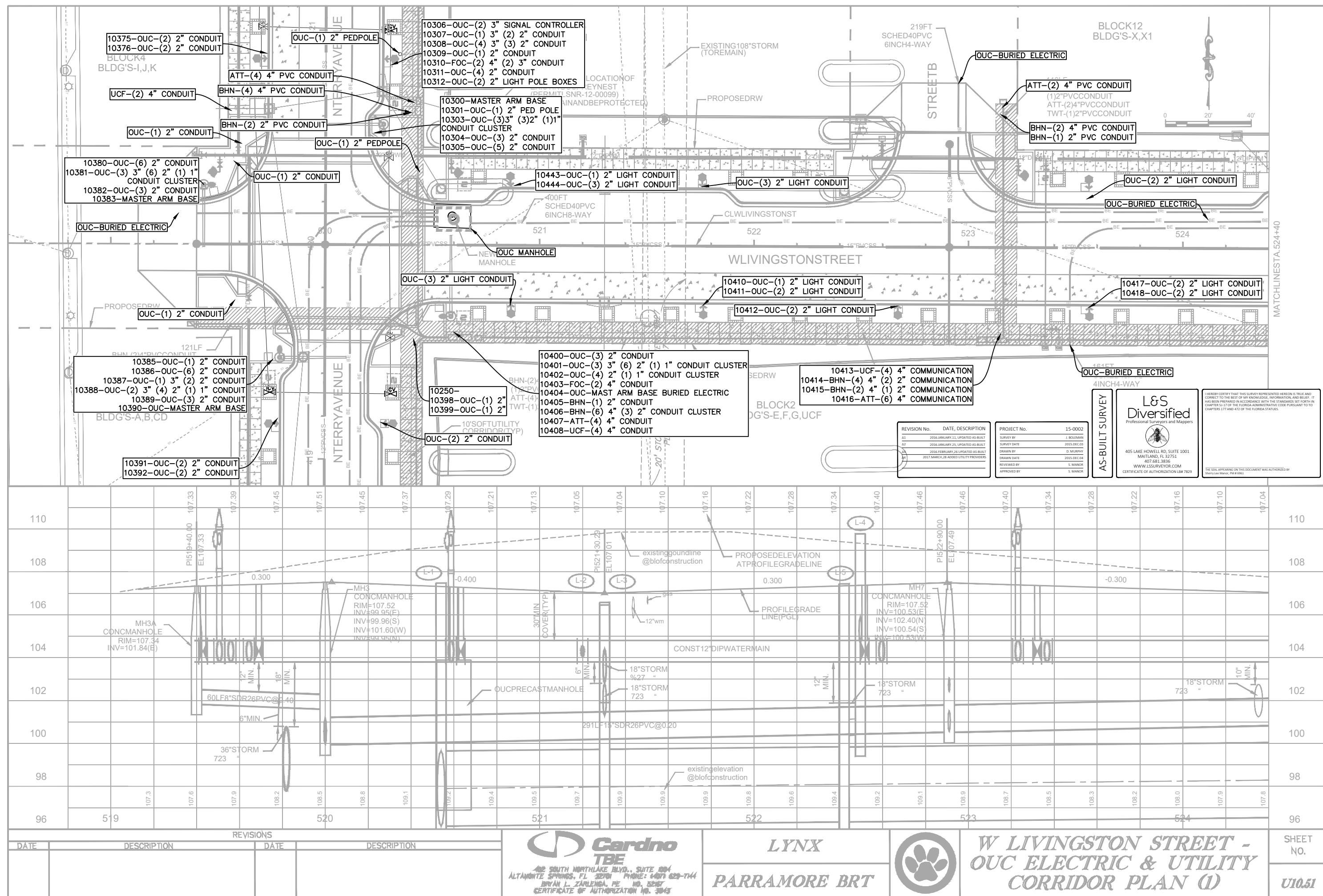
PROJECT NO. 15-0002

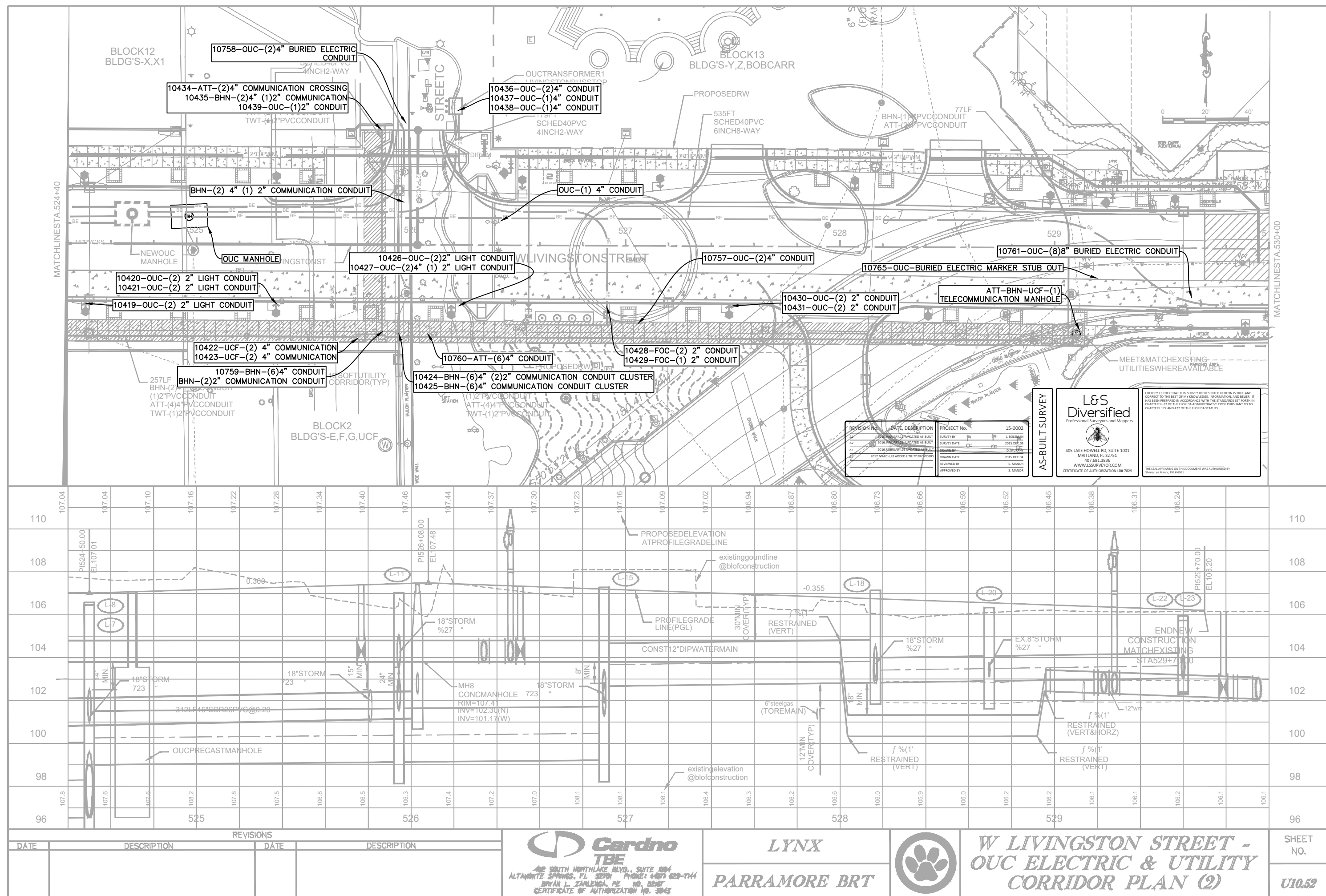
DATE: 03/12/2016

BY: [Signature]

CHECKED: [Signature]

APPROVED: [Signature]





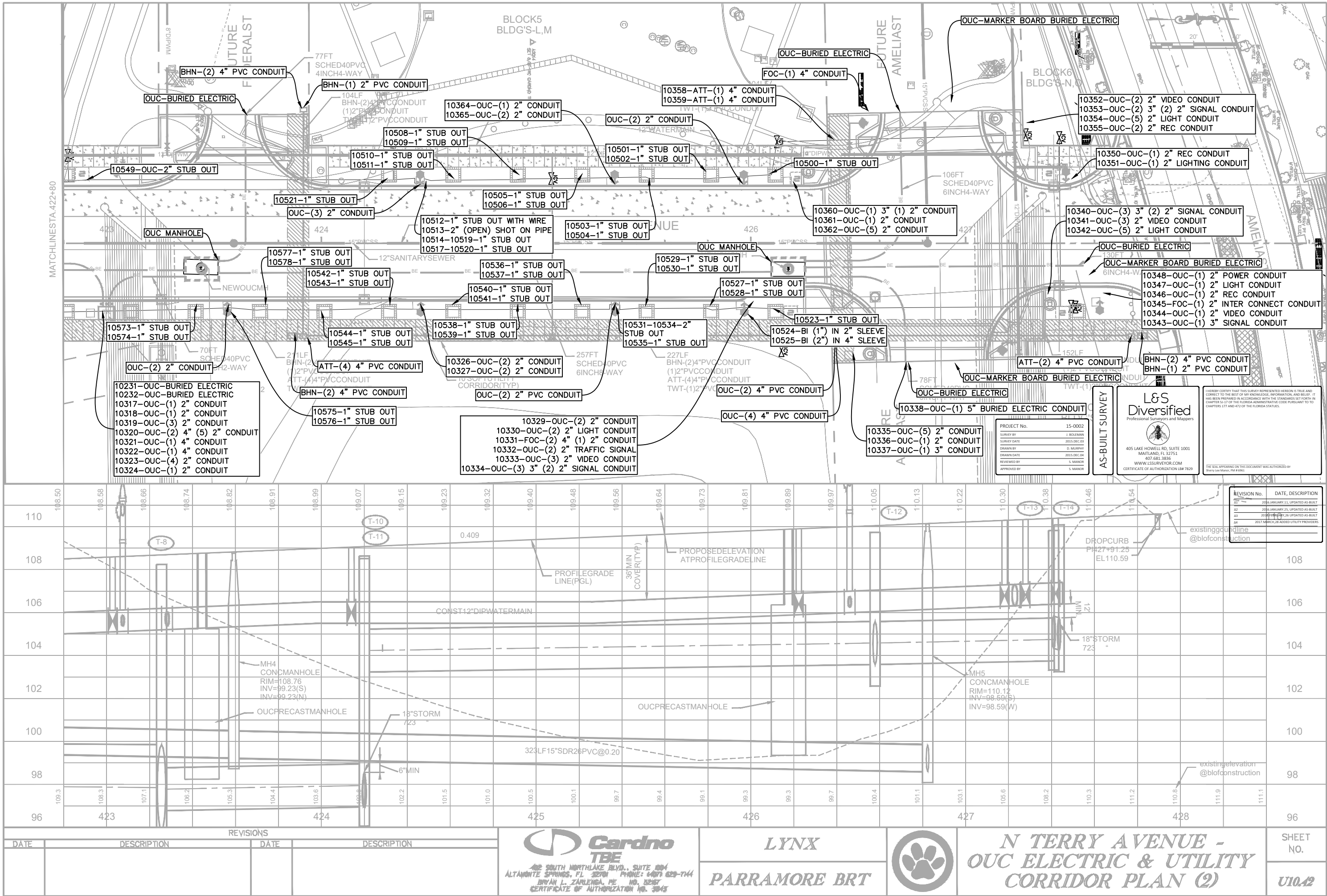


EXHIBIT C

INVOICES

HISTORICAL

CFRTA dba LYNX
2500 LYNX Lane
Orlando FL 32804

INVOICE	36962
Type	
Date	12/31/2016
Page	1

Bill to:

CITY OF ORLANDO
ECONOMIC DEVELOPMENT DEPARTMENT
400 S ORANGE AVENUE
ORLANDO FL 32802

Ship to:

CITY OF ORLANDO
ECONOMIC DEVELOPMENT DEPARTMENT
400 S ORANGE AVENUE
ORLANDO FL 32802

Purchase Order ID		Customer ID	Salesperson ID	Shipping Method		Payment Terms ID	
150209103		ORLECO				Net 30	
Quantity	Item Number	Description	U Of M	Discount	Unit Price	Ext. Price	
1	MISCELLANEOUS	GENERAL CONDITIONS BBCPROJ A-20 AT&T	EACH	\$ 0.00	\$ 958.35	\$ 958.35	

BALFOUR BEATTY - LYMMO PARRAMORE BRT
CITY OF ORLANDO - AT&T
10/01/16 - 10/31/16

Subtotal	\$ 958.35
Misc	\$ 0.00
Tax	\$ 0.00
Freight	\$ 0.00
Trade Discount	\$ 0.00
Total	\$ 958.35

HISTORICAL

CFRTA dba LYNX
2500 LYNX Lane
Orlando FL 32804

INVOICE	36971
Type	
Date	12/31/2016
Page	1

Bill to:

CITY OF ORLANDO
ECONOMIC DEVELOPMENT DEPARTMENT
400 S ORANGE AVENUE
ORLANDO FL 32802

Ship to:

CITY OF ORLANDO
ECONOMIC DEVELOPMENT DEPARTMENT
400 S ORANGE AVENUE
ORLANDO FL 32802

Purchase Order ID		Customer ID	Salesperson ID	Shipping Method		Payment Terms ID	
150209103		ORLECO				Net 30	
Quantity	Item Number	Description	U Of M	Discount	Unit Price	Ext. Price	
1	MISCELLANEOUS	PROFESSIONAL SERVICES BBC PROJ A-21 AT&T	EACH	\$ 0.00	\$ 931.00	\$ 931.00	

BALFOUR BEATTY - LYMMO PARRAMORE BRT
CITY OF ORLANDO
11/01/16 - 11/30/16

Subtotal	\$ 931.00
Misc	\$ 0.00
Tax	\$ 0.00
Freight	\$ 0.00
Trade Discount	\$ 0.00
Total	\$ 931.00

HISTORICAL

CFRTA dba LYNX
2500 LYNX Lane
Orlando FL 32804

INVOICE	36841
Type	
Date	12/20/2016
Page	1

Bill to:

CITY OF ORLANDO
ECONOMIC DEVELOPMENT DEPARTMENT
400 S ORANGE AVENUE
ORLANDO FL 32802

Ship to:

CITY OF ORLANDO
ECONOMIC DEVELOPMENT DEPARTMENT
400 S ORANGE AVENUE
ORLANDO FL 32802

Purchase Order ID		Customer ID	Salesperson ID	Shipping Method	Payment Terms ID	
150209103		ORLECO			Net 30	
Quantity	Item Number	Description	U Of M	Discount	Unit Price	Ext. Price
1	MISCELLANEOUS	AT&T	EACH	\$ 0.00	\$ 93,079.00	\$ 93,079.00
1	MISCELLANEOUS	GENERAL CONDITIONS	EACH	\$ 0.00	\$ 9,867.87	\$ 9,867.87
1	MISCELLANEOUS	PROFESSIONAL SERVICES	EACH	\$ 0.00	\$ 2,601.19	\$ 2,601.19
1	MISCELLANEOUS	CONTRACTOR'S FEE BBC PROJ A AT&T	EACH	\$ 0.00	\$ 6,400.21	\$ 6,400.21

BALFOUR BEATTY - LYMMO PARRAMORE BRT
CITY OF ORLANDO
INCEPTION THROUGH 09/30/16

Subtotal	\$ 111,948.27
Misc	\$ 0.00
Tax	\$ 0.00
Freight	\$ 0.00
Trade Discount	\$ 0.00
Total	\$ 111,948.27

EXHIBIT D

BILL OF SALE

THIS BILL OF SALE is made this _____ day of _____, 2018, by and between The City of Orlando, Florida, hereinafter referred to as the BUYER, and CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX, hereinafter referred to as the SELLER.

RECITALS

WHEREAS, SELLER is the owner of a certain duct bank (the “Duct Bank”) containing conduits lying within the rights-of-way along N. Terry Avenue from Amelia Street to Bentley Street and on W. Livingston Street from Terry Avenue to Bentley Street; and

WHEREAS, BUYER and SELLER entered into that certain Conduit Sales and Use Agreement (“Agreement”) effective June 1, 2018; and

WHEREAS, SELLER pursuant to the Agreement desires to sell and BUYER desires to purchase one (1) four inch conduit and associated pull boxes and equipment within the Duct Bank as more particularly depicted and described in the conduit sketch (Exhibit “A” to the Agreement) and as-built plans (Exhibit “B” to the Agreement) copies of which are attached as an Appendix to this Bill of Sale and incorporated herein by this reference (collectively, the “Conduit”).

WITNESSETH

IN CONSIDERATION OF THE FOREGOING, SELLER does hereby grant and deliver to BUYER the Conduit for ownership and maintenance thereof by BUYER and subject to all terms and conditions set forth in that certain Conduit Sales and Use Agreement by and between SELLER and BUYER entered into effective June 1, 2018.

IN WITNESS WHEREOF, the SELLER has hereunto set its hand and seal the day and year first above written.

The City of Orlando, Florida

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY d/b/a
LYNX

By:_____

By:_____

Print Name:_____

Print Name:_____

Title:_____

Title:_____

Date: _____

Date:_____

APPENDIX TO BILL OF SALE

DESCRIPTION OF CONDUIT