

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: November 18, 2024

RE: **Development Agreement with IPS Enterprises, Inc. for
IDEA Charter School**

Attached for your consideration is a Development Agreement between the City of Lakeland and IPS Enterprises, Inc. IPS Enterprises operates the IDEA K-8 charter school at 1775 Interstate Drive within Interstate Business Park. The school opened in 2024 with a Phase I enrollment capacity of 425 students. As part of the Phase I site plan approval and to accommodate a future Phase II buildout enrollment of 1,645 students by Year 2026, a Development Agreement is necessary to formalize the parties' transportation concurrency and operational mitigation requirements.

Under the Development Agreement, the Developer will complete the following:

- Construction of a westbound left-turn lane on Interstate Drive at the State Road 539 (Kathleen Road) intersection and construction of a 155-foot-long northbound right-turn lane on Interstate Drive at the northern site driveway so that both are complete prior to final Certificate of Occupancy issuance;
- Installation of a school zone on Interstate Drive if merited by pedestrian traffic; and
- Installation of an internal sidewalk connection to the site's 14th Street frontage.

The Agreement specifies that school traffic shall not queue into public right-of-way and that, in the event queuing exceeds available storage during arrival and dismissal times, the Developer and the City will reasonably cooperate to identify/implement programmatic solutions to the traffic management plan, such as expanded on-site queuing and, if necessary, staggered arrival and dismissal times. The Agreement also requires the Developer to report on the number of students enrolled at the school annually, with the enrollment numbers identifying commuters, bus riders and pedestrians. The Developer would expand bus operations or other means of student transportation commensurate with additional demand.

In exchange for the site improvements to be completed by the Developer, transportation concurrency vesting will be granted for the project for 2,448 Daily, 445 AM Peak and 265 School PM Peak trips for up to 15 years, with the City Commission having the option to extend this vesting period twice for periods of five years each.

It is recommended that the City Commission approve the attached Development Agreement with IPS Enterprises, Inc. and authorize the appropriate City officials to execute the Agreement.

Attachment

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF LAKE LAND, a municipal corporation of the State of Florida (the “City”) and IPS ENTERPRISES, INC., a Texas nonprofit corporation, or its assigns (“Developer”).

RECITALS

WHEREAS, the Developer proposes to develop the land described in the attached Exhibit A, comprised of approximately 12.61 acres, generally located on the east side of Interstate Drive, north of State Road 539/Kathleen Road (Parcel IDs: 232802020501000011, 232802020501000021) (the “Property”); and

WHEREAS, the City approved the Phase I site plan for a charter school with grades kindergarten through eighth grade on July 10, 2024 (“Phase I”) with a maximum enrollment of 425 students; and

WHEREAS, the Developer plans to construct certain additional facilities related to Phase I (“Phase II”, and together with Phase I, the “Project”) as depicted in the Phase II Site Development Plan attached as Exhibit B (the “Site Plan”) to accommodate a maximum buildout enrollment of 1,645 students; and

WHEREAS, that certain traffic study covering the Project prepared for Developer by Ali Hanes Brighton, P.E., License No. 77731, Kimley-Horn and Associates, Inc., Project No. 045719002, dated May 19, 2024 (the “Traffic Study”) concludes that the Property provides sufficient queuing storage for on-site vehicle accumulation during the school’s arrival and dismissal periods, but, to accommodate Phase II traffic volumes, recommends (i) construction of a westbound left-turn within the existing raised median along Interstate Drive at the intersection with State Road 539/Kathleen Road, which results in a three-lane westbound approach with an exclusive left-turn lane, through lane, and right-turn lane, and (ii) construction of a 155’ (including 50’ taper) northbound right-turn lane along Interstate Drive at the northern site driveway (collectively, the “Offsite Improvements”); and

WHEREAS, the Florida Local Government Development Agreement Act, Florida Statutes Sections 163.3220-163.3243 (the “Act”), authorizes local governments to enter into development 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 will assist in providing a high-quality place for education that can serve the diverse needs of a growing population in the City;

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:

1. **Findings of Fact.** The Recitals set forth above are true and correct and are incorporated herein.
2. **Purpose.** The purpose of this Agreement is to establish the respective rights and obligations of the Developer and the City.
3. **Phase II Completion; Transportation Concurrency Vesting.** Developer will complete Phase II substantially in accordance with the Site Plan. Upon completion of Phase II Site Plan construction along with the Off-Site Improvements and other requirements contained in this Agreement, the City will vest the Project for 2,448 Daily, 445 AM Peak and 265 School PM Peak trips as depicted in **Exhibit C**.
4. **Offsite Improvements; School Zone.** The City agrees to reasonably cooperate (i) to facilitate the Developer's construction of the Offsite Improvements so that they are substantially completed prior to issuance of final Certificate of Occupancy, (ii) in the event that pedestrian traffic to and from the Property merits the implementation of a school zone over portions of Interstate Drive as described in the Traffic Study, to support the Developer's implementation of such a school zone, and (iii) the implementation of a sidewalk connection to the site's 14th Street frontage.
5. **Queuing Adjustments.** School traffic shall not queue into public right-of-way. In the event actual queuing conditions at the Property exceed the queuing storage for on-site vehicle accumulation during the school's arrival and dismissal periods, Developer and the City agree to reasonably cooperate to identify and implement programmatic solutions and/or adjustments to the traffic management plan that is implemented. Possible mitigation measures include expanded onsite queuing and, if necessary, staggered arrival and dismissal times as described in the Traffic Study.
6. **Enrollment Reporting.** Commencing on the Effective Date and until such date that Developer no longer operates the Project as a charter school, Developer will report the number of enrolled students with enrollment specified as commuter, bus rider or pedestrian to the City of Lakeland on an annual basis within one (1) month of the start of each school year. Developer will expand bus operations (or other means of student transportation) commensurate with additional demand, within practical bus service area, all as determined by Developer in its reasonable discretion.
7. **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.
8. **Notice Costs.** The Developer will be responsible for and shall pay all costs related to providing notice and advertising this Agreement under Section 163.3225, Florida Statutes, and the recording of this Agreement.
9. **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.
10. **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 Commerce. The City agrees that the Project is consistent with its Comprehensive Plan and Land Development Regulations.
11. **Binding Effect.** The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties of this Agreement.

- 12. Applicable Law; Jurisdiction; Venue.** This 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 Agreement shall govern the development of the Project for the duration of this Agreement. The City may apply subsequently adopted regulations and policies to the Project in accordance with the requirements of Florida Statutes § 163.3233(2). Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the Project shall not relieve the Developer or its successor in interest of the obligation to comply with the law governing such permit requirements, conditions, terms and restrictions.
- 13. Joint Preparation.** Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 14. Counterparts.** This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and same Agreement.
- 15. Effective Date and Duration.** In accordance with Section 163.3239, Florida Statutes, this Agreement shall be recorded within fourteen (14) days of approval by the City and shall become effective upon recording in the public records of Polk County (the “**Effective Date**”). This Agreement shall remain in effect until the earlier of the completion of the Project or the expiration fifteen (15) years from the Effective Date, unless terminated or extended as provided for herein or in Section 163.3229 of the Act. Should Project completion not occur within fifteen (15) years of the Effective Date due to factors outside of the Developer’s control (including but not limited to a demonstrated Developer funding shortfall, a lack of market demand to warrant additional Project funding, an economic recession, a threatened or existing global pandemic or epidemic, natural disasters (including hurricanes, tornadoes or flooding) that affect the Property and/or services and materials necessary for the production of plans, or purchases of materials necessary for Project buildings and infrastructure), the City Commission shall have the option to extend the 15 year vesting period twice for periods of five years each (total of ten years if a second extension is granted five years after initial five year extension) as determined to be necessary or appropriate, pursuant to the Developer’s continuing good faith efforts towards completion of construction of the Project. This Agreement may be terminated only by mutual consent of the parties, or by Developer in accordance with Section 16.
- 16. Amendment.** This Agreement may be amended by mutual written consent of the parties so long as the amendment meets the requirements of the Act. If the Developer, in its sole and absolute discretion, determines that the Project will not be constructed, the Developer may notify the City in writing that this Agreement is terminated, in which event the parties hereto will have no further rights, obligations or liabilities hereunder.
- 17. Further Assurances.** Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Agreement and give effect thereto.

18. Notices. Any notices or reports required by this Agreement shall be sent to the following:

City:	City Manager City of Lakeland 228 S. Massachusetts Avenue Lakeland, FL 33801
With a Copy to:	Palmer Davis, City Attorney City of Lakeland 228 S. Massachusetts Avenue Lakeland, FL 33801
Developer:	IPS Enterprises, Inc. 2115 W. Pike Blvd. Weslaco, Texas 78596 Attention: Vice President of Financial Planning and Treasury Phone: 956-377-8000
With a Copy to:	Hunton Andrews Kurth LLP 600 Travis Street, Suite 4200 Houston, Texas 77002 Attn: Christopher Richardson Phone: 713-220-4541 Email: chrisrichardson@HuntonAK.com

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

20. 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.

21. 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.

[SIGNATURES APPEAR 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.

IPS ENTERPRISES, INC.,
a Texas nonprofit corporation

By: _____
Name: Kathleen Zimmermann
Title: Chief Financial Officer

STATE OF TEXAS
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2024, by Kathleen Zimmermann, as Chief Financial Officer of IPS Enterprises, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation. She is personally known to me or has produced _____ as identification.

[SEAL]

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

CITY COMMISSIONERS OF THE CITY OF
LAKELAND

By: _____
H. William Mutz, Mayor

Date: _____

Attest:

Kelly S. Koos, City Clerk

Approved as to Form and Correctness

Palmer C. Davis, City Attorney

Exhibit A
Legal Description of the Property

1775 Interstate Drive, Lakeland, Florida 33805

Property Description

PARCEL NO. 1

A portion of Lot 21, of LAKELAND INTERSTATE BUSINESS PARK, per map or plat thereof as recorded In Plat Book 81, page 44, of the Public Records of Polk County, Florida, being more particularly described as follows:

BEGIN at the Northeast corner of Lot 24, of said LAKELAND INTERSTATE BUSINESS PARK, said point being located on the West boundary of aforementioned Lot 21; run thence South 00°15'06" East, along said West boundary, 73.00 feet; thence departing said West boundary and running along a line being parallel with the South boundary of said Lot 21, North 89°48'45" East, 318.16 feet to a point of Intersection with the East boundary of said Lot 21; thence along the East, North and West boundaries of said Lot 21 by the following four (4) courses:

- (1) 133.53 feet along the arc of a curve through a central angle of 6°40'11", said curve being concave Westerly and having a radius of 1147.12 feet, subtended by a chord which bears North 03°04'18" East, 133.46 feet to a point of tangency;
- (2) North 00°15'48" West, 134.40 feet to the Northeast corner of said Lot 21;
- (3) South 89°44'12" West, 325.87 feet to the Northwest corner of said Lot 21;
- (4) South 00°15'06" East, 194.21 feet to the POINT OF BEGINNING.

PARCEL NO. 2

Lots 1 and 2, of LAKELAND INTERSTATE BUSINESS PARK, per map or plat thereof as recorded in Plat Book 81, page 44, of the Public Records of Polk County, Florida.

LESS AND EXCEPT the following two parcels of land:

LESS OUT PARCEL A:

A portion of Lot 2, of LAKELAND INTERSTATE BUSINESS PARK, per map or plat thereof as recorded In Plat Book .Bl, page 44, of the Public Records of Polk County, Florida, being more particularly described as follows:

BEGIN at the Southwest corner of Lot 14, of Block G, of GOLDEN NORTHGATE UNIT ONE, per map or plat thereof as recorded In Plat Book 48, page 21, of the public records of Polk County, Florida, said point also being a corner on the East boundary of Lot 2, of LAKELAND INTERSTATE BUSINESS PARK, per map or plat thereof as recorded In Plat Book 81, page 44, of the public records of Polk County, Florida; thence North 89°59'28" East, 20.00 feet along the common boundary line between said Lots 2 and 14; thence south 00°08'19" East, 12.06 feet along said common boundary line thence departing said boundary, South 89°59'28" West, 43.00 feet along a line being parallel with said common boundary line; thence North 00°08'19" West, 122.01 feet along a line being parallel with and 23.00 feet Westerly or said common boundary line; thence North 89°51'41" East, 23.00 feet to the Northwest corner of aforementioned Lot 14; thence South 00°08'19" East, 110.00 feet to the POINT OF BEGINNING.

LESS OUT PARCEL D:

A parcel of land in Lot 1, LAKELAND INTERSTATE BUSINESS PARK, recorded in Plat Book 81, pages 44 through 48, of the Public Records of Polk County, Florida, being described as follows:

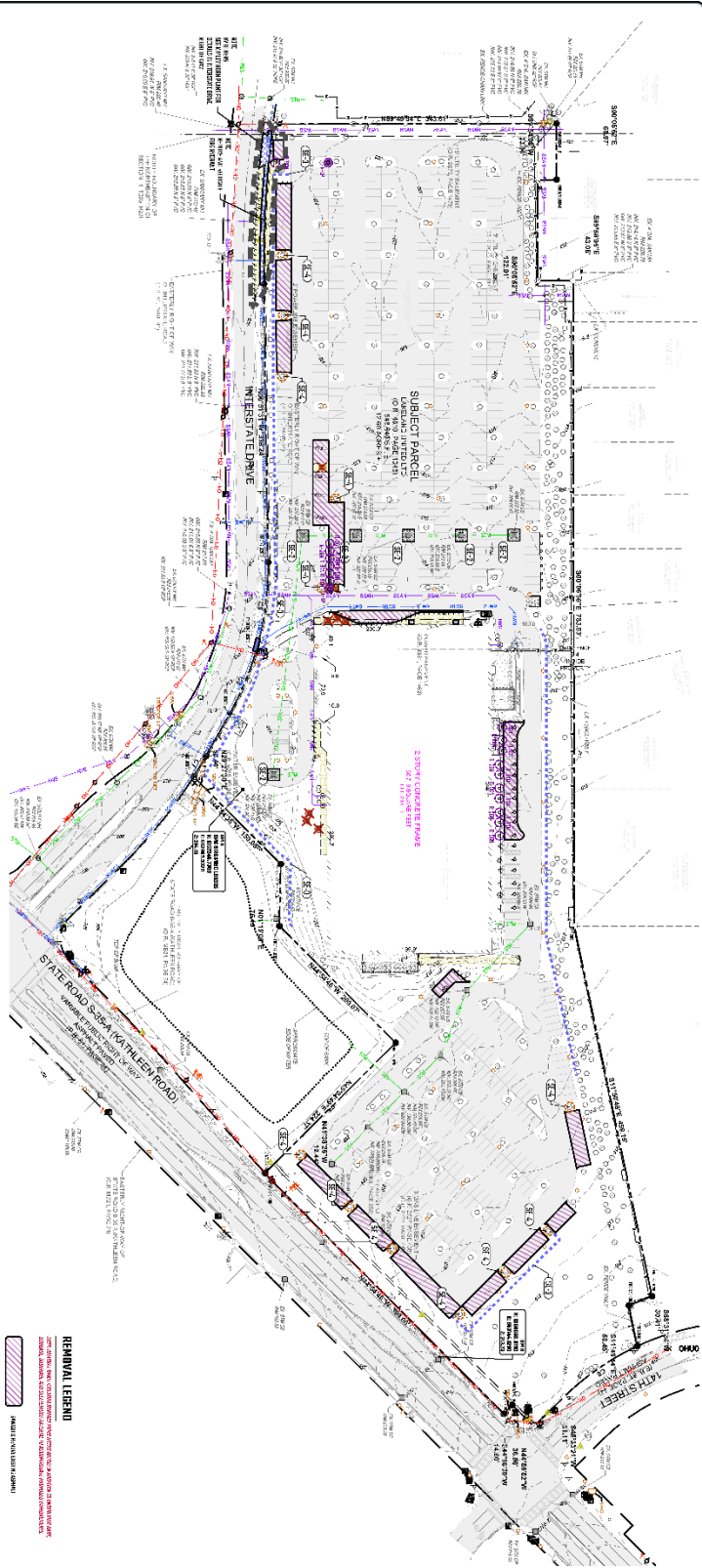
Commence at the Northwest corner of said Lot 1 being on a curve to the right having a radius of 365.00 feet, a central angle of 13°18'40", a chord distance of 84.61 feet and a chord bearing of South 22°40'17" West; thence along the arc of said curve, the Northwestern line of said Lot 1 and the Southeasterly platted right-of-way of Interstate Drive, as recorded in aforesaid LAKELAND INTERSTATE BUSINESS PARK, 84.80 feet to a point of tangency; thence South 29°19'37" West, continuing along said Northwestern line of Lot 1, and said Southeasterly right-of-way of Interstate Drive, 58.45 feet to the point of curvature of a curve to the right having a radius of 580.00 feet, a central angle of 2°51'28", a chord distance of 28.93 feet and a chord bearing of South 30°45'19" West; thence along the arc of said curve, said Northwestern line of Lot 1 and said Southeasterly platted right-of-way of Interstate Drive, 28.93 feet to the POINT OF BEGINNING; thence South 44°53'33" East, 150.00 feet; thence South 120°22" West, 75.26 feet; thence South 44°53'33" East, 200.00 feet; thence South 45°06'27" West, 224.29 feet to the Southwesterly line of aforesaid Lot 1, and the Northeasterly platted right-of-way of Kathleen Road (County Road S-35-A) as recorded in aforesaid LAKELAND INTERSTATE BUSINESS PARK; thence North 41°37'19" West along said Southwesterly line of Lot 1, and said Northeasterly platted right-of-way of Kathleen Road, 250.41 feet; thence North 44°53'33" West, continuing along said Southwesterly line of Lot 1, and said Northeasterly platted right-of-way of Kathleen Road, 100.37 feet to the point of curvature of a curve to the right having a radius of 37,00 feet, a central angle of 90°00'00", a chord distance of 52.33 feet, and a chord bearing of North 00°06'27" East; thence along the arc of said curve and said Southwesterly line of Lot 1, a distance of 58.12 feet to a point of tangency being on aforesaid Northwestern line of Lot 1, and aforesaid Southeasterly platted right-of-way of Interstate Drive; thence North 45°06'27" East, along said Northwestern line of Lot 1, and said Southeasterly platted right-of-way of Interstate Drive, 97.64 feet to a point of curvature of a curve to the left having a radius of 580.00 feet, a central angle of 12°55'21", a chord distance of 130.54 feet, and a chord bearing of North 38°38'46" East; thence along the arc of said curve, said Northwestern line of Lot 1, and said Southeasterly platted right-of-way of Interstate Drive, 130.81 feet to the POINT OF BEGINNING.

PARCEL NO. 3

Easement rights recited in the Declaration of Covenants, Conditions And Restrictions recorded in Official Records Book 2447, Page 1593, as amended by documents recorded in Official Records Book 2447, Page 1647, Official Records Book 2508, Page 2062, Official Records Book 25B3, Page 2120 and Official Records Book 2783, Page 69, as affected by the Reinstatement and Fifth Amendment to Declaration of Covenants and Restrictions for Lakeland Interstate Business Park recorded May 2, 2017, in Official Records Book 10134, Page 387, all of the Public Records of Polk County, Florida.

Exhibit B
Site Development Plan

[Attached]



SOIL EROSION CONTROL LEGEND

SYMBOL	DESCRIPTION
(E1)	EXISTING EROSION CONTROL
(E2)	NEW EROSION CONTROL
(E3)	EXISTING EROSION CONTROL TO BE REMOVED
(E4)	NEW EROSION CONTROL TO BE REMOVED
(E5)	EXISTING EROSION CONTROL TO BE MAINTAINED
(E6)	NEW EROSION CONTROL TO BE MAINTAINED
(E7)	EXISTING EROSION CONTROL TO BE REPLACED
(E8)	NEW EROSION CONTROL TO BE REPLACED
(E9)	EXISTING EROSION CONTROL TO BE DESTROYED
(E10)	NEW EROSION CONTROL TO BE DESTROYED

EROSION CONTROL NOTES

1. EROSION CONTROL SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND SHALL BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

2. EROSION CONTROL SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND SHALL BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

3. EROSION CONTROL SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND SHALL BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

4. EROSION CONTROL SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND SHALL BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

5. EROSION CONTROL SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND SHALL BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

REMOVAL LEGEND

(R1)	EXISTING REMOVAL
(R2)	NEW REMOVAL
(R3)	EXISTING REMOVAL TO BE MAINTAINED
(R4)	NEW REMOVAL TO BE MAINTAINED
(R5)	EXISTING REMOVAL TO BE DESTROYED
(R6)	NEW REMOVAL TO BE DESTROYED

NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

EXISTING/REMOVED UTILITIES NOTE

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



PRIORITY ENGINEERING, LLC

Engineer's Seal

IDEA PUBLIC SCHOOLS

775 INTERSTATE DRIVE
LAKELAND, FL 33805

Project Location

Sheet Name: **REMOVAL/SWPPP PLAN**

Phase: **PHASE II**

Scale: 1" = 40'

North Arrow

North Scale

Revision Table:

NO.	DATE	BY	DESCRIPTION
1	06/12/2024	BRS	ISSUED FOR SITE PLAN APPROVAL
2	06/12/2024	MMA	REVISIONS

Project Information:

Project Name: IDEA PUBLIC SCHOOLS

Project Location: 775 INTERSTATE DRIVE, LAKELAND, FL 33805

Project Number: 24-0015

Sheet No: C-300

Exhibit B

Exhibit C
Peak Hour Project Trip Assignment (Full Buildout)

[Attached]

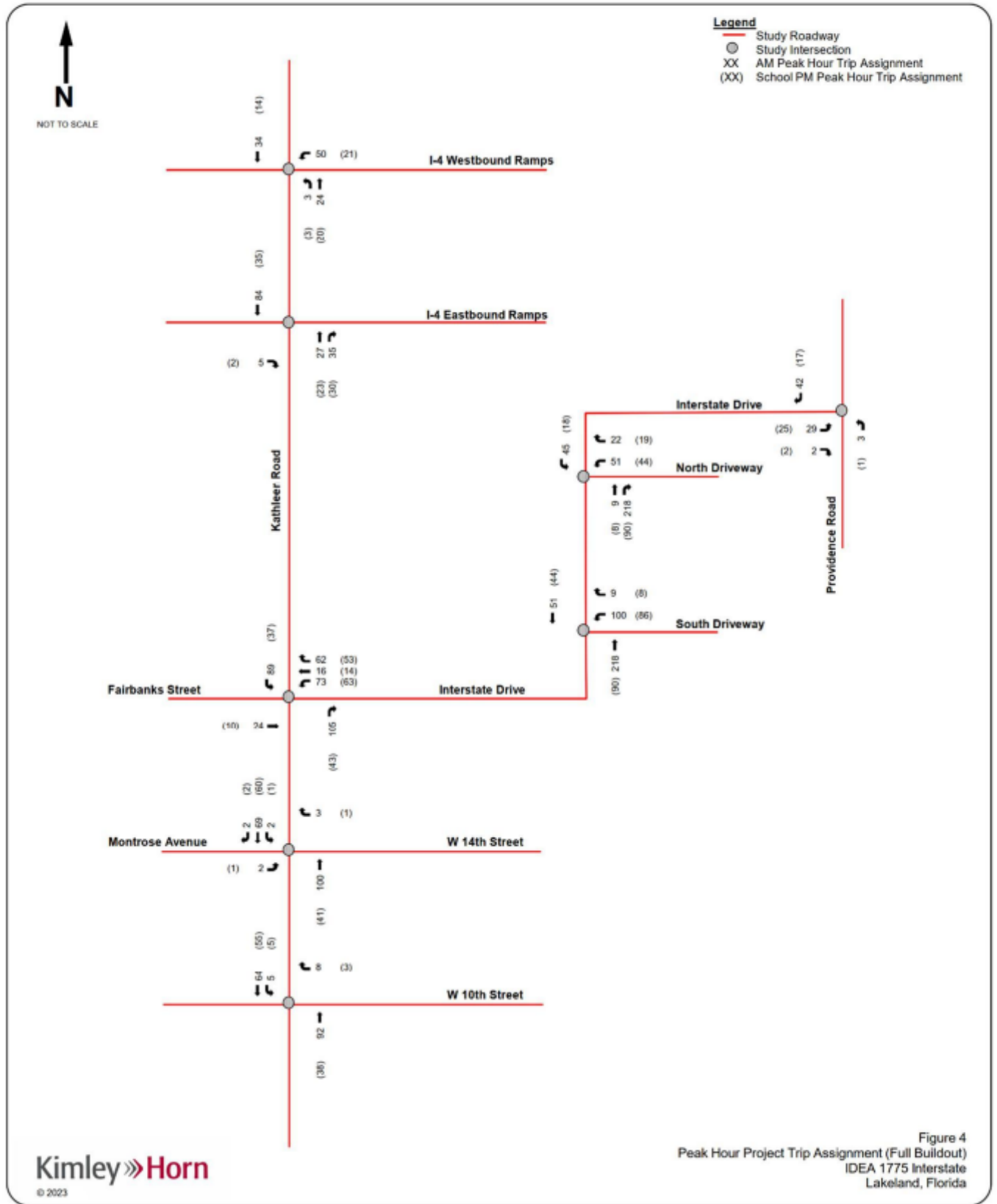


Figure 4
Peak Hour Project Trip Assignment (Full Buildout)
IDEA 1775 Interstate
Lakeland, Florida