

**CASH ESCROW DEPOSIT AGREEMENT GUARANTEEING INSTALLATION
OF SUBDIVISION IMPROVEMENTS**

**THIS CASH ESCROW DEPOSIT AGREEMENT GUARANTEEING
INSTALLATION OF SUBDIVISION IMPROVEMENTS** ("Deposit Agreement"), is made and entered into this ____ day of _____ 2019, by TOWNSEND SUMMIT, LLC, a Missouri limited liability company, (hereinafter referred to as the "Developer") and the CITY OF LEE'S SUMMIT, MISSOURI (hereinafter referred to as the as "City").

RECITALS

WHEREAS, the Developer has submitted plans, information and data to the City as part of Application #PL2019-124 for the creation and development of a Final Plat for a subdivision to be known as the Summit Orchard, Lots 4A-4E Final Plat Subdivision (hereinafter referred to as the "Subdivision"), and a copy of the proposed Final Plat is attached hereto and incorporated by reference as Exhibit 'A'; and

WHEREAS, engineering plans for the Subdivision have been submitted to the City together with the estimated costs of construction, installation and completion of certain subdivision-related public improvements ("Subdivision Improvements") required by the City's Unified Development Ordinance ("UDO") and Code of Ordinances, all in accordance with the City's subdivision regulations set forth in Article 7 of the UDO, and have been approved; and

WHEREAS, Section 7.340 of the UDO requires that the Subdivision Improvements must be constructed prior to approval of the Final Plat for the Subdivision, unless satisfactory security is provided in accordance with Section 7.340 of the UDO; and

WHEREAS, the Developer desires to establish security for the Subdivision Improvements by deposit of a cash escrow in the manner set forth in this Deposit Agreement.

NOW, THEREFORE, in consideration of the covenants, promises and agreements herein provided, **IT IS HEREBY MUTUALLY AGREED:**

1. The Developer has deposited with the City the sum of \$394,373.11 (the "Deposit Sum") to be held in escrow for the purpose of guaranteeing the construction, installation, and completion of all required Subdivision Improvements, all in accordance with the plans approved by the City and on file with the City's Development Services Department (the "Approved Improvement Plans") and in accordance with the City ordinances regulating the same. The Deposit Sum consists of an amount equal to the *estimated* costs of the construction, completion, and installation of the Subdivision Improvements ("Estimated Costs") as set forth on the Estimate Sheet which is attached hereto as Exhibit 'B' and incorporated herein by reference. Nothing in the estimates or specification of component items shall in any way limit the City or require release based on each line item, and Developer agrees it continues to be obligated to complete and guarantee completion of all Subdivision Improvements regardless of the amount of the Deposit Sum. The City and Developer agree that the Deposit Sum shall guarantee the construction, installation and completion of the required subdivision-related public

improvements in the Subdivision, all in accordance with the approved plans therefore and in accordance with the ordinances of the City regulating the same. The City and Developer further agree that the Deposit Sum shall be held by the City in an interest bearing account, and that the City shall retain the right to any accrued interest in order to help defray the cost of administering this Deposit Agreement.

2. The Deposit Sum guarantees the construction, installation, and completion of all Subdivision Improvements in accordance with the Approved Improvement Plans which are incorporated in this Deposit Agreement by reference and as summarized in the attached Exhibit 'B' and as required by the ordinances and regulations of the City. Any release of a portion of the Deposit Sum is only an accommodation to the Developer and is not a waiver of any kind by the City of its rights under the Deposit Agreement that the entire Deposit Sum guarantees each and every improvement.

3. The Developer guarantees that all Subdivision Improvements will be installed, constructed and completed in accordance with the Approved Improvement Plans and the ordinances of the City not later than **two years** after the date of this Agreement Date appearing on the signature page below ("Completion Date").

4. (a) The City shall, through written authorization of the City Engineer, release or reduce portions of the Deposit Sum upon completion of components within categories and shall release corresponding portions of the Deposit Sum upon completion of categories of improvements provided that a qualified, licensed engineer employed by the Developer certifies to the City the completion of such work. In no event shall the City release any part of the Deposit Sum except as provided herein.

(b) In order to obtain such written authorization for a release, upon completion of any category of Subdivision Improvements, the Developer shall first make written request for inspection, and include therewith a certification by the Developer's engineer to the City Engineer. Upon receipt of the Developer's written request for inspection and certification by the Developer's engineer, the City (or the appropriate inspecting authority) shall (i) inspect the construction, installation and completion of the Subdivision Improvements that have been certified as complete by the Developer's engineer. Upon receipt of the inspection report, the City Engineer will review the report, verify that the Subdivision Improvement complies with all laws and requirements of the City, and then may authorize such release.

(c) No category of any Subdivision Improvement shall be eligible for release until each and every component and requirement that makes up that category of Subdivision Improvement is deemed complete by the City. No category of Subdivision Improvement may be deemed to be complete until there is a certification by the City that the category of Subdivision Improvement is complete. No certification shall be issued by the City unless all of the following takes place: (i) the Developer submits a written request to the City for inspection of the Subdivision Improvements; (ii) the inspection is completed by the City's inspector who determines that the Subdivision Improvement are complete and recommends to the City Engineer that it be released; and (iii) the City Engineer reviews the City Inspector's inspection report, determines that the

Subdivision Improvement complies with all laws and requirements of the City, and authorizes such release.

(d) Upon certification by the City Engineer that the construction and installation of a category of Subdivision Improvement is complete (in accordance with §4(b) and (c) above), the City shall authorize the release of the Estimated Cost originally retained for that category as set forth on Exhibit B *minus* a maximum retention of five percent (5%), with said release of funds to take place within 30 days of the City's Engineer's certification as provided for in Section 16.340.D of the UDO. The Developer shall not be released of any responsibility for installation, construction, completion, or maintenance for the remaining required Subdivision Improvements, regardless of any release that may have been issued based on specific improvements or inspections prior to final approval of all improvements and release of the entire Deposit Sum for all categories.

(e) In no event shall the City be required to release, disburse or otherwise dispose of more than ninety-five percent (95%) of the Deposit Sum, until the City has certified as provided herein that all categories of Subdivision Improvements have been completed in accordance with the Approved Improvement Plans and the regulations and ordinances of the City.

5. The Developer shall in all respects comply with all applicable laws and regulations pertaining to the construction, completion, dedication and installation of the Subdivision Improvements. This Deposit Agreement shall not be deemed to create any commitment by the City to accept any improvement for dedication and maintenance.

6. Upon completion of the final category of Subdivision Improvements and compliance with all ordinances, laws and regulations relating to dedication of the Subdivision Improvements to the City, any and all remaining portion of the Deposit Sum shall be released within 30 days of certification of completion by the City Engineer.

7. In the event the Developer shall be in default or abandon the Subdivision, or fail to complete the obligations herein, including, but not limited to, the failure to complete the Subdivision Improvements by the Completion Date, the Developer shall forfeit to the City the then current balance of the Deposit Sum or any portion thereof, which funds the City shall thereafter use to complete the Subdivision Improvements or otherwise rectify the Developer's failure hereunder. The City may further apply such necessary amount of the Deposit Sum to remedy any failure of the Developer to perform its maintenance obligations in the Subdivision. For the purpose of this Agreement and the City's rights hereunder, any and all of the remaining Deposit Sum may be applied to completion or maintenance of any Subdivision Improvements, and no limitation of any kind shall be implied from the line item calculations of separate Subdivision Improvements.

8. Exercise or waiver by City of any enforcement action under this Deposit Agreement or the City's Code of Ordinances does not waive or foreclose any other or subsequent enforcement action whatsoever. The Deposit Sum placed under this Deposit Agreement shall be governed by the provisions of the City's Code of Ordinances, including, without limitation, the UDO and the subdivision regulations contained therein, and the Developer agrees to the provisions thereof as

if set forth herein. The City shall be entitled to its costs, including reasonable attorneys' fees, in enforcement of Developer's obligations under this Agreement.

9. The City and Developer hereby accept this agreement as a lawful and satisfactory Deposit Agreement.

10. This Agreement shall be interpreted in accordance with the laws of the State of Missouri. Time is of the essence with respect to the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Stephen A. Arbo, *City Manager*

Approved as to form:

David Bushek, *Chief Counsel of Economic Development and Planning*

TOWNSEND SUMMIT, LLC

By: _____

Its: _____

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

Notary for Townsend Summit, LLC

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, the _____ of Townsend Summit, LLC, who is personally known to me to be the same person who executed the within instrument on behalf of Townsend Summit, LLC, and such person duly acknowledged the execution of the same to be the act and deed of Townsend Summit, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

EXHIBIT 'A' – FINAL PLAT
[see attached]

SUMMIT ORCHARD, LOTS 4A-4E

REPLAT OF LOT 4, SUMMIT ORCHARD-FIRST PLAT, LOTS 1-4 & TRACT "A",
A SUBDIVISION IN THE CITY OF LEE'S SUMMIT, JACKSON COUNTY,
MISSOURI

DESCRIPTION:
THIS IS A REPLAT OF LOT 4, SUMMIT ORCHARD - FIRST PLAT, LOTS 1-4 & TRACT "A", A SUBDIVISION IN THE CITY OF LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

PLAT DEDICATION:
THE UNDERSIGNED OWNER(S) OF THE PROPERTY DESCRIBED HEREIN HAS/HAVE CAUSED THE SAME TO BE SUBDIVIDED IN THE MANNER SHOWN ON THIS PLAT AND THE PROPERTY SHALL HEREAFTER BE KNOWN AS "SUMMIT ORCHARD, LOTS 4A-4E"

EASEMENT DEDICATION:
AN EASEMENT OR LICENSE IS HEREBY GRANTED TO THE CITY OF LEE'S SUMMIT, MISSOURI TO LOCATE, CONSTRUCT, AND MAINTAIN, OR AUTHORIZE THE LOCATION, CONSTRUCTION, AND MAINTENANCE OF POLES, WIRES, ANCHORS, CONDUITS, AND/OR STRUCTURES FOR WATER, GAS, STORM SEWER, SURFACE DRAINAGE CHANNEL, ELECTRICITY, TELEPHONE, CABLE TELEVISION, OR ANY OTHER NECESSARY PUBLIC UTILITY OR SERVICES, ANY OR ALL OF THEM, UPON, OVER, OR UNDER THOSE AREAS OUTLINED ON THIS PLAT AS UTILITY EASEMENT (U/E) OR WITHIN ANY STREETS OR THOROUGHFARES DEDICATED TO PUBLIC USE ON THIS PLAT, INCLUDING A SANITARY SEWER EASEMENT (SSE/E), GRANTOR, ON BEHALF OF ITSELF AND ITS ASSIGNS AND SUCCESSORS IN INTEREST, HEREBY WAIVES, TO THE FULLEST EXTENT ALLOWED BY LAW, INCLUDING, WITHOUT LIMITATION, SECTION 52.118, RSMO (2006), ANY RIGHT TO REQUEST RESTORATION OF RIGHTS PREVIOUSLY TRANSFERRED AND VACATION OF THE EASEMENT HEREBY GRANTED.

STREETS/ROAD RIGHT-OF-WAY DEDICATION:
STREETS, ROADS, AND THOROUGHFARES SHOWN ON THIS PLAT AND NOT HERETOFORE DEDICATED TO PUBLIC USE ARE SO HEREBY DEDICATED.

BUILDING/SEBACK LINES:
BUILDING OR SEBACK LINES ARE HEREBY ESTABLISHED AS SHOWN ON THE ACCOMPANYING PLAT AND NO BUILDING OR PORTION THEREOF SHALL BE CONSTRUCTED BETWEEN THIS LINE AND THE RIGHT-OF-WAY LINES.

DRAINAGE:
INDIVIDUAL LOT OWNER(S) SHALL NOT CHANGE OR OBSTRUCT THE DRAINAGE FLOW PATHS ON THE LOTS, UNLESS SPECIFIC APPLICATION IS MADE AND APPROVED BY THE CITY ENGINEER.

OIL/GAS WELLS:
ACCORDING TO AN ENVIRONMENTAL IMPACT STUDY OF ABANDONED OIL AND GAS WELLS IN LEE'S SUMMIT, MISSOURI IN 1995, BY EDWARD ALTON MAY, JR., P.E., THERE ARE NO OIL AND GAS WELLS WITHIN THE PROPERTY SHOWN HEREIN.

FLOOD INFORMATION:
ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP, 299050417G, DATED JANUARY 20, 2017, THIS PROPERTY LIES WITHIN ZONE "X", AREA OF MINIMAL FLOOD HAZARD.

ACCESS EASEMENT:
THE LOTS WITHIN THIS PLAT ARE SUBJECT TO CERTAIN ACCESS EASEMENTS CREATED BY, AND IN ACCORDANCE WITH THE TERMS OF, THAT CERTAIN REPERCUSSIVE EASEMENT AND OPERATING AGREEMENT THAT IS BEING RECORDED AGAINST THE LOTS WITHIN THIS PLAT ON OR ABOUT THE DATE HEREOF.

IN TESTIMONY WHEREOF:
THE UNDERSIGNED PROPRIETOR OF THE ABOVE TRACT OF LAND HAS CAUSED THESE PRESENTS TO BE SIGNED THIS _____ DAY OF _____, 2019 BY:

STEVEN W RICH, VICE PRESIDENT
TOWNSEND SUMMIT, LLC

STATE OF _____ J.S.
COUNTY OF _____

BE IT REMEMBERED THAT ON THIS _____ DAY OF _____, 2019, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED STEVEN W RICH, TO ME PERSONALLY KNOWN, AND WHO BEING BY ME DULY SWORN BY ME DID SAY THAT HE IS THE VICE PRESIDENT OF TOWNSEND SUMMIT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND THAT SAID INSTRUMENT WAS SIGNED ON BEHALF OF SAID TOWNSEND SUMMIT, LLC, AND THAT SAID INSTRUMENT WAS SIGNED ON BEHALF OF SAID LLC AND AS THE FREE ACT AND DEED OF SAID LLC.

IN WITNESS WHEREOF:
I HAVE HERETO SET MY HAND AND AFFIXED MY SEAL THE DATE LAST ABOVE WRITTEN ABOVE

NOTARY PUBLIC _____ MY COMMISSION EXPIRES: _____

APPROVED:
PUBLIC WORKS / ENGINEERING
GEORGE M. BINDER II, P.E., CITY ENGINEER DATE _____
DEVELOPMENT SERVICES DEPARTMENT

WILLIAM A. BAIRD, MAYOR DATE _____
RYAN A. ELAM, P.E., DIRECTOR OF DEVELOPMENT SERVICES DATE _____

TRISHA FOWLER ARDUR, CITY CLERK DATE _____
PLANNING COMMISSION
DANA ARTH, SECRETARY DATE _____

I HEREBY CERTIFY THAT THIS PLAT IS BASED ON AN ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT IT MEETS OR EXCEEDS THE CURRENT MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS AS ESTABLISHED BY THE MISSOURI BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, AND LANDSCAPE ARCHITECTS, AND THE MISSOURI DEPARTMENT OF AGRICULTURE AND RESOURCE ASSESSMENT AND THAT THE RESULTS OF SAID SURVEY ARE SHOWN HEREON TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF.

FOR: TOWNSEND SUMMIT, LLC



ENGINEERS • SURVEYORS • LABORATORIES • DRILLING
941 W 141ST TERR, STE A • KANSAS CITY, MO 64145 • PHONE (816) 777-2400
A LICENSED MISSOURI ENGINEERING & SURVEYING CORPORATION - LC 02

SECTION	TOWNSHIP	RANGE	COUNTY	STATE	DATE	JOB NO.
31	48N	31W	JACKSON	MISSOURI	03/15/19	19C010001
32	48N	32W				

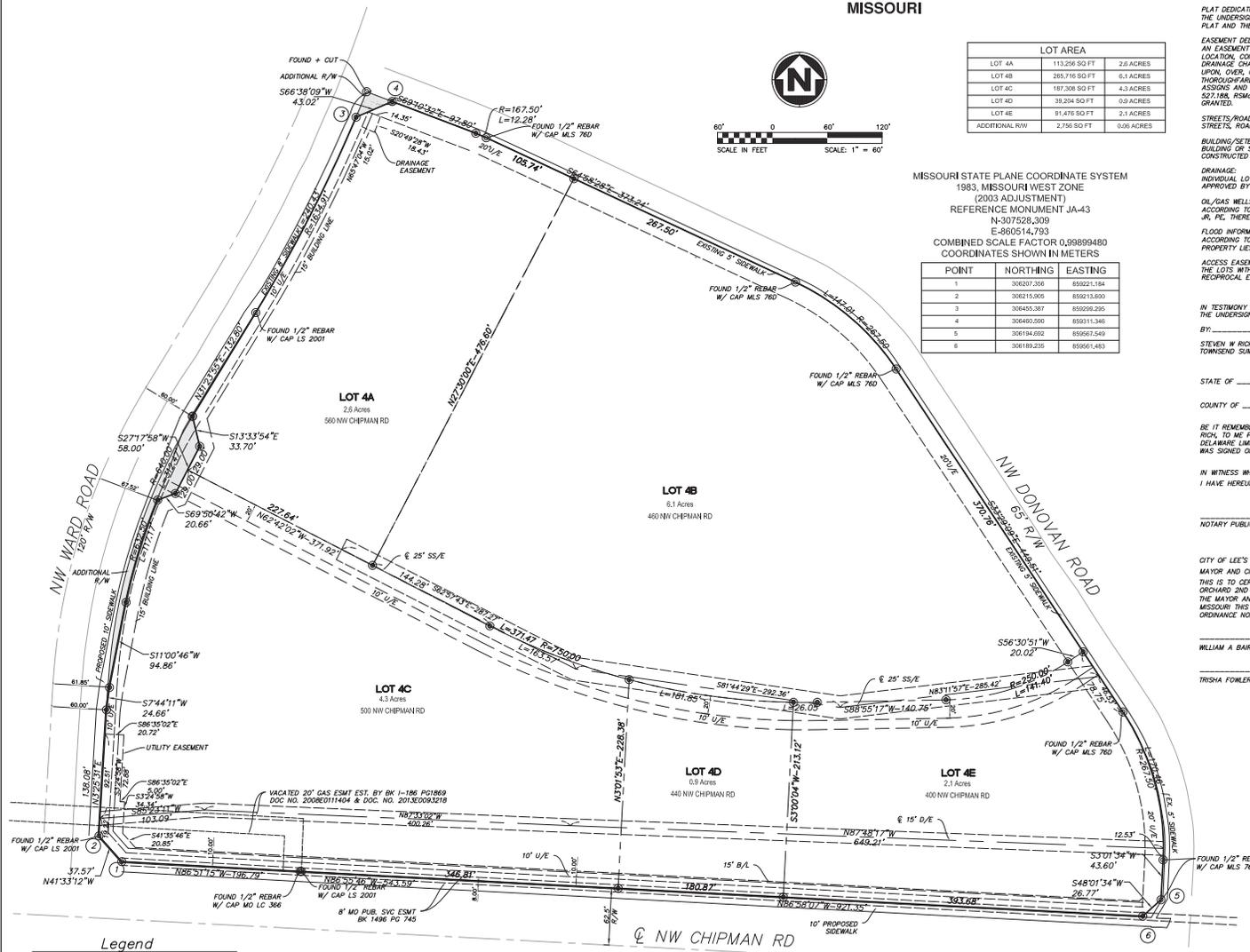
SCOTT G CHRISMAN MO PLS 2594

DRAWING NO. 19C010001 DRAWN BY: CM CHECKED BY: SC

LOT AREA		
LOT 4A	113,256 SQ FT	2.6 ACRES
LOT 4B	265,716 SQ FT	6.1 ACRES
LOT 4C	187,306 SQ FT	4.3 ACRES
LOT 4D	38,234 SQ FT	0.9 ACRES
LOT 4E	91,478 SQ FT	2.1 ACRES
ADDITIONAL RW	2,796 SQ FT	0.06 ACRES

MISSOURI STATE PLANE COORDINATE SYSTEM
1983, MISSOURI WEST ZONE
(2003 ADJUSTMENT)
REFERENCE MONUMENT JA-43
N-937528.309
E-860514.793
COMBINED SCALE FACTOR 0.99899480
COORDINATES SHOWN IN METERS

POINT	NORTHING	EASTING
1	308207.266	899221.184
2	306215.906	899213.690
3	306495.287	899209.295
4	306460.593	899111.249
5	306194.892	898967.549
6	306189.235	898961.483



- Legend**
- PROPOSED CURB INLET
 - PROPOSED SANITARY SEWER MANHOLE
 - EXISTING SANITARY SEWER MANHOLE
 - PROPOSED FIRE HYDRANT
 - EXISTING PHONE PEDESTAL
 - EXISTING POWER POLE
 - EXISTING SIGN
 - PROPOSED STORM SEWER
 - PROPOSED SANITARY SEWER
 - EXISTING SANITARY SEWER
 - PROPOSED SIDEWALK
 - FOUND MONUMENT AS NOTED
 - SET 1/2" IRON BAR W/ PLASTIC CAP STAMPED AE LC-02
 - ADDITIONAL RIGHT OF WAY

EXHIBIT 'B' – ESTIMATE SHEET
[see attached]



5/3/19
John V. Huss
Mo PE E20579

Summit Orchard Lot 4 Infrastructure Improvements
2-May-19

Opinion of Probable Cost

Sanitary Sewer					
Item No.	Description	Units	Quantity	Unit Price	Cost
1	Mobilization (7%)	LS	1	\$ 5,498.78	\$ 5,498.78
2	8" PVC Sewer	LF	843	\$ 48.00	\$ 40,464.00
3	6" PVC Sewer Service	LF	338	\$ 55.00	\$ 18,590.00
4	Sanitary Manhole	EA	3	\$ 4,500.00	\$ 13,500.00
5	Service Tee	EA	9	\$ 500.00	\$ 4,500.00
6	Connection to Existing Manhole	EA	1	\$ 1,500.00	\$ 1,500.00

Total Estimated Cost - Sanitary Sewer \$ 84,052.78

Water Main					
Item No.	Description	Units	Quantity	Unit Price	Cost
1	Mobilization (7%)	LS	1	\$ 5,091.24	\$ 5,091.24
2	8" PVC C900 Water Main	LF	1,348	\$ 34.00	\$ 45,832.00
3	Fire Hydrant Assembly	EA	2	\$ 3,500.00	\$ 7,000.00
4	8" Gate Valve & Box	EA	2	\$ 1,250.00	\$ 2,500.00
5	Directional Drill 8" Water Main	LF	100	\$ 150.00	\$ 15,000.00
6	Connect to Existing Main	EA	2	\$ 1,200.00	\$ 2,400.00

Total Estimated Cost - Water Main \$ 77,823.24

Paving - Chipman and Ward Decel Lanes, Ward Left Turn Pocket, Chipman and Replace Walks					
Item No.	Description	Units	Quantity	Unit Price	Cost
1	Mobilization (7%)	LS	1	\$ 15,210.09	\$ 15,210.09
2	Remove Existing Curb and Gutter	LF	826	\$ 5.00	\$ 4,130.00
3	Remove Inlet / Fill existing Pipe	ea	1	\$ 1,500.00	\$ 1,500.00
4	Remove Sidewalk	SY	383	\$ 4.00	\$ 1,532.00
5	Revise Inlet to J. Box	ea	1	\$ 2,000.00	\$ 2,000.00
6	Curb Inlet	ea	2	\$ 5,000.00	\$ 10,000.00
7	15" RCP	EA	235	\$ 52.00	\$ 12,220.00
8	8" PC Conc Pav't w / integral curb / base	SY	1,141	\$ 65.00	\$ 74,165.00
9	8" Colored Stamped Concrete Median	SY	25	\$ 75.00	\$ 1,875.00
10	6" PC Concrete Trail with base	SF	11,970	\$ 6.00	\$ 71,820.00
11	8" Valley Gutter	SY	493	\$ 65.00	\$ 32,045.00
12	ADA Ramps	EA	4	\$ 1,500.00	\$ 6,000.00

Total Estimated Cost - Sanitary Sewer \$ 232,497.09

Total Public Work \$ 394,373.11

THE BEST PLACE TO WORK WITH AND THE BEST PLACE TO WORK FOR