

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

DEVELOPMENT AGREEMENT
(Arabella on the Prairie)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (the "County"), a body politic acting herein by and through its Commissioners Court and Beazer Homes Texas Holdings, Inc., an applicant for a subdivision plat to develop property in Fort Bend County (the "Owner"). The County and the Owner may be individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Owner proposes to develop an approximate 136.9 acre tract of land situated in Fort Bend County, Texas, as generally shown on Exhibit "A" attached hereto and incorporated herein for all purposes, (the "Owner's Property"); and

WHEREAS, Powerline Road is a public roadway maintained by the County and near or adjacent to the Owner's Property; and

WHEREAS, the Parties desire to enter into a Development Agreement to memorialize the terms in which the Owner will submit a subdivision plat to the County for approval of its Commissioners Court, and either (1) construct the half boulevard improvements to a portion of Powerline Road; (2) pay to the County the amount of \$810,000.00 as the required contribution to improve Powerline Road; or (3) acquire land and construct a proposed detention pond to accommodate the County's roadway improvements.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the County and the Owner agrees as follows:

1. Owner's Responsibilities.

(a) The Owner agrees to elect and perform one of the following obligations prior to submitting for approval, a subdivision plat that includes the one hundred seventy-first (171st) lot of the three hundred forty-two (342) lots proposed for development within the Owner's Property:

- (I) construct the half boulevard improvements to the portion of Powerline Road adjacent to the Owner's Property; or
- (II) pay to the County the amount of \$810,000.00 as the pro-rated amount and required contribution to improve the portion of Powerline Road adjacent to the Owner's Property; or
- (III) acquire the necessary land and construct a proposed detention pond to accommodate the County's roadway improvements by providing at least 13.25 acre-feet of storage in accordance with Exhibit B attached hereto and incorporated herein for all purposes.

(b) The Owner shall be responsible for maintenance of the detention pond upon completion of its construction. Further, the Owner may only convey ownership and maintenance responsibility of the fully constructed detention pond to Fort Bend County Municipal Utility District Number 162 and/or Arabella Homeowners Association without consent of the County.

2. County's Responsibilities. In exchange for the Owner's commitment to submit subdivision plats meeting the requirements of the County's Regulation of Subdivisions, and the election and performance of one of the obligations in accordance with Section 1 (a) – (c) above, the County agrees to present the proposed subdivision plat for consideration by the County's Commissioners Court for approval.

3. Disclaimer/Waiver of Damages/Liability

(a) The Owner acknowledges and agrees that the County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of Powerline Road, in whole or in part.

(b) The Owner acknowledge and agrees that the County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or the Owner's Property, resulting, in whole or in part, directly or indirectly, from the County's failure to complete its responsibilities stated herein by any certain date and/or as set forth in this Agreement.

(c) The Owner hereby releases the County, its officers, agents, representatives and employees, from and against, and waive any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), it/they may have with regard to the construction and/or completion of Powerline Road and/or any other act and/or omission relating, directly or indirectly, to Powerline Road, in whole or in part, as provided in this Agreement, except to the extent any such claims arise due to, or damages are caused by, the negligence, breach of this Agreement or willful misconduct of County or its authorized officers, agents, representatives or employees

4. PARTIES' ACKNOWLEDGMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(a) OWNER ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY OWNER TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:

- (I) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
- (II) VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;
- (III) NUISANCE; AND/OR

(IV) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

(b) OWNER RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(c) OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(d) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

5. Limitations of Agreement. The Parties hereto acknowledge this Agreement is limited to the development of Owner's Property only. Further, this Agreement does not waive or limit any of the obligations of Owner to County under any other order whether now existing or in the future arising.

6. Default. In the event the Owner fails to comply with any of the provisions of this Agreement within sixty (60) business days after the Owner's receipt of written notice thereof from the County, the County shall have the following remedies in addition to the County's other rights and remedies, at law or in equity:

- (a) to refuse to accept any portion of any public improvements on the Owner's Property and/or associated with the development of the Owner's Property; and/or
- (b) to refuse to finally accept the Owner's Property and/or any portion thereof; and/or
- (c) to seek specific enforcement of this Agreement.

In the event of the County's default under this Agreement, the Owner will be entitled to seek any remedy available to it at law or in equity.

7. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County Engineering
Attention: County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469

If to Owner, to:

Beazer Homes Texas Holdings, Inc.
Attention: Jeff Anderson, Vice President
10235 West Little York, Suite 200
Houston, Texas 77040

(b) Assignment. This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Owner and/or its authorized representatives.

(p) Owner's Warranties/Representations. All warranties, representations and covenants made by the Owner in this Agreement or in any certificate or other instrument delivered by Owner to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

(q) Acknowledgments. The parties agree that the acknowledgments set forth in Paragraphs 3 and 4 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:

KP George, County Judge

Date

Attest:


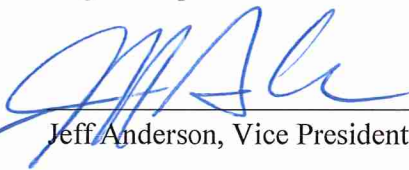
Laura Richard, County Clerk

Approved:

J. Stacy Slawinski, P.E., County Engineer

OWNER:

BEAZER HOMES TEXAS HOLDINGS, INC.,
as general partner of Beazer Homes Texas, LP

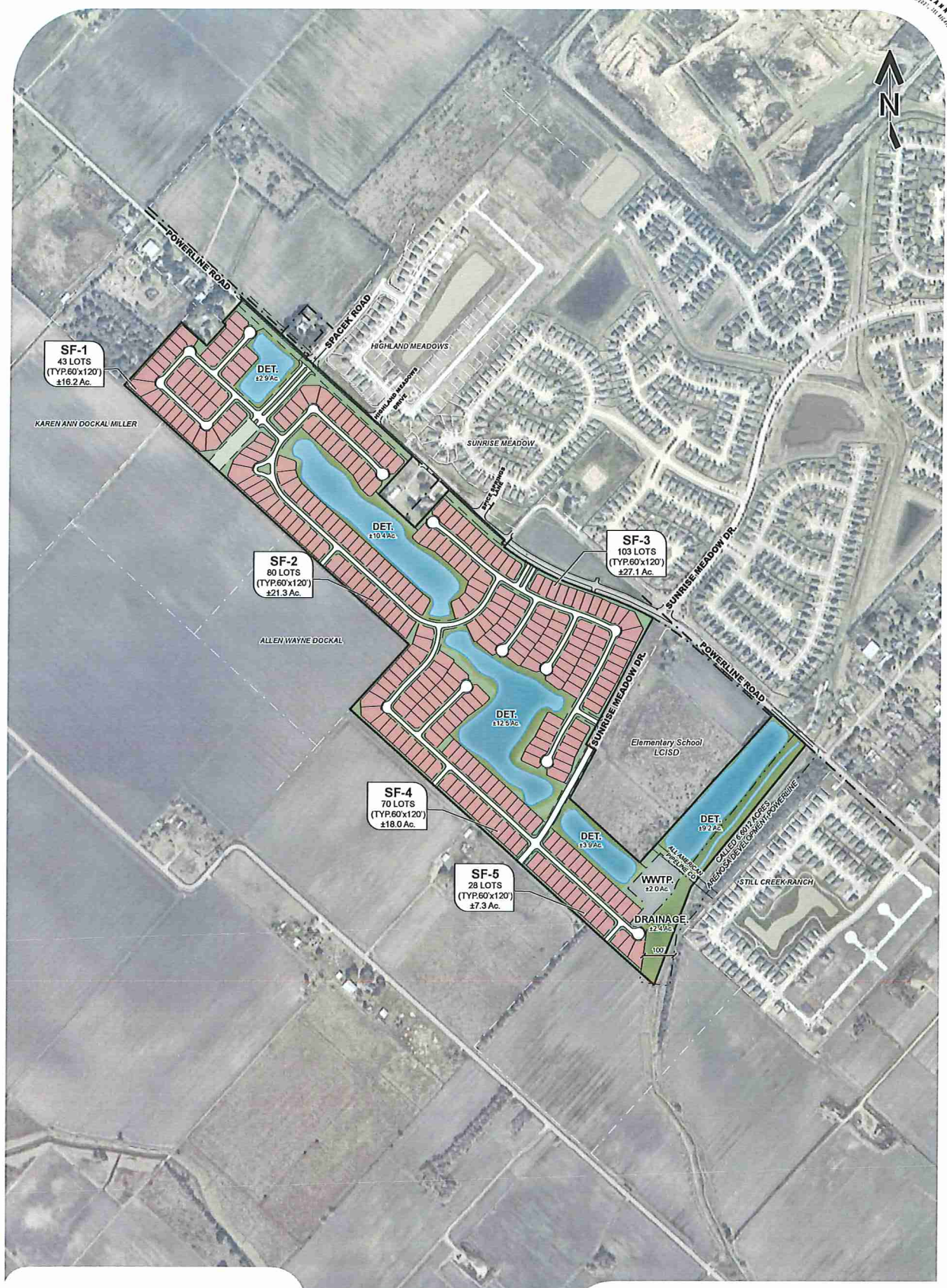
 

Jeff Anderson, Vice President


12/2/2021

Date

EXHIBIT A



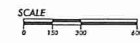
LOT SUMMARY

	60'x120'	324 LOTS	100%
TOTAL 324 LOTS			

a schematic development plan for
POWERLINE ROAD
 ±136.9 ACRES OF LAND
 prepared for
BEAZER HOMES



24275 Katy Freeway, Ste. 200
 Katy, Texas 77494
 Tel: 281-810-1422



MTA-0439
 MAY 20, 2021

THIS DRAWING IS A GRAPHIC REPRESENTATION FOR PRESENTATION PURPOSES ONLY AND IS NOT FOR COMPUTATION OR CONSTRUCTION PURPOSES. SAID DRAWING IS A SCANNED IMAGE ONLY AND IS SUBJECT TO CHANGE WITHOUT NOTICE. META PLANNING + DESIGN MAY OR MAY NOT INTEGRATE ADDITIONAL INFORMATION PROVIDED BY OTHER CONSULTANTS, INCLUDING BUT NOT LIMITED TO THE TOPICS OF ENGINEERING AND DRAINAGE, FLOODPLAINS, AIR/OR ENVIRONMENTAL ISSUES AS THEY RELATE TO THIS DRAWING. NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE PHYSICAL DESIGN, LOCATION, AND CHARACTER OF THE FACILITIES SHOWN ON THIS MAP ARE INTENDED. ADDITIONALLY, NO WARRANTY IS MADE TO THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

EXHIBIT B

FORT BEND MUNICIPAL UTILITY DISTRICT NO. 162

TRIANGULAR TRACT DETENTION BASIN

PRELIMINARY CONSTRUCTION COST ESTIMATE

COST SUMMARY

	<u>TOTAL</u>
1. Clearing, Grubbing, and Site Preparation	\$6,000.00
2. Storm Water Collection System	\$100,600.00
3. Detention Basin	\$363,400.00
4. Storm Water Pollution Prevention Plan	\$7,925.00
5. Construction Staking Services (2.5%)	<u>\$11,950.00</u>
Sub-Total Construction Costs	\$489,875.00
Contingencies (10%)	<u>\$48,990.00</u>
Total Construction Costs	\$538,865.00
Permitting Fees (2%)	<u>\$10,780.00</u>
TOTAL PRELIMINARY CONSTRUCTION COST ESTIMATE	\$549,645.00

Notes:

1. Estimate does not include any additional costs that may be required for development outside the scope outlined above. These fees may include construction materials testing, geotechnical services, adjustments of existing private utilities (pipeline or ...)
2. The quantities reflected on this estimate were tabulated from a one line conceptual drawing. The unit prices shown hereon are based on current bid prices received in this office and are subject to change pending completion of construction plans.

FORT BEND MUNICIPAL UTILITY DISTRICT NO. 162

TRIANGULAR TRACT DETENTION BASIN

PRELIMINARY CONSTRUCTION COST ESTIMATE

CLEARING, GRUBBING, AND SITE PREPARATION

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	Light Clearing (Grass)	4	AC	\$1,500.00	<u>\$6,000.00</u>
TOTAL CLEARING, GRUBBING, AND SITE PREPARATION					\$6,000.00

Note: The quantities reflected on this estimate were tabulated from a one line conceptual drawing. The unit prices shown hereon are based on current bid prices received in this office and are subject to change pending completion of construction plans.

FORT BEND MUNICIPAL UTILITY DISTRICT NO. 162

TRIANGULAR TRACT DETENTION BASIN

PRELIMINARY CONSTRUCTION COST ESTIMATE

STORM WATER COLLECTION SYSTEM

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	36-Inch, CLIII R/G, RCP Storm Sewer	670	LF	\$130.00	\$87,100.00
2.	Standard Type "C" Manhole (24"-42")	3	EA	\$4,500.00	<u>\$13,500.00</u>
TOTAL STORM WATER COLLECTION SYSTEM					\$100,600.00

Note: The quantities reflected on this estimate were tabulated from a one line conceptual drawing. The unit prices shown hereon are based on current bid prices received in this office and are subject to change pending completion of construction plans.

1. Arabella on the Prairie to pay additional cost for upsizing 36" RCP to 48" RCP.

FORT BEND MUNICIPAL UTILITY DISTRICT NO. 162

TRIANGULAR TRACT DETENTION BASIN

PRELIMINARY CONSTRUCTION COST ESTIMATE

DETENTION BASIN

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	Scarify or Strip Spoil Site	3	AC	\$700.00	\$2,100.00
2.	Detention Basin Excavation , Off-Site Haul	25,700	CY	\$12.00	\$308,400.00
3.	Proof Roll Spoil Site	1	LS	\$2,000.00	\$2,000.00
4.	Reinforced Concrete Slope Paving	80	SY	\$110.00	\$8,800.00
5.	Backslope Interceptor Structure including 24" CGMP w/ Concrete Slope Paving	3	EA	\$9,500.00	\$28,500.00
6.	Backslope Swale	1,950	LF	\$4.00	\$7,800.00
7.	Turf Establishment	1	AC	\$2,300.00	\$2,300.00
8.	Pumping of Storm Water Runoff During Construction	5	DAY	\$700.00	<u>\$3,500.00</u>
TOTAL DETENTION BASIN					\$363,400.00

Note: The quantities reflected on this estimate were tabulated from a one line conceptual drawing. The unit prices shown hereon are based on current bid prices received in this office and are subject to change pending completion of construction plans.

1. Assuming this project will be constructed simultaneously with Arabella Phase 1 Detetnion Basin.
2. Assuming Arabella on the Prairie can take the detention spoils.

FORT BEND MUNICIPAL UTILITY DISTRICT NO. 162

TRIANGULAR TRACT DETENTION BASIN

PRELIMINARY CONSTRUCTION COST ESTIMATE

STORMWATER POLLUTION PREVENTION PLAN

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	Reinforced Filter Fabric Fence	2,000	LF	\$2.00	\$4,000.00
2.	Stabilized Construction Access	1	EA	\$2,500.00	\$2,500.00
3.	Concrete Truck Washout	1	EA	\$1,200.00	\$1,200.00
4.	Inlet Protection Barriers	3	EA	\$75.00	<u>\$225.00</u>
TOTAL STORMWATER POLLUTION PREVENTION PLAN					\$7,925.00

Note: The quantities reflected on this estimate were tabulated from a one line conceptual drawing. The unit prices shown hereon are based on current bid prices received in this office and are subject to change pending completion of construction plans.