

THE STATE OF TEXAS

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COUNTY OF FORT BEND

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**DEVELOPMENT AGREEMENT  
(SANSBURY BOULEVARD)**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court, and CarMax Auto Superstores, Inc., a Virginia corporation authorized to conduct business in the State of Texas (hereinafter referred to as "Owner.")

WHEREAS, Sansbury Boulevard is a public road maintained by the County that currently terminates at Grand Estates Drive; and

WHEREAS, County proposes to extend Sansbury Boulevard east to Canyon Lake Drive, including extension of drainage facilities, water lines and sidewalks within the right of way (the "Project"); and

WHEREAS, Owner proposes to develop property adjacent to the proposed extension of Sansbury Boulevard (the "Owner Property"); and

WHEREAS, County and Owner agree that Owner Property will substantially benefit from the construction of the Project; and

WHEREAS, County has agreed to construct the Project and Owner agrees to: (a) pay for a portion of the construction cost of paving; (b) pay for all storm sewer and water line construction costs of the Project; and (c) the construction cost for the sidewalk located on the north side of the right of way; and

WHEREAS, County has investigated and determined that it would be advantageous and beneficial to County and its citizens to participate in the construction of the Project, as provided herein; and

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

1. Description of Project. The Project consists of the construction of the extension of Sansbury Boulevard from Grand Estates Boulevard east to Canyon Lake Drive as depicted in the plans prepared by Terra Associates, Inc. (the "Project Engineer") and as approved by County on September 3, 2014 (the "Plans"), attached hereto as Exhibit A and incorporated herein for all purposes.

2. Construction of Project. In exchange for Owner participating in the Project, County has agreed to construct extension of Sansbury Boulevard substantially in accordance with the Plans and in accordance with County design and construction standards.

3. Owner's Contribution to the Project.

(a) As its contribution to the Project, Owner will pay to County an amount equal to the following, hereinafter collectively referred to as "Owner Contribution:"

- i. Fifty percent (50%) of the construction cost of paving and roadway related items for the Project;
- ii. One hundred percent (100%) of the storm sewer and water line construction costs for the Project; and
- iii. One hundred percent (100%) of the construction cost for the sidewalk located on the north side of the right of way.

(b) Owner shall make an initial payment in an amount equal to an estimate of the Owner Contribution prepared by the Project Engineer, attached hereto as Exhibit B and incorporated herein for all purposes, ("Initial Payment") prior to award of the construction contract by the County. The Initial Payment shall be based on 110% of the Project Engineer's estimate of the Owner Contribution, subject to County's approval of the Project Engineer's estimate;

(c) The Owner Contribution will be available to County for the above-described construction costs associated with the Project, and County shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Owner Contribution in connection with the construction of the Project.

(d) Upon County issuing a final letter of acceptance for the construction of the Project, the County will provide to Owner a final accounting of the Project Costs including the actual costs of the items described in Section 3(e) above. Within sixty (60) days of County's issuance and Owner's receipt of such final accounting, Owner shall make a payment in an amount equal to the difference between the Owner Contribution and the Initial Payment, if the Initial Payment is less than the Owner Contribution. However, should the Initial Payment exceed the Owner Contribution, County agrees to return such funds paid in excess by Owner. The final accounting will be based on the contractor's final pay estimate for the Project.

(e) Owner reserves the right to seek any available sources for reimbursement of its Owner Contribution under rules provided by the Texas Commission on Environmental Quality.

4. Disclaimer/Waiver of Damages/Liability. (a) Owner acknowledges and agrees that 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 the Project, in whole or in part.

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

(c) Owner hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, 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, solely and directly, the negligence or willful misconduct of County or its authorized officers, agents, representatives or employees.

**5. PARTIES' ACKNOWLEDGEMENT 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.**

6. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the Project 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.

7. Default. In the event Owner fails to comply with any of the provisions of this Agreement within thirty (30) business days after Owner's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

(a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against the Owner and/or the Property; and/or

(b) to refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or

(c) to refuse to finally accept the Owner Property and/or any portion thereof; and/or

(d) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

8. 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: Richard W. Stolleis, P.E., County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: Robert E. Hebert, County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Owner, to:

CarMax Auto Superstores, Inc.  
Attention: Daniel T. Bickett  
12800 Tuckahoe Creek Parkway  
Richmond, Virginia 23238

(b) Assignment. This Agreement is not assignable by Owner without the prior written consent of County, which consent shall not be unreasonably withheld.

(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.

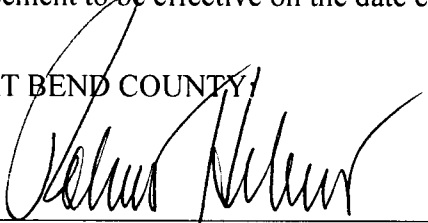
(p) Owner's Warranties/Representations. All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of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

(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 4 and 5 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.

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

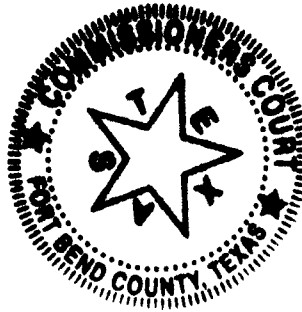
FORT BEND COUNTY

  
Robert E. Hebert, County Judge

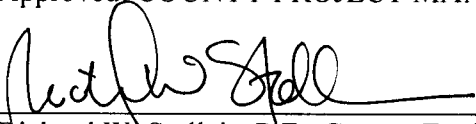
1-27-2015  
Date

Attest:

  
County Clerk 1-27-2015



Approved: COUNTY PROJECT MANAGER

  
Richard W. Stolleis, P.E., County Engineer

OWNER:

CarMax Auto Superstores, Inc.

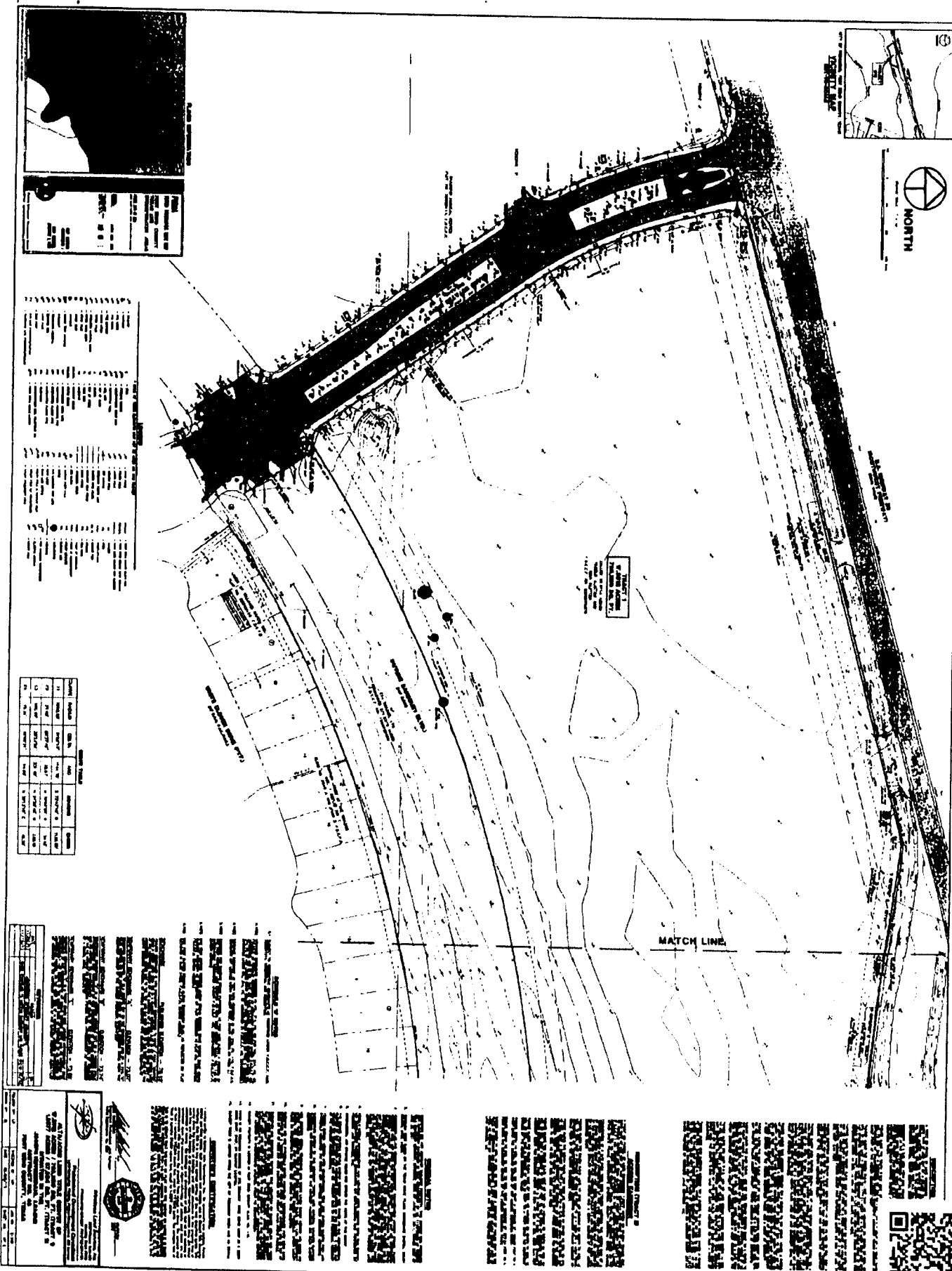
  
Daniel T. Bickett, Vice President <sup>TM</sup>

Date: 1.16.15

# EXHIBIT A



EXHIBIT A





# EXHIBIT B

**Preliminary Engineers Estimate of Probable Construction Costs For  
Sansbury Road Extension - Full Boulevard**

Date: January, 2015

Job No.: 0125-1301

ITEM	DESCRIPTION	UNIT	ESTIMATED QUANTITY	ESTIMATED UNIT COST	ESTIMATED TOTAL COST	CarMax SHARE	COUNTY SHARE
<b>PAVING &amp; DIRT WORK</b>							
1	STORM WATER POLLUTION PREVENTION PLAN	LS	1	\$ 10,000.00	\$ 10,000	\$ 5,000	\$ 5,000
2	TRAFFIC CONTROL PLAN	MO	3	\$ 1,800.00	\$ 5,400	\$ 2,700	\$ 2,700
3	Removing Concrete Ramp	SY	5	\$ 15.00	\$ 75	\$ 38	\$ 38
4	Roadway Excavation including Stripping	CY	3007	\$ 9.00	\$ 27,063	\$ 13,532	\$ 13,532
5	LIME FOR SUBGRADE STABILIZED 37 LBS./SY	TON	182	\$ 165.00	\$ 30,030	\$ 15,015	\$ 15,015
6	MANIPULATION OF LIME FOR SUBGRADE STABILIZATION	CY	2193	\$ 3.00	\$ 6,579	\$ 3,290	\$ 3,290
7	8-INCH REINFORCED CONCRETE PAVING	SY	8511	\$ 45.00	\$ 382,995	\$ 191,498	\$ 191,498
8	TIE IN TO EXISTING PAVEMENT AT SANSBURY & GRAND ESTATES	EA	4	\$ 1,200.00	\$ 4,800	\$ 2,400	\$ 2,400
9	6-INCH REINFORCED CONCRETE CURB	LF	6000	\$ 3.00	\$ 18,000	\$ 9,000	\$ 9,000
10	NORTH CONCRETE SIDEWALK (5' WIDTH) 4.5" DEPTH	LF	1503	\$ 22.00	\$ 33,066	\$ 33,066	\$ -
11	SOUTH CONCRETE SIDEWALK (5' WIDTH) 4.5" DEPTH	LF	-	\$ 22.00	\$ -	\$ -	\$ -
12	TY 1 (W) (4") (BRK) (100 mil)	LF	1170	\$ 0.50	\$ 585	\$ 293	\$ 293
13	TY 1 (W) (4") (SLD) (100 mil)	LF	40	\$ 1.00	\$ 40	\$ 20	\$ 20
14	TY 1 (W) (8") (SLD) (100 mil)	LF	240	\$ 1.25	\$ 300	\$ 150	\$ 150
15	TY 1 (W) (24") (SLD) (100 mil)	LF	40	\$ 6.00	\$ 240	\$ 120	\$ 120
16	TY 1 (W) (ARROW) (100 mil)	EA	2	\$ 135.00	\$ 270	\$ 135	\$ 135
17	TY 1 (W) (WORD) (100 mil)	EA	2	\$ 130.00	\$ 260	\$ 130	\$ 130
18	REFL PAV MRK TY II-C-R	EA	130	\$ 4.00	\$ 520	\$ 260	\$ 260
19	NON-REFLEC TRAFFIC BUTTON (W)	EA	48	\$ 4.00	\$ 192	\$ 96	\$ 96
20	Pavement surface preparation for markers (BLAST CLN) (ARROW)	EA	2	\$ 15.00	\$ 30	\$ 15	\$ 15
21	Pavement surface preparation for markers (BLAST CLN) (WORD)	EA	2	\$ 19.00	\$ 38	\$ 19	\$ 19
22	Pavement surface preparation for markers (4")	LF	1210	\$ 0.04	\$ 48	\$ 24	\$ 24
23	Pavement surface preparation for markers (24")	LF	40	\$ 1.00	\$ 40	\$ 20	\$ 20
24	Pavement surface preparation for markers (8")	LF	240	\$ 0.12	\$ 29	\$ 14	\$ 14
25	Aluminum Signs	EA	4	\$ 300.00	\$ 1,200	\$ 600	\$ 600
	Remove existing Stop Bar, Turn Arrows, Existing Directional Sign (W1-6), and Yellow Turn Lane Stripping complete and in place	LS	1	\$ 2,500.00	\$ 2,500	\$ 1,250	\$ 1,250
27	Reflectorized Paint for Esplanade (ER-ER)	LF	450	\$ 1.00	\$ 450	\$ 225	\$ 225
28	HYDROMULCH SEEDING OF DISTURBED AREAS	AC.	2.12	\$ 1,800.00	\$ 3,816	\$ 1,908	\$ 1,908
<b>SUBTOTAL - PAVING &amp; GRADING ITEMS</b>					<b>\$ 528,566</b>	<b>\$ 264,283</b>	<b>\$ 264,283</b>
<b>STORM SEWER COLLECTION SYSTEM</b>							
1	24-INCH C76, CI III, RCP, STORM SEWER	LF	358	\$ 80.00	\$ 28,640	\$ 28,640	\$ -
2	36-INCH C76, CI III, RCP, STORM SEWER	LF	367	\$ 125.00	\$ 45,875	\$ 45,875	\$ -
3	48-INCH C76, CI III, RCP, STORM SEWER	LF	293	\$ 150.00	\$ 43,950	\$ 43,950	\$ -
4	60-INCH C76, CI III, RCP, STORM SEWER	LF	332	\$ 235.00	\$ 78,020	\$ 78,020	\$ -
5	5x4 RCB, STORM SEWER	LF	30	\$ 400.00	\$ 12,000	\$ 12,000	\$ -
6	5x4 RCB, STORM SEWER BORE AND JACK	LF	92	\$ 950.00	\$ 87,400	\$ 87,400	\$ -
7	Type E INLET	EA	4	\$ 1,500.00	\$ 6,000	\$ 6,000	\$ -
8	TYPE H-2 STORM SEWER INLET, ALL DEPTHS	EA	4	\$ 2,150.00	\$ 8,600	\$ 8,600	\$ -
9	TYPE C STORM SEWER MANHOLE - 24" to 72"	EA	4	\$ 3,400.00	\$ 13,600	\$ 13,600	\$ -
10	MANHOLE ON EXISTING BOX STORM SEWER	EA	1	\$ 1,800.00	\$ 1,800	\$ 1,800	\$ -
11	TRENCH SAFETY	LF	1,380	\$ 2.00	\$ 2,760	\$ 2,760	\$ -
<b>SUBTOTAL - STORM SEWER COLLECTION SYSTEM</b>					<b>\$ 328,645</b>	<b>\$ 328,645</b>	<b>\$ -</b>
<b>WATER DISTRIBUTION SYSTEM</b>							
1	12-INCH WATER MAIN, C-900, CL150	LF	1,514	\$ 55.00	\$ 83,270	\$ 83,270	\$ -
2	Fire Hydrants, Complete Assembly Includes Hydrant, 6" Gate Valve and Box, Tee, 6" FH Lead, and Restrained Fittings Bury All Depths, Complete in Place	EA	5	\$ 3,900.00	\$ 19,500	\$ 19,500	\$ -
3	12-in Gate Valve	EA	1	\$ 2,500.00	\$ 2,500	\$ 2,500	\$ -
4	12-in Wet Connect	EA	1	\$ 1,100.00	\$ 1,100	\$ 1,100	\$ -
5	TRENCH SAFETY	LF	1,514	\$ 1.50	\$ 2,271	\$ 2,271	\$ -
<b>SUBTOTAL - WATER SYSTEM</b>					<b>\$ 108,641</b>	<b>\$ 108,641</b>	<b>\$ -</b>
<b>PRELIMINARY ENGINEER'S ESTIMATE OF PROBABLE CONSTRUCTION COST SUMMARY</b>							
<b>PAVING AND GRADING ITEMS</b>					<b>\$ 528,566</b>	<b>\$ 264,283</b>	<b>\$ 264,283</b>
<b>STORM SEWER COLLECTION SYSTEM</b>					<b>\$ 328,645</b>	<b>\$ 328,645</b>	<b>\$ -</b>
<b>WATER SYSTEM</b>					<b>\$ 108,641</b>	<b>\$ 108,641</b>	<b>\$ -</b>
<b>Soft Cost (construction admin, management, materials testing, inspections, etc.)</b>					<b>\$ 96,585</b>	<b>\$ 70,157</b>	<b>\$ 26,428</b>
<b>TOTAL AMOUNT ESTIMATED*</b>					<b>\$ 1,062,437</b>	<b>\$ 771,726</b>	<b>\$ 290,711</b>

This cost estimate is based on the current design standards for public paving and utilities as promulgated by the governing authorities.

- \* Does not include landscape & irrigation costs
- \* Does not include power, telephone & gas service costs.
- \* Actual construction costs may be higher, or lower than, this estimate.