COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET NEW UTILITY FACILITY KEEP COST BETTERMENT AGREEMENT PURSUANT TO KRS 177.035 WORK BY CABINET'S HIGHWAY CONTRACTOR COMPENSABLE TO THE CABINET

Fayette County FD39 034 85884 02C Widen Newtown Pike Item No. 7-375.00

THIS UTILITY BETTERMENT AGREEMENT is made and entered into by and between the Kentucky Transportation Cabinet, Department of Highways, hereinafter the Cabinet, and Lexington Fayette Urban County Government, 101 East Vine Street Suite 400, Lexington Kentucky, 40507, hereinafter referred to as the City.

AGREEMENT PREMISES

- 1. The Cabinet, in the interest of public safety and convenience, proposes to widen Newtown Pike to a five lane urban highway including turn lanes and traffic signal upgrades at Bluegrass Community and Technical College Newtown Campus across from Booker Street, from West Fourth Street to West Loudon Avenue, a distance of approximately three tenths (0.3) miles as shown by the Cabinet's survey and general plan sheets, which are hereby made a part of this Agreement.
- 2. The subject project was authorized by TC 10-1, Official Order Authorization No. 85884 002C, dated October 11, 2011. The scope of betterment, which as pertains to this agreement, is in the amount of \$793,064.00, and is one hundred (100) percent compensable to the Cabinet by the City.

- 3. The City proposes to complete betterment to their existing sanitary sewer facilities. The sanitary sewer facilities are proposed to be constructed within the right of way for the proposed roadwork for Newtown Pike. The proposed betterment work will be constructed by the Cabinet's road contractor as a part of the Cabinet's road construction contract.
- 4. The City and the Cabinet agree that it is in the best interest of both parties that the Cabinet's general road contractor perform the work to construct the City's facilities as designed by the City and shown on plans provided by the City, which are to be made a part of the Cabinet's survey and general plan sheets.
- 5. The said facilities may be constructed upon highway right of way, with restrictions, or upon other private right of way to be obtained by the City.
- 6. If required and applicable, the Cabinet will recommend approval of this project to the Federal Highway Administration for construction with funds apportioned to the Cabinet under the Federal Aid Highway Program, and Acts amendatory thereof and supplementary thereto, including Subpart A of 23 Code of Federal Regulations (CFR) 645.
- 7. The Cabinet, through the services of a contractor or internal personnel, is authorized herein to complete the proposed betterment to the City's facilities. The total cost of said betterment work is to be one hundred (100) percent compensable to the Cabinet with one hundred (100) percent of the costs to be borne by the City.

SCOPE OF AGREEMENT

In consideration of the above premises, the parties agree as follows:

- 8. The Cabinet's contractor or subcontractor will furnish all construction labor, equipment and materials to accomplish the proposed betterment to the City's facilities. All work shall be completed in a manner that will accommodate the proposed highway construction. Said work will be completed as shown in the attached plans and estimate (Attachment A) and which by this reference is hereby made a part of this Agreement.
- 9. The City proposes betterment work to be completed by the Cabinet's contractor as part of this highway project. All work directly pertaining to said betterment is detailed in Attachment A and is one hundred (100) percent compensable to the Cabinet as estimated. Such betterment work to be done is substantially as follows: the City will install 1660 linear feet of eighteen (18) inch ductile iron sewer line; 411 linear feet of eight (8) inch SDR 35 sewer line; 165 linear feet of four (4) inch PVC sewer lateral line; sixteen (16) five (5) foot diameter manholes. Additionally the City will abandon 1576 linear feet of sanitary sewer line..
- 10. Such betterment work is estimated to cost \$793,064.00, which is one hundred (100) Percent of the total cost and is to be borne by the City and compensable to the Cabinet.
- 11. The net cost of the proposed betterment work to be completed by the Cabinet's roadway contractor is \$793,064.00, and is compensable to the Cabinet.
- 12. The City and the Cabinet shall have the right to review any change orders for work by the contractor prior to the work being initiated. Said change order must

be reasonably detailed and include proper itemizations by the Cabinet. The City shall review any request for change orders relative to the construction activities within two (2) working days of its submission. A change order shall be considered in the event there is a change in the scope of work, extra work to be performed, or other major changes in the work covered by this Agreement.

- 13. The Cabinet reserves the right to refuse to have performed any extra work that the City may request over and above that shown in the plans.
- 14. On any relocation project, all work within the limits of the Cabinet's right-of-way, whether by force account or contract, shall be done in accordance with the Cabinet's Standards, Specifications, and Standard Drawings. All traffic control will be in accordance with Part VI of the *Manual on Uniform Traffic Control Devices*. Backfilling and bedding, if required and/or necessary, will be performed in accordance with the most recent version of the Roadway Drainage Installations (RDI) section of the Cabinet's *Division of Highway Design Standard Drawings*. Surface restoration, if required, will be performed in accordance with details as shown in the most recent version of the Cabinet's Standard Specifications for Road and Bridge Construction and the *Permits Manual*, or as directed by the Cabinet's engineer.
- 15. On any relocation project, the vertical clearance of overhead utilities shall be a minimum of eighteen (18) feet or in no case less than the clearance required by the National Electric Safety Code, American National Standards Institute, Institute of Electrical & Electronic Engineers, Inc.

- 16. On any relocation project, the vertical clearance of overhead utilities crossing the interstate or other limited access highway, roadways, and ramps shall be a minimum of twenty-four (24) feet as determined by the Cabinet, but in no case less than the clearance required by the National Electric Safety Code, American National Standards Institute, Institute of Electrical & Electronic Engineers, Inc.
- 17. Per Cabinet policy in the most recent version of the Cabinet's *Permits Manual*, the following minimum standards are to be adhered to regarding underground utility construction for any relocation project: The minimum depth for underground utilities on fully controlled access routes, except for natural gas and petroleum fraction lines, is forty-two (42) inches. Underground utilities on nonfully controlled access routes except for natural gas and petroleum fraction lines, is forty-two (42) inches under roadways, shoulders, ramps, and ditch lines and thirty (30) inches in all other areas within state right-of-way. For natural gas and petroleum fraction lines located within the state right-of-way on fully controlled access highways, the minimum depth is sixty (60) inches. For non-fully controlled access highways the minimum depth for such lines, is sixty (60) inches when located inside of ditch lines and a minimum of forty-two (42) inches in all other areas outside of ditch lines. Exceptions may be made where a lesser depth will not interfere with the highway maintenance or safety. Exceptions shall include an engineering study that will be prepared and submitted by the permittee and approved by the Cabinet's engineer.

RESPONSIBILITIES OF THE CITY

- 18. The City will compensate the Cabinet for the actual cost of any qualifying compensable costs of the Cabinet upon presentation of invoices from the Cabinet.

 The Cabinet will compute costs by keeping accurate diaries, logs, and records of actual utility construction as it is performed.
- 19. Itemized bills from the Cabinet to the City will be in detail form that will meet the approval of the Cabinet and the Federal Highway Administration.

Payments from the City will be made on the following basis:

<u>Partial Compensation</u>. The Cabinet is due compensation from the City. In such a condition, the Cabinet will submit billings reflecting the actual cost incurred during any given work period, in which case the current billings will be paid within thirty (30) business days after receipt of same by the City.

Final Payment. Upon completion of all said work, the Cabinet shall provide one final and complete billing of all remaining costs incurred. Said invoice will be based on bid costs or the unit costs as shown in Attachment A (if said bid costs are not included in the construction bid documents) and calculated by multiplying actual as-bid costs and as-built quantities and any approved change orders. The City shall pay the invoice amount within thirty (30) business days after receipt of same.

The remainder of this page is intentionally left blank.

ADDITIONAL REQUIREMENTS

- 20. The Cabinet certifies that it is in compliance with the provisions of KRS 45A.695.

 "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the Agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The City also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884
- 21. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)
- 22. All records of the City pertaining to this project will be subject to inspection at any reasonable time by representatives of the Cabinet and/or the Federal Highway Administration, and shall be retained and maintained as prescribed in 23 CFR

- 645.117 (i)(3). Such records shall be maintained in accordance with and 49 CFR 18.42 Retention and Access Requirements for Records.
- 23. The work of altering and maintaining the City's facilities covered by this Agreement, at any time after they have been relocated and/or constructed by the Cabinet as herein provided, shall be done by the City at its sole expense except as may otherwise be provided by law. Such work as is necessary to install, alter, service and maintain any facilities within the Cabinet's right of way will be performed in accordance with policies and procedures prescribed by the Cabinet's Permits Manual and in such a manner as will ensure the safety of the general public in their use of the road as a highway.
- 24. The City shall comply with 18 United States Code (U.S.C.) 874 Copeland "Anti-Kickback" Act as supplemented in Department of Labor regulations (29 CFR Part 3).
- 25. It is agreed by and between the parties hereto that 23 CFR 645 and supplements and amendments thereto form an essential part of this Agreement, and shall in no way be abrogated or superseded by the terms and provisions of this Agreement.
- 26. Limited to acts related to this Agreement, the City indemnify and hold harmless the Cabinet against any and all third-party claims, demands, obligations, or litigation, that result from: (1) any material breach of this Agreement by the City; (2) any all negligent City; acts of the and (3) policy, procedure, any employment practice of the City violating applicable, Federal, State, or local laws.

- 27. The City shall maintain adequate protection of all work from damage and shall protect the Cabinet's property from injury or loss arising in connection with this Agreement. The City shall make good any such damage, injury or loss, except such as may be directly due to errors in the solicitation or caused by agents or employees of the Cabinet. The City shall adequately protect adjacent property as provided by law and this Agreement.
- 28. The City shall take all necessary precautions for the safety of City employees and agents on the work site and shall comply with all applicable provisions of Federal, State and municipal safety laws and building codes to prevent accidents or injury to City personnel or persons on, about or adjacent to the premises where the work is being performed. The City personnel and its agents shall comply with all applicable Federal and State Occupational Safety and Health Administration (OSHA) standards including 23 CFR 634 and Kentucky Revised Statutes (KRS) Chapter 338.
- 29. KRS 45A.480 requires the City to comply with the Cabinet's requirements pertaining to workers' compensation insurance and unemployment insurance. By execution of this agreement, the City agrees that all contractors and subcontractors employed directly by the City, or to be employed directly by the City in connection with this Agreement shall be in compliance with Kentucky requirements for Workers' Compensation Insurance KRS Chapter 342 and Unemployment Insurance KRS Chapter 341.
- 30. By execution of this Agreement, the City is agreeing that the scope of this Agreement shall be in compliance with all applicable Federal, State and local

laws, regulations and mandates. Compliance as described herein includes, but not exclusively, environmental regulations such as: Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR Part 15).

31. To the extent applicable to this agreement, the City shall comply with the Buy America requirements (as specified in 23 U.S.C. 313 and 23 CFR 635.410) if the utility work uses any amount of Federal Aid Highway Program (FAHP) funding. The City is not required to change its existing standards for materials as long as the Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or relocation of the City's facilities (as specified in 23 CFR 645) on contracts or agreements involving FAHP funding and over regulations which allow the City to furnish materials from City stock (as specified in 23 CFR 645.117(e)). City stock materials that do not meet Buy America requirements may not be permanently incorporated into an FAHP funded project. The City must provide a definitive statement that all products, permanently incorporated into the project are covered under the Buy America requirements. This requirement is fulfilled via proper signature and submission of the statement of charges form. In some circumstances, a waiver of the Buy America requirements may be granted by the Federal Highway Administration, to be determined on a project-by-project basis. If the accommodation or relocation of the City's facilities uses only State or local funding, the Buy America requirements do not apply.

- 32. The Commonwealth of Kentucky and the Cabinet are prohibited from contracting with firms that utilize the services of illegal immigrants in the performance of a contract of goods, services or construction purposes and the performance of a contract with the Commonwealth. By the execution of this Agreement, the City agrees not to hire any illegal immigrants itself and to take commercially reasonable measures to ensure that its contractors and their subcontractors not utilize the services of illegal immigrants.
- 33. The Cabinet may terminate this Agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Agreement. The Cabinet shall provide the City thirty (30) calendar days written notice of termination of the Agreement.
- 34. The City reserves the right in its sole discretion to demand that the Cabinet and all subcontractors immediately cease any portion of, or all further work undertaken within the scope of work of this agreement. Any authorized services performed, materials used or installed to the satisfaction of the City before the demand to cease any or all further work shall be paid in accordance with the terms of the section entitled "Responsibilities of the City".
- 35. The City affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded. The City shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this

Fayette County Lexington Fayette Urban County Government Item No. 7-375.00

Agreement. Such registration is obtained from the Secretary of State, who will

also provide the certification thereof.

36. This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Kentucky. In the event that any one or more of the provisions contained herein 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 provisions of this agreement, but this agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

The remainder of this page is intentionally left blank.

Fayette County Lexington Fayette Urban County Government Item No. 7-375.00

AGREEMENT EXECUTION

By the execution of this Agreement, the Parties warrant that they have fully read this Agreement, agree to the terms and conditions and accept the assignment of work duties as defined within this Agreement.

The proposed betterment work and the cost to the Cabinet to complete such work, using the Cabinet's contractor, shall be compensated by the City. The City warrants that all compensable costs invoiced will be paid as defined herein.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly

authorized officers. This the day of 2012. COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET APPROVALS Approval of the Utilities & Rails Branch Approval of the Division of Right of Way and Utilities SIGNATURE: SIGNATURE: TEBM – Utilities and Rails Keith McDonald, Division Director DATE: Approved Legality SIGNATURE SKUL (DATE: 1-8-13 Office of Legal Services Approval of Lexington Fayette Urban County Government SIGNATURE: _____ DATE: _____ TITLE:

Fayette County Lexington Fayette Urban County Government Item No. 7-375.00



Steven L. Beshear Governor Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF THE SECRETARY

Room 383, Capitol Annex 702 Capital Avenue Frankfort, KY 40601-3462 (502) 564-4240 Fax (502) 564-6785 Lori H. Flanery Secretary

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a formal review process should be created whereby the Finance and Administration Cabinet would provide oversight and direction to an agency of the Commonwealth that is in a dispute with a vendor regarding documents that it believes are being improperly withheld by the vendor and are necessary to conduct a thorough review of the vendor's activities pursuant to said contract; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, 45A.230, and 200 KAR 5:314, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the filing of a Petition for Determination with the Finance and Administration Cabinet by an agency of the Commonwealth, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the filing of a Petition for Determination from an agency of the Commonwealth, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits,

KentuckyUnbridledSpirit.com



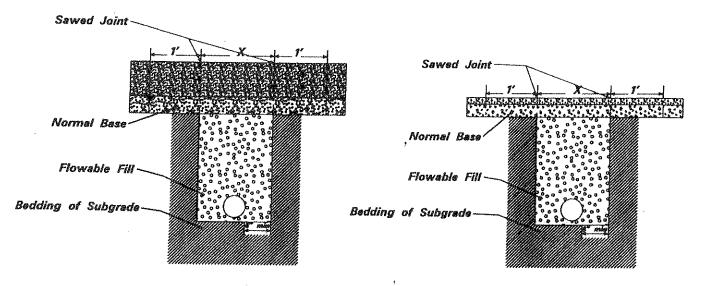
An Equal Opportunity Employer M/F/D

investigations or any other formal inquiry and a dispute has arisen as to what documents are necessary to conclude the inquiry.

- III. Upon the filing of a Petition for Determination by an agency of the Commonwealth pursuant to Section I or Section II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall pursue any and all options that it possesses to obtain the documents in question, including, but not limited to the following:
 - a. Initiating discussions with the vendor to obtain the documents determined to be necessary for the inquiry;
 - b., Terminating the vendor's contract; or
 - c. Filing an action jointly or singularly against the vendor in a court of appropriate jurisdiction to obtain a court order mandating the disclosure of the documents determined to be necessary for the inquiry.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

THIS ORDER SHALL BECOME EFFECTIVE UPON EXECUTION.

COMMONWEALTH OF KENTUCKY DEPARTMENT OF HIGHWAYS RESTORATION District Seven Permits



CONCRETE PAVING

BITUMINOUS PAVING

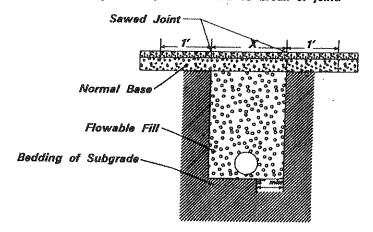
General Notes:

Fill extends to bottom of pavement structure.

Replace pavement with existing type and thickness.

Fill material must be agitated during transportation and waiting.

If the sawed joints are less than 6' from an existing joint or break in pavement, remove slab to break or joint.



BITUMINOUS PAVING LESS THAN 2"

FLOWABLE FILL SPECIFICATIONS:

Flowable fill ingredients must meet the requirements of the Kentucky Department of Highways as set forth in the manual of standard specifications

Proportioned as follows per cubic yard batch:

Fly Ash, Class F

30 Pounds 300 Pounds

Sand (SSD)

3,000 Pounds

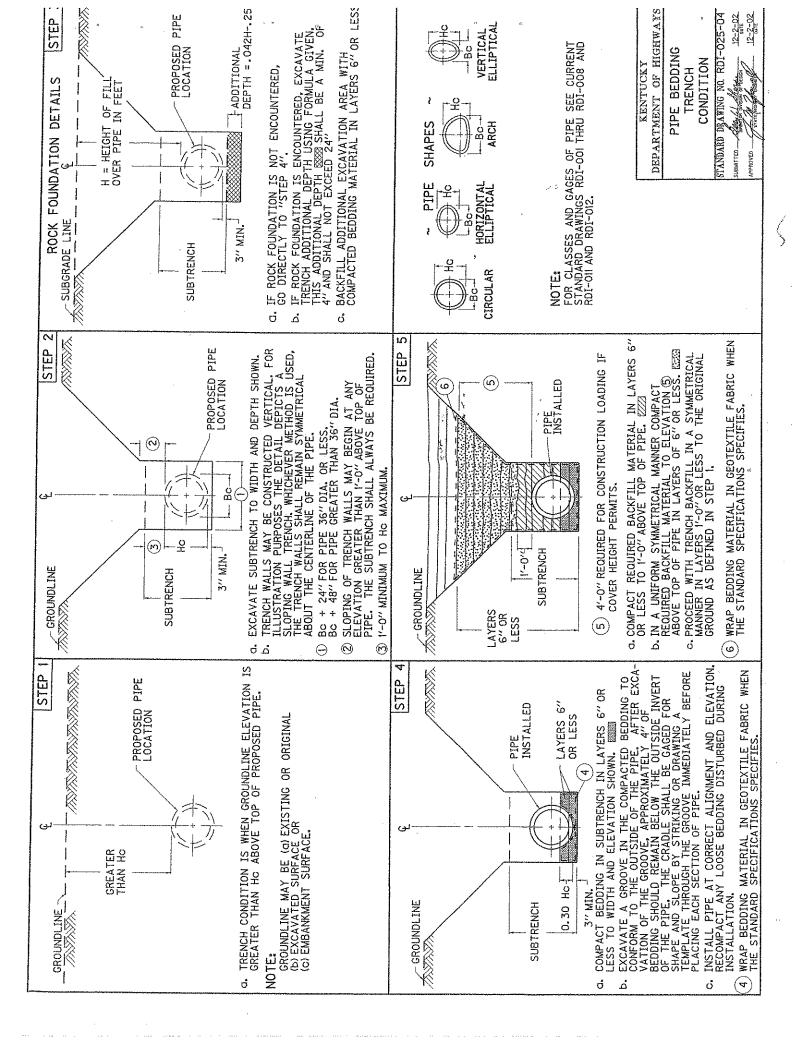
Water (mex)

550 Pounds

Note:

The proposed mixture shall be proportioned to obtain a minimum flow of 8 inches when tested with a 3 inch by 6 inch open ended cylinder modified flow test and meets acceptable strength requirements.

The mixture shall bleed freely within 10 minutes.
The mixture shall suport a 150 pound person within 3 hours.
Flowable fill shall be in place for 2 hours prior to addition and compaction of cover material.





LFUCG Sanitary Sewer Project Engineer Estimate

ITEM#	DESCRIPTION	QUANTIT	Y UNITS	UNIT PRICE	TOTA AMOUN
PHASEI					
1	18" Ductile Iron Sewer Line (10'-20') -Line B	302	LF	\$250.00	\$75,50
2	8" SDR 35 Sewer Line -Line D	411	LF	\$100.00	\$41,10
3	18" Ductile Iron Sewer Line (10'-20') -Line A	23	LF	\$250.00	\$5,75
4	18" Ductile Iron Sewer Line (10'-20') -Line C	39	LF	\$250.00	\$9,75
5	5' Dia Manholes w/ Frame & Lid (0-10') -Line B	2	EA	\$5,000.00	\$10,00
6	5' Dia Drop Manholes w/ Frame & Lid (0-10') -Line B	2	EA	\$5,500.00	\$11,00
7	5' Dia Manholes w/ Frame & Lid (0-10') -Line D	ŀ	EA	\$5,000.00	\$5,00
8	Extra Depth Manhole (depths greater than 10') 5' Dia.	23	VF	\$500.00	\$11,50
9	Rock Excavation (Mechanical Rock Removal, No Blasting)	5	CY	\$100.00	\$50
10	Service Lateral Reconnect -Depths >10' 4" to 6" (including up to 30 LF of lateral line and cleanout)	3	EA	\$2,150.00	\$6,45
11	Flowable Fill Concrete, including, sand and flowable fill as		LF	\$120.00	\$63,12
	shown on detail sheet and described in specs (Bit. Replacement Not Included)	526		<u> </u>	40003 140
12	By Pass Pumping, 500 to 1000 LF Discharge line -Line B	1	LS	\$16,800.00	\$16,80
13	By Pass Pumping, 500 to 1000 LF Discharge line - Line D	1	LS	\$8,080.00	\$8,08
	The state of the s	· · · · · · · · · · · · · · · · · · ·		**************************************	\$264,55
HASE II & II					
14	Clearing & Grubbing	1	LS	\$10,000.00	\$10,00
15	18" Ductile Iron Sewer Line (10'-20') -Line A	367	LF	\$210.00	\$77,07
16	Bore & Jack 18" Sewer (30" Casing Pipe)	126	LF	\$500.00	\$63,00
17	18" Ductile Iron Sewer Line (10'-20') -Line C	803	LF	\$210.00	\$168,63
18	15" SDR 35 Sewer Line (0'-10') - Line E	90	LF	\$200.00	\$18,00
19	5' Dia Manholes w/ Frame & Lid (0-10') -Line A	5	EA	\$5,000.00	\$25,00
20	5' Dia Manholes w/ Frame & Lid (0-10') -Line C	5	EA	\$5,000.00	\$25,00
21	5' Dia Manholes w/ Frame & Lid (0-10') -Line E	1	EA	\$5,000.00	\$5,00
22	Extra Depth Manhole (depths greater than 10') 5' Dia.	53	VF	\$500.00	\$26,50
23	Rock Excavation (Mechanical Rock Removal, No Blasting)	460	CY	\$100.00	\$46,00
24	Service Lateral Reconnect -Depths >10' 4" to 6" (including cleanout) (Line A)	1	EA	\$2,050.00	\$2,05
25	4" PVC Sewer Lateral Line (Line A)	165	LF	\$63.00	\$10,39
26	Bituminous Paving Replacement on County Roads and Driveways. Including gravel backfill	530	LF	\$30.00	\$15,90
27	Silt Fence	2,810	LF	\$2.50	\$7,02
28	By Pass Pumping, 500 to 1000 LF Discharge line -Line A	1	LS	\$14,400.00	\$14,40
29	By Pass Pumping, 500 to 1000 LF Discharge line -Line C	1	LS	\$12,120.00	\$12,12
30	By Pass Pumping, 1 to 500 LF Discharge line - Line E	1	LS	\$2,424.00	\$2,42 \$528,51
	Quantity of Sanitary Sewer Abandoned				
		1,576	LF	70000000000000000000000000000000000000	
	TOTAL ESTIMATED COST OF CONSTRUCTIO	N			\$793,064