

RESOLUTION NO. 1185

**A RESOLUTION OF THE GOLDEN CITY COUNCIL APPROVING
THE SUBDIVISION DEVELOPMENT AGREEMENT FOR THE
CANYON VIEW BUSINESS PARK SUBDIVISION - FILING NO. 1
FINAL PLAT**

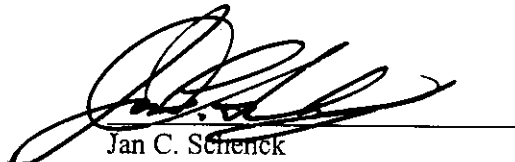
WHEREAS, the L.H. Kilgroe Construction Company (subdivider) has submitted a proposed final subdivision plat for property within the City of Golden, State of Colorado, entitled Canyon View Business Park Subdivision - Filing No. 1 Final Plat; and

WHEREAS, the City of Golden City Council approved the final plat for the subject property on January 25, 2001, subject to City Council approval of the Subdivision Development Agreement.


THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The Subdivision Development Agreement for the Canyon View Business Park Filing No.1 Subdivision is approved substantially in the form attached hereto as Exhibit A. The City Manager is authorized to execute the agreement on behalf of the City, upon final approval of the form of the agreement by the City Attorney.

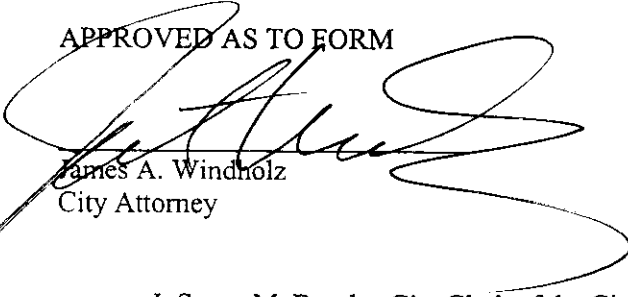
Adopted the 8th day of March, 2001.


Jan C. Schenck
Mayor

ATTEST:


Susan M. Brooks, CMC/AAE
City Clerk

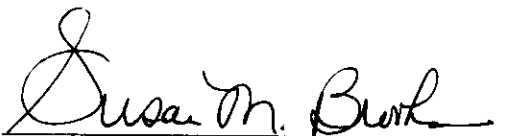
APPROVED AS TO FORM


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 8th day of March, A.D., 2001.

(SEAL)

ATTEST:


Susan M. Brooks, City Clerk of the City of
Golden, Colorado

SUBDIVISION DEVELOPMENT AGREEMENT

Canyon View Business Park Filing No.1 Subdivision

THIS AGREEMENT is entered into between the City of Golden, Colorado (the City) and L.H. Kilgroe Const. Co. (Developer), this 15 day of March, 2001.

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RECITALS

A. L.H. KILGROE CONST. CO. OWN REAL PROPERTY (THE PROPERTY) WITHIN THE CITY GENERALLY LOCATED AT PINE RIDGE ROAD AND COLORADO HIGHWAY 93 AND KNOWN AS THE SUBDIVISION APPROVED AS CANYON VIEW BUSINESS PARK FILING NO.1.

B. THE DEVELOPER INTENDS TO IMPROVE AND/OR DEVELOP THE PROPERTY IN A MANNER AS AUTHORIZED BY THE SUBDIVISION APPROVED BY RESOLUTION NO. 1176, ADOPTED BY THE CITY ON JANUARY 25, 2001. CITY AND DEVELOPER ARE EXECUTING THIS AGREEMENT TO SET FORTH THEIR RESPECTIVE RIGHTS AND OBLIGATIONS WITH RESPECT TO THE PROPOSED USES OF THE PROPERTY AND THE PROPOSED IMPROVEMENTS THEREON.

C. THE CITY, PURSUANT TO THE GOLDEN MUNICIPAL CODE, REQUIRES EXECUTION OF A SUBDIVISION DEVELOPMENT AGREEMENT ESTABLISHING THE OBLIGATION FOR THE PROVISION OF SUCH IMPROVEMENTS NECESSITATED BY SUBDIVISION AND/OR DEVELOPMENT.

D. IN CONSIDERATION OF THE APPROVAL BY THE CITY OF THE PLAT, PLANS AND PROFILES OF THE SUBDIVISION KNOWN AS KILGROE BUSINESS PARK FILING NO.1, THE DEVELOPER, ITS HEIRS, SUCCESSORS, AND ASSIGNS AGREE TO COMPLETE THE PUBLIC IMPROVEMENTS AS PROVIDED HEREIN.

AGREEMENT

1.00 DEFINITIONS

Unless the context otherwise clearly indicates, the following words and phrases shall be defined as follows:

1.01 "City" shall refer to the City of Golden, Colorado, a Municipal Corporation organized pursuant to the laws of the State of Colorado, and shall include the City Manager, or his/her designed or other official, body or agency designated by statute, charter or ordinance to act on behalf of the City.

1.02 "Developer" shall include the owner or owners of the property, and shall include any person acting in accordance with the duly executed power of attorney granting the attorney-in-fact full authority to act in the stead of the developer.

1.03 "Improvements" shall include any public physical facilities and/or obligations identified by this Agreement and the plat, plans, and profiles, and applicable provisions of the subdivision and zoning ordinance approved by the City in conjunction with the Developer's subdivision/development

application.

1.04 "Plat" shall refer to the subdivision plat approved by the City Council of Golden in Resolution No. 1176, and all conditions included therein.

1.05 "Comprehensive plan" shall refer to the Master Planning document of the City of Golden, as adopted by the Planning Commission and approved by the City Council, including all adopted and approved amendments thereto. 2

1.06 "Property" shall refer to the property contained in the subdivision plat approved by the City Council of Golden in Resolution No. 1176. 2

2.00 IMPROVEMENTS REQUIRED -- SECURITY

2.01 Improvements. Developer shall design, construct and provide all public improvements in accordance with the plat, plans and profiles, and the subdivision and zoning ordinances of the City of Golden, Colorado, including, but not limited to adequate drainage systems (on and off site as required to serve the subdivision), erosion control measures, streets, public thoroughfares (including curb, gutter, detached sidewalks, paving, handicap ramps, street signs, pavement markings, and reconstruction of existing private streets where required by the City Engineer), future traffic signal at Highway 93 and Pine Ridge Road, water and wastewater facilities to serve the subdivision, fire hydrants, right of way landscaping, and the submission of "as-built" plans for such public improvements. Such design and construction shall be in accordance with the plans approved by the City Engineer as in compliance with the city's engineering regulations in effect at the time of construction. The schedule of public improvements, hereto attached as Exhibit "A", outlines those improvements and the estimated costs of such public improvements.

It shall be the responsibility of the Developer, at its sole expense, to design, construct and install such improvements for acceptance by the City, or appropriate Governmental entity, according to this Agreement, the plat, the applicable standards, rules and regulations of the City, or appropriate Governmental entity as the case may be, and in accordance with the approved plans and profiles submitted by the Developer and approved by the City. Such improvements shall be completed for initial acceptance within two years of the date hereof; provided, however, that such completion date may be extended for good cause shown in the discretion of the City. The Developer will maintain and repair such improvements until final acceptance thereof by the City and/or District, and/or appropriate Governmental entity.

2.02 Payment of Contractors, Materials, and Laborers. The Developer shall promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the work provided for in this Agreement, and to any persons who may otherwise be entitled to assert a lien upon the property by virtue of Section 38-22-101, et seq., C.R.S. In the event that any person asserts a lien upon the property by virtue of Section 38-22-101, et seq., C.R.S., Developer will indemnify and defend the City with respect to the claimed lien, and shall further immediately take any and all steps as are necessary to remove lien from any property dedicated to the City regardless of the merits of the claimant of the lien.

2.03 Restrictions on Conveyance and Certificates of Occupancy. In order to secure the performance of the work to be done by the Developer, the Developer agrees that there shall be no conveyance sale or transfer of title of any individual lot, lots or tracts within the subdivision, nor will the City issue any certificates of occupancy for any lot in the subdivision until all public

improvements which are the subject of this agreement are fully completed and initially accepted by the City, and the City issues a Certificate of Compliance releasing this prohibition. The foregoing notwithstanding, the Developer or Partial Owner may convey to a single developer 100% of their ownership within the subdivision, with the prior written consent of the City Manager, provided, however, that such conveyance shall be subject to all provisions of this Agreement, including restrictions upon subsequent conveyances and restrictions on certificates of occupancy. The City Manager's approval shall not be unreasonably withheld. This provision shall not restrict the Developer from accepting financial deposits for lot reservations or sales contracts, nor shall it restrict the issuance of building permits. None of these restrictions apply to lots 25 and 29, which do not require additional public improvements.

2.04 Substitution of Performance Surety. At any time, the Developer may furnish to the City, in form and substance acceptable to the City Manager, a performance guaranty in an amount not less than 25% of the total estimated cost of the improvements, as set out in Exhibits "A". Upon acceptance of such substituted performance surety, the City shall release the restriction on conveyances and certificates of occupancy. The substituted security shall be in the form of a irrevocable letter of credit, performance bond, or escrow of either cash or corporate or municipal bonds rated at least AA by Standard and Poors or an equivalent rating by Moody's, with such escrow agreement as is acceptable to the City Attorney, subject to the following terms and conditions.

(A) The Irrevocable Letter of Credit, Performance Bond, or Escrow shall provide financial guarantee that the Developer will fulfill all obligations under the terms of this Agreement. Reference to exhibit's attached hereto is to establish the amount of the financial guarantee and shall not be construed to limiting the liability of such guarantor to improvements set out in specific exhibits.

(B) The entity issuing the Performance Bond shall have at least an "A" Rating from Moody's or an equivalent rating as designated by a nationally recognized rating firm, and shall additionally be included in the most recent listing of companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.

(C) The entity issuing the Irrevocable Letter of Credit must maintain an office or corresponding bank within 50 miles of the City of Golden, and shall have a current rating of 125 or better from IDS Financial Services, Inc., or otherwise be approved by the City Treasurer.

(D) Developer shall not have greater than a 10% ownership or managerial control over the entity issuing any performance guaranty.

(E) In the event that prior to City acceptance of the improvements the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying, or the cost of improvements construction is reasonably determined by the City to be greater than the amount of security provided, then the City shall furnish the Developer with written notice of such conditions, and within 30 days of receipt of mailing of such notice, the Developer shall provide the City with a substituted qualifying Performance Guarantee, or augment the deficient security to achieve the required security. If such Performance Guarantee is not timely furnished, then the development activities, including, but not limited to, the issuing of building permits and certificates of occupancy may be suspended by the City pending compliance herewith.

(F) Letters of credit acceptable hereunder shall have an expiration date no sooner than six months following the scheduled completion of improvements.

(G) Developer may request and the City shall grant reductions in contract security for improvements constructed and initially accepted by the City, provided however that sufficient proportional security remains to ensure completion of all remaining obligations, but no less than the warranty security required by Section 5.06.

2.05 Traffic Signal at State Highway 93 and Pine Ridge Road. The Developer will contribute 100% of the cost of installation of a future traffic signal at State Highway 93 and Pine Ridge Road, provided such traffic signal is warranted within 10 years of the approval of the subject subdivision. In conjunction with the provision of performance surety to guaranty completion of improvements listed in Exhibit A, the Developer will provide a separate performance surety to be held by the City for use in installation of said future traffic signal at State Highway 93 and Pine Ridge Road, should such traffic signal be warranted within 10 years of the approval of the subject subdivision. Said performance surety shall be in the amount listed in Exhibit A. The actual contribution will be determined at the time that the signal is approved by CDOT based upon actual bids for installation secured by the Developer or the City. 4 4

3.00 ADDITIONAL PROVISIONS -

3.01 City Utilities/Cash Fee in Lieu of Water Rights The City shall provide water and wastewater services to the Property in accordance with this paragraph and the requirements of Chapter 13 of the Municipal Code. The parties acknowledge that the Developer is in possession of four water tap connections, which water connections provide service to portions of the Property or adjacent property and which, may be continued or used as a credit toward additional system development fees to provide upgraded water service to the lot served by the existing tap. These existing water tap connections include: No.35-5014 (3/4 inch); No.35-5012 (2 inch); No.35-5010 (2 inch); No.35-5000 (1 inch). Except as specifically provided herein, additional water and wastewater services will be provided for the property, upon satisfaction of all of the requirements of Chapter 13.04 and 13.08 of the Municipal Code including the requirement that the property owner construct all necessary improvements which shall comply with the Golden Water and Wastewater Specifications, pay all applicable fees, and provide water rights as necessary to serve the property, or a cash fee in lieu of water rights, to the City. Said cash fee in lieu of water rights will be calculated at the time of final site plan approval and submitted upon issuance of the building permit for construction or renovation of a building requesting additional water or wastewater service. The calculation of necessary water rights shall be based upon an independent determination by the City's water engineer of the water requirements of the proposed development phase. The value of any cash fee in lieu of water rights shall be based upon the then current value of water, as determined by the City's water attorney. However if the City's determination in this regard either as to water requirements or value or both is deemed excessive by Developer's professional consultants, the following procedure shall be utilized: Developer's professional consultants promptly shall confer with the City's engineer and/or water attorney, in order to negotiate a water rights payment mutually acceptable to the parties and, if such agreement cannot be reached within fifteen days of the date upon which the consultants confer, the matter shall be submitted to binding arbitration to be held within fifteen additional days before a panel consisting of one water attorney and one water engineer chosen by mutual agreement among the City's engineer and water attorney and Developer's professional consultants. the parties shall share equally the cost of such arbitration

and shall abide by the results thereof.

3.02 Open Space Dedication . In the Annexation Agreement for the property, the parties anticipated, and now agree to, satisfaction of the parkland dedication requirement by dedication of off-site lands, located west of the subdivision and consisting of a portion of the 19.89 acre portion of the "Dakota hogback" designated as open space in the Kilgroe Annexation No.3 Official Development Plan. In the event that such dedication of off-site lands has not been completed prior to recording of the Kilgroe Business Park Filing No.1 final subdivision plat, a financial guaranty in the amount of \$65,000 in a form acceptable to the City will be temporarily substituted to allow recording of this final plat. 5

3.03 Acceptance of Pine Ridge Road and Private Streets. The parties acknowledge that Pine Ridge Road and the north south road located approximately 1,000 feet west of the intersection of Pine Ridge Road and Highway 93 were not previously formally accepted for maintenance by Jefferson County. Upon completion of improvements to these streets as contained in the approved construction plans for the Property, the Developer will request acceptance of these streets and related improvements according to the procedures detailed in Section 5 of this agreement. 5

4.00 LIABILITY LIMITATIONS -- HOLD HARMLESS

4.01 Non-Liability. Developer acknowledges that the City's review and approval of the plans for the development of the property is done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to the Developer or third parties is assumed by such review approval, or immunity waived, as is more specifically set forth in the Colorado Governmental Immunity Act.

4.02 Hold Harmless. Developer agrees to save, defend and hold the City harmless from any claims of willful misconduct or negligence brought by any third party against the City which is attributable to any act or omission of the Developer, its employees, agents, contractors, subcontractors, and consultants with respect to the property. Developer shall bear all reasonable costs of investigation and litigation, including reasonable attorney fees, incurred by the City in defending such claim. This indemnification does not extend to claims of willful misconduct or negligence brought by any third party against the City which is attributable to any act or omission of the City. In the event of a claim covered by this indemnification provision, the City shall notify the Developer of the claim and the Developer shall have the option of retaining counsel to represent the City in the defense of the claim.

4.03 Insurance. The Developer and its contractors performing work in the public right-of-way constructing those improvements contemplated by this agreement shall at all times hereunder have and maintain in full force and effect comprehensive liability insurance, providing general liability, and comprehensive automobile liability insurance. The Developer's architect and engineer responsible for work in the right-of-way shall also carry professional liability insurance. The policies shall name the City and its agents, officials and employees as additional insurers and shall provide coverage for the liability risks identified at Section 4.02 hereof, and shall not be less than the minimum amounts per occurrence as set forth in the Colorado Governmental Immunity Act as that Act may from time to time be amended. The Developer and contractors shall at all times fully comply with the Colorado Workmen's Compensation Act, and shall ensure that each of its contractors and subcontractors are in full compliance with the Act. The Developer shall submit

certificates of insurance in compliance with the standards as set forth above. Nothing herein shall be construed to relieve or discharge the Developer of its liability to the City under the terms of this Agreement should the Developer for any reason fail to procure and maintain any required insurance in sufficient amounts.

5.00 DEVELOPMENT STANDARDS AND PROCEDURES

5.01 Engineering Services. The Developer shall, at its sole expense, procure all engineering services necessary and appropriate in conjunction with the development of the property which shall fully conform to the City's ordinances, rules, regulations, standards and specifications. Professional services shall be performed by engineers, surveyors, architects, or other professionals duly licensed by the State of Colorado as may be appropriate. 6

5.02 Review. All applicable plans for improvements shall be approved by the City, which approval shall not be unreasonably or arbitrarily withheld, and shall be given in a timely fashion. No construction of improvements shall occur without prior plan approval. 6

5.03 Testing. The Developer, at its sole expense, shall employ a professionally qualified, independent testing company to perform all testing of materials or construction as may be reasonably required by the City to ensure compliance with applicable standards and specifications. Developer shall furnish the City with certified copies of test results, and agrees to release and authorize full access to the City and their designated representatives all work up materials, procedures and documents used in preparing the test results.

5.04 Inspection. At all times during construction of the improvements, and until final acceptance thereof by the City, the City shall have the right, but not the duty to inspect materials and workmanship in order to ascertain conformance with the approved plans, standards and specifications. Developer shall reasonably cooperate and assist the City in gaining appropriate access to the areas designated for inspection. It shall be the duty of the Developer to notify the City upon discovery of any non-conformance with said plans, standards and specifications to which the developer has or should have actual knowledge of such non-conformance. Inspection and acceptance of work by the City shall not relieve the Developer of any responsibility under this Agreement.

5.05 Initial Acceptance of Improvements. Upon completion of the improvements the Developer shall submit to the City "as built" drawings of the improvements, proposed documents of conveyance, and a statement certifying that the improvements are fully complete, have been fully paid for, and the Developer has fully paid all persons or entities having furnished labor or materials for the design and construction of the improvements. Upon inspection (which inspection shall occur within 21 days of the Developer's submission) and finding of satisfactory completion of the improvements in compliance herewith and all applicable standards and ordinances of the City, and upon submission and approval of an acceptable replacement Warranty Guarantee (which approval shall occur within 21 days of submission), the City shall issue a "Certificate of Initial Acceptance" to the Developer which shall commence the running of the one (1) year repair/replacement period for improvements, and authorize replacement of the original performance guarantee with the replacement Warranty Guarantee listed in Section 5.06 (b) below.

In the event that the City determines that the improvements have not been completed in a satisfactory fashion or that the replacement Warranty Guarantee is unacceptable, the City shall provide written notice to the Developer specifically delineating any unsatisfactory items and, in such event, the Developer shall correct any unsatisfactory item and provide notice of correction to the City. The City shall then re-inspect those items within 15 days of notice from the Developer.

5.06 Warranty Guarantee.

(a) Developer warrants that all improvements hereunder will be free from defects, including but not limited to defects of materials, workmanship or design, and that the improvements otherwise fully comply with the applicable approved plans and profiles, and city standards and specifications.

(b) A Warranty Guarantee shall be posted and shall be equal to 25% of the cost of right of way landscape improvements, and 10% of the total cost of all other improvements, as certified to the City. The Warranty Guarantee shall be in such form and issued by such institution as provided in paragraph 2.03 of this Agreement. The Warranty Guarantee shall provide security for the cost which may be incurred in repairing and/or replacing improvements during the period of two full growing seasons for right of way landscaping, and a period of one (1) year following initial acceptance by the City as defined in Paragraph 5.05, and in defending or removing claims of unpaid laborers, material suppliers and/or subcontractors who may attempt to assert a lien upon the property.

(c) In the event that any substantial repair or replacement is required to any of the improvements during the one (1) year warranty period or the two growing season warranty period for right of way landscaping and such repair or replacement is not timely made upon notice of defect or in any event before expiration of the repair/replacement period, the City, may, in addition to any other legal or remedies available to the City:

(1) Extend the repair/replacement period for up to one (1) year following initial acceptance of the completed repair or replacement; and/or

(2) Require that the Developer adjust the amount or term of the Warranty Guarantee as may be appropriate; and/or

(3) Call the Warranty Guarantee and, at the City's discretion, secure repair or replacement of the non-conforming improvements; and/or

(4) Order denial or suspension of building permits, utility services or certificates of occupancy outstanding until repair or replacement of any non-conforming improvements have been performed.

5.07 Procedure for Final Acceptance of Improvements. No earlier than 60 days prior to the expiration of the repair/replacement period, the Developer shall submit a written request for final acceptance of the improvements. The City shall conduct a final inspection of the improvements and if such improvements fully conform to this Agreement and the applicable City standards and specifications, and if all repairs as are needed have been made to bring the same into such conformance, then the City shall issue a "Certificate of Acceptance" and certified final inspection and approval of the improvements. After final acceptance the City shall release the performance and/or warranty guarantee provided no lien claims or statements have been filed with respect to the project. Separate acceptance requests for right of way landscaping and other improvements shall be processed if requested by Developer.

6.00 OWNERSHIP OF IMPROVEMENTS

Subject to this Agreement and to the provisions of any City ordinances, resolutions, rules, regulations and standards relating to the City acceptance of the improvements provided for herein, the Developer shall convey all of the improvements free and clear of all liens, encumbrances and restrictions.

7.00 ENFORCEMENT AND REMEDIES

7.01 Breach of Agreement. In the event that either party should fail to timely comply with any of the terms, conditions, covenants and undertakings hereof, such non-compliance shall be cured and brought into compliance within thirty days of written notice of breach by the other party. Such notice will specify the conditions of default. The City may after the cure period withhold any additional building permits, certificates of occupancy, or provision of new utility fixtures or service only upon reasonable cause. Nothing hereunder shall be construed to limit the parties from pursuing any other remedy at law or in equity which may be appropriate under the charter or ordinances of the City, and the applicable laws and legal standards of the State of Colorado or the United States before any court of competent jurisdiction, including remedies which may be available against the Performance or Warranty Guarantees. Such remedies shall be cumulative.

7.02 Legal Expenses. In the event that it is necessary to initiate legal proceedings to enforce the provisions of this Agreement, the party in default shall be responsible for all reasonable legal expenses and costs incurred by the non-defaulting party.

7.03 Venue. Venue for any legal proceedings shall be in the County of Jefferson, State of Colorado.

8.00 MISCELLANEOUS PROVISIONS

8.01 No Waiver. Nothing herein shall constitute or be interpreted as a waiver or repeal of existing codes or ordinance or the City's legislative, governmental or police powers, nor shall this Agreement prohibit the enactment by the City of any fees or any other ordinances which are of uniform or general application.

8.02 Section Headings. The section of headings are inserted herein only for convenience or reference, and in no way shall be defined to limit or describe the scope or intent of any of the provisions in this Agreement.

Signed this 30 day of October, 2001.

CITY OF GOLDEN

By: 
City Manager

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ATTEST:

City Clerk

APPROVED AS TO FORM:



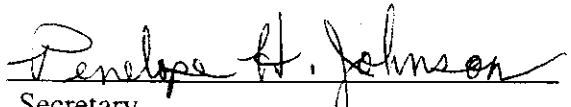
City Attorney

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L.H. KILGROE CONST CO.

By: 

ATTEST:



Secretary

EXHIBIT "A"

	UNIT	QUANTITY	UNIT COST	TOTAL
<u>Water</u>				
8" Water Line	Lf	3,100	\$34.00	\$105,400.00
12" Water Line	Lf	3,065	\$40.00	\$122,600.00
8" Valves	Ea	5	\$1,700.00	\$8,500.00 10
12" Valves	Ea	5	\$2,000.00	\$10,000.00
Fire Hydrants	Ea	15	\$3,000.00	\$45,000.00 10
Sewer 8"	Lf	4,085	\$40.00	\$163,400.00
Man Holes	Ea	15	\$3,500.00	\$52,500.00
Storm Sewer	Lf	700	\$60.00	\$42,000.00
Inlets	Ea	3	\$2,500.00	\$7,500.00
North Street Paving	Tons	5,612	\$36.00	\$202,032.00
South of Pine Ridge Paving	Tons	3,177	\$36.00	\$114,372.00
Curb & Gutter	Lf	11,000	\$11.00	\$121,000.00
Cross Pans	Sq Yds	128	\$40.00	\$5,120.00
84" RCP	Lf	90	\$275.00	\$24,750.00
Head Walls	Ls			\$15,000.00
Earth Work	Ls			\$225,000.00
Landscaping	Ls			\$50,000.00
			Total	\$1,314,174.00
Bonding at 25%				\$328,543.50
Traffic Signal	Ls			\$100,000.00