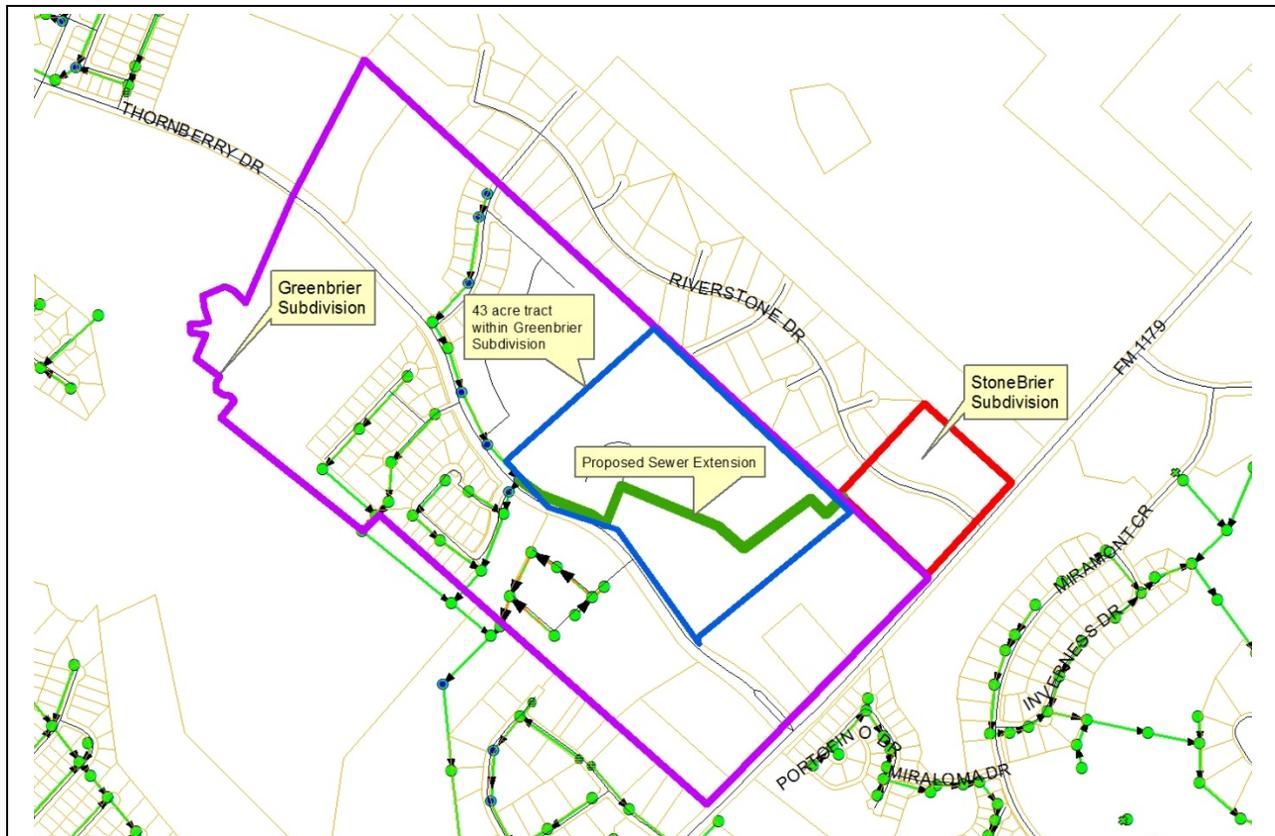


ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: December 2, 2014		DATE SUBMITTED: November 17, 2014	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Kevin Russell	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider authorizing the Mayor to execute a Chapter 380 Development Agreement between the City of Bryan and Homewood LLC to provide up to a \$246,319.50 interest free loan to be used for the sole purpose of constructing a new public sanitary sewer line that will serve parts of the Greenbrier Subdivision and Stonebrier Subdivision.			
SUMMARY STATEMENT: The City was approached by the Developer of the Greenbrier Subdivision (Homewood LLC), in early 2014 to assist in the construction of a public sanitary sewer line. This proposed interest free loan would remove one of the obstacles in development of this property. In the summer of 2014, the City Council was made aware of the possibility of the developer's request for the City's assistance, requested in the form of a loan. The Council directed staff to bring an agreement back for consideration.			
<p>Under the proposed Chapter 380 Development Agreement, Homewood LLC will construct an eight-inch diameter sanitary sewer line from an existing manhole in the Greenbrier Subdivision. The sewer line will follow the planned routes of future streets to the joint property line from which the sewer will be extended to the Stonebrier Subdivision where it will terminate as it does not serve more adjacent properties. Having the City participate with the developer through this Chapter 380 Development Agreement will allow the development of the Stonebrier Subdivision at this time, which is ahead of the planned development for the phases of Greenbrier through which this sewer extends. Homewood LLC is to begin construction on the approximately 45 acre tract within five (5) years and will repay the City of Bryan the full amount of the loan over a ten (10) year term. If the entire 45 acres is not platted during the ten (10) year term, Homewood LLC will pay interest in the amount of five percent (5%) on the outstanding balance in one lump sum payment at year ten.</p> <p>In the past, the City has entered into agreements with developers and extended sewer lines at critical points to spur new growth, including Texas Triangle Park, as well as a major trunk line extension near FM158 and FM1179 to spur new residential growth. This proposed agreement is more beneficial to the City long-term, as it involves a loan versus a sole expense to the City.</p>			



STAFF ANALYSIS AND RECOMMENDATION: Staff recommends the City Council authorize the Mayor to execute the Chapter 380 Agreement with Homewood LLC to construct a public sanitary sewer line through Greenbrier Subdivision to the adjoining property line to the east. Homewood LLC is to begin construction on the approximately 45-acre tract within five (5) years and will fully repay the loan amount to the City of Bryan over a ten (10) year term. If the subdivision has not been platted and amount is not paid in full after ten (10) years, the developer will make a single lump sum payment to the City for the balance plus five percent (5%) interest on the outstanding balance at the 10th year.

OPTIONS (In Suggested Order of Staff Preference):

1. Authorize the Mayor to execute the agreement
2. Do not authorize the Mayor to execute the agreement

ATTACHMENTS:

1. Chapter 380 Agreement
2. Engineer's Estimate

FUNDING SOURCE: Waste Water Fund 515 not to exceed - \$246,319.50

APPROVALS: Hugh R. Walker, 11/18/2014; Joey Dunn, 11-24-14

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 11-24-2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 11-24-2014

STATE OF TEXAS §

COUNTY OF BRAZOS §

CHAPTER 380 DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRYAN, TEXAS AND HOMEWOOD, LLC

This Agreement is made by and between the City of Bryan, Texas, a home-rule municipal corporation (“City”) and Homewood, LLC, a limited liability company operating pursuant to the laws of the State of Texas (“Developer”) on this the ___ day of _____, 2014.

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association, or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, the Developer is the owner of an approximately forty-five (45) acre tract situated off F.M. 1179 in Bryan, Brazos County, Texas (“Property”) which it plans to develop in the future as single family residential housing, which is tentatively laid out as shown in **Exhibit A**; and

WHEREAS, the City is interested in accelerating the development of the Property in order to provide infrastructure to adjacent parcels and facilitate nearby development, as well as to fill a niche in the City’s housing market; and

WHEREAS, the City Council has determined that the construction of mid-range residential housing will be a catalyst for the growth of the City, because affordable mid-range housing will bring more residents to the City, which will in turn mean more business for the local economy; and

WHEREAS, the City Council finds that the Developer has plans to construct housing of the type needed by the City, and that the City can accelerate those plans by making the construction of infrastructure affordable immediately; and

WHEREAS, the City Council is willing to provide a loan, with the proceeds to be used for infrastructure construction, with the provision that the Developer will repay the loan incrementally as the Property develops, but at least within ten (10) years; and

WHEREAS, the City Council finds that the loan of money will facilitate the development of adjacent properties and accelerate the development of the Property, and that the ensuing economic benefit to the community justifies the City’s assistance; and

NOW, THEREFORE, City and Developer agree as follows:

A. Construction of Infrastructure

1. For the purposes of this Agreement only, Developer is responsible for the construction of sanitary sewer, to the size and specifications acceptable to the City Engineer, which will

connect the Property, as well as adjacent properties, to the City's existing sanitary sewer system. The layout of the sewer is to be substantially as shown on **Exhibit A**. The City understands that Developer will be contracting with a third party to do the construction and that Developer will be using funds obtained from the City to pay invoices related to construction, or reimburse the third party for the cost of same.

2. The City agrees to provide the Developer with a loan of up to \$246,319.50 in order to finance the payment or reimbursement of the sanitary sewer construction costs. Funds are payable by the City within thirty (30) days following a written request from Developer, which may be tendered after acceptance of the work by the City.
3. Funds provided by the City pursuant to this Agreement may only be used by Developer to reimburse, or directly pay invoices for, construction of sanitary sewer, and related infrastructure. The infrastructure must be related to, and sufficient to serve, a residential subdivision made up of mid-range single family housing on the Property, as well as an adjacent property being developed as a residential subdivision. For the purposes of this Agreement, Developer will be deemed in compliance with this provision if Developer is in compliance with the requirements of the Planned Development District in which the Property is located.

B. Repayment

4. Developer agrees to repay the City as the Property develops, as provided herein, but no later than ten (10) years after Completion of Construction. The term "Completion of Construction" shall be deemed to have occurred upon final acceptance of the sanitary sewer infrastructure by the City.
5. The Developer shall make proportional, partial repayments to the City each time the Developer files a plat for all or a portion of the Property. The repayment amount shall be determined by taking the total amount of the loan and dividing that by the forty-five (45) acres of the Property to arrive at the "per acre" repayment cost. Before a plat may be approved for the Property, the Developer must pay the City back an amount equal to the number of acres being platted multiplied by the per acre repayment cost.
6. The City is offering this loan at no interest to the Developer as an incentive to accelerate the development of the Property. In order to qualify for this incentive, Developer must a) begin developing the Property, meaning a portion of the Property is platted, within five (5) years after Completion of Construction, and b) complete developing the Property, meaning that the remainder of the Property is platted, within ten (10) years after Completion of Construction. For the purposes of this Agreement, property is platted when a final plat is filed in the real property records of Brazos County, Texas (acceptance of the final plat by the City is not, by itself, sufficient). In the event that Developer has not platted all forty-five (45) acres of the Property within ten (10) years, in addition to the outstanding balance of the original loan, Developer must pay simple interest in the amount of five percent (5%) per annum on the outstanding balance of the loan.

C. Contract Lien

7. The Developer agrees that once the City tenders the loan proceeds to the Developer, such proceeds are secured by a contract lien which shall attach to the Property. As security for the repayment of the loan being made by the City, the parties will execute a

Memorandum of Contract Lien in the Official Records of Brazos County, Texas in a form substantially as shown in **Exhibit B**.

8. The City will execute a partial release of the Memorandum of Contract Lien with respect to each portion of the Property that is sold, provided that the City has received the per acre repayment cost for that portion of the Property.

D. Breach & Termination

9. It shall be deemed a breach of this Agreement if Developer:
 - a. Plats all or a portion of the Property in violation of the Planned Development District requirements;
 - b. Plats all or a portion of the Property without making the partial repayment; or
 - c. Fails to tender a final payment of the outstanding balance of the loan within ten (10) years after Completion of Construction.
10. In the event of a breach, the non-breaching party shall provide the other party with written notice and thirty (30) days to cure. If such breach is not cured, in the case of a breach by the Developer, the City may tender a demand for the outstanding balance of the loan, plus ten percent (10%) interest, per annum, of the outstanding balance of the loan from the date of completion of construction until the date the outstanding balance, plus interest, is paid in full, or the maximum amount allowed by law, whichever is less.
11. This Agreement is subject to annual appropriation for same by the City Council.

E. Miscellaneous

12. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: Economic Development Director
 City of Bryan
 P.O. Box 1000
 Bryan, Texas 77805-1000

If to Developer: Homewood, LLC
 Steve Arden
 311 Cecilia Loop
 College Station, Texas 77845

13. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
14. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are

performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

15. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
16. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
17. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
18. No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
19. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
20. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
21. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
22. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
23. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

Executed to be effective on the date approved by the City Council, as stated above.

CITY OF BRYAN:

DEVELOPER:

Jason P. Bienski, Mayor

Robert Carter, President

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

Exhibit A



Exhibit B
Memorandum of Contract Lien

STATE OF TEXAS §

COUNTY OF BRAZOS §

MEMORANDUM OF CONTRACT LIEN

This Memorandum of Contract Lien (“Memorandum”) is made and entered into by and between the City of Bryan, a Texas home rule municipal corporation (“City”) and Homewood LLC, a limited liability company operating under the laws of the State of Texas (“Developer”), effective on this the ___ day of _____, 20__.

The City and Developer entered into a Chapter 380 Economic Development Agreement (“Agreement”) where the City made a loan to Developer to finance the construction of sanitary sewer that would serve approximately forty-three (43) acres of the Developer’s property (“Property”) as well as adjacent tracts. The Property is more particularly described by metes and bounds as follows:

METES AND BOUNDS

Being all that certain tract or parcel of land lying and being situated in the JOHN AUSTIN LEAGUE, Abstract No. 2 in Bryan, Brazos County, Texas and being part of the 103.916 acre tract described in the deed from Anne Richter Carter, Robert Brennan Carter and George Francis Carter, Jr. to Homewood, LLC recorded in Volume 8938, Page 97 of the Official Records of Brazos County, Texas (O.R.B.C.) and being more particularly described by metes and bounds as follows:

BEGINNING: at the east corner of the said 103.916 Homewood, LLC tract, said corner also being in the northeast line of the called 176.241 acre Anne Richter Carter, et al tract recorded in Volume 3253, Page 207 (O.R.B.C.) and the southwest line of the called 89.096 acre 1179 Joint Venture I, L.P. tract recorded in Volume 6334, Page 235 (O.R.B.C.) and further described in the boundary line agreement recorded in Volume 7849, Page 6 (O.R.B.C), from whence a found 5/8-inch iron rod marking the east corner of the called 176.241 acre tract bears S 45° 01' 30" E at a distance of 616.30 feet for reference;

THENCE: along the southeast line of the said 103.916 acre Homewood, LLC tract for the following seven (7) calls:

- 1) S 57° 00' 44" W for a distance of 270.28 feet to the Point of Curvature of a curve to the left,
- 2) 227.56 feet along the arc of said curve having a central angle of 08° 41' 32", a radius of 1500.00 feet, a tangent of 114.00 feet and a long chord bearing S 52° 39' 58" W at a distance of 227.34 feet to the Point of Tangency,
- 3) S 48° 19' 12" W for a distance of 226.72 feet to the Point of Curvature of a curve to the right,
- 4) 224.89 feet along the arc of said curve having a central angle of 12° 16' 18", a radius of 1050.00 feet, a tangent of 112.88 feet and a long chord bearing S 54° 27' 21" W at a distance of 224.46 feet to the Point of Tangency,
- 5) S 60° 35' 29" W for a distance of 194.34 feet to the Point of Curvature of a curve to the left,
- 6) 138.54 feet along the arc of said curve having a central angle of 08° 21' 19", a radius of 950.00 feet, a tangent of 69.39 feet and a long chord bearing S 56° 24' 50" W at a distance of 138.41 feet to the Point of Compound Curvature,
- 7) 41.53 feet along the arc of said compound curve having a central angle of 95° 10' 38", a radius of 25.00 feet, a tangent of 27.37 feet and a long chord bearing S 04° 38' 51" W at a distance of 36.92 feet to the most southerly corner of this tract and being in the northeast line of the 11.190 acre right-of-way dedication tract for Thornberry Drive as recorded in Volume 9828, Page 120 (O.R.B.C.);

THENCE: along the said right-of-way of Thornberry Drive (based on a 100-foot width at this location) for the following four (4) calls:

- 1) 105.55 feet in a clockwise direction along the arc of a curve having a central angle of 10° 59' 44", a radius of 550.00 feet, a tangent of 52.94 feet and a long chord bearing N 37° 26' 36" W at a distance of 105.39 feet to a 3/4-inch iron pipe found for the Point of Tangency,
- 2) N 31° 56' 44" W for a distance of 523.71 feet to a 3/4-inch iron pipe found for the Point of Curvature of a curve to the left,
- 3) 547.27 feet along the arc of said curve having a central angle of 34° 50' 26", a radius of 900.00 feet, a tangent of 282.39 feet and a long chord bearing N 49° 21' 57" W at a distance of 538.88 feet to a 3/4-inch iron pipe found for the Point of Tangency, and
- 4) N 66° 47' 10" W for a distance of 150.51 feet to a 3/4-inch iron pipe found for corner;

THENCE: through the interior of the said 103.916 acre Homewood, LLC tract for the following nine (9) calls:

- 1) N 08° 50' 18" E for a distance of 15.47 feet for corner,
- 2) N 07° 32' 01" W for a distance of 234.61 feet for corner,
- 3) N 49° 34' 50" E for a distance of 342.74 feet for corner,
- 4) N 27° 55' 39" E for a distance of 182.21 feet for corner,
- 5) N 32° 50' 43" E for a distance of 108.37 feet for corner,
- 6) N 21° 26' 57" E for a distance of 182.08 feet for corner,
- 7) N 11° 16' 21" W for a distance of 170.44 feet for corner,
- 8) N 38° 59' 54" E for a distance of 100.01 feet for corner, and
- 9) N 21° 24' 21" E for a distance of 124.72 feet for corner in the southwest line of Block One, RIVERSTONE SUBDIVISION, PHASE ONE as recorded in Volume 8285, Page 56 (O.R.B.C.), said line being common with the before-mentioned boundary line agreement;

THENCE: S 45° 01' 30" E along the said agreed common boundary line for a distance of 2003.18 feet to the POINT OF BEGINNING and containing 45.385 acres of land, more or less.

Developer has agreed to repay the City in accordance with the terms of the Agreement, in phases when the property is platted for development. The covenants contained in the Agreement are covenants running with and appurtenant to the land. The purpose of this Memorandum is to notify the public of the repayment obligation attached to the Property. Unless released by the City under the terms of the Agreement, the Property is encumbered by an obligation to repay the loan, and interest if applicable, enforceable by the City.

For the purposes of determining whether the obligations set forth in the Agreement have been released, any party reviewing this Memorandum may conclusively rely on a release as to a particular parcel. The City will execute releases of this lien with respect to a particular parcel upon request, to be effective at closing on the sale of said parcel, provided that the City has received the per acre payment for the platted portion of the Property in which the particular parcel is located.

This Memorandum is not intended to alter or supersede the Agreement and in the event of any conflict between the two, the provisions of the Agreement shall control.

IN WITNESS WHEREOF

CITY OF BRYAN

ATTEST

Jason P. Bienski, Mayor

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney

HOMEWOOD, LLC

Robert Carter, President

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me the undersigned notary on this the ____ day of _____,
20__ by Robert Carter, President of Homewood, LLC on behalf of said organization.

Notary Public, State of _____

STONBRIER SUBDIVISION PHASE 1 & 2

OFFSITE SANITARY SEWER LINE

ENGINEERS QUANTITY AND COST ESTIMATE OF CONSTRUCTION COST

OFFSITE SANITARY SEWER					
1	MOBILIZATION, INSURANCE, LAYOUT, TRAFFIC CONTROL	L.S.	1	\$10,000.00	\$10,000.00
2	50 FOOT WIDE CONSTRUCTION EASEMENT: CLEAR, GRUB & REMOVAL OF WASTE FROM EASEMENT	AC.	1.80	\$5,000.00	\$9,000.00
3	8-INCH SAN SWR (0-8' CUT) IN EASEMENT	L.F.	2800	\$30.00	\$84,000.00
4	STRUCTURAL BACKFILL 2-FEET BELOW EXISTING NATURAL GROUND & 2-FEET ABOVE BOTTOM OF TRENCH (4' WIDE X 4' DEEP)	L.F.	2000	\$30.00	\$60,000.00
5	CONNECT TO EXISTING MANHOLE	L.S.	1	\$1,000.00	\$1,000.00
6	STANDARD 6.0' MANHOLE	EA.	11	\$3,000.00	\$33,000.00
7	EXTRA DEPTH MANHOLE	VF	25.0	\$300.00	\$7,500.00
8	DVD OF SANITARY SEWER LINE	L.F.	2800	\$2.50	\$7,000.00
9	EROSION/SEDIMENT CONTROL: INSTALL, MAINTAIN, REMOVAL	L.F.	2800	\$2.50	\$7,000.00
10	CREEK CROSSING CONCRETE PIERS	EA	4	\$3,250.00	\$13,000.00
11	TURF REINFORCEMENT MAT (TRM): RECYCLEX BY AMERICAN EXCELSIOR CO. INCLUDES INSTALLATION PER MANUFACTURERS RECOMMENDATIONS, DITCH BOTTOM PREP, TOPSOIL, SEEDBED, SEEDING, WATERING, MAINTENANCE AND ESTABLISH A HEALTHY GROUND COVER. (OR AN APPROVED EQUAL)	S.Y.	100	\$5.90	\$590.00
12	RE-VEGETATION, SEEDING & WATERING - ESTABLISH HEALTHY GROUND COVER WITHIN LIMITS OF PROJECT - ALL DENUDED AREAS ALONG EASEMENTS	L.S.	1	\$2,500.00	\$2,500.00

OFFSITE SANITARY SEWER =	\$234,590
5% CONTINGENCY =	\$11,730
OFFSITE ESTIMATED CONSTRUCTION COST =	\$246,319.50



Michael G. Hester, P.E.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY MICHAEL G. HESTER, P.E. #69104 ON September 26, 2014
RELEASED FOR RECORD
HESTER ENGINEERING COMPANY #f-3476