

THIS AGREEMENT made this day of , 2021

B ETWEEN:

MERRYWOOD INC.

(A Company incorporated under the laws of the Province of Ontario)
(Hereinafter called the "Owner")

OF THE FIRST PART

AND:

KERRY KEVIN TESKEY AND JULIE ANN TESKEY

(Hereinafter called the "Developer")

OF THE SECOND PART

AND:

THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES

(Hereinafter called the "Municipality")

OF THE THIRD PART

WHEREAS the Owner has obtained provisional consent from the Committee of Adjustment of the Municipality of Lambton Shores (file B-01/2021) pursuant to Section 53 of the *Planning Act, R.S.O. 1990* for the creation of a lot as a residential building lot as described in Schedule 'A' to this Agreement (hereinafter called the "Lands");

AND WHEREAS the conditions of approval of the said provisional consent include entering into a development agreement for the construction of infrastructure;

AND WHEREAS the Owner and the Developer represent that they have a separate agreement under which the Developer will satisfy all conditions of approval of the said consent and acquire the vacant building lot resulting from said provisional consent;

AND WHEREAS the Developer represents and warrants that they intend to develop said lot;

AND WHEREAS the former Corporation of the Township of Bosanquet acquired lands known as Plan 734, Block 55 pursuant to a previous agreement with 533762 Ontario Limited, dated September 17, 1990 respecting the lands;

AND WHEREAS said previous agreement including provisions respecting the return of Block 55 in Plan 734;

AND WHEREAS the Developer of has submitted plans to the Municipality for approval in accordance with said conditions of consent;

NOW THEREFORE the parties hereto agree as follows:

1. SCHEDULES

The following Schedules are hereby declared to form part of this Agreement and are attached hereto:

<u>Schedules</u>	<u>Description</u>
"A"	- being a legal description of the land affected hereinafter referred to as the "Lands".
"B"	- being plans and specifications identifying the new facilities, works and matters to be provided on the "Lands", hereinafter referred to as the "Development".
"C"	- being a draft reference plan of the parcels to be conveyed under this agreement.

2. SERVICING, GRADING AND INSPECTION

- (a) The Developer shall provide for the construction and maintenance of such sewers, water mains, roads, curbs, site grading, driveway installation, and service connections as designed, certified and shown in the Schedule "B", and as per the Municipality of Lambton Shores Engineering Standards and Specifications.
- (b) Specifically, the works required under this agreement include but are not necessarily limited to:
 - (i) the installation of a water lateral in the location shown on Schedule "B" to this agreement;
 - (ii) the grading, curbing, and surfacing of the road in the location and to the dimensions and grades shown on Schedule "B" to this agreement; and
 - (iii) the final finished grading and seeding of boulevards.

3. STANDARD OF WORK

- (a) Except as may be specified otherwise in this agreement, all works and services shall be constructed and installed strictly in accordance with the approved plans and specifications, which must conform to the Municipality of Lambton Shores standards or, in the case where Municipal standards do not exist, in accordance with the latest Ontario Provincial Standard Specifications and Drawings.

- (b) Any works or services to be constructed within a road allowance shall be located in accordance with Schedule "B". Should a variation be necessary that conflicts with the standard location of another utility, this variation must be approved by the Municipal Engineer prior to the installation. The Municipal Engineer may require, in writing, such variance from such plans and specifications as may be determined by conditions which may be disclosed as the work progresses, and by sound engineering practice.

4. SPECIAL PROVISIONS

- (a) The Developer agrees that the Municipality may require the Developer to provide and submit written work schedules to the Municipal Engineer for approval of any work required directly or indirectly by this Agreement.
- (b) The Developer agrees to obtain any approvals required by the Ausable Bayfield Conservation Authority under the *Conservation Authorities Act*.
- (c) The Developer agrees to register a reference plan consistent with the approval of the Committee of Adjustment and Schedule "C" to this agreement.
- (d) Pursuant to the development agreement entered into by the Corporation of the Township of Bosanquet on September 17, 1990 as authorized by By-law 65/90, the Municipality agrees, when all other conditions of consent have been met and securities required under this agreement have been given, to convey, free of any encumbrances, to the Developer, those lands identified in Schedule "C" to this agreement as Part 1 and to the Owner, those lands identified as Part 5. The Developer agrees to merge Part 1 to the lot created by the provisional consent (identified as Parts 2 and 3 in Schedule "C"). The Owner agrees to merge Part 5 with the retained parcel created by the provisional consent.
- (e) Pursuant to the conditions of consent, the Owner agrees to convey to the Municipality, free of any encumbrances, an easement for a public walkway over those lands identified as Part 3 in Schedule "C" to this agreement.
- (f) The Municipality agrees to pass a by-law to dedicate as a public highway those lands identified as Part 4 on Schedule "C", at the latest, when the Municipality passes a by-law to assume the works completed under this agreement. The Developer agrees the registration of said road dedication by-law shall be at the Developer's cost.
- (g) The cul-de-sac required by this agreement shall be constructed to an 11m radius.
- (h) The existing water blowoff shall be left in place. A note to this effect having been added to Schedule "B" that was not included in the original engineered servicing plans.
- (i) The water service shall be run with 12 gauge tracer wire as per municipal standards.

5. **-Omitted-**

6. **COMMENCEMENT AND COMPLETION**

- (a) The Developer agrees that no work shall commence on the lands until, and further that no person shall apply for or be entitled to a building permit with respect to the new residential building lot to be created by the provisional consent until:
- (i) the Developer has paid to the Municipality those monies required as securities and deposits by this Agreement;
 - (ii) the consent respecting the severance of Parts 2 and 3 shown on Schedule "C" has been finalized and registered and merged with Part 1 shown on Schedule "C" to this agreement; and
 - (iii) the Developer has obtained all necessary permits and approvals of the Work as required (e.g. Ontario Hydro etc.) and copies of such permits and approvals have been given to the Municipality and the Municipal Engineer; and
 - (iv) a pre-construction meeting with the Municipality has been held and final approval to proceed has been received from the Municipal Engineer.
- (b) The Developer shall thereafter wholly at its own expense construct, install and promptly pay for those works and services set out upon the plans and specifications hereinafter set forth, and also those set forth in Schedule "B" hereto annexed.
- (c) The Developer agree that any work required under this agreement shall not commence or, having commenced and subsequently halted, deferred or suspended (except overnight or over a weekend) shall not commence again without approval of the Municipal Engineer.

7. **GUARANTEE AND ASSUMPTION**

- (a) The Developer acknowledges that the services provided for in this agreement shall not become the property of the Municipality nor shall the Municipality be deemed to have assumed any works or services unless an assumption by-law has been enacted to that effect. The Developer also acknowledges and agrees that the Municipality accepts no liability whatsoever for the said services until such time as they are assumed by by-law and that all subsequent purchasers shall be notified in writing that such unassumed services are not the responsibility of the Municipality.
- (b) The Municipality shall not pass an assumption by-law until:
- (i) all the required works and services have been installed by the Developer and the Municipality is satisfied that they have been installed strictly in accordance with the requirements of the Agreement; and

- (ii) any deficiencies or difficulties in the required works or services have been corrected and repaired to the satisfaction of the Municipality.
- (c) When the Municipality passes an assumption by-law, it will also pass a by-law to dedicate Part 4 as identified in Schedule "C" as a public highway, if such a road dedication by-law has not already been passed.
- (d) When the Municipality has assumed the works and services, and a road dedication by-law has been passed and registered on title, the Municipality will release any money, deposit, or security which the Municipality has to which the Developer is entitled under this Agreement.

8. UNDERGROUND SERVICES

- (a) The Developer shall ensure that the installation of the services will not interfere with or be in conflict with location of any existing underground facilities, whether on road allowances or private rights-of-way. The Developer, or their Consulting Engineer, shall obtain field locates from the appropriate authority prior to the installation of any services.
- (b) The Developer shall cooperate and coordinate with all utility companies, such as Union Gas, Telephone Company, Cable TV, etc. so that the doing of the work which the Developer is required to do shall be coordinated as much as is practicable with the installation of any utilities which may be installed by any utility. Such installations shall not commence until the Municipality has approved the plans, design and specifications as are to be required.

9. GRADING CERTIFICATE

- (a) Surface drainage shall be accommodated on the "Lands" and shall not drain onto adjoining property. The Developer shall be responsible to ensure that the proposed development, subsequent construction of any structure on the lands, and final grading of the site do not in any way adversely affect the drainage of adjoining properties. The Developer agrees to indemnify the Municipality against any claims that may arise from the development with respect to alterations in the direction, quantity, or quality of surface drainage or storm water. Pursuant to Section 19 c), this clause, in particular, shall also apply to future lot owners.
- (b) No person shall be entitled to a building permit with respect to the proposed residential lot unless there is filed with the Municipal Engineer and Chief Building Official a Certified Lot Grading Plan, consistent with the preceding clause.
- (c) No newly constructed building shall be occupied or used unless there is filed with the Municipal Engineer and Chief Building Official a Final Grading Certificate, bearing the signature and seal of either a Registered Professional Engineer or an Ontario Land Surveyor showing the actual finished elevations and that the grading of these lands generally conform with the Certified Lot Grading Plan.

- (d) No person shall, at any time, add fill to a lot or grade a lot in such a manner that it will cause surface water to flow along the surface from that lot to any adjacent lands.

10. IMPACT ON DRAINAGE

The Developer shall ensure that there is no interruption to any surface or subsurface drainage due to the construction on the site, either during or following completion of the development. Should such an interruption occur, the Developer shall carry out any necessary remedial work, at his own expense, as recommended by his Consulting Engineer and approved by the Municipal Engineer.

11. FILL DISPOSAL

The Developer agrees that no fill material will be removed or placed without the prior authorization from the Conservation Authority. Fill will not be exported from the site and deposited in any area susceptible to flooding under regional storm conditions as regulated by the Conservation Authorities Act of Ontario.

12. RIGHT OF INSPECTION AND DIRECTION

- (a) The Developer agrees that the Municipal Engineer and other persons authorized by him for the purpose shall have the right at any time, to enter upon any part of the said Development lands and other lands upon which any work or service which herein is required to be done and to make such tests and inspections as he may deem necessary and to call for any document which, in his opinion, is required to be obtained in order to facilitate his inspection, and to give direction to the Developer in any matter touching upon the due performance of the work and services herein required to be done.
- (b) In the event that difficulties are encountered in the completion of the works as required by this agreement or it otherwise becomes necessary, in the opinion of the Municipal Engineer, to make modifications or provide items not described in this agreement, such requirements of the Municipal Engineer shall be carried out by the Developer as though they were included in and form a part of this agreement.
- (c) The Municipal Engineer may require that any or all work shall cease until any breach of plans and specifications or his requirements (of which he shall be the sole judge) have been remedied (other than the work required to be done to remedy such breach) and if he shall deem it necessary to engage technical consultants to assist him in the performance of any inspection or supervision, the expense of such technical consultants shall be a debt due to the Municipality by the Developer recoverable upon demand.

13. DEFAULT

The Developer hereby authorizes the Municipality to carry out the completion of any of the provisions of this Agreement and to use any monies held by the Municipality for this purpose, if the Developer fails to complete the said work within the time agreed to in writing between the Municipality and the Developer. Upon completion of the work, any unused balance shall forthwith be returned to the Developer and, should the funds deposited be insufficient, the Developer shall forthwith pay to the Municipality such sum as may be required to make up the total cost of the work. Failure to pay the amount within 30 days after the account has been submitted will result in the cost being added to the tax bill for the "Lands" and collected in like manner as municipal taxes.

14. STREET CLEANING

The Developer shall be responsible for cleaning the sidewalk and roadway along the street in the vicinity of the "Lands" to remove all dirt, mud and debris which, in the opinion of the Municipality, has been deposited thereon as a result of the construction activities on the "Lands". Such cleaning shall be done at the end of each day if required or otherwise as determined by the Municipality. If the Developer is unable or unwilling to clean the sidewalk or street to the reasonable satisfaction of the Municipality, the Developer hereby authorizes the Municipality to clean the sidewalk and street as required by the Municipality and the Developer agrees to pay the Municipality all costs associated with the cleaning operation performed by the Municipality.

15. DEPOSITS, SECURITIES AND PAYMENTS

- (a) The Developer shall deposit with the Municipality the sum of \$4,000.00 which sum shall be held in trust by the Municipality and from which any engineering review and supervision fees shall be paid during the development process. The Municipality may call upon the Developer from time to time to replenish the account. Any sum remaining in the account after the site has been completed in compliance with this Agreement to the satisfaction of the Municipality, shall be refunded to the Developer. The amount invoiced to the Municipality for the above fees in connection with the work required under this Agreement shall include an accounting of the services performed and shall be open to challenge by the Developer in proceedings that may be taken in the name of the Municipality with notice to the Municipality providing that payment in full has been made of the disputed account before such proceedings are taken.
- (b) Prior to the execution of this Agreement the Developer shall pay to the Municipality a legal deposit of \$2000.00 to cover any miscellaneous legal fees incurred by the Municipality and as a security for the registration of this agreement and a road dedication by-law on title.

- (c) Prior to the commencement of any work provided for in this Agreement, the Developer shall pay to the Municipality or provide an irrevocable Letter of Credit from a chartered bank for 100% of the cost of the works required under this agreement to be held as a guarantee for the completion of the works.

16. INDEMNIFICATION

- (a) This Agreement and the provisions thereof do not give to any person acquiring any interest in the "Lands" any rights against the Municipality or the Municipal Engineer with respect to the failure to perform any obligations under this Agreement or the failure of the Municipality to force any such persons to perform any obligations under this Agreement or any negligence of any such persons in the performance of the said obligations. The only duty and responsibility of the Municipal Engineer arising out of this Agreement is to the Municipality and the Agreement and any work or service done or performed by the Municipal Engineer under this Agreement does not in any way create any liability on the part of the Municipal Engineer to the Owner or Developer or any person acquiring any interest in the "Lands".
- (b) The Developer covenants that he will indemnify and save harmless the Owner and Municipality from any and all claims, demands, actions and causes of action, whether the same shall be successful or unsuccessful and from all costs to which the Owner and Municipality may be at, suffer, or be put to in respect of any such action, cause of action, claim or demand in any way arising out of or alleged to arise out of any work, service, operation or thing constructed, installed, repaired, maintained or done or omitted to be done or negligently done by the Developer, his servants, agents, contractors or subcontractors under them, in respect of the said works and services, whether or not the same shall be required to be done under the terms of this Agreement, and including (without limiting the generality of the foregoing) the alteration of any grade or existing level construction, maintenance or repair of any road.

17. MAINTENANCE OF MUNICIPAL ROAD ALLOWANCES

The Developer shall ensure that no earth, debris or excavated material shall be deposited within the limits of a Municipal/Provincial road allowance without permission in writing to do so from the Municipality. In the event that earth, debris or excavated material is deposited on the Municipal/Provincial roadway it shall be removed by the Developer immediately upon notification from the Municipality. If, the earth, debris or excavated material has not been removed from the road allowance by the Developer, the Developer acknowledges and agrees that the Municipality may take it upon itself to remove the said earth, debris or excavated material. Notwithstanding this notice to the Developer, the Municipality may at any time remove debris from the Municipal property, and the cost of such removal will be paid for by the Developer and may be deducted from the Developer's deposit fee or other securities held by the Municipality.

18. REGISTRATION

- (a) The Owner hereby agrees to give such authorization as required to permit the registration of this Agreement against the "Lands". The Developer shall register this Agreement against the "Lands" to which it applies and the Municipality is entitled to enforce the provisions hereof against the Developer upon the Developer taking possession of the vacant residential lot created by the provisional consent, and subject to the provisions of the Registry Act and the Land Titles Act, against any and all subsequent Developers of the land. Prior to the issuance of any building permit on the "Lands", the Developer must satisfy the Municipality that this agreement has been registered on title.
- (b) The Developer shall be responsible to register, at its cost, a road dedication by-law on title for the lands identified as Part 4 in Schedule "C" to this Agreement.

19. MISCELLANEOUS

- (a) Notwithstanding any of the provisions of this Agreement, the Developer shall be subject to all of the by-laws of the Municipality and shall construct all work in accordance with the requirements of the Municipality, the County of Lambton, the Ausable Bayfield Conservation Authority, and the Province of Ontario, including any requirement to obtain permits or other approvals.
- (b) This Agreement may be amended at any time with the consent, in writing, of the Municipality and the registered Owner of the "Lands" at the time of such amendment.
- (c) The provisions hereof shall ensure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.
- (d) Any notices required or permitted to be given pursuant to the terms of this agreement shall be addressed to:

In the case of notice given to the Owner:

Peter Warner
358 Ontario Street South
PO Box 1089
Grand Bend, ON, N0M 1T0

In the case of notice given to the Developer:

Kerry and Julie Ann Teskey
10180 Meadowlily Cres.
Grand Bend, ON, N0M 1T0

In the case of notice given to the Municipality:

The Municipality of Lambton Shores
R.R. #1,
9575 Port Franks Road
Thedford, ON, N0M 2N0

IN WITNESS WHEREOF the parties hereto have hereunto affixed their signatures and Corporate Seals attested to by the hands of their proper officers, duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED

In the presence of:

MERRYWOOD INC.

per:

Peter Warner - I have the power to bind
the corporation

KERRY AND JULIE ANN TESKEY

Kerry Kevin Teskey

Julie Ann Teskey

**THE CORPORATION OF THE
MUNICIPALITY OF LAMBTON SHORES**

Authorized by By-law

Bill Weber, Mayor

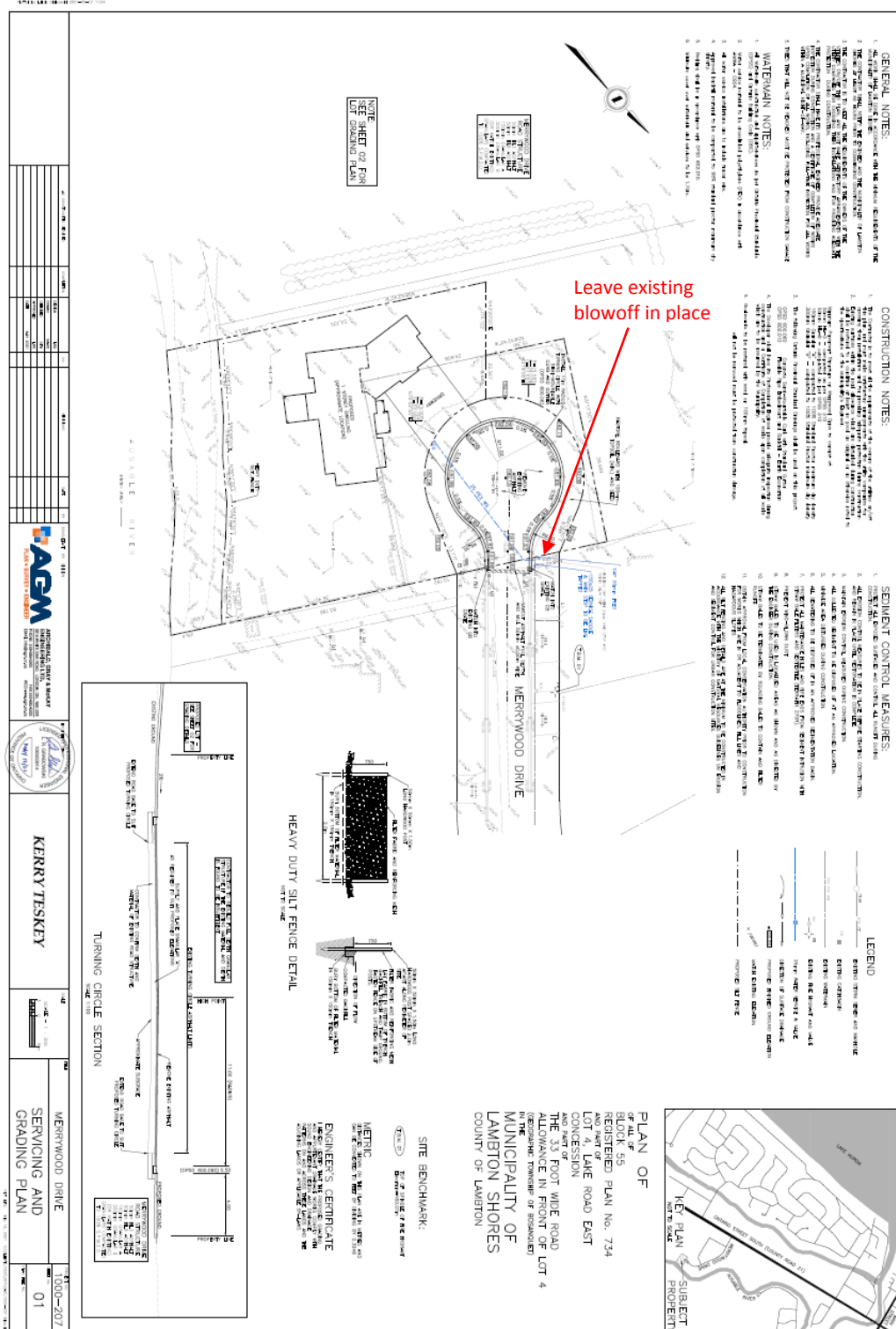
(SEAL)

Stephanie Troyer-Boyd, Clerk

SCHEDULE "A"**LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THIS AGREEMENT**

Part of Lot 4, Lake Road East Concession, designated as Parts 1 and 2 on Reference Plan 25R-_____; and Part of Original 33 Foot Wide Road Allowance in front of Lot 4, designated as Part 3 on draft Reference Plan 25R-_____; in the Geographic Township of Bosanquet, in the Municipality of Lambton Shores.

(Being the lot provisionally approved by Consent application B-01/2021 by the Committee of Adjustment of the Corporation of the Municipality of Lambton Shores)





PLAN • SURVEY • ENGINEER

MAY 2021

MERRYWOOD DRIVE Cul-De-Sac Construction Cost Estimate						
ITEM No.	SPEC No.	DESCRIPTION	UNIT	EST QUANTITY	UNIT PRICE	TOTAL PRICE
REMOVALS						
A-1		REMOVE AND DISPOSE OF ROADWAY ASPHALT FULL DEPTH, INCLUDES SAWCUTTING AS REQUIRED.	m ²	433	\$3.50	\$1,515.05
A-2		MILL ASPHALT AT CONSTRUCTION LIMITS - 500mm WIDE.	m ²	4	\$70.00	\$280.70
A-3		REMOVE EXISTING WATERMAIN BLOWOFF	LS	1	\$300.00	\$300.00
A-4		EARTH EXCAVATION AND GRADING, INCLUDING EXCAVATION TO SUBGRADE FOR ROADWAYS AND BOULEVARDS, DISPOSAL OF EXCESS MATERIAL, FINE GRADING AND COMPACTION OF SUBGRADE AND BOULEVARDS, STRIPPING AND DISPOSAL OF TOPSOIL AND VEGETATION - EXCAVATE & DISPOSE OFF SITE.	m ³	72	\$15.75	\$1,133.69
GRADING & ROADWORKS						
A-5		SUPPLY, PLACE, GRADE AND COMPACT GRANULAR 'B' (300mm)	t	267	\$15.00	\$3,998.10
A-6		SUPPLY, PLACE, GRADE AND COMPACT GRANULAR 'A' (150mm)	t	147	\$16.00	\$2,345.60
A-7		SUPPLY & PLACE HL8 BASE ASPHALT (50mm)	t	54	\$115.00	\$6,258.30
A-8		SUPPLY & PLACE HL3 SURFACE ASPHALT (50mm)	t	54	\$120.00	\$6,530.40
A-9		SUPPLY AND PLACE CURB & GUTTER (OPSD 600.06)	LM	76	\$40.00	\$3,040.00
A-10		SUPPLY & PLACE 100mm TOPSOIL.	m ²	345	\$5.50	\$1,897.78
A-11		SUPPLY & PLACE SEED.	m ²	345	\$3.50	\$1,207.68
SERVICING						
A-12		EXCAVATE FOR, SUPPLY AND PLACE 25mm PEX POTABLE WATER SERVICE TUBING FROM MAIN TO CURB STOP, INCLUDING BEDDING, BACKFILL, COMPACTION, TRACER WIRE, FITTINGS AND CONNECTION.	m	31	\$137.00	\$4,253.85
A-13		SUPPLY & INSTALL 25mm MAIN STOP, CURB STOP WITH BOX & ROD, ADJUSTMENT TO FINAL GRADE.	EA	1	\$500.00	\$500.00
TOTAL THIS PAGE						\$33,261.15

