

**RESOLUTION NO. 1919**

**A RESOLUTION OF THE CITY OF WILSONVILLE, OREGON, APPROVING A SYSTEMS DEVELOPMENT CHARGE REIMBURSEMENT AND CONDITIONS OF DEVELOPMENT AGREEMENT BETWEEN GO DUCKS, LLC AND THE CITY OF WILSONVILLE PROVIDING FOR CAPITAL INFRASTRUCTURE IMPROVEMENTS, SYSTEMS DEVELOPMENT CHARGE CREDITS, AND AUTHORIZING THE ADDITION OF CERTAIN PROJECTS TO THE CAPITAL IMPROVEMENT PLAN.**

WHEREAS, Go Ducks, LLC has land use approvals to develop a Honda Dealership at the northeast corner of Memorial Drive and Parkway Avenue; and

WHEREAS, the conditions of development approval involve the construction of certain street, sewer, water, storm drainage, and other public infrastructure. A portion of the improvements is not roughly proportional to development impacts and is subject to system development charge credits or reimbursements. City staff and Go Ducks, LLC negotiated an agreement covering necessary dedications of land, the kind of public infrastructure necessary to meet the conditions of approval, the responsibility for constructing the improvements, the estimated costs thereof, the relative share of the costs to be paid by Go Ducks, LLC and the City, and the provision for funding through credits to Systems Development Charges and reimbursements. A copy of the proposed Systems Development Charge Reimbursement and Conditions of Development Agreement is marked "Exhibit A", attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, a capital infrastructure project must be listed in an approved Capital Improvements Plan before the City can participate in project funding; and

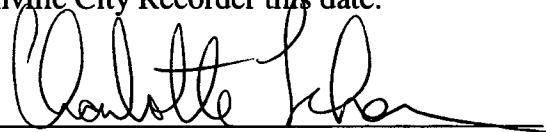
WHEREAS, portions of the improvements addressed in the Systems Development Charge Reimbursement and Conditions of Development Agreement are not currently included in the City's Capital Improvements Plan.

NOW, THEREFORE THE CITY OF WILSONVILLE HEREBY RESOLVES AS FOLLOWS:

1. The City Council adopts the above recital as finding and incorporates them by reference as if fully set forth herein;

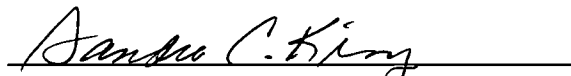
2. The City Council approves the Systems Development Charge Reimbursement and Conditions of Development Agreement between the City and Go Ducks, LLC, attached as Exhibit "A" and authorizes the City Manager to sign on behalf of the City of Wilsonville;
3. The City Council authorizes the addition of storm drainage improvements at the intersection of Memorial Drive and Parkway Avenue at an estimated cost of \$9,663 as a refinement to the 2004-05 Storm Water Projects Capital Improvement Plan with payment in an estimated amount of \$9,663 as a credit to the developer's Storm Water Systems Development Charges. Payment is subject to adjustment based on appraisal and actual construction costs.
4. The invalidity of any section, clause, or provision of this resolution shall not affect the validity of the balance of the resolution
5. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 7<sup>th</sup> day of February, 2005, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Charlotte Lehan	<u>Yes</u>
Council President Kirk	<u>Yes</u>
Councilor Holt	<u>Yes</u>
Councilor Scott-Tabb	<u>Yes</u>
Councilor Knapp	<u>Yes</u>

**SYSTEMS DEVELOPMENT CHARGE REIMBURSEMENT AND  
CONDITIONS OF DEVELOPMENT AGREEMENT BETWEEN GO DUCKS LLC,  
THE CITY OF WILSONVILLE, AND THE URBAN RENEWAL AGENCY OF THE  
CITY OF WILSONVILLE**

This Systems Development Charge Reimbursement and Conditions of Development Agreement ("Agreement"), dated as of this \_\_\_\_ day of February 2005, is made by and between Go Ducks, LLC, a Washington corporation ("Applicant"), the City of Wilsonville, an Oregon municipal corporation ("City"), and the Urban Renewal Agency of the City of Wilsonville ("Agency").

**A. RECITALS**

- A. The Applicant has filed a land use application (03DB27) with the City of Wilsonville to develop a Honda Automobile Dealership, located north of Memorial Drive and east of Parkway Avenue ("Project Property").
- B. The land use application consists of a Stage I Preliminary Plan approval, Stage II Final Plan approval, Site Design Plan approval, Master Sign Plan approval, and a Type C Tree Removal permit (together, the "Application").
- C. In connection with the approval of the Application and completion of the project certain conditions were applied. The infrastructure improvements required as conditions of approval, and required under this Agreement, are necessary in part to mitigate the impacts created by the development onto the City's infrastructure and also provide some capacity in excess of the capacity needed to serve the development. Additional infrastructure improvements required during the plan review process, also subject to this Agreement, are in part not roughly proportional to the mitigation required by the development, and therefore the Applicant is eligible for either SDC credits or reimbursement from the City for making such mitigating improvements that provide capacity in excess of that which is needed to serve the development.
- D. The parties desire to set forth the obligations of the Applicant, the City, and the Agency with respect to the mitigating infrastructure improvements, SDC charges, SDC credits and reimbursements.

**B. AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **I. GENERAL PROVISIONS**

### **A. System Development Charges**

#### **1. SDC Calculations**

##### **a) Street SDC**

Based on information provided by the Applicant, the City estimates that the total street SDC charges for full development of the Project Property will be \$355,493.00, (which includes both the Street SDC and the I-5/Wilsonville Road Interchange Supplemental SDC as reflected in the breakdown below) based on the SDC fees in effect at the time of approval of the Application.

- The total Street SDC charges are estimated to be \$136,493.00.
- The total Supplemental Street SDC charges are \$219,000.00. The Supplemental Street SDC were paid by applicant pursuant to a Vesting Agreement with the City and are not subject to SDC credits.

Only the 'Street SDC' shall remain at the rate in effect as of the effective date of this Agreement.

##### **b) Parks SDC**

Based on information provided by the Applicant, the City estimates that the total Parks SDC charges for full development of the Project Property will be \$2,257.00, based on the SDC fees in effect at the time of approval of the Application.

##### **c) Water SDC**

Based on information provided by the Applicant, the City estimates that the total Water SDC charges for full development of the Project Property will be \$29,602.00, based on the SDC fees in effect at the time of approval of the Application.

##### **d) Storm SDC**

Based on information provided by the Applicant, the City estimates that the total Storm SDC charges for full development of the Project Property will be \$33,438.09 based on the SDC fees in effect at the time of approval of the Application.

##### **e) Sewer SDC**

Based on information provided by the Applicant, the City estimates that the total Sewer SDC charges including improvement and reimbursement components for full development of the Project Property will be \$13,024.00, with the improvement part of the sewer SDC estimated at \$8,726 based on the SDC fees in effect at the time of approval of the Application.

## **2. SDC Credits**

The Applicant shall receive SDC credits and reimbursement by the City and the Agency for improvements in excess of those required to serve the development of the Project Property subject to the limitations and requirements of the City's SDC Ordinance. The improvements eligible for SDC credits are as set forth in this Agreement.

The amount of SDC credits for the eligible Improvements shall be based on the fair and equitable actual costs incurred by the Applicant in the construction of such improvements, as evidenced by itemized invoices or other documentation reasonably satisfactory to the City to determine the actual costs of construction and the appropriate credit therefore.

Although not binding on the parties, the estimated SDC credits are as set forth in that certain spreadsheet with notes prepared by the Applicant's sub-contractor, Bones Construction, attached as Exhibit A. These costs are also reflected in the contract between the general contractor, Mountain Construction, and the Applicant (Exhibit D).

The Applicant shall also receive SDC credits for design and engineering in connection with the construction of the eligible improvements in an amount equal to the proportionate cost of the City's portion of the improvements, as calculated based on the fair and equitable construction costs or, at the Applicant's option, as set forth in itemized invoices properly documenting an equitable share of the design and engineering costs. The estimated costs are shown in Exhibit A in the amount of \$24,500. The documentation of the design and engineering costs must also include documentation of the breakdown of those costs between the Applicant and the credits to the Applicant against applicable SDCs. An available alternative is 10% of the construction costs.

## **B. Road Improvements**

### **1. Memorial Drive Improvements**

The City, the Agency, and the Applicant represent and acknowledge that the Applicant is required to provide to the city the permanent/temporary construction easements necessary, to construct the curb/gutter, sidewalk, landscaping, streetlights and the northerly 24 feet of paving for the section of Memorial Drive abutting the Project Property (from STA 13+99.85 to approx STA 16+65). No SDC credits are available for this portion of the improvements. The costs associated with the remaining southerly 12-feet of street construction, including the removal/replacement of the south curb and/or sidewalk as necessary to meet the required grades and associated engineering costs are eligible for SDC credits as reflected on Exhibit B-1.

The City will be responsible to secure the permanent/temporary construction easements, as necessary, to construct the curb/gutter, sidewalk, landscaping, streetlights and paving for the section of Memorial Drive from the west Project Property line to the intersection with Parkway Avenue (from approx STA 16+65 to STA 18+21.37). The construction and engineering costs associated with this construction are eligible for SDC credits as shown on Exhibit C.

Notwithstanding anything to the contrary in this Agreement, the Applicant shall be required to install concrete pavement when making these street improvements.

## **2. Parkway Avenue**

The City, the Agency, and the Applicant represent and acknowledge that the Applicant will be required to secure the permanent/temporary construction easements, if necessary, to construct the curb/gutter, sidewalk, landscaping, streetlights and the easterly 24 feet of paving for the section of Parkway Avenue abutting the Project Property (from approx STA 11+17 to approx STA 16+12). No SDC credits are available for this portion of the improvements. The costs associated with the remaining westerly 4-feet of street construction, is SDC creditable as reflected on Exhibit B-2.

The City will be responsible to secure the permanent/temporary construction easements, as necessary, to construct the curb/gutter, sidewalk, landscaping, streetlights and paving for the section of Parkway Avenue from the south Project Property line to the intersection with Memorial Drive (from STA 10+00 to approx STA 11+17). The construction and engineering costs associated with construction of this section of road are eligible for SDC credits as shown on Exhibit C.

Notwithstanding anything to the contrary in this Agreement, the Applicant shall be required to install asphalt pavement when making these street improvements.

## **3. Road Right-of-Way**

### **a) Dedication and Acquisition**

The applicant shall be responsible to dedicate the necessary right-of-way as per the conditions of approval for the Application. The City is responsible for acquiring the necessary easements and/or right-of-way for the improvements on Parkway Avenue and Memorial Drive that are not explicitly the responsibility of the Applicant.

## **C. Water System Improvements**

The Applicant shall be responsible for constructing a 12-inch water line from the east property line to the existing waterline in Parkway Avenue. It is

acknowledged that waterline construction that was required as part of the Engineering plan review is required as a Condition of Approval. The construction and engineering costs associated with oversizing the line from 8" to 12" adjacent to the property and the cost of the 12" line from the west edge of the property to Parkway Avenue are eligible for SDC credits as depicted on Exhibit C.

**D. Sanitary Sewer System Improvements**

The Applicant is responsible for the costs associated with constructing the manhole at the connection point to the existing sewer line in Memorial Drive. The City is responsible for the costs associated with the replacement of the existing sanitary sewer line (approximately 206 lf) and the abandonment of the existing line in Memorial Drive as depicted on Exhibit C. It is acknowledged that any sewer line construction that was required as part of Engineering plan review is required as a Condition of Approval. The City is also responsible for any costs associated with determining the location of the existing right-of-way. The estimated costs for the City's portion of the construction and engineering costs are eligible for SDC credits or other City reimbursement.

**E. Storm Drainage System Improvements**

The Applicant shall be responsible for constructing the storm drainage system extension along Parkway Avenue. The City is responsible for the costs associated with the abandonment of the existing pipe and catch basin at the intersection as well as any new curb inlets required that are not located along the project frontage as depicted on Exhibit C. The estimated costs for the City's portion of the construction and engineering costs are eligible for SDC credits.

**F. Contribution by City and Agency**

The parties acknowledge that the total improvement costs eligible for SDC credits may exceed the total SDC charges as shown in Table 1 below. In order to offset this excess credit, the City and the Agency, as appropriate agree to budget the additional funds (if necessary) in the Capital Improvement Program and compensate the Applicant within 30 days of substantial completion of the construction of the improvements or 30 days of approval of the reimbursement and condition agreement, whichever is last.

**TABLE 1**

<b>Public Improvement</b>	<b>Cost Eligible for SDC Credits or URA Funding</b>	<b>Applicant's SDC Improvement Fee Obligation</b>	<b>SDC Credits and URA Funding</b>	<b>SDC Payment less SDC Eligible Credits</b>
Street* Memorial Drive Parkway Avenue &Engineering Services	\$160,749	\$136,493**	SDC Credit \$35,000 URD4104 \$125,749	\$101,493
Water	\$24,565	\$29,306	SDC Credit \$24,565	\$4,741
Sanitary Sewer**	\$62,979	\$8,726	SDC Credit \$8,726 Sewer SDC \$54,253	\$0
Storm Drainage	\$9,244	\$33,438	SDC Credit \$9,244	\$24,194
<b>Total</b>	<b>\$257,537</b>	<b>\$207,963</b>	<b>\$257,537</b>	

\*Note: Does not include the Supplemental Street SDC, as it is not a reimbursable component.

\*\*Note: Costs include replacement which may not be eligible for improvement fee credits, but are eligible for payment from SDC reimbursement fees.

**II. GENERAL OBLIGATIONS**

**A. Interconnection and Coordination**

In constructing the improvements required under this Agreement, the Applicant shall coordinate with all appropriate jurisdictions, private utilities, including Clackamas County.

**B. Landscaping**

The Applicant shall install all required landscaping along the entire frontage of the Project Property consistent with all applicable City ordinances.

**C. Plans and Construction**

The City shall be responsible for reviewing and approving all plans, and shall inspect the Project Property and all required improvements.

The applicant shall pay prevailing wages where appropriate. The Applicant shall be responsible for the payment of all applicable Public Works permit fees.

**D. Costs**



Both parties acknowledge that the costs set forth in this Agreement are estimates only and that the final costs of the improvements required under this Agreement may vary based on final design approval and actual construction costs.

#### **E. Public Work Provisions**

To the extent that the improvements contemplated hereunder are considered "Public Works," the Applicant shall comply with applicable provisions of the prevailing wage law set forth in ORS Chapter 279.

### **III. MISCELLANEOUS PROVISIONS**

#### **A. Further Assurances**

Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.

#### **B. Modification or Amendment**

No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by the parties hereto.

#### **C. Relationship**

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the parties.

#### **D. Burden and Benefit; Assignment**

The covenants and agreements contained herein shall be binding upon and to the benefit of the parties and their successors and assigns. The Applicant covenants and agrees that it shall notify any successor in interest or any tenant on the Project Property of The Applicant obligations under this Agreement. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **E. No Continuing Waiver**

The waiver of either party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

#### **F. Applicable Law**

This Agreement shall be interpreted under the laws of the State of Oregon.

### **G. Legal Fees**

If either party commences legal proceedings, including arbitration or mediation, for any relief against the other party arising out of or related to this Agreement, or the breach thereof, the losing party shall pay the prevailing party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorney's fees and expert witness fees as determined by the court or the arbitrator, at the trial level or on any appeal.

### **H. Time of Essence**

Time is expressly declared to be of the essence in this Agreement.

### **I. Notices.**

All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States mail at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three days after mailing by United States Mail or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City:                    David R. Waffle  
                                  City of Wilsonville  
                                  30000 S.W. Town Center Loop East  
                                  Wilsonville OR 97070

To The Applicant:      John B. Dimmer, Managing Member  
                                  Go Ducks, LLC  
                                  17923 NE Homestead Drive  
                                  Brush Prairie WA 98606

### **J. Rights Cumulative**

All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive or in lieu of, those conferred by law.

### **K. Counterparts**

This Agreement may be executed in several counterparts, each of, which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

#### **L. No Third Party Beneficiaries**

None of the duties and obligations of any party under this Agreement shall in any way or in any manner be deemed to create any rights in, any person or entity other than the parties hereto.

#### **M. Dispute Resolution**

##### **1. Mediation.**

All disputes arising out of this Agreement shall first be submitted to mediation. Either party desiring mediation shall provide the other party with a written notice (the "Request to Mediate") which shall set forth the nature of the dispute. The parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the parties, in the parties' sole discretion, within twenty (20) days from the date of the Request to Mediate or such longer time frame as may be agreed upon in writing by the parties, then either party may make demand for arbitration pursuant to the following paragraph.

##### **2. Arbitration**

Any dispute arising under this Agreement, which is not resolved through mediation, may be submitted by either party to arbitration conducted in Portland, Oregon before a single arbitrator selected by mutual agreement of the parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the parties are unable to mutually select an arbitrator within 20 days, then each party shall select an arbitrator and the two arbitrators shall select a single arbitrator. Judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

#### **N. Effect of Other Approvals.**

The City and The Applicant agree and acknowledge that the conditions of approval and the improvements required under this Agreement are based upon the expected build-out of the Project Property as set forth in the Application. If, for whatever reason, The Applicant cannot develop the Project Property as anticipated in the Approvals, The Applicant shall have the right, but not the obligation, to declare this Agreement null and void, by providing written notice to the City. Upon such declaration neither party shall have any further obligations under this Agreement except that each party shall be

responsible for the payment of money, the crediting or payment of SDC charges for obligations or work completed prior to the date of termination. For example, should The Applicant complete improvements required under this Agreement and then terminate this Agreement pursuant to this section, then the City shall be obligated to provide the required SDC credits to The Applicant for such work.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first written above.

**Go Ducks, LLC:**

Go Ducks, LLC, a Washington Corporation

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

City of Wilsonville, an Oregon Municipal Corporation

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**AGENCY:**

Urban Renewal Agency of the City of Wilsonville

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_



**WILSONVILLE HONDA OFF-SITE IMPROVEMENTS (City of Wilsonville Cost Breakdown)**

	PROJECT TOTAL				CITY OF WILSONVILLE			
	Quantity	Unit	Unit Price	Extension	Quantity	Unit	Unit Price	Extension
<b>MOBILIZATION &amp; EROSION CONTROL</b>								
Mobilization	1	LS	\$7,400.00	\$7,400.00	0.25	LS	\$7,400.00	\$1,850.00
Traffic Control	1	LS	\$26,060.00	\$26,060.00	0.25	LS	\$26,060.00	\$6,515.00
Silt Fence	1000	LF	\$1.75	\$1,750.00	0	LF	\$1.75	\$0.00
Silt Sacks for Inlet Protection	10	EA	\$80.00	\$800.00	3	EA	\$80.00	\$240.00
<b>SUBTOTAL FOR MOBILIZATION &amp; EROSION CONTROL</b>				<b>\$36,010.00</b>				<b>\$8,605.00</b>
<b>CLEARING / DEMOLITION</b>								
Additional Clearing at Hotel Entrance	1	LS	\$1,050.00	\$1,050.00	1	LS	\$1,050.00	\$1,050.00
Removal of Existing AC	27880	SF	\$0.15	\$4,182.00	11495	SF	\$0.15	\$1,724.25
Removal of Existing Sidewalks	500	SF	\$1.00	\$500.00	500	SF	\$1.00	\$500.00
Removal of Existing Curb & Gutter	385	LF	\$1.25	\$481.25	370	LF	\$1.25	\$462.50
<b>SUBTOTAL FOR CLEARING / DEMOLITION</b>				<b>\$6,213.25</b>				<b>\$3,736.75</b>
<b>EARTHWORK</b>								
Roadway Excavation and Export	2572	TCY	\$9.10	\$23,405.20	737	TCY	\$9.10	\$6,706.70
Finish Roadway Subgrades	32164	SF	\$0.10	\$3,216.40	6210	SF	\$0.10	\$621.00
Finish ROW Subgrades	26226	SF	\$0.10	\$2,622.60	6032	SF	\$0.10	\$603.20
<b>SUBTOTAL FOR EARTHWORK</b>				<b>\$29,244.20</b>				<b>\$7,930.90</b>
<b>AGGREGATES</b>								
Place and Finish Roadway Aggregate	31700	SF	\$0.60	\$19,020.00	10125	SF	\$0.60	\$6,075.00
Finish Roadway Aggregate	3096	SF	\$0.18	\$557.28	3096	SF	\$0.18	\$557.28
Additional Aggregate on SW Parkway (12" to 15")	14600	SF	\$0.25	\$3,650.00	3060	SF	\$0.25	\$765.00
<b>SUBTOTAL FOR AGGREGATES</b>				<b>\$23,227.28</b>				<b>\$7,397.28</b>
<b>SURFACING</b>								
Prep and Pour Standard Curb & Gutter	601	LF	\$8.05	\$4,838.05	155	LF	\$8.05	\$1,247.75
Prep & Pour Thickened Curb and Gutter	757	LF	\$10.30	\$7,797.10	435	LF	\$10.30	\$4,480.50
Asphalt Paving 5" (SW Parkway)	18985	SF	\$2.09	\$39,678.65	8448	SF	\$2.09	\$17,656.32
Asphalt Paving Transitions	560	SF	\$1.15	\$644.00	0	SF	\$1.15	\$0.00
Concrete Paving 7.5" (SW Memorial Drive)	12680	SF	\$3.80	\$48,184.00	5654	SF	\$3.80	\$21,485.20
Add for 2 Stage Concrete Street Pour @ Adj Businesses	1	LS	\$2,200.00	\$2,200.00	1	LS	\$2,200.00	\$2,200.00
Handi Cap Ramps	1	EA	\$385.00	\$385.00	1	EA	\$385.00	\$385.00
Concrete Sidewalks 4" / 2" Crushed Rock	5440	SF	\$3.40	\$18,496.00	1150	SF	\$3.40	\$3,910.00
<b>SUBTOTAL FOR SURFACING</b>				<b>\$122,222.80</b>				<b>\$51,364.77</b>
<b>--- OFF-SITE STORM SEWER ---</b>								
24" Concrete Storm Line	181	LF	\$86.25	\$15,611.25	0	LF	\$86.25	\$0.00
24" PVC Storm Line	146	LF	\$59.25	\$8,650.50	0	LF	\$59.25	\$0.00
18" PVC Storm Line	331	LF	\$44.10	\$14,597.10	0	LF	\$44.10	\$0.00
10" C-900 Storm Line	103	LF	\$71.50	\$7,364.50	14	LF	\$71.50	\$1,001.00
48" Storm Sewer Manhole	5	EA	\$1,605.00	\$8,025.00	0	EA	\$1,605.00	\$0.00
Concrete Catch Basins	6	EA	\$1,075.00	\$6,450.00	2	EA	\$1,075.00	\$2,150.00

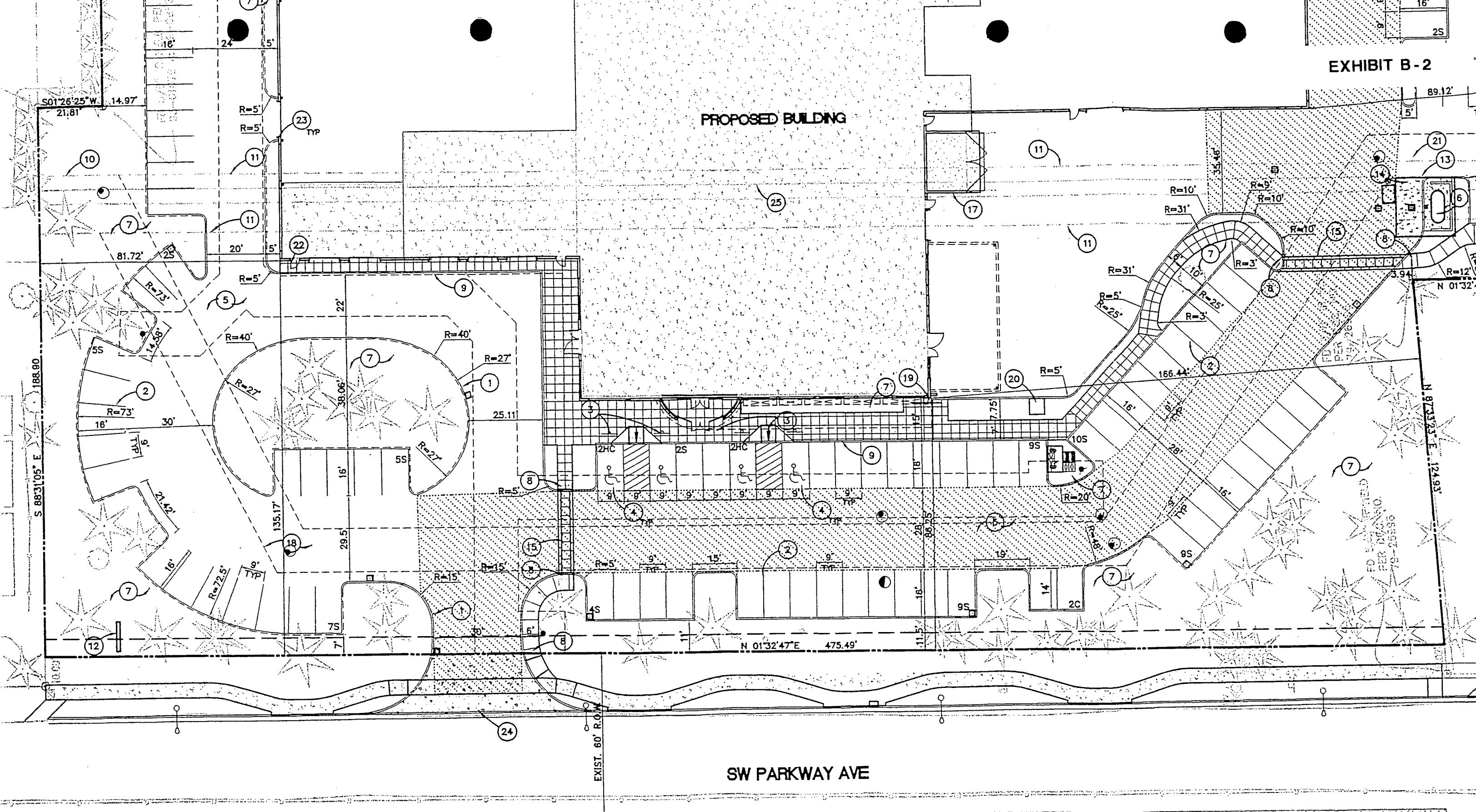
**WILSONVILLE HONDA OFF-SITE IMPROVEMENTS (City of Wilsonville Cost Breakdown)**

	PROJECT TOTAL				CITY OF WILSONVILLE			
	Quantity	Unit	Unit Price	Extension	Quantity	Unit	Unit Price	Extension
Concrete Area Drain	1	EA	\$1,125.00	\$1,125.00	0	EA	\$1,125.00	\$0.00
18" Storm Sewer Cap	2	EA	\$110.00	\$220.00	0	EA	\$110.00	\$0.00
18" x 10" Tee	1	EA	\$290.00	\$290.00	0	EA	\$290.00	\$0.00
Connection to Existing System	2	EA	\$1,200.00	\$2,400.00	0	EA	\$1,200.00	\$0.00
Abandonment of Existing Storm Sewer Line @ Intersection	1	LS	\$3,265.00	\$3,265.00	1	LS	\$3,265.00	\$3,265.00
Trench Patch	1	LS	\$15,750.75	\$15,750.75	0	LS	\$15,750.75	\$0.00
<b>SUBTOTAL FOR OFF-SITE STORM SEWER</b>				<b>\$83,749.10</b>				<b>\$6,416.00</b>
<b>--- OFF-SITE WATER IMPROVEMENTS ---</b>								
12" Ductile Iron Water	514	LF	\$41.90	\$21,536.60	305	LF	\$41.90	\$12,779.50
8" Ductile Iron Water	54	LF	\$32.50	\$1,755.00	0	LF	\$32.50	\$0.00
14" x 12" Hot Tap	1	EA	\$3,705.00	\$3,705.00	1	EA	\$3,705.00	\$3,705.00
8" x 8" Hot Tap	1	EA	\$2,450.00	\$2,450.00	0	EA	\$2,450.00	\$0.00
12" Bend 45 Degree	4	EA	\$281.00	\$1,124.00	0	EA	\$281.00	\$0.00
12" Bend 22.5 Degree Bend	2	EA	\$283.00	\$566.00	2	EA	\$283.00	\$566.00
12" x 8" Tee	1	EA	\$348.00	\$348.00	0	EA	\$348.00	\$0.00
8" Gate Valve	1	EA	\$700.00	\$700.00	0	EA	\$700.00	\$0.00
Temporary Blow Off Assy.	2	EA	\$290.00	\$580.00	0	EA	\$290.00	\$0.00
Connection to Existing	1	EA	\$335.00	\$335.00	0	EA	\$335.00	\$0.00
Abandon & Remove Existing Water Service	1	EA	\$2,800.00	\$2,800.00	0	EA	\$2,800.00	\$0.00
Trench Patch	1	LS	\$8,626.25	\$8,626.25	0	LS	\$8,626.25	\$0.00
<b>SUBTOTAL FOR OFF-SITE WATER IMPROVEMENTS</b>				<b>\$44,525.85</b>				<b>\$17,050.50</b>
<b>--- SIGNAGE AND STRIPING ---</b>								
4" White Fog Line (Painted)	250	LF	\$0.40	\$100.00	110	LF	\$0.40	\$44.00
4" Yellow Center Line (Painted)	1460	LF	\$0.40	\$584.00	0	LF	\$0.40	\$0.00
Raised Pavement Markers	18	EA	\$56.65	\$101.70	0	EA	\$56.65	\$0.00
8" Bike Lane (Painted)	250	LF	\$0.80	\$200.00	140	LF	\$0.80	\$112.00
Bicycle Symbol (Painted)	2	EA	\$85.00	\$170.00	0	EA	\$85.00	\$0.00
"Begin" Sign	1	EA	\$56.65	\$56.65	1	EA	\$56.65	\$56.65
"End" Sign	2	EA	\$56.65	\$113.30	0	EA	\$56.65	\$0.00
"Bike Route" Sign	3	EA	\$227.00	\$681.00	1	EA	\$227.00	\$227.00
Type III Barricade 10'	1	EA	\$1,019.00	\$1,019.00	0	EA	\$1,019.00	\$0.00
Additional Striping	1	LS	\$1,372.00	\$1,372.00	1	LS	\$1,372.00	\$1,372.00
<b>SUBTOTAL FOR SIGNAGE AND STRIPING</b>				<b>\$4,397.65</b>				<b>\$1,811.65</b>
<b>--- ALTERNATES ---</b>								
Monument Control Boxes	3	EA	\$975.00	\$2,925.00	1	EA	\$975.00	\$975.00
Additional Water Fittings to Route Under Storm Line	1	EA	\$2,010.00	\$2,010.00	1	EA	\$2,010.00	\$2,010.00
Adjust Existing Phone Vault to Grade	2	EA	\$325.00	\$650.00	0	EA	\$325.00	\$0.00
Add for "Thermo Plastic" Bicycle Symbol	2	EA	\$85.00	\$170.00	0	EA	\$85.00	\$0.00
Surveying for Off-Site Improvements	1	LS	\$14,150.00	\$14,150.00	0.39	LS	\$12,450.00	\$4,855.50
Surveying for On-Site Public Waterline & Sewerline	1	LS	\$1,698.00	\$1,698.00	0	LS	\$1,698.00	\$0.00
Commercial Driveway (8")	1440	SF	\$5.40	\$7,776.00	790	SF	\$5.40	\$4,266.00

**WILSONVILLE HONDA OFF-SITE IMPROVEMENTS (City of Wilsonville Cost Breakdown)**

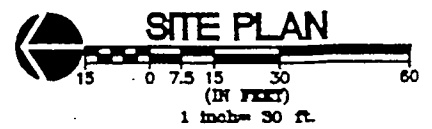
	PROJECT TOTAL				CITY OF WILSONVILLE			
	Quantity	Unit	Unit Price	Extension	Quantity	Unit	Unit Price	Extension
Potholing / Day	3	DAY	\$1,000.00	\$3,000.00	0	DAY	\$1,000.00	\$0.00
				<u>\$32,379.00</u>				<u>\$12,106.50</u>
<b>SW Memorial Drive Sewer Realignment</b>								
Supervision	1	LS	\$1,700.00	\$1,700.00	1	LS	\$1,700.00	\$1,700.00
Tree Removal	2	EA	\$1,325.00	\$2,650.00	2	EA	\$1,325.00	\$2,650.00
Surveing	1	LS	\$800.00	\$800.00	1	LS	\$800.00	\$800.00
Traffic Control	1	LS	\$3,050.00	\$3,050.00	1	LS	\$3,050.00	\$3,050.00
24" PVC Sanitary Sewer Main, Granular	206	LF	\$93.00	\$19,158.00	206	LF	\$93.00	\$19,158.00
48" Sanitary Sewer Manhole	1	EA	\$2,265.00	\$2,265.00	1	EA	\$2,265.00	\$2,265.00
Connection to Existing Manholes	2	EA	\$1,600.00	\$3,200.00	2	EA	\$1,600.00	\$3,200.00
Vactor Truck & Exploratory Excavation	1	LS	\$2,014.00	\$2,014.00	0.5	LS	\$2,014.00	\$1,007.00
Live Sewer Transport	1	LS	\$3,600.00	\$3,600.00	1	LS	\$3,600.00	\$3,600.00
Remove Existing 18" Metal Line	18	LF	\$36.00	\$648.00	18	LF	\$36.00	\$648.00
Remove Existing 48" Diameter Manhole	1	EA	\$1,300.00	\$1,300.00	1	EA	\$1,300.00	\$1,300.00
Grout Fill Existing 18" Line	210	LF	\$10.00	\$2,100.00	210	LF	\$10.00	\$2,100.00
				<u>\$42,485.00</u>				<u>\$41,478.00</u>
<b>ROW Modifications at Intersection of SW Parkway &amp; Memorial Drive</b>								
Sanitary Sewer Stub, 6"	1	EA	\$650.00	\$650.00	1	EA	\$650.00	\$650.00
Sanitary Sewer Connection to New Line	1	EA	\$750.00	\$750.00	1	EA	\$750.00	\$750.00
Storm Sewer Stub, 10"	1	EA	\$1,100.00	\$1,100.00	1	EA	\$1,100.00	\$1,100.00
Water Service, 6"	1	EA	\$2,740.00	\$2,740.00	1	EA	\$2,740.00	\$2,740.00
Off-Haul Surplus Utility Spoils	40	CY	\$7.25	\$290.00	40	CY	\$7.25	\$290.00
Sidewalk Addition, 5' width	1110	SF	\$3.40	\$3,774.00	1425	SF	\$3.40	\$4,845.00
				<u>\$9,304.00</u>				<u>\$10,375.00</u>
Increase to BOLI	1	LS	\$15,552.00	\$15,552.00	1	LS	\$15,552.00	\$15,552.00
				<u>\$15,552.00</u>				<u>\$15,552.00</u>
<b>Subtotal Construction Cost</b>				<b>\$454,599.63</b>	<b>\$183,824.35</b>			
<b>---- STREET LIGHTING ----</b>								
Conduit Trench, Granular	745	LF	\$7.10	\$5,289.50	0	LF	\$7.10	\$0.00
<b>SUBTOTAL FOR STREET LIGHTING</b>				<b>\$5,289.50</b>	<b>\$0.00</b>			
Bond Cost	1	LS	\$20,020.00	\$20,020.00	0.42	LS	\$20,000.00	\$8,400.00
<b>Total City Responsibility</b>							<b>\$192,224.35</b>	





PROPOSED BUILDING

SW PARKWAY AVE



TREE LEGEND

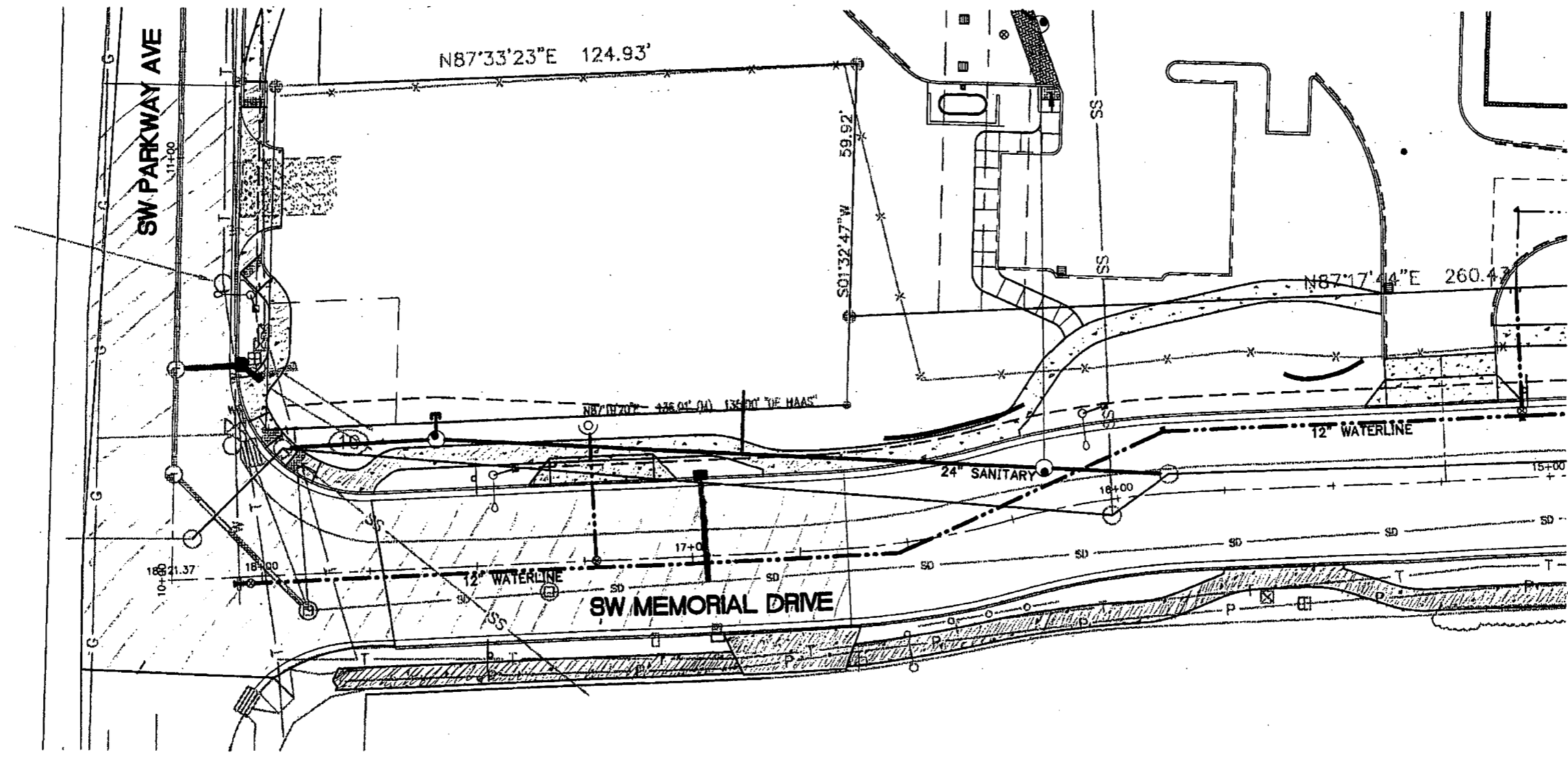
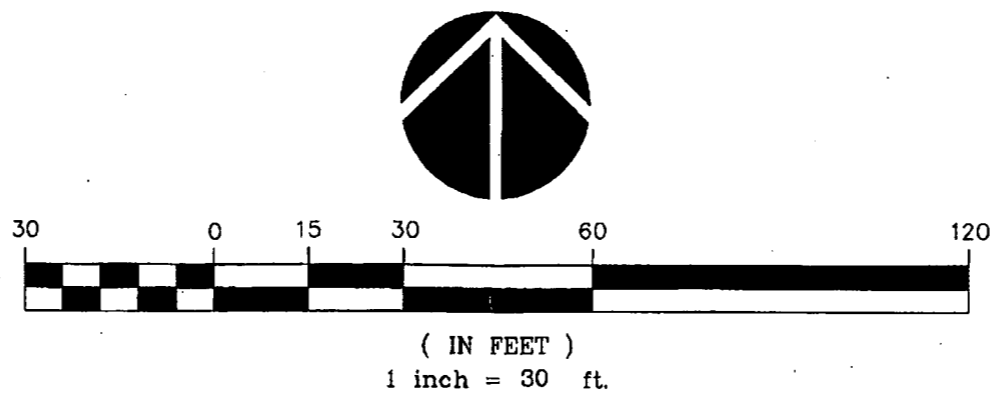
★ VIABLE TREE TO REMAIN

EXHIBIT B-2

**S** (Symbol)  
 GEND FOR TYPE  
 PARKING STRIPE  
 PARKING SIGN SEE DETAIL 4/C8.0  
 PARKING SPACE SEE DETAIL 3/C8.0  
 SEE GEOTECHNICAL REPORT FOR SECTION AND SPECIFICATIONS

- 19. PROPOSED 7 COVERED BICYCLE SPACES (RACK MIN. 1.5' AWAY FROM BLDG)
- 20. 5'x5' CONCRETE TRANSFORMER PAD
- 21. PROPOSED OIL/WATER SEPARATOR SEE UTILITY PLANS
- 22. TWO BICYCLE SPACES NEAR SERVICE AREA
- 23. INSTALL 6" BOLLARD TYP. SEE DETAIL 9/C8.0

PAVEMENT SECTION LEGEND



**GROUP MACKENZIE**  
 Architecture  
 Interior Design  
 Land Use Plan  
 Civil Engineering  
 Structural Engineering  
 Transportation Planning

PROJECT:  
**HONDA  
 WILSONVILLE**

© GROUP MACKENZIE 200  
 ALL RIGHTS RESERVED  
 THESE DRAWINGS ARE THE PROP  
 GROUP MACKENZIE AND ARE NOT  
 USED OR REPRODUCED IN ANY  
 WITHOUT PRIOR WRITTEN PERM

ORIGINAL SHEET T1  
 EXHIBIT

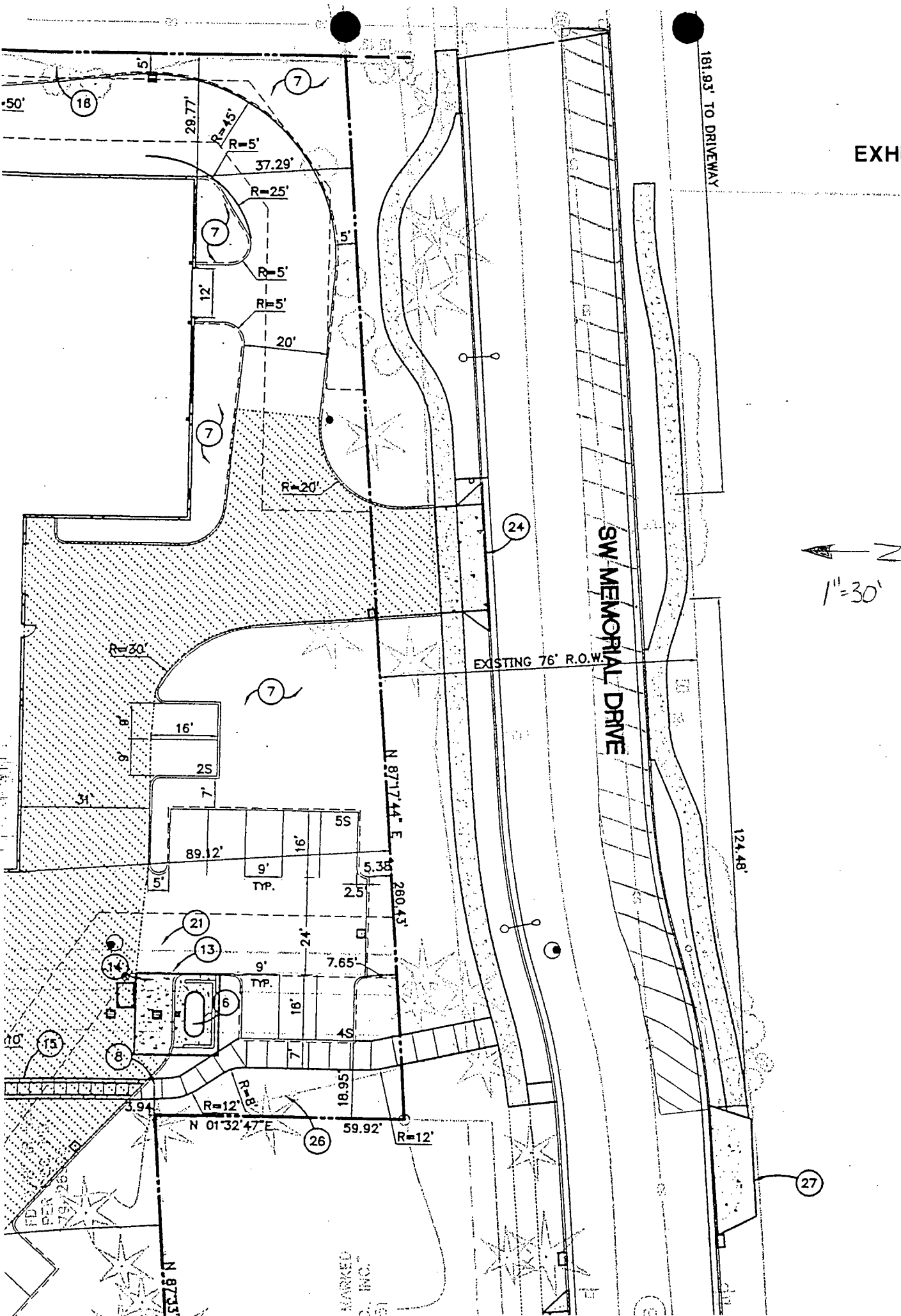
DATE: **2/1/05**  
 DRAWN BY: **RLF**  
 CHECKED BY: **RLF**

ORIGINAL SHEET:

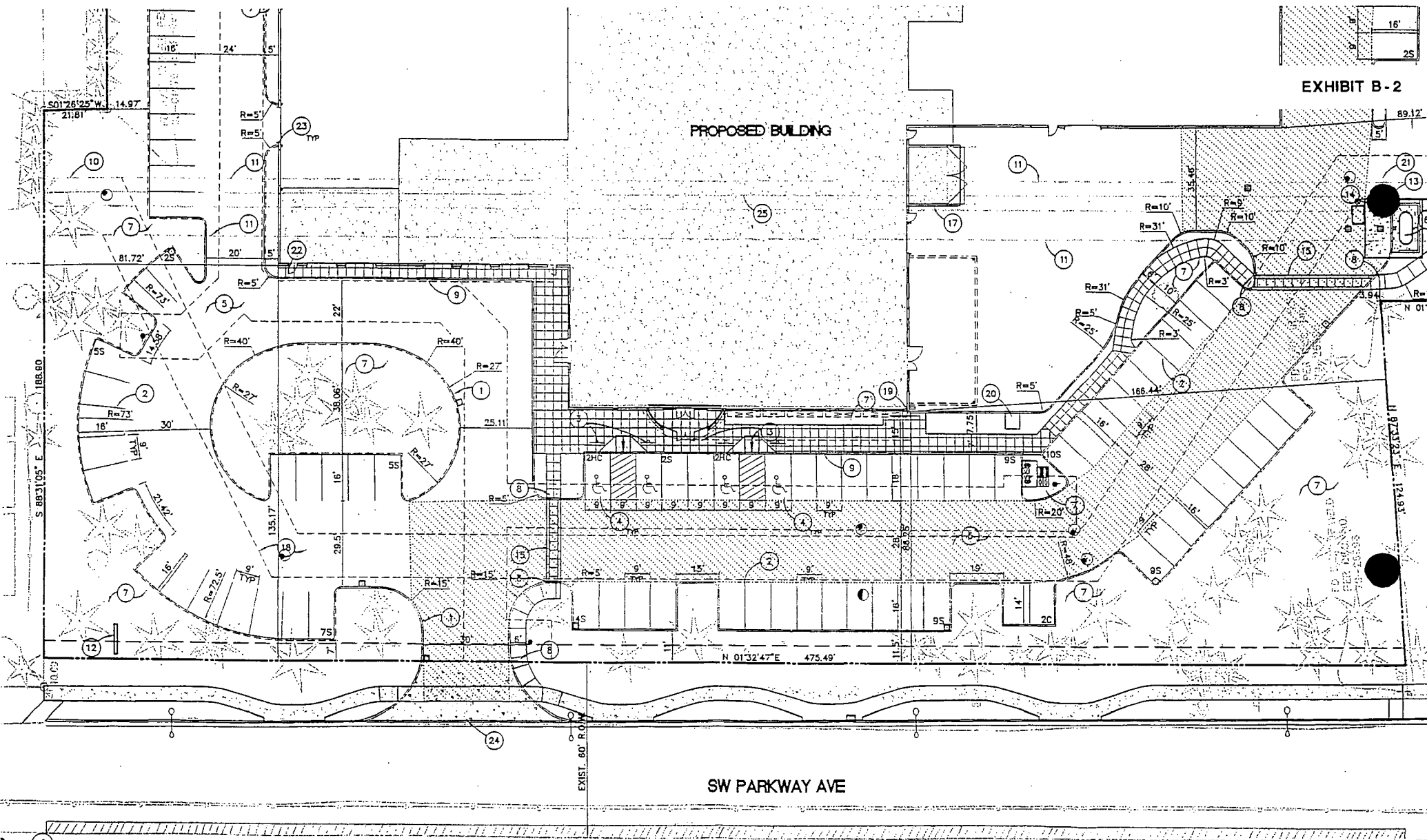
EXHIBIT DRAWING:  
**EXHIBIT C**

JOB NO:  
**2030041.C**

EXHIBIT B-1

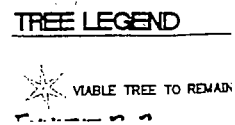


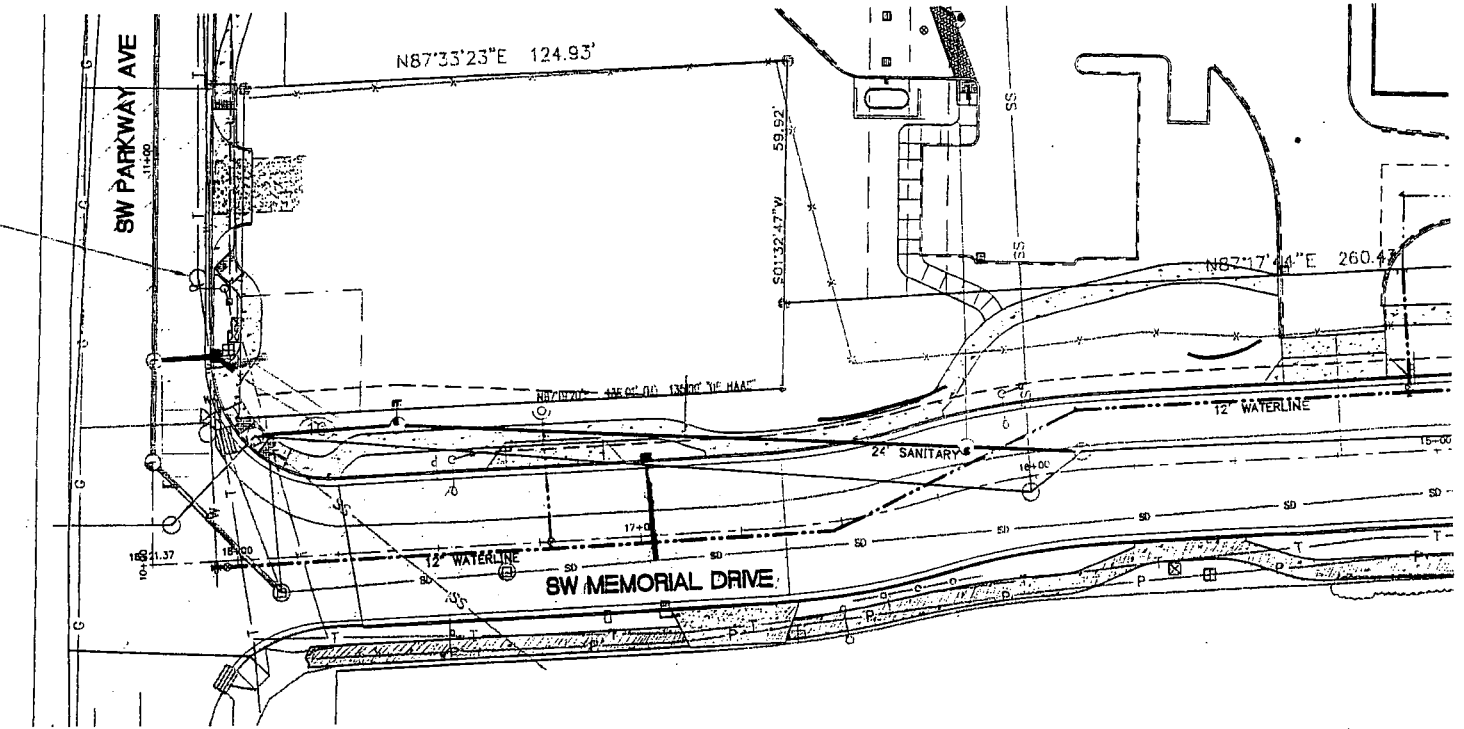
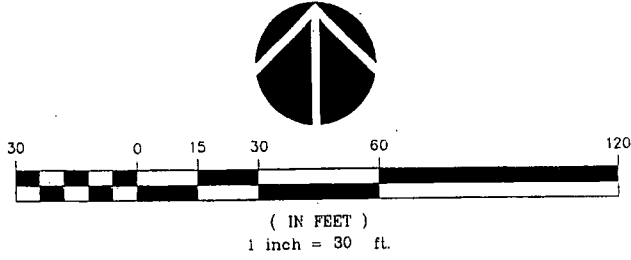
MARKED  
BY INC.



END FOR TYPE  
 KING STRIPE  
 KING SIGN SEE DETAIL 4/C8.0  
 KING SPACE SEE DETAIL 3/C8.0  
 E GEOTECHNICAL REPORT FOR SECTION AND SPECIFICATIONS

- 19. PROPOSED 7 COVERED BICYCLE SPACES (RACK W/IN. 1.5' AWAY FROM BLDG)
- 20. 5'x5' CONCRETE TRANSFORMER PAD
- 21. PROPOSED OIL/WATER SEPARATOR SEE UTILITY PLANS
- 22. TWO BICYCLE SPACES NEAR SERVICE AREA
- 23. DETAIL 5' REQUIRED TO SEE FROM 1000'





**GROUP**  
**MACKENZIE**  
Civil Engineering  
Structural Engineering  
Transportation Planning  
Architecture  
Interior Design  
Land Use Plan

PROJECT:  
HONDA  
WILSONVILLE

© GROUP MACKENZIE, INC.  
ALL RIGHTS RESERVED.  
THESE DRAWINGS ARE THE PROPERTY  
OF GROUP MACKENZIE, INC. AND ARE NOT  
TO BE REPRODUCED IN ANY MANNER  
WITHOUT WRITTEN PERMISSION.

ORIGINAL SHEET TITLE:  
EXHIBIT

DATE: 2/1/05  
DRAWN BY: RLF  
CHECKED BY: RLF

ORIGINAL SHEET:

EXHIBIT DRAWING:

**EXHIBIT C**

JOB NO:  
2030041.C



RECEIVED  
JUL 28 2004  
MOUNTAIN CONSTRUCTION

# INSTRUCTIONS FOR COMPLETION OF AGC DOCUMENT NO. 230 STANDARD FORM OF AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR

(Where the Basis of Payment is the Cost of the Work  
with an Option for Preconstruction Services)

## 2000 EDITION

*The Standard Form of Agreement and General Conditions Between Owner and Contractor (Where the Basis of Payment is the Cost of the Work with an Option for Preconstruction Services), AGC Document No. 230 (AGC 230), is a new document that is intended to form an integrated agreement and general conditions document between the owner and the contractor performing work on a cost of the work plus a fee basis without the establishment of a guaranteed maximum price. AGC 230 may be used, for example, in situations when the exact scope of the work may be unknown at the time of contract execution. AGC 230 also provides an option for the contractor to provide preconstruction services for the project.*

*AGC 230, 2000 edition, benefited from an inclusive development process. It was developed with the advice and cooperation of the AGC Private Industry Advisory Council, consisting of design and construction professionals within Fortune 500 companies representing many sectors of the U.S. economy, such as automobile manufacturing, entertainment, banking, insurance, retailing, energy generation and distribution, and health care. PIAC members meet regularly with AGC contractors to discuss construction contracting issues of mutual concern and to participate in the development and revision of AGC standard form contract documents. AGC gratefully acknowledges the contributions of the PIAC owners who participated in this effort to produce this AGC 230.*

*AGC 230 is intended to be compatible with other AGC 200 series documents and 600 series subcontracts.*

## GENERAL INSTRUCTIONS

### Standard Form

These instructions are for the information and convenience of the users of AGC 230, 2000 Edition. They are neither part of the Agreement nor a commentary on or interpretation of the standard form. The intent of the parties to a particular agreement controls its meaning and not that of the writers and publishers of the standard form. As a standard form, this Agreement has been designed to establish the relationship of the parties in the standard situation. Recognizing that every project is unique, modifica-

tions will be required. See the following recommendations for modifications.

### Related AGC Documents

AGC 230 is part of the AGC 200 series of contract documents. Consider also using these AGC documents.

AGC Document No. 200, *Standard Form of Agreement and General Conditions Between Owner and Contractor (Where the Contract Price is a Lump Sum) Order No. 1870*

AGC Document No. 205, *Standard Short Form Agreement Between Owner and Contractor (Where the Contract Price is a Lump Sum)* Order No. 1872

AGC Document No. 220, *Construction Contractor's Qualification Statement for Engineered Construction* Order No. 716.

AGC Document No. 235, *Standard Short Form Agreement Between Owner and Contractor (Where the Basis of Payment is the Cost of the Work)* Order No. 1881

AGC Document No. 240, *Standard Form of Agreement Between Owner and Architect/Engineer* Order No. 1885

AGC Document No. 250, *Standard Form of Agreement and General Conditions Between Owner and Contractor (Where the Basis of Payment is a Guaranteed Maximum Price with an Option for Preconstruction Services)* Order No. 1890

AGC Document No. 260, *Performance Bond* Order No. 1895

AGC Document No. 261, *Payment Bond* Order No. 1896

#### Legal and Insurance Counsel

**THIS DOCUMENT HAS IMPORTANT LEGAL AND INSURANCE CONSEQUENCES, AND IT IS NOT INTENDED AS A SUBSTITUTE FOR COMPETENT PROFESSIONAL SERVICES AND ADVICE. CONSULTATION WITH AN ATTORNEY AND AN INSURANCE ADVISER IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS MAY VARY WITH RESPECT TO THE APPLICABILITY AND/OR ENFORCEABILITY OF SPECIFIC PROVISIONS IN THIS DOCUMENT.**

AGC SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASERS ASSUME ALL LIABILITY WITH RESPECT TO THE USE OR MODIFICATION OF THIS DOCUMENT, AND AGC SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE OR MODIFICATION.

## COMPLETING THE AGREEMENT

### Completing Blanks

Diamonds (◆) in the margins indicate provisions requiring the parties to fill in blanks with information. The checklist for completion can also be used to ensure important information is not omitted.

## Checklist for Completion of AGC 230

The following provisions, identified within the text of the standard form with a diamond (◆), require the parties to insert information in order to complete the Agreement.

Article 1	3.3.7	6.3	9.3.8	Exhibit No. 1
2.3.2	3.7.3	6.5	10.4.2	
3.1.5	4.6	7.2.2	12.9	
3.1.6	4.7	8.1.1	13.1	
3.2.1	5.4	9.3.2		

### Modifications

Supplemental conditions, provisions added to the printed agreement, may be adopted by reference. It is always best for supplements to be attached to the agreement. Provisions in the printed document that are not to be included in the agreement may be deleted by striking through the word, sentence or paragraph to be omitted. It is recommended that unwanted provisions not be blocked out so that the deleted materials are illegible. The parties should be clearly aware of the material deleted from the printed standard form.

It is a good practice for both parties to sign and date all modifications and supplements.

### Photocopying the Completed Agreement

The purchaser of this printed, copyrighted document may make up to nine (9) photocopies of a completed document, whether signed or unsigned, for distribution to appropriate parties in connection with a specific project. Any other reproduction of this document in any form is strictly prohibited, unless the purchaser has obtained the prior written permission of The Associated General Contractors of America.

## OBTAINING ADDITIONAL INFORMATION

To obtain additional information about AGC standard form contract documents and the AGC Contract Documents Program, contact AGC at 333 John Carlyle Street, Suite 200, Alexandria, VA 22314; phone (703) 548-3119; fax (703) 548-3119, or visit AGC's web site at [www.agc.org](http://www.agc.org).

## AGC 230

### Article 1 AGREEMENT

The date of the Agreement and identification of the parties and the Project are essential information to be accurately inserted in this Article.

### Article 2 GENERAL PROVISIONS

The relationship of the parties, the extent of the Agreement, and the definitions of key terms, such as Contract Documents, Final Completion, and Work, are described in this Article.

### Article 3 CONTRACTOR'S RESPONSIBILITIES

This Article describes the Contractor's general responsibilities for labor, materials, supervision, coordination and construction means and methods, naming of the Contractor's authorized representative, and professional services, if any.

**3.2** This Paragraph details the Contractor's responsibilities for preconstruction services, if selected by the parties. As part of those services, the Contractor will furnish estimates of the Project, review of drawings and specifications for constructibility problems, create schedule for procurement of long-lead items, and develop trade contractor interest in the Project.

**3.3** This Paragraph addresses the Contractor's services during the construction phase of the Project.

**3.3.1-3** Responsibilities for review of the Contract Documents and reporting errors or inconsistencies discovered are detailed.

**3.3.4** The Contractor's responsibilities governing cost reporting are detailed here.

**3.3.5** As between the Owner and the Contractor, responsibilities for construction personnel and supervision are defined.

**3.3.6** Procedures for review and approval of shop drawings, samples, product data and other submittals are detailed in this Paragraph. The Owner is responsible for the review and approval of submittals.

**3.3.8** This Subparagraph provides for the Contractor's cooperation with the work of the Owner or Others.

**3.3.10** This Subparagraph describes the Contractor's responsibilities to keep the Worksite clean.

**3.3.13** The responsibilities and costs for testing and inspection are set forth here.

**3.5-6** The Contractor's warranty and obligations to correct Work are detailed.

**3.7** As between the Owner and Contractor, provisions for safety precautions and programs are detailed.

**3.8** This Paragraph provides for emergency actions by the Contractor to prevent personal injury or property damage.

**3.9** Procedures for handling Hazardous Materials are detailed. Hazardous Materials provisions acknowledge that the Owner is responsible for conditions at the site. The Contractor may immediately stop Work in the affected area and is not required to perform Work related to or in the area of Hazardous Materials.

**3.10** Responsibilities for unknown site conditions are described in this Paragraph.

**3.11** Responsibilities for permits and taxes are allocated in this Paragraph. Paragraph 4.4 is referenced differentiating the Owner's responsibilities for building permits and approvals, including developers' fees.

**3.12** This is a general statement about the Contractor's responsibility for keeping certain Owner information in confidence.

### Article 4 OWNER'S RESPONSIBILITIES

**4.1-3 and 4.5** The Owner's responsibilities include providing information and services in a timely manner, including financial information, site information, and information necessary to give notice of or to enforce mechanics lien rights.

**4.4** Building permits, fees, and approvals, that are not the responsibility of the Contractor as described in Paragraph 3.17, are to be secured and paid for by the Owner.

**4.6-7** The Owner provides the Contractor with a reasonable number of sets of the Contract Documents and designates its representative with regard to the Project.

**4.10** This provision allows the Owner to determine the sequences of construction within the approved construction schedule.

**4.11** Establishes the Owner's responsibilities regarding damage or loss caused by the Owner or Others.

### Article 5 SUBCONTRACTS

**5.2-3** These provisions govern the award of subcontracts and the possibility of the Owner objecting to a proposed Subcontractor, as well as the binding of Subcontractors and materials suppliers to the Contract Documents as they apply to their work.

**5.4-5** There is a note to insert any obligations relative to labor relations affecting the project, and a provision for the contingent assignment of subcontracts if the Agreement is terminated.

### Article 6 COMPENSATION

**6.1** The basis of compensation for the Work performed is described here.

**6.3** The Contractor's Fee is to be inserted here.

**6.4** The adjustment in the Contractor's Fee is described here.

**6.5** The compensation for Preconstruction Services is stated here.

### Article 7 COST OF THE WORK

**7.2** In addition to the Contractor's Fee, the Owner agrees to pay the Contractor for the items listed and described in this Paragraph.

**7.3** Trade discounts, rebates and refunds are to be credited to the Cost of the Work.

### Article 8 PAYMENT

**8.1** Progress payment applications are described, including the treatment of stored materials and equipment, partial lien waivers and affidavits.

**8.2** Under specified circumstances, the Owner may adjust or reject the Contractor's payment application.

**8.3** This provision governs acceptance of Work not complying with the Contract Documents.

**8.4** Procedures for payment delays not the fault of the Contractor are described in this Paragraph.



8.5 Procedures for determining Substantial Completion of the Work are detailed.

8.6 This provision details the conditions for partial occupancy or use of a portion of the Work.

8.7 The conditions for final payment are detailed.

#### Article 9 INDEMNITY, INSURANCE, AND WAIVERS

9.1 The Contractor indemnifies the Owner, Architect/Engineer, and Others as defined in this Agreement, and the Owner causes other contractors to indemnify the Contractor. Contractual indemnification is governed by state law and the states differ as to the types of indemnification agreements they will enforce. Consultation with legal and insurance counsel with knowledge of the jurisdiction is recommended.

9.2 The Contractor and Owner mutually waive claims for consequential damages arising out of the Agreement.

9.3 Insurance provided by the Contractor includes workers' compensation, employer's liability, business automobile liability and commercial general liability insurance. Blanks allow the parties to agree to specific policy limits.

9.3.5 This provision requires the Owner to obtain property insurance on the entire project.

9.3.10 This provision addresses the Owner's business income and liability insurance.

9.4 Responsibilities for claims for royalty, patent or copyright infringement are outlined.

#### Article 10 SUSPENSION, NOTICE TO CURE AND TERMINATION OF AGREEMENT

10.1 The consequences of suspension by the Owner for convenience are outlined.

10.2 The Owner's rights in a situation where the Contractor has failed to cure a default within the requisite period of time are outlined in this Paragraph.

10.3 The parties' respective rights when the Owner exercises its right to terminate the Agreement for cause are detailed.

10.4 The Owner has the right to terminate the Agreement for convenience.

10.5 The Contractor has the right to terminate the Agreement for specified reasons.

10.6 Obligations arising before the date of a termination under this Article apply after termination.

#### Article 11 DISPUTE RESOLUTION

##### Partnering

AGC advocates dispute avoidance through the use of Partnering. While it is not recommended that Partnering be a contractual requirement, experience commends its use to establish working relationships among the parties through a mutually developed, formal strategy of commitment and communication. See Partnering: Concept for Success Booklet, Order No. 2900 (Associated Gen. Contractors of Am. (AGC of Am.), ed. 1991); Partnering:

Changing Attitude Construction, Order No. 2902 (AGC of Am., ed. 1995); Partnering: A Concept for Success Video, Order No. 2901 (AGC of Am., ed. 1992); and Job Site Partnering Video, Order No. 2907, (AGC of Am., ed. 1999).

11.1 The Contractor is expected to continue performance of the Work and the Owner is expected to continue payment for Work performed during dispute resolution proceedings.

11.2 The parties are encouraged to settle their disputes first through direct discussions between authorized representatives. If the representatives are unable to resolve the dispute, the parties' senior executives are to attempt resolution. If these discussions are not successful, the parties must attempt mediation as a condition precedent to any other form of binding dispute resolution procedure (Paragraph 11.3). Any disputes not resolved by mediation are to be decided by the dispute resolution procedure selected in Exhibit No. 1, a menu of dispute resolution methods to which a dispute may be submitted. These provisions can be utilized singularly or progressively.

11.5 This Paragraph provides for the consolidation of dispute resolution procedures in all contracts relating to the Work.

11.6 The prevailing party is entitled to recover attorneys' fees when using procedures selected in Exhibit No. 1.

11.7 This Paragraph establishes that the dispute resolution procedures do not limit the Contractor's lien rights.

#### Article 12 MISCELLANEOUS PROVISIONS

These general provisions govern:

12.1 Assignment of this Agreement by either party.

12.2 Governing law.

12.3 Severability.

12.4 No waiver of performance.

12.5 Titles.

12.6 Construction of the Agreement as a jointly drafted document.

12.7 Rights and remedies of the parties.

12.8 Precedence of this Agreement and other Contract Documents.

12.9 Other provisions specific to the Project may be added at this Paragraph.

#### Article 13 CONTRACT DOCUMENTS

13.1 The Contract Documents in existence at the time of execution of the Agreement are listed here.

13.2 This provision governs the interpretation of Contract Documents.

#### Exhibit No. 1 DISPUTE RESOLUTION MENU

The parties are to select the procedures to resolve their disputes if direct discussions and mediation are unsuccessful.



---

**AGC DOCUMENT NO. 230**  
**STANDARD FORM OF AGREEMENT AND GENERAL**  
**CONDITIONS BETWEEN OWNER AND CONTRACTOR**  
**(Where the Basis of Payment is the Cost of the Work**  
**with an Option for Preconstruction Services)**

---

**TABLE OF ARTICLES**

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONTRACTOR'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. COMPENSATION
7. COST OF THE WORK
8. PAYMENT
9. INDEMNITY, INSURANCE, AND WAIVERS
10. SUSPENSION, NOTICE TO CURE AND TERMINATION  
OF AGREEMENT
11. DISPUTE RESOLUTION
12. MISCELLANEOUS PROVISIONS
13. CONTRACT DOCUMENTS

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification. A diamond "◆" indicates where information is to be inserted to complete this Agreement.

AGC DOCUMENT NO. 230  
STANDARD FORM OF AGREEMENT AND GENERAL CONDITIONS  
BETWEEN OWNER AND CONTRACTOR  
(Where the Basis of Payment is the Cost of the Work  
with an Option for Preconstruction Services)

ARTICLE 1  
AGREEMENT

This Agreement is made this 14th day of June in the year 2004 ◆

by and between the

**OWNER**  
(Name and Address)

Go Ducks, LLC  
1019 Pacific Avenue Suite 916  
Tacoma, WA 98402 ◆

and the  
**CONTRACTOR**  
(Name and Address)

Mountain Construction, Inc.  
7457 S. Madison St.  
Tacoma, WA 98409 ◆

for services in connection with the following  
**PROJECT**  
(Name, location and brief description)

Parker Johnstone Honda  
30600 SW Parkway Ave.  
Wilsonville, OR ◆

Notice to the parties shall be given at the above addresses.

## ARTICLE 2

### GENERAL PROVISIONS

**2.1 RELATIONSHIP OF PARTIES** The Owner and the Contractor agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

**2.1.1** The Contractor shall furnish construction administration and management services and use the Contractor's best efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Owner and Contractor shall endeavor to promote harmony and cooperation among all Project participants.

**2.1.2** The Contractor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

**2.1.3** Neither Contractor nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in the Agreement or unless authorized in writing by Owner's Representative.

**2.2 EXTENT OF AGREEMENT** This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement and each and every provision thereof is for the exclusive benefit of the Owner and Contractor and not for the benefit of any third party except to the extent expressly provided in this Agreement.

### 2.3 DEFINITIONS

**.1** *Agreement* means this AGC Document No. 230, Standard Form of Agreement and General Conditions Between Owner and Contractor (Where the Basis of Payment is the Cost of the Work with an Option for Preconstruction Services), as modified by the parties, and Exhibits and Attachments made part of this Agreement upon its execution.

**.2** *Architect/Engineer* means the licensed Architect, Architect/Engineer or Engineer, and its consultants, retained by Owner to perform design services for the Project. The Owner's Architect/Engineer for the Project is Group MacKenzie ♦

**.3** The *Contract Documents* consist of this Agreement, the drawings, specifications, addenda issued prior to execution of this Agreement, approved submittals, information furnished by the Owner under Paragraph 4.3, other documents listed in this Agreement and any modifications issued after execution.

**.4** The *Contractor* is the person or entity identified in Article 1 and includes the Contractor's Representative.

**.5** The term *Day* shall mean calendar day unless otherwise specifically defined.

**.6** *Fee* means salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices except as may be set forth in Subparagraph 7.2.2; general and administrative expenses of the Contractor's principal and branch offices other than the field office; the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work; and profit.

**.7** *Final Completion* occurs on the date when the Contractor's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Contractor.

**.8** A *Material Supplier* is a person or entity retained by the Contractor to provide material and equipment for the Work.

**.9** *Others* means other contractors, material suppliers and persons at the Worksite who are not employed by the Contractor or Subcontractors.

**.10** *Owner* is the person or entity identified in Article 1 and includes the Owner's representative.

**.11** The *Owner's Program* is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

**.12** The *Project*, as identified in Article 1, is the building, facility and/or other improvements for which the Contractor is to perform Work under this Agreement. It may also include construction by the Owner or Others.

**.13** The *Schedule of the Work* is the document prepared by the Contractor that specifies the dates on which the Contractor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

**.14** A *Subcontractor* is a person or entity retained by the Contractor as an independent con-

tractor to provide the labor, materials, equipment and/or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Architect/Engineer or Others.

.15 *Substantial Completion of the Work*, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Contractor's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Contractor.

.16 A *Subsubcontractor* is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

.17 *Work* means the construction and services necessary or incidental to fulfill the Contractor's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

.1 *Changed Work* means work that is different from the original scope of Work;

.2 *Defective Work* is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.4 and 3.5.

.18 *Worksite* means the location in Article 1 where the Work is to be performed.

### ARTICLE 3

#### CONTRACTOR'S RESPONSIBILITIES

##### 3.1 GENERAL RESPONSIBILITIES

3.1.1 The Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work all of which shall be provided in full accord with and reasonably inferable from the Contract Documents as being necessary to produce the indicated results.

3.1.2 The Contractor shall be responsible for the supervision and coordination of the Work, including the con-

struction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Contractor shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Contractor recognized and failed to timely report to the Owner any error, inconsistency, omission or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences or procedures.

3.1.3 The Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable law.

3.1.4 **WORKSITE VISIT** The Contractor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.1.5 **CONTRACTOR'S REPRESENTATIVE** The Contractor's authorized representative is Jeff Stroud ♦

The Contractor's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Contractor shall notify the Owner in writing of a change in the designation of the Contractor's Representative.

3.1.6 **PROFESSIONAL SERVICES** The Owner, through its Architect/Engineer, shall provide professional services required for the completion of the Work, except the following: HVAC, Plumbing, Fire Protection, Electrical, Metal Building Design ♦

The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless the Contractor needs to provide such services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures, or unless such services are specifically called for by the Contract Documents. If professional services are required of the Contractor, the Owner shall indicate all performance and design criteria to be satisfied. The Contractor shall not be responsible for the adequacy of such performance and design criteria. The Contractor shall obtain professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner and the Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. The Contractor shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

## 3.2 PRECONSTRUCTION SERVICES

3.2.1 The Preconstruction Services under this Paragraph

3.2

(Check one only)

\_\_\_\_\_ are / XX are not  
included in the Contractor's Work.

**3.2.2 PRELIMINARY EVALUATION** The Contractor shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Architect/Engineer.

**3.2.3 CONSULTATION** The Contractor shall schedule and attend regular meetings with the Owner and Architect/Engineer. The Contractor shall consult with the Owner and Architect/Engineer regarding site use and improvements; and the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

### 3.2.4 ESTIMATES

.1 When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Architect/Engineer has prepared other basic design criteria, the Contractor shall prepare, for the review of the Architect/Engineer and approval of the Owner, an initial estimate for the Project, utilizing area, volume or similar conceptual estimating techniques.

.2 When schematic or preliminary design documents have been completed by the Architect/Engineer and approved by the Owner, the Contractor shall prepare for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data including, where possible, data from potential Trade Contractors. During the preparation of the design development documents or documents of comparable detail, the Contractor shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Contractor.

.3 When design development documents or documents of comparable detail have been completed by the Architect/Engineer and approved by the Owner, the Contractor shall prepare a further detailed estimate with supporting data including, where possible, data from potential Trade Contractors for review by the Architect/Engineer and ap-

proval by the Owner. During the preparation of the Drawings and specifications, the Contractor shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Contractor.

.4 If any estimate submitted to the Owner exceeds previously approved estimates, the Contractor shall notify and make recommendations to the Owner.

**3.2.5 CONSTRUCTION DOCUMENT REVIEW** The Contractor shall review the drawings and specifications in an effort to identify potential constructibility problems that could impact the Contractor's ability to perform the Work in an expeditious and economical manner. The Contractor shall issue a report to the Architect/Engineer and Owner for their review and action as appropriate. In addition, the Contractor shall promptly report to the Owner and the Architect/Engineer any errors or omissions which it discovers in the drawings and specifications.

**3.2.6 TEMPORARY FACILITIES** The Contractor shall make recommendations regarding temporary construction facilities, equipment, materials and services for common use by the Contractor, its Subcontractors, Subsubcontractors and Material Suppliers.

**3.2.7 LONG-LEAD ITEMS** The Contractor shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Schedule of the Work. The Contractor shall help expedite the delivery of long-lead time items.

**3.2.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS** The Contractor shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer a list of possible Subcontractors from whom proposals may be requested for each principal portion of the Work. The Owner shall promptly reply in writing to the Contractor if the Owner or Architect/Engineer know of any objection to a subcontractor. The Owner may designate specific persons or entities from whom the Contractor shall solicit bids.

**3.2.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION** The Contractor shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

**3.2.10 CONSULTANTS** The Contractor shall assist the Owner in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories and special consultants as needed.

**3.2.11 PERMITS** The Contractor shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractor.

### **3.3 CONSTRUCTION SERVICES AND ADMINISTRATION**

**3.3.1** In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Contractor shall examine and compare the Contract Documents with information furnished by the Owner pursuant to Paragraph 4.3; relevant field measurements made by the Contractor; and any visible conditions at the Worksite affecting the Work.

**3.3.2** If in the course of the performance of the obligations in Subparagraph 3.3.1, the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Owner. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

**3.3.3** The Contractor has no liability for errors, omissions or inconsistencies discovered under Subparagraphs 3.3.1 and 3.3.2 unless the Contractor knowingly failed to report a recognized problem to the Owner.

**3.3.4 COST REPORTING** The Contractor shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Contractor shall maintain a complete set of all books and records prepared or used by the Contractor with respect to the Project. The Contractor's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of three years after the final payment or longer where required by law.

**3.3.4.1** The Contractor agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee them.

### **3.3.5 CONSTRUCTION PERSONNEL AND SUPERVISION**

**3.3.5.1** The Contractor shall provide competent supervision for the performance of the Work. Before commencing the Work, Contractor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, Contractor shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

**3.3.5.2** The Contractor shall be responsible to the Owner for acts or omissions of parties or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

**3.3.5.3** Contractor shall permit only skilled persons to perform the Work. Contractor shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Contractor shall immediately reassign the person on receipt of Owner's written notice to do so.

### **3.3.6 SUBMITTALS**

**3.3.6.1** The Contractor shall submit to the Owner and, if directed, to its Architect/Engineer for review and the Owner's approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. The Contractor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Contractor shall prepare and deliver its submittals to the Owner in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the Contractor delivers its submittals to the Owner, the Contractor shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Contractor submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution or change. Further, the Owner shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Contractor. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Contractor agrees upon request to submit in a timely fashion to the Owner for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner.

3.3.6.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.3.6.3 The Contractor shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

3.3.6.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples and shop drawings.

3.3.6.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Contractor obtains all approvals required under the Contract Documents for substitutions.

3.3.7 The Contractor shall prepare and submit to the Owner

(Check one only)

- final marked up as-built drawings ◆  
or ◆  
 updated electronic data ◆  
or ◆  
 such documentation as defined by the parties by attachment to this Agreement, ◆

in general documenting how the various elements of the Work were actually constructed or installed

### 3.3.8 COOPERATION WITH WORK OF OWNER AND OTHERS

3.3.8.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, clean up and safety which are substantively the same as the corresponding provisions of this Agreement.

3.3.8.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Contractor and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Contractor and assist with the coordination of activities and the review of construction schedules and operations.

3.3.8.3 With regard to the work of the Owner and Others, the Contractor shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Contractor's construction and operations with theirs as required by this Subparagraph 3.3.8.

3.3.8.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Contractor shall give the Owner prompt, written notification of any defects the Contractor discovers in their work which will prevent the proper execution of the Work. The Contractor's obligations in this Subparagraph 3.3.8 do not create a responsibility for the work of Others, but are for the purpose of facilitating the Work. If the Contractor does not notify the Owner of patent defects interfering with the performance of the Work, the Contractor acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

### 3.3.9 CUTTING, FITTING AND PATCHING

3.3.9.1 The Contractor shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.3.9.2 Cutting, patching, or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

3.3.10 **CLEANING UP** The Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.3.11 **ACCESS TO WORK** The Contractor shall facilitate the access of the Owner, its Architect/Engineer and Others to Work in progress.

3.3.12 **MATERIALS FURNISHED BY THE OWNER OR OTHERS** In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Contractor to examine the



items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

### 3.3.13 TESTS AND INSPECTIONS

3.3.13.1 The Contractor shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Contractor shall give proper notice to all required parties of such tests, approvals and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. The Owner shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents except as provided in Clause 3.3.13.3, and which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Contractor and promptly delivered to the Owner.

3.3.13.2 If the Owner or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Contractor shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the Owner's expense except as provided in Clause 3.3.13.3.

3.3.13.3 If the procedures described in Clauses 3.3.13.1 and 3.3.13.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Contractor, the Contractor shall be responsible for the costs of correction and retesting.

3.4 **WORKMANSHIP** The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

### 3.5 WARRANTY

3.5.1 The Contractor warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and

free from defective workmanship and materials. At the Owner's request, the Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The contractor's warranty pursuant to this Paragraph 3.5 shall commence on the Date of Substantial Completion.

3.5.2 With respect to any portion of Work first performed after Substantial Completion, the Contractor's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work:

3.5.3 The Contractor shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached exhibit to this Agreement. Contractor's liability for such warranties shall be limited to the one year correction period referred to in Paragraph 3.6. After that period Contractor shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

### 3.6 CORRECTION OF WORK WITHIN ONE YEAR

3.6.1 If prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the Owner shall promptly notify the Contractor in writing. Unless the Owner provides written acceptance of the condition, the Contractor shall promptly correct the Defective Work. If within the one-year correction period the Owner discovers and does not promptly notify the Contractor or give the Contractor an opportunity to test and/or correct Defective Work as reasonably requested by the Contractor, the Owner waives the Contractor's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.6.2 With respect to any portion of Work first performed after Substantial Completion, the one year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Contractor.

3.6.3 If the Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner, the Owner may correct it in accordance with the Owner's right to carry out the Work in Paragraph 10.2.

3.6.4 If after the one-year correction period but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Contractor. If the Contractor elects to correct the Work it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from the Owner. The Contractor shall complete the correction of Work within a mutually agreed time frame. If the Contractor does not elect to correct the Work the Owner may have the Work corrected by itself or Others and charge the Contractor for the reasonable cost of the correction. Owner shall provide Contractor with an accounting of correction costs it incurs.

3.6.5 If the Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the Contractor shall be responsible for the cost of correcting the destroyed or damaged construction.

3.6.6 The one-year period for correction of Defective Work does not affect a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents.

3.6.7 Prior to final payment, at the Owner's option and with the Contractor's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction.

### 3.7 SAFETY OF PERSONS AND PROPERTY

3.7.1 **SAFETY PRECAUTIONS AND PROGRAMS** The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 3.7 establishes the responsibility for safety between the Owner and Contractor, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.7.2 The Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- .1 its employees and other persons at the Worksite;
- .2 materials and equipment stored at on-site or off-site locations for use in of the Work; and
- .3 property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

### 3.7.3 CONTRACTOR'S SAFETY REPRESENTATIVE

The Contractor's Worksite Safety Representative is Jeff May

who shall act as the Contractor's authorized safety representative with a duty to prevent accidents in accordance with this Subparagraph 3.7.2. If no individual is identified in this Paragraph, the authorized safety representative shall be the Contractor's Representative. The Contractor shall report immediately in writing all recordable accidents and injuries occurring at the Worksite. When the Contractor is required to file an accident report with a public authority, the Contractor shall furnish a copy of the report to the Owner.

3.7.4 The Contractor shall provide the Owner with copies of all notices required of Contractor by law or regulation. The Contractor's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.7.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent of the negligence attributed to acts or omissions of the Contractor, or anyone for whose acts the Contractor may be liable, shall be promptly remedied by the Contractor. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Contractor, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

3.7.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Contractor does not adopt corrective measures, the Owner may perform them.

3.8 **EMERGENCIES** In an emergency, the Contractor shall act in a reasonable manner to prevent personal injury or property damage of this Agreement.

### 3.9 HAZARDOUS MATERIALS

3.9.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal and/or clean-up. The Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the project Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.9.2 If after the commencement of the Work, Hazardous Material is discovered at the project Worksite, the Contractor

tor shall be entitled to immediately stop Work in the affected area. The Contractor shall report the condition to the Owner and, if required, the government agency with jurisdiction.

**3.9.3** The Contractor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

**3.9.4** The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

**3.9.5** To the extent not caused by the negligent acts or omissions of the Contractor, its Subcontractors and Sub-subcontractors, and the agents, officers, directors and employees of each of them, the Owner shall defend, indemnify and hold harmless the Contractor, its Subcontractors and Sub-subcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.

### **3.9.6 MATERIALS BROUGHT TO THE WORKSITE**

**3.9.6.1** Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Contractor and made available to the Owner, Subcontractors and Others.

**3.9.6.2** The Contractor shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

**3.9.6.3** To the extent not caused by the negligent acts or omissions of the Owner, its agents, officers, directors and employees, the Contractor shall defend, indemnify and hold

harmless the Owner, its agents, officers, directors and employees, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Contractor.

**3.9.6.4** The terms of this Paragraph 3.9 shall survive the completion of the Work and/or any termination of this Agreement.

**3.10 CONCEALED OR UNKNOWN WORKSITE CONDITIONS** If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Contractor shall stop Work and give immediate written notice of the condition to the Owner. The Contractor shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the parties.

### **3.11 PERMITS AND TAXES**

**3.11.1** Contractor shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Paragraph 4.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Contractor shall provide to Owner copies of all notices, permits, licenses and renewals required under this Agreement.

**3.11.2** Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Contractor.

**3.11.3** If in accordance with the Owner's direction, the Contractor claims an exemption for taxes, the Owner shall defend, indemnify and hold the Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any such action.

**3.12 CONFIDENTIALITY** The Contractor shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discover-

ies, production methods and the like that may be disclosed to the Contractor or which the Contractor may acquire in connection with the Work. The Owner shall treat as confidential information all of the Contractor's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement.

## ARTICLE 4

### OWNER'S RESPONSIBILITIES

**4.1 INFORMATION AND SERVICES** Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work.

**4.2 FINANCIAL INFORMATION** Prior to commencement of the Work and thereafter at the written request of the Contractor, the Owner shall provide the Contractor with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Contractor's commencing or continuing the Work. The Contractor shall be notified prior to any material change in Project financing.

**4.3 WORKSITE INFORMATION** Except to the extent that the Contractor knows of any inaccuracy, the Contractor is entitled to rely on Worksite information furnished by the Owner pursuant to this Paragraph. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations;

.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and

.3 any other information or services requested in writing by the Contractor which is relevant to the Contractor's performance of the Work and under the Owner's control.

The information required by this Paragraph 4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions.

Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Contractor in laying out the Work.

### 4.4 BUILDING PERMIT, FEES AND APPROVALS

Except for those permits and fees related to the Work which are the responsibility of the Contractor pursuant to Subparagraph 3.11.1, the Owner shall secure and pay for all other permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

### 4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION

Within seven (7) days after receiving the Contractor's written request, the Owner shall provide the Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

**4.6 CONTRACT DOCUMENTS** Unless otherwise specified, Owner shall provide fifteen (15) copies of the Contract Documents to the Contractor without cost.

**4.7 OWNER'S REPRESENTATIVE** The Owner's authorized representative is John B. Dimmer  
Parker Johnstone

The representative shall be fully acquainted with the, and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the Contractor in writing.

**4.8 OWNER'S CUTTING AND PATCHING** Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Contractor, which approval shall not be unreasonably withheld.

**4.9 OWNER'S RIGHT TO CLEAN UP** In case of a dispute between the Contractor and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures.

### 4.10 SEQUENCE OF THE WORK

**4.10.1** The Owner may determine the sequence in which the Work is performed, provided it does not unreasonably

interfere with the Contractor's Work. The Owner may require the Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others.

**4.10.2** The Owner, for any reason, may require the Contractor at any time to perform any portion of the Work on an overtime basis or may require the Contractor not to perform any portion of the Work on an overtime basis. If the Owner requires overtime Work, the overtime portion will be considered a Cost of the Work.

**4.11 COST OF CORRECTING DAMAGED OR DESTROYED WORK** With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Contractor, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss.

## ARTICLE 5

### SUBCONTRACTS

**5.1 SUBCONTRACTORS** The Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

**5.2.1** As soon after the execution of the Agreement as possible the Contractor shall provide the Owner, and if directed, the Architect/Engineer with a written list of the proposed Subcontractors and significant Material Suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or Material Supplier, the Owner shall notify the Contractor in writing. Failure to promptly object shall constitute acceptance.

**5.2.2** If the Owner has reasonably and promptly objected as provided in Subparagraph 5.2.1, the Contractor shall not contract with the proposed Subcontractor or Material Supplier, and the Contractor shall propose another acceptable to the Owner.

**5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS** The Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

**5.4 LABOR RELATIONS** (Insert here any conditions, obligations or requirements relative to labor relations and their effect on the Project. Legal counsel is recommended.) ♦

N/A

### 5.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

**5.5.1** If this Agreement is terminated, each subcontract agreement shall be assigned by the Contractor to the Owner, subject to the prior rights of any surety, provided that:

- .1 this Agreement is terminated by the Owner pursuant to Paragraphs 10.3 or 10.4; and
- .2 the Owner accepts such assignment after termination by notifying the Subcontractor and Contractor in writing.

**5.5.2** If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

## ARTICLE 6

### COMPENSATION

**6.1** The Owner shall compensate the Contractor for Work performed on the following basis:

- .1 the Cost of the Work as allowed in Article 7; and
- .2 the Contractor's Fee paid in proportion to the Work performed subject to adjustment as provided in Paragraph 6.4.

**6.2** Payment for Work performed shall be as set forth in Article 8.

**6.3 CONTRACTOR'S FEE** The Contractor's Fee shall be as follows, subject to adjustment as provided in Paragraph 6.4: (State whether a stipulated sum or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.) ♦

8% of the cost of work

**6.4 ADJUSTMENT IN THE CONTRACTOR'S FEE**  
Adjustment in the Contractor's Fee shall be made as follows:

.1 if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss, the Contractor shall be paid an additional fee in the same proportion that the Contractor's Fee bears to the estimated Cost of the Work for the replacement.

**6.5 PRECONSTRUCTION SERVICES COMPENSATION** The Contractor shall be compensated for Preconstruction Services, as set forth in Paragraphs 3.2 and 3.3, as follows: (State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month).

N/A

**ARTICLE 7**

**COST OF THE WORK**

7.1 The Owner agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Paragraph 6.3.

7.2 **COST ITEMS** The Cost of the Work includes:

7.2.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work.

7.2.2 Salaries of the Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

N/A

7.2.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agree-

ments, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 7.2.1 and 7.2.2.

7.2.4 Reasonable transportation, travel, hotel and moving expenses of the Contractor's personnel incurred in connection with the Work.

7.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.

7.2.6 Payments made by the Contractor to Subcontractors for work performed under this Agreement.

7.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value and/or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Contractor.

7.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Contractor or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Contractor or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

7.2.9 Cost of the premiums for all insurance and surety bonds which the Contractor is required to procure or deems necessary, and approved by the Owner.

7.2.10 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.

7.2.11 Permits, fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Contractor is not responsible as set forth in Paragraph 9.4, and deposits lost for causes other than the Contractor's negligence.

7.2.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the construction and for a period of one year following the date of Substantial Completion of the Work, provided that such corrective work did not arise from the negligence of the Contractor.

7.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

7.2.14 All costs associated with demobilizing and remobilizing the field office and the Contractor's workforce, including Subcontractor workforces, as a result of a suspension of the Work by the Owner.

7.2.15 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the Worksite and reasonable petty cash expenses at the field office.

7.2.16 All water, power and fuel costs necessary for the Work.

7.2.17 Cost of removal of all nonhazardous substances, debris and waste materials.

7.2.18 Costs incurred due to an emergency affecting the safety of persons and/or property.

7.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Contractor, reasonably and properly resulting from the Contractor's performance of the Work.

7.2.20 Additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of this Agreement.

7.2.21 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contractor's Fee as set forth in Article 6, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

7.3 **DISCOUNTS** All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

## ARTICLE 8

### PAYMENT

#### 8.1 PROGRESS PAYMENTS

8.1.1 **APPLICATIONS** The Contractor shall submit to the Owner and, if directed, its Architect/Engineer, a monthly application for payment no later than the tenth (10th) day of the calendar month for the preceding thirty (30) Days. The application for payment shall consist of the Cost of the Work performed up to the last day of the month, including the cost of material suitably stored on the Worksite or at other locations approved by the Owner, along with a proportionate share of the Contractor's Fee. Approval of payment applications for such stored materials stored off-site shall be conditioned upon submission by the Contractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest, including transportation to the Worksite. Prior to submission of the next application for payment, the Contractor shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the Owner and the Contractor.

five (5)

8.1.2 Within ~~ten (10)~~ days after receipt of each monthly application for payment, the Owner shall give written notice to the Contractor of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) days after accepting such application, the Owner shall pay directly to the Contractor the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Contractor cannot agree on a revised amount then, within fifteen (15) days after its initial rejection in part of such application, the Owner shall pay directly to the Contractor the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

#### 8.1.3 LIEN WAIVERS AND LIENS

8.1.3.1 **PARTIAL LIEN WAIVERS AND AFFIDAVITS** If requested by the Owner, as a prerequisite for payment, the Contractor shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the Contractor be required to sign an unconditional waiver of lien or claim, either partial or final, prior to

receiving payment or in an amount in excess of what it has been paid.

**8.1.3.2 RESPONSIBILITY FOR LIENS** If Owner has made payments in the time required by this Article 8, the Contractor shall, within thirty (30) days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Contractor fails to take such action on a lien, the Owner may cause the lien to be removed at the Contractor's expense, including bond costs and reasonable attorney's fees. This Paragraph shall not apply if there is a dispute pursuant to Article 11 relating to the subject matter of the lien.

**8.2 ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Contractor is responsible therefor under the Contract :

- .1 the Contractor's repeated failure to perform the Work as required by the Contract Documents;
- .2 loss or damage arising out of or relating to this Agreement and caused by Contractor to the Owner or Others to whom the Owner may be liable;
- .3 the Contractor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner.

The Owner shall give written notice to the Contractor at the time of disapproving or nullifying an application for payment of the specific reasons therefor. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

**8.3 ACCEPTANCE OF WORK** Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

**8.4 PAYMENT DELAY** If for any reason not the fault of the Contractor the Contractor does not receive a progress payment from the Owner within seven (7) days after the time such payment is due, as defined in Subparagraph 8.1.2, then the Contractor, upon giving seven (7) days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Contractor has been received, including interest from the date when payment was due in accordance with Paragraph 8.8.

## 8.5 SUBSTANTIAL COMPLETION

**8.5.1** The Contractor shall notify the Owner and, if directed, its Architect/Engineer when it considers that Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Architect/Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the Contractor. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Architect/Engineer shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Contractor shall promptly complete all items on the list.

**8.5.2** When Substantial Completion of the Work or a designated portion is achieved, the Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and the respective responsibilities of the Owner and Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Contractor to the Owner and, if directed, to its Architect/Engineer, for the Owner's written acceptance of responsibilities assigned in the Certificate.

**8.5.3** Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

## 8.6 PARTIAL OCCUPANCY OR USE

**8.6.1** The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Owner shall not unreasonably refuse to accept partial occupancy.

## 8.7 FINAL COMPLETION AND FINAL PAYMENT

**8.7.1** Upon notification from the Contractor that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Architect/Engineer, shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.



**8.7.2** When the Work is complete the Contractor shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Contractor's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

**8.7.3** Final payment shall be made to the Contractor within twenty (20) days after the Contractor has submitted an application for final payment, including submissions required under Subparagraph 8.7.4, and a Certificate of Final Completion has been executed by the Owner and Contractor.

**8.7.4** Final payment shall be due on the Contractor's submission of the following to the Owner:

- .1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;
- .2 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;
- .3 release of any liens, conditioned on final payment being received;
- .4 consent of any surety; and
- .5 any outstanding known and unreported accidents or injuries experienced by the Contractor or its Subcontractors at the Worksite.

**8.7.5** If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the estimated Cost of the Work for Work not fully completed and accepted is less than the retained amount prior to payment, the Contractor shall submit to the Owner, and if directed, to the Architect/Engineer, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Paragraph 8.7.

**8.7.6** Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties and Defective Work.

**8.7.7 ACCEPTANCE OF FINAL PAYMENT** Unless the Contractor, provides written identification of unsettled claims with an application for final payment, acceptance of final payment constitutes a waiver of such claims.

**8.8 LATE PAYMENT** Payments due but unpaid shall bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

## ARTICLE 9

### INDEMNITY, INSURANCE, AND WAIVERS

#### 9.1 INDEMNITY

**9.1.1** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold the Owner, Owner's officers, directors, members, consultants, agents and employees, the Architect/Engineer and Others harmless from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Subparagraph 9.3.5, that may arise from the performance of the Work, but only to the extent of the negligent acts or omissions of the Contractor, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall not be required to defend, indemnify or hold harmless the Owner, the Architect/Engineer or Others for any negligent acts, omissions of the Owner, the Architect/Engineer or Others.

**9.1.2** To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, its officers, directors, members, consultants, agents and employees, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Subparagraph 9.3.5, that may arise from the performance of work by Owner, Architect/Engineer or Others, to the extent of the negligence attributed to such acts or omissions by Owner, Architect/Engineer or Others.

**9.2 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES** The Owner and the Contractor agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, the services of employees, or loss of reputation. The Contractor agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity or loss of reputation. This Paragraph 9.2 shall not be construed to preclude contractual provisions for liquidated damages when such provisions relate to direct damages only. The provisions of this paragraph shall also apply to the termination of this Agreement and shall survive such termination.

## 9.3 INSURANCE

9.3.1 The Contractor shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Contractor or the Owner.

9.3.2 Prior to the start of Work, the Contractor shall procure and maintain in force Workers Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products—completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The primary CGL coverage shall also name the Owner as an additional insured for liability arising out of the Work. If requested, the Contractor shall provide the Owner with certificates of the insurance coverages required.

The Contractor's Employers' Liability, Business Automobile Liability, and Commercial General Liability policies, as required in this Subparagraph 9.3.2, shall be written with at least the following limits of liability:

- .1 Employers' Liability
  - a. \$ 1,000,000.00 ♦  
Bodily Injury by Accident  
Each Accident
  - b. \$ 1,000,000.00 ♦  
Bodily Injury by Disease  
Policy Limit
  - c. \$ 1,000,000.00 ♦  
Bodily Injury by Disease  
Each Employee
- .2 Business Automobile Liability
  - a. \$ 1,000,000.00 ♦  
Each Accident
- .3 Commercial General Liability
  - a. \$ 1,000,000.00 ♦  
Each Occurrence
  - b. \$ 2,000,000.00 ♦  
General Aggregate
  - c. \$ 2,000,000.00 ♦  
Products/Completed  
Operations Aggregate
  - d. \$ 1,000,000.00 ♦  
Personal and Advertising  
Injury Limit

9.3.3 Employers' Liability, Business Automobile Liability and Commercial General Liability coverages required under Subparagraph 9.3.2 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess and/or Umbrella Liability policies.

9.3.4 The Contractor shall maintain in effect all insurance coverage required under Subparagraph 9.3.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.

The policies of insurance required under Subparagraph 9.3.2 shall contain a provision that the coverages afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. The Contractor shall maintain completed operations liability insurance for one year after acceptance of the Work, substantial completion of the Project, or to the time required by the Contract Documents, whichever is longer. Prior to commencement of the Work, Contractor shall furnish the Owner with certificates evidencing the required coverages.

9.3.5 **PROPERTY INSURANCE** Before the start of Work, the Owner shall obtain and maintain Builder's Risk or all risk upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Owner, Contractor, Subcontractors and Subsubcontractors as named insureds. This insurance shall be written as a builder's risk, "all risk" or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship or material. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Contractor, Subcontractors, Subsubcontractors and Material Suppliers. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this Subparagraph 9.3.5. Prior to commencement of the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this Subparagraph 9.3.5.

9.3.6 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Contractor before the Work is commenced. The Contractor may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. In such case, the cost of this insurance shall be a Cost of the Work. The Owner shall be responsible for all of Contractor's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

9.3.7 Owner and Contractor waive all rights against each other and their respective employees, agents, contractors, subcontractors and Subsubcontractors for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights the Contractor may have for the failure of the Owner to obtain and maintain property insurance.

9.3.8 To the extent of the limits of Contractor's Commercial General Liability Insurance specified in Subparagraph 9.3.2 or \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) whichever is more, the Contractor shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses and expenses, including attorney's fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of the Contractor, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

9.3.9 The policies shall also be endorsed to state that the carrier waives any right of subrogation against the Contractor, the Architect/Engineer, Subcontractors, Material Suppliers or Subsubcontractors.

9.3.10 **OWNER'S INSURANCE** The Owner shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Owner's errors or omissions.

9.4 **ROYALTIES, PATENTS AND COPYRIGHTS** The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Contractor harmless from any suits or claims of infringement of any patent rights or copyrights

arising out of any patented or copyrighted materials, methods or systems specified by the Owner or Architect/Engineer.

## ARTICLE 10

### SUSPENSION, NOTICE TO CURE AND TERMINATION OF AGREEMENT

#### 10.1 SUSPENSION BY OWNER FOR CONVENIENCE

10.1.1 **OWNER SUSPENSION** Should the Owner order the Contractor in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be liable, then the Contractor shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner.

10.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 10.1.

10.2 **NOTICE TO CURE A DEFAULT** If the Contractor refuses or persistently fails to supply enough properly skilled workers, proper materials, and/or equipment, or fails to make prompt payment to its workers, subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement the Contractor may be deemed in default. If the Contractor fails within seven (7) working days after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner without prejudice to any other rights or remedies may:

.1 supply workers and materials, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default

.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default;

.3 withhold payment due the Contractor in accordance with Paragraph 8.2; and

.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 10.2.1 and

10.2.2 without first giving written notice to the Contractor, but shall give prompt written notice of such action to the Contractor following commencement of the action.

### 10.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

**10.3.1 TERMINATION BY OWNER FOR DEFAULT** If, within seven (7) days of receipt of a notice to cure pursuant to Paragraph 10.2, the Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Contractor that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional days. After the expiration of the additional fourteen (14) day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Owner under Paragraph 10.2.

**10.3.2 USE OF CONTRACTOR'S MATERIALS, SUPPLIES AND EQUIPMENT** If the Owner or Others perform Work under this Paragraph 10.3, the Owner shall have the right to take and use any materials, supplies, equipment belonging to the Contractor and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work shall be returned to the Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

**10.3.3** If the Contractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

### 10.4 TERMINATION BY OWNER FOR CONVENIENCE

**10.4.1** Upon written notice to the Contractor, the Owner may, without cause, terminate this Agreement. The Contractor shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

**10.4.2** If the Owner terminates this Agreement pursuant to this Paragraph 10.4, the Contractor shall be paid for the Work performed to date and for any proven loss, cost or expense in connection with the Work, including all demobilization costs and a premium as set forth below: (Insert here the amount agreed to by the parties.)

-0-

**10.4.3** If the Owner terminates this Agreement pursuant to Paragraphs 10.3 or 10.4, the Contractor shall:

.1 execute and deliver to the Owner all papers and take all action required to assign, transfer and vest in the Owner the rights of the Contractor to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

.2 exert reasonable efforts to reduce to a minimum the Owner's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

.3 cancel any subcontracts, orders and commitments as the Owner directs; and

.4 sell at prices approved by the Owner any materials and supplies as the Owner directs, with all proceeds paid or credited to the Owner.

### 10.5 CONTRACTOR'S RIGHT TO TERMINATE

**10.5.1** Upon seven (7) days' written notice to the Owner, the Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of the Contractor for any of the following reasons:

.1 under court order or order of other governmental authorities having jurisdiction;

.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available; or

.3 suspension by Owner for convenience pursuant to this Paragraph 10.5.

**10.5.2** In addition, upon seven (7) days' written notice to the Owner, the Contractor may terminate the Agreement if the Owner:

.1 fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Paragraph 4.2, or

.2 assigns this Agreement over the Contractor's reasonable objection, or

.3 fails to pay the Contractor in accordance with this Agreement and the Contractor has complied with Paragraph 8.5, or

.4 otherwise materially breaches this Agreement.

**10.5.3** Upon termination by the Contractor in accordance with Paragraph 10.5, the Contractor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost or expense in connection with the Work, including all demobilization costs plus the premium as set forth in Subparagraph 10.4.2.

**10.6 OBLIGATIONS ARISING BEFORE TERMINATION** Even after termination pursuant to Article 10, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

## ARTICLE 11

### DISPUTE RESOLUTION

**11.1 WORK CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, the Contractor shall continue the Work during any dispute resolution proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

**11.2 INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives, who shall have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, the senior executives of the parties, who shall have the authority to settle the dispute, shall meet within twenty-one (21) days after the dispute first arises. If the dispute is not settled within seven (7) days from the referral of the dispute to the

senior executive of the parties shall submit the dispute to mediation in accordance with Paragraph 11.3.

**11.3 MEDIATION** If the dispute cannot be settled pursuant to Paragraph 11.2, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other dispute resolution procedures. Once one party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the party's representative to the other party's representative and the mediator.

**11.4 DISPUTE RESOLUTION MENU** If the dispute cannot be settled by mediation within sixty (60) days, the parties shall submit the dispute to any dispute resolution procedure selected in Exhibit No.1.

**11.5 MULTIPARTY PROCEEDING** The parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution procedures.

**11.6 COST OF DISPUTE RESOLUTION** The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a binding dispute resolution procedure selected in Exhibit No.1 to this Agreement shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

**11.7 LIEN RIGHTS** Nothing in this Article 11 shall limit any rights or remedies not expressly waived by the Contractor which the Contractor may have under lien laws.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

**12.1 ASSIGNMENT** Neither the Owner nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Contractor or to

an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Contractor than this Agreement. In the event of such assignment, the Contractor shall execute any consents reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either party attempts to make such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other party.

**12.2 GOVERNING LAW** This Agreement shall be governed by the law in effect at the location of the Project.

**12.3 SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**12.4 NO WAIVER OF PERFORMANCE** The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

**12.5 TITLES AND GROUPINGS** The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

**12.6 JOINT DRAFTING** The parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

**12.7 RIGHTS AND REMEDIES** The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

**12.8 PRECEDENCE** In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 13.2.2 the draw-

ings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.3; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency.

## **12.9 OTHER PROVISIONS**

(Insert here other provisions, if any, that pertain to this Agreement)

**Attachment A  
Supplemental Conditions  
Dated 6/14/04**

ARTICLE 13

CONTRACT DOCUMENTS

13.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

13.2 INTERPRETATION OF CONTRACT DOCUMENTS

13.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Contractor shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

13.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner, and if directed, to its Architect/Engineer for clarification. The Owner's clarifications are final and binding on all parties.

13.2.3 Where figures are given, they shall be preferred to scaled dimensions.

13.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

This Agreement is entered into as of the date entered in Article 1.

ATTEST:

*Julia Hoff*

OWNER:

Go Ducks, LLC

BY:

*John B. Dimmer*

PRINT NAME

John B. Dimmer

PRINT TITLE

Managing Member

CONTRACTOR:

Mountain Construction, Inc.

BY:

*Jeff Stroud*

PRINT NAME

Jeff Stroud

PRINT TITLE

Vice-President

ATTEST:

*Michelle Russell*

**AGC DOCUMENT NO. 230**  
**STANDARD FORM OF AGREEMENT AND GENERAL**  
**CONDITIONS BETWEEN OWNER AND CONTRACTOR**  
**(Where the Basis of Payment is the Cost of the Work**  
**with an Option for Preconstruction Services)**

**DISPUTE RESOLUTION MENU**

Pursuant to Paragraph 11.4, if neither direct discussions nor mediation successfully resolve the dispute, the Owner and the Contractor agree the following shall be used to resolve the dispute.

*(Check the appropriate selection(s). These procedures can be used singularly or progressively as agreed to by the parties.)*

**Dispute Review Board** The Dispute Review Board shall be composed of one member selected by the Owner, one selected by the Contractor, and a third member selected by the Owner and Contractor selected members. This Board shall be selected prior to commencement of construction, shall meet periodically, and shall make advisory decisions which may be introduced into evidence at any subsequent dispute resolution process. If a Dispute Review Board is selected, it is understood its review shall precede mediation.

**Advisory Arbitration** Advisory Arbitration shall be pursuant to the current Construction Industry Rules of the American Arbitration Association, except that the award shall not be binding on the parties.

**Mini Trial** Each party, in the presence of senior executives, shall submit its position to a mutually selected individual who shall make a non-binding recommendation to the parties. Such advisory decision may be introduced into evidence at any subsequent dispute resolution process.

**XX**

**Binding Arbitration** Binding Arbitration shall be pursuant to the current Construction Industry Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise. A written demand for arbitration shall be filed with the American Arbitration Association and the other party within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run. The location of the arbitration proceedings shall be at the office of the American Arbitration Association nearest the Worksite, unless the parties agree otherwise. The arbitration award shall be final. Notwithstanding Paragraph 12.2, this agreement to arbitrate shall be governed by the Federal Arbitration Act and judgment upon the award may be confirmed in any court having jurisdiction.

**Litigation** Action may be filed in the appropriate state or federal court located in the jurisdiction in which the Project is located.



**Attachment A (6/2/04)**  
**Supplemental Conditions**

Article 3.2.5 – modify the last sentence to read, “... any errors or omissions which it discovers in the drawings and specifications, *and any opportunities for cost savings.*”

Article 3.3.3 – delete entire paragraph. This is a matter that should be worked out between the parties, or in the event that the parties cannot reach an acceptable resolution, then it should go through the dispute resolution process. Owner is not in a position to be able to evaluate what Contractor did or did not know.

Article 3.5.1 – modify the first sentence as follows, “The Contractor warrants that all materials and equipment furnished under ~~the Construction Phase of~~ this Agreement will be new...”. Warranties should also extend to any work required to cure deficiencies or the like subsequent to the Construction Phase.

Article 3.6.2 – delete the entire last sentence, “~~Correction periods shall not be extended by corrective work performed by the Contractor.~~”

Article 3.11.1 and related Paragraph 4.4 – The contract language is circuitous. The Agreement should provide that Contractor will secure all necessary permits, approvals, easements, licenses and renewals, and that Owner shall take whatever steps are necessary to assist Contractor in the timely procurement of such.

Article 4.3 – subsequent to the last sentence, add the following sentence, “Contractor hereby acknowledges receipt of the documents listed herein.”

Article 4.10.2 – modify the last sentence to read, “... the overtime portion will be considered a Cost of the Work, *unless such overtime is the result of defective work of the Contractor.*”

Article 6.4.1 – modify the first sentence to read, “if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss *that is not the fault of the Contractor*, the Contractor shall be paid...”

Article 7.2.15 – modify this sentence to read, “... and reasonable petty cash expenses at the field office as long as such expenses are related solely to the Work.”

Article 7.2.18 – modify this sentence to read, “Costs incurred due to an emergency affecting the safety of persons and/or property *not resulting from Contractor’s negligence.*”

Article 7.2.20 - modify this sentence to read, “... enacted after the date of this Agreement *which Contractor did not know about, or in the exercise of reasonable care would not have known about or have been aware.*”

**Attachment A (6/2/04)**  
**Supplemental Conditions**

Article 8.2.3 - modify this sentence to read, "... following receipt of such payment from the Owner, *and timely secure lien releases from subcontractors and material suppliers.*"

Article 9.2 – delete entire paragraph. This matter is more appropriately dealt with between the parties, or in the dispute resolution process.

Article 10.3.3 - add the following sentence to the end of this paragraph, "*If Contractor files a petition under the Bankruptcy Code, Owner may, at Owner's sole option and discretion, terminate this Agreement without further obligation or penalty.*"

Article 11.3 – add JAMS, or any other professional mediation organization acceptable to both parties, as acceptable mediation organizations.

AGC Document No. 230 - add JAMS, or any other professional mediation organization acceptable to both parties, as acceptable organizations for dispute resolutions.

**Additional Provisions:**

1. Retention in the amount of 5% shall be withheld from each payment. This will be paid no later than 30 days after project acceptance, unless approved earlier as major portions of the work are completed and accepted.
2. It is the intent that as design is completed estimates will be completed and submitted for review and approval. These will form the basis for a Not to Exceed budget. Legitimate changes in scope will be submitted as they are identified for inclusion in the Not to Exceed budget.

Cost Code	Item	Qty	UM	Lab Unit	Matl Rate	Equip Rate	S/C Rate	MH's	Lab Rate	Labor Cost	Matl Cost	Equip Cost	S/C Cost	Total Cost	Comment	Sub Name
<b>Div 1</b>	<b>General Conditions</b>															<b>167,142</b>
1300	Permits		lt					0	37	0	0	0	0	0	By Owner	
1301	Builders Risk Property Insurance		lt					0	37	0	0	0	0	0	By Owner	
1303	Superintendent	48	wk	40				1920	47	90,240	0	0	0	90,240		
1400	Continuous Clean Up	44	wk	2	50			88	37	3,256	2,200	0	0	5,456		
1420	Final Clean Up - Office	30,000	sf				0.2	0	37	0	0	0	6,000	6,000		
1420	Final Clean Up - Whse	57,000	sf				0.05	0	37	0	0	0	2,850	2,850		
1500	Job Office	52	wk		65			0	37	0	3,380	0	0	3,380		
1500	Job Office - Parker	12	wk		65			0	37	0	780	0	0	780		
1500	Sanican	52	wk		70			0	37	0	3,640	0	0	3,640		
1500	Temp Signage	1	lt		500			0	37	0	500	0	0	500		
1501	Temp Electrical	44	wk		75			0	37	0	3,300	0	0	3,300		
1502	Telephone	44	wk		75			0	37	0	3,300	0	0	3,300		
1500	Telephone - Parker	12	wk		75			0	37	0	900	0	0	900		
1510	Temp Fencing	1,000	lf				2	0	37	0	0	0	2,000	2,000		
1510	Safety	44	wk	2	25			88	37	3,256	1,100	0	0	4,356		
1530	Temp Heat	1	lt		5000			0	37	0	5,000	0	0	5,000		
1540	Weather Protection	1	lt		2500			0	37	0	2,500	0	0	2,500		
1600	Consumables	48	wk		35			0	37	0	1,680	0	0	1,680		
1900	Subsistence	44	wk		300			0	37	0	13,200	0	0	13,200		
1900	Apartment & Utilities	44	wk		240			0	37	0	10,560	0	0	10,560		
1900	Misc Travel	1	lt		2500			0	37	0	2,500	0	0	2,500		
1900	Travel & Subsistence	1	lt				5000	0	37	0	0	0	5,000	5,000		
<b>Div 2</b>	<b>Site Work</b>															<b>1,353,000</b>
2200	Sitework - Onsite	1	ls				660000	0	37	0	0	0	660,000	660,000		Bones
2200	Sitework - Offsite	1	ls				475000	0	37	0	0	0	475,000	475,000		Bones
2800	Landscaping	1	ls				145000	0	37	0	0	0	145,000	145,000		NW Landscape
2800	Landscaping - City Sidewalks	1	ls				15000	0	37	0	0	0	15,000	15,000		NW Landscape
2800	Rock Wall - City Sidewalk	1	ls				7000	0	37	0	0	0	7,000	7,000		NW Landscape
2800	Tree Trimming	1	ls				13800	0	37	0	0	0	13,800	13,800		Urban Forest
2620	Striping & Extruded Curbs	1	ls				5000	0	37	0	0	0	5,000	5,000		River City
2700	Ornamental fence panels	1	ls				30000	0	37	0	0	0	30,000	30,000		Argo
2700	Dumpster Fence	1	ls				2200	0	37	0	0	0	2,200	2,200	Allowance	Argo
<b>Div 3</b>	<b>Concrete</b>															<b>317,705</b>
3100	Foundation & Slab	1	ls				272000	0	37	0	0	0	272,000	272,000		W/E
3100	Dynamometer Pit	1	ls				6075	0	37	0	0	0	6,075	6,075		W/E
3100	Mezz Deck Fill	1	ls				19982	0	37	0	0	0	19,982	19,982		W/E
3100	Wash bay & Storage slab	1	ls				6626	0	37	0	0	0	6,626	6,626		W/E
3100	Bollards & door t-holds	1	ls				9122	0	37	0	0	0	9,122	9,122		W/E
3100	Interior Curbs	1	ls				3900	0	37	0	0	0	3,900	3,900		W/E
<b>Div 4</b>	<b>Masonry</b>															<b>137,345</b>
4210	Masonry	1	ls				125000	0	37	0	0	0	125,000	125,000		Comerstone
4210	Anti-graffiti Sealer	1	ls				8345	0	37	0	0	0	8,345	8,345		Comerstone
4210	Fuel Island CMU	1	ls				2500	0	37	0	0	0	2,500	2,500	Allowance	
4210	Masonry Cutting	1	ls				1500	0	37	0	0	0	1,500	1,500	Allowance	
<b>Div 5</b>	<b>Misc Steel</b>															<b>77,684</b>
5100	Misc Steel & canopies	1	ls		70500		5000	0	37	0	70,500	0	5,000	75,500		Pesnecker Bros
5100	Misc Steel - Mountain	1	lt	32	500	500		32	37	1,184	500	500	0	2,184		Mountain

Wilsonville Honda

Definitive Estimate

Estimate Date: 11/13/04

Cost Code	Item	Qty	UM	Lab Unit	Matl Rate	Equip Rate	S/C Rate	MH's	Lab Rate	Labor Cost	Matl Cost	Equip Cost	S/C Cost	Total Cost	Comment	Sub Name
<b>Div 6</b>	<b>Woods</b>															<b>101,659</b>
6200	Finish Carpentry	1	ls				10000	0	37	0	0	0	10,000	10,000	Allowance	
6800	Casework - per plans	1	ls				6864	0	37	0	0	0	6,864	6,864		Burgener
6800	Casework - Honda Additional	1	ls				84795	0	37	0	0	0	84,795	84,795		Burgener
<b>Div 7</b>	<b>Thermal &amp; Moisture</b>															<b>110,978</b>
7220	Metal Building Insulation	1	ls				64100	0	37	0	0	0	64,100	64,100		JT Johnson
7210	Building Insulation	1	ls				8000	0	37	0	0	0	8,000	8,000		Gale
7210	Sound Insulation	1	ls				13000	0	37	0	0	0	13,000	13,000		
7500	Roofing	1	ls				20878	0	37	0	0	0	20,878	20,878		Snyder
7600	Misc Flashing	1	ls				5000	0	37	0	0	0	5,000	5,000	Allowance	
<b>Div 8</b>	<b>Doors &amp; Hardware</b>															<b>211,251</b>
8100	HM Doors	30	ea	3	350			90	37	3,330	10,500	0	0	13,830		WAH
8100	HM Frames	11	ea	3	350			33	37	1,221	3,850	0	0	5,071		WAH
8200	Wood Doors	30	ea	3	300			90	37	3,330	9,000	0	0	12,330		WAH
8100	Timely Frames	40	ea	2	250			80	37	2,960	10,000	0	0	12,960		WAH
8700	Door Hardware	60	ea	3	265			180	37	6,660	15,900	0	0	22,560		WAH
8020	OH Doors	1	ls				47500	0	37	0	0	0	47,500	47,500		Jacks OH doors
8020	OH Doors - 2 HR walls	5	ea				2800	0	37	0	0	0	14,000	14,000		Jacks OH doors
8020	Coiling Screens - reception area	3	ea				2000	0	37	0	0	0	6,000	6,000		Jacks OH doors
8400	Windows	1	ls				5000	0	37	0	0	0	5,000	5,000		NW Pacific
8400	Storefronts & Glazing	1	ls				50000	0	37	0	0	0	50,000	50,000		NW Pacific
8800	Glass Railing	1	ls				22000	0	37	0	0	0	22,000	22,000		Benson
<b>Div 9</b>	<b>Finishes</b>															<b>605,066</b>
9200	Steel Studs & Drywall	1	ls				195000	0	37	0	0	0	195,000	195,000		Omni
9200	Steel Stud Extras 11/12/04	1	ls				86374	0	37	0	0	0	86,374	86,374		Omni
9200	Steel Posts Service Bay/ Tank rm	1	ls				4926	0	37	0	0	0	4,926	4,926		Omni
9200	Fire rated plywood canopies	1	ls				21811	0	37	0	0	0	21,811	21,811		Omni
9200	Rotunda Sheathing	1	ls				15000	0	37	0	0	0	15,000	15,000		Omni
9500	Acoustical Ceiling	1	ls				15000	0	37	0	0	0	15,000	15,000		Lanco
9900	Painting	1	ls				44000	0	37	0	0	0	44,000	44,000		L. Kilgore
9900	Paint Showroom Ceiling	1	ls				4000	0	37	0	0	0	4,000	4,000		L. Kilgore
9600	Carpet	1	ls				41772	0	37	0	0	0	41,772	41,772		Resource Oreg
9600	Tile - per plans	1	ls				48588	0	37	0	0	0	48,588	48,588		Roedel
9600	Tile room 105	1	ls				2095	0	37	0	0	0	2,095	2,095	Allowance	Roedel
9600	Added Tile	1	ls				103000	0	37	0	0	0	103,000	103,000	Allowance	Roedel
9600	Concrete Floor Sealer	1	ls				10000	0	37	0	0	0	10,000	10,000		Pro Tekt
9956	FRP	1	ls				13500	0	37	0	0	0	13,500	13,500		Inviornmentalists
<b>Div 10</b>	<b>Specialties</b>															<b>16,376</b>
10150	Toilet Partitions	1	ls				4500	0	37	0	0	0	4,500	4,500		WH Cress
10800	Toilet Accessories	1	ls				2000	0	37	0	0	0	2,000	2,000		WH Cress
10500	Lockers	1	ls				5100	0	37	0	0	0	5,100	5,100		NW Handling
10900	Fire Extinguishers	15	ea	3	150			45	37	1,665	2,250	0	0	3,915		
10900	Knox box	1	lt	3	250			3	37	111	250	0	0	361		
10910	Misc Signage	1	ls				500	0	37	0	0	0	500	500		
<b>Div 13</b>	<b>Special Construction</b>															<b>1,250,000</b>
13600	Metal Bldg Package	1	ls		775000			0	37	0	775,000	0	0	775,000		
13600	Freight	1	lt		5000			0	37	0	5,000	0	0	5,000		

Cost Code	Item	Qty	UM	Lab Unit	Matl Rate	Equip Rate	S/C Rate	MH's	Lab Rate	Labor Cost	Matl Cost	Equip Cost	S/C Cost	Total Cost	Comment	Sub Name
13600	Erection	1	ls				400000	0	37	0	0	0	400,000	400,000		
13600	Wave Canopy & Rotunda	1	ls				70000	0	37	0	0	0	70,000	70,000	Allowance	Omni
<b>Div 14</b>	<b>Conveying Systems</b>														<b>39,837</b>	
14200	Elevator	1	ls		5000		34837	0	37	0	5,000	0	34,837	39,837		Otis
<b>Div 15</b>	<b>Mechanical</b>														<b>470,087</b>	
15100	Plumbing	1	ls				105000	0	37	0	0	0	105,000	105,000		Pennisula
15100	Plumbing Extras 9/21/04	1	ls				16087	0	37	0	0	0	16,087	16,087		Pennisula
15100	Gas Piping	1	ls				14000	0	37	0	0	0	14,000	14,000		Pennisula
15400	HVAC	1	ls				240000	0	37	0	0	0	240,000	240,000		Sunset Air
15500	Fire Protection	1	ls				95000	0	37	0	0	0	95,000	95,000		Patriot
<b>Div 16</b>	<b>Electrical</b>														<b>406,530</b>	
16100	Electrical	1	ls				390000	0	37	0	0	0	390,000	390,000		Capital Electric
16100	Electrical Extras 11/12/04	1	ls				16530	0	37	0	0	0	16,530	16,530		Capital Electric
	<b>Contractor's Contingency</b>	1	lt		75000			0	37	0	75,000	0	0	75,000	75,000	
	<b>Cost of Work</b>							2649		117,213	1,037,290	500	4,184,657	5,339,660	5,339,660	
	<b>Fee</b>											8.00%		427,173		
	<b>Total</b>													<b>5,766,833</b>		

## **ENGINEERING DEPARTMENT STAFF REPORT**

**DATE:** January 31, 2005

**TO:** Honorable Mayor and City Councilors

**FROM:** Laurel Byer, PE  
Assistant City Engineer

**SUBJECT:** Systems Development Charge Reimbursement and Conditions of Development Agreement between Go Ducks, LLC, the City of Wilsonville, and the Wilsonville Urban Renewal Agency

---

### **SUMMARY**

Go Ducks, LLC is constructing a Honda Automobile Dealership at the northeast corner of Parkway Avenue and Memorial Drive. They are almost complete with the construction of several projects whose capacity will exceed the requirements for the Honda development and they have requested credits against the sewer, water, and street Systems Development Charges. They have also requested that the City pay for the construction of the extension of the improvements on Memorial Drive and Parkway Avenue to complete the street section through the intersection. Staff has worked with the developer to complete the Systems Development Charge Reimbursement and Conditions of Development Agreement (Agreement). Staff recommends approval of the resolution approving the Agreement between Go Ducks, LLC, the City of Wilsonville, and the Wilsonville Urban Renewal Agency.

### **DISCUSSION**

Go Ducks, LLC has Stage II planning approval to develop a Honda Automobile Dealership at the northeast corner of Parkway Avenue and Memorial Drive. The developer has requested that the City provide Systems Development Charge (SDC) credits and pay for the construction of additional projects that are being constructed as part of the Honda project.

The guidance for SDC credits is included in paragraph 11.040(9) of the SDC Ordinance. The eligibility of credits is based on the construction of a qualified public improvement. A qualified public improvement meets the following criteria: 1) Requires a condition of development approval, 2) Identified in an adopted Capital Improvements Plan, and 3) Not located within or contiguous to the property or parcel that is subject to the development approval except to the extent that the Capital Improvement(s) represent(s) a measurable provision for extra service capacity beyond the actual public facility requirements of the property. In the case where a Condition of Approval in the planning case does not exist, it is our opinion that the engineering markup of the plans is sufficient to establish a condition of approval.

A summary of the requested SDC credits and a review of the qualification for credit for each improvement are as follows:

#### **Water**

The extension of a waterline and over-sizing from an 8-inch to a 12-inch line along the project frontage in Memorial Drive from the east property line to the existing waterline in Parkway Avenue. This waterline extension was required as a part of the Engineering plan

review and therefore is required as a Condition of Approval. This waterline is in the Capital Improvements Program for the City of Wilsonville Water System Master Plan as adopted by Ordinance No. 531 and, as such, is in an approved Capital Improvements Plan. An 8-inch line would be sufficient to serve the Honda development; however, the Engineering staff has conditioned the developer to provide a 12-inch waterline to provide the required capacity per the water master plan for a looped water system in this area. Therefore this project is eligible for SDC credit.

### **Sanitary Sewer**

The replacement of the existing sanitary sewer line and the abandonment of the existing line in Memorial Drive. The replacement of the existing sanitary sewer line was required as a part of the Engineering plan review and therefore is required as a Condition of Approval. This project is in the 2004-05 Capital Improvements Plan and also in the Capital Improvements Program for the City of Wilsonville Wastewater Collection System Master Plan as adopted by Ordinance No. 427 and, as such, is in an approved Capital Improvements Plan. A new sewer connection and manhole would be adequate to serve the Honda Development; however, the Engineering staff has conditioned the developer to construct this capital project to correct a deficiency and increase capacity in the existing sanitary sewer system. Therefore this project is eligible for SDC credit. However, the construction costs will exceed the total Sewer System Development Charges that would be collected from Honda. Staff's proposal is to provide sewer SDC credits for as much of the construction costs as possible and the remainder of the project costs would come from existing fund balance in the Sanitary Sewer Reimbursement SDC.

### **Storm Drainage**

The abandonment of the existing pipe and catch basin at the intersection of Memorial Drive and Parkway Avenue and new curb inlets that are not located along the project frontage. As part of the street construction improvements required in Condition PF19, the developer was required to extend the storm drainage system on Parkway Avenue. The connection of the new line to the existing system required abandonment of some existing components. The abandonment of the existing line and installation of new catch basin(s) is not in any existing Capital Improvements Plan and needs to be added to the 2004-05 Capital Improvement Plan. The installation of new catch basins on Parkway Avenue in front of adjacent properties do not benefit the Honda Development. This project will meet the criteria for an SDC credit upon inclusion of the project in the Capital Improvements Plan.

### **Street**

The construction of a 36-foot wide street section on Memorial Drive along the project frontage. This requirement is a condition of development as included in PF19 Condition of Approval of the Stage II application. This project is in the 2004-05 Street Capital Improvements Plan and also in the Capital Improvement Plan that is included as a component of the 2003 Transportation Systems Plan. The improvements to the northerly 24-feet of the street section are required to provide service to the Honda Development. However, the remaining 12-feet of street width provides capacity in excess of that which is needed to provide service to the Honda Development. Therefore, the costs associated with the southerly 12-feet of street construction, including the removal/replacement of the south curb and/or sidewalk as necessary to meet the required grades, are eligible for SDC credit.

The construction of a 28-foot wide street section on Parkway Avenue along the project frontage. This requirement is a condition of development as included in PF19 Condition of Approval of the Stage II application. This project is in the 2004-05 Street Capital Improvements Plan and also in the Capital Improvement Plan that is included as a component of the 2003 Transportation Systems Plan. The improvements to the easterly 24-feet of the street section are required to provide service to the Honda Development. However, the remaining 4-feet of street width provides capacity in excess of that which is needed to provide service to the Honda Development. Therefore, the costs associated with the westerly 4-feet of street construction are eligible for SDC credit.

The extension of the Memorial Drive and Parkway Avenue street improvements from the project boundaries to the intersection. The extension of the street improvements was required as a part of the Engineering plan review and therefore is required as a Condition of Approval. This project is in the 2004-05 Street Capital Improvements Plan and also in the Capital Improvement Plan that is included as a component of the 2003 Transportation Systems Plan. This project provides capacity in excess of that which is needed to provide service to the Honda Development and is not contiguous to the project property. Therefore, it is eligible for SDC credit. However, the total costs of the street construction would exceed the amount of Street System Development Charges collected from Honda. Staff's proposal is to provide street SDC credits for a portion of the construction costs as shown in Attachment "1" of this staff report, with the remainder of the project costs paid from Urban Renewal Project 4104.

For the portions of the projects that are being paid from Urban Renewal funds, the developer will need to comply with the City purchasing requirements for construction of capital projects. These include requirements for competitive bidding and complying with the state wage guidelines for construction projects. City staff has evaluated the proposed costs and found that they are comparable to past capital projects. Also, staff can make a finding that it is more cost effective and efficient to have the contractor that is already on-site doing work complete the required public improvements and therefore, this project can be considered exempt from the competitive bidding requirement. The contractor has met the requirement of complying with the state wage guidelines.

For Systems Development Charge credits, staff evaluates the contract amounts to determine if the costs exceed the prevailing market rates for a similar project. If they do exceed those rates, the contract costs and associated credits will be adjusted to the market rate. Staff has completed a review of the contract costs and determined that the costs are similar to the prevailing market rates and therefore, no adjustment to the costs in the contract are anticipated.

For the design and Engineering costs associated with the project, the developer has the option to use an itemized cost or 10 percent of the construction costs as a flat rate. For this project, the developer has included itemized costs for the portions of the project that are either SDC creditable or will be reimbursed through the Urban Renewal District.

The cost figures that were used as a basis for the overall cost of the improvements that are reimbursable are from the final construction estimate from the sub-contractor, Bones Construction attached as Exhibit "A" of the Development Agreement. These costs are also represented in the contract between the general contractor, Mountain Construction and the owner, Go Ducks, LLC. A copy of the contract has been attached as Exhibit "D" of the Development Agreement.



**RECOMMENDATION**

Staff respectfully recommends that the City Council adopt Resolution No. 1918, thereby authorizing approval of the Systems Development Charge Reimbursement and Conditions of Development Agreement and authorizing the City Manager to sign on behalf of the City of Wilsonville.

Staff also recommends that the City Council adopt Resolution No. 1919, exempting the improvements to Memorial Drive, Parkway Avenue, and other public infrastructure from competitive bidding requirements.

### Honda SDC Credit Estimate

2/2/2005

Type	Streets	Storm Water	Water	Sewer	Total	Check
<b>Projected SDC collections (improvement fees only)</b>	<b>\$136,493</b>	<b>\$33,438</b>	<b>\$29,306</b>	<b>\$8,726</b>	<b>\$207,963</b>	<b>\$207,963</b>
<b>Creditable costs</b>						
Construction	\$103,826	\$6,416	\$17,051	\$40,678	\$167,971	\$167,971
Engineering, survey, LS & constr mgt	\$30,047	\$1,857	\$4,934	\$11,772	\$48,610	\$48,610
Bond	\$5,192	\$321	\$853	\$2,034	\$8,400	\$8,400
Placeholder for Public Works Permit	\$5,191	\$321	\$853	\$2,034	\$8,399	\$8,399
BOLI	\$11,174	\$0	\$0	\$4,378	\$15,552	\$15,552
Mobilization	\$5,319	\$329	\$874	\$2,083	\$8,605	\$8,605
<b>Total</b>	<b>\$160,749</b>	<b>\$9,244</b>	<b>\$24,565</b>	<b>\$62,979</b>	<b>\$257,537</b>	<b>\$257,537</b>
<b>SDC credits/refund</b>	<b>\$35,000</b>	<b>\$9,244</b>	<b>\$24,565</b>	<b>\$8,726</b>	<b>\$77,535</b>	
<b>Added payment from URA for streets &amp; Sewer SDC funds for sewer</b>	<b>\$125,749</b>			<b>\$54,253</b>	<b>\$180,002</b>	
<b>Total</b>	<b>\$160,749</b>	<b>\$9,244</b>	<b>\$24,565</b>	<b>\$62,979</b>	<b>\$257,537</b>	