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I. INTRODUCTION

This is an appeal from the denial of Point Ruston, LLC's ("Point Ruston") motion pursuant to RCW 60.04.081 to determine that a lien that Olson Brothers Excavating, Inc. ("Olson Brothers") had filed against Point Ruston, LLC's property was frivolous. Because Olson Brothers did not submit any competent evidence that it had performed lienable work in the 90 days prior to the filing of its lien claim, and because Olson Brothers did not even dispute the fact that its lien purported to extend to property on which it performed no work, this Court should reverse the trial court's denial of Point Ruston's motion.

II. ASSIGNMENTS OF ERROR

The trial court erred in entering Findings 3, 4, 5, and 6, and paragraphs 1 and 2 of its Order Denying Request to Dismiss Lien as Frivolous entered on September 15, 2008, which state:

3. Defendant Olson presented evidence demonstrating that its lien was filed well within the ninety-day (90) lien limitation period.
4. Point Ruston, LLC, as the party seeking the release of the lien, bore the burden of proving that the lien was frivolous and without reasonable cause.

5. A lien is frivolous only if it presents no debatable issues and is devoid of merit that no possibility of reversal exists.
6. Point Ruston LLC has not met its burden of showing that Olson's lien is frivolous.
1. Plaintiff's Motion is Denied.
2. Olson as the prevailing party is awarded reasonable fees and costs pursuant to RCW 60.04.081(4) in the amount of—reserved for trial.

CP 108.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Superior Court err in considering the hearsay documents attached to the Declarations of Olson Brothers' witnesses?

Answer: Because these documents were clearly hearsay and Olson Brothers did not lay a proper foundation for their admission as business records, the trial court should have declined to consider them.

2. Did Olson Brothers perform lienable work on or after May 24, 2008, the 90th day preceding the date that it recorded its claim of lien?

Answer: Olson Brothers had the burden of establishing that it performed lienable work within the 90 days preceding the date it recorded its

claim of lien. RCW 60.04.091. Here, Olson Brothers recorded its claim of lien on August 22, 2008. Therefore, Olson Brothers had to show it performed lienable work on or after May 24, 2008.

Olson Brothers did not establish that Olson Brothers performed lienable work on or after May 24, 2008. Therefore, Olson Brothers did not show that it had timely filed its Claim of Lien. Its claim should have been dismissed.

3. In the alternative, should Olson Brothers' Claim of Lien be dismissed to the extent it purports to extend to property that was not part of the "Stack Hill" contract and which Olson Brothers did not improve?

Answer: Olson Brothers was only entitled to lien that property which its work improved. RCW 60.04.051. Olson Brothers did not respond to or dispute Point Ruston's claim, made under oath in its Verified Complaint, that Olson Brothers had liened a substantial quantity of property in addition to the "Stack Hill" property which its work had improved. Therefore, the trial court should, at a minimum, have limited Olson Brothers' lien claim only to the "Stack Hill" property.

IV. STATEMENT OF THE CASE

On May 10, 2007, Point Ruston and Olson Brothers entered into a contract whereby Olson Brothers agreed to perform certain work at a project site identified as “Stack Hill” in Ruston, Washington. CP 2, 18-45. Olson Brothers worked on the project between May of 2007 and May of 2008.

The “Stack Hill” site is a Superfund site. As a result, access to the site was strictly controlled. The entire site was fenced, and access could be obtained only through a gate that was kept locked. When a contractor entered the site, Point Ruston’s site work superintendent would communicate with the contractor, and would invariably note the fact that the contractor had come onto the site and was performing work on the site on the daily activity log which he created on the date noted on the log, and kept in the normal course of business. CP 98 (Daniel Supplemental Declaration, ¶¶ 4-6).

On May 14, 2008, the final construction walk-through occurred. At that time, Olson Brothers had all but completed its work. CP 51 (Daniel Declaration, ¶ 6).

Olson Brothers’ crew performed work on the site every weekday up to and through Monday, May 19, 2008. CP 98 (Daniel Supplemental

Declaration, ¶ 7). See also CP 84-85. Olson Brothers does not claim that its crew worked on Tuesday, May 20; Wednesday, May 21; Thursday, May 22; or Friday May 23, 2008.

On Thursday, May 22, 2008, Olson Brothers submitted its final bill for the work. CP 37-44 (Verified Complaint, Exhibit D). The certification on the front page of the billing states that the “contractor certifies that, to the best of the contractor’s knowledge, the work on the above-named job has completed in accordance with the plans and specifications to the level of completion indicated on the attached schedule of completion.” CP 38. The billing described all work as having been “100 percent” completed. CP 39 et seq.

As Olson Brothers’ billing shows, Olson Brothers had scrupulously recorded and billed Point Ruston for all work that its crews had performed up to that date. However, Olson Brothers never billed Point Ruston for any further or additional work allegedly occurring on or after May 19, 2008. CP 2 (Verified Complaint, ¶ 5). Compare CP 55 (Olson Brothers’ Response to Motion to Dismiss, p. 4 at l. 22-23) (“It is correct that Olson has not yet submitted any further progress billings . . .”).

Monday, May 26, 2008 was Memorial Day. Point Ruston's site work superintendent's Daily Activity Log for Tuesday, May 27, 2008, describes several other contractors as being present and performing work on the site. CP 98-99, 102. The Daily Activity Log contains no record of Olson Brothers' crew or equipment being present on the site that day. *Id.* The fact that Olson Brothers was not noted on this log establishes, to a substantial certainty, that Olson Brothers' crew was in fact not working on the site on the date in question. CP 98 (Daniel Supplemental Declaration, ¶ 6).

Although the contract provided for a total contract price of \$943,411.00, Olson Brothers has insisted it be paid \$1,863,068.96 for the work. Point Ruston has disputed its liability to pay the full amount claimed by Olson Brothers. CP 2 (Verified Complaint, ¶ 6).

On August 22, 2008, Olson Brothers recorded a claim of lien with the Pierce County Auditor. CP 7-16 (Verified Complaint, Exhibit A). The claim of lien asserts that Olson Brothers last performed labor, furnished professional services, or furnished materials or equipment on May 27, 2008. CP 8-9. The claim of lien constituted the first notice which Olson Brothers had given Point

Ruston that Olson Brothers had allegedly performed lienable work on May 27, 2008.

The claim of lien purported to assert a lien against all of the properties contained in the legal description attached to the claim of lien as Exhibit A. CP 10-16 (Verified Complaint, Exhibit A). The properties described include numerous properties owned by Point Ruston that were NOT part of the “Stack Hill” project, and upon which Olson Brothers performed no work under the “Stack Hill” contract. CP 9 (Verified Complaint, ¶ 9). See also CP 2 (Verified Complaint, ¶ 2) and CP 34-35 (Verified Complaint, Exhibit C) (legal description of “Stack Hill” parcel where Olson Brothers was actually performing work).

On September 2, 2008, Point Ruston filed a verified complaint seeking to dismiss Olson Brothers’ lien claim pursuant to RCW 60.04.081. CP 1-44. Point Ruston also filed a motion asking the court to determine that the lien claim was invalid. CP 45-49.

Olson Brothers filed a response brief. CP 52-73. In addition, Olson Brothers filed the declarations of three individuals—Steve Olson (CP 74-81), Scott Jamison (CP 82-87), and Larry Folden (CP 88-91).

None of Olson Brothers' witnesses testified directly that Olson Brothers had performed lienable work on or after May 24, 2008, the 90th day preceding its lien claim, asserted that Olson Brothers had performed its work on the site, described how Olson Brothers obtained access to the site without Point Ruston's supervisor knowing about it, or directly described the nature of the work allegedly performed.

Instead, Larry Folden attached a copy of a Daily Foreman's Report dated May 27, 2008, to his declaration, and stated:

In the course and scope of my duties as Foreman on the Stack Hill Job #1065-07, I completed Daily Foreman's Reports and submitted them to the Project Manager, Scott Jamison.

Attached is a true and accurate copy of the Daily Foreman's Report No. 1939 which I completed reflecting the correct employees, work classifications, hours, equipment, etc. for the Stack Hill Job on May 27, 2008. I submitted this Report to my supervisor, Scott Jamison, for review and approval for payment.

CP 88.

The attached report states, under the heading of "Description of Work Performed Today," the following:

Install single rings in struct., clean site, load mat. on car trailer + take to Fife.

CP 91.

Scott Jamison attached two additional Daily Foreman's Reports, (including one for June 20, 2008) to his declaration, with respect to which he states:

2. In course and scope of my duties as project manager on the Stack Hill Job No. 1065-07, I receive Daily Foreman's Reports from Larry Folden, Olson's Foreman for the Stack Hill job.
3. Larry submitted Daily Foreman's Reports to me for review.

CP 82. The attached report for June 4, 2008 states, under Description of Work Performed Today:

Met w/ project manager to discuss final plat + latest billing.

CP 87.

Point Ruston submitted a reply brief. CP 92-96. In that brief, Point Ruston objected to any consideration of the documents attached to the declaration of Mr. Folden and Mr. Jamison on the grounds that the information contained in those documents was hearsay. CP 94.

On September 15, 2008, Court Commissioner pro tem Jacqueline Rosenblatt heard this matter, in the middle of a calendar otherwise devoted to

family law cases. Demonstrating a clear misunderstanding of the procedure set up by the frivolous lien statute, the Commissioner denied the motion, stating that the case would need to be resolved “at trial.”¹ RoP 16-17. The Commissioner then signed an order that had been prepared by Olson Brothers’ attorneys, which stated:

3. Defendant Olson presented evidence demonstrating that its lien was filed well within the ninety-day (90) lien limitation period.
4. Point Ruston, LLC, as the party seeking the release of the lien, bore the burden of proving that the lien was frivolous and without reasonable cause.
5. A lien is frivolous only if it presents no debatable issues and is devoid of merit that no possibility of reversal exists.
6. Point Ruston LLC has not met its burden of showing that Olson’s lien is frivolous.
1. Plaintiff’s Motion is Denied.

CP 107. In addition, the Commissioner purported to reserve the issue of attorneys’ fees “for trial”:

2. Olson as the prevailing party is awarded reasonable fees and costs pursuant to RCW 60-04-081(4) in the amount of—reserved for trial.

¹ Under the frivolous lien statute, the hearing conducted by the commissioner was the only “trial” that was ever going to occur. RCW 60.04.081.

Point Ruston filed a timely notice of appeal.

V. **APPEALABILITY; STANDARD OF REVIEW;**
BURDEN OF PROOF

Appealability: The decision to deny Point Ruston, LLC's Motion to Dismiss Olson Brothers' Lien Claim was made on September 15, 2008 by a pro tem court commissioner. No one sought review of the commissioner's decision within ten days of its entry. After ten days had passed without a motion to revise the commissioner's decision having been filed, the commissioner's decision became final and appealable just like any other superior court decision. RCW 2.24.050; *In Re Bellanich*, 43 Wn. App. 345, 717 P.2d 307 (1986).

Standard of Review: Although a frivolous lien hearing is to be conducted upon affidavits, the Legislature intended to allow a court to resolve factual disputes raised by those affidavits. *W.R.P. Lake Union Ltd. Partnership v. Exterior Services, Inc.*, 85 Wn. App. 744, 750, 934 P.2d 722 (1997).

This Court should review issues of law raised by the proceedings below de novo. *Id* To the extent that a trial court's ruling is based upon a resolution of factual disputes, the Court should review the ruling to determine whether the factual determinations are supported by substantial evidence. *Id*. However,

when the record contains no clear resolution of factual disputes, the Court should accord the trial court's decision no deference and proceed with a de novo review in light of the applicable burden of proof. *Id.*

Here, the pro tem court commissioner did not purport to address or resolve any factual dispute. Instead, demonstrating a clear misunderstanding of the nature of a frivolous lien proceeding, the commissioner expressly declined to resolve any factual dispute on the grounds that all such disputes should be resolved "at trial." RoP at 16-17. Therefore, the Court should accord the pro tem commissioner's decision no deference, but should conduct a de novo review in light of the applicable burden of proof.

Burden of Proof: The mechanic's lien statutes, being in derogation of the common law, are to be strictly construed. *Intermountain Electric, Inc. v. G-A-T Bros. Construction Co.*, 115 Wn. App. at 391. The benefits of the lien statute are to be extended only to those who clearly come within the statute's terms. *Pacific Industries, Inc v. Singh*, 120 Wn. App. 1, 6, 86 P.2d 778 (2003).

Here, in order to show that its claimed lien comes within the statute's terms, Olson Brothers had to show that it had recorded its claim of lien within

90 days of the date it last performed lienable work. Therefore, and contrary to what the trial court held in its Finding No. 4 (CP 108), Olson Brothers had the burden of showing that it timely filed its lien.

VI. ANALYSIS

- A. **The trial court should have declined to consider the documentation attached to the declarations of Olson Brothers' witnesses. These documents were hearsay, and Olson Brothers did not lay a proper foundation for their admission under any exception to the hearsay rules.**

The trial court should have declined to consider the documentation attached to the declarations of Olson Brothers' witnesses. These documents were hearsay, and Olson Brothers did not lay a proper foundation for their admission under any exception to the hearsay rules.

Point Ruston moved to dismiss Olson Brothers' claims under the frivolous lien statute, RCW 60.04.081. Under that statute, the trial court conducts a hearing based on affidavits. *W.R.P. Lake Union Ltd. Partnership v. Exterior Services, Inc.*, 85 Wn. App. 744, 750, 934 P.2d 722 (1997).

At the hearing on Point Ruston's motion, the trial court was required only to consider admissible evidence. *Dunlap v. Wayne*, 105 Wn.2d 529,

535-36, 716 P.2d 842 (1986). The trial court is not to consider inadmissible hearsay. *Lynn v. Labor Ready, Inc.*, 136 Wn. App. 295, 306 at ¶ 25, 151 P.3d 201 (2006).

Here, Olson Brothers submitted three declarations to the trial court. CP 74, et seq. However, none of Olson Brothers' declarants purported to directly offer testimony that they had performed or seen Olson Brothers' crews perform work on the "Stack Hill" project after May 24, 2008. *Id.* Instead, the declarants simply described certain documents that were attached to their respective declarations. *Id.* Olson Brothers then asked the trial court to consider the contents of the documents attached to the declarations as evidence, and to draw factual inferences therefrom. *See* CP 52.

Because they contained out-of-court statements offered for the truth of the matters they asserted, the information contained in these documents was hearsay. ER 801. Therefore, the contents of the documents were presumptively inadmissible. ER 802.

Olson Brothers did not establish that these documents qualified for consideration under any exception to the hearsay rules. In particular, Olson Brothers did not lay a proper foundation for the admission of the "Daily

Foreman's Report" attached to the declaration of Larry Folden as a business record within the meaning of ER 803(a)(6), and Chapter 5.45 RCW.

In order to qualify as a business record, the proponent of the record must establish, among other things, that the record was made at or near the time of the act, condition, or event, and that the surrounding circumstances suggest the record is reliable. *State v. Hopkins*, 134 Wn. App. 780, 789 at ¶ 26, 142 P.3d 1104 (2006). Here, Olson Brothers did not make these showings.

First, Olson Brothers did not offer testimony to the effect that these records were created at or near the time of the act, condition, or event they describe. In particular, Larry Folden, its foreman on the "Stack Hill" site, does not state when he created the key "Report" that purports to describe work Olson Brothers allegedly performed on May 27, 2008. Therefore, Olson Brothers did not lay a proper foundation to admit that document.

In addition, the surrounding circumstances do not suggest that this record is reliable. Again, it is undisputed (1) that Olson Brothers and Point Ruston conducted the final walk through on May 14, 2008; (2) that Olson Brothers' crew continued to work at the site every weekday through Monday,

May 19, 2008; (3) that Olson Brothers' crew did not perform any further or additional work on the site the four weekdays following Monday, May 19, 2008; and (4) that Olson Brothers had submitted a billing on May 22, 2008, to Point Ruston certifying that as of May 20, 2008, its work was "100 percent complete." CP 37-44, 51, 84-85, 98. The documents which Olson Brothers itself contemporaneously provided to Point Ruston, LLC completely contradict the claim that Olson Brothers' crew performed work on the site at any time on or after May 20, 2008.

Moreover, Mr. Folden states that the purpose of the record was "for payment." CP 88. Yet it is undisputed that Olson Brothers never submitted a bill to Point Ruston asking for payment for the work that his report alleges Olson Brothers' crew performed on May 27, 2008. CP 2, 55.

Moreover, the report which Mr. Folden attached to his declaration shows that Mr. Folden himself was not part of the crew that allegedly performed work on that day. CP 90. *Compare* CP 84. Mr. Folden therefore completed that report without himself having personal knowledge of the alleged work, or of the circumstances under which it was allegedly performed.

Because it was created based on information that Mr. Folden necessarily had to receive from third parties, the report contains hearsay within hearsay. Because no foundation was laid for the admission of the second layer of hearsay, the report should not have been considered. *State v. Barringer*, 32 Wn. App. 882, 650 P.2d 1129 (1982). See also *State v. Hendrickson*, 138 Wn. App. 827, 158 P.3d 1257 (2007).

Finally, Olson Brothers has not, and cannot, explain why it attempted to “prove” the timeliness of its lien claim in such a convoluted manner. If Olson Brothers’ employees had in fact performed lienable work on the site on May 27, 2008, it would have been the easiest thing in the world for Olson Brothers to have its employees sign declarations directly stating that they had done so. If they had offered such direct testimony, Olson Brothers’ employees could have explained why they had gone back to the site after not having worked on it for a week, how they got on to the fenced, gated site without Point Ruston’s foreman knowing about it, exactly what work they had performed, who had requested it, why it was lienable, and the like.

But Olson Brothers did not do this. It did not offer the direct testimony of its employees, although it easily could have had them testify.

Instead, Olson Brothers chose to “prove” the key issue in dispute – whether its crew had in fact performed lienable work on the site on May 27, 2008 – by relying only on cryptic statements contained in a document for which no evidentiary foundation was properly laid, and which contained interior hearsay. As a matter of law, Olson Brothers was not entitled to rely on this evidence to prove its contention as to the heart of the issue in dispute. *State v. Barringer*, 32 Wn. App. at 885.

Therefore, the trial court was legally required to decline to consider the contents of the documents which Olson Brothers attached to its witnesses’ declarations. If the documents had been excluded, Olson Brothers did not present the slightest evidence that it performed any work on or after May 24, 2008 (the 90th day preceding its August 22, 2008 lien filing). Therefore, if it had properly excluded these documents, the trial court would had to have found that Olson Brothers’ lien claim was untimely, and dismissed it.

B. **Olson Brothers did not carry its burden of showing that it performed any lienable work within 90 days preceding the date it filed its claim of lien.**

In any event, even if the trial court had been entitled to consider the hearsay statements contained in these documents, Olson Brothers did not

carry its burden of showing that it performed any lienable work within 90 days preceding the date it filed its claim of lien.

RCW 60.04.021 authorizes a person furnishing labor, materials, or equipment for the improvement of real property at the instance of the owner to assert a lien upon the improvement for the contract price. “Labor” is defined as the “exertion of the powers of body or mind performed at the site for compensation.” RCW 60.04.011(7). Therefore, in order to qualify as lienable, work (1) must improve the real property, (2) must occur “at the instance” of the owner, and (3) must be performed at the site.

RCW 60.04.091 further requires a claimant to record its claim of lien within 90 days of the date that the claimant last furnished such labor, professional services, materials or equipment:

Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than 90 days after the person has ceased to furnish labor, professional services, materials, or equipment

The period provided for recording the claim of lien is a period of limitation and no action to foreclose a lien shall be maintained unless the claim of lien is filed for recording within the 90-day period stated.

This ninety day filing period is to be strictly enforced. *Intermountain Electric, Inc. v. G-A-T Bros. Construction Co.*, 115 Wn. App. 384, 62 P.3d 548 (2003). The 90-day period runs from the last date labor was furnished, materials supplied, or professional services rendered *at the request of the owner to complete the contract*. *Id.*, citing *Rieflin v. Grafton*, 63 Wash. 387, 389, 115 Pac. 851 (1911) (emphasis in original) (90-day period runs from date contractor last performed work as requested by owner, not from date contractor later picked up its equipment left on the job site). A claim of lien that is not timely filed is void. *Lumberman's of Washington, Inc. v. Barnhardt*, 89 Wn. App. 283, 949 P.2d 382 (1997).

Here, Point Ruston's site superintendent carefully monitored the fenced, gated Superfund site where Olson Brothers had been performing its work, and completed logs that described each of the contractors who were present and working on the site on any given day. CP 98 (Daniels Supplemental Declaration, ¶ 6). These logs show that Olson Brothers last worked at the site on Monday, May 19, 2008. CP 89-99 (Daniels Supplemental Declaration, ¶ 7-8). The log for May 27, 2008, the date Olson Brothers now claims that it had a three-man crew performing some kind of

work, show that in fact no one from Olson Brothers performed work on the site that day. *Id.* See also CP 102-103.

Olson Brothers' own *contemporaneous* documentation confirms this. On May 22, 2008, Olson Brothers sent Point Ruston a final bill for its work. CP 37-44 (Verified Complaint, Exhibit D). This bill contains Olson Brothers' written certification that, as of May 19, 2008, it had performed all the work which Point Ruston, LLC had asked it to perform at the site so that the work was "100 percent complete." *Id.* Although Olson Brothers scrupulously described and billed for all of the work it performed on the project, Olson Brothers never billed for any work performed after May 19, 2008. CP 2 (Verified Complaint, ¶ 2).

This evidence clearly established the Olson Brothers did not perform any work at the site for the improvement of the property at the request of the owner after May 19, 2008. Olson Brothers' lien claim, filed on August 22, 2008, 95 days later, was therefore not timely.

Olson Brothers claims that the documents attached to its witnesses' declarations "prove" that it performed work on May 27, 2008. Even if the Court were to consider the hearsay contained in these documents for the truth

of what is asserted, they do not show that Olson Brothers performed work “on the site” “at the instance of the owner,” as the mechanic’s lien statute plainly requires.

In particular, Olson Brothers is expected to rely on the language in a document dated May 27, 2008, to suggest that a three-man crew “cleaned [the] site.” CP 91. But the document does not clearly describe what “site” was being referred to—the project site, or some other location where Olson Brothers stored its tools and equipment for its own convenience.

If Olson Brothers had actually performed work on May 27, 2008 at the project site for the improvement of the property at the instance of the owner, it would have been the easiest thing in the world for Olson Brothers’ witnesses to have said so directly. But none of Olson Brothers’ employees so testified. Olson Brothers’ failure to offer their direct testimony—when Olson Brothers clearly had the capability to offer that testimony, if its witnesses could truthfully so testify—gives rise to the compelling inference that Olson Brothers’ own witnesses could not claim that they actually performed work on May 27, 2008 at the project site. See *State v. Cheatam*, 150 Wn.2d 626, 652-53, 81 P.3d 830 (2003).

Olson Brothers also submitted a document which purported to describe its manager spending four hours on June 10, 2008 discussing the dispute over its bill with Point Ruston's foreman. CP 86-87. Even if the hearsay contained in this document could be considered for the truth of the matters being asserted, the "work" being described clearly does not constitute the provision of labor, materials or equipment, and thus is not lienable under the statute. RCW 60.04.021. Indeed, Olson Brothers itself admitted as much when it originally recorded its lien claim. CP 8-9. (Olson Brothers claim of lien describes the date it last performed work at May 27, 2008.)

As the lien claimant, Olson Brothers had the burden of clearly demonstrating that it has asserted a claim in a manner consistent with the statute. *Pacific Industries, Inc. v. Singh*, 120 Wn. App. 1, 6, 86 P.2d 778 (2003). Olson Brothers did not carry its burden of showing that it timely asserted its lien claim.

C. **Olson Brothers wrongfully purported to lien property on which it had never performed any work.**

Finally, Olson Brothers wrongfully purported to lien property on which it had never performed any work.

The facts pertaining to this issue were completely undisputed. Olson Brothers performed work only on the “Stack Hill” property. CP 2 (Verified Complaint, ¶ 1-2) Point Ruston, in its moving papers, pointed out that in the claim of lien, Olson Brothers had not only liened the “Stack Hill” property, but had also wrongfully liened a great deal of additional property which Point Ruston owns, but upon which Olson Brothers performed no work. CP 4 (Verified Complaint, Claim, ¶ 2).

Olson Brothers did not respond to this claim, or to this evidence. See CP 52-57. Olson Brothers provided no evidence showing that it was entitled to lien property in addition to the property subject to the “Stack Hill” contract which it had improved.

Therefore, at a bare minimum, Point Ruston was and is entitled to the entry of an order limiting Olson Brothers’ claimed lien only to the “Stack Hill” property.

D. **The Court should award Point Ruston its attorneys’ fees.**

Finally, to the extent Point Ruston prevails in this appeal, the Court should award Point Ruston its attorneys’ fees.

RCW 60.04.081(4) provides that, “if a court determines that a lien is frivolous and made without reasonable cause or clearly excessive, the court shall award costs and reasonable attorneys’ fees to the applicant to be paid by the lien claimant.” Under this statute, to the extent Point Ruston succeeds in obtaining any of the relief it has requested as part of this appeal, it is entitled to be awarded its attorneys’ fees—both at the appellate and trial court level.

VII. CONCLUSION

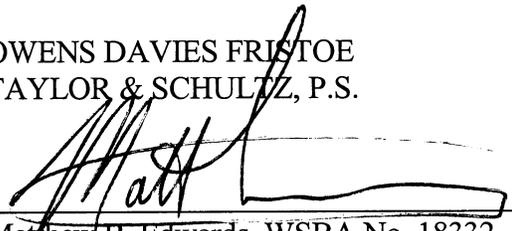
The Court should determine that the documents which Olson Brothers’ witnesses attached to their declarations are inadmissible hearsay. In the absence of these documents, there is absolutely no dispute: Olson Brothers did not timely file its lien claim. But even if the Court were to consider these documents, they do not satisfy Olson Brothers’ burden of proving that it had performed work on or after May 24, 2008. And, in any event, Point Ruston is entitled to have Olson Brothers’ Claim of Lien limited to the property on which Olson Brothers actually worked.

This Court should reverse and remand with instructions that Olson Brothers claim of lien be held invalid. At a minimum, the Court should reverse and remand with instructions that the trial court limit Olson Brothers’

claimed lien to only the "Stack Hill" property. And, the Court should award Point Ruston its attorneys' fees.

DATED this 29 day of October, 2008.

OWENS DAVIES FRISTOE
TAYLOR & SCHULTZ, P.S.



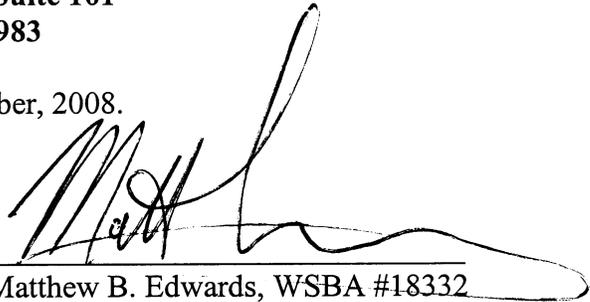
Matthew B. Edwards, WSBA No. 18332
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CERTIFICATE OF SERVICE

I hereby certify that I deposited a complete copy of the brief, including this Certificate of Service, in the United States Postal Service, first class postage prepaid, addressed to the following on this 21st day of October, 2008:

**John R. Spencer
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Tacoma, WA 98402-1983**

DATED this 29 day of October, 2008.


Matthew B. Edwards, WSBA #18332

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APPENDICES

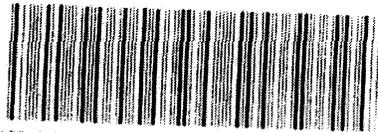
Evidentiary Materials Before Trial Court

Verified Complaint	CP 1-44	A
Declaration of Keith Daniel	CP 50-51	B
Declaration of Steve Olson	CP 74-81	C
Declaration of Scott Jamison	CP 82-87	D
Declaration of Larry Folden	CP 88-91	E
Supplemental Declaration of Keith Daniel	CP 97-106	F

Trial Court Order

Order Denying Request to Dismiss Lien Claim as Frivolous	CP 107-108	G
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A



08 0 12016-9 30452524 CMP 09-03-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 02 2008 P.M.

PIERCE COUNTY WASHINGTON
KINGSTOCK, WASHINGTON
PIERCE COUNTY

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

POINT RUSTON, LLC, a Washington limited
liability company,

No. 08 2 12016 9

Plaintiff,

**VERIFIED COMPLAINT PURSUANT
TO RCW 60.04.081**

vs.

OLSON BROTHERS EXCAVATING, INC.,
a Washington corporation,

Defendant.

COMES NOW Point Ruston, LLC ("Point Ruston") and pleads by way of Complaint against Olson Brothers Excavating, Inc. ("Olson") as follows:

I. JURISDICTION AND VENUE

1. This is a Complaint to obtain dismissal of a claim of lien recorded by Olson against property owned by Point Ruston located in Pierce County, Washington. A true copy of the claim of lien is attached to this Complaint as Exhibit A and incorporated by reference herein. Point Ruston asserts that the claim of lien is frivolous within the meaning of RCW 60.04.081.

2. This Court has jurisdiction over the subject matter of this action as provided in Chapter 60.04 RCW. Venue lies with this Court.

VERIFIED COMPLAINT PURSUANT TO RCW 60.04.081 - 1
No. 08 02 12016-9 Plaintiff: Verified Complaint Pursuant to RCW 60.04.081 Use

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

ORIGINAL

000001

II. PARTIES

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2 1. Point Ruston is a Washington limited liability company in good standing, which
3 has satisfied every condition precedent to its maintaining suit in the courts of this state under its
4 own name. Point Ruston is the owner of the real property subject to the claimed lien.

5 2. Olson is the claimant under the claim of lien.

III. FACTS

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7 1. On or about May 10, 2007, Point Ruston and Olson entered into a contract
8 whereby Olson was to perform certain work at a project site identified as "Stack Hill," 49th and
9 Baltimore, Ruston, Washington 98407. A true copy of the contract is attached to this Complaint
10 as Exhibit B and incorporated by reference herein.

11 2. The legal description of the site known as Stack Hill, where the work was to be
12 performed, is attached to this Complaint as Exhibit C and incorporated by reference herein.

13 3. As Olson performed the work, it would periodically submit progress billings
14 requesting payment.

15 4. On or about May 22, 2008, Olson submitted its progress billing No. 11 for the
16 work it performed in the period ending May 20, 2008. This billing is attached to this Complaint
17 as Exhibit D and incorporated by reference herein. This progress billing described all work as
18 having been 100 percent completed. The certification on the front page of the progress billing
19 states that the "contractor certifies that, to the best of the contractor's knowledge, the work on the
20 above-named job has completed in accordance with the plans and specifications to the level of
21 completion indicated on the attached schedule of completion."

22 5. Point Ruston never received further or additional progress billing from Olson with
23 respect to the work.

24 6. Although the contract provided for a total contract price of \$943,411.00, Olson
25 has insisted it be paid \$1,863,068.96 for the work. Point Ruston disputes Olson's claim that it is
26 entitled to payment in this amount.

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1. The mechanics' and materialmen's lien statute only authorizes a contractor to claim a lien on the "lot, tract or parcel of land which is improved." RCW 60.04.051.

2. Olson's claim of lien is frivolous, without reasonable cause and/or clearly excessive because Olson purports to claim a lien not merely upon the parcel improved by its work, but upon every piece of real property Point Ruston owns in the area, even though Olson performed no work upon and did nothing to arguably "improve" these properties.

V. PRAYER

Based on the foregoing, Point Ruston prays the Court for the following relief:

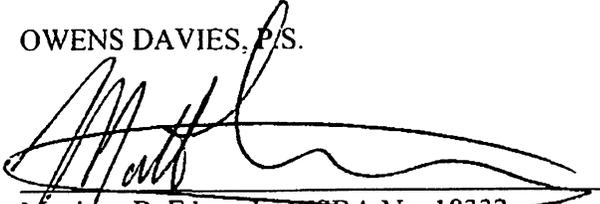
1. For the entry of an order requiring Olson to appear and show cause, if any it has, why the Court should not declare its claim of lien to be frivolous, without reasonable cause, clearly excessive and/or invalidly recorded, and otherwise to explain why the Court should not grant the relief requested in this Complaint;

2. For the entry of an order, in the manner contemplated by RCW 60.04.081, declaring Olson's claim of lien to be frivolous, without reasonable cause, and/or clearly excessive, declaring that Olson in fact has no right to a claim of lien under the mechanic's or materialmen's statute, and determining that the claim of lien which Olson has recorded shall be invalidated and have no further force or effect;

3. For attorneys' fees and costs, to the maximum extent contemplated by RCW 60.04.081;

4. For such further and other relief as the Court deems just and equitable.

DATED this 2nd day September, 2008.

OWENS DAVIES, P/S.

Matthew B. Edwards, WSBA No. 18332
Attorneys for Plaintiff Point Ruston

VERIFICATION

I, Loren Cohen, Member of Point Ruston, LLC, have read this complaint, am familiar with its contents, and affirm, under penalty of perjury of the laws of the State of Washington, that it and the information it contains is true and correct.



LOREN COHEN
Manager of Legal Affairs of Point Ruston, LLC

At: TACOMA, WA

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**EXHIBIT A
CLAIM OF LIEN**

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200808220685 10 PGS
08/22/2008 4:11pm \$51.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:

SPENCER LAW FIRM, PLLC
1326 Tacoma Avenue South, Suite 200
Tacoma, WA 98402-1983

Please print legibly or type information.

Document title (Or transaction contained therein) Claim of Lien
Claimant(s) (Last name, first, then first name, middle name) Olson Brothers Excavating, Inc., a Washington corporation Additional Names on Page ___ of Document
Name of Indebted Person(s) (Last name, first, then first name, middle name) Michael Cohen and Point Ruston, LLC, a Washington limited liability company Additional Names on Page ___ of Document
Legal Description (Abbreviated: i.e. lot, block & subdivision name or number OR section/township/range and quarter/quarter section NE/4 NE/4 SEC 23, TP 21 N, R 2 E LOTS A-C, M.S. DREW'S PLAT, BLK 3, LTS 3,4 AND 7, BLK, 4, BLKS 5 AND 8, LTS 1-4, BLK 9, BLKS 11 AND 16, LTS 1-3, BLK 17, LTS 1-6, BLK 18, BLKS 19 AND 24, LTS 1-6, BLK 25, BAY VIEW, BLKS 108-115 AND 113A-115A, TACOMA TIDE LANDS AND BLK B SUPPL MAP OF TACOMA TIDE LANDS Complete Legal Description on Page <u>3</u> of Document
Auditor's Reference Number(s)
Assessor's Property Tax Parcel/Account Number(s) 8950003310; 0221231000; 0221231033; 2365000670
The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. IF YOU REPRODUCE THIS FORM, BE SURE THE MARGINS REMAIN 3 INCHES AT THE TOP AND 1 INCH ON SIDES AND BOTTOM. gpcovst.lst 2/98

COPY

After Recording Return to:
John R. Spencer
Spencer Law Firm, LLC
1326 Tacoma Ave. S., Suite 200
Tacoma, WA 98402
P. (253) 383-2770

CLAIM OF LIEN

Olson Brothers Excavating, Inc.
(Claimant)

vs.

Michael Cohen, Point Ruston, LLC
(name of indebted person)

Notice is hereby given that the person named below claims a lien pursuant to chapter 60.04 RCW. In support of this lien, the following information is submitted.

Name of Lien: Olson Brothers Excavating, Inc. Name of Owner: Point Ruston, LLC

1. Claimant: Olson Brothers Excavating, Inc. 5. Reputed Owner: Point Ruston, LLC
Michael Cohen

Address Olson Bros. Excavating, Inc. Address: 5219 North Shirley St., #100
6622 112th Street East Ruston, WA 98407
Puyallup, WA 98373

Telephone 253-770-3844 Telephone:

2. Date of which the claimant began to perform labor, provide professional services, supply equipment or the date of which employee benefit contributions became due:

May 10, 2007

3. Name of person indebted to the claimant: **Michael Cohen, Point Ruston, LLC**

4. Description of the property against which a lien is claimed:

**See attached legal description entitled Exhibit A.
Portion of Section 23 and 24, Township 21 North, Range 2 East, W.M.**

Commonly known as: N 52nd Street, Ruston, WA 98407

6. This last date on which labor was performed; professional services were furnished;

EXHIBIT A

PARCEL A:

BEGINNING AT A POINT 433.19 FEET NORTH AND 434.50 FEET WEST OF THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., FOR PLACE OF BEGINNING;
 THENCE NORTH 51°30' EAST 101.59 FEET TO MEANDER LINE OF COMMENCEMENT BAY;
 THENCE NORTHWESTERLY ALONG SAID MEANDER LINE TO THE NORTH BOUNDARY OF SAID SECTION 23;
 THENCE WEST ALONG THE SAID NORTH BOUNDARY OF SAID SECTION 23, A DISTANCE OF 246.59 FEET;
 THENCE SOUTH TO A POINT 433.19 FEET NORTH OF THE NORTH BOUNDARY OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 23;
 THENCE EASTERLY TO PLACE OF BEGINNING;

EXCEPT BENNETT STREET;

AND EXCEPT THAT PORTION APPROPRIATED IN PIERCE COUNTY SUPERIOR COURT CAUSE NO. 9499, FOR THE POINT DEFIANCE, TACOMA AND EDISON RAILWAY COMPANY, RECORDED UNDER RECORDING NO. 82672, RECORDS OF THE PIERCE COUNTY AUDITOR;

AND

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M.;
 THENCE NORTH ALONG THE EASTERLY BOUNDARY OF SAID SECTION 23, 16.50 FEET;
 THENCE NORTH 30° WEST 66 FEET;
 THENCE NORTH 38°30' WEST 534 FEET;
 THENCE SOUTH 51°30' WEST 101.59 FEET;
 THENCE WEST 698.70 FEET, MORE OR LESS TO THE EASTERLY LINE OF HOWARD HEIGHTS ANNEX ADDITION, AS PER PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 48, RECORDS OF PIERCE COUNTY AUDITOR;
 THENCE SOUTHEASTERLY ALONG SAID EASTERLY LINE, 171.87 FEET TO THE CENTER LINE OF JELLEBERG COUNTY ROAD;
 THENCE ALONG SAID CENTER LINE AT RIGHT ANGLES WITH THE LAST COURSE, 116.98 FEET;
 THENCE WITH AN ANGLE OF 17°30' TO THE LEFT, 290 FEET TO A POINT 6.66 FEET EASTERLY OF THE CENTER OF THE NORTHEAST QUARTER OF SAID SECTION 23;
 THENCE EASTERLY ALONG THE NORTH LINE OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR, TO PLACE OF BEGINNING;

EXCEPT THE FOLLOWING TRACT:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 17, IN HOWARD HEIGHTS ANNEX, AS PER PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 48, RECORDS OF PIERCE COUNTY AUDITOR;
 THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 17, 120 FEET TO THE NORTHEAST CORNER OF SAID LOT 17;
 THENCE EASTERLY AT RIGHT ANGLES TO SAID EAST LINE, BEING A CONTINUATION OF THE NORTH LINE OF SAID LOT 17, A DISTANCE OF 48.15 FEET TO AN INTERSECTION WITH THE NORTH LINE OF AMERICAN SMELTERS SECURITIES COMPANY'S PROPERTY AT A POINT 57.74 FEET EAST OF THE NORTHEAST CORNER OF SAID HOWARD HEIGHTS ANNEX;
 THENCE EAST ON SAID LINE TO SAID AMERICAN SMELTERS SECURITIES COMPANY'S PROPERTY, 2.21 FEET;
 THENCE SOUTHERLY PARALLEL WITH AND 50 FEET FROM SAID EAST LINE OF SAID LOT 17, A

DISTANCE OF 118.78 FEET TO THE NORTHERLY LINE OF THE J.O. JELLEBERG COUNTY ROAD;
THENCE WESTERLY ALONG THE NORTH LINE OF SAID COUNTY ROAD, 50 FEET TO THE POINT
OF BEGINNING;

AND EXCEPT ALSO THE TRACT BEGINNING AT A POINT ON THE NORTH LINE OF SAID J.O.
JELLEBERG COUNTY ROAD 50 FEET EASTERLY FROM THE SOUTHEAST CORNER OF SAID LOT
17 IN HOWARD HEIGHTS ANNEX, AS PER PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 48,
RECORDS OF PIERCE COUNTY AUDITOR;
THENCE NORTHERLY ON A LINE PARALLEL WITH AND 50 FEET FROM THE EASTERLY LINE OF
SAID LOT 17 A
DISTANCE OF 118.78 FEET TO AN INTERSECTION WITH THE NORTH LINE OF AMERICAN
SMELTERS SECURITIES COMPANY'S PROPERTY AT A POINT 59.95 FEET EAST OF THE
NORTHEAST CORNER OF SAID HOWARD HEIGHTS ANNEX;
THENCE EAST ON SAID LINE TO SAID AMERICAN SMELTERS SECURITIES COMPANY'S
PROPERTY, 70.34 FEET;
THENCE SOUTHEASTERLY ON AN ANGLE OF 69°27' WITH SAID LAST NAMED COURSE, BEING
A LINE AT RIGHT ANGLES WITH THE NORTHERLY LINE OF SAID COUNTY ROAD AT THEIR
INTERSECTION, 85.38 FEET TO SAID LINE OF SAID COUNTY ROAD;
THENCE SOUTH 69°23' WEST 14.71 FEET;
THENCE SOUTH 56°30' WEST 25.29 FEET TO THE POINT OF BEGINNING;

AND EXCEPT THE FOLLOWING DESCRIBED TRACT:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 17 OF HOWARD HEIGHTS ANNEX, AS PER
PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 48, RECORDS OF PIERCE COUNTY AUDITOR;
THENCE ALONG THE NORTHERLY LINE OF THE J.O. JELLEBERG COUNTY ROAD, NOW KNOWN
AS NORTH 51ST STREET, IN THE TOWN OF RUSTON, NORTH 56°30' EAST 75.29 FEET;
THENCE CONTINUING ON SAID NORTHERLY LINE OF NORTH 51ST STREET, NORTH 69°23'
EAST 14.71 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;
THENCE NORTH 20°33' WEST 85.38 FEET TO A CONTINUATION EAST OF THE NORTH LINE OF
SAID HOWARD HEIGHTS ANNEX AT A POINT 130.29 FEET EAST OF THE NORTHEAST CORNER
OF SAID HOWARD
HEIGHTS ANNEX;
THENCE EAST ON SAID CONTINUATION OF SAID NORTH LINE 1.61 FEET;
THENCE ON A LINE PARALLEL WITH AND 110.0 FEET NORTHEASTERLY FROM, MEASURED AT
RIGHT ANGLES TO THE NORTHEASTERLY LINE OF SAID LOT 17, SOUTH 33°30' EAST 87.01
FEET TO SAID NORTHERLY LINE OF NORTH 51ST STREET;
THENCE ALONG SAID NORTHERLY LINE, SOUTH 69°23' WEST 20.89 FEET TO THE TRUE
POINT OF BEGINNING;

AND EXCEPT THE FOLLOWING DESCRIBED TRACT:

BEGINNING AT A POINT WHEREOF THE PROLONGATION OF THE LINE BETWEEN LOTS 13 AND
14 ARE SHOWN UPON THE PLAT OF HOWARD HEIGHTS ANNEX, AS RECORDED IN THE OFFICE
OF THE AUDITOR OF SAID PIERCE COUNTY, AS ABOVE STATED, INTERSECTS THE
SOUTHEASTERLY LINE OF THE SAID J.O. JELLEBERG COUNTY ROAD;
THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE OF SAID COUNTY ROAD, 60
FEET;
THENCE SOUTHEASTERLY ON A LINE PARALLEL WITH A PROLONGATION OF THE LINE
BETWEEN LOTS 10 AND 11 IN SAID HOWARD HEIGHTS ANNEX, 75 FEET;
THENCE NORTHEASTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF SAID COUNTY
ROAD TO THE INTERSECTION OF A PROLONGATION OF SAID LINE BETWEEN LOTS 13 AND 14
IN SAID HOWARD HEIGHTS
ANNEX;
THENCE NORTHWESTERLY ALONG SAID LAST NAMED LINE TO THE POINT OF BEGINNING;

AND EXCEPT THE FOLLOWING DESCRIBED TRACT:

A STRIP 30 FEET WIDE, 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT THE INTERSECTION OF THE NORTH BOUNDARY OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR, WITH THE CENTER LINE OF THIRD STREET, AS SHOWN ON SAID PLAT; THENCE NORTH 05°30' WEST 433.40 FEET TO A POINT 338 FEET EAST OF THE NORTHEAST CORNER OF PLAT OF HOWARD HEIGHTS ANNEX;

AND

ALL OF BLOCK 3 OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED DOCK STREET AND FIRST STREET (ORCHARD STREET) ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

EXCEPT TUNNEL CONVEYED TO THE TOWN OF RUSTON BY INSTRUMENT RECORDED AUGUST 10, 1916 UNDER RECORDING NO. 446869, RECORDS OF PIERCE COUNTY AUDITOR;

AND

LOTS 3, 4 AND 7 IN BLOCK 4 OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED DOCK STREET AND ALLEY ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

ALL OF BLOCKS 5 AND 8 OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED DOCK STREET, 2ND STREET, COMMERCIAL STREET AND ALLEY ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

LOTS 1, 2, 3 AND 4 IN BLOCK 9 OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED 2ND STREET, COMMERCIAL STREET AND ALLEY ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

ALL OF BLOCKS 11 AND 16 IN BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED COURT STREET AND ALLEY ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

LOTS 1, 2, AND 3 IN BLOCK 17 AND LOTS 1 THROUGH 6, INCLUSIVE, IN BLOCK 18 OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF COURT STREET ABUTTING VACATED BY ORDINANCE NO. 1172 OF THE TOWN OF RUSTON, RECORDED UNDER RECORDING NO. 200509290017;

AND

ALL OF BLOCKS 19 AND 24 IN BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED COURT STREET, THE NORTH 20.5 FEET OF 49TH STREET (PALACE AVENUE) AND ALLEY ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

LOTS 1 THROUGH 6, INCLUSIVE, OF BLOCK 25 OF BAY VIEW ADDITION, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THE NORTH 20.5 FEET OF VACATED 49TH STREET (PALACE AVENUE) ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

ALL OF BLOCKS 114-A, 115 AND 115A OF TACOMA TIDE LANDS, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGES 18 AND 19, RECORDS OF PIERCE COUNTY AUDITOR;

SITUATE IN THE TOWN OF RUSTON, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL B:

BLOCKS 112, 113, 113A AND 114 OF TACOMA TIDE LANDS, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGES 18 AND 19, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED ENELL STREET ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

TOGETHER WITH PORTIONS OF SPRAGUE STREET, WHICH HAVE BEEN HERETOFORE VACATED, LYING BETWEEN RUSTON WAY AND THE INNER HARBOR LINE OF THE 1961 SUPPLEMENTAL MAPS OF TACOMA TIDE LANDS, AS SHOWN ON THE OFFICIAL MAPS OF SAID TIDELANDS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON;

EXCEPT ANY PORTION LYING WITHIN RUSTON WAY;

SITUATE IN THE TOWN OF RUSTON AND CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL C:

THAT CERTAIN STRIP OF LAND 24 FEET IN WIDTH AND RUNNING THROUGH LOT "C" AND LOT 1 AS THE SAME ARE SHOWN AND DESIGNATED ON M.S. DREW'S PLAT OF LOT 1 OF SECTION 24, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE W.M., RECORDED IN THE OFFICE OF THE AUDITOR OF PIERCE COUNTY WASHINGTON, ON OCTOBER 24, 1872 AND RECORDED IN

VOLUME 1 OF PLATS, PAGE 16, RECORDS OF PIERCE COUNTY AUDITOR, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IN SAID LOT C BEGINNING AT THE NORTHWEST CORNER OF SAID LOT C;
 THENCE SOUTH 23.7 FEET;
 THENCE SOUTH 51°14'00" EAST, 72.1 FEET;
 THENCE SOUTH 48°44'00" EAST ON A LINE, 12 FEET FROM CENTER LINE OF RAILROAD SURVEY 145.9 FEET;
 THENCE EAST 36.4 FEET;
 THENCE NORTH 48°44'00" WEST ON A LINE PARALLEL WITH AND 12 FEET DISTANT FROM CENTER LINE OF RAILROAD SURVEY, 173.8 FEET;
 THENCE NORTH 51°14'00" WEST, 77.3 FEET;
 THENCE WEST 13.6 FEET TO PLACE OF BEGINNING;

IN SAID LOT 1, BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1;
 THENCE WEST 29.5 FEET;
 THENCE SOUTH 51°14'00" EAST, 37.9 FEET;
 THENCE NORTH 23.7 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION, IF ANY, CONVEYED TO THE PORT TOWNSEND SOUTHERN RAILROAD COMPANY BY INSTRUMENT RECORDED UNDER RECORDING NO. 368323, RECORDS OF THE PIERCE COUNTY AUDITOR;

AND

LOTS 1 THROUGH 16, INCLUSIVE, IN BLOCK 110, LOTS 1 THROUGH 19, INCLUSIVE, OF BLOCK 108 AND LOTS 1 THROUGH 18, INCLUSIVE, OF BLOCK 109 OF TACOMA TIDE LANDS, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGES 18 AND 19, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED EDWARDS STREET, ENELL STREET, RUSTON WAY (FRONT STREET) AND SPRAGUE STREET, ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND TOGETHER WITH THAT PORTION OF VACATED RUSTON WAY AS VACATED BY ORDINANCE NO. 17957 OF THE CITY OF TACOMA RECORDED NOVEMBER 22, 1965 UNDER RECORDING NO. 2125358, RECORDS OF PIERCE COUNTY AUDITOR, WHICH UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

AND

BLOCK 111 OF TACOMA TIDE LANDS, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGES 18 AND 19, RECORDS OF PIERCE COUNTY AUDITOR;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED DECEMBER 30, 1965 UNDER RECORDING NO. 2129771, RECORDS OF PIERCE COUNTY AUDITOR;

AND EXCEPT THAT PART OF SAID BLOCK 111 LYING SOUTH OF A PROLONGATION OF THE LINE BETWEEN LOTS C AND D IN M.S. DREW'S PLAT AS SAID, LOTS APPEAR OF RECORD ON SAID PLAT IN THE OFFICE THE AUDITOR OF SAID PIERCE COUNTY;

AND EXCEPTING ALSO THE PART OF SAID LOT 111 HEREINAFTER EXCEPTED;

AND

LOTS A AND B OF M.S. DREW'S PLAT, AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 16, RECORDS OF PIERCE COUNTY AUDITOR;

EXCEPT FROM SAID LOT B, THAT PORTION THEREOF DESCRIBED AS BEGINNING AT THE
SOUTHWEST CORNER OF SAID LOT B;
THENCE NORTH 140 FEET;
THENCE SOUTHEASTERLY 245 FEET TO THE SOUTH LINE OF SAID LOT B;
THENCE WEST 205 FEET TO THE POINT OF BEGINNING;

AND EXCEPT THE PARCELS OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE WESTERLY LINE OF FRONT STREET AS SHOWN ON PLAT OF TACOMA
TIDE LANDS, AT THE INTERSECTION OF SAID WESTERLY LINE WITH THE EXTENSION EAST
OF THE SOUTH LINE OF LOT B OF M.S. DREW'S PLAT IN SECTION 24, TOWNSHIP 21 NORTH,
RANGE 2 EAST OF THE W.M.;
THENCE ON SAID SOUTH LINE AND ITS EXTENSION NORTH $89^{\circ}31'53''$ WEST, 130.78 FEET TO
ITS INTERSECTION WITH THE EASTERLY LINE OF THE RIGHT OF WAY DEEDED BY CHARLES
A. ENELL AND WIFE TO DENIS RYAN AS RECORDED IN THE OFFICE OF COUNTY AUDITOR OF
PIERCE COUNTY IN VOLUME 58 OF DEEDS, PAGE 230, RECORDS OF PIERCE COUNTY
AUDITOR;
THENCE ALONG SAID EASTERLY LINE OF RIGHT OF WAY AS DESCRIBED IN SAID DEED,
NORTH $56^{\circ}14'00''$
WEST 126.2 FEET;
THENCE NORTH $58^{\circ}44'00''$ WEST 202.0 FEET TO THE WEST LINE OF LOT "A" OF SAID M.S.
DREW'S PLAT AT A POINT 10 FEET NORTH OF THE SOUTHWEST CORNER THEREOF;
THENCE ALONG SAID WEST LINE NORTH $00^{\circ}03'27''$ EAST, 58.437 FEET TO AN INTERSECTION
WITH THE
EXTENSION EAST OF THE NORTH LINE OF DOCK STREET AS SHOWN ON PLAT OF BAY VIEW;
THENCE ALONG SAID EXTENSION OF NORTH LINE OF DOCK STREET SOUTH $89^{\circ}02'23''$ EAST,
39.673 FEET TO A LINE PARALLEL WITH AND 70 FEET NORTHEASTERLY FROM MEASURED AT
RIGHT ANGLES TO SAID EASTERLY LINE OF DENIS RYAN RIGHT OF WAY;
THENCE ALONG SAID PARALLEL LINE SOUTH $58^{\circ}44'00''$ EAST, 218.64 FEET TO AN
EXTENSION SOUTHWESTERLY OF THE LINE COMMON TO LOTS 10 AND 11, BLOCK 110 OF
SAID TACOMA TIDE LANDS;
THENCE ALONG SAID EXTENSION NORTH $50^{\circ}01'39''$ EAST, 60.37 FEET TO SAID WESTERLY
LINE OF FRONT
STREET;
THENCE ALONG SAID WESTERLY LINE SOUTH $39^{\circ}58'21''$ EAST, 210.64 FEET TO THE POINT
OF BEGINNING;

AND EXCEPT THE PARCEL OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

IN SAID LOT A, BEGINNING AT THE WEST LINE OF SECTION 24, TOWNSHIP 21 NORTH,
RANGE 2 EAST OF THE W. M., AT A POINT 155 FEET SOUTH OF THE NORTHWEST CORNER OF
SAID LOT A;
THENCE SOUTH 10 FEET TO THE SOUTHWEST CORNER OF SAID LOT A;
THENCE EAST 16.4 FEET;
THENCE NORTH $58^{\circ}44'00''$ WEST 19.2 FEET ON A LINE PARALLEL TO AND 12 FEET DISTANT
FROM THE CENTER LINE OF RAILROAD SURVEY TO POINT OF BEGINNING;

AND EXCEPT THE PARCEL OF LAND BOUNDED AND DESCRIBED AS FOLLOWS:

IN SAID LOT B, BEGINNING AT THE NORTHWEST CORNER OF SAID LOT B;
THENCE SOUTH 18 FEET;
THENCE SOUTH $58^{\circ}44'$ EAST ON A LINE PARALLEL TO AND 12 FEET DISTANT FROM THE
CENTER LINE OF
RAILROAD SURVEY, 187 FEET;
THENCE SOUTH $56^{\circ}14'$ EAST 89.8 FEET;
THENCE EAST 43.2 FEET;
THENCE NORTH $56^{\circ}14'$ WEST, 126.2 FEET;
THENCE NORTH $58^{\circ}44'$ WEST ON A LINE PARALLEL TO AND 12 FEET FROM THE CENTER LINE

OF RAILROAD SURVEY, 182.9 FEET;
THENCE WEST 16.4 FEET TO POINT OF BEGINNING;

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL D:

BLOCK B OF 1961 SUPPLEMENTAL MAPS OF TACOMA TIDE LANDS, AS SHOWN ON THE
OFFICIAL MAPS OF SAID TIDELANDS ON FILE IN THE OFFICE OF THE COMMISSIONER OF
PUBLIC LANDS AT OLYMPIA WASHINGTON;

SITUATE IN THE CITIES OF RUSTON AND TACOMA, COUNTY OF PIERCE, STATE OF
WASHINGTON.

**EXHIBIT B
OLSON/POINT RUSTON, LLC CONTRACT**

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VERIFIED COMPLAINT PURSUANT TO RCW 60.04.081 - 7
N:\MRE\Point Ruston\Pleadings\Verified Complaint Pursuant to RCW 60.04.081.doc

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

**CONTRACTOR:
POINT RUSTON LLC**

**SUBCONTRACTOR:
OLSON BROTHER EXCAVATING INC.**

SUBCONTRACT

TABLE OF ARTICLES

- 1) CONTRACT PAYMENT
- 2) SCOPE OF WORK
- 3) SCHEDULE OF WORK
- 4) CHANGES
- 5) FAILURE OF PERFORMANCE
- 6) CONTRACT CANCELLATION
- 7) INSURANCE
- 8) INDEMNIFICATION
- 9) WARRANTY
- 10) SPECIAL PROVISIONS
- 11) DISPUTE RESOLUTION
- 12) ATTACHMENT A SCOPE OF WORK
- 13) ATTACHMENT B CHANGE ORDER
- 14) ATTACHMENT C WAIVER OF LIEN RIGHTS

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SUBCONTRACT

Job Name: STACK HILL

Date: May 10, 2007

THIS AGREEMENT, by and between

POINT RUSTON LLC (Contractor)

And **OLSON BROTHERS EXCAVATING INC. (Subcontractor)**

To perform the Work identified in Article 2 in accordance with the Project's Contract Documents.

PROJECT: STACK HILL
 SITE ADDRESS: 49th & Baltimore, Ruston, WA 98407
 MAILING ADDRESS: 5219 N. Shirley St, #100, Ruston, WA, 98407
 OWNER: POINT RUSTON LLC.
 ENGINEER: ESM, FEDERAL WAY, WA
 CONTRACTOR: POINT RUSTON LLC
 SUBCONTRACTOR: OLSON BROTHERS EXCAVATING INC.

Address:

6622 112TH ST. E
 PUYALLUP, WA 98373.
 Phone #: 253-770-3844
 Fax #: 253-770-3845

Internal Use Only:

<u>Cost Code:</u>	<u>\$ Amount:</u>

Initial: _____

Initial: YS

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ARTICLE 1: CONTRACT PAYMENT

Contractor, for full, complete, and faithful performance of this Subcontract, agrees to pay Subcontractor the sum of: Eight hundred and Sixty Seven thousand, One hundred and One dollars and zero cents (\$867,106.00)

PLUS Sales Tax at the rate of 8.8% in the amount of : Seventy Six thousand, Three hundred and Five dollars and zero cents (\$76,305.64) - For Rule 171 - 12,515.64 *PL*

For a Total Contract Price of: Nine hundred and Forty Three thousand, Four hundred and Eleven dollars and Zero Cents (\$943,411.00)

Payments, less retainage of 5%, shall be made to Subcontractor for Work Satisfactorily performed. A Lien Waiver will accompany each payment and must be returned to contractor's office before any other payments are made to the subcontractor. The subcontractor shall become entitled to receive progress payments on the 10th of the month for its work performed during the previous month, based on an agreed percentage of completion and invoice received in contractor's office by the first (1st) of the current month. In no event shall subcontractor be entitled to receive any form of payment prior to the Contractor's actual receipt of that payment for that work from the bank. Retainage shall be released the 15th of the month following 90 days after completion of Subcontractors Scope of Work. ***A signed Final Lien Release Waiver will be required before retention will be paid.***
ATTACHMENT C.

ARTICLE 2: SCOPE OF WORK

Subcontractor agrees to furnish all manpower labor, services, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein. Subcontractor to provide adequate crew as determined by Site Superintendent and or Project Manager. Subcontractor has satisfied itself as to the nature and location of the work, the character, kind and quantity of material to be encountered, the character, kind and equipment and labor needed, the location, conditions and other matters which can in any manner affect the work under this subcontract, and acknowledges that Subcontractor has had a reasonable opportunity to examine the site, all of the Contact Documents and this Subcontract. Subcontractor agrees not to subcontract or sublet any portion of this work without the prior written consent of Contractor. Subcontractor shall finance its own operations hereunder and warrants that it is, and shall operate as an independent contractor and not as an agent of Contractor. Subcontract shall commence Subcontractor's Work herein described upon notification by Contractor, and to perform and complete such Work in accordance with Contract Documents and under the general direction of Contractor in accord with Contractor's schedule. This shall include all work necessary or incidental to complete the: *Please see Attached Attachment 'B' (Bid Proposal)*

PL

Sheets 1+2

Initial: _____

Initial: *YF*

SEE ATTACHMENT "A" FOR MORE DETAILS

Work for the Project as more particularly, though not exclusively specified in: Attachment A.

The Subcontractor shall follow the contractor's clean-up and safety directions, and (a) at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and (b) broom clean each work area prior to discontinuing working the same. Subcontractor to place debris generated by its work in an onsite, owner supplied dumpster. **If the subcontractor does not clean up after himself, the subcontractor will be notified in writing from the site Superintendent or Project Manager of default. One day after written notice of default, the contractor will hire from a labor pool, laborers to have the subcontractors debris cleaned up at the expense of the subcontractor.**

Contractor is committed to maintaining a safe work place, Subcontractor agrees to take necessary safety and other precautions, at all times, to prepare for and perform the work in a safe manner and to protect persons from illness or injury and property from damage arising out of the performance of the work.

To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and hold Contractor, Architect, and Architect's Consultants harmless from all OSHA and WISHA claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Subcontractor's failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder. The indemnity obligation of Subcontractor shall include all costs, expenses, and attorney fees reasonable incurred by Contractor, Architect, and Architect's Consultants. If the subcontractor fails to immediately commence compliance with such safety duties or commence clean-up duties within 24 hours after receipt from the Contractor of written notice of deficiency, the Contractor may implement such safety or clean-up measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor.

The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and pay for all fees, licenses, assessments, and taxes necessary to complete the Subcontractor's Work in accordance with the Contract Documents.

The Subcontractor shall not assign neither this Agreement nor its proceeds, nor subcontract the whole or any part of the Subcontractor's Work without prior written approval of the Contractor, which shall not be unreasonably withheld.

In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items with such skill and care to ensure a satisfactory and proper installation. Loss or damage due to the act of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

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ARTICLE 3: SCHEDULE OF WORK

TIME IS OF THE ESSENCE of this Subcontract. Subcontractor agrees to start work on the date directed by Contractor and to punctually and diligently perform all parts of its work at the times scheduled by Contractor, which schedule shall be subject to change by Contractor as it deems necessary or convenient to the overall progress of the project. Subcontractor agrees to keep itself continually informed of the progress of the Project and will on its own initiative, confer with the Contractor so as to plan Subcontractor's work in coordinated sequence with the work of the Contractor and of others so as to be able to expeditiously undertake and perform its work at the time which is both most beneficial to the entire Project and which will enable Contractor to timely comply with the Contract Documents Subcontractor recognizes that reasonable changes may be made in the Schedule of Work by Contractor and agrees to comply with such reasonable changes.

ARTICLE 4: CHANGES

Contractor without nullifying this Agreement may direct Subcontractor in writing to make changes to Subcontractor's Work. Adjustment, if any, in the contract price or contract time resulting from such changes shall be set forth in a Subcontract Change Order pursuant to the Contract Documents.
ATTACHMENT B (If required)

All change orders must be approved and signed by Project Manager.

ARTICLE 5: FAILURE OF PERFORMANCE

Should Subcontractor fail to cure a notice of contractual deficiency within three (3) working days from receipt of contractor's written notice, then the Contractor, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, who shall be liable for payment of same, including reasonable overhead, profit and attorneys fees.

Liquidated Damages: Subcontractor to submit a mutually agreed revised construction schedule for the completion of the Stack Hill Project once the Town of Ruston has released the road and utilities permits. Should the Subcontractor default in the proper performance of its work thereby causing delay in the entire work, it shall be liable for any and all resulting loss and damages including but not limited to liquidated damages of \$500.00 per day of delay. Subcontractor shall be liable under this paragraph even though such default is caused by strikes, lockouts, acts of God, or other reasons beyond the control of Subcontractor, unless Subcontractor gives written notice of a delay beyond its control to Contractor within five (5) working days following the start of the alleged occurrence. Contractor shall NOT be liable to Subcontractor for losses or damages resulting from the aforementioned causes or for Contractor's delay, or for modification or extension of the schedule made at the sole discretion of Contractor, or for losses or damages resulting from suspensions or Change Orders issued by Owner, or for delays caused by other Subcontractors.

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ARTICLE 6: CONTRACT CANCELLATION

This subcontract may be cancelled by Contractor in whole or part without liability for damages and Contractor shall be liable to Subcontractor only for the reasonable value of Subcontractor's work completed to the extent that Contractor has received payment for said work from Bank.

Subcontractor agrees that it has in place, or will immediately implement a substance abuse program. Subcontractor further acknowledges that the use, sale or possession by any employee of Subcontractor while on the Project of an intoxicating liquor, controlled substance, drug not medically authorized or other substances that impair job performance or pose a hazard to the safety and welfare of the employee, the public or other employees is strictly prohibited and will result in termination of the employee by Subcontractor. The failure of Subcontractor to so act will be sufficient cause for Contractor to terminate and cancel this subcontract.

ARTICLE 7: INSURANCE

Prior to the start of Subcontractor's Work, Subcontractor shall procure and maintain in force for the duration of the Work, Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars Aggregate (\$2,000,000.00) and all other insurance required of Contractor under Contract Documents or Washington state law. POINT RUSTON LLC shall be named as additional insured party on each of these policies, except for Worker's Compensation.

Subcontractor shall provide A Certificate of Insurance evidencing the above coverage, which must be filed with Contractor prior to commencing work under this Subcontract. Neither Subcontractor nor its employees will be permitted on the job site absent the receipt by Contractor of the required Certificate of Insurance. NO PAYMENT SHALL BE ISSUED WITHOUT SATISFACTORY EVIDENCE ON REQUEST FROM CONTRACTOR THAT REQUIRED INSURANCE REMAINS IN FORCE.

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ARTICLE 8: INDEMNIFICATION

To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner, Engineer and Contractor from all damages, losses and expenses, including attorneys fees, from any claims or damages for bodily injury, sickness, disease, or death OR from claims for damage to tangible property, other than the Work itself. This indemnification shall extend to claims resulting from performance of this Subcontract and shall apply only to the extent that the claim or loss is caused in whole or in part by any negligent act or omission of Subcontractor or any of its agents, or employees. This indemnity shall be effective regardless of whether the claim or loss is caused in some part by a party to be indemnified. The obligation of Subcontractor under this Article shall not extend to claims or losses that are primarily caused by the Engineer.

Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Act, Title 51, RCW. Further the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under worker's Compensation Acts, Disability Benefit Acts, or other employee benefits acts.

ARTICLE 9: WARRANTY

The Subcontractor warrants its work against all deficiencies and defects in workmanship and will fix such deficiencies and defects without cost to the Owner or the Contractor. Subcontractor shall guarantee or warranty its work described above for the duration to coincide with General Contractors Warranty from the date(s) of substantial completion of all or a designated portion of the Subcontractor's Work or acceptance for use by the Contractor or Owner of designated equipment, whichever is sooner.

ARTICLE 10: SPECIAL PROVISIONS

This Agreement represents the entirety of the understanding between the parties and supercedes prior negotiations, representations or agreements, either written or oral. In the event of inconsistencies between this and any other contract document between the parties, or any exhibits or attachments hereto, the terms of this Agreement shall govern.

Initial: _____

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VS

000024

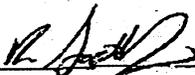
ARTICLE 11: DISPUTE RESOLUTIONS

In the event of dispute concerning this Agreement, its meaning or enforcement, such disputes shall be submitted to a single arbitrator, under the commercial arbitration rules of the American Arbitration Association, with the arbitration to be held in Tacoma Washington. The arbitrator shall determine that one party has substantially prevailed and shall award to that party in addition to any other relief granted, that parties actual attorney's fees and costs of arbitration including travel, accommodations and witness fees.

IN WITNESS WHEREOF, the parties have executed this Agreement under Seal, the day and year first written above.

Subcontractor Firm Name:
OLSON BROTHER EXCAVATING INC.

Contractor Firm Name:
POINT RUSTON LLC

By: 

By: 

Print: R. Scott Jamison

YUCHUN SANTORY

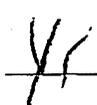
Title Project Manager

Title
PROJECT MANAGER

Date: 5/15/17

Date: 5/15/07

Initial: _____

Initial: 

000025

ATTACHMENT A SCOPE OF WORK

JOB NAME: STACK HILL

PROJECT: POINT RUSTON LLC

OWNER: POINT RUSTON LLC

ENGINEER: ESM, FEDERAL WAY, WA.

CONTRACTOR: POINT RUSTON, STACK HILL PROJECT

SUBCONTRACTOR: OLSON BROTHER EXCAVATING INC.

PER ENGINEERS DETAILS AND PLANS, SIGNED PLANS AND CITY OF TACOMA STANDARDS AND TOWN OF RUSTON. FOLLOWING GOOD AND WORKMAN LIKE PRACTICES:

SCOPE OF WORK SUMMARY

1. TO PROVIDE A PROJECT MANAGEMENT TEAM TO OVERSEE THE PROJECT FROM START TO FINISH.
2. MOBILIZATION OF NECESSARY EQUIPMENT, STAFF AND MATERIALS REQUIRED TO COMPLETE THE PROJECT AS REQUIRED BY THE ENGINEERED PLANS AND CITY OF TACOMA AND TOWN OF RUSTON STANDARDS.
3. EROSION CONTROL (1200 LF SILT FENCE AND ONE CONST. ENTRANCE)
4. CLEAR AND GRUB (SMALL AMOUNT OF MISC ONSITE)
5. MASS EXCAVATION INCLUDING WALLS (THE COMPLETION OF THE MASS GRADING IS INCLUDED. ANY FILL SHORTAGES IS THE OWNER'S RESPONSIBILITY TO STOCK PILE ADDITIONAL MATERIALS NEAR AREAS NEEDING ADDITIONAL FILL. ALL CONTAMINATED MATERIALS WILL BE REMOVED BY OWNER PRIOR TO OLSON BROTHERS TO START WORK ON SITE.
 - a. ROCKERY (NO BLACK ROCK) OWNER TO APPROVE TYPE AND SIZE OF ROCKERY
6. SEWER SYSTEM (1450 FT 8" PVC AND 6" SIDE SEWERS)
7. STORM SYSTEM (1125 LF OF MAIN AND HDPE LOT DRAINS) - INCLUDES 12 CARTRIDGE STORM WATER VAULT.
8. WATER SYSTEM (1150 FEET OF MAIN) INCLUDES 4 HYDRANTS
9. SUB GRADE ROAD (3835 SQ YRDS AND 1 FOOT BASE SECTION)
10. CURB AND GUTTER (3056 LF)
11. DRY UTILITY TRENCH (1500 FT INCLUDING SAND)
12. SIDEWALKS (6' FOOT WIDE 18.336 SQFT)
13. ASPHALT (2" CSTC AND 2" ASPHALT)
14. LIGHT POLES (30' ALUMINUM COMPLETE 250 WATT 6 POLES) AS SELECTED AND APPROVED BY TOWN.
15. MAIL BOXES (COMPLETE INSTALL) LOCATIONS TO BE DETERMINED BY THE OWNERS. PLEASE PROVIDE TYPE AND SUPPLIER INFORMATION.

Initial: _____

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- 16. COMPACTION TESTING FOR THE PUBLIC ROAD AND WALKS (COMPACTION TESTING TO BE A MINIMUM OF 95% COMPACTION).
- 17. THE REQUIRED DUST CONTROL FOR THE PROJECT.

EXCLUSION ARE AS FOLLOWS;
 PERMITS, CONNECTION FEES, BONDS, ENGINEERING, CONSTRUCTION STAKING, INSPECTION FEES,
 TRENCH IMPORT OR EXPORT ONSITE, EXPORT, PERMANENT FENCING, LANDSCAPING, DRY UTILITIES,
 HANDLING OF CONTAMINATED SOIL IN ANY FORM, FOOTING, W.S.T. OR DEMOLITION.

Subcontractor Firm Name:
OLSON BROTHER EXCAVATING INC.

Contractor Firm Name:
POINT RUSTON LLC

By: 

By: 

Print: R. Scott Jamison

YUCHUN SANTORY
 PROJECT MANAGER

Date: 5/15/17

Date: 5/15/17

Initial: _____

Initial: 

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ATTACHMENT B CHANGE ORDER

JOB NAME: POINT RUSTON LLC
PROJECT: STACK HILL
SUBCONTRACTOR: OLSON BROTHERS EXCAVATING INC.
DESCRIPTION OF ADDITIONAL WORK:

Internal Use Only

- Increase Budget - Cost Code _____
- No Budget Change - Cost Code _____

COST OF ADDITIONAL WORK:

Plus 8.8% Sales Tax

TOTAL

Subcontractor Firm Requesting CO:

By: _____

Date: _____

Contractor Firm Acceptance:
POINT RUSTON LLC

By: [Signature]
YUCHUN SANTORY
PROJECT MANAGER

Date: 5/1/07

Initial: _____

Initial: [Signature]

GIVEN UNDER my hand and official seal this _____ day of _____, 20____.

Notary Public in and for the State
of
Washington,
Residing at

My Appointment Expires:

Initial: _____

Initial: yr



8622 - 112th ST. E. • PUYALLUP, WA 98373 • (253) 770-3844 FAX (253) 770-3845

Attachment B
Sheets 1 + 2



EXCAVATING
DEMOLITION
LAND DEVELOPING

Date: 3/19/07

TO: MC Construction Consultants
Attn: Yuchun Santory
5219 N. Shirley
Suite# 100
Ruston, WA 98407
Phone: 253-752-2185
Fax: 253-752-7085

Re: Stack Hill

Dear: Mr. Santory

I am providing you with a bid to perform the site work as follow:

01	Project Management	\$ 13,522.00
02	Mobilization	\$ 11,484.00
03	Erosion Control (1,200 LF silt fence and one const. Ent.)	\$ 8,640.00
04	Clear and Grub (small amount of misl. Onsite)	\$ 11,549.00
05	Mass Excavation/Budget (10,000 Yards onsite, Incl. Walls)	\$ 78,000.00
06	Sewer System (1,450 ft 8" pvc and 6" side sewers)	\$ 132,762.00
07	Storm System (1,125 ft of main and HDPE lot drains)	\$ 183,645.00
08	Water System (1,150 feet of main)	\$ 89,459.00
09	Sub grade road (3,835Sq Yrds and 1 foot base section)	\$ 51,295.00
10	Curb and Gutters (3,056 LF)	\$ 51,983.00
11	Dry utility trench (1,500 ft including sand)	\$ 32,370.00
12	Sidewalks (6 foot wide 18,336 sqft)	\$ 81,045.00
13	Asphalt (2" asphalt 2" CSTC, 3,835sq yards incl. Stripping and signage)	\$ 80,075.00
14	Light Poles (30' Aluminum complete 250 watt 6 poles)	\$ 36,314.00
15	Mail boxes (complete installed 3 boxes 12 unit)	\$ 4,963.00
16	Full taxes	\$ 75,976.74
17	Reduce tax for rule 171	\$ -12,515.64

470

The price to perform the work will be \$ 930,567.00

The bid was figured by using the prints provided, ESM dated 11/01/06 sheets 1 thru 15 including the dry utility plan dated 2/23/07 sheet 4 of 11, All UNSIGNED sets of plans.

Assumptions: We will be using native backfill for all sewer, storm and water.

Exclusions are as follows:

YS

CONTRACTOR'S LICENSE NO. • OLSON B E 113N3



BROS. EXCAVATING INC.

6622 - 112th ST. E. • PUYALLUP, WA 98373 • (253) 770-3844 FAX (253) 770-3845



EXCAVATING
DEMOLITION
LAND DEVELOPING

Permits, Connection fees, Bonds, Engineering, Construction staking, Compaction testing, Inspection fees, Trench import or export onsite, Export, Permanent fencing, Dewatering, Landscaping, Dry utilities, Contaminated soil in any form, Footings, W.S.S.T. or Demolition.

Should you have any questions, please contact me at the number referenced above.

Sincerely,
Olson Brothers Excavating, Inc.

R. Scott Jamison
Project Manager

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**EXHIBIT C
LEGAL DESCRIPTION OF STACK HILL PARCEL**

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Order No.: 10921698

EXHIBIT "A"

ALL OF BLOCKS 3, 5, 8, 11, 16, 19 AND 24, AND LOTS 3 AND 4, BLOCK 4, AND LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 9, AND LOTS 1, THROUGH 3, INCLUSIVE, BLOCK 17, AND LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 18, AND LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 25, ALL IN THE PLAT OF BAY VIEW ADDITION, AS RECORDED IN VOLUME 2 OF PLATS, PAGE 21, RECORDS OF PIERCE COUNTY AUDITOR;

TOGETHER WITH THOSE PORTIONS OF VACATED 2ND STREET, COMMERCIAL STREET, COURT STREET, DOCK STREET, VILLARD STREET, THE NORTH 20.5 FEET OF 49TH STREET (PALACE AVENUE) AND ALLEYS ADJOINING, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW;

EXCEPT ANY PORTION LYING NORTHERLY OF THE SOUTHWESTERLY MARGIN OF THAT TUNNEL CONVEYED TO THE TOWN OF RUSTON BY INSTRUMENT RECORDED AUGUST 10, 1916 UNDER RECORDING NO. 446869, RECORDS OF PIERCE COUNTY AUDITOR, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF BALTIMORE STREET AND NORTH 49TH STREET, BEING A BRASS MONUMENT SET IN A CASE;
 THENCE ALONG THE MONUMENTED CENTERLINE OF BALTIMORE STREET, NORTH 02°23'48" EAST, 29.50 FEET TO THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF THE VACATED NORTHERLY 20.5 FEET OF NORTH 49TH STREET IN SAID BLOCK 24;
 THENCE ALONG SAID SOUTHERLY LINE, SOUTH 87°34'17" EAST, 30.00 FEET TO THE EASTERLY MARGIN OF SAID BALTIMORE STREET AND THE TRUE POINT OF BEGINNING;
 THENCE ALONG SAID EASTERLY MARGIN THE FOLLOWING COURSES;
 NORTH 02°23'48" EAST, 310.61 FEET;
 NORTH 02°24'36" EAST, 329.81 FEET;
 NORTH 02°21'58" EAST, 479.85 FEET TO THE NORTHWEST CORNER OF SAID BLOCK 3;
 THENCE ALONG THE NORTHERLY LINE OF SAID BLOCK 3, SOUTH 87°35'00" EAST, 16.17 FEET TO THE SOUTHWESTERLY LINE OF THAT TUNNEL CONVEYED TO THE TOWN OF RUSTON BY INSTRUMENT RECORDED AUGUST 10, 1916 UNDER RECORDING NO. 446869, AND A POINT OF CURVATURE;
 THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES;
 SOUTHEASTERLY, 48.44 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 70.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 81°01'46" EAST, THROUGH A CENTRAL ANGLE OF 39°38'50";
 SOUTH 56°54'35" EAST, 9.09 FEET;
 SOUTH 60°56'16" EAST, 11.61 FEET;
 SOUTH 72°53'00" EAST, 234.38 FEET;
 SOUTH 87°35'05" EAST, 14.94 FEET;
 SOUTH 02°26'35" WEST, 6.83 FEET TO A POINT OF CURVATURE;
 SOUTHEASTERLY, 92.33 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 2662.79 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 19°11'20" WEST, THROUGH A CENTRAL ANGLE OF 01°59'12", TO THE CENTERLINE OF VACATED DOCK STREET;
 THENCE ALONG SAID CENTERLINE, NORTH 87°35'05" WEST, 57.93 FEET TO THE CENTERLINE OF VACATED VILLARD STREET;
 THENCE ALONG SAID CENTERLINE, SOUTH 02°26'35" WEST, 164.93 FEET, TO THE WESTERLY EXTENSION OF THE CENTERLINE OF THE VACATED ALLEY BETWEEN SAID BLOCK 4 AND BLOCK 9;
 THENCE ALONG SAID CENTERLINE, SOUTH 87°35'17" EAST, 80.03 FEET TO THE SOUTHERLY

000034

Order No.: 10921698

EXHIBIT "A" (continued)

EXTENSION OF THE WESTERLY LINE OF SAID LOT 3, BLOCK 4;
THENCE ALONG SAID WESTERLY LINE, NORTH 02°30'24" EAST, 157.26 FEET TO THE
SOUTHWESTERLY LINE OF SAID TUNNEL AND A POINT OF CURVATURE;
THENCE ALONG SAID SOUTHWESTERLY LINE, SOUTHEASTERLY, 53.32 FEET ALONG THE ARC OF A
NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 2662.79 FEET, THE RADIUS POINT
OF WHICH BEARS SOUTH 21°40'57" WEST, THROUGH A CENTRAL ANGLE OF 01°08'50", TO THE
NORTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT 4, BLOCK 4;
THENCE SOUTH 02°34'14" WEST, 309.09 FEET, SAID LINE BEING COINCIDENT WITH THE
EASTERLY LINE OF SAID LOT 4, BLOCK 4 AND LOT 4, BLOCK 9, TO THE CENTERLINE OF VACATED
COMMERCIAL STREET;
THENCE ALONG SAID CENTERLINE, NORTH 87°35'29" WEST, 129.68 FEET TO THE CENTERLINE OF
SAID VILLARD STREET;
THENCE ALONG SAID CENTERLINE, SOUTH 02°26'35" WEST, 169.91 FEET TO THE WESTERLY
EXTENSION OF THE CENTERLINE OF THE ALLEY BETWEEN SAID BLOCK 10 AND BLOCK 17;
THENCE ALONG SAID CENTERLINE, SOUTH 87°35'26" EAST, 104.95 FEET TO THE NORTHERLY
EXTENSION OF THE EASTERLY LINE OF SAID LOT 3, BLOCK 17;

THENCE ALONG SAID EASTERLY LINE, SOUTH 02°31'57" WEST, 159.91 FEET TO THE CENTERLINE
OF VACATED COURT STREET;
THENCE ALONG SAID CENTERLINE, SOUTH 87°35'23" EAST, 75.37 FEET TO THE NORTHERLY
EXTENSION OF THE EASTERLY LINE OF LOT 6, BLOCK 18;
THENCE SOUTH 02°38'00" WEST, 310.73 FEET, SAID LINE BEING COINCIDENT WITH THE
EASTERLY LINE OF SAID LOT 6, BLOCK 18 AND LOT 6, BLOCK 25, TO THE SAID SOUTHERLY LINE
OF THE VACATED NORTHERLY 20.5 FEET OF NORTH 49TH STREET;
THENCE ALONG SAID SOUTHERLY LINE THE FOLLOWING COURSES;
NORTH 87°35'13" WEST, 149.03 FEET;
NORTH 87°34'45" WEST, 60.00 FEET;
NORTH 87°34'17" WEST, 299.60 FEET TO THE TRUE POINT OF BEGINNING;

SITUATE IN THE CITY OF RUSTON, COUNTY OF PIERCE, STATE OF WASHINGTON.

000035

EXHIBIT D
MAY 22, 2008 PROGRESS BILLING NO. 11

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VERIFIED COMPLAINT PURSUANT TO RCW 60.04.081 - 9
N:\BIBEX\Point Ruston\Pleadings\Verified Complaint Pursuant to RCW 60.04.081.doc

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

COPY



Olson Brothers Excavating, Inc.
6622 112th St. E.
Puyallup WA 98373
253-770-3844

License: OLSONBE113N3

Contract Invoice

Invoice#: J1065 E#11

Date: 05/20/2008

Billed To: Pt. Ruston, LLC
5219 N. Shirley, Suite 100
Ruston WA 98047

Project: Stack Hill
49th & Baltimore
Ruston, WA 98407

Due Date: 05/20/2008

Terms:

Order#

Description	Amount
Progress Billing# 11 Non-Taxable Portion	92,231.75
Progress Billing# 11 Taxable Portion	EWDS → 91,286.15 ✓

adjust retention

183,517.90

A service charge of 18 % per annum will be charged on all amounts overdue on regular statement dates.

Thank you for your prompt payment!!

Sales Tax:	8,033.18 ✓
Invoice Total:	191,551.08
Retention:	0.00
Amount Paid:	0.00
Amount Due	191,551.08

000037

Olson Brothers Excavating, Inc.
 6622 112th St. E
 Puyallup WA 98373
 253-770-3844

License: OLSONBE113N3

Owner: Pt. Ruston, LLC
 5219 N. Shirley, Suite 100
 Ruston WA 98047

Job Location: Stack Hill
 49th & Baltimore
 Ruston, WA 98407

Progress Billing

Application: 11

Period: 05/20/2008

Application For Payment On Contract

Original Contract.....	867,106.00
Net Change by Change Orders.....	995,962.96
Contract Sum to Date.....	1,863,068.96
Total Complete to Date.....	1,821,792.46
Total Retained.....	0.00
Total Earned Less Retained.....	1,821,792.46
Less Previous Billings.....	1,638,274.56
Current Payment Due.....	183,517.90
Balance on Contract.....	41,276.50

Contractor's Certification of Work

The undersigned contractor certifies that, to the best of the contractor's knowledge, the work on the above named job has been completed in accordance with the plans and specifications to the level of completion indicated on the attached schedule of completion.

Contractor: 

Date: 5/22/08

Terms: Invoices are due and payable from the date of invoice. All overdue amounts will be charged a service charge of 0.00 % per annum. Please make checks payable to: Olson Brothers Excavating, Inc.

Thank you for your prompt payment.

0000300

PROGRESS BILLING

Application: 11

Period: 05/20/2008

Schedule of Work Completed

Description of Work	Scheduled	Changes	Contract	Previous	Current Comp.	Stored Mat.	Total Comp.	%	Balance	Retained
6/25/07 EWO #6740		13,225.83	13,225.83	13,225.83			13,225.83	100.00		
6/18/07 EWO #6741		4,810.77	4,810.77	4,810.77			4,810.77	100.00		
6/26/07 EWO #6742		16,162.32	16,162.32	16,162.32			16,162.32	100.00		
6/27/07 EWO #6743		13,609.91	13,609.91	13,609.91			13,609.91	100.00		
8/1/07 EWO #6995		629.97	629.97	629.97			629.97	100.00		
8/9/07 EWO #6991		6,105.30	6,105.30	6,105.30			6,105.30	100.00		
8/13/07 EWO #6711		2,175.37	2,175.37	2,175.37			2,175.37	100.00		
8/14/07 EWO #6714		724.50	724.50	724.50			724.50	100.00		
8/15/07 EWO #6717		3,813.99	3,813.99	3,813.99			3,813.99	100.00		
8/16/07 EWO #6718		5,810.56	5,810.56	5,810.56			5,810.56	100.00		
8/17/07 EWO #6715		2,619.31	2,619.31	2,619.31			2,619.31	100.00		
9/7/07 EWO #		7,903.13	7,903.13	7,903.13			7,903.13	100.00		
8/24/07 EWO #7417		3,749.68	3,749.68	3,749.68			3,749.68	100.00		
8/27/07 EWO #7416		921.91	921.91	921.91			921.91	100.00		
8/30/07 EWO #7383		185.43	185.43	185.43			185.43	100.00		
9/2/07 EWO #7384		1,738.00	1,738.00	1,738.00			1,738.00	100.00		
9/10/07 EWO #7393		3,112.45	3,112.45	3,112.45			3,112.45	100.00		
9/11/07 EWO #7395		5,025.11	5,025.11	5,025.11			5,025.11	100.00		
9/12/07 EWO #7398		2,994.44	2,994.44	2,994.44			2,994.44	100.00		
9/13/07 EWO #7397		2,821.34	2,821.34	2,821.34			2,821.34	100.00		
9/14/07 EWO #7403		1,159.35	1,159.35	1,159.35			1,159.35	100.00		
10/2/07 EWO #7270		2,177.00	2,177.00	2,177.00			2,177.00	100.00		
10/17/07 EWO #		20,815.79	20,815.79	20,815.79			20,815.79	100.00		
10/4/07 EWO #7472		278.14	278.14	278.14			278.14	100.00		
10/8/07 EWO #7466		5,602.91	5,602.91	5,602.91			5,602.91	100.00		
10/9/07 EWO #7271		5,743.26	5,743.26	5,743.26			5,743.26	100.00		
10/11/07 EWO #7277		10,726.94	10,726.94	10,726.94			10,726.94	100.00		
10/12/07 EWO #7275		10,866.94	10,866.94	10,866.94			10,866.94	100.00		
10/13/07 EWO #7276		3,619.41	3,619.41	3,619.41			3,619.41	100.00		
10/15/07 EWO #7289		5,695.83	5,695.83	5,695.83			5,695.83	100.00		

PROGRESS BILLING

Application: 11

Period: 05/20/2008

Schedule of Work Completed

Description of Work	Scheduled	Changes	Contract	Previous	Current Comp.	Stored Mat.	Total Comp.	%	Balance	Retained
10/16/07 EWO #7467		13,674.15	13,674.15	13,674.15			13,674.15	100.00		
10/17/07 EWO #7281		11,982.26	11,982.26	11,982.26			11,982.26	100.00		
10/18/07 EWO #7290		8,454.16	8,454.16	8,454.16			8,454.16	100.00		
10/19/07 EWO #7410		3,881.84	3,881.84	3,881.84			3,881.84	100.00		
10/22/07 EWO #7294		1,278.64	1,278.64	1,278.64			1,278.64	100.00		
10/23/07 EWO #7295		4,903.88	4,903.88	4,903.88			4,903.88	100.00		
10/25/07 EWO #7289		1,746.70	1,746.70	1,746.70			1,746.70	100.00		
10/26/07 EWO #7301		8,600.94	8,600.94	8,600.94			8,600.94	100.00		
10/27/07 EWO #7307		5,585.61	5,585.61	5,585.61			5,585.61	100.00		
10/28/07 EWO #7305		2,677.66	2,677.66	2,677.66			2,677.66	100.00		
10/29/07 EWO #7306		4,071.14	4,071.14	4,071.14			4,071.14	100.00		
10/30/07 EWO #7309		23,520.56	23,520.56	23,520.56			23,520.56	100.00		
10/31/07 EWO #7282		1,581.69	1,581.69	1,581.69			1,581.69	100.00		
10/31/07 EWO #7484		5,389.99	5,389.99	5,389.99			5,389.99	100.00		
11/1/07 EWO #7311		21,250.82	21,250.82	21,250.82			21,250.82	100.00		
11/2/07 EWO #7285		4,264.56	4,264.56	4,264.56			4,264.56	100.00		
11/5/07 EWO #7286		10,973.97	10,973.97	10,973.97			10,973.97	100.00		
11/6/07 EWO #7469		3,522.99	3,522.99	3,522.99			3,522.99	100.00		
11/8/07 EWO #7315		1,723.54	1,723.54	1,723.54			1,723.54	100.00		
11/9/07 EWO #7317		2,076.99	2,076.99	2,076.99			2,076.99	100.00		
11/14/07 EWO #7321		2,046.86	2,046.86	2,046.86			2,046.86	100.00		
11/15/07 EWO #7323		11,400.62	11,400.62	11,400.62			11,400.62	100.00		
11/16/07 EWO #7328		3,730.04	3,730.04	3,730.04			3,730.04	100.00		
11/19/07 EWO #7326		10,516.78	10,516.78	10,516.78			10,516.78	100.00		
11/20/07 EWO #7333		8,162.64	8,162.64	8,162.64			8,162.64	100.00		
11/21/07 EWO #7339		1,105.24	1,105.24	1,105.24			1,105.24	100.00		
11/26/07 EWO #7334		9,925.88	9,925.88	9,925.88			9,925.88	100.00		
11/27/07 EWO #7337		9,868.84	9,868.84	9,868.84			9,868.84	100.00		
11/28/07 EWO #7342		9,997.53	9,997.53	9,997.53			9,997.53	100.00		
11/29/07 EWO #7343		10,115.22	10,115.22	10,115.22			10,115.22	100.00		

PROGRESS BILLING

Application: 11

Period: 05/20/2008

Schedule of Work Completed

Description of Work	Scheduled	Changes	Contract	Previous	Current Comp.	Stored Mat.	Total Comp.	%	Balance	Retained
11/30/07 EWO #7340		13,546.02	13,546.02	13,546.02			13,546.02	100.00		
12/5/07 EWO #7348		9,210.82	9,210.82	9,210.82			9,210.82	100.00		
12/6/07 EWO #7349		5,863.95	5,863.95	5,863.95			5,863.95	100.00		
12/7/07 EWO #7350		4,949.96	4,949.96	4,949.96			4,949.96	100.00		
12/10/07 EWO #7330		8,570.51	8,570.51	8,570.51			8,570.51	100.00		
12/11/07 EWO #6999		6,742.11	6,742.11	6,742.11			6,742.11	100.00		
12/12/07 EWO #7332		8,468.23	8,468.23	8,468.23			8,468.23	100.00		
12/19/07 EWO Credit		-4,830.51	-4,830.51	-4,830.51			-4,830.51	100.00		
12/20/07 EWO #7474		9,618.21	9,618.21	9,618.21			9,618.21	100.00		
1/2/08 EWO #7479		4,947.58	4,947.58	4,947.58			4,947.58	100.00		
1/3/08 EWO #7480		3,207.41	3,207.41	3,207.41			3,207.41	100.00		
1/4/08 EWO #6751		4,460.87	4,460.87	4,460.87			4,460.87	100.00		
1/15/08 EWO #Material		7,173.15	7,173.15	7,173.15			7,173.15	100.00		
Impacts - Sewer & Storm Sys		131,049.85	131,049.85	131,049.85			131,049.85	100.00		
1/25/08 EWO #7486		1,561.99	1,561.99	1,561.99			1,561.99	100.00		
2/4/08 EWO #7487		2,491.65	2,491.65	2,491.65			2,491.65	100.00		
2/5/08 EWO #7488		1,764.04	1,764.04	1,764.04			1,764.04	100.00		
2/6/08 EWO #7491		2,870.81	2,870.81	2,870.81			2,870.81	100.00		
2/7/08 EWO #7493		452.02	452.02	452.02			452.02	100.00		
2/8/08 EWO #6765		1,999.92	1,999.92	1,999.92			1,999.92	100.00		
2/13/08 EWO #7494		1,689.90	1,689.90	1,689.90			1,689.90	100.00		
2/14/08 EWO #7495		1,689.90	1,689.90	1,689.90			1,689.90	100.00		
2/15/08 EWO #7497		313.03	313.03	313.03			313.03	100.00		
2/18/08 EWO #7496		2,007.33	2,007.33	2,007.33			2,007.33	100.00		
2/19/08 EWO #7498		1,563.56	1,563.56	1,563.56			1,563.56	100.00		
2/20/08 EWO #7499		1,881.87	1,881.87	1,881.87			1,881.87	100.00		
2/26/08 EWO #7358		3,447.70	3,447.70	3,447.70			3,447.70	100.00		
2/27/08 EWO #7356		3,069.25	3,069.25	3,069.25			3,069.25	100.00		
2/28/08 EWO #7357		2,569.84	2,569.84	2,569.84			2,569.84	100.00		
1/31/08 Material		18,493.73	18,493.73	18,493.73			18,493.73	100.00		

PROGRESS BILLING

Application: 11

Period: 05/20/2008

Schedule of Work Completed

Description of Work	Scheduled	Changes	Contract	Previous	Current Comp.	Stored Mat.	Total Comp.	%	Balance	Retained
2/29/08 Material		11,628.71	11,628.71	11,628.71			11,628.71	100.00		
Current Trenching Off Site		22,500.00	22,500.00	22,500.00			22,500.00	100.00		
Traffic Control		3,500.00	3,500.00	3,500.00			3,500.00	100.00		
Current Trenching On Site		20,500.00	20,500.00	20,500.00			20,500.00	100.00		
Sand Bedding		7,700.00	7,700.00	7,700.00			7,700.00	100.00		
EWO's 2/29-3/11										
EWO Materials		6,714.32	6,714.32	6,714.32			6,714.32	100.00		
2/29/08 EWO #7359		1,158.07	1,158.07	1,158.07			1,158.07	100.00		
3/3/08 EWO #6766		2,592.97	2,592.97	2,592.97			2,592.97	100.00		
3/4/08 EWO #6762		1,096.41	1,096.41	1,096.41			1,096.41	100.00		
3/5/08 EWO #7361		410.45	410.45	410.45			410.45	100.00		
3/6/08 EWO #7362		263.81	263.81	263.81			263.81	100.00		
3/7/08 EWO #7363		2,672.89	2,672.89	2,672.89			2,672.89	100.00		
3/10/08 EWO #7364		4,898.72	4,898.72	4,898.72			4,898.72	100.00		
3/11/08 EWO #7366		3,530.10	3,530.10	3,530.10			3,530.10	100.00		
Import Trench Backfill 1800 t		1,500.00	1,500.00	1,500.00			1,500.00	100.00		
700 tons of recycled		7,847.00	7,847.00	7,847.00			7,847.00	100.00		
3/4/08 EWO Materials		4,434.47	4,434.47	4,434.47			4,434.47	100.00		
3/12/08 EWO #7367		5,358.82	5,358.82	5,358.82			5,358.82	100.00		
3/14/08 EWO #7369		2,878.04	2,878.04	2,878.04			2,878.04	100.00		
3/17/08 EWO #7370		2,777.23	2,777.23	2,777.23			2,777.23	100.00		
3/18/08 EWO #7372		5,458.27	5,458.27	5,458.27			5,458.27	100.00		
3/20/08 EWO #6767		3,776.19	3,776.19	3,776.19			3,776.19	100.00		
3/21/08 EWO #7374		907.70	907.70	907.70			907.70	100.00		
3/24/08 EWO #6814		1,384.80	1,384.80	1,384.80			1,384.80	100.00		
3/26/08 EWO #6768		1,306.81	1,306.81	1,306.81			1,306.81	100.00		
4/7/08 EWO #6815		16,214.91	16,214.91	16,214.91			16,214.91	100.00		
4/8/08 EWO #6817		3,729.04	3,729.04	3,729.04			3,729.04	100.00		
4/15/08 Woodworth material		2,857.40	2,857.40	2,857.40			2,857.40	100.00		
Add Asphalt per letter 2/11/0		9,635.00	9,635.00		9,635.00			100.00		

PROGRESS BILLING

Application: 11

Period: 05/20/2008

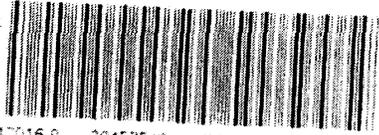
Schedule of Work Completed

Description of Work	Scheduled	Changes	Contract	Previous	Current Comp.	Stored Mat.	Total Comp.	%	Balance	Retained
Add Concrete per letter 2/11/0		9,898.00 ✓	9,898.00		9,898.00		9,898.00	100.00		
4/9/08 EWO #6818		5,913.01 ✓	5,913.01		5,913.01		5,913.01	100.00		
4/10/08 EWO #6819		3,050.96 ✓	3,050.96		3,050.96		3,050.96	100.00		
4/18/08 EWO #6789		5,388.26 ✓	5,388.26		5,388.26		5,388.26	100.00		
4/21/08 EWO #6787		3,238.91 ✓	3,238.91		3,238.91		3,238.91	100.00		
4/24/08 EWO #6784		1,490.09 ✓	1,490.09		1,490.09		1,490.09	100.00		
4/25/08 EWO #6785		4,344.42 ✓	4,344.42		4,344.42		4,344.42	100.00		
4/28/08 EWO #6783		3,458.11 ✓	3,458.11		3,458.11		3,458.11	100.00		
4/29/08 EWO #6781		10,150.00 ✓	10,150.00		10,150.00		10,150.00	100.00		
4/30/08 EWO #6780		6,097.24 ✓	6,097.24		6,097.24		6,097.24	100.00		
5/1/08 EWO #6779		2,514.36 ✓	2,514.36		2,514.36		2,514.36	100.00		
5/2/08 EWO #6778		2,009.37 ✓	2,009.37		2,009.37		2,009.37	100.00		
5/5/08 EWO #6777		5,018.38 ✓	5,018.38		5,018.38		5,018.38	100.00		
5/6/08 EWO #6773		3,105.87 ✓	3,105.87		3,105.87		3,105.87	100.00		
5/7/08 EWO #6502		5,011.61 ✓	5,011.61		5,011.61		5,011.61	100.00		
5/8/08 EWO #6503		3,984.20 ✓	3,984.20		3,984.20		3,984.20	100.00		
5/9/08 EWO #6504		4,330.15 ✓	4,330.15		4,330.15		4,330.15	100.00		
5/15/08 EWO #6775		1,690.74 ✓	1,690.74		1,690.74		1,690.74	100.00		
5/16/08 EWO #6506		957.47 ✓	957.47		957.47		957.47	100.00		
Totals:	867,106.00	995,962.96	1,863,068.96	1,638,274.56	163,517.90		1,821,792.46	97.78	41,276.50	

91,256.15
(in changes
49,635.00
from previous
page)

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08-2-12016-9 36452542 DCLR 09 03-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 02 2008 P.M.

PIERCE COUNTY WASHINGTON
KELLY STROCK, County Clerk
COURT CLERK

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

POINT RUSTON, LLC, a limited liability
company,

No. 08 2 12016 9

DECLARATION OF KEITH DANIEL

Plaintiff,

vs.

OLSON BROTHERS EXCAVATING, INC.,
a Washington corporation,

Defendant.

I, KEITH DANIEL, declare as follows:

1. I am over the age of eighteen, competent to testify and I make this declaration on personal knowledge.
2. I am the Sitework Superintendent for MC Construction Consultants, Inc., retained by Point Ruston, LLC to provide project management and construction consulting expertise for its development of the project known as the Stack Hill Plat, located in Ruston, Washington at 49th and Baltimore Streets, Ruston, Washington 98407. I have been and will continue to be involved in the development of the Stack Hill Plat.
3. In May 2007, Point Ruston, LLC started the work necessary for the grading of the Stack Hill Plat property. I worked daily on this site from approximately May 2007 up until May 16, 2008, when site construction activities culminated.

DECLARATION OF KEITH DANIEL - 1
NUMBER: Point Ruston/Findings/Daniel Decl.doc

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

1 4. As part of my daily work on the Stack Hill Plat, I worked directly with Larry
2 Folden, Olson Brother Excavating, Inc.'s site superintendent for the Stack Hill Plat.

3 5. As part of my responsibilities as the Sitework Superintendent, I keep a daily log
4 of construction activities. Throughout the development and construction of the Stack Hill Plat, I
5 noted all persons present and working on the site.

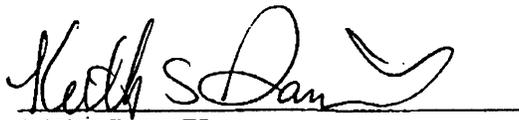
6 6. On May 14, 2008, I led a final construction walkthrough on the site with Larry
7 Folden (Olson Brothers' site manager), Eric Abbott (ESM Engineer, the site's managing
8 engineer), Eric Pilcher (ESM, the site's civil engineer), Sue O'Neill (Point Ruston, LLC
9 Construction Manager), and Steven Yester (Point Ruston, LLC, Development Manager). The
10 purpose of this walkthrough was to review Olson's work, since it had been completed. At that
11 time, I noted that Olson was performing only "punch list" work, and had all but completed all
12 work.

13 7. Olson Brothers Excavating, Inc.'s last day of work on the Stack Hill Plat was
14 Friday, May 16, 2008.

15 8. As part of my responsibilities as the Sitework Superintendent, it is also my
16 responsibility to verify invoices. The last invoice received from Olson Brothers Excavation, Inc.
17 was on May 20, 2008, in the amount of \$191,551.08. Along with this invoice, an Extra Work
18 Order (EWO) was received, which indicates the specific time and work completed for the term
19 of the pertinent invoice. The most recent EWO is dated May 16, 2008, confirming that the last
20 date Olson Brothers Excavation, Inc. performed work on the site was May 16, 2008.

21 I declare under penalty of perjury under the laws of the state of Washington that the
22 foregoing is true and correct.

23 Dated this 2 day of September, 2008 at Point Ruston, Pierce County, Washington.

24
25 
26 KEITH DANIEL

C



FILED
IN COUNTY CLERK'S OFFICE
A.M. SEP - 9 2008 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

**POINT RUSTON, LLC, a Washington
limited liability company,**

Plaintiff,

v.

**OLSON BROTHERS EXCAVATING,
INC., a Washington corporation,**

Defendant.

NO. 08-2-12016-9

**DECLARATION OF STEVE
OLSON**

I, Steve Olson, having been duly sworn, declare as follows:

1. I am the Vice-President of Olson Brothers Excavating, Inc. and make this declaration.
2. On or about August 15, 2008, I received a spreadsheet from Sue O'Neal, the construction manager for the Stack Hill job, and Mike Cohen. The invoice column on the spreadsheet, reflects an invoice total of \$2,023,307.97(page 3).
3. The change description column reflects a total of 140 change orders and additional non-numbered change orders.

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DECLARATION OF STEVE OLSON
Page 1 of 2

SPENCER LAW FIRM, LLC
1326 Tacoma Ave. S., Suite 200
Tacoma, WA 98402-1983
P.253.383.2770 F. 253 572.4207

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1 I declare under penalty of perjury of the laws of the State of Washington that the
2 statements as provided herein are true and accurate.

3 DATED this the 9th day of September, 2008.

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By: 
Steve Olson

DECLARATION OF STEVE OLSON
Page 2 of 2

SPENCER LAW FIRM, LLC
1326 Tacoma Ave. S., Suite 200
Tacoma, WA 98402-1983
P.253.383.2770 F. 253 572.4207

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M&C CONST
DOCUMENT

Rec'd by
Steve Olson
from Sue O'Neil
& Mike Cohen on

Res	Date	EWO # or Change	Desc.	Change Amount	Notes	Mats/Sub
			N/A			
86.86	5/24/2007	6725		3,402.52	Tie in to existing drainage system	960.11
	5/25/2007	6726		2,301.50	Tie in to drainage syst, road clean up, strip unsuitable mtl	-
	5/29/2007	6727		3,440.87	Strip unsuitable, begin fill with structural fill to grade	-
	6/1/2007	6728		7,169.20	Stack base area cut & fill	1,053.98
	6/4/2007	6729		5,529.04	Excavate blue clay & behind concrete walls to be removed	-
	6/6/2007	6731		9,516.04	Excavate blue clay & debris, starte removing concrete wall	-
	6/7/2007	6732		7,518.23	Remove concrete wall, fill voids, load out soil & dust control	149.50
	6/11/2007	6733		10,546.77	Load concrete, clay, sand, backfill wall, strip clay, dewater & install wet well	1,064.84
	6/12/2007	6734		5,981.06	Strip, stockpile & load clay to export	-
	6/13/2007	6735		9,598.87	Strip, stockpile & load clay to export	-
	6/13/2007	6736		15,813.70	Export unsuitable matl & clay	4,950.00
	6/20/2007	6737		13,181.37	Export unsuitable matl & clay, uncovered buried concrete, sort god/bad matl	-
	6/21/2007	6738		9,800.36	Export unsuitable matl & clay, uncovered buried concrete, sort god/bad matl	-
	6/22/2007	6739		7,578.50	Built diversion swale along north TCLP line, install check dams in swale	1,382.93
	6/25/2007	6740		13,225.83	Export clay, fill with good mtl, dewater well points & pond, strip haul road mud	-
	6/18/2007	6741		4,810.77	Export clay and manage clay stockpiles	-
	6/26/2007	6742		16,162.32	Export clay from lots & fill lots 7-10, 21 & 22, place quarry rock to control water	1,799.91
	6/27/2007	6743		13,609.91	Export unsuitable, fill & compact	-
	Total Changes			159,186.86		Total Mats/Subs 11,361.27
24.57	6/1/2007	6728-b		1,360.35	Addn for 5/8 minus rock missed on EWO#6728	1,360.35
	6/28/2007	7253		14,130.53	Cut/haul surplus matl, place clean fill, install gw convey trench w/5/8 per geo	1,833.61
	7/2/2007	7255		12,712.44	Cut 2:1 slopes, exprt suplus, fill & compact with sand, demo pond	481.67
	7/3/2007	7256		14,696.75	Grade slopes, install conveyance ditched & filled over exc lots, haul unsuitable	1,377.70
	7/5/2007	7257		15,308.36	Grade slopes, built 2nd constr entrance - road not drivable	3,153.81
	7/6/2007	7258		12,415.68	Cut lots to grade and filled over exc lots to grade, compacted, track slopes	1,130.45
	7/9/2007	7259		13,475.07	Filled over exc lots to grade, compacted, exported unsuitable mtl	865.98
	7/10/2007	7261		4,991.69	Lot grading, building swales and installed pipe for gw surface control	-
	7/11/2007	7263		3,433.70	Fill slope where contaminated material was removed & tested	-
	Total Changes			92,524.57		Total Mats/Subs 10,203.56
82.13	8/1/2007	6995		629.97	Rolled the site for weather and cleaned haul trucks for removal from site	-
	8/9/2007	6991		6,105.30	Additional 5/8" per geotech, install rock, mob loader and gravel skiff	4,382.48
	8/13/2007	6711		2,175.37	Additional 5/8th per geotech & density testing	1,422.11
	8/14/2007	6714		724.50	Soils engineer to monitor backfill & test density	724.50
	8/15/2007	6717		3,813.99	Graded slopes per geo to accommodate changes on site	-
	8/18/2007	6718		5,810.56	Weather proof site & prep to mob out	-
	8/17/2007	6715		2,619.31	Decon equip, met with PSE	-
	9/7/2007	N/A		7,903.13	Geotech test not prev. billed, equip rental for EWO work, 5/8" rock	7,903.13
	Total Changes			29,782.13		Total Mats/Subs 14,432.22
30.50	8/2/2007	7417		3,749.68	Remove contaminated matl & regrade slopes. Replace entry quarry spalls	1,075.25
	8/27/2007	7416		921.91	Excavate contaminated soils from lots 1 & 2, backfill	-
	8/31/2007	7383		185.43	Met with hydroseeder and provided access	-
	9/7/2007	7384		1,738.00	Watered hydroseed	-
	9/13/2007	7393		3,112.45	Repair storm damage from Labor Day storm	25.30
	9/11/2007	7395		5,025.11	Repair erosion control & replace rock in parking area, deliver ecology block	1,380.00
	9/12/2007	7398		2,994.44	Repair erosion control damage	-
	9/13/2007	7397		2,821.34	Erosion control repairs	-
	9/14/2007	7403		1,159.35	Helped complete erosion control	207.00
	10/2/2007	7270		2,177.00	Repair erosion control BMPs and ditched to divert water	-
	10/17/2007	no number		20,815.79	Locate sewer on BNRR property per Steve's request, water, place hydroseed per geo direction	20,815.79
	Total Changes			44,700.50		Total Mats/Subs 23,503.34
3.00	10/4/2007	7472		278.14	Try to repair groundwater leaching	-
	10/8/2007	7486		5,602.91	Redesign sanitary MH #1, prepare traffic plan, import matl for san. Trench	1,242.91
	10/9/2007	7271		5,743.26	Import matl for trench backfill, core MH section, misc parts, slope erosion repair	1,788.07
	10/11/2007	7277		10,726.94	Import pitrun, labor & mater - geo & density testing	10,159.11
	10/12/2007	7275		10,866.94	Import pitrun & place in san ditch, clean road from import truck, loboy to remob. geo	1,883.41
	10/13/2007	7276		3,619.41	Clean road from import, heel piles for erosion control	-
	10/15/2007	7289		5,695.83	Import trench backfill & place, geo, street cleaning from import/export	4,794.99
	10/16/2007	7467		13,674.15	Import trench backfill & place in ditch & stockpile, sort clay for export, geo	12,065.93
	10/17/2007	7281		11,982.26	Import pit run for trench backfill	10,084.07
	10/18/2007	7290		8,454.16	Import trench backfill & place, geo for density	7,057.29

Billing #	Period	Taxable	Nontaxable	Tax	Invoice Total	Retainage	Total Paid	Contract	Changes	Changes		EWC								
										Date										
1	5/25/2007	32,172.10	-	2,831.14	35,003.24	1,750.16	33,253.08	32,172.10	-											
2	6/28/2007	208,549.48	19,500.00	18,352.35	246,401.83	11,402.47	235,140.92	68,862.30	159,186.86	5/24/2007 5/25/2007 5/29/2007 6/1/2007 6/4/2007 6/6/2007 6/7/2007 6/11/2007 6/12/2007 6/13/2007 6/14/2007 6/20/2007 6/21/2007 6/22/2007 6/25/2007 6/18/2007 6/26/2007 6/27/2007										
Invoice 4066										7/31/2007	92,524.57	8,142.16	100,666.73	4,626.22	96,040.51	-	92,524.57	6/1/2007 6/28/2007 7/2/2007 7/3/2007 7/5/2007 7/6/2007 7/9/2007 7/10/2007 7/11/2007		
3	9/7/2007	96,086.18		8,455.58	104,541.76	4,804.30	99,314.67	66,304.05	29,782.13	8/1/2007 8/9/2007 8/13/2007 8/14/2007 8/15/2007 8/16/2007 8/17/2007 9/7/2007										
4	10/18/2007	146,300.30		12,874.43	159,174.73	7,215.01	151,859.72	101,599.80	44,700.50	8/24/2007 8/27/2007 8/31/2007 9/2/2007 9/10/2007 9/11/2007 9/12/2007 9/13/2007 9/14/2007 10/2/2007 10/17/2007										
5	10/28/2007	378,227.90		33,284.06	411,511.96	18,911.39	392,600.57	181,084.90	197,143.00	10/4/2007 10/8/2007 10/9/2007 10/11/2007 10/12/2007 10/13/2007 10/15/2007 10/16/2007 10/17/2007 10/18/2007										

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Changes					
Pages	Date	EWO # or Change	Change Amount	Notes	Matts/Sub
	10/19/2007	7410	3,881.84	Erosion control, trench backfill	-
	10/22/2007	7294	1,278.64	Clean up mud, place trench backfill	-
	10/23/2007	7295	4,903.88	Pitrun import & place	4,235.53
	10/25/2007	7299	1,746.70	Clean out ditches, help with layout for dewatering, clean roads from import/export	-
	10/26/2007	7301	8,600.94	Import pitrun, stockpile and keep up with haul roads	7,559.80
	10/27/2007	7307	5,585.61	Repair blanket drain, ET around buried san main, help MC with erosion clean up	690.00
	10/28/2007	7305	2,677.66	Repair 6" drainline, clean swales behind MC crew	-
	10/29/2008	7306	4,071.14	Place pitrun in trench & backfill, dewatering delay	-
	10/30/2007	7309	23,520.56	Place pitrun for backfill	23,007.85
	10/31/2007	7282	1,581.69	Place pitrun for trench backfill	-
	10/31/2007	7464	5,389.99	Erosion repair	-
	11/1/2007	7311	21,250.82	Place pitrun, dewater during pipe installation, dig to set MH #7 again	19,319.32
	11/2/2007	7285	4,264.56	Pit run	4264.5565
	11/5/2007	7286	10,973.97	Install 8" sanitary main and MH #12 import pit run	4,787.92
	11/6/2007	7469	3,522.99	Cleaned up N 49th after sewer tie-in and placed pit run for backfill	1,877.36
	11/8/2007	7315	1,723.54	Placed pit run for trench backfill	-
	11/9/2007	7317	2,076.99	Dismantle well points and place pit run	-
	11/14/2007	7321	2,046.86	Erosion control maintenance and loaded trucks hauling offsite spoils	-
	11/15/2007	7323	11,400.62	Load clay spoils and work on erosion control	9,967.61
	Total Changes		197,143.00		Total Matts/Subs 124,785.74
943.26	11/16/2007	7328	3,730.04	Hydro exc 12" gas - repair storm damage	833.94
	11/19/2007	7326	10,516.78	Repair east swale & line, build check dams, install pipe slope drains	2,318.34
	11/20/2007	7333	8,162.64	Erosion control, line swale, check dams, pipe slope drains	3,639.72
	11/21/2007	7339	1,105.24	Clean up slopes from water damage & straw	450.50
	11/26/2007	7334	9,925.88	Line swales & install chk dams, load clay spoils, exc for waterdrain	1,298.30
	11/27/2007	7337	9,868.84	Install the dewatering system, rented equipment	6,620.60
	11/28/2007	7342	9,997.53	Install well points, install 8" HDPE underdrain	-
	11/29/2007	7343	10,115.22	Install underdrain per design, discharge line, maintain sed traps & check dams	763.26
	11/30/2007	7340	13,546.02	Install underdrain, import material for drain	7,368.36
	12/5/2007	7348	9,210.82	Install underdrain and install trench dam with CDF	1,531.11
	12/6/2007	7349	5,863.95	Install underdrain	-
	12/7/2007	7350	4,949.96	Install underdrain, relocate dewatering, erosion control	1,067.87
	12/10/2007	7330	8,570.51	Install underdrain, locate HDPE for survey per Steve Yester	1,636.20
	12/11/2007	6999	6,742.11	Install 12" storm in Baltimore and bypass	733.19
	12/12/2007	7332	8,468.23	Install storm redesign and remove dewatering	2,081.97
	12/19/2007	EWO Credit	(4,830.51)	Credit to reduce markup from 15% to 7.5% on pit run from Miles	(4,830.51)
	Total Changes		115,943.26		Total Matts/Subs 25,292.84
107.22	12/20/2007	7474	9,618.21	Remov stump, remove & replace storm	7,097.64
	1/2/2008	7479	4,947.58	Import trench backfill, density test	4,947.58
	1/3/2008	7480	3,207.41	Import trench backfill	-
	1/4/2008	6751	4,460.87	Gather & load spoil, clean streets, erosion control maintenance	-
	1/15/2008	Material	7,173.15		7,173.15
	Total Changes		29,407.22		Total Matts/Subs 19,218.36
45.10	Impacts	Storm & Sewer	131,049.85	added impact to cost - see memo from Scott	-
	1/25/2008	7486	1,561.99	Remove mud from low cul-de-sac on road B, pile material to be hauled	-
	2/4/2008	7487	2,491.65	Remove mud from roadway & load out	375.66
	2/5/2008	7488	1,764.04	Material for dry utility crossings, load mud on MC trucks, clean road	-
	2/6/2008	7491	2,870.81	Carry good material to trench for backfill, clean road, Sound electrical	2,225.25
	2/7/2008	7493	452.02	Pack material to crossing #7	-
	2/8/2008	6765	1,999.92	Remove & replace crossing #7, clean street	-
	2/13/2008	7494	1,689.90	Extra material in road section to haul off, loading	-
	2/14/2008	7495	1,689.90	Loading extra material out of road section B for Olson to haul off	-
	2/15/2008	7497	313.03	Over 2200 tons 4" minus	-
	2/18/2008	7496	2,007.33	Import material for road section and place	-
	2/19/2008	7498	1,563.56	Redesign and begin to build trac road	-
	2/20/2008	7499	1,881.87	Build trac rd. to design build elevation	-
	2/26/2008	7358	3,447.70	Remove fence, trees, move job trailer, move rock pile, dumpster & crates	-
	2/27/2008	7356	3,069.25	Build ant hills on lots per lot grading plan - joint trench mtg w/Scott/Yuchun	-
	2/28/2008	7357	2,569.84	Complete ant hill building, meet with City Electric & walk site	-
	1/31/2008	Material	18,493.73	materials	18,493.73
	2/29/2008	Material	11,628.71	materials	11,628.71
	Total Changes		190,545.10		Total Matts/Subs 32,723.34

Billing #	Period	Taxable	Nontaxable	Tax	Invoice Total	Retainage	Total Paid	Contract	Changes	Changes	
										Date	EWK
										10/19/2007	
										10/22/2007	
										10/23/2007	
										10/25/2007	
										10/26/2007	
										10/27/2007	
										10/28/2007	
										10/29/2008	
										10/30/2007	
										10/31/2007	
										10/31/2007	
										11/1/2007	
										11/2/2007	
										11/5/2007	
										11/6/2007	
										11/8/2007	
										11/9/2007	
										11/14/2007	
										11/15/2007	
										Total Changes	
6	12/19/2007	138,308.01		12,171.10	150,479.11	7,523.96	142,955.15	22,364.75	115,943.26	11/16/2007	
										11/19/2007	
										11/20/2007	
										11/21/2007	
										11/26/2007	
										11/27/2007	
										11/28/2007	
										11/29/2007	
										11/30/2007	
										12/5/2007	
										12/6/2007	
										12/7/2007	
										12/10/2007	
										12/11/2007	
										12/12/2007	
										12/19/2007	
										Total Changes	
7	1/18/2008	79,151.42		6,965.33	86,116.75	4,305.84	81,810.91	49,744.20	29,407.22	12/20/2007	
										1/2/2008	
										1/3/2008	
										1/4/2008	
										1/15/2008	
										Total Changes	
8	2/29/2008	333,122.50		24,800.82	357,923.32	10,767.07	204,574.37	142,577.40	190,545.10	Impacts	Ston
						7,129.11	125,453.13			1/25/2008	
										2/4/2008	
										2/5/2008	
										2/6/2008	
										2/7/2008	
										2/8/2008	
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										2/19/2008	
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										2/27/2008	
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										1/31/2008	
										2/29/2008	
										Total Changes	

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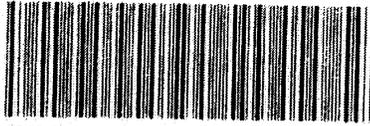
Changes		EWO # or Change	Change Amount	Notes	Mats/Sub
Changes	Date	Desc.			
837.74	2/11/08	budget ltr - trenching offsite	38,500.00	trenching offsite, traffic control, trenching onsite, sand bedding	7,500.00
		Materials	6,714.32	materials	6,714.32
	2/29/2008	7359	1,158.07	Stack ant hills, go over w/Keith why they're incorrect, get accurate elevs to repair	-
	3/3/2008	6766	2,592.97	Rebuild mounds on lots (ant hills, grade for electricians - job trailer & parking area)	-
	3/4/2008	6762	1,096.41	Set electricians trailer, place rock around, move OBE trailer to build mound	-
	3/5/2008	7361	410.45	Set grade on lot mounts on lot 1, dry util. precon with utilities, owner & town	-
	3/6/2008	7362	263.81	Unload electrical conduiti, assist in dry utility easement layout	-
	3/7/2008	7363	2,672.89	Exc for dry util, spoiling into MC truck, redig crossing, redig transformer pad	-
	3/10/2008	7364	4,898.72	Exc for dry util, trench & line floor w/sand, alignment & elev provided by City & MC	-
	3/11/2008	7366	3,530.10	Extra footage of joint trench beyond contract amt, remove & reroute roof drain	-
	Total Changes		61,837.74		Total Mats/Subs 14,214.32
01.64		Feb 11th Change Ltr	7,500.00	trenching offsite	
		Feb 11th Change Ltr	1,000.00	traffic control	1,000.00
		Feb 11th Change Ltr	4,500.00	trenching onsite	
		Feb 11th Change Ltr	2,700.00	sand bedding	2,700.00
		Import Trench Backfill	1,500.00		1,500.00
		700 Tons Recycled	7,847.00		7,847.00
		materials	4,434.47	materials	4,434.47
	3/4/2008	7367	5,358.82	Exc for joint trench & sand floor, set power vaults, clean Baltimore, build berm	-
	3/12/2008	7369	2,878.04	Excavate & locate under drain lines to be tied into roof drain	-
	3/14/2008	7370	2,777.23	Set Type I CB, under drains, clear & grub, mob Kobelco	588.11
	3/17/2008	7372	5,458.27	Hydro ex gas & phone on Baltimore, saw cut ditch line, mob Komatsu redig crossing	2,026.62
	3/18/2008	6767	3,776.19	Ex around lot drains to insure utility fit in easement, remove fence posts, trees, rocks	-
	3/20/2008	7374	907.70	Finish clean up, remove fence & trees & debris	-
	3/21/2008	6814	1,384.80	Redig joint trench (cave in), remove & reset vault in correct place	-
	3/24/2008	6768	1,306.81	Expose crossing & sand after City EI. Changed conduit, ex for SL on N49th, backfill	201.25
	3/26/2008	6815	16,214.91	Mat for water svc and install, sand joint trench (ft over contract)paving patches - 49th	12,037.10
	4/7/2008	Woodworth Mat	2,857.40	CSBC/Asph Conc Mix	2,857.40
	4/15/2008				
	Total Changes		72,401.64		Total Mats/Subs 35,191.95
86.15		Feb 11th Change Ltr	9,635.00	asphalt	
		Feb 11th Change Ltr	9,898.00	concrete	
	4/9/2008	6818	5,913.01	Manage trench spoils, install PVC sleeves for water, place recycle in driveways	-
	4/10/2008	6819	3,050.96	Load spoils, pick up debris, excavate, install sleeves for water svc	-
	4/18/2008	6789	5,388.26	Backfill behind sidewalks, repair slopes from winter storm damage & compact grading	-
	4/21/2008	6787	3,238.91	Backfill sidewalks, grade & compact - complete regrade of slopes damaged by storms	-
	4/24/2008	6784	1,490.09	Grade for plan revision #5 and #6	-
	4/25/2008	6785	4,344.42	Grade for approaches per plan rev #5 and #6, backfill sidewalks and compact	-
	4/28/2008	6783	3,458.11	Adjust risers/casting on designbuild tract rds, grading for rev 5&6, import sand - Qwest	1,140.79
	4/28/2008	6781	10,150.00	Excavate and install 4" sch 40 conduit for Qwest overhead to underground conv	4,191.32
	4/30/2008	6780	6,097.24	Excavate and install 5" conduit and 4"Qwest on 49th, compact, cold mix, clean street	690.00
	5/1/2008	6779	2,514.36	Change gas valve cans in road section for PSE, widen EV road per new survey	-
	5/2/2008	6778	2,009.37	Clean Baltimore and 49th, grade bar pking lot, clean Rust Way alley, fix crossing patch	-
	5/5/2008	6777	5,018.38	Pull mule tape in 4" Qwest lines, haul waste concrete, remove curb & gutter -chg #5	813.02
	5/6/2008	6773	3,105.87	Erosion control & prep for off site patching	-
	5/7/2008	6502	5,011.61	Export asphalt material for plan changes, design build trac road, offsite paving prep	-
	5/8/2008	6503	3,984.20	Dig out temp patches and pave final patches on 49th - Qwest crossing, etc.	-
	5/9/2008	6504	4,330.15	Clean 49th & Ball & ROW, backfill grade and compact near temp sidewalks-change 5&6	-
	5/15/2008	6775	1,690.74	Saw cut/remove damaged&temp curbs, sidewalks, grading for new concrete - for Qwest	-
	5/13/2008	6506	957.47	Excavate for & install water services from meter in sidewalks, backfill/grade for sidewalks	-
	Total Changes		91,286.15		Total Mats/Subs 6,835.13
8.17	All Changes		1,084,758.17		All Mats/Subs 317,762.09

Billing #	Period	Taxable	Nontaxable	Tax	Invoice Total	Retainage	Total Paid	Contract	Changes	Changes	
										Date	EWO
9	3/21/2008	61,837.74		5,441.72	67,279.46	3,363.97	63,915.49	-	61,837.74	2/11/08 budget ltr trenchir	
										2/29/2008	
										3/3/2008	
										3/4/2008	
										3/5/2008	
										3/6/2008	
										3/7/2008	
										3/10/2008	
										3/11/2008	
										Total Changes	
10	4/18/2008	72,401.64	68,888.25	6,371.35	147,661.24	7,383.06	140,278.18	68,888.25	72,401.64	Feb 11#	
										Feb 11#	
										Feb 11#	
										Feb 11#	
										Import T	
										700 Ton	
										n	
										3/4/2008	
										3/12/2008	
										3/14/2008	
										3/17/2008	
										3/18/2008	
										3/20/2008	
										3/21/2008	
										3/24/2008	
										3/26/2008	
										4/7/2008	
										4/15/2008	Woo
										Total Changes	
11	5/20/2008	91,286.15	92,231.75	8,033.18	191,551.08			92,231.75	91,286.15	Feb 11#	
										Feb 11#	
										4/9/2008	
										4/10/2008	
										4/18/2008	
										4/21/2008	
										4/24/2008	
										4/25/2008	
										4/28/2008	
										4/29/2008	
										4/30/2008	
										5/1/2008	
										5/2/2008	
										5/5/2008	
										5/6/2008	
										5/7/2008	
										5/8/2008	
										5/5/2008	
										5/15/2008	
										5/15/2008	
										Total Changes	
Totals										All Changes	
			144,892.08	2,023,307.97	87,432.40	1,733,943.62			1,084,758.17		

190006 8882/01/6 884

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08-2-12016-9 30491830 DCLR 09-10-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP - 9 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

**POINT RUSTON, LLC, a Washington
limited liability company,**

Plaintiff,

v.

**OLSON BROTHERS EXCAVATING,
INC., a Washington corporation,**

Defendant.

NO. 08-2-12016-9

**DECLARATION OF SCOTT
JAMISON**

I, Scott Jamison, having been duly sworn, declare as follows:

1. Beginning on or about May 2008, I was employed by Olson Brothers Excavating, Inc. (hereinafter referred to as "Olson") as a project manager on the Stack Hill Job and make this declaration.
2. In the course and scope of my duties as project manager on the Stack Hill Job No. 1065-07, I received Daily Foreman's Reports from Larry Folden, Olson's foreman for the Stack Hill Job.
3. Larry submitted Daily Foreman's Reports to me for review.
4. It is my understanding that Larry Folden has already provided Olson's attorney the May 27, 2008 Daily Foreman's Report No. 19394. Attached are true and accurate copies of the May 19, 2008 Daily Foreman's Reports and the June 20, 2008 Daily

DECLARATION OF SCOTT JAMISON
Page 1 of 2

SPENCER LAW FIRM, LLC
1326 Tacoma Ave. S., Suite 200
Tacoma, WA 98402-1983
P.253.383.2770 F. 253 572.4207

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Foreman's Report Nos. 19383 and 19469 respectively.

I declare under penalty of perjury of the laws of the State of Washington that the statements as provided herein are true and accurate.

DATED this the 8 day of September, 2008.

By: 

Scott Jamison



No 19469

Daily Foreman's Report

Job Name: Stack Hill Job # 1065-07 Date: 6-20-08 M T W TH SA SN
 Foreman: LARRY F Start: _____ Finish: _____ Weather: _____

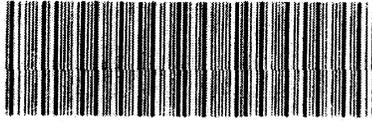
Employee Name	Work Class.	Total Hours	Ph.Code Cost Code						
1 LARRY FOREMAN	ORE	4	000 775 4						
2									
3									
4									
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6									
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OBE Equipment Description	OBE No.	Total Hours	Ph.Code Cost Code						
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Rental Equipment Description	Equip. No.	Total Hours	Ph.Code Cost Code						

OBE & Rental Trucks Description	Truck No.	T/T Hours	Solo Hours	Ph.Code Cost Code					

E



08-2-12016-9 30491851 DCLR 09-10-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP - 9 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

**POINT RUSTON, LLC, a Washington
limited liability company,**

Plaintiff,

v.

**OLSON BROTHERS EXCAVATING,
INC., a Washington corporation,**

Defendant.

NO. 08-2-12016-9

**DECLARATION OF
LARRY FOLDEN**

I, Larry Folden, declare as follows:

On or about May 2008, I was employed by Olson Brothers Excavating, Inc. as a Foreman on the Stack Hill Job and make this declaration.

In the course and scope of my duties as Foreman on the Stack Hill Job #1065-07, I completed Daily Foreman's Reports and submitted them to the Project Manager, Scott Jamison.

Attached is a true and accurate copy of the Daily Foreman's Report No. 1939 which I completed reflecting the correct employees, work classifications, hours, equipment, etc. for the Stack Hill Job on May 27, 2008. I submitted this Report to my supervisor, Scott Jamison, for review and approval for payment. Mr. Jamison's initials are shown at the top of the document.

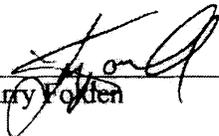
Declaration of Larry Folden
Page 1 of 2

SPENCER LAW FIRM, LLC
1326 Tacoma Ave. S., Suite 200
Tacoma, WA 98402-1983
P.253.383.2770 F. 253 572.4207

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct.

SIGNED at Puyallup, Washington on this 4TH day of September, 2008.



Larry Folden



BROS. EXCAVATING INC.

Daily Foreman's Report

No 19394

Job Name: STACK Hill Job # 1065-07 Date: 5-27-08 M T W TH F SA SN
Foreman: LARRY F. Start: Finish: Weather:

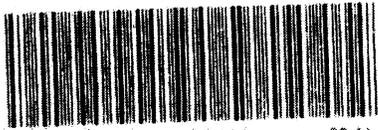
Table with columns: Employee Name, Work Class, Total Hours, Ph.Code, Cost Code. Rows 1-20. Includes entries for WAYNE DURHAM, TIM STERNOD SR., and DAVE COX.

Table with columns: OBE Equipment Description, OBE No., Total Hours, Ph.Code, Cost Code. Rows 1-20. Includes entry for 420 B.LAE.

Table with columns: Rental Equipment Description, Equip. No., Total Hours, Ph.Code, Cost Code. Rows 1-20.

Table with columns: OBE & Rental Trucks Description, Truck No., T/T Hours, Solo Hours, Ph.Code, Cost Code. Rows 1-20.

F



08-2-12016-9 30507312 DCLR 09-11-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 11 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

POINT RUSTON, LLC, a limited liability
company,

Plaintiff,

vs.

OLSON BROTHERS EXCAVATING, INC.,
a Washington corporation,

Defendant.

NO. 08-2-12016-9

**SUPPLEMENTAL DECLARATION OF
KEITH DANIEL IN SUPPORT OF
MOTION FOR DETERMINATION
THAT CLAIM OF LIEN WAS FILED
FRIVOLOUSLY, WITHOUT
REASONABLE CAUSE, AND/OR IS
CLEARLY EXCESSIVE, TO
INVALIDATE LIEN, AND FOR
REASONABLE ATTORNEYS' FEES
AND COSTS**

I, **KEITH DANIEL**, declare as follows:

1. I am over the age of eighteen, competent to testify, and make this declaration on personal knowledge.

2. I make this supplemental declaration in support of Point Ruston LLC's Reply in Support of its Motion for Determination that Claim of Lien was Filed Frivolously, Without Reasonable Cause, and/or is Clearly Excessive, to Invalidate Lien, and for Reasonable Attorney's Fees and Costs.

3. As indicated in my original declaration, I am the site work Superintendent for MC Construction Consultants, Inc. retained by Point Ruston, LLC to provide project management and construction consulting expertise for its development of the project known as the Stackhill plat, located in Ruston, Washington at 49th and Baltimore Streets.

SUPPLEMENTAL DECLARATION OF KEITH DANIEL - 1
C:\Documents and Settings\Loren\Local Settings\Temporary Internet
Files\OLKFSupDanielDecl LorenChanges.doc

OWENS DAVIES FRISTOE
TAYLOR & SCHULTZ, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

ORIGINAL

1 4. As indicated in my prior declaration, I was required as part of my job duties to,
2 and I did, keep Daily Activity Logs covering the Point Ruston project, which logs described,
3 among other things, the subcontractors present on the site on any given day, the name of the
4 subcontractor's supervisor, the number of workers present on the site, the equipment present on
5 the site, and the like. I prepared each of these Daily Activity Logs on the date indicated on the
6 upper right hand corner of the document, as part of my normal job function. I have an obligation
7 to be accurate in creating these logs, and I was accurate. MC Construction maintains copies of
8 these logs as part of the records of its business activities.

9 5. I have reviewed the documents that have been provided to the Court by Olson
10 Brothers, and subsequently rechecked my Daily Activity Logs in light of those documents.
11 Attached to this declaration as Exhibit A are true copies of the daily activity logs which I filled
12 out on May 19, 2008, May 27, 2008, and June 20, 2008.

13 6. The Stack Hill site is a Superfund site. As a result, access to the site is strictly
14 controlled. The entire site is fenced, and access can be obtained only through a gate that is kept
15 locked. Typically when a subcontractor were to enter the site I would have communication with
16 them throughout the day, invariably, note the fact that the contractor had come onto the site and
17 was performing work on the site on my daily activity log. The fact a contractor's presence is not
18 noted on the daily activity log establishes, to a substantial certainty, that the contractor was in
19 fact not working on the site on the date in question.

20 7. With respect to May 19, 2008, I have confirmed that my Daily Activity Log does
21 in fact reflect Olson Brothers' presence on the site, and that it was performing work. Therefore,
22 May 19, 2008, is in fact the last date on which Olson Brothers was on the site, performing work
23 for the improvement of the property at the instance of Point Ruston. I note that Olson Brothers
24 invoiced Point Ruston the following day, stating that its work was "100% complete."

25 8. Olson Brothers' documents appear to suggest that it performed some sort of work
26 on May 27, 2008. My daily activity log for Tuesday, May 27, 2008, shows that, although there
27
28

1 were a number of other subcontractors present at the site, Olson Brothers was at no time on the
2 site performing work for the improvement of the property at the instance of Point Ruston.

3 9. Finally, Olson Brothers claims that on June 20, 2008, Olson Brothers' supervisor
4 spent four hours talking to an unidentified "project manager" about its bill. On its face, this
5 would not constitute the provision of labor, materials, or equipment at the site for the
6 improvement of real property at the instance of the owner. Also, although I am the "project
7 manager" for this site, I do not recall spending, and my daily activity log and time records
8 confirm that I did not spend, four hours on June 20, 2008 discussing billing or related issues with
9 Olson Brothers.

10 I declare under penalty of perjury under the laws of the state of Washington that the
11 foregoing is true and correct.

12 Dated this 10th day of September, 2008 at POINT RUSTON, Pierce County, Washington.

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15 _____
16 KEITH DANIEL

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DAILY ACTIVITY LOG

DATE: 5/19/08
 PROJECT: Point Ruston page 1 of 2
 SUPERINTENDENT: Keith S Daniel

WEATHER (Rain, Snow, Cloudy, <u>Windy</u> , Sunny, "Circle")	TEMPERATURE High Low	GROUND CONDITIONS (<u>Dry</u> , Ramp, Wet, Frozen, "Circle")
---	------------------------------	--

SUBCONTRACTORS ON SITE	NAME OF SUPERVISOR & NUMBER OF WORKERS	
<u>Point Ruston LLC</u>	<u>Keith S Daniel</u>	<u>2</u>
<u>Shane Wohl exc</u>	<u>Shane Wohl</u>	<u>1</u>
<u>Olson Bros exc</u>	<u>Jerry Foden</u>	<u>1</u>
<u>Rock Kohl exc</u>	<u>Rocky Kohl</u>	
<u>CTL</u>		<u>1</u>
<u>Gulliards Const</u>	<u>Chad Gulliard</u>	<u>1</u>

EQUIPMENT ON JOB Brief Description of Size	NO. UNITS	WORKING		MATERIALS DELIVERED
		YES	NO	
Trucks <u>OBE 400/60li 350</u>	<u>2</u>	<u>1</u>	<u>1</u>	
Dozer <u>TT-D-6</u>	<u>1</u>	<u>1</u>		
Back-hoe <u>MC</u>	<u>1</u>	<u>1</u>		
Grader <u>PR</u>	<u>1</u>		<u>1</u>	
Excavator <u>TT/PR/RK</u>	<u>4</u>	<u>1</u>	<u>3</u>	
<u>Water Tks</u>	<u>2</u>	<u>2</u>		
				OFFICIAL VISITORS TO JOB SITE
				<u>CHM Z Hill oversight</u>

STATUS OF WORK

ITEM Brief description of work in progress, questionable performance, etc. Include tests made and samples taken.
 NO. (Use comments section on continuation sheet for other information, if necessary).

Point Ruston - Finish Backfilling & Compacting test Holes on South Side of Bldg 2A, layout & excavate footing from 7P-18P (F4) layout & excavate footing on west end of Bldg 2A from P6-PC - encountered slab area demo @ between PC-PD removed rubble & excavated to slag. Stockpile tended by D-6 2 - water tks used for Dust Suppressors - 1 w/ fire hose @ excavation site & 1 for haul route & Stockpile.

CONTINUED
 SIGNATURE Keith S Daniel TITLE PROJECT SUPERVISOR/COR

DAILY ACTIVITY LOG (CONT.)

DATE: 5/19/08

page 2 of 2

STATUS OF WORK

Wohl exc & Kola exc - operating equipment
Olson & Calliardi - Haul truck operators

CoTL - Geo create for inspection

SAFETY COMMENTS

Safety meeting held. Topic of Summer weather meeting minutes are in Safety meeting Binder.

DIFFICULTIES WITH CONTRACTOR OR REPRESENTATIVE

UNFORESEEN DEVELOPMENTS ON JOB (Describe conditions, action taken, person contacted, recommended actions).

OTHER COMMENTS OR PERTINENT FACTS REGARDING JOB



DAILY ACTIVITY LOG

DATE: 5/27/08

PROJECT: Point Ruston page 1 of 1

SUPERINTENDENT: Keith S Daniel

WEATHER (Rain, Snow, Cloudy, Windy, Sunny) "Circle"	TEMPERATURE High Low	GROUND CONDITIONS (Dry, Damp, Wet, Frozen, "Circle")
--	-------------------------	---

SUBCONTRACTORS ON SITE	NAME OF SUPERVISOR & NUMBER OF WORKERS
Point Ruston LLC	Keith S Daniel 2
Rocky Kole exc	Rocky Kole 1
GTL	John Russell 1
Pro Vac	
Tri Star Const	Terry DeLevergne

EQUIPMENT ON JOB Brief Description of Size	NO. UNITS	WORKING		MATERIALS DELIVERED
		YES	NO	
Trucks CCE 400/Coal: 300/MC/Provac	4	2	2	Tri Star 1 1/4" Crush (clean Rd)
Dozer TT	1		1	
Back-hoe MC	1	1		
Grader PR	1		1	
Excavator PR/RK/TT	4	1	3	
Water truck	2	2		
Rocklift	2		2	

OFFICIAL VISITORS TO JOB SITE
CHM Z Hill Pat O'Hanley

STATUS OF WORK

ITEM NO. Brief description of work in progress, questionable performance, etc. Include tests made and samples taken. (Use comments section on continuation sheet for other information, if necessary).

Point Ruston - installing Clean Rd @ Bldg 2A for Pump access, working with Pro Vac for cleaning footings, working w/Rocky to clean out footings on North side of Bldg

Pro Vac - operating 8' truck to clean footings

Rock Kole - equipment operating

Tri Star - importing 1 1/4" crush for Clean Rd

GTL - onsite Geo for observing dirt work.

CONTINUED ()

SIGNATURE: Keith S Daniel TITLE: PROJECT SUPERVISOR/COR



DAILY ACTIVITY LOG

DATE: 6/20/08
 PROJECT: Point Ruston page 1 of 2
 SUPERINTENDENT: Keith S Daniel

WEATHER (Rain, Snow, Cloudy, Windy, Sunny, "Circle")	TEMPERATURE High Low	GROUND CONDITIONS (Dry, Damp, Wet, Frozen, "Circle")
---	-------------------------	---

SUBCONTRACTORS ON SITE	NAME OF SUPERVISOR & NUMBER OF WORKERS	
Point Ruston LLC	Keith S Daniel	4
Rain City	Ed Diamond	21
GTL	John Massett	1
mec (Ruston Soils)	Michael E	
Rocky Koe exc	Rocky Koe	1

EQUIPMENT ON JOB Brief Description of Size	NO. UNITS	WORKING		MATERIALS DELIVERED
		YES	NO	
Trucks CBE/400/mc	2	1		
Dozer TD-6	1	1		
Back-hoe	0			
Grader PR	1		1	
Excavator TI/PR	3	1	2	
Water truck	2	2		
Forklifts	3	2	1	
Rollers	2		2	

OFFICIAL VISITORS TO JOB SITE
 CHM2 Hill (Coversight)

STATUS OF WORK

ITEM NO. Brief description of work in progress, questionable performance, etc. Include tests made and samples taken. (Use comments section on continuation sheet for other information, if necessary).

Point Ruston LLC - Dust control, layout for Footings, export of excavation material to stockpile area, pile tending.

GTL - on site geo for excavation

mec - import of Ruston Soils to stockpile area

Rain City - foundation Contractor installing rebar for Bldg 2A

Rocky Koe exc - equipment operator

CONTINUED

SIGNATURE: Keith S Daniel TITLE: PROJECT SUPERVISOR/COR

DAILY ACTIVITY LOG (CONT.)

DATE: 10/20/08

page 2 of 2

STATUS OF WORK

SAFETY COMMENTS

all safety guidelines are being followed

DIFFICULTIES WITH CONTRACTOR OR REPRESENTATIVE

UNFORESEEN DEVELOPMENTS ON JOB (Describe conditions, action taken, person contacted, recommended actions).

Due to placement of rebar in elevator area some debris has been removed by 190 EB

OTHER COMMENTS OR PERTINENT FACTS REGARDING JOB

water service line to water tank was not disconnected when water tank left. The valve assembly was broken. meter & line was dug onto side & under a workers car. The vehicle was checked out by owner & Logan Drives. No damage was found.

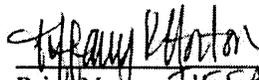
1 EXCESSIVE, TO INVALIDATE LIEN, AND FOR REASONABLE ATTORNEYS' FEES
2 AND COSTS in the above-referenced case.

3 3. I have examined the aforesaid Supplemental Declaration, and determined that it
4 consists of three (3) pages and that page 3 contains the signature of Keith Daniel. I have also
5 determined that it is complete and legible, and I have discussed the filing of this Supplemental
6 Declaration with Mr. Daniel. Based on those conversations, I believe his signature on the
7 document to be valid.

8 
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10 Matthew B. Edwards

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14 SUBSCRIBED AND SWORN TO before me this 10th day of September, 2008.

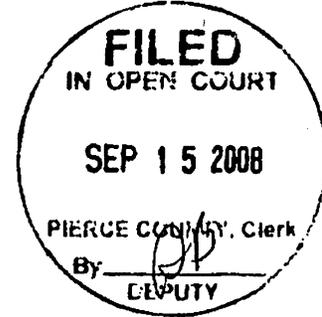
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16 **NOTARY PUBLIC**
17 **STATE OF WASHINGTON**
18 **TIFFANY R. HORTON**
19 Commission Expires July 7, 2012

20 
21 Print Name: TIFFANY R. HORTON
22 NOTARY PUBLIC in and for the State of
23 Washington, residing at OLYMPIA
24 Commission expires: JULY 7, 2012

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08-2-12016-9 30540590 ORDY 09-17-08



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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

**POINT RUSTON, LLC, a Washington
limited liability company,**

Plaintiff,

v.

**OLSON BROTHERS EXCAVATING,
INC., a Washington corporation,**

Defendant.

NO. 08-2-12016-9

**ORDER DENYING REQUEST
TO DISMISS LIEN AS
FRIVOLOUS**

**[PROPOSED] - REQUIRES
CLERK'S ACTION**

THIS MATTER, having come before the Court on Plaintiff POINT RUSTON, LLC 's Motion for an Order to dismiss Defendant OLSON BROTHERS EXCAVATING, INC's lien as frivolous, was at a hearing on September 15, 2008.

The Court has considered the pleadings filed in this action, the Declarations presented by Plaintiff and Defendant, and has heard oral argument.

Based on the oral argument of Plaintiff's counsel, the pleadings and evidence presented, the Court finds:

1. The original contract between the parties contemplated compensation of \$867,106.00, although, as typical of construction projects, Defendant Olson performed certain extra work and supplied extra materials and equipment at the request of Point Ruston, ultimately submitting more

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1 than 140 change work orders.

2 2. The change orders totaled more than the original contract price.

3 3. Defendant Olson presented evidence demonstrating that its lien was filed well
4 within the ninety-day (90) lien limitation period.

5 4. Point Ruston, LLC, as the party seeking the release of the lien, bore the burden of
6 proving that the lien was frivolous and without reasonable cause.

7 5. A lien is frivolous only if it presents no debatable issues and is so devoid of merit that
8 no possibility of reversal exists.

9 6. Point Ruston, LLC has not met its burden of showing that Olson's lien is frivolous.

10 Based on the above findings, it is hereby

11 ORDERED, ADJUDGED and DECREED:

12 1. Plaintiff's Motion is denied.

13 2. Olson as the prevailing party is awarded reasonable fees and costs pursuant to RCW

14 60.04.081(4) in the amount of \$ reserved for trial. *me*

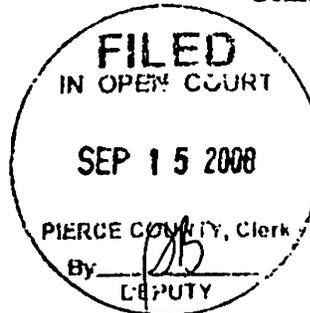
15 Dated this 15 day of September, 2008. *ME*

[Signature]
Judge/Commissioner *Pro Tem*

18 Presented By:
19 SPENCER LAW FIRM, PLLC

JAQUELINE ROSENBLATT
Commissioner Pro Tem

20 By: *Michelle Branigan*
21 John R. Spencer, WSBA #32188
22 Michelle Branigan, WSBA # 33252
Attorneys for Defendant



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