

84555-7
NO. -84764-9

**SUPREME COURT
OF THE STATE OF WASHINGTON**

HOS BROS. CONSTRUCTION, INC.,

Appellant,

v.

C19-1 SHOTWELL, LLC; SEQUOYAH ELECTRIC, LLC, a Washington limited liability company; SS LANDSCAPING SERVICES, INC., a Washington corporation; PACLAND-BELLEVUE, INC., a Washington corporation; BANKFIRST, a South Dakota state bank; CENTURION FINANCIAL GROUP, LLC, a Washington limited liability company; WF CAPITAL, INC., a Washington limited liability company; BINGO INVESTMENTS, LLC, a Washington limited liability company; and RICHARD BURRELL, an individual,

Respondents.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This is a dispute about the validity of a mechanic's lien. Appellant Hos Bros. Construction, Inc. recorded a lien against real property now owned by Respondent BF-Thar, LLC. Hos used a claim of lien form identical to the "safe harbor" form in RCW 60.04.091(2)—*i.e.*, the sample form that follows the phrase, "A claim of lien substantially in the following form *shall* be sufficient:"¹

Hos's president, John Caunt, signed the lien claim's verification clause.² The language of the clause is identical to that in RCW 60.04.091(2)'s safe harbor form. And although the preamble to the clause mistakenly identified Mr. Caunt as the lien claimant (as opposed to a representative of the claimant), the claim of lien form elsewhere identified Mr. Caunt as Hos's president, and Hos as the lien claimant. A notary then signed and certified Mr. Caunt's signature using the exact notary certification language contained in the safe harbor form. Thus, the claim of lien as a whole (a) identified Hos as the corporate lien claimant; (b) was signed by the claimant's president (using the same verification language set forth in the safe harbor form); (c) identified the signing party

¹ See Appendix A (emphasis added).

² See Appendix B.

as the lien claimant's president; and (d) was notarized using the same notary certification language set forth in the safe harbor form.

Although Hos's lien form was therefore materially identical to the one that the Legislature has said "*shall* be sufficient," the Pierce County Superior Court ruled the lien was invalid, then dismissed Hos's lien foreclosure claim. The trial court reasoned that because Hos is a corporation, RCW 60.04.091(2) required the notary to use the "certificate of acknowledgment for a corporation" set forth in RCW 64.08.070—as opposed to the notary language of the safe harbor form. The trial court also refused to allow Hos to amend its lien, ruling a void lien could not be amended to render it valid. The trial court based its orders on a recent Division Two case, Williams v. Athletic Field, Inc., 155 Wn. App. 434, 228 P.3d 1297 (April 7, 2010),³ which this Court recently agreed to review.⁴

Reversal is appropriate for three primary reasons.

First, Williams was wrongly decided. RCW 60.04.091(2) says that if a lien claimant uses the safe harbor form, then the lien "shall" be sufficient. Thus, the courts in both this case and Williams erred in invalidating liens on grounds that those liens did not use language set forth

³ *Appendix C.*

⁴ *See Appendix D.*

in chapter 64.08 RCW, as opposed to the notary certification language in the safe harbor form.

Second, even if Williams had not been erroneously decided, the trial court erred in following it because the case is distinguishable. The Williams court held the lien in that case was invalid not because the *lien claimant* was a corporation, but because the person who signed the verification clause did so *on behalf of a corporation* that was in turn executing the lien on behalf of the lien claimant. In other words, Williams is about corporate *agents* verifying liens, not about corporate *lien claimants*. Here, by contrast, the person who signed the verification clause was signing *as an individual*—as a person authorized by RCW 60.04.091 to sign *in his own capacity* for the lien claimant: “The notice of claim of lien . . . [s]hall be signed by the claimant ***or some person authorized to act on his behalf***”

Third, the trial court should have allowed Hos to amend its claim of lien, both to correct any alleged defects in the form and to correct the lien amount and the date Hos’s work commenced.⁵ It is well-settled in Washington that if a claim of lien substantially complies with

⁵ A lien’s priority relates back to the “commencement of labor” or “first delivery of materials or equipment.” RCW 60.04.061; *see also* A.A.R. Testing Laboratory, Inc. v. New Hope Baptist Church, 112 Wn. App. 442, 448-49, 50 P.3d 650 (2002) (“[L]iens are a class of ‘off-the-record’ interests that may be senior to interests actually recorded prior to the recording of the mechanics’ or materialmen’s lien but after commencement of work on the project.”).

RCW 60.04.091, then the trial court should liberally allow amendment, as it would with pleadings. Here, the lien form substantially complied with RCW 60.04.091 because it was materially identical to the safe harbor form in that statute. Thus, even if Respondent's "acknowledgement" arguments had merit, the trial should have allowed Hos to amend its lien to correct any defects.

For these reasons, Hos respectfully requests that this Court reverse the trial court, reinstate Hos's lien foreclosure claim, and allow Hos to amend its lien.

II. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in dismissing Hos's lien foreclosure claim on grounds that Hos's lien failed to comply with RCW 60.04.091(2).

2. The trial court erred in refusing to allow Hos to amend its claim of lien.

Issues Pertaining to Assignments of Error

1. Is a claim of lien valid and enforceable if it is materially identical to the "safe harbor" form in RCW 60.04.091(2)—*i.e.*, the sample form that follows the phrase, "A claim of lien substantially in the following form shall be sufficient"—even though the notary's certificate

of acknowledgement does not match the language in chapter 64.08 RCW? (Assignment of Error 1).

2. Where a claim of lien is materially identical to the safe harbor form in RCW 60.04.091(2), should a trial court allow the lien claimant to amend the lien form to add additional certificate of acknowledgment language, to change the date that work commenced, and/or to change the amount of the lien? (Assignment of Error 2).

III. STATEMENT OF THE CASE

Hos is a licensed, locally-owned general contractor.⁶ In 2004, Hos began negotiating an agreement to provide construction services on a parcel of unimproved property in Pierce County, Washington (“the Property”).⁷ Hos and the former owner of the Property (“Shotwell”) ultimately entered into a written agreement under which Hos agreed to perform certain grading, utility installation, and site work toward construction of a commercial development called Canyon Clock.⁸

The parties agreed that Hos would perform its work in two phases. Phase One involved work on the southern part of the development, where

⁶ *Appendix E* (“Declaration of Barbara Rodgers in Support of Plaintiff’s Motion for Summary Judgment”) ¶ 1. Appellant has designated this document as a Supplemental Clerk’s Paper, but it has not yet been numbered.

⁷ *Appendix E* ¶ 2.

⁸ *Appendix E* ¶ 2.

Shotwell already had tenants.⁹ Phase Two consisted of the northern portion of the Property, which was not tenanted.¹⁰ The parties agreed that they would modify the scope of Hos's work as necessary.¹¹

Hos mobilized its equipment and began work on the Property in January 2005.¹² The Property was unencumbered at the time.¹³

In March 2006, Hos temporarily stopped working because Shotwell had been unable to get utility permits that Hos needed to continue its work.¹⁴ At this point, Hos had completed approximately half of the Project and been paid in full for its work.¹⁵

On April 12, 2006, while Hos was still waiting for Shotwell to get permits, an entity called Shotwell Holding, LLC recorded a \$6.43 million deed of trust against the Property.¹⁶ Then on May 12, 2006, an entity called Centurion Financial Group recorded an \$8.5 million deed of trust against the Property.¹⁷

⁹ *Appendix E ¶ 3.*

¹⁰ *Appendix E ¶ 3.*

¹¹ *Appendix E ¶ 4.*

¹² *Appendix E ¶ 5.*

¹³ *Appendix E ¶ 5.*

¹⁴ *Appendix E ¶ 6.*

¹⁵ *Appendix E ¶ 6.*

¹⁶ CP 396.

¹⁷ CP 396.

Around this same time, Shotwell told Hos that Shotwell would need bank funding to complete the Project.¹⁸ Until then, Hos understood that Shotwell was self-financing the Project.¹⁹

In June 2006, a Shotwell lender, BankFirst, contacted Hos about providing financial information to support a construction loan that BankFirst was considering issuing to Shotwell.²⁰ BankFirst later told Hos that BankFirst was issuing a \$21 million construction loan to Shotwell and that Hos would be paid from the proceeds of that loan.²¹ BankFirst did not tell Hos that the availability of construction loan proceeds was contingent on the pending sale of the Project to a third party.²² If the sale fell through, the loan commitment would drop by approximately \$2.5 million, leaving insufficient loan funds to pay for Hos's work.²³

On August 7, 2006, Hos and Shotwell—at BankFirst's request—entered into a second written agreement regarding Hos's construction work on the Property.²⁴ This second contract does not say it supersedes the parties' first contract, nor does it say that equipment used in

¹⁸ *Appendix E* ¶ 7.

¹⁹ *Appendix F* ¶ 4. This document is also a designated "Supplemental Clerk's Paper" that has not yet been numbered.

²⁰ *Appendix F* ¶ 4.

²¹ *Appendix F* ¶ 4.

²² *Appendix F* ¶ 5.

²³ *Appendix F* ¶ 5.

²⁴ *Appendix E* ¶ 8.

completing the first contract would not be used in fulfilling the second contract.²⁵ Although BankFirst knew that Hos had already performed work on the Property, BankFirst never asked Hos to execute a document subordinating its lien rights.²⁶

Relying on its understanding that BankFirst would be fully financing the Project, Hos hired 30 subcontractors and paid its own full-time crews to operate 17 trucks, bulldozers, and earthmovers to continue improving the Property.²⁷ Hos mobilized these *additional* materials and workers onto the site on August 17, 2006.²⁸ Significantly, Hos had left its field office, signage, and certain equipment on the Property since January 2005.²⁹

BankFirst employed its own construction personnel to monitor all of Hos's work.³⁰ In addition, BankFirst required Hos to submit payment applications to the bank before it would authorize payment.³¹ Over the

²⁵ *Appendix E* ¶ 8. The second contract does contain a boilerplate integration clause, but it simply says the written agreement supersedes the parties' prior negotiations regarding *that particular scope of work*. See CP 361.

²⁶ *Appendix E* ¶ 10.

²⁷ *Appendix E* ¶ 13.

²⁸ *Appendix E* ¶ 13.

²⁹ *Appendix E* ¶ 13.

³⁰ *Appendix E* ¶ 14.

³¹ *Appendix E* ¶ 14.

next 13 months, BankFirst approved all of Hos's work and paid everything Hos invoiced, less a 10% retainage.³²

In September 2006, BankFirst recorded a deed of trust against the Property.³³ BankFirst's deed of trust secured significantly more debt than the loans that BankFirst's funds were used to pay off (*i.e.*, the loans secured by the Shotwell Holding, LLC and Centurion Financial Group deeds of trust).³⁴

Soon after Hos recommenced work, the sale of Canyon Clock fell through.³⁵ As a result, BankFirst's loan commitment dropped, leaving insufficient funds to pay Hos.³⁶ BankFirst did not tell Hos this, however, and Hos continued to improve the value of BankFirst's security.³⁷

In late November 2007, BankFirst informed Hos for the first time that Shotwell was in default on its loan.³⁸ BankFirst said it would not pay Hos's last two monthly invoices or the 10% retainage that had been withheld from each of Hos's previous draw requests.³⁹

³² *Appendix E* ¶ 14.

³³ CP 397.

³⁴ CP 397.

³⁵ CP 395.

³⁶ CP 395; CP 139-141.

³⁷ *Appendix E* ¶ 17; CP 139-141.

³⁸ *Appendix E* ¶ 18.

³⁹ *Appendix E* ¶ 18.

On November 30, 2007, Hos recorded a claim of lien against the Property in Pierce County.⁴⁰ Although the lien says the amount owed is \$771,273.15, Hos is in fact owed \$1,206,496.15 (the original amount failed to account for certain mark-ups that Hos was due under the contract with Shotwell).⁴¹ The entire \$1,206,496.15 is for labor and materials that Hos and its subcontractors expended to improve the Property (as opposed to, for example, delay damages).⁴²

The claim of lien form identifies Hos as the lien claimant and John Caunt as Hos's president.⁴³ The verification clause, however, erroneously identifies Mr. Caunt as the "lien claimant" (as opposed to the person signing the verification on behalf of the lien claimant).⁴⁴ Otherwise, the lien form is identical to the safe harbor form set forth in RCW 60.04.091—the verification clause is identical, and the language preceding the notary's signature is identical.⁴⁵ Mr. Caunt signed the verification clause above the words "John W. Caunt, President," and the

⁴⁰ *Appendix E* ¶ 20.

⁴¹ *Appendix E* ¶ 22-23.

⁴² *Appendix E* ¶ 22.

⁴³ *Appendix B*.

⁴⁴ *Appendix B*.

⁴⁵ *Appendix A, B*.

notary signed below the phrase “Subscribed and sworn to before me this 30th day of November.”⁴⁶

In 2008, BankFirst initiated proceedings to foreclose its deed of trust, ultimately acquiring title to the Property. Soon after that, Hos filed this lien foreclosure lawsuit.⁴⁷ In January 2009, Hos moved to amend the amount of its lien to \$1,206,496.15 and to change the date it commenced work from August 17, 2006 to January 19, 2005 (the date Hos first mobilized onto the Property).⁴⁸

In March 2010, Hos learned for the first time that the Property had been transferred to BankFirst’s affiliate, BF-Thar. BankFirst had conveyed the Property to BF-Thar on March 11, 2009.⁴⁹

On April 7, 2010, Division Two issued its published opinion in Williams v. Athletic Field, Inc.⁵⁰ The Williams court held that a claim of lien executed by the corporate agent of the lien claimant was invalid because the person who signed the lien’s verification clause (on behalf of the corporate agent) failed to use the “corporate certificate of

⁴⁶ *Appendix B.*

⁴⁷ CP 1-13.

⁴⁸ CP 202-215.

⁴⁹ CP 86-87.

⁵⁰ Williams v. Athletic Field, Inc., 155 Wn. App. 434, 228 P.3d 1297 (2010).

acknowledgement” language set forth in RCW 64.08.070. This Court granted a Petition for Review in Williams on September 11, 2010.⁵¹

On April 16, 2010, BF-Thar filed a motion to dismiss Hos’s lien foreclosure lawsuit on grounds that Hos’s lien was invalid under Williams.⁵² BF-Thar argued that because Hos is a corporation, the verification clause in Hos’s lien form had to be acknowledged with the “corporate” certificate of acknowledgement language in RCW 64.08.070. While BF-Thar’s motion was pending, Hos filed a second motion to amend its lien to change the amount, the date that Hos commenced work, and—to the extent necessary—the language of the verification clause (the first motion to amend had never been ruled on).⁵³

On May 28, 2010, the Pierce County Superior Court granted BF-Thar’s motion to dismiss Hos’s lien foreclosure claim and denied Hos’s motion to amend its lien.⁵⁴ The trial court later entered CR 54(b) findings and conclusions.⁵⁵ This timely appeal followed.⁵⁶

⁵¹ *Appendix D.*

⁵² CP 14-25.

⁵³ CP 14-25. Hos had filed its first motion to amend in the United States Bankruptcy Court, which temporarily took over the case when Shotwell filed bankruptcy. The Bankruptcy Court judge never ruled on the motion because the case went back to Pierce County upon transfer of the Property from BankFirst to BF-Thar.

⁵⁴ CP 760-67.

⁵⁵ CP 781-790. Hos had also moved to amend its complaint to add non-foreclosure claims against BF-Thar. The trial court granted that motion, necessitating the CR 54(b) order.

IV. ARGUMENT

A. WILLIAMS WAS WRONGLY DECIDED

The fundamental issue in this case is how to properly interpret RCW 60.04.091. Review is therefore de novo.⁵⁷

“In construing a statute, the court’s paramount duty is to ascertain and give expression to the intent of the Legislature.”⁵⁸ To determine that intent, a court “must look first to the language of the statute.”⁵⁹ “Where statutory language is plain and unambiguous, a statute’s meaning must be derived from the wording of the statute itself.”⁶⁰ Thus, if “the words in a statute are clear and unequivocal,” the Court should “assume the Legislature meant exactly what it said and apply the statute as written.”⁶¹

It is undisputed that Hos provided labor and materials to benefit the Property. As a result, Hos falls within the protection of the lien

⁵⁶ CP 793-815 (Notice of Appeal).

⁵⁷ See, e.g., Bostain v. Food Express, Inc., 159 Wn.2d 700, 727, 153 P.3d 846 (2007) (“Statutory interpretation is a question of law that this court reviews de novo.”).

⁵⁸ Service Employees Int’l Union, Local 6 v. Superintendent of Pub. Instruction, 104 Wn.2d 344, 348, 705 P.2d 776 (1985).

⁵⁹ Condit v. Lewis Refrigeration Co., 101 Wn.2d 106, 110, 676 P.2d 466 (1984).

⁶⁰ Human Rights Comm’n v. Cheney Sch. Dist. 30, 97 Wn.2d 118, 121, 641 P.2d 163 (1982).

⁶¹ Duke v. Boyd, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

statutes, and the Court should apply RCW 60.04.091 liberally, to effect its purpose of protecting lien claimants like Hos.⁶²

RCW 60.04.091(2) plainly states that if a lien is even “substantially” like the safe harbor form, then that lien “*shall* be sufficient”: “A claim of lien substantially in the following form shall be sufficient” “Shall” is a word of command; it affords a trial court no discretion.⁶³ Thus, the Legislature has decided that if a lien claimant uses

⁶² See, e.g., Kinnebrew v. CM Trucking, 102 Wn. App. 226, 234, 6 P.3d 1235 (2000) (“A lien statute should be liberally construed to protect the lien claimant. RCW 60.04.900.”). RCW 60.04.900, which was enacted in 1991, states that “60.04.011 through 60.04.226 . . . are to be liberally construed to provide security for all parties intended to be protected by their provisions.” Notwithstanding this directive, courts have periodically stated that because lien statutes are in derogation of the common law, they should be strictly construed *in determining whether a lien attaches*. See, e.g., Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 498, 210 P.3d 308 (2009) (“Mechanics’ and materialmen’s liens are creatures of statute, in derogation of common law, and therefore must be strictly construed to determine whether a lien attaches.”). But this Court has also said the opposite at times. See, e.g., Proulx v. Stetson & Post Mill Co., 6 Wash. 478, 481, 33 P. 1067 (1893) (“These lien statutes are remedial in their nature, and ought to be liberally construed in the interests of labor, and courts do almost uniformly so construe them.”). Regardless, to the extent “strict construction” is even a valid rule following the enactment of RCW 60.04.900, that rule applies only in deciding whether the claimant has supplied the *type of work or materials* that would give rise to a lien. See, e.g., Tsutakawa v. Kumamoto, 53 Wash. 231, 236, 101 P. 869 (1909) (citing rule that “[l]iens are in derogation of the common law” in distinguishing lienable materials from those “used by [workers] merely for the purpose of facilitating their work”). In other words, the strict construction rule, even if still valid, would not apply in deciding whether a claim of lien *form* gives rise to a valid lien.

⁶³ See, e.g., State v. Goins, 151 Wn.2d 728, 749, 92 P.3d 181 (2004) (“Fundamental to statutory construction is the doctrine that ‘shall’ is construed as mandatory language and ‘may’ is construed as permissive language.”).

a form substantially like the safe harbor one, then the courts *must* deem that lien valid.⁶⁴

Here, Hos’s claim of lien was not just “substantially” like the safe harbor form, it was identical. So by holding that Hos’s claim of lien was invalid—*i.e.*, that “a claim of lien substantially in the [safe harbor] form” is *not* sufficient—the trial court contradicted both the plain language of RCW 60.04.091(2) and this Court’s rules about how to interpret statutes.

The trial court apparently reached the conclusion it did because it felt constrained to follow Williams. As in this case, the lien claimant in Williams used the safe harbor form in RCW 60.04.091. But unlike here, a corporate lien-recording service (LienData USA, Inc.) executed the lien as the agent for the actual lien claimant (Athletic Field, Inc.).⁶⁵ An employee of LienData, Rebecca Southern, signed the lien’s verification clause.⁶⁶ A notary then certified the verification clause using the same “Subscribed and sworn to before me” language in the safe harbor form.⁶⁷ But neither the verification clause nor the notary certification identified Ms. Southern

⁶⁴ The lien could of course still be invalid because of a defect unrelated to its *form*, such as a failure to record it in time.

⁶⁵ Williams, 155 Wn. App. at 438.

⁶⁶ Williams, 155 Wn. App. at 438.

⁶⁷ Williams, 155 Wn. App. at 438.

as a representative of LienData, nor did the lien say that she was signing on behalf of LienData.⁶⁸

The Williams court held the lien was invalid. Citing the phrase, “[A]cknowledged pursuant to chapter 64.08 RCW” in RCW 60.04.091(2), the Williams court reasoned that because a corporation (LienData) executed the lien on behalf of the lien claimant, the notary certification had to comply with the “certificate of acknowledgment for a corporation” in RCW 64.08.070:

This attestation clause⁶⁹ fails to substantially comply with the forms provided in RCW 64.08.070 and RCW 42.44.100⁷⁰ because it does not indicate that Southern signed in a representative capacity on behalf of Lien-Data.

. . . .

[T]o establish that the claim of lien was properly acknowledged, RCW 60.04.091(2) requires compliance with chapter 64.08 RCW. Where corporate acknowledgment is required, the sample form cannot be sufficient because it only satisfies the requirements to witness an individual signature. . . . The lien was invalid

⁶⁸ Williams, 155 Wn. App. at 438.

⁶⁹ The Williams court’s use of the phrase “attestation clause” appears to be a reference to the verification language subscribed to by the person executing the lien claim. *See Williams*, 155 Wn. App. at 443 (“The attestation clause *signed by Rebecca Southern* does not meet the requirements of either RCW 64.08.070 or 42.44.100”) (emphasis added). Notwithstanding that statement, the Williams decision is actually about the sufficiency of the *notary’s* certification language. *See Williams*, 155 Wn. App. at 442-43 (discussing purportedly-missing *notary* certifications set forth in RCW 64.08.070 and RCW 42.44.100(2)).

⁷⁰ This is the “short form” corporate acknowledgement that, according to RCW 64.08.070, could be used after December 31, 1985.

for failure to comply with the statutory attestation requirement.⁷¹

Thus, like the trial court in this case, the Williams court invalidated a lien form that was identical to the one the Legislature has said “shall be sufficient.” Like the trial court here, Division Two therefore contradicted both the plain language of RCW 60.04.091 and Washington’s rules of statutory interpretation.

Williams was wrongly decided for several additional reasons.

First, the case improperly renders the safe harbor form a nullity. Washington courts are not to interpret a statute “so as to render any portion meaningless, superfluous or questionable,”⁷² or in a way that produces “absurd” results.⁷³ According to Williams, the phrase “acknowledged pursuant to” in RCW 60.04.091(2) requires a lien claimant to use one of the notary certification clauses set forth in chapter 64.08 RCW or RCW 42.44.100.⁷⁴ But *none* of those clauses matches the notary certification language in the safe harbor form. As Division Two acknowledged in Williams, the “corporate representative” clauses in RCW 64.08.070 and RCW 42.44.100(2) contain language not

⁷¹ Williams, 155 Wn. App. at 443, 445 (emphasis added).

⁷² Addleman v. Board of Prison Terms & Paroles, 107 Wn.2d 503, 509, 730 P.2d 1327 (1986).

⁷³ Morris v. Blaker, 118 Wn.2d 133, 143, 821 P.2d 482 (1992) (statutes should be interpreted to avoid an absurd result).

⁷⁴ See Williams, 155 Wn. App. at 442-43.

present in the safe harbor form. But the “individual” certification clauses in RCW 64.08.60 and RCW 42.44.100(1) *also* differ from the safe harbor form.⁷⁵

Thus, under the reasoning of Williams, *no* lien on the safe harbor form would ever be valid. Even if Mr. Caunt had been the lien claimant here (such that an “individual” notary certification would have undisputedly been acceptable), the lien would have still been invalid under Williams because it would not have been “acknowledged pursuant to [RCW 64.08.060].” Williams makes every lien on the safe harbor form invalid. That is an absurd—and impermissible—construction of RCW 60.04.091.

Williams also conflicts with this Court’s interpretation of the certificate of acknowledgement statutes. In Kley v. Geiger,⁷⁶ the appellants challenged the enforceability of a mortgage on grounds that the witnessing officer failed to certify the mortgage had been signed “freely and voluntarily.” Like chapter 64.08 RCW, the statute in Kley identified what language would be “sufficient” to constitute an acknowledgement: “Sec. 1437 . . . provides that the certificate of acknowledgment

⁷⁵ Compare RCW 60.04.091(2) (“Subscribed and sworn to before me this _ day of _.”) with RCW 64.08.060 (certifying that signatory attested to signing document “for the uses and purposes therein mentioned”) and RCW 42.44.100(1) (same).

⁷⁶ Kley v. Geiger, 4 Wash. 484, 487, 30 P. 727 (1892).

substantially in the form there given shall be sufficient”⁷⁷ Citing the word “sufficient,” this Court held that the sample certification language was not the *exclusive* way of acknowledging something in accordance with the statute:

Sec. 1437 . . . provides that the certificate of acknowledgment substantially in the form there given shall be sufficient, which form contains a recital that the execution of the instrument was the free and voluntary act of the party executing the same. *It does not provide that this form of acknowledgment shall be exclusive*, and we are satisfied the acknowledgment which was taken wherein the defendants acknowledged that they signed and executed the mortgage, without any further statement that they voluntarily did the same, was sufficient.⁷⁸

In other words, the reference in chapter 64.08 RCW as to what certification language *is* sufficient does not define what certification language is *not* sufficient. Thus, according to Kley, a certificate of acknowledgment for a corporation need not be *identical* to RCW 64.08.070 for a document to be “acknowledged pursuant to” that statute.

In that sense, Kley also reconciles the phrases “shall be acknowledged pursuant to chapter 64.08 RCW” and “a lien in the

⁷⁷ See Kley, 4 Wash. at 487 (“Sec. 1437, which was also in force at that time, provides that the certificate of acknowledgment substantially in the form there given *shall be sufficient*”) (emphasis added); see also RCW 64.08.070 (“A certificate of acknowledgment for a corporation, substantially in the following form . . . *shall be sufficient* for the purposes of this chapter. . . .”) (emphasis added).

⁷⁸ Kley, 4 Wash. at 487 (emphasis added).

following form shall be sufficient” in RCW 60.04.091. As Kley makes clear, “[A]cknowledged pursuant to chapter 64.08 RCW” does not mean “acknowledged using the *exact language* of chapter 64.08 RCW.” Chapter 64.08 RCW itself has some “wiggle room.” Thus, because Chapter 64.08 RCW does not require absolute fidelity to its sample language, a lien claimant can use the notary language in the safe harbor form and still have a lien that is “acknowledged pursuant to chapter 64.08 RCW.”

Finally, Williams is also flawed because Division Two failed to harmonize RCW 60.04.091(2) with the older, less specific chapter 64.08 RCW. The Legislature enacted RCW 60.04.091 in 1991.⁷⁹ The Legislature enacted chapter 64.08 RCW and RCW 42.44.100 in 1988.⁸⁰ “Generally, provisions of a specific more recent statute prevail in a conflict with a more general predecessor.”⁸¹

Chapter 64.08 RCW and RCW 42.44.100 deal with certificates of acknowledgement generally. But RCW 60.04.091(2) addresses what a certificate *in a mechanic’s lien* should say. Thus, because the Legislature

⁷⁹ See Laws of 1991, Ch. 281 § 9.

⁸⁰ See Laws of 1988, Ch. 69 §§ 2-4.

⁸¹ Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 37, 785 P.2d 44 (1990).

enacted that more specific language more recently, the trial court should have ruled that the certificate language in the safe harbor form prevailed.

B. WILLIAMS IS DISTINGUISHABLE ANYWAY

Reversal is also appropriate here because even if Williams had been correctly decided, the case is distinguishable. In Williams, the property owners argued that the lien was invalid not because the *lien claimant* was a corporation, but because a corporation executed the lien on behalf of the lien claimant.⁸² The Williams court agreed. It held that because the agent who executed the lien on behalf of the claimant (LienData) was a corporation, the individual who signed *for that corporate agent* (Ms. Southern) had to use the notary language in RCW 64.08.070:

This attestation clause fails to substantially comply with the forms provided in RCW 64.08.070 and RCW 2.44.100 because it does not indicate that Southern signed in a representative capacity *on behalf of Lien-Data*.⁸³

Here, by contrast, there was no corporate agent executing the lien on behalf of the claimant. Williams might be on point if Mr. Caunt worked for a corporation that had in turn executed the lien on behalf of

⁸² See Williams, 155 Wn. App. at 441 (explaining property owners' argument that lien does not comply with RCW 60.04.091 "because LienData was Athletic's agent and, as a corporation, *LienData* must acknowledge the claim of lien using the corporate form") (emphasis added).

⁸³ See Williams, 155 Wn. App. at 443 (emphasis added).

Hos. But Mr. Caunt signed in his *own* capacity, as a *person* authorized by RCW 60.04.091 to execute the verification clause: “The notice of claim of lien . . . [s]hall be signed by the claimant *or some person authorized to act on his or her behalf* who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury” RCW 60.04.091(2) (emphasis added). Thus, the notary for Hos’s lien would at most have had to use the *individual* certificate of acknowledgement language in RCW 64.08.060, not the *corporate* certificate in RCW 64.08.070. And *according to Williams*, the safe harbor language that Hos used *does* satisfy RCW 64.08.060.⁸⁴

The trial court apparently missed this distinction because it thought Ben Holt Indus. v. Milne⁸⁵ required Mr. Caunt to use the corporate certificate of acknowledgment. In that case, the Court of Appeals held a lease was invalid because the person signing it used the individual certificate of acknowledgement instead of the corporate one. But no statute in Ben Holt said the corporation *or some person authorized to act on its behalf* could execute the document—only the corporation itself

⁸⁴ See Williams, 155 Wn. App. at 445 (“Where corporate acknowledgment is required, the sample form cannot be sufficient because *it only satisfies the requirements to witness an individual signature.*”) (emphasis added).

⁸⁵ Ben Holt Indus. v. Milne, 36 Wn. App. 468, 675 P.2d 1256 (1984).

could execute the lease in Ben Holt.⁸⁶ Here, by contrast, RCW 60.04.091 expressly states that someone other than the lien claimant (e.g., an individual) can sign the verification clause: “The notice of claim of lien . . . [s]hall be signed by the claimant *or some person authorized to act on his or her behalf*” Ben Holt would be analogous if RCW 60.04.091 said only the *lien claimant* can sign the claim of lien. In that case, “Hos” would be the one executing the verification clause, and the human being who signed—assuming Williams were good law—would have been required to use the certificate of acknowledgement in RCW 64.08.070.⁸⁷ But as RCW 60.04.091 is written, applying Ben Holt here would read the phrase “*or some person authorized to act on [the lien claimant’s] behalf*” out of RCW 60.04.091—an impermissible construction of the statute.⁸⁸

⁸⁶ See Stevenson v. Parker, 25 Wn. App. 639, 642 n.3, 608 P.2d 1263 (1980) (explaining lease must be acknowledged because of RCW 64.04.010 and .020); RCW 64.04.020 (“Every deed shall be in writing, signed by the party bound thereby, and acknowledged *by the party* before some person authorized by this act to take acknowledgments of deeds.”) (emphasis added).

⁸⁷ RCW 64.08.070 makes clear that the *corporation* is executing the instrument being acknowledged: “On this day of, 19. . ., before me personally appeared, to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) *of the corporation that executed the within and foregoing instrument*” (emphasis added).

⁸⁸ See Rivard v. State, 168 Wn.2d 775, 783, 231 P.3d 186 (2010) (explaining courts “interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous”).

BF-Thar’s arguments about Mr. Caunt’s corporate authority suffer the same flaw. Unlike the certificate of acknowledgement in Bank of Commerce of Anacortes v. Kelpine Products Co., 167 Wash. 592, 595, 10 P.2d 238 (1932), which BF-Thar relied upon in the trial court, the certificate here did not need to address Mr. Caunt’s

Williams is also distinguishable because the claim of lien form in this case identified the person signing as someone with the capacity to bind the lien claimant. In Fircrest Supply, Inc. v. Plummer,⁸⁹ Division One considered whether a lien satisfied RCW 60.04.060, the predecessor to RCW 64.04.091.⁹⁰ Like RCW 60.04.091, RCW 60.040.060 required a lien to be signed by the claimant “or by some person in his behalf,” and that the lien be verified as accurate by the person signing.⁹¹

The lien claimant in Fircrest was a corporation. An individual (Perkins) signed the claim of lien *form*, identifying himself as the corporation’s “Registered Agent.”⁹² But Perkins failed to sign the verification clause.⁹³ Instead, a notary signed the verification (which contained Perkins’s typewritten name), but in the wrong place.⁹⁴ The trial

corporate authority because Hos was not executing the verification clause—Mr. Caunt was.

⁸⁹ Fircrest Supply, Inc. v. Plummer, 30 Wn. App. 384, 634 P.2d 891 (1981).

⁹⁰ In 1992, the Legislature repealed RCW 60.04.060 and replaced it with RCW 60.04.091. See Laws 1991 ch. 281 § 9.

⁹¹ See Lumberman’s, Inc. v. Barnhardt, 89 Wn. App. 283, 287, 949 P.2d 382 (1997) (“Former RCW 60.04.060 stated in part: . . . ‘Such claim . . . shall be signed by the claimant . . . and be verified by the oath of the claimant . . . to the effect that the affiant believes the claim to be just . . .’”).

⁹² Fircrest, 30 Wn. App. at 389.

⁹³ Fircrest, 30 Wn. App. at 389.

⁹⁴ Fircrest, 30 Wn. App. at 389.

court invalidated the lien on grounds that “the verification portion of the lien was defective.”⁹⁵

Division One reversed. The court reasoned that because “some person in [the lien claimant’s] behalf” (Perkins) signed the claim of lien, and because the notary then verified that signature, putting those signatures in the wrong place did not render the lien invalid:

We are convinced that the requirements of the statute have been substantially complied with. Indeed, as the Dorsey case points out, such affidavits should be liberally construed in the absence of fraud or other suspicious circumstances. The absence of the signature, and the misplaced notary’s signature, in these circumstances appear to be little more than a scrivener’s error.⁹⁶

Significantly, the Fircrest court also held that the lien was not invalid simply because the *verification clause itself* did not explain in what capacity Mr. Perkins was signing:

Finally, Blumhardt claims that Perkins improperly signed the lien claim as Fircrest’s “Registered Agent.” He argues that this fails to show Perkins’ authority to act for Fircrest. We disagree. The statute requires only that the claim be “signed by the claimant, or by some person in his behalf”. RCW 60.04.060. Nothing in the record suggests that Fircrest did not comply fully with this requirement.⁹⁷

In other words, it was sufficient that the lien form identified Perkins as a representative of the claimant; the form did not have to expressly say that

⁹⁵ Fircrest, 30 Wn. App. at 389.

⁹⁶ Fircrest, 30 Wn. App. at 391 (citations omitted).

⁹⁷ Fircrest, 30 Wn. App. at 391.

Perkins was signing on behalf of the claimant or explain why he possessed that authority.

Here, as in Fircrest, the lien form identified the signor (Mr. Caunt) as an agent (President) of the corporation. In Williams, by contrast, the person executing the lien (Ms. Southern) simply signed her name above the words “Rebecca Southern.” Nothing on the lien form connected her to the lien claimant (or LienData), nor did the lien form identify her as someone with the capacity to bind the claimant. Thus, even if Williams had been correctly decided, this case is analogous to Fircrest, not Williams.

Williams is both bad law and distinguishable. The trial court erred in relying upon it.

C. THE TRIAL COURT SHOULD HAVE ALLOWED HOS TO AMEND ITS LIEN

The trial court also erred in not allowing Hos to amend its lien. Hos moved to change the value of the work it performed, the date it commenced work, and—to the extent necessary—the certificate of acknowledgement language.⁹⁸ The trial court denied the motion on

⁹⁸ If the Court reverses or distinguishes Williams, then this last element of Hos’s motion to amend is of course moot (because Hos would not need to amend the certificate of acknowledgement language).

grounds that Hos's lien was void under Williams, such that there was effectively nothing to amend.

The standard of review on this issue is "abuse of discretion."⁹⁹

According to RCW 60.04.091(2), a "notice of claim of lien may be amended as pleadings may be . . . insofar as the interests of third parties are not adversely affected by such amendment." The "pleadings" reference means that amendment of liens "should be liberally allowed."¹⁰⁰ The ultimate goal is to "facilitate a proper decision on the merits."¹⁰¹

Consistent with this, Washington courts have routinely allowed claimants to amend liens. In Davidson v. National Can Co.,¹⁰² for example, this Court held that a lien claimant should have been allowed to amend its lien to change the name of the indebted party and to add a notary stamp. Significantly, the missing notary stamp was a *required* element of the lien.¹⁰³ Nevertheless, the Court held that because the

⁹⁹ CKP, Inc. v. GRS Constr. Co., 63 Wn. App. 601, 610, 821 P.2d 63 (1991) ("[L]iens may be amended . . . as pleadings may be . . . Appellate review of a request to amend pleadings will not be upset absent abuse of discretion.").

¹⁰⁰ See Bremerton Concrete Prods. Co. v. Miller, 49 Wn. App. 806, 812, 745 P.2d 1338 (1987).

¹⁰¹ Herron v. Tribune Pub. Co., 108 Wn.2d 162, 165, 736 P.2d 249 (1987) ("The purposes of CR 15 are to 'facilitate a proper decision on the merits,' and to provide each party with adequate notice of the basis of the claims or defenses asserted against him.") (citation omitted).

¹⁰² Davidson v. National Can Co., 150 Wash. 370, 273 P. 185 (1928).

¹⁰³ Davidson, 150 Wash. at 373 ("It would seem that the ruling of the trial court was based upon . . . Gates v. Brown, 1 Wash. 470, 25 Pac. 914 [(1890)]. . . ."); Gates,

original lien afforded sufficient notice to third parties, it was not invalid, and the trial court should have allowed the claimant to amend it:

Ever since 1893 this court has given careful heed to the legislative intent thus expressed, and has disregarded non-essentials and liberally allowed amendments. . . . We are well satisfied that where, as here, it clearly appears that the claim or notice was duly verified by the oath of the claimant, administered by a duly authorized officer, and the only defect is the failure to impress his official seal before recording, that cannot be urged to defeat the lien by anyone other than a subsequent innocent purchaser who relies on the record, and even he would seem to be bound¹⁰⁴

Notwithstanding this policy of liberal amendment, the trial court here apparently accepted BF-Thar's argument that under Williams and Lumberman's,¹⁰⁵ Hos's lien was "invalid," and therefore not subject to amendment.¹⁰⁶ That argument obviously falls apart if this Court reverses or distinguishes Williams (*i.e.*, decides Hos's lien is not invalid because the corporate certificate of acknowledgement language in RCW 64.08.070 was never required). But the argument fails for two additional reasons.

First, Lumberman's is not binding. The claimant in that case *conceded* that its original claim of lien "did not substantially comply

1 Wash. at 474 ("[T]he seal should have been impressed, to have given the certification of the oath required any validity.").

¹⁰⁴ Davidson, 150 Wash. at 374, 376.

¹⁰⁵ Lumberman's of Washington v. Barnhardt, 89 Wn. App. 283, 949 P.2d 382 (1997).

¹⁰⁶ *See* CP 785 ("The [trial court] has ruled that Hos Bros's mechanic's lien against certain property described above is invalid and cannot be cured by amendment."); Lumberman's, 89 Wn. App. at 291 ("[A]n invalid lien could not be amended . . . to make it valid after the statutory period had passed.").

with . . . RCW 60.04.091.”¹⁰⁷ *Based upon that admission*, the Court of Appeals reasoned that the claimant had in effect never filed a lien within the 90-day limitation period, and there was therefore nothing to amend.¹⁰⁸ Thus, to the extent Lumberman’s says a timely lien is invalid (and therefore not subject to amendment) *because it omits certain elements*—as opposed to not being filed within the 90-day limitation period—that statement is dicta.

Second, even if Lumberman’s could be considered precedent, Fircrest makes clear that a flawed lien is nevertheless valid if it “substantially complies” with RCW 60.04.091: “We are convinced that the requirements of the statute have been substantially complied with.”¹⁰⁹ It follows that if Hos’s original lien—even if flawed—*did* substantially comply with RCW 60.04.091, then the lien was valid, and Lumberman’s should not have barred its amendment.¹¹⁰

¹⁰⁷ Lumberman’s, 89 Wn. App. at 289.

¹⁰⁸ The Lumberman’s court based its holding exclusively on McMullen & Co. v. Croft, 96 Wash. 275, 164 P. 930 (1917). But in that case, the claimant failed to file *anything* within the 90-day window. The McMullen court understandably held that although amendments are liberally allowed, if the claimant does not file within the limitations period, then there is nothing to amend: “We have . . . held that a lien notice may be amended after the time has expired when it may be filed. . . . [B]ut we have never held that a lien notice *filed after the expiration of the ninety days* could be so amended as to make it a valid notice.” McMullen, 96 Wash. at 278-79 (emphasis added).

¹⁰⁹ *See* Fircrest, 30 Wn. App. at 391.

¹¹⁰ The invalidity of the original lien was the sole reason the Court of Appeals precluded amendment in Lumberman’s.

Sullivan v. Treen¹¹¹ illustrates this distinction. In that case, the Court considered whether a lien lacked the requisite verification because the notary failed to list his place of residence (something a verification arguably required at the time).¹¹² The Court explained that even if the residence was a required element of the verification, the trial court properly allowed the claimant to amend its lien to add the residence because no third parties would be prejudiced by the change.¹¹³

In Stetson & Post Lumber Co. v. W. & J. Sloane Co.,¹¹⁴ the trial court allowed a lien claimant to amend its lien to clarify that the defendant had a leasehold interest in the subject property. On appeal, the defendant argued that the original lien was defective, so it could not be amended after the expiration of the 90-day limitation period. This Court disagreed, holding that the amendment “cured” the original lien’s defect (to the extent it even had one) and could be made after the 90-day period because the amendment was not prejudicial to third parties.¹¹⁵

¹¹¹ Sullivan v. Treen, 13 Wash. 261, 43 P. 38 (1895).

¹¹² Sullivan, 13 Wash. at 263. The notary’s residence was arguably required under Gates, 1 Wash. 470.

¹¹³ Sullivan, 13 Wash. at 263-64 (explaining Court did not need to address whether absence of residence “would . . . be fatal to the lien notice” because lien statute “authorized an amendment of notices of lien when the interests of third parties would not be affected thereby”).

¹¹⁴ Stetson & Post Lumber v. W. & J. Sloane Co., 61 Wash. 180, 112 P. 248 (1910).

¹¹⁵ Stetson, 61 Wash. at 181-82 (“We think, however, the amendment cured the defect, if any, and that the fact that it was made after the expiration of 90 days is immaterial

As Fircrest, Sullivan, and Stetson demonstrate, a claim of lien that substantially complies with RCW 60.04.091—even if particular elements of the claim are missing—is not invalid, and is therefore able to be amended. In other words, even if Lumberman’s were precedential here (and even if Williams were good law and not distinguishable), omitting the RCW 64.08.070 certificate of acknowledgement language would not render Hos’s lien invalid if the lien “substantially complies” with RCW 60.04.091.

It does. Hos used a lien form that was materially *identical* to the one that the Legislature said “shall” be sufficient. One could not “substantially comply” with the statute any more than that. Moreover, whether the claim of lien included the language from RCW 64.08.070 or not, BF-Thar (and everyone else) knew that Hos claimed a lien against the Property. Thus, as in Sullivan, the proposed amendment is not the kind that would affect the notice that third parties received. And as in Fircrest, the lien form as a whole makes clear that Hos is the lien claimant, and that the reference to Mr. Caunt as “the claimant” is therefore an error.

. . . . The rule of amendment established by this court is that amendments of this character are in the same nature of amendments to pleading, and the same liberal rule as to substance and time should be followed, where the interests of third parties are not injuriously affected.”).

In sum, even if this Court decides that Hos's original lien was flawed under Williams, the lien substantially complied with RCW 60.04.091, and the trial court should have allowed Hos to amend it.

BF-Thar also argued in response to Hos's motion to amend that Hos could not change the date work commenced or the lien's amount. This is true, BF-Thar claimed, because Hos representatives at one time said work under the second contract commenced in 2006, not 2005, and the amendments would purportedly prejudice BF-Thar.¹¹⁶

These arguments are both factually and legally flawed.

Hos first moved to amend its lien more than a year *before* BF-Thar received the Property.¹¹⁷ Thus, BF-Thar knew when it recorded its deed that Hos claimed it was owed \$1,206,496.15, not \$771,273.15, and that Hos claimed its lien related back to January 2005, not August 2006. As the Court of Appeals recognized in CKP, if a third party takes with notice that the lien claimant has proposed amending its lien, that party cannot claim prejudice as a result of the amendment.¹¹⁸

¹¹⁶ See CP 552-53 ("BF-Thar's Opposition to Hos Bros.'s Motion to Amend Lien and Complaint").

¹¹⁷ See CP 202-215; CP 86.

¹¹⁸ See CKP, 63 Wn. App. at 610 ("Although United Bank and certain limited partners did acquire their interests after the filing of the lien, *they had actual notice of the potential for amendment prior to the acquisition of their interests*. . . . No prejudice resulted to these parties. Thus, the trial court did not abuse its discretion in allowing the amendment.") (emphasis added).

As for BF-Thar's arguments about the date work commenced, Hos representatives did at one time say work under the parties' second contract commenced in 2006. But Hos witnesses later filed sworn declarations—*before BF-Thar was deeded the Property*—correcting that testimony.¹¹⁹ These witnesses clarified that work under the second contract in fact commenced in 2005, when Hos originally began delivering its equipment to the site.¹²⁰ Consistent with that testimony, this Court has held that if a contractor starts and then suspends work, the priority of its lien relates back to the date the contractor first came on site:

A temporary cessation of work, where the design of the performance is not abandoned and work subsequently resumed and prosecuted without any substantial change in the plan, will not prevent the relation back of the lien to the time of the original commencement.¹²¹

This makes sense: the purpose of a lien is to compensate the claimant for work it has done *to improve a particular piece of property*, not for work in furtherance of a particular contract: “[T]he very reason for establishing

¹¹⁹ See CP 528-533 (January 2009 declaration of Barbara Rodgers, stating correct lien amount and January 2005 commencement date); CP 86 (March 2009 deed to BF-Thar).

¹²⁰ The priority of a mechanic's lien runs from the date the contractor first delivered its *equipment* to the site. RCW 60.04.061 (“The claim of lien . . . shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or *first delivery of materials or equipment* by the lien claimant.”) (emphasis added).

¹²¹ Bradley v. Donovan-Pattison Realty Co., 84 Wash. 654, 658, 147 P. 421 (1915).

mechanic's liens [is] . . . preventing detriment to laborers and material suppliers who expend their resources *on others' property*.”¹²²

Most importantly, the *merits* of Hos's proposed amended lien claim should have been irrelevant. Liens are amendable like complaints.¹²³ And Washington courts have held that a party is entitled to amend its complaint regardless of what the non-movant says about the merits of the proposed amendments:

[L]eave to amend shall be freely given when justice so requires . . . No matter how likely it may seem that a plaintiff may be unable to prove his case, he is entitled, upon averring a claim, to an opportunity to prove it.¹²⁴

Persuasive Federal case law¹²⁵ similarly states that a party who contests the substance of an amended complaint should raise its objections in a

¹²² *Haselwood v. Bremerton Ice Arena, Inc.*, 137 Wn. App. 872, 887-88, 155 P.3d 952 (2007). BF-Thar claimed in the trial court that Hos could not “tack” the parties’ second contract onto the first, so as to extend the 90-day deadline for filing a lien *over work Hos performed under the first contract*. See CP 557 (“[W]ork done . . . under a new and independent agreement, made after the original contract . . . was ended . . . does not set the time running so as to preserve a lien *for the earlier work*.”) (quoting *Swensson v. Carlton*, 17 Wn.2d 396, 404, 135 P.2d 450 (1943) (emphasis added)). But Hos was not arguing it could file a lien for work performed under the first contract. Hos was simply explaining that it performed work to improve the Property within 90 days of when it filed its claim of lien (an undisputed fact), and that *this* work commenced when Hos first moved its equipment onto the site back in 2005 (equipment that remained at the Property the whole time Hos was working). “Tacking” is not the issue here.

¹²³ See RCW 60.04.091(2) (“[A] notice of claim of lien may be amended as pleadings may be . . .”).

¹²⁴ *Adams v. Allstate Ins. Co.*, 58 Wn.2d 659, 671-72, 364 P.2d 804 (1961).

¹²⁵ See *Beal v. City of Seattle*, 134 Wn.2d 769, 777, 954 P.2d 237 (1998) (“Where a state rule parallels a federal rule, analysis of the federal rule may be looked to for guidance”); CR 15(a) (“[A] party may amend the party’s pleading only by leave

separate motion to dismiss: “Ordinarily, courts will defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed.”¹²⁶

In other words, BF-Thar’s substantive arguments should not have affected Hos’s ability to amend its lien (any more than those arguments would have affected Hos’s ability to *originally* file its lien with a 2005 commencement date). Once Hos alleged with supporting evidence that it commenced work in 2005, the trial court should have allowed Hos to amend its lien, leaving substantive challenges to the amendments to another date.

V. CONCLUSION

RCW 60.04.091(2) says a claim of lien on the safe harbor form *shall* be sufficient. Williams was therefore wrongly decided. But the case is also distinguishable because Hos did not employ a corporate agent to execute its lien. For both reasons, the trial court erred in dismissing Hos’s lien foreclosure claim. The trial court also erred in refusing to allow Hos to amend its lien because Hos’s lien substantially complied with RCW 60.04.091, because BF-Thar had notice of the proposed

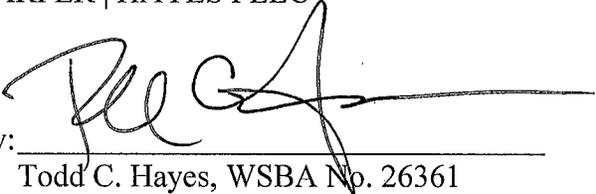
of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.”); FRCP 15(a)(2) (“[A] party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”).

¹²⁶ Netbula, LLC v. Distinct Corp., 212 F.R.D. 534, 539 (N.D. Ca. 2003).

amendments, and because the substance of the amendments should have been addressed separately from the motion to amend. For each of these reasons, Hos respectfully requests that this Court reverse the trial court's June 24, 2010 order.

DATED this 12th day of October, 2010.

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By: 

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APPENDIX A

RCW 60.04.091
Recording — Time — Contents of lien.

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 ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

(f) The principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW. If the lien has been assigned, the name of the assignee shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

CLAIM OF LIEN

....., claimant, vs, name of person indebted to claimant:

Notice is hereby given that the person named below claims a lien pursuant to *chapter 64.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:

TELEPHONE NUMBER:

ADDRESS:

2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR, PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE:

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

.....

4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED (Street address, legal description or other information that will reasonably describe the property):

.....

.....

.....

5. NAME OF THE OWNER OR REPUTED OWNER (If not known state "unknown"):

6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS FURNISHED:

.....

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE:

.....

....., Claimant

.....

.....

(Phone number, address, city,
and
state of claimant)

STATE OF WASHINGTON, COUNTY OF

....., ss.

....., being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

.....

Subscribed and sworn to before me this day of

.....

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 ninety-day period stated. The lien claimant shall give a copy of the claim of lien to the owner or reputed owner by mailing it by certified or registered mail or by personal service within fourteen days of the time the claim of lien is filed for recording. Failure to do so results in a forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under RCW 60.04.181.

[1992 c 126 § 7; 1991 c 281 § 9.]

Notes:

***Reviser's note:** The reference to chapter 64.04 RCW appears to be erroneous. Reference to chapter 60.04 RCW was apparently intended.

APPENDIX B



200711300389 4 PGS
11/30/2007 12:07pm \$43.00
PIERCE COUNTY, WASHINGTON

When Recorded Mail To:

Jeffrey G. Frank
Foster Pepper PLLC
1111 Third Ave., Suite 3400
Seattle, WA 98101

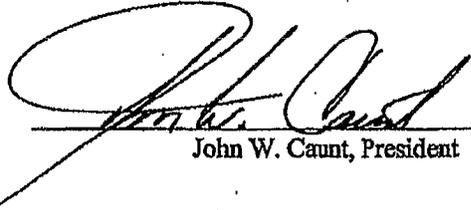
Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

<p>Document Title(s) (or transactions contained therein): (all areas applicable to your document <u>must</u> be filled in)</p> <p>Claim of Lien</p>
<p>Reference Number(s) of Documents assigned or released:</p> <p>Additional reference #'s on page <u>N/A</u> of document</p>
<p>Grantor(s) (Last name first, then first name and initials)</p> <p><u>C19-1 Shotwell LLC</u></p> <p><input type="checkbox"/> Additional names on page <u>N/A</u> of document</p>
<p>Grantee(s) (Last name first, then first name and initials)</p> <p><u>Hos Bros. Construction, Inc.</u></p> <p><input type="checkbox"/> Additional names on page <u>N/A</u> of document</p>
<p>Legal description (abbreviated: i.e., lot, block, plat or section, township, range)</p> <p><u>17200 block, Canyon Road East, SE QTR OF SEC 25, TWN 19 N, R 3 E, AND SW QTR OF SEC 30, TWN 19 E, R 4 E, Fredrickson, Washington</u></p> <p><input checked="" type="checkbox"/> Additional legal is attached to the <u>Claim of Lien</u> as <u>Exhibit A</u>.</p>
<p>Assessor's Property Tax Parcel/Account Number</p> <p><u>0319258022, 0319258023, 0319258026, 0319258027</u></p> <p><input type="checkbox"/> Assessor Tax # not yet assigned</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p>

- 6. *The last date on which labor was performed, professional services were furnished, contributions to an employee benefit plan were due, or material, or equipment was furnished: 11/29/07.*
- 7. *Principal amount for which the lien is claimed is: \$ 771,273.15*
- 8 *If the claimant is the assignee of this claim so state here: N/A*

STATE OF WASHINGTON)
) ss.
 COUNTY OF KING)

John W. Caunt being sworn, says I am the claimant above named. I have read or heard the foregoing claim read and know the contents thereof and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause and is not clearly excessive under penalty of perjury and shall be acknowledged pursuant to Chapter 64.08.


 John W. Caunt, President

SUBSCRIBED AND SWORN TO before me this 30th day of November, 2007.



Marilyn K. Meadows
 Print Name MARILYN K. MEADOWS
 NOTARY PUBLIC in and for the State of Washington
 Residing at Woodinville, Washington
 My commission expires May 17, 2008

EXHIBIT A
LEGAL DESCRIPTION

LOTS 1, 2, 3 AND LOT 4, AS SHOWN ON SHORT PLAT NUMBER 9702110243, FILED WITH THE PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THOSE PORTIONS OF SAID LOTS CONVEYED TO PIERCE COUNTY, A MUNICIPAL CORPORATION, BY DEED RECORDED APRIL 26, 2004 UNDER RECORDING NUMBER 200404260818, AND EXCEPT THOSE PORTIONS OF SAID LOTS CONVEYED TO PIERCE COUNTY, A MUNICIPAL CORPORATION, BY DEED RECORDED AUGUST 3, 2004 UNDER RECORDING NUMBER 200408030248.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

APPENDIX C

FILED
COURT OF APPEALS
DIVISION II

NOV 7 AM 9:53

STATE OF WASHINGTON
BY *lp*

No. 33607-3 DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

TERRY L. WILLIAMS and JANIS E.
WILLIAMS, husband and wife,

Respondents,

v.

ATHLETIC FIELD, INC., a Washington
corporation,

Appellant.

PUBLISHED OPINION

HOUGHTON, J. — Athletic Field, Inc., appeals a trial court order releasing its mechanics' lien as frivolous and awarding attorney fees and costs to the property owners, Terry and Janis Williams. The trial court found the lien invalid because a lien filing service employee signed the notice of lien's attestation clause. Athletic argues that the trial court erred in construing the statute as requiring that either the claimant or the claimant's attorney sign the attestation clause. We affirm in part and reverse in part and remand.

FACTS

The Williamses are the owners and developers of a parcel of land in Sumner. Their development project required site preparation work estimated to cost \$419,925, followed by construction of a commercial warehouse. In spring 2004, they orally contracted with Athletic Field, Inc., to complete either some portion or all of the site preparation work (the parties dispute the scope of the agreement). They later made three payments to Athletic totaling approximately \$155,000 for work completed. But they were dissatisfied with the pace of Athletic's performance. In October 2004, Athletic's owner, Craig Starren, asked the Williamses to sign a written contract. Instead, the Williamses ordered Athletic to discontinue work and vacate the site.

No. 33607-3-II

The Williamses moved for an order to show cause why relief should not be granted under RCW 60.04.081, the frivolous lien statute.¹ They claimed that the lien was invalid because neither Athletic nor its attorney signed the attestation clause. They further noted the absence of a written contract and stated that they had paid Athletic for all the work it performed and, in fact, had overpaid Athletic.

In support of their show cause motion, the Williamses filed declarations by Terry Williams and Norman Hubbard, an Athletic employee who acted as the site project manager. Hubbard stated that he was a general contractor on the project, that he brought Athletic in to perform only a portion of the work, that his own company performed a substantial portion of the work, and that the Williamses paid Athletic all amounts due.

In opposing the motion, Athletic contested the Williamses' interpretation of the statute, arguing that, according to RCW 60.04.081, any authorized agent may sign the attestation clause. Athletic argued that the lien's validity could not be resolved in the context of a show cause proceeding because it involved disputed factual issues about the amount of work performed and monies due that required a trial on the merits.

In support of its opposition, Athletic filed Starren's declaration stating that his oral agreement with the Williamses was for performing the entire site preparation work and that Athletic had completed 90 percent of the work. Starren also stated that Hubbard was his full-time employee, not a general contractor, and that any work he performed is attributable to Athletic because Athletic provided all the labor, services, and equipment. He also stated that he performed additional work at the Williamses' request worth \$50,000.

¹ RCW 60.04.081 was amended in 2006 and for purposes of this opinion, there were no substantive changes.

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In reply, the Williamses submitted additional declarations by Hubbard and Terry Williams rebutting Athletic's allegations. Williams stated that the additional work allegedly worth \$50,000 was a fill project costing far less and that he actually did Athletic a favor by permitting it to use the site as a dumping ground for the "dirty dirt"² it accumulated at other projects. Hubbard again asserted that his own company performed most of the work.

After hearing argument on the motion, a pro tempore superior court commissioner entered an order releasing the lien and awarding attorney fees and costs to the Williamses for an amount to be determined at a motion for revision hearing held by a superior court judge. The order states that the lien did not comply with RCW 60.04.091 because it "was not signed, under penalty of perjury, by the Claimant (or an officer of the Claimant corporation) or by an attorney for the Claimant." Clerk's Papers at 136. The order further states that the Williamses met their initial burden to show that the lien was frivolous and without reasonable cause and that Athletic failed to present a prima facie case to the contrary, but the commissioner provided no explanation for this determination.³

In its motion for revision by the superior court, Athletic filed several declarations rebutting the Williamses' assertions made in reply to the motion. The trial court granted the Williamses' motion to strike Athletic's additional pleadings and denied Athletic's motion to revise the commissioner's ruling. The trial court entered an order awarding the Williamses approximately \$10,000 in attorney fees and costs. Athletic appeals.

² Williams explained that "dirty dirt" needs to be screened for use other than as fill. Clerk's Papers at 77.

³ Our record does not contain a transcript of the show cause hearing.

ANALYSIS

RCW 60.04.091

We first address whether the notice of claim of lien recorded here complied with the statutory requirements. Athletic contends that the trial court erred when it ruled that RCW 60.04.091 requires either the claimant or the claimant's attorney sign the attestation clause and that no other authorized agent may do so.

We review statutory construction issues de novo. *LRS Elec. Controls, Inc. v. Hamre Constr., Inc.*, 153 Wn.2d 731, 738, 107 P.3d 721 (2005). We give effect to the plain meaning of a statute as an expression of legislative intent. *State v. Thompson*, 151 Wn.2d 793, 801, 92 P.3d 228 (2004).

We strictly construe lien statutes because they are in derogation of the common law. *Dean v. McFarland*, 81 Wn.2d 215, 219-20, 500 P.2d 1244 (1972). A lien claimant must clearly demonstrate satisfaction of all the statutory lien claim requirements. *Dean*, 81 Wn.2d at 220.

Under RCW 60.04.091, a lien claimant must file a notice of claim of lien within 90 days after the claimant ceased to supply services or materials to a subject property. Subsection (1) sets forth the required content of the lien claim. Subsection (2) provides that the lien claim must be notarized and "[s]hall be signed by *the claimant or some person authorized to act on his or her behalf* who shall affirmatively state they [sic] have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury A claim of lien *substantially in the following form* shall be sufficient." RCW 60.04.091 (emphasis added).

A sample attestation clause follows, stating in part:

I am *the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan)* above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the

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same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

RCW 60.04.091(2) (emphasis added).

Athletic argues that the attestation clause for a lien claim may be signed by any authorized agent of the claimant, not just the claimant or the claimant's attorney. The Williamses respond that the acknowledgment signed by Rebecca Southern in her individual capacity does not substantially comply with RCW 60.04.091 because LienData was Athletic's agent and, as a corporation, LienData must acknowledge the claim of lien using the corporate form.

The Williamses cite *Ben Holt Industries, Inc. v. Milne* to support their argument that the acknowledgment was defective. 36 Wn. App. 468, 675 P.2d 1256 (1984). Athletic counters that the separate corporate acknowledgment set forth in RCW 64.08.070 is no longer required and that the required form is set forth in RCW 42.44.100. According to Athletic, the acknowledgment signed by Rebecca Southern fulfills the requirements of RCW 42.44.100. The Williamses' argument persuades us.

A lien claim is invalid if it does not substantially comply with RCW 60.04.091. See *Lumberman's of Wash., Inc. v. Barnhardt*, 89 Wn. App. 283, 289, 949 P.2d 382 (1997). In 1991, the legislature amended the statute to require that a claimant attest to the lien's validity under penalty of perjury. *Lumberman's*, 89 Wn. App. at 287-88. In the absence of evidence that the claimant (or someone authorized to act on the claimant's behalf) attested to its validity, a lien claim does not substantially comply with RCW 60.04.091. See *Flag Constr. Co. v. Olympic Boulevard Partners*, 109 Wn. App. 286, 290, 34 P.3d 1250 (2001).

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RCW 60.04.091(2) requires that the notice of claim of lien "shall be acknowledged pursuant to chapter 64.08 RCW." Chapter 64.08 RCW provides two forms of acknowledgment, one for individuals and one for corporations. RCW 64.08.070 sets forth the following form for a corporate acknowledgment:

On this . . . day of . . . , 19 . . . , before me personally appeared . . . , to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

RCW 64.08.070 also provides that after December 31, 1985, a certificate of acknowledgment for a corporation is valid if it substantially complies with the short form set forth in RCW 42.44.100(2). This short form acknowledgment for one acting in a representative capacity is:

I certify that I know or have satisfactory evidence that (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

RCW 42.44.100(2).

The attestation clause signed by Rebecca Southern does not meet the requirements of either RCW 64.08.070 or 42.44.100(2). The attestation clause in the claim of lien stated only,

I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

No. 33607-3-II

/S/ Rebecca Southern

SUBSCRIBED AND SWORN to before me this 1st day of December, 2004.

/S/ Judi M. Elsbree
NOTARY PUBLIC in and for the
State of Washington, residing at Bothell.
My Commission expires: 08/18/07

This attestation clause fails to substantially comply with the forms provided in RCW 64.08.070 and RCW 42.44.100 because it does not indicate that Southern signed in a representative capacity on behalf of LienData. The acknowledgment stated only, "SUBSCRIBED AND SWORN to before me this 1st day of December, 2004," followed by the signature, name, and title of the notary public and the date on which her commission expires. At best, this acknowledgment only satisfies the short form requirements for witnessing a signature set forth in RCW 42.44.100(4). It does not satisfy the more complex requirements of corporate acknowledgment.

In *Ben Holt*, the Court of Appeals invalidated a lease because the lessor acknowledged the lease using the individual acknowledgment form rather than the corporate acknowledgment form. 36 Wn. App. at 472-73. Citing the Supreme Court's decisions in *Yukon Inv. Co. v. Crescent Meat Co.*, 140 Wash. 136, 248 P. 377 (1926) and *Bank of Commerce of Anacortes v. Kelpine Prods. Corp. of Am.*, 167 Wash. 592, 10 P.2d 238 (1932), the court held that four elements are required for a valid corporate acknowledgment: (1) the person signing the instrument was known to the notary to be an officer of the corporation which executed the instrument; (2) he acknowledged the same to be the free and voluntary act of the corporation; (3) he was authorized to execute it on behalf of the corporation; and (4) the seal affixed was the corporate seal. *Ben Holt*, 36 Wn. App. at 471-72. Absent a writing affixed to the instrument

No. 33607-3-II

setting forth these elements, both the acknowledgment and the underlying instrument were held to be invalid. *Ben Holt*, 36 Wn. App. at 472.

Here, the elements of corporate acknowledgment are not satisfied by the attestation clause signed by Rebecca Southern. The form fails to identify her as an officer or employee of LienData, fails to characterize the subscription as the free and voluntary act of LienData, and fails to set forth Southern's authority to act on behalf of LienData. These shortcomings cannot be cured by affidavit because parol evidence is not admissible to cure a defective acknowledgment. *Ben Holt*, 36 Wn. App. at 472. Accordingly, on its face the attestation clause does not substantially comply with the requirements of RCW 60.04.091(2).

Athletic further argues that RCW 60.04.091(2) provides that a lien substantially in the form of the sample shall be sufficient and, because its lien was substantially similar to the example and identified Rebecca Southern as an agent for Athletic, the acknowledgment was sufficient. For purposes of attesting to the validity of the lien, it is sufficient, if only barely so, that Rebecca Southern signed in an individual capacity when LienData USA, Inc., was clearly identified as the agent for the lien claimant. But to establish that the claim of lien was properly acknowledged, RCW 60.04.091(2) requires compliance with chapter 64.08 RCW. Where corporate acknowledgment is required, the sample form cannot be sufficient because it only satisfies the requirements to witness an individual signature. Athletic's argument fails. The lien was invalid for failure to comply with the statutory attestation requirement.

Frivolous Lien

The Williamses also argue that the lien was frivolous because Athletic did not comply with the statutory lien notice requirements and because they do not owe Athletic any money. Athletic responds that it met its burden of stating a prima facie case showing its entitlement to

No. 33607-3-II

the amount claimed and that the Williamses failed to meet their burden of proving the invalidity of Athletic's claim beyond legitimate dispute. While we agree with the Williamses that they proved the invalidity of the lien itself, we agree with Athletic that they did not prove that filing the lien was frivolous or that Athletic may not be allowed to prove the disputed amount owed.

Lack of compliance with RCW 60.04.091 renders a lien claim invalid but not necessarily frivolous. *W.R.P. Lake Union Ltd. P'ship v. Exterior Servs., Inc.*, 85 Wn. App. 744, 752, 934 P.2d 722 (1997) (lien not frivolous where its compliance with statutory notice requirement is fairly debatable). Although all frivolous liens are invalid, not all invalid liens are frivolous. *Intermountain Elec., Inc. v. G-A-T Bros. Constr., Inc.*, 115 Wn. App. 384, 394, 62 P.3d 548 (2003) (first lien invalid but not frivolous where claimant legitimately disputed the calculation of the limitations period); *cf. Intermountain*, 115 Wn. App. at 394-95 (second lien invalid and frivolous where court previously ruled that the limitations period had expired). A lien claim is not necessarily frivolous because a party loses on a factual or legal ground. *W.R.P.*, 85 Wn. App. at 752. Release of a lien as frivolous is appropriate only when it is apparent beyond legitimate dispute that the lien was invalid when filed. *Intermountain*, 115 Wn. App. at 394.

Where, as here, the notice requirements are subject to legitimate dispute, it is incorrect to release the lien as "frivolous." *W.R.P.*, 85 Wn. App. at 752. Because the issue of who may attest to a claim of lien is a debatable legal issue, the question of the form of acknowledgment for a corporate agent attesting to the lien is likewise subject to legitimate legal debate. In the absence of controlling authority on the validity of the lien, a lien is not frivolous. *See Pac. Indus., Inc. v. Singh*, 120 Wn. App. 1, 10, 86 P.3d 778 (2003) (lien invalid but not frivolous where the lienability of the claimant's services raised an issue of first impression). Because the construction of RCW 60.04.091 presented a debatable issue of law, the trial court correctly

No. 33607-3-II

determined that the lien was invalid but erred in concluding that the lien claim was frivolous and without reasonable cause for failure to comply with the statute.

A proceeding to determine the validity or frivolity of a lien claim is not a substitute for a trial on the merits of the underlying claim. *See Andries v. Covey*, 128 Wn. App. 546, 550, 113 P.3d 483 (2005). Here, the Williamses submitted affidavits by Terry Williams and Hubbard stating that the Williamses orally agreed to pay Athletic for whatever portion of the site preparation work Athletic completed. The affidavits further state that Athletic completed a small fraction of the work and that the Williamses overpaid it for the work performed. In support, the Williamses pointed out the absence of a written contract and submitted a copy of the unsigned contract for the entire site preparation project.

In response, Athletic submitted an affidavit by its owner, Starren, stating that the Williamses orally agreed to pay him for the entire site preparation work and that Athletic had, in fact, completed 90 percent of the project plus additional work the Williamses requested. Athletic stated that Hubbard was its full-time employee and that any work he performed is attributable to Athletic. In reply, the Williamses reasserted their allegations, disputing Athletic's version of the facts.

Athletic established debatable issues of law and fact concerning its entitlement to recover for work it performed. It is undisputed that the Williamses entered an oral contract with Athletic to provide labor, services, materials, and/or equipment for the improvement of their property. It is also undisputed that Athletic performed work at the site between May 2004 and mid-November 2004.

The remaining dispute involves the scope of the oral agreement, the amount of work Athletic actually performed, and whether the Williamses paid it all amounts due. This dispute

No. 33607-3-II

raises debatable issues of fact that cannot be resolved in a summary proceeding under the frivolous lien statute. The Williamses rely on the absence of a written contract for proof of their version of the facts. But their refusal to sign the contract does not disprove Athletic's contention that they orally agreed to have Athletic complete the entire project.

Athletic met its burden of presenting a prima facie case that its lien filing was not frivolous. And the Williamses failed to prove that it was frivolous. Thus, the trial court erred when it released the lien as frivolous and without reasonable cause but it did not err in finding the lien invalid for failure of proper attestation.⁴

Attorney Fees

Athletic argues that the trial court erred in awarding attorney fees to the Williamses. It asks us to award it attorney fees for the summary proceeding below and on appeal.

The frivolous lien statute mandates an award of attorney fees to the prevailing party. The trial court granted attorney fees to the Williamses under RCW 60.04.081(4).⁵ Because the trial court erred in finding the lien filing frivolous, it improperly awarded the Williamses their attorney fees. The Williamses prevail on appeal regarding the lien's invalidity and Athletic prevails on the issue of whether it was frivolous. Thus, neither party substantially prevailed and we do not award fees to either party.

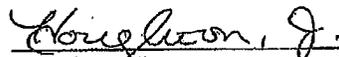
⁴ Athletic further argues that the trial court erred when it considered declarations the Williamses submitted in their reply pleading and refused to consider its own reply declarations. Because the resolution of this case turns on other issues, we do not address Athletic's additional argument.

⁵ RCW 60.04.081(4) provides in part, "If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant."

No. 33607-3-II

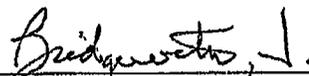
The trial court erred in awarding attorney fees when releasing the invalid lien, and we reverse and remand for reassessment of fees and costs and further proceedings on Athletic's claim because both parties admit that there was an oral agreement that Athletic perform work for the Williamses and merely dispute whether the Williamses owe Athletic additional sums. *See Intermountain*, 115 Wn. App. at 396,

Affirmed in part and reversed in part and remanded.

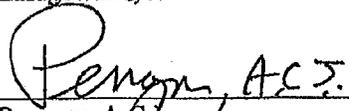


Houghton, J.

We concur:



Bridgewater, J.



Penoyar, A.C.J.

APPENDIX D

THE SUPREME COURT OF WASHINGTON

TERRY L. WILLIAMS and JANIS E.
WILLIAMS, husband and wife,

Respondents,

v.

ATHLETIC FIELD, INC., a Washington
corporation,

Petitioner.

NO. 84555-7

ORDER

C/A NO. 33607-3-II

FILED
SUPREME COURT
STATE OF WASHINGTON
2010 SEP -9 A 10:17
BY RONALD R. CARPENTER
CLERK

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered at its September 7, 2010, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is granted.

DATED at Olympia, Washington this 9th day of September, 2010.

For the Court

Madsen, C.J.
CHIEF JUSTICE

593/158

APPENDIX E

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

HOS BROS. CONSTRUCTION, INC.,

Plaintiff,

v.

C19-1 SHOTWELL LLC.; SEQUOYAH
ELECTRIC, LLC, a Washington limited liability
company; SS LANDSCAPING SERVICES,
INC., a Washington corporation; PACLAND -
BELLEVUE, INC., a Washington corporation;
BANKFIRST a South Dakota state bank;
CENTURION FINANCIAL GROUP, LLC, a
Washington limited liability company; WF
CAPITAL, INC., a Washington limited liability
company; BINGO INVESTMENTS, LLC, a
Washington limited liability company; and
RICHARD BURRELL, an individual;

Defendants.

Honorable Ronald E. Culpepper

No. 08-2-10622-1

DECLARATION OF BARBARA
RODGERS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Barbara Rodgers declares as follows:

1. Declarant. I am a Senior Project Manager of Hos Bros Construction, and managed the Canyon Clock project, which is the subject of this litigation. I am over the age of 18. Hos Bros is a fully licensed, locally owned general contractor that performs earthwork, engineering, and utility construction services.

DECLARATION OF BARBARA RODGERS - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 2. Purpose of Project. In 2004, Hos Bros began negotiating with C19-1 Shotwell
2 (“Shotwell”) for the grading, utility installation and general site preparation of a fifty-seven acre
3 undeveloped property, known as Canyon Clock, which is located in Fredrickson, Pierce County,
4 Washington (the “Project”). I personally participated in the negotiations on behalf of Hos Bros.
5 The Project was intended to be a commercial business park and shopping center.

6 3. Phased Project. When negotiations were completed, Shotwell and Hos Bros
7 agreed Hos Bros’ work would be performed in two phases under one contract. Phase 1 would
8 generally involve the development of the southern lots (upper portion of the site which included
9 plans for a grocery store and retail/pharmacy) for which C19-1 Shotwell had secured interested
10 tenants/buyers. Phase II would involve the northern, lower lots, which did not have committed
11 tenants at the start of project planning.

12 4. Original Contract. On or about March 11, 2005, I signed a construction
13 agreement on behalf of Hos Bros for the construction of Phase I and II. At the time I signed the
14 agreement, Hos Bros and Shotwell understood the scope of work would be modified as
15 necessary. A budget for both Phase I and II was part of the original contract. **A copy of the**
16 **contract is attached as Exhibit 1.**

17 5. Commencement Date. On January 19, 2005, we mobilized labor and equipment
18 to the site to dig pot holes to allow engineers to conduct soil sampling. **A copy of a time card**
19 **for that work is attached as Exhibit 2.** When we began work there were no other liens or
20 deeds of trust on the property.

21 6. Delay of Project. Hos Bros stopped work in March 2006 because Mr. Burrell of
22 Shotwell advised me that Shotwell was delayed in obtaining proper utility permitting for the
23 remaining work. At that time we had completed half the project and been paid in full for our
24 work.

25 7. No Knowledge of Liens. While waiting for the utility permits to be issued,
26 Richard Burrell and Patrick McCourt advised me (in about June 2006) that Shotwell would

1 require additional funding to complete the project. Hos Bros was asked to execute a separate
2 contract for the balance of the work, instead of completing the original contract. Hos Bros was
3 unaware that interim deeds had been recorded against the property or that the funding would be
4 paying off any interim liens.

5 8. New Contract. On August 7, 2006 Hos Bros signed a second construction
6 agreement on behalf of Shotwell for the balance of the work. The agreement was for the
7 guaranteed maximum price of \$4,699,187.00. The agreement allowed C19-1 Shotwell to retain
8 10% of all payments owed until the completion of the work. The agreement contained a
9 prevailing party attorney fee provision. That same day, the parties signed another document that
10 clarified their agreed upon mark-up values, and agreed that "any savings between the actual and
11 the contract value will be split 50/50."

12 9. **A copy of the Agreement, including the clarification, is included as Exhibit 3.**

13 10. No Subordination. Soon thereafter, Richard Burrell informed me that BankFirst
14 would be the Project's lender. Shotwell then emailed me BankFirst documents requiring Hos
15 Bros to assign its major subcontracts to the bank in the event Shotwell defaulted on the loan. A
16 **copy of the Collateral Assignment of Major Contracts is attached as Exhibit 4.** In addition,
17 BankFirst required Hos Bros to post a Payment and Performance Bond with a rider naming
18 BankFirst. But BankFirst never requested Hos Bros to agree to subordinate its mechanic's lien
19 rights to BankFirst's interests. Again, no one informed Hos Bros that BankFirst claimed
20 "equitable subordination" to the interim liens, or that such liens even existed.

21 11. Expectation of Payment. BankFirst required Hos Bros to sign a "Contractor's
22 Certificate" in which Hos Bros would agree to recognize that BankFirst is "making a loan to the
23 Owner to finance construction of the Project." **A copy of the Contractor's Certificate is**
24 **attached as Exhibit 5.** In exchange for naming the bank on our bond, and assigning our
25 subcontract rights, and relying on BankFirst's representations that it would finance construction,
26 it was our understanding BankFirst would pay for Hos Bros' construction services.

DECLARATION OF BARBARA RODGERS - 3

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 12. BankFirst Monitors Work. BankFirst retained its own construction personnel to
2 monitor the work performed by Hos Bros and required Hos Bros to submit pay applications on
3 BankFirst form documents in order to receive payment.

4 13. Hos Bros's Work. Because it was our understanding that BankFirst would fully
5 finance the Project, we retained 30 subcontractors to work on the Project and paid for full time
6 crews of a daily average of 28 people to operate 17 trucks, bulldozers, and earthmovers. For the
7 next year we dedicated these resources to improve the property. Hos Bros began to mobilize
8 additional equipment, materials, and job teams on site on August 17, 2006 to complete the
9 project. Our field office, signage and some other equipment never left the site that arrived at the
10 time we commenced the project in January 2005.

11 14. Shotwell Approves Work. For the next 13 months, I submitted monthly pay
12 applications to Shotwell. Shotwell approved the applications after review and approval by their
13 retained civil engineer, and then submitted draw requests to the bank. The bank had its own
14 consultant on site who also reviewed, and approved our draw requests. Because we were paid
15 for each draw, less 10% withheld as retainage, it is my understanding the bank must have
16 approved each draw request. Until October 2007, we were paid every invoice. I never received
17 a rejection notice.

18 15. BankFirst Approved Change Orders. I also submitted ten Change Orders
19 requesting modifications to the second agreement to account for unforeseen conditions or
20 changes in design documents, such as when Shotwell revised the sewer plans. Early on
21 BankFirst had established a process by which all proposed modifications must first be pre-
22 approved by the bank before the contract could be modified. We agreed to this when we signed
23 the Contractor's Registration form. Every Change Order that Hos Bros submitted was approved
24 by Shotwell and BankFirst.

25 16. September 2007 Draw. When Shotwell failed to make the September 2007
26 payment for the August draw request, I immediately contacted Richard Burrell who informed

1 Hos Bros that the BankFirst and Shotwell were renegotiating the terms of the loan, and were
2 attempting to find a buyer of the property. At that time, representations were made to me that the
3 loan re-negotiation was successful and that the following draw requests would not have this
4 delay. Hos Bros was subsequently paid for the August draw.

5 17. BankFirst Induces Continued Construction. Richard Burrell forwarded me an
6 email from Rebecca Bergin of BankFirst in which she represented the renegotiation was
7 successful and "all participants have funded." In reliance upon this assurance, Hos Bros
8 continued to work on the Project believing the project was still funded. **A copy of those emails**
9 **is attached as Exhibit 6.**

10 18. BankFirst Claimed Funds Disbursed. In late November 2007, Richard Burrell
11 and Patrick McCourt informed me that Shotwell was in default on its loan, and that the parties
12 were still renegotiating the terms of the loan agreement. By then we had essentially completed
13 our work. At this time I called Rebecca Bergin and she advised me the bank had disbursed all
14 proceeds under the loan agreement, and would issue no further disbursements to pay Hos Bros
15 for the already approved retainage and remaining work.

16 19. Notice to Lender Unnecessary. Relying on Rebecca Bergin's representation that
17 the bank had distributed all proceeds, Hos Bros did not issue a Notice to Lender to the bank
18 requiring the bank to pay Hos Bros before issuing further proceeds. If I had understood that
19 funds were available to disburse to Hos Bros, I would have issued a notice.

20 20. Hos Bros Lien. Hos Bros liened the project on November 30, 2007 in the amount
21 of \$771,273.15, which was intended to encompass the unpaid October and November work
22 (\$297,511.43) and unpaid, but already approved retainage (\$473,761.71). **A copy of the lien is**
23 **attached as Exhibit 7.** All documents supporting the amount of the lien have been provided to
24 BankFirst in Hos Bros' discovery responses, and were attached to my declaration previously
25 submitted to the Court in October 2008. **The invoices and documents supporting the amounts**
26 **owed are included behind the lien as Exhibit 7.**

DECLARATION OF BARBARA RODGERS - 5

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 21. No Knowledge of Equitable Subrogation Claim. At the time that Hos Bros filed
2 its lien, Hos Bros was unaware that BankFirst had paid any prior liens or that it claimed a right to
3 be “equitably subrogated” to these liens.

4 22. Need to Adjust Lien. The original lien reflected amounts owed by Hos Bros’ to
5 its subcontractors: Caliber Concrete Construction, Inc.; Looker & Associates, Inc.; Sequoyah
6 Electric, LLC and SS Landscaping Services, Inc. The Hos Bros lien asserted Hos Bros
7 commenced work on the Project on August 17, 2006, the day Hos Bros commenced work on the
8 second contract, instead of January 19, 2005 when Hos Bros actually began work on the project.
9 Also, the lien did not capture Hos Bros’ claim for certain entitled mark-ups in the amount of
10 \$435,223.00. The full amount owed to Hos Bros under its contract is \$1,206,496.15, and the
11 amended lien should reflect this.

12 23. To calculate this amount I took our job cost totals and applied the agreed upon
13 mark-ups. **A copy of my calculation is attached as Exhibit 8.**

14 I declare under penalty of perjury under the laws of the United States and the state of
15 Washington that the foregoing is true and correct.

16
17 Executed this 12th day of March, 2010 at Seattle, Washington.

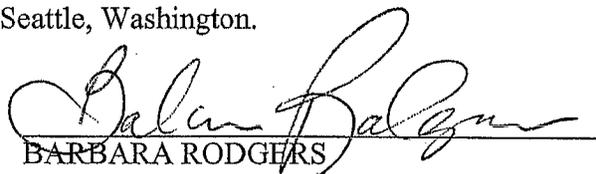
18
19 
20 BARBARA RODGERS

EXHIBIT I

C19-1 SHOTWELL, LLC

GENERAL CONTRACTOR
AGREEMENT

WITH

HOS BROS. CONSTRUCTION, INC.

FOR

EARTHWORK

C19-1 Canyon Clock Center

3/11/2005

**C19-1 Shotwell, LLC
General Contractor Agreement**

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**C19-1 Shotwell, LLC
General Contractor Agreement**

THIS CONTRACT AGREEMENT made and entered into on this 11th day of March 2005, by and between C19-1 Shotwell, LLC, with its place of business at 10515 20th Street SE, Suite 100, Everett, Washington 98205, hereinafter called the "Owner", and HOS Bros. Construction, Inc. with its place of business at P. O. Box 1788, Woodinville, WA 98072-1788, hereinafter called the "Contractor".

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN MADE, CONTRACTOR AND OWNER HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF WORK Contractor shall complete all Work as specified or indicated in this Contract Agreement (the "Work"). The Project for which the Work under this Contract Agreement may be the whole or only a part is generally described in Exhibit A. Special provisions and specifications are set forth on Exhibit B.

SECTION 2. ARCHITECT The Project has been designed by Alpha Community Development who is hereinafter called "Architect" and who will assume all duties and responsibilities and will have the rights and authority assigned to Architect in the Contract Documents (as defined in Section 37 herein) in connection with completion of the Work in accordance with the Contract Documents.

SECTION 3. CONTRACT AND PROJECT ADMINISTRATION Barclays North, Inc., a Washington corporation, (the "Administrator") will provide administration of the Agreement and will be the Owner's representative during construction as defined below. SD Deacon Corporation of Washington (the "Construction Manager") will provide construction management services for the Project and will supply full time on-site supervision and representation on behalf of the Owner, in support of the Administrator's duty to the Owner, and shall serve as the Administrator's designee during construction. In the event of a conflict or dispute regarding instructions or directives received by the Contractor, the Administrator shall have the final authority.

1. The Administrator will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of onsite observations, the Administrator will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.
2. The Administrator will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Administrator will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.
3. Based on the Administrator's observations and evaluations of the Contractor's Applications for Payment, the Administrator will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
4. The Administrator will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor.
5. The Administrator will have authority to reject Work which does not conform to the Contract Documents.

**C19-1 Shotwell, LLC
General Contractor Agreement**

6. The Administrator will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

SECTION 4. CONTRACT TIME The Contractor shall complete the Scope of Work per the schedule set forth below:

Start Date: 3/11/2005
Completion Date: 12/31/2005

The Work will be substantially completed and ready for final payment within thirty (30) days following the date the Scope of Work under this Contract Agreement has been accepted by the appropriate Jurisdictional agencies. Time is of the essence with respect to this Contract Agreement.

SECTION 5. CONTRACT TIME EXTENSIONS The length of time within which to complete the Work as specified herein shall be extended in case of unusually adverse weather, for a period of the time equal to such conditions. Requests for days of extension will be in writing to the Owner or Administrator, agreed upon, signed by the Owner or Administrator and a copy returned to the Contractor. Only those requests approved in writing will be considered for Contract extensions. Request for an extension of the Contract time shall be provided to the Owner or Administrator on the form attached hereto as Exhibit C.

SECTION 6. DELETED

SECTION 7. CONSTRUCTION SCHEDULE Attached hereto as Exhibit D is the Anticipated Construction Schedule prepared by the Administrator, which sets forth the anticipated schedule for work to be performed. The Contractor shall substantially comply with the construction schedule, but it is understood by both the Owner and Contractor that the construction schedule can and may be affected by numerous elements that are outside the control of the Owner, the Contractor or the Administrator. The Contractor shall submit to the Owner or the Administrator on a weekly-basis, a statement of Working days for the previous week Worked. The statement of Working days shall be submitted on the form attached hereto as Exhibit E.

SECTION 8. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if required by the Owner. The cost of the bond shall be determined between the Owner and the Contractor, and paid by the Owner.

SECTION 9. CONTRACT PRICE AND INTENT OF CONTRACT

9.1 Intent Of Contract. The intent of the Contract is to pay unit prices, time and material prices and/or lump sum prices for Work installed to the satisfaction of Owner, Administrator and the applicable governmental agencies. All necessary Work to accomplish the result is incidental to the unit price, time and material price and/or lump sum payment. The unit price, time and materials price and/or lump sum price are set forth on Exhibit A. Contractor shall permit Owner, the Administrator and/or their representatives, to inspect all operations, facilities, scale reports, books and any other data in any way related to the performance of the Contractor's obligation.

C19-1 Shotwell, LLC
General Contractor Agreement

9.2 Increases/Decreases In Contract Price. If the Owner, the Administrator and/or their representatives orders, in writing, changes to any of the Contract Documents, which affect the contract fee, the Contractor shall provide written notice of either an increase or decrease in the Contract price which shall be approved by the Owner or Administrator. The Contractor shall not proceed with any additional Work until such time as the Contractor has received written authority from the Owner or Administrator pursuant to Section 9.3. Items comprising the Work subject of this Contract have been bid on either a unit price, a time and materials price, or a lump sum price basis depending upon the item of Work to be performed. The cost of all items bid on a unit price basis shall be increased or decreased based upon actual quantities as verified by the Owner, the Administrator and/or their representatives.

9.3 Extra Work And Change Orders. Changes, deletions or additions to items of Work under this Contract shall only be done by written Change Order signed by both Owner or Administrator and the Contractor or their authorized agent. The Change Order form to be used is attached hereto as Exhibit F.

9.4 Back Charges. Contractor may be subject to a back charge as a result of: Failure to follow scope of Work, specifications, codes, jobsite rules, and/or breach of this Agreement. The final amount of the back charge shall be determined by the Owner or Administrator. The back charge shall be provided to the Contractor on the form attached hereto as Exhibit G.

9.5 Payment Of Extra Fees. Any and all fees due to extra or redundant inspection, design, staking or consultations by any of the governmental agencies, engineers or surveyors involved in this Project caused by inadequate Workmanship or Work that was not deemed satisfactory shall be the sole responsibility of the Contractor and the Owner shall have the full right and authority to deduct the amount of these fees from the total overall contract price.

9.6 Contractor's Obligations For Wages, Taxes And Benefits. The Contractor shall be obligated for the following:

1. All payroll charges such as Social Security payments, Unemployment Insurance, Worker's Compensation Insurance premiums, pensions and retirement allowances and insurance premiums, vacation and sick leave allowance applicable to wages or salaries paid to own employees for Work done in connection with the Contract Agreement.
2. All premiums on fire, public liability, property damage or other insurance coverage authorized or required by Contractor, or regularly paid by the Contractor in the conduct of its business.
3. All use, excise, privilege, business, occupation, gross receipt and all other taxes paid by the Contractor in connection with the Work, except Washington State Sales Tax.

9.7 Data and Records. The parties hereto agree to make available to each other all data, records, and documents pertaining to the property which may be required to properly exercise their respective duties as set forth herein. Any surveys, architectural and engineering drawings and plans, consultant reports, appraisals, design work, tests and/or studies that are produced by Contractor pursuant to this Agreement, and any electronic versions of any of the foregoing items, shall be the sole property of the Owner. Upon Owner's request, Contractor shall sign a Bill of Sale or other documentation evidencing such ownership.

SECTION 10. PAYMENT PROCEDURES AND RETENTION

C19-1 Shotwell, LLC
General Contractor Agreement

10.1 Payment Procedures. Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents in current funds.

On or about the 10th day of the month (should the 10th fall on a weekend or holiday, checks will be available on the next regular business day), Owner agrees to pay Contractor the agreed compensation for the performance of Work completed on or before the 25th day of the previous month, *provided* Contractor has complied with all of the following payment conditions:

1. Contractor has complied with all provisions of this Agreement.
2. Contractor has provided to Owner the following documents:
 - a) Completed and signed current **Information Sheet** (attached hereto as Exhibit H).
 - b) Completed and signed current **Safety Program Manual** (see Section 13).
 - c) Copies of current first Aid and CPR certification cards for employees Working on the Project.
 - d) Current insurance certificate.
 - e) Current Contractor's License.
3. Contractor has submitted to Owner or Administrator the following items on or before 5:00 p.m. of the **LAST BUSINESS day of the month**:
 - a) Original **Contractor Invoice** printed on Contractor company letterhead.
 - b) Completed and signed **Change Order**, if applicable (attached hereto as Exhibit F).
 - c) Completed and signed **Back Charge**, if applicable (attached hereto as Exhibit G).
 - d) Completed and signed **Application for Payment** (attached hereto as Exhibit I).
 - e) Completed and signed **Lien Release** (attached hereto as Exhibit J) in the amount equal to the amount of the invoice being submitted by Contractor.
 - f) Evidence satisfactory to the Owner or Administrator that all payrolls, bills, or materials and equipment, and all known indebtedness connected with the Contractor's Work incurred prior to the date thereof have been satisfied.

10.2 Retention. Retention in the amount of 10% shall be withheld from all payments, including progress payments. Retention shall be released no sooner than thirty (30) days following receipt of Contractor's invoice for retention. Retention will not be released until all approvals from Jurisdictional agencies having authority over the Work performed by the Contractor have been received. All product and system warranty information, specifications, manuals, and similar items, for materials supplied, if any, and installed in the Project by Contractor must be on file with Owner or Administrator prior to release of retainage. Contractor shall not be entitled to interest on any retainage.

SECTION 11. PROJECT MANAGEMENT Contractor agrees to furnish its best skill and judgment to cooperate in forwarding the interest of the Owner. Contractor shall designate a competent Project Manager, satisfactory to the Owner or Administrator, who shall be readily available at the Project site and shall be empowered to act for the Contractor in all respects, if required. A competent Project Manager shall either be physically present at the Project site or accessible to the Owner by telephone between 7:00 a.m. and 7:00 p.m., Monday through Friday. The Contractor shall provide the Owner or Administrator with the name and number of a contact person who may be contacted over the weekend and on holidays in the event of an emergency. This information shall be shown on the Contractor Information Sheet attached as Exhibit H.

Should Contractor designate a new Project Manager or emergency contact during the term of this contract, it shall be the Contractor's responsibility to provide written notice of the new Project Manager or emergency contact to the Owner or Administrator.

**C19-1 Shotwell, LLC
General Contractor Agreement**

SD Deacon Corporation has been contracted by the Owner to

SECTION 12. WARRANTIES AND GUARANTEES

12.1 Contractor Warranties. The Contractor warrants to the Owner that all labor and materials shall be equal to industry standard, quality and workmanship, free from faults and defects and in conformance with the Contract Documents.

12.2 Guarantee Of Work. Contractor hereby guarantees all workmanship and materials for a period of two (2) years from the date of inspection and approval of the Work by the jurisdictions involved and/or utility districts having inspection and approval authority over the project improvements. Provided, however, that such guaranty shall continue in full force and effect until Owner's responsibility under Contractor's maintenance bonds shall have been satisfied.

SECTION 13. SAFETY AND LOSS PREVENTION Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All persons furnishing labor, materials or services in connection with the Project and all other persons who may be affected thereby.
2. The Project and all materials and equipment to be incorporated therein, whether in storage on or off the site, or under the care, custody or control of the Contractor or any of its contractors or subcontractors; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structure and utilities not designated for removal, relocation or replacement in the course of the construction. Any and all damage or loss to any property or person(s) and any and all damage or loss in any other manner arising out of or in connection with the project and/or the Work caused in whole or in part by Contractor, any Contractor or anyone for whose acts any of them may be liable, shall be remedied by the Contractor and the Contractor shall indemnify, defend and save Owner and Administrator harmless from and against any claims arising in connection therewith, except for damage or loss caused by or arising out of acts or omissions of the Owner, Administrator, their agents, assigns and/or employees.

SECTION 14. COMPLIANCE WITH LAWS AND REGULATIONS Contractor warrants to Owner that Contractor has complied and will comply with, at its own expense, all federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder, including, but not by way of limitation, the OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, as amended from time to time (OSHA) and the WASHINGTON INDUSTRIAL SAFETY HEALTH ACT, as amended from time to time (WISHA). The Contractor covenants and agrees that in the event any liability is assessed against the Contractor because of failure of Contractor to comply with all federal, state, and local laws and ordinances and all lawful order, rules, and regulations hereunder, then Contractor shall pay and indemnify Owner and Administrator for such amounts and the Owner may set off one hundred fifty percent (150%) of any such fines, assessments, penalties, or liability of any nature resulting from such violation against amount owing to the Contractor hereunder. Contractor further acknowledges that it has reviewed the Owner's safety program, rules and/or regulations and agrees to abide by all of Owner's rules and regulations.

Prior to commencement of Work, Contractor shall submit to Owner Contractor's Safety Program Manual, including Standard First Aid and Adult CPR certification card copies for all

C19-1 Shotwell, LLC
General Contractor Agreement

Contractor's agents and/or employees Working on the Project. Contractor warrants that all of its Contractors, agents, employees, and/or guests entering the Project premises shall comply with Contractor's safety program, rules and/or regulations, including the full-time use of OSHA approved safety equipment, head gear, footgear and clothing, as instituted by the Contractor's on-site superintendent/Project Manager. Contractor's failure to comply with any portion of such safety program, rules, and/or regulations may result in the immediate termination of this Agreement.

SECTION 15. COMPLIANCE WITH DISCRIMINATION LAWS Contractor agrees in connection with the performance of Work under this Agreement not to discriminate against any employee, applicant or client because of race, religion, creed, color or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, promotion, and transfer, recruitment, advertising, layoff or termination, raise of pay or other forms of compensation and selection for training, including apprenticeships. Contractor agrees to post hereafter, in conspicuous places available for employees and applicants for employment, notices to be provided by Contractor, to the extent one is required, setting forth the provisions of this nondiscrimination clause and Contractor's equal opportunity plan to the extent it is required by law.

SECTION 16. PRESERVATION OF MONUMENTS AND STAKES The Contractor shall carefully preserve all monuments, benchmarks, reference points and stakes. The Contractor shall be responsible for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance, so long as the Architect or surveyor follows the staking sequence requested by the Contractor. In the event that the stakes or marks placed by the Architect and/or surveyor are destroyed through carelessness on the part of the Contractor and that the destruction of these stakes or marks causes a delay in the Work, the Contractor shall have no claim for damages or extensions of time. In the case of any permanent monuments or bench marks which must, out of necessity, be removed or disturbed in the construction of the Work, the Contractor shall carefully protect and preserve the same until they can be properly referenced for relocation. The Contractor shall bear the cost of replacing monuments or benchmarks that have been moved or destroyed by the Contractor, its agents or employees. This includes the front lot stakes adjacent to the roadway, providing stakes are not in conflict with construction of improvements.

SECTION 17. INSURANCE REQUIREMENTS Contractor warrants to Owner, and will provide to Owner prior to commencement of work, a Certificate of Insurance for Public Liability, Premises/Operations, Bodily Injury/Property Damage, Broad Form Property Damage including On Going Completed Operations and Defense Costs, Products/Completed Operations for any work performed by or on its behalf (by subcontractors or temporary labor), Contractual Liability insuring the obligations assumed by Contractor in this Agreement, Explosions, Collapse and Underground Hazards, Personal Injury Liability, Employer's Liability aka Washington State Stop Gap, Auto Liability for all Owned, Non-Owned & Hired Autos and Worker's Compensation Insurance for Contractor and Contractor's employees in the minimum amounts set forth below, naming Owner and Owner as "Primary Additional Named Insured on a Non-Contributory Basis" on an ongoing basis and including defense costs in favor of the Owner with the appropriate forms CG2010 (Additional Insured), CG2404 (Waiver of Subrogation) and CG2503 (Per Project Aggregate) along with ACORD Form 25-S (Certificate of Liability Insurance). The insurance carrier for the Contractor (and their subcontractors) must have an A.M. Best Rating of A- or better and be listed as such on the certificate of insurance.

The minimum acceptable Primary Liability Limits are One Million Dollars (\$1,000,000.00) for Bodily Injury and Property Damage Liability – Per Occurrence and subject to separate Aggregate Limits of Two Million Dollars (\$2,000,000) for Products/Completed Operations and General Aggregate. The minimum acceptable Excess Liability Limits are One Million Dollars (\$1,000,000) Per Occurrence and One Million Dollars (\$1,000,000) Aggregate. No such insurance shall be cancelled without thirty (30) days prior written notice to

C19-1 Shotwell, LLC
General Contractor Agreement

the Owner. Contractor will be in breach of contract for failure to timely supply and maintain proper insurance at all times as warranted under this contract and evidenced by the certificate provided.

If Contractor hires subcontractors and/or temporary labor, all of the requirements of this Section 17 shall apply to subcontractors and/or temporary labor and Contractor shall maintain certificates naming Owner as additional insured for this Project. The Contractor understands that it is its responsibility to have such current certificates, as well as its active Washington State contractor's license, on file, and failure to do so may result, in addition to any other remedies available to Owner under this Agreement, in being removed from job-site and/or Owner withholding payment until proper and acceptable certificate is provided.

SECTION 18. PROTECTION OF PUBLIC AND PRIVATE UTILITIES It shall be the responsibility of the Contractor to avoid damage or disturbance to all existing utilities. The Contractor shall contact all utilities including, but not limited to, telephone, power, fiber optics, sewer, water, gas and cable TV for the purpose of identifying the correct locations prior to construction. In the event that the locator service errs in locating utilities, the Contractor has no liability or responsibility for the same and the time of performance shall be extended to accommodate any delays occasioned to the Contractor. It shall be the sole responsibility of the Contractor to prove that the locator service erred in locating the utilities. The Contractor shall also be responsible for locating all storm water utilities.

SECTION 19. OWNER'S OBLIGATIONS In addition to any other obligation arising under this Agreement, the Owner shall have the following obligations:

19.1 Owner's Responsibility To Furnish Data And Make Payment. Owner shall furnish the data required of Owner under the Contract Documents promptly and shall make payments to Contractor promptly after they are due as provided in Section 9.

19.2 Permits. The Owner shall acquire and furnish all permits required for Contractor to perform the Work. Permits shall be provided at Owner's expense, unless otherwise stated in the Scope of Work attached as Exhibit A.

SECTION 20. OWNER'S REMEDIES In addition to any other remedies available to the Owner at law or in equity upon the Contractor's default, the Owner shall have the following rights:

20.1 Owner's Right To Suspend Work. If at any time during construction, Owner shall reasonably determine that Work is not proceeding in accordance with the terms of the Contract Documents, and if Owner shall give written notice to Contractor specifying the particular deviation, deficiency or omission, Contractor shall immediately take such steps as shall be necessary to correct such deviation, deficiency or omission. Failure to comply with this provision may, at Owner's election, result in a suspension of Contractor's Work or termination of this Agreement under provisions of this Section 20.

20.2 Termination for Cause. If the Contractor is adjudged bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor, or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy act of applicable laws, or if it repeatedly fails to supply sufficient skilled workers or suitable materials or equipment, or if it repeatedly fails to make prompt payment to subcontractors for labor, materials or equipment, or if it substantially disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction over the Work, or if it substantially disregards the authority of the Architect or Administrator, or if it otherwise substantially violates any provision of the Contract Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and its surety, if applicable, a minimum of ten (10) days from delivery of a written notice to cure said default, terminate the

C19-1 Shotwell, LLC
General Contractor Agreement

services of the Contractor and take possession of the project and of all materials and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid by the Contractor. Such costs incurred by the Owner will be determined by the Architect and incorporated in a Change Order.

20.3 Termination without Cause. After ten (10) days from delivery of a written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In such case, the Contractor shall be paid for all Work performed according to the unit price and other compensation formulas set forth herein, subject to the provisions of this Contract Agreement.

20.4 Effect of Termination. Where the Contractor's services have been terminated by the Owner as described above, said termination shall not affect any right of the Owner against the Contractor that is then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.

SECTION 21. NOTICES. Any notices required or permitted hereunder shall be in writing and delivered either in person to the other party, or by fax, electronic mail or by United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the address set forth hereinafter, or to such other address as either party may designate in writing and deliver as herein provided:

OWNER:

C19-1 Shotwell, LLC
c/o Barclays North, Inc.
10515 20th Street SE, Suite 100
Everett, WA 98205
Attn: Scot Becraft

Phone: (425) 334-4040
Fax: (425) 334-5254

CONTRACTOR:

HOS Brothers Construction
P. O. Box 1788
Woodinville, WA 98072-1788
Attn: John Caunt

Phone: (425) 481-5569
Fax: (425) 485-6634

ADMINISTRATOR:

Barclays North, Inc.
10515 20th Street SE, Suite 100
Everett, WA 98205
Attn: Tony R. Kastens

Phone: (425) 334-4040
Fax: (425) 334-5254

SECTION 22. WAIVER No waiver by Owner of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Contractor of the same or any other provision. Owner's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Owner's consent to or approval of any subsequent act by Contractor. The acceptance of Work hereunder by Owner shall not be a waiver of any preceding breach by Contractor of any provision hereof of Owner knowledge of such preceding breach at the time of acceptance of the Work.

C19-1 Shotwell, LLC
General Contractor Agreement

SECTION 23. INDEMNIFICATION It shall be a condition precedent to this Agreement, and to any payment obligations by Owner under this Agreement, that Contractor execute and deliver to Owner an Indemnification and Hold Harmless Agreement in the form attached hereto as Exhibit K within ten (10) days after mutual execution of this Agreement.

SECTION 24. INDEPENDENT CONTRACTOR Contractor shall provide professional services directly to Owner on an independent contractor basis. Contractor shall not be an employee of Owner or Administrator. As an independent contractor, the Contractor shall be responsible for its own federal, state and local taxes, insurance, bonding, and other obligations of any kind relating to the Contractor's performance of services under this Agreement. Owner and Contractor agree that Contractor is providing professional services that are not "retail sales" as defined in RCW 82.04.050. In the event that Contractor is liable for retail sales tax on amounts paid to Contractor under this Agreement, Owner shall reimburse Contractor for such taxes and interest thereon, excluding penalties. The Contractor acknowledges the Contractor will not qualify for benefits which may be available if classified as an employee. In the event that the Internal Revenue Service (the "IRS") successfully asserts that the Contractor is not or was not an independent contractor for any period during the term of this Agreement and reclassifies the Contractor as an employee, then the Contractor agrees to complete, sign and deliver IRS Form 4669 (Employee Wage Statement) to Owner for any tax period affected. Owner shall then file the Form 4669 with the IRS (along with IRS Form 4670 "Request for Relief From Payment of Income Tax Withholding") to offset against Owner's withholding obligation. The Contractor shall, in addition, indemnify and hold Owner harmless from any additional taxes, interest and penalties that may be due from any such reclassification. In the event that any state or local taxing authority successfully asserts that the Contractor is not or was not an independent contractor for any period during the term of this Agreement and reclassifies the Contractor as an employee, then the Contractor shall indemnify and hold Owner harmless from any additional taxes, interest and penalties to such state or local taxing authority that may be due from any such reclassification. The obligations set forth under this Section shall survive the termination of this Agreement for any reason whatsoever.

SECTION 25. CONSTRUCTION DEBRIS Contractor shall be responsible for the removal from the project site, any and all construction debris generated by the Contractor in the performance of the Scope of Work described in Exhibit A. Removal of construction debris shall be at the sole expense of the Contractor and shall be invoiced on either a time and material basis under this Contract Agreement.

SECTION 26. CORRECTION NOTICES The Owner will inspect the performance of Work, Work product and/or materials provided by Contractor. Should the inspection reveal that the Contractor is not in compliance with the scope of Work and/or specifications, Owner may, at its sole discretion, issue to Contractor a written correction notice, a copy of which is attached hereto as Exhibit L. The Contractor shall take all action necessary to make the correction identified in the correction notice. The correction shall be completed within 24 hours of date of written correction notice unless otherwise stated on the correction notice. The procedure as set forth above shall not preclude the Owner from providing a verbal correction notice when the Owner, in its sole discretion, deems a verbal correction notice is appropriate.

SECTION 27. NOISE ORDINANCE Contractor and Contractor's agents and/or employees shall comply with noise control ordinance of the jurisdiction in which the project is located. Any violation of the noise control ordinance resulting in costs, fees and/or fines shall be at the sole cost and expense of the Contractor.

SECTION 28. RULES OF CONSTRUCTION Words of any gender used in this Agreement shall be held to include the other gender, any words in the singular shall be held to include the plural when the sense requires. The parties hereto have both participated in the drafting of this document and have had the full opportunity to consult independent legal counsel. Therefore, the rule of construction that a document drawn by one party shall be construed against that party in a case of ambiguity shall have no application herein.

C19-1 Shotwell, LLC
General Contractor Agreement

SECTION 29. CAPTIONS The captions and article numbers appearing in this Contract Agreement are inserted only as matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles of this contract agreement.

SECTION 30. ASSIGNMENT OF AGREEMENT No assignment by a party hereto of any rights under or interest in this Contract Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitations, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

SECTION 31. BINDING EFFECT Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

SECTION 32. ARBITRATION. In the event that a dispute or disagreement shall arise by and between the parties hereto in respect to any of the terms, conditions or covenants hereof as to the method or manner of performance or breach hereunder, then the same shall be subject to arbitration under the rules of the American Arbitration Association, and such arbitration shall take place in the City of Everett, County of Snohomish, State of Washington. In any such arbitration proceeding the prevailing party shall be entitled to its reasonable costs and attorney's fees incurred and at such time shall be included in any award.

SECTION 33. APPLICABLE LAW AND VENUE This Agreement shall be governed and construed in accordance with the law of the State of Washington and the venue of any dispute shall be in Snohomish County, State of Washington.

SECTION 34. FURTHER ASSURANCE The parties hereto agree to promptly execute and deliver any additional agreements or documents and to perform any other acts reasonably necessary to effectuate the purposes and intent of this Agreement. The parties hereto warrant they have all rights, authority and power to enter into this Agreement and bind themselves to the terms, conditions and covenants of this Agreement.

SECTION 35. COUNTERPARTS For the convenience of the parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

SECTION 36. CONTRACTOR'S REPRESENTATIONS. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor has familiarized itself with the nature and extent of the scope of Work, specifications, locality and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work to be performed and/or materials to be provided by the Contractor.
2. Contractor has carefully reviewed all visible physical conditions at the site or otherwise affecting cost, progress or performance.

SECTION 37. AUTHORITY If Contractor is a corporation, limited liability company or partnership, each individual executing this Contract on behalf of said entity represents and warrants that he/she is duly

**C19-1 Shotwell, LLC
General Contractor Agreement**

authorized to execute and deliver this Contract on behalf of said entity in accordance with a duly adopted resolution of the entity and that the Contract is binding upon said entity.

SECTION 38. CONTRACT DOCUMENTS. The Contract Documents consist of this Agreement and Exhibits thereto, and the Plans, Specifications, Reports, Permits and Approvals enumerated below:

- I. The Exhibits to this Agreement are as follows:

Description	Exhibit
Scope of Work / Price	A
Schedule of Values	A-1
Special Provisions and Specifications	B
Request for Extension of Contract Time	C
Construction Schedule	D
Statement of Working Days	E
Change Order	F
Back Charge	G
Contractor Information	H
Application for Payment	I
Lien Release	J
Indemnification and Hold Harmless Agreement	K
Contractor Correction Notice	L

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**C19-1 Shotwell, LLC
General Contractor Agreement**

3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Subcontractor. It does not include all governing jurisdictions' laws, ordinances, regulations, plans and specifications. It shall be the Subcontractor's responsibility to familiarize itself and to comply with the same. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Subcontractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

4. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the General Contractor and a sub-subcontractor or (2) between any persons or entities other than the General Contractor and Subcontractor.

5. The terms "Work" and "Scope of Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Subcontractor to fulfill the Subcontractor's obligations. The Work may constitute the whole or a part of the Project.

SECTION 39. ENTIRE AGREEMENT This Agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained and supersedes all prior negotiations, whether in writing, oral or implied and shall not be modified except in writing and executed by all parties hereto. In the event, any provision is deemed to be unenforceable; the remaining provisions shall remain in full force and effect.

SECTION 40. INTELLECTUAL PROPERTY. Ownership of all applicable copyrights, trade secrets, patents and other intellectual property rights in the Contract Documents, and all other Work product and data, shall be vested in Owner, and the Contractor shall not permit their use in any way which would be detrimental to Owner. Any confidential information disclosed by Owner to the Contractor shall be held in strict confidence and shall not be disclosed to any other party whatsoever. Confidential Information shall include, but not be limited to: proprietary technical data, trade secrets, construction processes, know-how, financial data, environmental analyses, forecasts, plans, and contractor, supplier and customer lists. This obligation of confidentiality shall survive the termination of this Agreement for any reason, and the Contractor further agrees to surrender all Confidential Information to Owner upon request and in any event upon termination of this Agreement, and shall not retain copies or memorandum of said information in any form whatsoever.

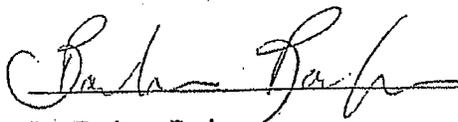
IN WITNESS WHEREOF, the parties hereto have signed this Agreement in duplicate. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by the Contractor's representative on their behalf.

OWNER:
C19-1 Shotwell, LLC



By: Scot Becraft
Its: Authorized Agent
Date: 4-27-05

CONTRACTOR:
HOS Bros. Construction, Inc.



By: Barbara Rodgers
Its: Project Manager
Date: 4/27/05

EXHIBIT A
SCOPE OF WORK / PRICE

TO: C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA 98205

FROM: HOS Bros. Construction, Inc.
P. O. Box 1788
Woodinville, WA 98072-1788

PROJECT NAME & NUMBER: Canyon Clock Center - C19-1

DATE: 3/11/2005

CONSTRUCTION TRADE: Earthwork and Grading

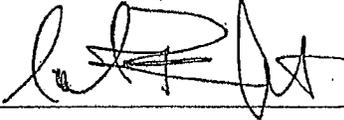
CONTRACT PRICE: See attached Exhibit A-1, which includes the Grading & Utility Budget dated April 15, 2005 and the Time and Materials Rate Sheet effective January 1, 2005.

SCOPE OF WORK: All Work to be performed shall be pursuant to the Contract Documents and as directed by Owner or Administrator. Contractor acknowledges that it has reviewed the Contract Documents and understands that all work to be performed shall be authorized by the Owner or Administrator prior to commencement of the Work. Contractor further acknowledges that the Work will be performed in parts, and that not all Work pursuant to Exhibit A-1 will be performed. Unless specified in writing to the contrary, the price to be paid to the Contractor shall include all necessary labor, equipment, machinery, tools, fasteners, scaffolding, man-lifts, fork-lifts, safety protection, etc., as required to perform the stated scope of Work in accordance with this Agreement.

In the event of a conflict between the provisions of this Exhibit A or the provisions of Exhibit A-1 and the provisions of the Agreement, the provisions of the Agreement shall be deemed to control.

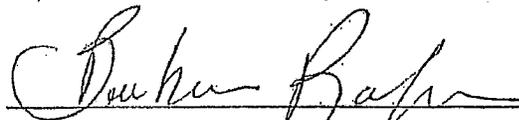
SPECIFIC EXCLUSIONS: Any Work not authorized by Owner or Administrator. All import materials to be supplied by Randles Sand & Gravel shall be paid for separately by Owner pursuant to a separate Materials Contract between Owner and Randles Sand & Gravel.

OWNER:
C19-1 Shotwell, LLC



By: Scot Becraft
Its: Authorized Agent
Date: 4-27-05

CONTRACTOR:
HOS Bros. Construction, Inc.



By: ~~John Caunt~~ BARBARA RODGERS
Its: President, PROJECT MANAGER
Date: 4/27/05

C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT A-1
BID SHEET PRICES

(SEE ATTACHED)

CANYON CLOCK PROJECT
GRADING, & UTILITY BUDGET (revised 04-15-05)
HOS BROS. CONSTRUCTION, INC.

EXHIBIT A-1

Scope 1 of 7
 4/27/2005

MASS GRADING BUDGET

	QTY	UNIT			TOTAL
GENERAL CONDITIONS					\$125,955
Mobilization	1	LS	\$33,000.00	\$33,000	
Project Manager	19	WKS	\$2,800.00	\$53,200	
- Based on 60% of the construction duration (estimated at 7 months)					
Project Engineer	12	WKS	\$1,800.00	\$21,600	
- Based on 40% of the construction duration (estimated at 7 months)					
Field Office, Storage and Office Supplies	7	MO	\$965.00	\$6,755	
Safety	19	WKS	\$600.00	\$11,400	
TESC (no plan provided)					\$172,280
Construction Entrance	2	EA	\$3,500.00	\$7,000	
Temp Sediment Pond	1	EA	\$10,000.00	\$10,000	
Silt Fence (at property line)	7,500	LF	\$5.00	\$37,500	
Temporary Swales	10,000	LF	\$1.50	\$15,000	
Rock Check Dams	100	EA	\$180.00	\$18,000	
CB Protection	202	EA	\$90.00	\$18,180	
Remove TESC	1	LS	\$10,000	\$10,000	
ATB Wheel Wash	1	EA	\$15,000	\$15,000	
Hydroseed	52	ACRE	\$800.00	\$41,600	
SITE PREPARATION					\$84,000
Clear & Grub Trees & Brush (estimated, no plans)	1	LS	\$25,000.00	\$25,000	
Hydro-axe existing vegetation	26	ACRE	\$1,500.00	\$39,000	
- Material to be incorporated into fills					
- Estimated to cover 50% of total site area					
Misc. site surface/building demo	1	LS	\$20,000.00	\$20,000	
MASS GRADING - PHASE I					\$708,013
Strip Subgrade Prior to Placing New Fill	21,247	TCY	\$2.75	\$58,429	
- Strippings to be temporarily stockpiled in Phase II area					
Cut Phase I to Phase II Preload	35,968	TCY	\$2.75	\$98,912	
- Hos to preload Lot #4 pad and parking area					
- Hos estimates a minimum preload height of 9' (measured from existing elevation) over the pad area					
- Hos estimates a preload height of 8' to 10' over the parking lot					
Place and Compact Randles Fill	497,686	TON	\$0.80	\$398,149	
- Includes approximately 10,460 tons of fill to be placed at Lot #4 prior to preloading the pad					
- Does not include Import cost (see heading below, Import Material from Randles)					
Furnish & Install Fabric for Haul Roads	11,340	SY	\$1.10	\$12,474	
- Includes fabric under footprint of the main loop road					
- Includes a 600' x 32' haul road into the Phase II area					
Import, Place & Compact 18" Depth Haul Road	10,773	TON	\$13.00	\$140,049	
- Haul to be built with 2" x 4" quarry spalls with option of a cap of CSBC					
- Includes footprint of main loop road					
- Includes a 600' x 32' haul road into the Phase II area (to facilitate stockpiling of Phase I excess cut material and infiltration excavation)					
OVER-EXCAVATION - PHASE I					\$675,931
Over-Excavation of Lot #1 Pad to Phase II Stockpile	8,782	TCY	\$3.00	\$26,346	
- 13' below FF elevation (EL. 372.0)					
- Does not include aeration					
Place and Compact Randles Fill to Lot #1 Pad	12,836	TON	\$1.00	\$12,836	
Over-Excavation of Lot #2 Pad to Phase II Stockpile	10,365	TCY	\$3.00	\$31,095	
- 13' below FF elevation (EL. 340.0)					
- Does not include aeration					
Place and Compact Randles Fill to Lot #2 Pad	15,150	TON	\$1.00	\$15,150	
Over-Excavation of Lot #1 Parking Lot to Phase II Stockpile	22,115	TCY	\$3.00	\$66,345	
- 3' below subgrade elevation (EL. varies)					
- Does not include aeration					

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CANYON CLOCK PROJECT

Scope 2 of 7
4/27/2005

GRADING, & UTILITY BUDGET (revised 04-15-05)

IOS BROS. CONSTRUCTION, INC.

Place and Compact Randles Fill to Lot #1 Parking Lot	32,324	TON	\$1.00	\$32,324
Over-Excavation of Lot #2 Parking Lot to Phase II Stockpile - 3' below subgrade elevation (EL. varies) - Does not include aeration	3,698	TCY	\$3.00	\$11,094
Place and Compact Randles Fill to Lot #2 Parking Lot	5,400	TON	\$1.00	\$5,400
Over-Excavation of Main Loop Road to Phase II Stockpile - 5' below subgrade elevation in upper portion (approx. 400 LF of roadway, EL. varies) - 3' below subgrade elevation in lower portion (approx. 320 LF of roadway, EL. varies) based on original pit floor elevation - Does not include aeration	5,680	TCY	\$3.00	\$17,040
Place and Compact Randles Fill to Main Loop Road	8,301	TON	\$1.00	\$8,301
Over - Ex Slope @ Lot 4 & 5 and Stockpile 400 LF X 120 LF X 10' Deep = 70,000 TCY Total - Less 20,000 Already in Budget	50,000	TCY	\$3.00	\$150,000
Aeration of Fill Place in Stockpile From Lot 4 & 5 Over -Ex	37,000	BCY	\$2.50	\$92,500
Place Over Ex Stockpiled Material in Phase 2 Fills	50,000	TCY	\$2.75	\$137,500
Place Randle's Fill in Over Ex @ Slopes Between Lots 4 & 5	70,000	TON	\$1.00	\$70,000

PHASE I SITE WALL SUPPORT

Over-ex Phase I - for wall geo-grid and foundation rock and haul to PH II stockpile (assumed 18' width for geo-grid, and 6" depth for rock)	4,025	TCY	\$3.00	\$12,075
Over-ex Phase I wall ftgs to ensure min. of 5' of fill below wall and haul to PH II stockpile	7,425	TCY	\$4.00	\$29,700
Backfill wall ftg over-ex with Randles fill	10,846	TON	\$2.75	\$29,827
Furnish and Install orange safety fence at top tier of walls	1,800	LF	\$2.50	\$4,500
Install 2' wide rock drain, behind MSE wall (trench in Randles)	1,000	LF	\$34.00	\$34,000
Install 2' wide rock drain, behind MSE wall (trench in native) (note: this drain is located 18'-20' behind wall, and is in addition to the wall drain behind the wall panels)	600	LF	\$43.00	\$25,800
Import crushed rock for wall bedding	1,094	TON	\$9.90	\$10,831
Import crushed rock for Key West drain behind wall	9,572	TON	\$9.90	\$94,763

Site Wall Backfill Support

- Includes supply of backfill from onsite stockpile - Includes Initial foundation prep - Includes the import of drain rock to be placed by Key West for 1' chimney drain behind wall - Does not include import of backfill	25,509	SF	\$4.00	\$102,036
Premium to Place Fill behind Retail Center Building Wall - Does not include import of backfill	8,133	SF	\$6.00	\$48,798

EXPORT BUDGET FOR UNSUITABLE MATERIAL

MASS GRADING - PHASE II

Strip Existing Pond to Phase II Landscape Fill - Quantity based on a 6" strip depth (geo-tech to confirm)	1,967	TCY	\$4.00	\$7,868
Strip Train Station Pad Area to Phase II Landscape fills - Based on revised grades over-excavation not required, Hos budgeted a 4" strip depth (geo-tech to confirm)	257	TCY	\$4.00	\$1,028
Strip Wooded areas to Phase II Landscape Fills - Based on new information provided, Hos budgeted a 12" strip depth within the limits of "wooded area" as shown on latest drawings - Geo-tech to confirm	3,150	TCY	\$4.00	\$12,600
Sort Existing Stockpiles - 28,638 from existing stockpiles (estimated from stockpile #3 and #5 plus an arbitrary 4000 TCY from other various sources) - 1526 TCY from design cut (5% of total site cut) - 3000 TCY (estimated bark chips) - Estimated quantity (to design subgrade), geo-tech to confirm based on revised grades	33,164	TCY	\$2.25	\$74,619
Cut to Fill (native suitable cut material)	41,553	TCY	\$2.75	\$114,271
Cut Phase I Strippings to Phase II Landscape Fills	21,747	TCY	\$4.00	\$86,988
Cut Phase I, Lot #4, Preload Material to Phase II Fills	35,968	TCY	\$2.75	\$98,912
Cut Phase I Over-ex Material to Phase II Fills	62,090	TCY	\$2.75	\$170,748

\$392,329

\$15,000

\$763,239

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CANYON CLOCK PROJECT

Scope 3 of 7
4/27/2005

GRADING, & UTILITY BUDGET (revised 04-15-05)

IOS BROS. CONSTRUCTION, INC.

Cut to Landscape Fills Sorted Unsuitable Material from Stockpiles	19,575	TCY	\$4.00	\$78,300
Cut Unsuitable Infiltration Cut to Landscape Fills	1,452	TCY	\$4.00	\$5,808
Cut Excess Infiltration Spoils To Phase II Fills	1,944	TCY	\$2.75	\$5,346
Cut to Temporary Stockpile (Native Backfill for Infiltration)	6,080	TCY	\$2.75	\$16,720
Backfill Infiltration From Stockpile	6,080	TCY	\$4.00	\$24,320
Cut Phase II Unsuitable Over-ex to Landscape Fills	9,742	TCY	\$4.00	\$38,968
Cut Working Stockpile to Site Fills	9,725	TCY	\$2.75	\$26,744

Above quantities include a shortage of site fills of approx 20,000 TCY which previously had been part of the site balance utilizing some of the working stockpile (total working stockpile was 50,000 BCY = 65,000 TCY). See added item below under Randles import for budget of an additional 20,000 TCY (30,000 TON) to replace the working stockpile source.

OVER-EXCAVATION - PHASE II

Over-Excavate and Re-Compact of Lot #7 Pad	15,300	TCY	\$4.00	\$61,200
- Excavate to native pit bottom (EL. 332.00') - Geo-tech to Confirm				
- Does not include aeration				
- 10% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact of Lot #8 Pad	8,150	TCY	\$4.00	\$32,600
- 8' below FF elevation (EL. 334.50) - Geo-tech to confirm				
- Does not include aeration				
- 5% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact of Lot #9 Pad	15,350	TCY	\$4.00	\$61,400
- Excavated to EL 337.00 - May be conservative based on new grades, geo-tech to confirm				
- Does not include aeration				
- 5% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact of Lot #10 Pad	1,520	TCY	\$4.00	\$6,080
- Excavated to EL 340.5 based on new grades, geo-tech to confirm				
- Does not include aeration				
- 5% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact of Lot #4 Pad	8,135	TCY	\$4.00	\$32,540
- Over-ex to an elevation of 6.5' below FF based on the pre-load scenario				
- Does not include aeration				
- 5% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact Lot #4 Parking Lot	5,110	TCY	\$4.00	\$20,440
- Over-ex to an elevation of 1.5' below finished grade based on the pre-load scenario				
- Does not include aeration				
- 5% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact of Lot #5 Pad	14,985	TCY	\$6.00	\$89,910
- Over-ex to elevation 340 based on approximate lower elevation of unsuitable material				
- Does not include aeration				
- Includes additional cost to sort remove and replace with native approximately 25% of the material				
- 25% of material assumed unsuitable and placed in Phase II landscape fills				
Over-Excavate and Re-Compact of Phase II Parking Lots	45,262	TCY	\$5.00	\$226,310
- Based on a 1.5' average over- excavation over entire parking lot area including interior landscape islands				
- Includes additional cost to sort remove and replace with native approximately 5% of the material				
- 5% of material assumed unsuitable and placed in Phase II landscape fills				
Place and compact fill from working stockpile	9,742	TCY	\$2.75	\$26,791
- Replace unsuitable excavation materials with material from working stockpile.				

\$557,271

\$17,164

PHASE II SITE WALL SUPPORT

Over-ex & Re-compact Phase II wall ftgs to ensure min. of 5' of fill below wall	905	TCY	\$5.00	\$4,525
Import crushed rock for wall bedding	86	TON	\$9.90	\$851
Site Wall Backfill Support	2,947	SF	\$4.00	\$11,788
- Includes supply of backfill from onsite stockpile				
- Includes initial foundation prep				
- Does not include import of backfill				

CANYON CLOCK PROJECT

GRADING, & UTILITY BUDGET (revised 04-15-05)

Scope 4 of 7
4/27/2005

HOS BROS. CONSTRUCTION, INC.

AERATION OF FILLS DURING PHASE II CONSTRUCTION

Aeration of stockpiled Material from Phase I	75,428	BCY	\$2.50	\$188,570	\$402,878
- 27,667 BCY from Lot 4 Preload, 47,761 BCY from Phase I over-ex					
Aeration of site cuts and over-ex cuts during Phase II	85,723	BCY	\$2.50	\$214,308	
- Includes 47,587 BCY from Over-ex, 38,136 BCY from site & Infiltration cut					
- <u>Does not</u> include aeration of the material from the working stockpile					

TOTAL MASS GRADING BUDGET (HOS BROS.) \$3,914,059

IMPORT OF SITE FILL

	QTY	UNIT			TOTAL
PHASE I SITE FILLS - IMPORT MATERIAL FROM RANDES (contracted direct with BNI)					\$1,045,141
RANDES IMPORT	497,686	TON	\$2.10	\$1,045,141	
PHASE I OVER-EX - IMPORT MATERIAL FROM RANDES (contracted direct with BNI)					\$155,423
RANDES IMPORT	74,011	TON	\$2.10	\$155,423	
* PHASE I WALL OVER-EX - IMPORT MATERIAL FROM RANDES (contracted direct with BNI)					\$182,242
RANDES IMPORT ADDING 70,000 TON FOR LOY 4:2.5 SLOPE EX	86,782	TON	\$2.10	\$182,242	
FILL SHORTAGE IN PHASE 2 TO COMPLETE DESIGN GRADES					\$63,000
RANDES IMPORT	30,000	TON	\$2.10	\$63,000	

TOTAL SITE FILL IMPORT BUDGET (RANDES) \$1,445,806

SITE UTILITIES AND FINE GRADING:

	QTY	UNIT			TOTAL
GENERAL CONDITIONS					\$134,520
Mobilization	1	LS	\$37,000.00	\$37,000	
Project Manager	19	WKS	\$2,800.00	\$53,200	
- Based on 60% of the construction duration (estimated at 8 months)					
Project Engineer	14	WKS	\$1,800.00	\$25,200	
- Based on 40% of the construction duration (estimated at 8 months)					
Field Office, Storage and Office Supplies	8	MO	\$965.00	\$7,720	
Safety	19	WKS	\$600.00	\$11,400	

SITE GRADING					\$374,268
Finegrade for Paving	99,592	SY	\$1.50	\$149,388	
Finegrade for Building Pads (10 ea) +/- .2'	33,491	SY	\$1.25	\$41,864	
Finegrade for Site Sidewalks	9,503	SY	\$4.00	\$38,012	
Finegrade Perimeter Building Sidewalks	12,120	SY	\$5.00	\$60,600	
Finegrade Planter Islands	14,078	SY	\$2.00	\$28,156	
Finegrade for Landscape	74,997	SY	\$0.75	\$56,248	

STORM DRAINAGE					\$1,141,424
Type I CB's	156	EA	\$950	\$148,200	
TY II CB'S - 48"	42	EA	\$2,500	\$105,000	
- Assumed 8' average depth rim to Invert					
TY II CB'S - 54"	2	EA	\$5,200	\$10,400	
- Assumed 8' average depth rim to Invert					
TY II CB'S - 72"	2	EA	\$7,100	\$14,200	
- Assumed 12' average depth rim to Invert					
10" PVC SD	84	LF	\$24	\$2,016	
16" DIP (CL 50) SD	72	LF	\$40	\$2,880	
12" ADS SD	12,826	LF	\$23.00	\$294,998	
18" ADS SD	3,140	LF	\$32.00	\$100,480	
24" ADS SD	710	LF	\$45.00	\$31,950	
30" ADS SD	220	LF	\$70.00	\$15,400	

Handwritten initials: SF BR

CANYON CLOCK PROJECT

Scope 5 of 7
4/27/2005

GRADING, & UTILITY BUDGET (revised 04-15-05)

OS BROS. CONSTRUCTION, INC.

Water Quality Vaults	3	EA	\$100,000.00	\$300,000
- Size unknown				
Mud, Clean, & Adjust	1	LS	\$115,900.00	\$115,900

CONSTRUCT STORM INFILTRATION

Finegrade Subgrade	2,614	SY	\$2.00	\$5,228
Import and Place Infiltration Rock	4,936	TON	\$10.00	\$49,360
- 140'x1155'x3', 55'x35'x3', 110'x50'x3'				
Fabric Wrap Infiltration Bed	6,625	SY	\$1.10	\$7,288
CB TY II-48"	4	EA	\$4,500.00	\$18,000
24" Perf. ADS SD	160	LF	\$36.50	\$5,840
12" Perf. ADS SD	1,120	LF	\$16.00	\$17,920
Clean-outs	10	EA	\$500.00	\$5,000
Mud/Clean/Adjust	1	LS	\$5,000.00	\$5,000

\$113,636

WATER

Connect to Existing Water Main	2	EA	\$5,000.00	\$10,000
- Existing main size not provided				
- Actual point of connection unknown (assumed stub provided onsite by others)				
12" DIP Main with Fittings	1,870	LF	\$48.00	\$89,760
- Fitting design not provided				
8" DIP Main with Fittings	7,879	LF	\$35.00	\$275,765
- Fitting design not provided				
6" DIP Hydrant Lateral	1,030	EA	\$26.00	\$26,780
FHA	23	EA	\$4,100.00	\$94,300
Flush, Test, & Adjust	1	LS	\$45,000.00	\$45,000
Temporary Stubs/Phase Connections	5	EA	\$5,000.00	\$25,000
- Assumed 5 temporary stubs would be required for phasing				

\$566,605

SEWER (SS main size not provided)

Connect to Existing Onsite Stub	1	EA	\$1,200.00	\$1,200
- Actual point of connection not clearly shown (assumed stub provided onsite by others)				
Connect to Existing SSMH	1	EA	\$2,500.00	\$2,500
- Actual point of connection not shown				
- Assumed required based on previous plan				
SSMH - with G/U Liners	16	EA	\$3,300.00	\$52,800
- Assumed depth not to exceed 8'				
8" SS PVC SDR 35	1,290	LF	\$26.00	\$33,540
12" SS PVC SDR 35	1,680	LF	\$30.00	\$50,400
12" SS DIP CL 52 (sewer safe DIP)	483	LF	\$58.00	\$28,014
6" SS Side Laterals SDR 35	1,640	LF	\$24.00	\$39,360
6" Clean outs	15	EA	\$500.00	\$7,500
Flush, Test, & Adjust	1	LS	\$22,250.00	\$22,250

\$658,427

SELECT TRENCH BACKFILL - UNSCREENED GRAVEL BASE

ESTIMATED TRENCH BACKFILL QUANTITIES (Infrastructure Storm, Sewer and Water only)				
- Storm	19,610	TON	\$11.25	\$220,613
- Sewer	5,200	TON	\$11.25	\$58,500
- Water	12,600	TON	\$11.25	\$141,750

\$420,863

TOTAL SITE UTILITY AND FINE GRADING BUDGET

\$3,409,741

* New Items

** Changes to Existing Items

CANYON CLOCK PROJECT
GRADING, & UTILITY BUDGET (revised 04-15-05)
HOS BROS. CONSTRUCTION, INC.

Scope 6 of 7
 4/27/2005

ADDITIONAL PRICING

1 Finegrade for Curb and Gutter	LF	\$2.00
2 Finegrade for Vertical Curbs	LF	\$5.00
3 Export unsuitable fill material - Assumed to be organic in nature and contain no construction or garbage debris	TCY	\$15.00
4 Excavate and backfill Primary Common Trench - Based on 5' wide trench 4' depth with 1.5' of sand shading	LF	\$18.00
5 Excavate and backfill Secondary Common Trench - Based on 5' wide trench 4' depth with 1.5' of sand shading	LF	\$24.00
6 Excavate and Back Fill Dry Utility Vaults	EA	\$1,500.00
7 6" PVC SDR 35 Roof Drain Collector or Footing Drain Tight Line	LF	\$14.00
8 6" Perf PVC SDR 35 Footing Drain - Includes pea-gravel and fabric wrap	LF	\$10.00
9 Import, Place and Compact 5/8 CSTC at Sidewalks	TON	\$22.00
10 Import, Place and Compact Capillary Fill - Based on providing 1/2" x 1/4" Clean Crushed Rock	TON	\$26.00
11 Select trench backfill - Unscreened Gravel Base - Does not include offsite export of spoils - Includes provisions for stockpiling Bantles Import - Includes provisions for placing spoils in onsite fills - Includes provisions for handling material from onsite stockpile	TON	\$11.25

QUALIFICATIONS

General

- 1 Utility scope based on current utility rendering drawings received on 04-14-05. Earthwork quantities reflect revised Topo information received and the revised grading plan, CAD file received 02-22-05.
- 2 Hos Bros. recommends BNI carry a 10% to 15% contingency on the bottom line for unpredictable material and fuel increases.
- 3 Offsite grading and utility work is not part of this proposal (no plans provided).
- 4 See attached exclusion sheet for further information.

TESC, Demo, & Grading

- 1 Pumping or treating of TESC water is not included.
- 2 A clearing, demolition or TESC plan was not provided.
- 3 The mass grading budget includes provisions for cut, load and placing of an estimated 50,000 BCY of stockpiled material from the proposed Canyon Road widening project. Per the current design 14,973 BCY can be utilized, the balance needs a home.
- 4 Based on the current information provided the site will generate an excess cut of 35,027 BCY (not including utility spoils).
- 5 Subgrade elevations established as follows:
Building Pads - 12"

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CANYON CLOCK PROJECT

Scope 7 of 7
4/27/2005

ERADING, & UTILITY BUDGET (revised 04-15-05)

HOS BROS. CONSTRUCTION, INC.

- Standard Paving Areas - 10"
- Main loop Road thru Phase I and Phase II - 12.5"
- Landscape Areas - 12"
- Sidewalk/ Concrete Areas - 6"

- 6 Final building pad prep is not part of this budget proposal.
- 7 Based on current assumptions, this proposal has included the placing of unsuitable (or organic material) in site landscape fills.
- 8 Proposal includes a aeration budget for site cut/stockpiled material to be placed during phase II. This aeration budget does not include provisions for aerating material to be placed in landscape fills.

Utilities

- 1 Budget based on native backfill for all utility trenches.
- 2 Budget includes main line (Infrastructure) utilities only. Building services (fire, domestic and FDC lines) are excluded.
- 3 Budget does not include any dewatering over and above the use of 2 - 3" trash pumps for utility installation.
- 4 Hos excluded clean-outs (as shown) for storm main lines. Hos included additional TY I CB's on main line runs where the plans showed a bend (bends and clean-outs on main lines are not typical for construction in this area). Design should be confirmed with engineer and local jurisdiction.
- 5 Hos used historical pricing for water line fittings (fittings where not shown on the conceptual plan).
- 6 Fire lines, FDC's, domestic services and irrigation services are not part of this proposal.
- 7 Roof drain collectors, roof drain tight lines, footing drains, and footing drain tight lines are not part of this budget.
- 8 Side sewer laterals to be capped below grade and located within 5' of the building envelope.
- 9 Provisions for shallow sewer lines are not included with this proposal (information not provided).
- 0 Assumed 1 raise of iron

Storm Infiltration

- 1 Pricing based on constructing three separate infiltration beds. Per the engineer, beds to measure 140'x115', 55'x35', and 110'x50'. All beds to be 3' in height and buried 10' below design grades.
- 2 Price includes providing 12" Perf pipe grid on approximately 32' Centers.
- 3 Price includes a 24" Perf ADS header pipe with 2(ea) TY II 48" CB structures at either end of the header pipe.
- 4 Price based on the bottom of infiltration bed being 10' below designed grade.
- 5 All cut to be placed in site fills. Hos to import and place 6" minus drain rock in the bottom 10' of the excavation. Above this zone Hos to place Randles supplied fill.
- 6 No design was provided. Dimension, depth, and drain rock specification provided via phone call conversation with Alpha Engineers (Albert Castaneda). Pipe gallery design by Hos.
- 7 Due to the unique material specification (and quantity required) for the infiltration bed backfill, Randles has quoted a material price based on furnishing the material during the Winter months of 2004/2005. Therefore the infiltration budget provided above is based on installing the system during the Winter months of 2004/2005. If this is not possible an added \$2.50/Ton for double handling the material should be budgeted.

EXHIBIT A-1 T&M RATES

Canyon Clock Project

HOS BROS. CONSTRUCTION, INC.

Barclay's North, Inc.

P.O. Box 1788

Project

1438

Fredrickson, WA

Woodinville, WA 98072

TIME AND MATERIALS RATE SHEET

RATES EFFECTIVE JANUARY 1, 2005

ITEM #		HOURLY RATE	10% DISCOUNT
1	SOLO TRUCK	\$ 78.00	
2	TRUCK & TRAILER	95.00	
3	TWO AXLE 35 TON LOWBOY	120.00	
4	EIGHT AXLE 70 TON LOWBOY	265.00	
5	WATER TRUCK 3400 GALLON	120.00	
6	WATER TRUCK 7500 GALLON (INCLUDES LOADING FACILITY)	215.00	
7	35 TON ARTICULATED DIRT WAGON	155.00	
8	30 TON ARTICULATED DIRT WAGON	130.00	
9	MOBILE STREET SWEEPER	115.00	
10	KOMATSU 750 EXCAVATOR	305.00	274.00
11	KOMATSU 600 EXCAVATOR	268.00	240.00
12	KOMATSU 400 OR CAT 235 2-1/2 CY EXCAVATOR	235.00	212.00
13	KOMATSU 300 2 CY EXCAVATOR/308 EXCAVATOR	210.00	190.00
14	HITACHI 07 OR 083 EXCAVATOR WITH HOE PAC	178.00	160.00
15	HITACHI 07, 083 OR KOMATSU 200 OR CAT 215 1-1/2 CY EXCAVATOR	170.00	153.00
16	KOMATSU 045 EXCAVATOR	115.00	104.00
17	KOM 120 W/THUMB	141.00	126.00
18	KOMATSU 138 EXCAVATOR	152.00	137.00
19	CASE 580 OR CAT 416 BACKHOE	90.00	80.00
20	CAT 14 GRADER OR CAT 140 GRADER	131.00	118.00
21	CAT D10R WITH RIPPER	396.00	350.00
22	CAT D-9	275.00	245.00
23	CAT D-8 WITH RIPPER	238.00	215.00
24	CAT D-7 WIDE TRACK	210.00	189.00
25	CAT D-6 OR KOMATSU D-65P WIDE TRACK DOZER	181.00	162.00
26	CAT D-6 OR KOMATSU D-65 CONVENTIONAL WITH RIPPER	163.00	146.00
27	CAT D-5 DOZER	136.00	123.00
28	HYDRAULIC BREAKER	350.00	315.00
29	KOMATSU D-31 WIDE TRACK DOZER	128.00	113.00
30	CAT D-4, IH TD-8, KOMATSU D-37 OR D-41 DOZER	115.00	104.00
31	CAT D-3, IH TD-7, JD 450 OR CASE 450 DOZER	110.00	98.00
32	KOM 450 OR TEREX 72-61 LOADER	162.00	146.00
33	KOM 380 LOADER	150.00	135.00
34	CAT 950, 936, OR KOM 320 2-1/2 CY WHEEL LOADER	142.00	128.00
35	RAYGO 410, BM 213, IR SP-56, 850 HYSTER, BOMAG 217 COMPACTOR	173.00	155.00
36	RAYGO 220 COMPACTOR	110.00	99.00
37	SUPERVISOR AND PICKUP	88.00	
38	PROJECT MANAGER	90.00	
39	PROJECT ENGINEER	55.00	
40	PROJECT ACCOUNTANT	38.00	
41	OPERATOR ONLY	59.50	
42	DRIVER STAND-BY	57.15	
43	LABORER ONLY	52.00	
44	OPERATOR OVERTIME PREMIUM	28.65	
45	DRIVER OVERTIME PREMIUM	28.10	
46	LABORER OVERTIME PREMIUM	25.25	
47	FLATBED UTILITY PIPE TRUCK	21.00	

NOTE: ALL RATES FOR EQUIPMENT INCLUDE OPERATOR, F.O.G. AND OH&P

SP 4-27-05
BR

HOS 000078

C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT B
SPECIAL PROVISIONS AND SPECIFICATIONS

- 1-01 Deleted.
- 1-02 All Work within the right-of-ways shall be in conformance with the governing jurisdictions' laws, ordinances, regulations, plans and specifications and the Contract Documents.
- 1-03 The Contractor shall be responsible for maintaining traffic flow in conformance with Manual of Uniform Traffic Control Devices, latest edition, of Washington Department of Transportation standards and plan specifications and Contract Documents. This shall include any and all traffic construction signage in conjunction with activities in public right-of-way.
- 1-04 Deleted.
- 1-05 Deleted.
- 1-06 Deleted.
- 1-07 Deleted.
- 1-08 Any materials not specifically spelled out within the unit items and prices shall be authorized only upon written request by the Contractor and consent of the Owner, the Administrator or their respective representatives and will be paid in accordance with the payment provisions of the Contract Agreement.
- 1-09 The Owner and the Administrator reserve all rights to delete any item from the Contract bid items.
- 1-10 All grading shall be in conformance with the requirements as noted on the grading plan, or as directed by the Owner, the Administrator or their respective representatives to achieve building pads structurally stable to meet requirements for the construction of foundations. All filling onsite shall be to the recommendation and direction of the geotechnical engineer. Cost of the geotechnical engineer and testing shall be at the Owner's expense.
- 1-11 All unsuitable material shall be graded on site as directed by the Owner, the Administrator or their respective representatives and shall be incidental to the grading unit price of the Contract Agreement. There shall not be, unless otherwise directed by Owner, the Administrator or their respective representatives and/or representative in writing, more than 1 foot of unsuitable topsoil placed on any building lot.
- 1-12 Deleted.
- 1-13 The Contractor shall fully comply with the notification requirements of the appropriate utility companies involved with this project.
- 1-14 The Contractor shall submit a truck route plan to the appropriate regulatory agencies and Governing Jurisdictions for approval prior to removal of any excavated material, or other debris from the site.
- 1-15 The Contractor shall provide on a weekly basis, daily progress reports. These reports may be faxed, or hand delivered to the Owner, the Administrator or their respective representatives. The report received shall be for the previous Workweek.
- 1-16 No trespassing signs will be posted prior to any site preparation, preferably prior to mobilization of equipment to the site, in a manner in which any and all persons, or people on or near the site can readily observe so that safety is observed.

HOS 000079

C19-1 Shotwell, LLC
General Contractor Agreement

- 1-16 No trespassing signs will be posted prior to any site preparation, preferably prior to mobilization of equipment to the site, in a manner in which any and all persons, or people on or near the site can readily observe so that safety is observed.

- 1-17 Contractor shall provide Owner and Administrator with weekly statement of Working days on the form provided.

- 1-18 Deleted.

- 1-19 Deleted.

- 1-20 The Contractor shall be responsible for the proper maintenance, as determined by the Owner, the Administrator or their respective representatives, of the construction entrances and erosion control.

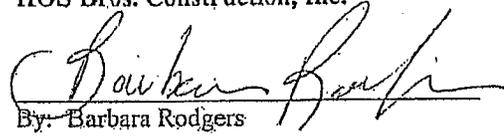
- 1-21 Contractor shall be responsible for street cleaning and dust control.

- 1-22 Contractor shall comply within the governing jurisdictions' noise ordinance and hours of operation.

- 1-23 Deleted.

Contractor:

HOS Bros. Construction, Inc.



By: Barbara Rodgers

Its: Project Manager

Date: 4/27/05

HOS 000080

C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT C

REQUEST FOR EXTENSION OF CONTRACT TIME

Project Name: Canyon Clock Center

Total Contract Days: 295

Job No.: C19-1

Contract Start Date: 3/11/2005

Completion Date: 12/31/2005

Total Days Worked to Date _____
Total Days Revised on Contract _____
Total Days Remaining on Contract _____

We are requesting that the contract time be extended for a period of _____ days. The revised completion date will be _____.

APPROVED

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scot Becraft
Its: Authorized Agent
Date: _____

By: Barbara Rodgers
Its: Project Manager
Date: _____

C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT D

CONSTRUCTION SCHEDULE

(SEE ATTACHED)

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT E**

STATEMENT OF WORKING DAYS

Project Name: Canyon Clock Center

Total Contract Days: 295

Project No.: C19-1

Contract Start Date: 3/11/2005

Week Ending: _____

Completion Date: 12/31/2005

<u>DAY</u>	<u>DATE</u>	<u>WEATHER</u>	<u>TEMP</u>	<u>WORKABLE/ UNWORKABLE</u>
Mon.	_____	_____	_____	_____
Tues.	_____	_____	_____	_____
Wed.	_____	_____	_____	_____
Thurs.	_____	_____	_____	_____
Fri.	_____	_____	_____	_____
Sat.	_____	_____	_____	_____
Sun.	_____	_____	_____	_____

Total Days Worked This Week _____
 Total Days Worked to Date _____
 Total Days Revised on Contract _____
 Total Days Remaining on Contract _____

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scot Becraft
 Its: Authorized Agent
 Date: _____

By: Barbara Rodgers
 Its: Project Manager
 Date: _____

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT F**

CHANGE ORDER

C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA 98205

Issued to: **HOS Bros. Construction, Inc.**
P. O. Box 1788
Woodinville, WA 98072-1788

PROJECT NAME: Canyon Clock Center

PROJECT #: C19-1

PLAN NO. _____ LOT # _____

CHANGE ORDER #: _____ CHANGE ORDER DATE: _____

REQUESTED BY: _____ AUTHORIZED: _____

ADDITIONS / DELETIONS:
(Circle One)

Total Increase / Decrease this Change Order: \$ _____

(Circle One)

Previous Total Contract Amount: \$ _____

New Total Contract Amount Change Order: \$ _____

Please note that this Change Order shall not be valid and no Work shall be authorized until such time as both parties have signed this Change Order. The completion date of Work will not be adjusted, unless noted herein. A copy of this Change Order must accompany application for payment.

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scot Becraft
Its: Authorized Agent
Date: _____

By: Barbara Rodgers
Its: Project Manager
Date: _____

HOS 000084

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT G**

BACK CHARGE

C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA 98205

Issued to: **HOS Bros. Construction, Inc.**
P. O. Box 1788
Woodinville, WA 98072-1788

PROJECT NAME: Canyon Clock Center

PROJECT #: C19-1

PLAN NO. _____ LOT # _____

ISSUED BY: _____

BACK CHARGE:

Description	Amount

Total Back Charge: \$ _____

Please note that this Back Charge is issued pursuant to Section 9.4 of the Agreement between Owner and Contractor.

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scot Becraft
Its: Authorized Agent
Date: _____

By: Barbara Rodgers
Its: Project Manager
Date: _____

C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT H

CONTRACTOR INFORMATION

Company/Full Legal Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Ph#: _____ Fax#: _____ Emergency Ph#: _____

Mobile Ph.# _____ Other Ph.#: _____

E-Mail Address _____

Name of Principal: _____ Title: _____

Residence Address: _____ State: _____ Zip Code: _____

Contact Person (Billing): _____ Phone#: _____

Fax#: _____ Mobile#: _____ E-mail#: _____

Project Manager: _____ Phone#: _____

Fax#: _____ Mobile#: _____ E-mail#: _____

Emergency Contact: _____ Phone#: _____

Fax#: _____ Mobile#: _____ E-mail#: _____

Check One: Corporation Partnership Proprietorship LLC

State of Incorporation: _____ Date of Incorporation: _____

Federal I.D. #: _____ SS#: _____

Contractor's Lic. #: _____ Expiration Date: _____

L&I Account I.D.#: _____ UBI#: _____

Insurance Co. Name: _____ Policy#: _____

Agent's Name: _____ Ph#: _____

Bonding Co. Name: _____ Bond#: _____

Ph#: _____ Bond Limits: _____

Name of Bank: _____ Branch Name: _____

Street Address: _____ Ph#: _____

City: _____ State: _____

Trade References:

Subcontractor: _____ Contact: _____ Ph#: _____

Subcontractor: _____ Contact: _____ Ph#: _____

Subcontractor: _____ Contact: _____ Ph#: _____

Applicant's Signature: _____ Dated: _____



Consultant:		Application for Payment									
Project Name:		Exhibit I									
Project Number:											
Invoice Number:											
Invoice Date:											
Cost Code	Task	Contract Amount	Total Cost Billed to Date	Remaining Billable	Cycle	1	2	3	4	5	
		\$0.00	\$0.00	\$0.00	Invoice Number						
			\$0.00	\$0.00	Invoice Date						
			\$0.00	\$0.00							
	Original Contract Amt.	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	Change Order 1		\$0.00	\$0.00							
	Subtotal	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	10% Less Retainage		\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	8.5% WSSST on Subtotal	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	Grand Total	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

EXHIBIT J

LIEN RELEASE

(Mechanic's Lien, Stop Notice, Equitable Lien, and Material Bond Release)

FROM: Hos Bros. Construction, Inc.
(Name of Person or Firm Giving Release)

PROJECT: Canyon Clock Center
(Name & Tract No.)

P.O. Box 1788
(Street Address)

17200 Block of Canyon Rd. E.
(Address of Project)

Woodinville, WA 98072-1788
(City, State, Zip)

Tacoma, WA 98445
(City, State, Zip)

ISSUED TO: _____

FULL RELEASE

The undersigned has been paid in full for all labor, subcontract Work, equipment, and materials supplied to the above described project and hereby releases all mechanic's liens, stop notices, equitable liens, and labor and material bond rights on the project for all materials, supplies, labor, services, etc., purchased, acquired, or furnished by or for us and used on above premises up to and including: (Date): _____

This Release is for the benefit of, and may be relied upon by the owner, the prime Owner, the construction lender, and the principal and surety on any labor and material bond posted for the project.

FIRM NAME: _____

(Firm furnishing labor, etc.)

By: _____

Date: _____

CONDITIONAL RELEASE

(Full Payment)

The undersigned does, hereby release all mechanic's liens, stop notices, equitable liens, and labor and material bond rights against the above-described project for all materials, supplies, labor, services, etc., purchased, acquired, or furnished by or for us and used on above premises up to and including: Date: _____

This Release is for the benefit of and may be relied upon by, the owner, the prime Owner, the construction lender, and the principal and surety on any labor and material bond.

This Release is **CONDITIONAL** and shall be effective only upon payment to the undersigned in the sum of \$_____. If payment is by check, this Release is effective only when the check is paid by the bank upon which it is drawn.

FIRM NAME: _____

(Firm furnishing labor, etc.)

By: _____

Date: _____

CONDITIONAL RELEASE

(Progress Payment)

The undersigned does hereby release all mechanic's liens, stop notices, equitable liens and labor and material bond rights against the above described project for all materials, supplies, labor services, etc., purchased, acquired, or furnished by or for us and used on above premises up to and including: Date: _____

This Release is for the benefit of and may be relied upon by the owner, the prime Owner, the construction lender, and the principal and surety on any labor and material bond.

This Release is **CONDITIONAL** and shall be effective only upon payment to the undersigned in the sum of \$_____. If payment is by check, this Release is effective only when the check is paid by the bank upon which it is drawn.

FIRM NAME: _____

(Firm furnishing labor, etc.)

By: _____

Date: _____

EXHIBIT K

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT made and entered into on this 11th day of March, HOS Bros. Construction, Inc. with its place of business at P. O. Box 1788, Woodinville, WA 98072-1788, hereinafter called the "Contractor", agrees to defend, indemnify and hold C19-1 Shotwell, LLC, with its place of business at 10515 20th Street SE, Suite 100, Everett, Washington 98205, hereinafter called the "Owner", and the Owner's members, employees, agent and representatives (collectively the "Indemnified Parties"), harmless from any and against all and all claims, losses and liabilities, including attorneys' fees and costs, resulting from or connected with services performed or to be performed under this Agreement by Contractor or Contractor's agents, subcontractors or employees to the fullest extent permitted by law and subject to the limitations provided below.

Contractor's duty to indemnify the Indemnified Parties for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the Indemnified Parties on the one hand, and (b) Contractor or Contractor's agents or employees on the other, shall apply only to the extent of negligence of Contractor or Contractor's agents or employees.

Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement 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 workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by the Indemnified Parties, and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

Contractor's duty to defend, indemnify and hold the Indemnified Parties harmless shall include, as to all claims, demands, losses and liability to which it applies, the Indemnified Parties' personnel-related costs, reasonable attorneys' and accountants' fees, expert witness fees, court costs and all other claim-related expenses.

Contractor's obligations under this Agreement are unconditional, irrevocable and separate and distinct obligations from and in addition to Contractor's obligations under the Contract Agreement between Owner and Contractor.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS AGREEMENT WAS MUTUALLY NEGOTIATED.

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scot Becraft
Its: Authorized Agent
Date: _____

By: Barbara Rodgers
Its: Project Manager
Date: _____

EXHIBIT L

CONTRACTOR CORRECTION NOTICE

CONTRACTOR: HOS Bros. Construction, Inc. NOTIFICATION DATE: _____ VIA: _____

<u>SITE</u>	<u>LOT</u>	<u>ITEM TO BE CORRECTED</u>	<u>REMEDY</u>	<u>BACK CHARGE \$</u>

Site Superintendent Signature: _____ Date: _____ Time: _____

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT made and entered into on this 11th day of March. HOS Bros. Construction, Inc. with its place of business at P. O. Box 1788, Woodinville, WA 98072-1788, hereinafter called the "Contractor", agrees to defend, indemnify and hold C19-1 Shotwell, LLC, with its place of business at 10515 20th Street SE, Suite 100, Everett, Washington 98205, hereinafter called the "Owner", and the Owner's members, employees, agent and representatives (collectively the "Indemnified Parties"), harmless from any and against all and all claims, losses and liabilities, including attorneys' fees and costs, resulting from or connected with services performed or to be performed under this Agreement by Contractor or Contractor's agents, subcontractors or employees to the fullest extent permitted by law and subject to the limitations provided below.

Contractor's duty to indemnify the Indemnified Parties for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the Indemnified Parties on the one hand, and (b) Contractor or Contractor's agents or employees on the other, shall apply only to the extent of negligence of Contractor or Contractor's agents or employees.

Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement 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 workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by the Indemnified Parties, and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

Contractor's duty to defend, indemnify and hold the Indemnified Parties harmless shall include, as to all claims, demands, losses and liability to which it applies, the Indemnified Parties' personnel-related costs, reasonable attorneys' and accountants' fees, expert witness fees, court costs and all other claim-related expenses.

Contractor's obligations under this Agreement are unconditional, irrevocable and separate and distinct obligations from and in addition to Contractor's obligations under the Contract Agreement between Owner and Contractor.

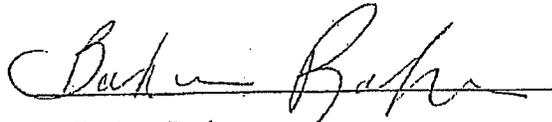
THE UNDERSIGNED HEREBY CERTIFY THAT THIS AGREEMENT WAS MUTUALLY NEGOTIATED.

OWNER:
C19-1 Shotwell, LLC



By: Scot Becraft
Its: Authorized Agent
Date: 4-27-05

CONTRACTOR:
HOS Bros. Construction, Inc.



By: Barbara Rodgers
Its: Project Manager
Date: 4/27/05

EXHIBIT 2

SUPERINTENDENT'S DAILY REPORT

Hos Bros. Construction, Inc.

Project Name: Knickerbocker

Project # _____

Date: 1/19/05 Day: Wed

DAILY REPORT:

PC300 Ape moved into site on Monday 1-17-05.
~~Started~~ Started Digging Test Pits on the North
 end of site. The 1st TP was to the South of
 Man. #5 approx 70' water test about 1' remaining. TP 36
 west of TP 35 approx 150' pit during water was fast
 as the water truck put it in. TP 35, 36 on the N end
 of site. TP 37 NW corner at 5' water seeping in at
 7' water starting to fill hole, TP 38 only 4" deep water
 test slow during. TP 39 N of Power Line west of
 TP 3 approx 80' a little water seeping in water test slow
 at approx 6'. Test pit 40 2' till, 2 1/2 to 3' gravel and
 then loose pit run to approx 18' no water test
 couldn't get water truck to test hole 40.
 Water truck left at approx 3pm.

Rep. from William Geis says the Gas Line runs

EXPLANATION: in a straight line going N on the West
 side.

SITE VISITORS: SUBCONTRACTOR INSPECTOR OTHER

DESCRIPTION	VENDOR	LOAD COUNT	TON / TCY	CODE

EXHIBIT 3

1543

7490 CONTRACT
1543 FILE

C19-1 SHOTWELL, LLC

GENERAL CONTRACTOR
AGREEMENT

WITH

HOS BROS. CONSTRUCTION, INC.

FOR

GENERAL CONTRACTOR

C19-1 Canyon Clock Center

8/07/2006

HOS 001869

C19-1 Shotwell, LLC
General Contractor Agreement

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C19-1 Shotwell, LLC
General Contractor Agreement

THIS CONTRACT AGREEMENT made and entered into on this _____ day of August 2006, by and between C19-1 Shotwell, LLC, with its place of business at 10515 20th Street SE, Suite 100, Everett, Washington 98205, hereinafter called the "Owner", and Bros.Hos.Bros. Construction, Inc. with its place of business at P. O. Box 1788, Woodinville, WA 98072-1788, hereinafter called the "Contractor".

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN MADE, CONTRACTOR AND OWNER HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF WORK: Contractor shall complete all Work as specified or indicated in this Contract Agreement (the "Work"). The Project for which the Work under this Contract Agreement may be the whole or only a part is generally described in Exhibit A, Exhibit A-1, and Exhibit A-2.

SECTION 2. ARCHITECT: The Project has been designed by Alpha Community Development who is hereinafter called "Architect" and who will assume all duties and responsibilities and will have the rights and authority assigned to Architect in the Contract Documents (as defined in Section 38 herein) in connection with completion of the Work in accordance with the Contract Documents.

SECTION 3. CONTRACT ADMINISTRATION: Barclays North, Inc., a Washington corporation, (the "Administrator") will provide administration of the Agreement and will be the Owner's representative during construction as follows:

1. The Administrator will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of onsite observations, the Administrator will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.
2. The Administrator will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Administrator will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.
3. Based on the Administrator's observations and evaluations of the Contractor's Applications for Payment, the Administrator will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
4. The Administrator will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor.
5. The Administrator will have authority to reject Work which does not conform to the Contract Documents.
6. The Administrator will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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SECTION 4. CONTRACT TIME The Work shall be substantially completed per Exhibit C. Owner shall issue two (2) separate written notices to proceed to Contractor as set forth in Exhibit C. Contractor shall not proceed with commencement of work until such notices are delivered to Contractor. Final payment shall be due thirty (30) days following the date the Scope of Work under this Agreement has been accepted by the appropriate Jurisdictional agencies. Time is of the essence with respect to this Subcontract Agreement.

SECTION 5. CONTRACT TIME EXTENSIONS The length of time within which to complete the Work as specified herein shall be extended in case of unusually adverse weather, for a period of the time equal to such conditions. Requests for days of extension will be in writing to the Owner or Administrator, agreed upon, signed by the Owner or Administrator and a copy returned to the Contractor. Only those requests approved in writing will be considered for Contract extensions. Request for an extension of the Contract time shall be provided to the Owner or Administrator on the form attached hereto as Exhibit B.

SECTION 6. LIQUIDATED DAMAGES Owner and Contractor recognize that time is of the essence with respect to this Agreement and that Owner will suffer financial loss if the Work is not substantially complete within the time specified in Section 4, plus any extensions thereof allowed in accordance with Section 5 above. The parties hereto also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner \$2,000.00 for each day that expires after the time specified in Section 4 including extensions as specified in Section 5 for substantial completion until the Work is substantially complete.

SECTION 7. CONSTRUCTION SCHEDULE Attached hereto as Exhibit C is the Construction Schedule which sets forth: (1) Completion of the Project within the Contract time; (2) The proposed order of the Work; and (3) Project starting and completion times for all phases of the Work. The Contractor shall substantially comply with the construction schedule. The Contractor shall submit to the Owner or the Administrator on a weekly basis, a statement of Working days for the previous week Worked. The statement of Working days shall be submitted on the form attached hereto as Exhibit D.

SECTION 8. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if required by the Owner. The cost of the Bond shall be determined between the Owner and the Contractor, and paid by the Owner.

SECTION 9. CONTRACT PRICE AND INTENT OF CONTRACT

9.1 Intent Of Contract The intent of the Contract is that of a Guaranteed Maximum Price Contract as defined by unit prices in Exhibit A-1. All work shall be to the satisfaction of Owner and the applicable governmental agencies. All necessary Work to accomplish the result is defined by the attached Hos Bros. Construction, Inc. Canyon Clock Project dated 8/3/2006 as set forth on Exhibit A-1. Contractor shall permit Owner, the Administrator and/or their representatives, to inspect all operations, facilities, scale reports, books, and any other data in any way related to the performance of the Contractor's obligation.

9.2 Increases/Decreases In Contract Price If the Owner, the Administrator and/or their representative's orders, in writing, changes to any of the Contract Documents, which affect the contract fee, the Contractor shall provide written notice of either an increase or decrease in the Contract price which shall be approved by the Owner or Administrator. The Contractor shall not proceed with any additional Work until such time as the Contractor has received written authority from the Owner or Administrator pursuant to Section 9.3. Items comprising the Work subject of this Contract have been bid on either a lump sum or a unit price basis depending upon the item of Work to be performed. The cost of all items bid on a unit price basis shall be increased or decreased based upon actual quantities as verified by the Owner, the Administrator

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and/or their representatives. Any cost savings resulting from the reduction of the GMP estimate will be split between the Owner and Contractor on the following basis: Owner 50%, Contractor 50%.

9.3 Extra Work And Change Orders. Changes, deletions or additions to items of Work under this Contract shall only be done by written Change Order signed by both Owner or Administrator and the Contractor or their authorized agent. The Change Order form to be used is attached hereto as Exhibit E.

9.4 Back Charges. Contractor may be subject to a back charge as a result of: Failure to follow scope of Work specifications, codes, jobsite rules, and/or breach of this Agreement. The final amount of the back charge shall be determined by the Owner or Administrator. The back charge shall be provided to the Contractor on the form attached hereto as Exhibit F.

9.5 Payment Of Extra Fees. Any and all fees due to extra or redundant inspection, design, staking or consultations by any of the governmental agencies, engineers or surveyors involved in this Project caused by inadequate Workmanship or Work that was not deemed satisfactory shall be the sole responsibility of the Contractor and the Owner shall have the full right and authority to deduct the amount of these fees from the total overall contract price.

9.6 Contractor's Obligations For Wages, Taxes And Benefits. The Contractor shall be obligated for the following:

1. All payroll charges such as Social Security payments, Unemployment Insurance, Worker's Compensation Insurance premiums, pensions and retirement allowances and insurance premiums, vacation and sick leave allowance applicable to wages or salaries paid to own employees for Work done in connection with the Contract Agreement.
2. All premiums on fire, public liability, property damage or other insurance coverage authorized or required by Contractor, or regularly paid by the Contractor in the conduct of its business.
3. All use, excise, privilege, business, occupation, gross receipt and all other taxes paid by the Contractor in connection with the Work, except Washington State Sales Tax.

SECTION 10. PAYMENT PROCEDURES AND RETENTION

10.1 Payment Procedures. Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents in current funds.

On or about the 10th day of the month (should the 10th fall on a weekend or holiday, checks will be available on the next regular business day), Owner agrees to pay Contractor the agreed compensation for the performance of Work completed on or before the 25th day of the previous month, provided Contractor has complied with all of the following payment conditions:

1. Contractor has complied with all provisions of this Agreement.
2. Contractor has provided to Owner the following documents:
 - a) Completed and signed current Information Sheet (attached hereto as Exhibit G).
 - b) Completed and signed current Safety Program Manual (see Section 14).
 - c) Copies of current first Aid and CPR certification cards for employees Working on the Project.

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General Contractor Agreement

- d) Current insurance certificate.
 - e) Current Contractor's License
3. Contractor has submitted to Owner or Administrator the following items on or before 5:00 p.m. of the **LAST BUSINESS** day of the month:
- a) Original Contractor Invoice printed on Contractor company letterhead.
 - b) Completed and signed Change Order, if applicable (attached hereto as **Exhibit E**).
 - c) Completed and signed Back Charge, if applicable (attached hereto as **Exhibit F**).
 - d) Completed and signed Application for Payment (attached hereto as **Exhibit H**).
 - e) Completed and signed Lien Release (attached hereto as **Exhibit D**) in the amount equal to the amount of the invoice being submitted by Contractor.
 - f) Evidence satisfactory to the Owner or Administrator that all payrolls, bills, or materials and equipment, and all known indebtedness connected with the Contractor's Work incurred prior to the date thereof have been satisfied.

10.2 Retention. Retention in the amount of 10% shall be withheld from all payments, including progress payments. Contractor shall not be entitled to interest on any retainage. Retention shall not be released sooner than thirty (30) days from receipt of or until the following have occurred:

- 1. Receipt of Contractor's invoice(s).
- 2. Signed and completed Unconditional Lien Release.
- 3. Completed and signed full lien releases from all contractors, suppliers and subcontractors on this project.
- 4. Approvals from jurisdictional agencies having authority over the Work performed by the Subcontractor have been received.
- 5. All product and system warranty information, specifications, manuals, and similar items for materials supplied, if any, and installed in the Project by Contractor must be on file with Owner prior to release of retainage.

SECTION 11. PROJECT MANAGEMENT. Contractor agrees to furnish its best skill and judgment to cooperate in forwarding the interest of the Owner. Contractor shall designate a competent Project Manager, satisfactory to the Owner or Administrator, who shall be readily available at the Project site and shall be empowered to act for the Contractor in all respects, if required. A competent Project Manager shall either be physically present at the Project site or accessible to the Owner by telephone between 7:00 a.m. and 7:00 p.m., Monday through Friday. The Contractor shall provide the Owner or Administrator with the name and number of a contact person who may be contacted over the weekend and on holidays in the event of an emergency. This information shall be shown on the Contractor Information Sheet attached as **Exhibit G**.

Should Contractor designate a new Project Manager or emergency contact during the term of this contract, it shall be the Contractor's responsibility to provide written notice of the new Project Manager or emergency contact to the Owner or Administrator.

SECTION 12. WARRANTIES AND GUARANTEES

12.1 Contractor Warranties. The Contractor warrants to the Owner that all labor and materials shall be equal to industry standard, quality and workmanship, free from faults and defects and in conformance with the Contract Documents.

12.2 Guarantee Of Work. Contractor hereby guarantees all workmanship and materials for a period of two (2) years from the date of inspection and approval of the Work by the jurisdictions involved and/or

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utility districts having inspection and approval authority over the project improvements. Provided, however, that such guaranty shall continue in full force and effect until Owner's responsibility under Contractor's maintenance bonds shall have been satisfied.

SECTION 13. SAFETY AND LOSS PREVENTION. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All persons furnishing labor, materials or services in connection with the Project and all other persons who may be affected thereby.
2. The Project and all materials and equipment to be incorporated therein, whether in storage on or off the site, or under the care, custody or control of the Contractor or any of its contractors or subcontractors; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structure and utilities not designated for removal, relocation or replacement in the course of the construction. Any and all damage or loss to any property or person(s) and any and all damage or loss in any other manner arising out of or in connection with the project and/or the Work caused in whole or in part by Contractor, any Contractor or anyone for whose acts any of them may be liable, shall be remedied by the Contractor and the Contractor shall indemnify, defend and save Owner and Administrator harmless from and against any claims arising in connection therewith, except for damage or loss caused by or arising out of acts or omissions of the Owner, Administrator, their agents, assigns and/or employees.

SECTION 14. COMPLIANCE WITH LAWS AND REGULATIONS. Contractor warrants to Owner that Contractor has complied and will comply with, at its own expense, all federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder, including, but not by way of limitation, the OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, as amended from time to time (OSHA) and the WASHINGTON INDUSTRIAL SAFETY HEALTH ACT, as amended from time to time (WISHA). The Contractor covenants and agrees that in the event any liability is assessed against the Contractor because of failure of Contractor to comply with all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations hereunder, then Contractor shall pay and indemnify Owner and Administrator for such amounts and the Owner may set off one hundred fifty percent (150%) of any such fines, assessments, penalties, or liability of any nature resulting from such violation against amount owing to the Contractor hereunder. Contractor further acknowledges that it has reviewed the Owner's safety program, rules and/or regulations and agrees to abide by all of Owner's rules and regulations.

Prior to commencement of Work Contractor shall submit to Owner Contractor's Safety Program Manual, including Standard First Aid and Adult CPR certification card copies for all Contractor's agents and/or employees Working on the Project. Contractor warrants that all of its Contractors, agents, employees, and/or guests entering the Project premises shall comply with Contractor's safety program, rules and/or regulations, including the full-time use of OSHA approved safety equipment, head gear, footwear and clothing, as instituted by the Contractor's on-site superintendent/Project Manager. Contractor's failure to comply with any portion of such safety program, rules, and/or regulations may result in the immediate termination of this Agreement.

SECTION 15. COMPLIANCE WITH DISCRIMINATION LAWS. Contractor agrees in connection with the performance of Work under this Agreement not to discriminate against any employee, applicant or client because of race, religion, creed, color or national origin. The aforesaid provision shall include, but not be

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limited to the following: employment, upgrading, promotion, and transfer, recruitment, advertising, layoff or termination, raise of pay or other forms of compensation and selection for training, including apprenticeships. Contractor agrees to post hereafter, in conspicuous places available for employees and applicants for employment, notices to be provided by Contractor, to the extent one is required, setting forth the provisions of this nondiscrimination clause and Contractor's equal opportunity plan to the extent it is required by law.

SECTION 16. PRESERVATION OF MONUMENTS AND STAKES The Contractor shall carefully preserve all monuments, benchmarks, reference points and stakes. The Contractor shall be responsible for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance, so long as the Architect or surveyor follows the staking sequence requested by the Contractor. In the event that the stakes or marks placed by the Architect and/or surveyor are destroyed through carelessness on the part of the Contractor and that the destruction of these stakes or marks causes a delay in the Work, the Contractor shall have no claim for damages or extensions of time. In the case of any permanent monuments or benchmarks which must, out of necessity, be removed or disturbed in the construction of the Work, the Contractor shall carefully protect and preserve the same until they can be properly referenced for relocation. The Contractor shall bear the cost of replacing monuments or benchmarks that have been moved or destroyed by the Contractor, its agents or employees. This includes the front lot stakes adjacent to the roadway, providing stakes are not in conflict with construction of improvements.

SECTION 17. INSURANCE REQUIREMENTS Contractor warrants to Owner, and will provide to Owner prior to commencement of work, a Certificate of Insurance for Public Liability, Premises/Operations, Bodily Injury/Property Damage, Broad Form Property Damage including On Going/Completed Operations and Defense Costs, Products/Completed Operations for any work performed by or on its behalf (by subcontractors or temporary labor), Contractual Liability insuring the obligations assumed by Contractor in this Agreement, Explosions, Collapse and Underground Hazards, Personal Injury Liability, Employer's Liability aka Washington State Stop Gap, Auto Liability for all Owned, Non-Owned & Hired Autos and Worker's Compensation Insurance for Contractor and Contractor's employees in the minimum amounts set forth below, naming Owner and Administrator as "Primary Additional Named Insured on a Non-Contributory Basis" on an ongoing basis and including defense costs in favor of the Owner with the appropriate forms CG2010 (Additional Insured), CG2404 (Waiver of Subrogation) and CG2503 (Per Project Aggregate) along with ACORD Form 25-S (Certificate of Liability Insurance). The insurance carrier for the Contractor (and their subcontractors) must have an A.M. Best Rating of A- or better and be listed as such on the certificate of insurance:

The minimum acceptable Primary Liability Limits are One Million Dollars (\$1,000,000.00) for Bodily Injury and Property Damage Liability - Per Occurrence and subject to separate Aggregate Limits of Two Million Dollars (\$2,000,000) for Products/Completed Operations and General Aggregate. The minimum acceptable Excess Liability Limits are One Million Dollars (\$1,000,000) Per Occurrence and One Million Dollars (\$1,000,000) Aggregate. No such insurance shall be cancelled without thirty (30) days prior written notice to the Owner. Contractor will be in breach of contract for failure to timely supply and maintain proper insurance at all times as warranted under this contract and evidenced by the certificate provided.

If Contractor hires subcontractors and/or temporary labor, all of the requirements of this Section 17 shall apply to subcontractors and/or temporary labor and Contractor shall maintain certificates naming Owner as additional insured for this Project. The Contractor understands that it is its responsibility to have such current certificates, as well as its active Washington State contractor's license, on file, and failure to do so may result, in addition to any other remedies available to Owner under this Agreement, in being removed from job-site and/or Owner withholding payment until proper and acceptable certificate is provided.

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Contractor recognizes and acknowledges that insurance requirements may be modified pursuant to separate insurance requirements of other related entities to the Project. Contractor understands and agrees that if such increases or modifications in insurance requirements are requested, it shall be the Contractor's sole financial responsibility to satisfy such increases or modifications (Maximum \$10,000,000, General Aggregate). The Owner shall have the full right and authority to deduct the amount of these potential additional insurance costs from the total overall contract price if Contractor does not immediately, within seven (7) days upon written request from Owner, satisfy such additional insurance requirements.

SECTION 18. PROTECTION OF PUBLIC AND PRIVATE UTILITIES. It shall be the responsibility of the Contractor to avoid damage or disturbance to all existing utilities. The Contractor shall contact all utilities including, but not limited to, telephone, power, fiber optics, sewer, water, gas and cable TV for the purpose of identifying the correct locations prior to construction. In the event that the locator service errs in locating utilities, the Contractor has no liability or responsibility for the same and the time of performance shall be extended to accommodate any delays occasioned to the Contractor. It shall be the sole responsibility of the Contractor to prove that the locator service erred in locating the utilities. The Contractor shall also be responsible for locating all storm water utilities.

SECTION 19. OWNER'S OBLIGATIONS. In addition to any other obligation arising under this Agreement, the Owner shall have the following obligations:

19.1 Owner's Responsibility To Furnish Data And Make Payment. Owner shall furnish the data required of Owner under the Contract Documents promptly and shall make payments to Contractor promptly after they are due as provided in Section 9.

19.2 Permits. The Owner shall acquire and furnish all permits required for Contractor to perform the Work. Permits shall be provided at Owner's expense, unless otherwise stated in the Scope of Work attached as Exhibit A.

SECTION 20. OWNER'S REMEDIES. In addition to any other remedies available to the Owner at law or in equity, the Owner shall have the following rights:

20.1 Owner's Right To Suspend Work. If at any time during construction, Owner shall reasonably determine that Work is not proceeding in accordance with the terms of the Contract Documents, and if Owner shall give written notice to Contractor specifying the particular deviation, deficiency or omission, Contractor shall immediately take such steps as shall be necessary to correct such deviation, deficiency or omission. Failure to comply with this provision may, at Owner's election, result in a suspension of Contractor's Work or termination of this Agreement under provisions of this Section 20.

20.2 Termination for Cause. If the Contractor is adjudged bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor, or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy act of applicable laws, or if it repeatedly fails to supply sufficient skilled workers or suitable materials or equipment, or if it repeatedly fails to make prompt payment to subcontractors for labor, materials or equipment, or if it substantially disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction over the Work, or if it substantially disregards the authority of the Architect or Administrator, or if it otherwise substantially violates any provision of the Contract Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and its surety, if applicable, a minimum of ten (10) days from delivery of a written notice to cure said default, terminate the services of the Contractor and take possession of the project and of all materials and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any

C19-1 Shotwell, LLC
General Contractor Agreement

further payment until the Work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid by the Contractor. Such costs incurred by the Owner will be determined by the Architect and incorporated in a Change Order.

20.3 Termination without Cause. After seventy-two (72) hours from delivery of a written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work or terminate the Contract. In such case, the Contractor shall be paid for work completed according to the unit prices as set forth on Exhibit A-1 and shall not be entitled to receive any further payment. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, such cost shall not be paid by the Contractor.

20.4 Effect of Termination. Where the Contractor's services have been terminated by the Owner as described above, said termination shall not affect any right of the Owner against the Contractor that is then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.

SECTION 21. NOTICES. Any notices required or permitted hereunder shall be in writing and delivered either in person to the other party, or by fax, electronic mail or by United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the address set forth hereinafter, or to such other address as either party may designate in writing and deliver as herein provided:

OWNER:

C19-1 Shotwell, LLC
c/o Barclays North, Inc.
10515 20th Street SE, Suite 100
Everett, WA 98205
Attn: Scott Beecraft

Phone: (425) 334-4040
Fax: (425) 334-5254

CONTRACTOR:

HOS Bros. Construction, Inc.
P.O. Box 1788
Woodinville, WA 98072-1788
Attn: John Caunt

Phone: (425) 481-5569
Fax: (425) 485-6634

ADMINISTRATOR:

Barclays North, Inc.
10515 20th Street SE, Suite 100
Everett, WA 98205
Attn: Tony E. Kastens

Phone: (425) 334-4040
Fax: (425) 334-5254

SECTION 22. WAIVER. No waiver by Owner of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Contractor of the same or any other provision. Owner's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Owner's consent to or approval of any subsequent act by Contractor. The acceptance of Work hereunder by Owner shall not be a waiver of any preceding breach by Contractor of any provision hereof of Owner's knowledge of such preceding breach at the time of acceptance of the Work.

SECTION 23. INDEMNIFICATION. It shall be a condition precedent to this Agreement, and to any payment obligations by Owner under this Agreement, that Contractor execute and deliver to Owner an Indemnification and

C19-1 Shotwell, LLC
General Contractor Agreement

Hold Harmless Agreement in the form attached hereto as Exhibit J within ten (10) days after mutual execution of this Agreement.

SECTION 24. INDEPENDENT CONTRACTOR. Contractor shall provide professional services directly to Owner on an independent contractor basis. Contractor shall not be an employee of Owner or Administrator. As an independent contractor, the Contractor shall be responsible for its own federal, state and local taxes, insurance, bonding, and other obligations of any kind relating to the Contractor's performance of services under this Agreement. Owner and Contractor agree that Contractor is providing professional services that are not "retail sales" as defined in RCW 82.04.050. In the event that Contractor is liable for retail sales tax on amounts paid to Contractor under this Agreement, Owner shall reimburse Contractor for such taxes and interest thereon, excluding penalties. The Contractor acknowledges the Contractor will not qualify for benefits which may be available if classified as an employee. In the event that the Internal Revenue Service (the "IRS") successfully asserts that the Contractor is not or was not an independent contractor for any period during the term of this Agreement and reclassifies the Contractor as an employee, then the Contractor agrees to complete, sign and deliver IRS Form 4669 (Employee Wage Statement) to Owner for any tax period affected. Owner shall then file the Form 4669 with the IRS (along with IRS Form 4670 "Request for Relief From Payment of Income Tax Withholding") to offset against Owner's withholding obligation. The Contractor shall, in addition, indemnify and hold Owner harmless from any additional taxes, interest and penalties that may be due from any such reclassification. In the event that any state or local taxing authority successfully asserts that the Contractor is not or was not an independent contractor for any period during the term of this Agreement and reclassifies the Contractor as an employee, then the Contractor shall indemnify and hold Owner harmless from any additional taxes, interest and penalties to such state or local taxing authority that may be due from any such reclassification. The obligations set forth under this Section shall survive the termination of this Agreement for any reason whatsoever.

SECTION 25. CONSTRUCTION DEBRIS. Contractor shall be responsible for the removal from the project site, any and all construction debris generated by the Contractor in the performance of the Scope of Work described in Exhibit A. Removal of construction debris shall be at the sole expense of the Contractor and shall be incidental to the unit and/or lump sum prices under this Contract Agreement.

SECTION 26. CORRECTION NOTICES. The Owner will inspect the performance of Work, Work product and/or materials provided by Contractor. Should the inspection reveal that the Contractor is not in compliance with the scope of Work and/or specifications, Owner may, at its sole discretion, issue to Contractor a written correction notice, a copy of which is attached hereto as Exhibit K. The Contractor shall take all action necessary to make the correction identified in the correction notice. The correction shall be completed within 24 hours of date of written correction notice, unless otherwise stated on the correction notice. The procedure as set forth above shall not preclude the Owner from providing a verbal correction notice when the Owner, in its sole discretion, deems a verbal correction notice is appropriate.

SECTION 27. NOISE ORDINANCE. Contractor and Contractor's agents and/or employees shall comply with noise control ordinance of the jurisdiction in which the project is located. Any violation of the noise control ordinance resulting in costs, fees and/or fines shall be at the sole cost and expense of the Contractor.

SECTION 28. RULES OF CONSTRUCTION. Words of any gender used in this Agreement shall be held to include the other gender; any words in the singular shall be held to include the plural when the sense requires. The parties hereto have both participated in the drafting of this document and have had the full opportunity to consult independent legal counsel. Therefore, the rule of construction that a document drawn by one party shall be construed against that party in a case of ambiguity shall have no application herein.

C19-1 Shotwell, LLC
General Contractor Agreement

SECTION 29. CAPTIONS The captions and article numbers appearing in this Contract Agreement are inserted only as matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles of this contract agreement.

SECTION 30. ASSIGNMENT OF AGREEMENT Owner may assign any and all rights under or interest in this Contract Agreement to another party (so long as other party's financial creditworthiness is equal to or greater than the ownership entity originally executing this Agreement) without consent or approval from Contractor and such rights interests and responsibilities of this Contract Agreement shall be binding to the new assigned Owner. Contractor shall not assign rights, interests or responsibilities in this Contract Agreement to another party without the written consent of the Owner. Monies that are due and owing upon an assignment may not be assigned without written consent from both the Owner and Contractor.

SECTION 31. BINDING EFFECT Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

SECTION 32. ARBITRATION In the event that a dispute or disagreement shall arise by and between the parties hereto in respect to any of the terms, conditions or covenants hereof as to the method or manner of performance or breach hereunder, then the same shall be subject to arbitration under the rules of the American Arbitration Association, and such arbitration shall take place in the City of Everett, County of Snohomish, State of Washington. In any such arbitration proceeding the prevailing party shall be entitled to its reasonable costs and attorney's fees incurred and at such time shall be included in any award. In the event it is legally impermissible to bring a third party into arbitration, the General Contractor may, in its sole discretion, either (i) implement a standstill agreement with all parties to the arbitration pending the outcome of the third party action, or (ii) join parties to the arbitration into the third party action.

SECTION 33. APPLICABLE LAW AND VENUE This Agreement shall be governed and construed in accordance with the law of the State of Washington and the venue of any dispute shall be in Snohomish County, State of Washington.

SECTION 34. FURTHER ASSURANCE The parties hereto agree to promptly execute and deliver any additional agreements or documents and to perform any other acts reasonably necessary to effectuate the purposes and intent of this Agreement. The parties hereto warrant they have all rights, authority and power to enter into this Agreement and bind themselves to the terms, conditions and covenants of this Agreement.

SECTION 35. COUNTERPARTS For the convenience of the parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

SECTION 36. CONTRACTOR'S REPRESENTATIONS In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor has familiarized itself with the nature and extent of the scope of Work, specifications, locality and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work to be performed and/or materials to be provided by the Contractor;
2. Contractor has carefully reviewed all visible physical conditions at the site or otherwise affecting cost, progress or performance.

**CI9-1 Shotwell, LLC
General Contractor Agreement**

SECTION 37. AUTHORITY If Contractor is a corporation, limited liability company or partnership, each individual executing this Contract on behalf of said entity represents and warrants that he/she is duly authorized to execute and deliver this Contract on behalf of said entity in accordance with a duly adopted resolution of the entity and that the Contract is binding upon said entity.

SECTION 38. COSTS AND ATTORNEYS' FEES In any legal action, arbitration or other proceeding related to or arising out of this Agreement, the prevailing party or parties shall be entitled to recover from the other party reasonable attorneys' fees and other costs incurred. Attorneys' fees covered by this paragraph include, without limitation, fees incurred in bankruptcy proceedings to modify or vacate any automatic stay of such legal action or proceeding, in appeals, and in post-judgment collection services.

SECTION 39. CONTRACT DOCUMENTS The Contract Documents consist of this Agreement and Exhibits thereto, and the Plans, Specifications, Reports, Permits and Approvals enumerated below:

1. The Exhibits to this Agreement are as follows:

Description	Exhibit
Scope of Work/ Price	A
Schedule of Values	A-I
Request for Extension of Contract Time	B
Construction Schedule	C
Statement of Working Days	D
Change Order	E
Back Charge	F
Contractor Information	G
Application for Payment	H
Lien Release	I
Indemnification and Hold Harmless Agreement	J
Contractor Correction Notice	K

C19-1 Shotwell, LLC
General Contractor Agreement

3. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Subcontractor. It does not include all governing jurisdictions' laws, ordinances, regulations, plans and specifications. It shall be the Subcontractor's responsibility to familiarize itself and to comply with the same. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Subcontractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

4. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the General Contractor and a sub-subcontractor or (2) between any persons or entities other than the General Contractor and Subcontractor.

5. The terms "Work" and "Scope of Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Subcontractor to fulfill the Subcontractor's obligations. The Work may constitute the whole or a part of the Project.

SECTION 40. DATA AND RECORDS The parties hereto agree to make available to each other all data, records, and documents pertaining to the property which may be required to properly exercise their respective duties as set forth herein. Any surveys, architectural and engineering drawings and plans, consultant reports, appraisals, design work, tests and/or studies that are produced by Subcontractor pursuant to this Agreement, and any electronic versions of any of the foregoing items, shall be the sole property of the General Contractor. Upon General Contractor's request, Subcontractor shall sign a Bill of Sale or other documentation evidencing such ownership.

SECTION 41. ENTIRE AGREEMENT This Agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained and supersedes all prior negotiations, whether in writing, oral or implied and shall not be modified except in writing and executed by all parties hereto. In the event any provision is deemed to be unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 42. CONFLICTS BETWEEN AGREEMENTS In the event there is conflict between EXHIBIT A-1, attached hereto, and this Agreement, the terms of this Agreement shall supersede and prevail over any provision(s) in EXHIBIT A-1.

SECTION 43. INTELLECTUAL PROPERTY Ownership of all applicable copyrights, trade secrets, patents and other intellectual property rights in the Contract Documents, and all other Work product and data, shall be vested in Owner, and the Contractor shall not permit their use in any way which would be detrimental to Owner. Any confidential information disclosed by Owner to the Contractor shall be held in strict confidence and shall not be disclosed to any other party whatsoever. Confidential information shall include, but not be limited to: proprietary technical data, trade secrets, construction processes, know-how, financial data, environmental analyses, forecasts, plans, and contractor, supplier and customer lists. This obligation of confidentiality shall survive the termination of this Agreement for any reason, and the Contractor further agrees to surrender all Confidential Information to Owner upon request and in any event upon termination of this Agreement, and shall not retain copies or memorandum of said information in any form whatsoever.

**C19-1 Shotwell, LLC
General Contractor Agreement**

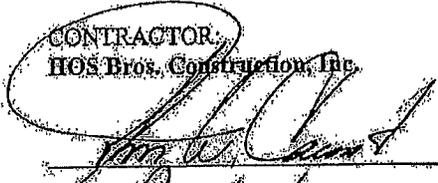
IN WITNESS WHEREOF, the parties hereto have signed this Agreement in duplicate. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by the Contractor's representative on their behalf.

OWNER:
C19-1 Shotwell, LLC



By: Scot Decraft
Its: Authorized Agent
Date: 8-9-06

CONTRACTOR:
HOS Bros. Construction, Inc.



By: John Caunt
Its: President
Date: 8-7-06

EXHIBIT A
SCOPE OF WORK / PRICE

TO: C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA, 98205

FROM: HOS Bros. Construction, Inc.
P.O. Box 1788
Woodinville, WA, 98072-1788

PROJECT NAME & NUMBER: Canyon Clock Center - C19-1

DATE:

CONSTRUCTION TRADE: General Contractor

CONTRACT PRICE: Guaranteed Maximum Price \$4,699,187.00 (subject to Section 9 of this General Contractor Agreement)

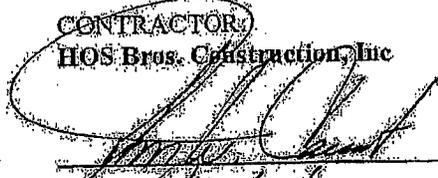
SCOPE OF WORK: All Work to be performed shall be per the Contract Documents. Contractor acknowledges that it has reviewed Contract Documents in their entirety. Unless specified in writing to the contrary, the price to be paid to the Contractor shall include all necessary labor, equipment, machinery, tools, fasteners, scaffolding, man lifts, fork lifts, safety protection, etc. as required to perform the stated scope of Work in accordance with this Agreement.

SPECIFIC EXCLUSIONS: See Exhibit A-1

OWNER:
C19-1 Shotwell, LLC


By: Scot Beckett
Its: Authorized Agent
Date: 8-1-06

CONTRACTOR:
HOS Bros. Construction, Inc


By: John Cant
Its: President
Date: 8-7-06

HOS 001885

C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT A-1
UNIT PRICES

(SEE ATTACHED)

HOS 001886

HOS BROS. CONSTRUCTION, INC.
CANYON CLOCK PROJECT
REVISED UTILITY BUDGET 8/3/06

Scope 1 of 5
 8/3/2006

SITE UTILITIES AND FINE GRADING:

	QTY	UNIT	PRICE	TOTAL	TOTAL
MOBILIZATION					\$35,500
STORM DRAINAGE - MAINLINE					\$792,038
Type I CB's	6	EA	\$1,150	\$6,900	
STORM MH'S - 48"	46	EA	\$2,445	\$112,470	
STORM MH'S - 54"	5	EA	\$3,150	\$15,650	
STORM MH'S - 60"	3	EA	\$3,848	\$11,544	
STORM MH'S - STORMGATE	2	EA	\$8,911	\$17,622	
10" PVC SD	610	LF	45.70	\$27,877	
12" ADS SD	1,764	LF	30.47	\$53,749	
18" ADS SD	2,019	LF	35.73	\$72,159	
24" ADS SD	163	LF	54.02	\$8,805	
30" ADS SD	366	LF	65.98	\$24,149	
30" RCP	47	LF	86.69	\$4,074	
Water Quality Vault - Storm Bed A	1	EA	\$165,475.00	\$165,475	
Water Quality Vault - Storm Bed C	1	EA	\$181,416.00	\$181,416	
Mtd. Clean. & Adjust	1	LS	\$90,768.00	\$90,768	
CONSTRUCT STORM INFILTRATION BEDS					\$645,432
Exc. Infiltration bed A	18,800	TCY	\$2.40	\$45,120	
-surplus cut material to be placed in site fills					
Install infiltration bed A	1	LS	\$675,498.00	\$675,498	
-includes washed rock and 48" dia. CMP pipe					
Backfill infiltration bed A - native	15,100	TCY	\$3.10	\$46,810	
Exc. Infiltration bed C	8,870	TCY	\$2.40	\$21,288	
-surplus cut material to be placed in site fills					
Install infiltration bed C	1	LS	\$138,279.00	\$138,279	
-includes washed rock and 48" dia. CMP pipe					
Backfill infiltration bed C - native	6,970	TCY	\$3.10	\$21,607	
WATER					\$310,231
Connect to Existing Water Main	2	EA	\$2,810.00	\$5,620	
8" DIP Main with Fittings (5' or less bury)	3,300	LF	\$34.14	\$112,662	
- Fitting design not provided					
8" DIP Main with Fittings (over 5' deep w/vertical bends)	1,100	LF	\$63.80	\$70,180	
- Fitting design not provided					
8" DIP stubs to lots	400	LF	\$57.16	\$22,864	
- Fitting design not provided					
6" DIP Hydrant Lateral	150	LF	\$30.53	\$4,580	
FHA	5	EA	\$3,878.00	\$19,390	
MAINLINE FITTINGS	1	LS	\$26,785.00	\$26,785	
- Estimated fittings based on supplier recommendations					
Flush, Test, & Adjust	1	LS	\$48,150.00	\$48,150	

Canyon Clock Utility and Grading 8-3-06

HOS 001887

HOS BROS. CONSTRUCTION, INC.

Scope 2 of 5
8/3/2006

SANITARY SEWER

Connect to Existing MH @ Canyon Rd.	1	EA	\$5,544.00	\$5,544
Connect to Existing MH @ Tacoma Rail	1	EA	\$7,224.00	\$7,224
Bore 20" carbon steel casing	56	LF	\$668	\$69,088
Trench dam	1	EA	\$6,912	\$6,912
12" DIP culvert	80	LF	\$57.63	\$4,626
SSMH - with G/U Liners	17	EA	\$3,891.00	\$67,847
8" SS DIP CL 52 (sewer safe DIP)	1,524	LF	\$50.58	\$77,084
12" SS DIP CL 52 (sewer safe DIP)	2,074	LF	\$70.91	\$147,067
Flush, Test, & Adjust	1	LS	\$19,269.00	\$19,269

\$374,662

GRADING

Cut, load and place preload from lot 4 to lot 9	7,500	TCY	\$2.90	\$21,750
Finegrade paving	18,000	SY	\$2.45	\$44,100
Furnish and Install 8" - 6.5" CSBC	8,000	TON	\$18.42	\$155,399
Finegrade curb & gutter	9,100	LF	\$3.20	\$29,120
Finegrade sidewalks	5,810	SY	\$8.65	\$50,257
Finegrade landscape	13,000	SY	\$3.15	\$40,950
Excavate, sand and backfill common trench	7,200	LF	\$22.50	\$162,000
Excavate and backfill power vaults	28	EA	\$1,365.00	\$38,080

\$542,597

SUBCONTRACT WORK

Install site power conduit and vaults	1	LS	\$160,530.00	\$160,530
Install site temporary power	1	LS	\$14,700.00	\$14,700
Install street lighting	1	LS	\$510,187	\$510,187
Install telecom conduit	1	LS	\$229,080	\$229,080
Install paving (2 mobs)	17,575	SY	\$12.96	\$227,772
Install curb & gutter (incl truncated domes)	9,100	LF	\$11.55	\$105,378
Install sidewalk	5,810	SY	\$32.85	\$190,859
Install landscape trees and sod lawn	1	LS	\$134,508.60	\$134,509
Install irrigation (for parking strip landscape only)	1	LS	\$74,174.00	\$74,174

\$1,647,138

SITWORK - remaining items from original bid

Place bal. fill/chips on lot 1 east slope at back of sidewalk on Can	2,000	TCY	\$2.90	\$5,800
Cut parking lot 1 at SEC (around project sign)	1	DAY	\$6,650.00	\$6,650
Log and Clear North tree line	2	AC	\$8,640.00	\$17,280
Strip and export topsoil along North property line (15" depth)	6,000	TCY	\$7.50	\$45,000
Relocate north berm to new clearing limit	3	DAYS	\$2,500.00	\$7,500
Pull cement treated haul road and bury in lot 9	1	DAY	\$6,650.00	\$6,650
Cut rock scraper load and place in deeper fill (floodplain bldg 7)	2,000	TCY	\$2.90	\$5,800
TESC swales and check dams	10,000	LF	\$3.10	\$31,000
OB protection	202	EA	\$90.00	\$18,180
Remove TESC	1	LS	\$10,000.00	\$10,000
ATB wheel wash	1	EA	\$15,000.00	\$15,000
Hydroseed	40	AC	\$800.00	\$32,000

\$200,860

SITWORK - remaining items from field revisions

Lot 2 stockpile to place in utility trenches or site fills	40,500	TCY	\$2.90	\$117,450
Additional grindings at lot 1 - cut approx. 12" & use in lieu of rock 1	4,500	TCY	-\$9.00	-\$40,500
Dewatering contingency - winter work	1	LS	\$40,000.00	\$40,000

\$116,950

MATERIAL PRICE INCREASES TO ADD TO CONTRACT

Locker Paving quote dated 7/7/06 (est. \$150/ton liquid asphalt price increase by pave date)				\$28,875
Canyon Clock Utility and Grading 8-3-06				

\$33,471

HOS 001888

AOS BROS. CONSTRUCTION, INC.

Scope 3 of 5
8/3/2006

Galber Concrete (curbs & sidewalks)

bid date 4/18/06
276,421

bid date 7/26/06
\$281,016.54

\$4,596

TOTAL SPINE ROADS AND UTILITY MAINLINE BUDGET \$4,699,178

UNIT PRICES AND ALTERNATES:

HAUL AND PLACE SURPLUS STOCKPILE AT LOT 2
4" rock subgrade under sidewalks (import & place)
4" rock subgrade under curbs (import & place)

QTY	UNIT	PRICE	TOTAL
	TCY	\$2.80	
1,200	TON	\$20.60	\$24,720
550	TON	\$20.60	\$11,330

Canyon Clock Utility and Grading 8-3-06

HOS 001889

HOS BROS. CONSTRUCTION, INC.
QUALIFICATIONS

General

- 1 Malheur utility scope based on permit submittals plans from Alpha Community Development, dated as follows:
Site Development sheets 1 through 30, dated 2/28/06.
Water Schematic Plan, sheet 1, dated 3/3/06, Water profiles as shown on Storm Plans dated 2/28/06.
Private Sewer Plans, sheets 1-3, Dated 3/2/06, Public Sewer Plans, sheets 1-4, Dated 3/2/06.
Landscape plans sheets L1-L4, dated 6/18/05.

Site Electrical and lighting plans by Hargis, sheets E1.01 through E3.01 dated 2/28/06, and T0.01 through T1.03 dated 2/28/06.
- 2 Tree removal, stripping, fill and finegrading along North property line beyond current clearing limit not included in this proposal.
- 3 Tree removal, fill, grading and finegrading to complete the site in the wetland area is not included in this proposal.
- 4 Pricing does not include any additional insurance or bonding requirements that may be required for work in the Williams Pipeline or Tacoma Rail easements.

QUALIFICATIONS

Utilities

- 1 Building services (sewer connections, downspout and foundation drains, fire, domestic and FDC lines) are excluded.
- 2 Budget does not include any dewatering over and above the use of 2 - 3" trash pumps for utility installation.
- 3 Has used historical pricing for water line fittings (fittings where not shown on the conceptual plan) the plans.
- 4 Fire lines, FDC's, domestic services and irrigation services are not part of this proposal.
- 5 Roof drain collectors, roof drain tight lines, footing drains, and footing drain tight lines are not part of this budget.
- 6 Side sewers to each building are not part of this budget.
- 7 Assumed 1 raise of iron.
- 8 Budget does not include WC vault drains to storm system. Plans note "no perimeter drains".
- 9 Utility backfill is priced as native. All trench spoils assumed to be placed in roadway in immediate proximity to the trench excavation.
- 10 Drain rock for the infiltration beds is priced to meet the DOT 2006 specified for Dry Wells, not the 2004 specification as noted on the plans.

Canyon Clock Utility and Grading 8-3-06

HOS BROS. CONSTRUCTION, INC.

Scope 5 of 5
8/3/2006

QUALIFICATIONS

Grading

- 1 Pavement delineation, striping or signage is not included in this budget (no plans provided).
- 2 Electrical proposal includes the installation of conduit for power, temp power, site lighting and telecom. The cost for each utility to pull their wire and energize is not included and assumed to be part of the owner agreement and user fee structure set up by each utility.
- 3 Our curbing subcontractor has priced this project contingent upon installation after October due to their current work load. We do not anticipate a scheduling conflict with this date range.
- 4 The electrical items may have material price increases after 8/5/06 due to volatile PVC and copper prices. Hos Bros. reserves the right to renegotiate this price should it become a major issue.

Canyon Clock Utility and Grading 8-3-06



CANYON CLOCK - EQUIPMENT AND LABOR COST RATES

RATES EFFECTIVE MAY 1, 2006

ITEM #		HOURLY RATE
1	SOLO TRUCK	86.00
2	TRUCK & TRAILER	120.00
3	TWO AXLE 35 TON LOWBOY	120.00
4	EIGHT AXLE 70 TON LOWBOY	265.00
5	WATER TRUCK 3400 GALLON	128.00
6	WATER TRUCK 3400 GALLON (INCLUDES LOADING FACILITY)	218.00
7	35 TON ARTICULATED DIRT WAGON	105.00
8	50 TON ARTICULATED DIRT WAGON	140.00
9	MOBILE STREET SWEEPER	120.00
10	KOMATSU 760 EXCAVATOR	274.50
11	KOMATSU 800 EXCAVATOR	241.00
12	KOMATSU 400 OR CAT 235 2-1/2 CY EXCAVATOR	212.00
13	KOMATSU 300 2 CY EXCAVATOR	189.00
14	HITACHI 07 OR 063 EXCAVATOR WITH HOE PAC	160.00
15	HITACHI 07, 063 OR KOMATSU 200 OR CAT 215 1-1/2 CY EXCAVATOR	153.00
16	KOMATSU 045 EXCAVATOR	103.50
17	KOM 120 WITHUMB	127.00
18	KOM 138 EXCAVATOR	137.00
19	CASE 580 OR CAT 416 BACKHOE	81.00
20	CAT 14 GRADER OR CAT 140 GRADER	118.00
21	CAT D-10R WITH RIPPER	357.00
22	CAT D-8 WITH RIPPER	246.00
23	CAT D-8 WITH RIPPER	214.00
24	CAT D-7 WIDE TRACK	188.00
25	CAT D-8 OR KOMATSU D-65P WIDE TRACK DOZER	163.00
26	CAT D-8 OR KOMATSU D-65 CONVENTIONAL WITH RIPPER	167.00
27	CAT D-9 DOZER	122.00
28	HYDRAULIC BREAKER	315.00
29	KOMATSU D-31 WIDE TRACK DOZER	117.00
30	CAT D-4, IH TD-8, KOMATSU D-37 OR D-41 DOZER	106.00
31	CAT D-3, IH TD-7, JD 450 OR CASE 450 DOZER	89.00
32	KOM 450 OR TEREX 72-61 LOADER	148.00
33	KOM 3000 LOADER	135.00
34	CAT 850, 936 OR KOM 320 2-1/2 CY WHEEL LOADER	128.00
35	RAYCO 410, BOMAG 219/217, IR 50, HYSTER 850 COMPACTOR	154.00
36	RAYCO 220 COMPACTOR	89.00
37	SUPERVISOR AND PICKUP	84.00
38	PROJECT MANAGER	80.00
39	PROJECT ENGINEER	63.00
40	PROJECT ACCOUNTANT	40.00
41	OPERATOR ONLY	59.50
42	DRIVER STAND-BY	57.15
43	LABORER ONLY	52.00
44	OPERATOR OVERTIME PREMIUM	28.66
45	DRIVER OVERTIME PREMIUM	28.10
46	LABORER OVERTIME PREMIUM	25.26
47	FLATBED/UTILITY PIPE TRUCK	21.00

NOTE: ALL RATES FOR EQUIPMENT INCLUDE OPERATOR, F.I.O.G. AND OHS&P

HOS BROS. CONSTRUCTION, INC.

P.O. BOX 1788, WOODINVILLE, WA 98072-1788 (425) 481-5568 * FAX (425) 488-6664



HOS 001892

C19-1 Shotwell, LLC
General Contractor Agreement

EXHIBIT A-2
SPECIAL PROVISIONS AND SPECIFICATIONS

- 1-01 All Work within the right-of-ways shall be in conformance with the governing jurisdictions' laws, ordinances, regulations, plans and specifications and the Contract Documents.
- 1-02 The Contractor shall be responsible for maintaining traffic flow in conformance with Manual of Uniform Traffic Control Devices, latest edition, of Washington Department of Transportation standards and plan specifications and Contract Documents. This shall include any and all traffic construction signage in conjunction with Contractor's activities in public right-of-way. Traffic control shall be incidental to the Contract.
- 1-03 Any materials not specifically spelled out within the unit items and prices shall be authorized only upon written request by the Contractor and consent of the Owner, the Administrator or their respective representatives and will be paid in accordance with the payment provisions of the Contract Agreement.
- 1-04 The Owner and the Administrator reserve all rights to delete any item from the Contract bid items.
- 1-05 The Contractor shall fully comply with the notification requirements of the appropriate utility companies involved with this project.
- 1-06 The Contractor shall provide on a weekly basis, daily progress reports. These reports may be faxed, or hand delivered to the Owner, the Administrator or their respective representatives. The report received shall be for the previous work week.
- 1-07 No trespassing signs will be posted prior to any site preparation, preferably prior to mobilization of equipment to the site, in a manner in which any and all persons, or people on or near the site can readily observe so that safety is observed. Cost of signs and maintenance are incidental to the contract price.
- 1-08 Contractor shall provide Owner and Administrator with weekly statement of working days on the form provided.
- 1-09 Proper maintenance, as determined by the Owner, the Administrator or their respective representatives, of the construction entrances shall be incidental to the unit price.
- 1-10 Contractor shall be responsible for street cleaning and dust control as related to contractor's scope of work. The cost for both shall be incidental to the contract price.
- 1-11 Contractor shall comply within the governing jurisdictions' noise ordinance and hours of operation.
- 1-12 Contractor shall construct all of the improvements identified in Contractor's bid per the plans and specifications as identified on that bid, a copy of which is attached to this Contract as Exhibit A-1.
- 1-13 Contractor's maximum allowable markup on supplies, materials, equipment (not listed on rate sheet in exhibit A-1), and/or subcontractor work shall be five (5%) percent.

Contractor:

Hos Bros. Construction, Inc.

By: John Cautel
Hos. President

**C19-1 Shotwell, LLC
General Contractor Agreement**

EXHIBIT B

REQUEST FOR EXTENSION OF CONTRACT TIME

Project Name: Canyon Clock Center

Total Contract Days: 174

Job No.: C19-1

Contract Start Date: 9/4/2006

Completion Date: 9/4/2007

Total Days Worked to Date _____
Total Days Revised on Contract _____
Total Days Remaining on Contract _____

We are requesting that the contract time be extended for a period of _____ days. The revised completion date will be _____.

APPROVED

**OWNER:
C19-1 Shotwell, LLC**

**CONTRACTOR:
HOS Bros. Construction, Inc.**

By: Scot Bcraft
Its: Authorized Agent
Date: _____

By: John Gaunt
Its: _____
Date: _____

HOS 001894

C19-T Shofwell, LLC
General Contractor Agreement
EXHIBIT C

CONSTRUCTION SCHEDULE

(SEE ATTACHED)

HOS 001895

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT D**

STATEMENT OF WORKING DAYS

Project Name: **Canyon Clock Center**

Total Contract Days: **174**

Project No: **C19-1**

Contract Start Date: **9/4/2006**

Week Ending: _____

Completion Date: **7/31/2007**

<u>DAY</u>	<u>DATE</u>	<u>WEATHER</u>	<u>TEMP</u>	<u>WORKABLE/ UNWORKABLE</u>
Mon.	_____	_____	_____	_____
Tues.	_____	_____	_____	_____
Wed.	_____	_____	_____	_____
Thurs.	_____	_____	_____	_____
Fri.	_____	_____	_____	_____
Sat.	_____	_____	_____	_____
Sun.	_____	_____	_____	_____

Total Days Worked This Week _____
 Total Days Worked to Date _____
 Total Days Revised on Contract _____
 Total Days Remaining on Contract _____

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc

By: Scott Becraft
 Its: Authorized Agent
 Date: _____

By: John Caunt
 Its: _____
 Date: _____

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT E**

CHANGE ORDER

C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA 98205

Issued to: **HOS Bros. Construction**
P. O. Box 1788
Woodinville, WA 98072-1788

PROJECT NAME: **Canyon Clock Center**

PROJECT # **C19-1**

PLAN NO. _____ LOT # _____

CHANGE ORDER #: _____ CHANGE ORDER DATE: _____

REQUESTED BY: _____ AUTHORIZED: _____

ADDITIONS / DELETIONS:

(Circle One)

Total Increase / Decrease this Change Order: \$ _____

(Circle One)

Previous Total Contract Amount: \$ _____

New Total Contract Amount Change Order: \$ _____

Please note that this Change Order shall not be valid and no Work shall be authorized until such time as both parties have signed this Change Order. The completion date of Work will not be adjusted, unless noted herein. A copy of this Change Order must accompany application for payment.

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scot Becraft
Its: Authorized Agent
Date: _____

By: John Caunt
Its: _____
Date: _____

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT F**

BACK CHARGE

C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA 98205

Issued to: **HOS Bros. Construction, Inc.**
P. O. Box 1788
Woodinville, WA 98072-1788

PROJECT NAME: Canyon Clock Center

PROJECT #: C19-1

PLAN NO. _____

LOT # _____

ISSUED BY: _____

BACK CHARGE

Description	Amount

Total Back Charge: \$ _____

Please note that this Back Charge is issued pursuant to Section 9.4 of the Agreement between Owner and Contractor.

OWNER:
C19-1 Shotwell, LLC

CONTRACTOR:
HOS Bros. Construction, Inc.

By: Scott Becraft
Its: Authorized Agent
Date: _____

By: John Caunt
Its: _____
Date: _____

HOS 001898

**C19-1 Shotwell, LLC
General Contractor Agreement
EXHIBIT G**

CONTRACTOR INFORMATION

Company/Full Legal Name: Hos Bros. Construction, Inc.
Street Address: 7733 West Postian Rd.
City: Woodinville State: WA Zip Code: 98072
Ph#: 425-481-5569 Fax#: 425-485-6634 Emergency Ph#: (Joaquin) 425-864-0004
Mobile Ph#: (Barbara) 425-864-0019 Other Ph#: _____
E-Mail Address: barbarar@hosbros.com
Name of Principal: John W. Gaunt Title: President
Residence Address: P.O. Box 1788 Woodinville State: WA Zip Code: 98072
Contact Person (Billing): Maurine Matoska Phone#: 425-481-5569
Fax#: 425-485-6634 Mobile#: _____ E-mail#: maurinem@hosbros.com
Project Manager: Barbara Rodgers Phone#: 425-481-5569
Fax#: 425-485-6634 Mobile#: 425-864-0019 E-mail#: barbarar@hosbros.com
Emergency Contact: Joaquin Castillo (Superintendent) Phone#: 425-864-0004
Fax#: _____ Mobile#: _____ E-mail#: _____

 Check Only Corporation Partnership Proprietorship LLC
State of Incorporation: Washington Date of Incorporation: 1966
Federal ID #: 91-0791022 SS#: XXX-XX-XXXX
Contractor's Lic. #: HOSBR01172B1 Expiration Date: 3/1/07
L&I Account ID #: 201,878-00 UBI#: 6174-004-051
Insurance Co. Name: American Zurich Insurance Company Policy#: _____
Agent's Name: Parker, Smith & Peck, Inc. Ph#: 425-709-3600
Bonding Co. Name: Travelers Casualty & Surety Co. Bond#: _____
Ph#: _____ Bond Limits: _____

Name of Bank: US Bank Branch Name: US Bank in Bellevue
Street Address: 10800 NE 8th St., Ste #1000 Ph#: 425-450-5914
City: Bellevue State: WA 98004

Trade References:
Subcontractor: National Waterworks Contact: Dean McKnight Ph#: 425-483-2724
Subcontractor: Rinker Materials Contact: Steve Lindford Ph#: 206-624-0901
Subcontractor: Modern Machinery Contact: Will Wintermute Ph#: 253-872-3500

Applicant's Signature: _____ Dated: _____

EXHIBIT I

LIEN RELEASE

(Mechanic's Lien, Stop Notice, Equitable Lien, and Material Bond Release)

FROM: _____ PROJECT: _____
 (Name of Person or Firm Giving Release) (Name & Tract No.)

 (Street Address) (Address of Project)

 (City, State, Zip) (City, State, Zip)

ISSUED TO: _____

 FULL RELEASE CONDITIONAL RELEASE CONDITIONAL RELEASE
 (Full Payment) (Progress Payment)

The undersigned has been paid in full for all labor, subcontract work, equipment, and materials supplied to the above described project and hereby releases all mechanic's liens, stop notices, equitable liens, and labor and material bond rights on the project for all materials, supplies, labor services, etc. purchased, acquired, or furnished by or for us and used on above premises up to and including: _____
 (Date)

This Release is for the benefit of and may be relied upon by the owner, the prime Owner, the construction lender, and the principal and surety on any labor and material bond posted for the project.

FIRM NAME: _____

(Firm furnishing labor, etc.)

By: _____

Date: _____

The undersigned does hereby release all mechanic's liens, stop notices, equitable liens, and labor and material bond rights against the above described project for all materials, supplies, labor services, etc. purchased, acquired, or furnished by or for us and used on above premises up to and including: _____
 Date: _____

This Release is for the benefit of and may be relied upon by the owner, the prime Owner, the construction lender, and the principal and surety on any labor and material bond.

This Release is CONDITIONAL and shall be effective only upon payment to the undersigned in the sum of \$ _____. If payment is by check, this Release is effective only when the check is paid by the bank upon which it is drawn.
 FIRM NAME: _____

(Firm furnishing labor, etc.)

By: _____

Date: _____

The undersigned does hereby release all mechanic's liens, stop notices, equitable liens and labor and material bond rights against the above described project for all materials, supplies, labor services, etc. purchased, acquired, or furnished by or for us and used on above premises up to and including: _____
 Date: _____

This Release is for the benefit of and may be relied upon by the owner, the prime Owner, the construction lender, and the principal and surety on any labor and material bond.

This Release is CONDITIONAL and shall be effective only upon payment to the undersigned in the sum of \$ _____. If payment is by check, this Release is effective only when the check is paid by the bank upon which it is drawn.
 FIRM NAME: _____

(Firm furnishing labor, etc.)

By: _____

Date: _____

EXHIBIT J

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT made and entered into on this 10th day of July 2006, HOS Bros. Construction, Inc. with its place of business at P. O. Box 1788, Woodinville, WA 98072-1788, hereinafter called the "Contractor", agrees to defend, indemnify and hold C19-J Shotwell, LLC, with its place of business at 10515 20th Street SE, Suite 100, Everett, Washington 98205, hereinafter called the "Owner", and the Owner's members, employees, agent and representatives (collectively the "Indemnified Parties"), harmless from any and against all and all claims, losses and liabilities, including attorneys' fees and costs, resulting from or connected with services performed or to be performed under this Agreement by Contractor or Contractor's agents, subcontractors or employees to the fullest extent permitted by law and subject to the limitations provided below.

Contractor's duty to indemnify the Indemnified Parties for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the Indemnified Parties on the one hand, and (b) Contractor or Contractor's agents or employees on the other, shall apply only to the extent of negligence of Contractor or Contractor's agents or employees.

Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Agreement 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 workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by the Indemnified Parties, and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

Contractor's duty to defend, indemnify and hold the Indemnified Parties harmless shall include, as to all claims, demands, losses and liability to which it applies, the Indemnified Parties' personnel-related costs, reasonable attorneys' and accountants' fees, expert witness fees, court costs and all other claim-related expenses.

Contractor's obligations under this Agreement are unconditional, irrevocable and separate and distinct obligations from and in addition to Contractor's obligations under the Contract Agreement between Owner and Contractor.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS AGREEMENT WAS MUTUALLY NEGOTIATED.

OWNER:
C19-J Shotwell, LLC



By: Scott Becraft
Its: Authorized Agent
Date: 8-4-06

CONTRACTOR:
HOS Bros. Construction, Inc.



By: John Gault
Its: President
Date: 8-7-06

EXHIBIT K

CONTRACTOR CORRECTION NOTICE

CONTRACTOR: HOS Bros.
Construction, Inc.

NOTIFICATION DATE: _____

VIA: _____

SITE	LOT	ITEM TO BE CORRECTED	REMEDY	BACK CHARGES

Site Superintendent Signature: _____

Date: _____

Time: _____

Hos Bros. Construction, Inc.
 1438 - Canyon Clock Utility and Paving Schedule
 Hos crews working 5 - 10's and 1 - 8, subcontractors working 5 - 8's

ID	Task Name	Duration	Start	Finish	Start	September	October	November	December	January	February	March	April	May	June	July	August
1	STEWORX - PHASE 1	1 day	Mon 1/30/06	Mon 1/30/06													
2	Move preload from lot 4	4 days	Mon 8/14/06	Thu 8/17/06	14												
3	Pull up cement treated haul road	1 day	Fri 8/18/06	Fri 8/18/06	18												
4	Cut parking lot 1 @ SEC.	1 day	Sat 8/19/06	Sat 8/19/06	19												
5	Relocate silt chips to slope	3 days	Mon 8/21/06	Wed 8/23/06	21												
6	Excavate Bed A	5 days	Thu 8/24/06	Tue 8/29/06	24												
7	Excavate Bed C	5 days	Wed 8/30/06	Wed 9/6/06	30												
8	Order sewer manholes	20 days	Mon 8/14/06	Thu 9/7/06	14												
9	Order storm CMP pipe	19 days	Mon 8/14/06	Wed 8/30/06	14												
10	STEWORX PHASE 2:	45 days	Tue 9/5/06	Mon 11/6/06													
11	Log north property line	5 days	Tue 9/5/06	Mon 9/11/06	5												
12	Strip north property line/move berm	10 days	Tue 9/12/06	Mon 9/25/06	12												
13	Pull rock haul road and build winter road	4 days	Wed 11/1/06	Mon 11/6/06	11												
14	BANITARY SEWER	56 days	Tue 8/15/06	Tue 1/23/07													
15	Bore under RR tracks	5 days	Tue 8/15/06	Mon 8/14/06	15												
16	Connect to existing	2 days	Tue 8/12/06	Wed 8/13/06	12												
17	Install manhole	13 days	Thu 9/14/06	Mon 10/2/06	14												
18	Test and Flush	5 days	Tue 10/3/06	Mon 10/30/06	3												
19	Sewer initial raise of iron	3 days	Wed 12/6/06	Fri 12/8/06	6												
20	Air vac SSMIFs	10 days	Wed 1/10/07	Tue 1/23/07	10												
21	STDRW SEWER	12 days	Tue 9/5/06	Fri 12/15/06													

Project: Canyon Clock - Utility schedule
 Date: Thu 9/5/06

Task: [Task Icon] Milestone: [Milestone Icon] Rolled Up Task: [Rolled Up Task Icon] Rolled Up Progress: [Rolled Up Progress Icon] External Tasks: [External Tasks Icon] Group By Summary: [Group By Summary Icon]

Progress: [Progress Icon] Summary: [Summary Icon] Rolled Up Milestone: [Rolled Up Milestone Icon] Split: [Split Icon] Project Summary: [Project Summary Icon] Deadline: [Deadline Icon]

Page 1

HOS 001904

Hos Bros. Construction, Inc.
 1438 - Canyon Clock Utility and Paving Schedule
 Hos crews working 5 - 10's and 1 - 8, subcontractors working 5 - 8's

ID	Task Name	Duration	Start	Finish	Start	September	October	November	December	January	February	March	April	May	June	July	August
22	Build infiltration bed A	12 days	Tue 9/26/06	Wed 10/20/06	9/26												
23	Build infiltration bed C	7 days	Tue 9/26/06	Wed 10/4/06	9/26												
24	Install Mainline storm	26 days	Tue 10/3/06	Tue 11/7/06	10/3												
25	Install storm valve	6 days	Wed 11/8/06	Wed 11/15/06	11/8												
26	Mud/Clean structures	10 days	Thu 11/16/06	Fri 12/1/06	11/16												
27	Storm initial raise of iron	5 days	Mon 12/11/06	Fri 12/15/06	12/11												
28	Air test storm	5 days	Mon 12/18/06	Fri 12/29/06	12/18												
29	WATER	70 days	Thu 10/19/06	Wed 1/17/07	10/19												
30	Install Mainline	20 days	Thu 10/19/06	Wed 11/1/06	10/19												
31	Hydrants	3 days	Thu 11/2/06	Mon 11/6/06	11/2												
32	Flush/Test	8 days	Tue 11/7/06	Thu 11/16/06	11/7												
33	Raise water valves	6 days	Wed 1/10/07	Wed 1/17/07	1/10												
34	PINEGRADE AND PAVG 1ST LIFT	44 days	Thu 11/2/06	Tue 1/30/07	11/2												
35	Joint trench crossing	5 days	Thu 11/2/06	Wed 11/8/06	11/2												
36	Sleeve for irrigation	5 days	Thu 11/2/06	Wed 11/8/06	11/2												
37	Sleeve for site lighting	5 days	Thu 11/2/06	Wed 11/8/06	11/2												
38	Finergade curb & gutter	4 days	Thu 11/9/06	Tue 11/14/06	11/9												
39	Install curb	10 days	Wed 11/15/06	Thu 11/29/06	11/15												
40	Finergade Paving	9 days	Tue 11/28/06	Fri 12/8/06	11/28												
41	Place rock subgrade	6 days	Thu 12/7/06	Thu 12/14/06	12/7												
42	Rain Days for utilities	10 days	Fri 12/15/06	Tue 1/23/07	12/15												

Project: Canyon Clock - utility schedul
 Date: Thu 9/26/06

Task Progress

Milestone Summary

Roll Up Task

Roll Up Milestone

Roll Up Progress

Split

External Tasks

Project Summary

Group By Summary

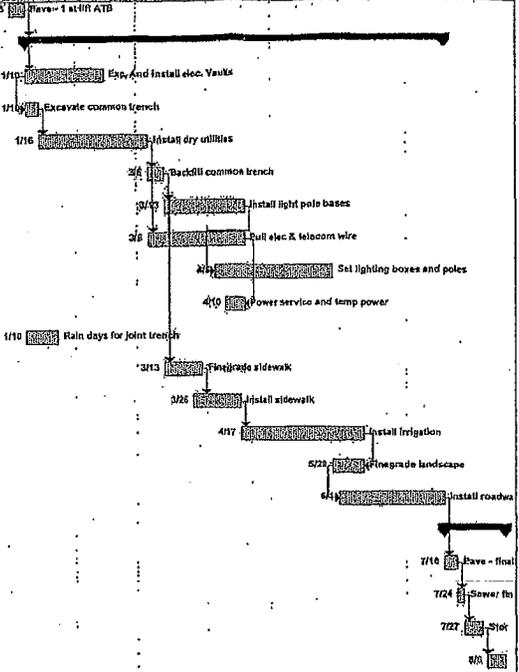
Deadline

Page 2

HOS 001905

Hos Bros. Construction, Inc.
 1438 - Canyon Clock Utility and Paving Schedule
 Hos crews working 5 - 10's and 1 - 8, subcontractors working 5 - 8's

ID	Task Name	Duration	Start	Finish	Start	September	October	November	December	January	February	March	April	May	June	July	August
43	Raw - 1 at HR ATB	5 days	Wed 1/30/07	Tue 1/30/07	1/30												
44	ELECTRICAL AND LANDSCAPE	135 days	Wed 1/10/07	Tue 7/17/07	1/10												
45	Exc. And Install elec. Vaults	25 days	Wed 1/10/07	Tue 2/13/07	1/10												
46	Excavate common trench	4 days	Wed 1/10/07	Mon 1/15/07	1/10												
47	Install dry utilities	35 days	Tue 1/16/07	Mon 3/5/07	1/16												
48	Backfill common trench	5 days	Tue 3/6/07	Mon 3/12/07	3/6												
49	Install light pole bases	27 days	Tue 3/13/07	Wed 4/18/07	3/13												
50	Pull elec & telecom wire	32 days	Tue 3/6/07	Wed 4/18/07	3/6												
51	Set lighting boxes and poles	38 days	Thu 4/5/07	Mon 5/28/07	4/5												
52	Power service and temp power	7 days	Tue 4/10/07	Wed 4/18/07	4/10												
53	Rein days for joint trench	10 days	Wed 1/16/07	Tue 1/23/07	1/16												
54	Finergrade sidewalk	13 days	Tue 3/13/07	Thu 3/29/07	3/13												
55	Install sidewalk	19 days	Mon 3/26/07	Mon 4/16/07	3/26												
56	Install irrigation	40 days	Tue 4/17/07	Mon 6/11/07	4/17												
57	Finergrade landscape	10 days	Tue 5/22/07	Mon 6/11/07	5/22												
58	Install roadway landscape	33 days	Fri 6/1/07	Tue 7/17/07	6/1												
59	FINAL PAVE	19 days	Wed 7/18/07	Mon 8/13/07	7/18												
60	Pave - final lift CL B	4 days	Wed 7/18/07	Mon 7/23/07	7/18												
61	Sewer final raise of iron	3 days	Tue 7/24/07	Thu 7/26/07	7/24												
62	Storm final raise of iron	6 days	Fri 7/27/07	Fri 8/3/07	7/27												
63	Water final raise of iron	6 days	Mon 8/6/07	Mon 8/13/07	8/6												



Project: Canyon Clock - utility schedul
 Date: Thu 05/06

Task Progress: [Legend]

External Tasks: [Legend]

Group By Summary: [Legend]

Page 3

HOS 001906

EXHIBIT 4

COLLATERAL ASSIGNMENT OF MAJOR SUBCONTRACTS

THIS COLLATERAL ASSIGNMENT OF MAJOR SUBCONTRACTS ("Agreement") is made as of the 28th day of August, 2006 by HOS BROS. CONSTRUCTION, INC., a Washington corporation ("General Contractor") and C19-1 SHOTWELL, LLC, a Washington limited liability company ("Borrower") to and for the benefit of BANKFIRST, a South Dakota state bank ("Lender").

RECITALS:

A. Borrower is the owner of the real estate legally described in attached Exhibit A (the "Property").

B. Borrower and General Contractor have entered into a certain General Contract dated 8/7/06, pursuant to which General Contractor has agreed to render certain construction services (the "General Contract") in connection with the Property.

C. In order to perform its obligations under the General Contract, General Contractor has entered into certain Major Subcontracts as identified on Exhibit B attached hereto, which may be amended from time to time during the term of the loan between Borrower and Lender (the "Major Subcontracts").

D. Lender has agreed, subject to certain terms and conditions, to make a loan to Borrower in an amount not to exceed Twenty-One Million One Hundred Thousand and No/100ths Dollars (\$21,100,000.00) (the "Loan"). The Loan is evidenced and governed by a certain Promissory Note dated of even date herewith, made by Borrower to the order of Lender in the original principal amount of Twenty-One Million One Hundred Thousand and No/100ths Dollars (\$21,100,000.00). The Loan is also evidenced by a Development Loan Agreement, of even date herewith by and between Lender and Borrower (the "Loan Agreement"). All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

E. To induce Lender to make the Loan, General Contractor has agreed to assign, as security for the Loan, its rights under the Major Subcontracts.

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

1. To secure the Loan, General Contractor hereby, sells, conveys and assigns to Lender all its right, title and interest in and to the Major Subcontracts. Lender and General Contractor hereby agree that upon the occurrence of an Event of Default under and as defined in the Loan Agreement, Lender shall have the right, but not the obligation, to elect, by giving written notice to Borrower and General Contractor, either to: (i) enforce the obligations of the subcontractors (the "Major Subcontractors") under the Major Subcontracts, (ii) terminate the Major Subcontracts as of the date of delivery of such notice and such Major Subcontractor shall promptly deliver to Lender all books and records pertaining to the construction of the Project. Upon the occurrence of an Event of Default, no further payments will be made to General Contractor and General Contractor shall not accept such payments.

2. The assignment made hereby is for collateral purposes only and Lender shall not be deemed to have assumed, or become liable for, the payment or performance of any of

17591420798\#669411 v 1

HOS 002101

the obligations or liabilities of Borrower arising from or in connection with the Major Subcontracts whether arising before or after the occurrence of an Event of Default, unless and until Lender delivers to General Contractor and Major Subcontractors the above described notice of its election to enforce the obligations of Major Subcontractors, as provided above, in which event Lender shall have no liability for any obligations or liabilities accruing prior to the date of the delivery of such notice.

3. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission if before 3:00 p.m. (Central Standard Time) on a Business Day so long as copy is sent on the same day by overnight courier as set forth below:

Notices to General Contractor:

HOS Bros. Construction, Inc.
P.O. Box 1788
Woodinville, WA 98072-1788

If to Borrower:

C19-1 Shotwell, LLC
c/o Barclays North, Inc.
10515 20th Street SE, Suite 100
Everett, WA 98205
Attn: General Counsel
Phone: 425-334-4040
FAX: 425-609-6882

If to Lender:

BankFirst
150 South Fifth Street
Suite 3000
Minneapolis, Minnesota 55402
Attention: Tim Sery
Telephone: 612-376-1353
Facsimile: 612-692-8413

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Any notice or demand delivered to the person or entity named above to accept notices and demands for such party shall constitute notice or demand duly delivered to such party, even if delivery is refused.

4. Neither Borrower nor General Contractor shall permit or agree to any modification, amendment or termination of the Major Subcontracts (other than the expiration of the Major Subcontracts on the expiry date, if any, set forth herein), without the prior written consent of Lender, which consent Lender shall not unreasonably withhold or delay.

This clause shall apply only to change orders involving Major Subcontracts that exceed \$100,000.00.

5. This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of Washington, without regard to conflicts of law principles. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect or impair the validity, legality or enforceability of the remainder of this Agreement, and to this end, the provisions of this agreement are declared to be severable.

6. GENERAL CONTRACTOR, BORROWER AND LENDER EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, CONTROVERSY, DISPUTE, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (INCLUDING WITHOUT LIMITATION ANY ACTIONS OR PROCEEDINGS FOR ENFORCEMENT OF THE LOAN DOCUMENTS) AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GENERAL CONTRACTOR, BORROWER AND LENDER EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH OF THEM HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. GENERAL CONTRACTOR, BORROWER AND LENDER EACH WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

7. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and together shall constitute the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year first above written.

GENERAL CONTRACTOR:

HOSBROS CONSTRUCTION, INC.
a Washington corporation

By: 
Name: John W. Gaunt
Title: President

BORROWER:

C19-1 SHOTWELL, LLC
a Washington limited liability company
By: Barclays North, Inc., Sole member

By: 
Name: Tony R. Kastens
Title: President

LENDER:

BANKFIRST
a South Dakota state bank

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION.

LOTS 1, 2, 3 AND LOT 4, AS SHOWN ON SHORT PLAT NUMBER 9702110243, FILED WITH THE PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THOSE PORTIONS OF SAID LOTS CONVEYED TO PIERCE COUNTY, A MUNICIPAL CORPORATION, BY DEED RECORDED APRIL 26, 2004 UNDER RECORDING NUMBER 200404260818, AND EXCEPT THOSE PORTIONS OF SAID LOTS CONVEYED TO PIERCE COUNTY, A MUNICIPAL CORPORATION, BY DEED RECORDED AUGUST 3, 2004 UNDER RECORDING NUMBER 200408030248.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

(75914)(20798) #669411 v f

EXHIBIT B
LIST OF MAJOR SUBCONTRACTS

7591420798\7669411\1

HOS BROS. CONSTRUCTION, INC.

SUBCONTRACTOR LIST

1543 - Canyon Clock Utilities

COMPANY	DESC.	EST. CONT. AMT.	PHONE	FAX
SUPPLIERS/SUBS				
Callbar Const. Concrete, Inc. P.O. Box 1881 Milton, WA 98354	Sidewalks & Curbs	\$ 281,018.00	253-927-0707	253-927-0706
Locker & Associates, Inc. 5825 176th St E Puyallup, WA 98375	Paving	\$ 187,000.00	253-535-1772	253-848-1851
Rainier Wood Recyclers 32300 148th Ave. SE Auburn, WA 98002	demo & clearing sub	\$ 14,000.00	253-830-3565	253-831-3032
Tunnel Systems, Inc. 22013 W. Bostian Rd. Woodinville, WA 98072	sewer bore	\$ 31,616.00	425-488-4880	425-488-6858
SS Landscaping Services 10215 Portland Ave. Tacoma, WA 98445	Landscape	\$ 190,000.00	253-535-2922	253-535-0090
Sequoian Electric, LLC 12316 134th Ct NE Redmond, WA 98052	Electrical & Site Lighting	\$ 900,000.00		

EXHIBIT 5

CONTRACTOR'S CERTIFICATE

BANKFIRST
Suite 3000
150 South Fifth Street
Minneapolis, MN 55402

Re: Project: Canyon Clock Center
Owner: C19-1 Shotwell, LLC
Construction Contract Dated: 8/7/06
Plans and Specifications: See Extract (attached)
Engineer/Architect: Alpha Community Development
Contract Sum: \$ 4,699,187.00 *

* Sales tax is in addition to the contract amount.
Ladies/Gentlemen:

We are the Contractor providing construction services to the Owner under the subject Construction Contract (the "Agreement") in the above Contract Sum. We understand that you are making a loan to the Owner to finance construction of the Project ("Loan") and that the Owner has collaterally assigned to you all of its right in the Agreement ("Assignment"). We consent to such Assignment and agree with you as follows:

1. Upon the occurrence of a default and subsequent failure to cure by the Owner under the Agreement you may elect in writing by a specific request to us to:
 - (a) continue performance under the Agreement in which case we shall thereafter continue to perform (or recommence performance) under the Agreement provided we are reimbursed for all services performed prior to the occurrence of the default in accordance with the Agreement for our services, including reimbursement to us for the actual costs of demobilization and remobilization if there is a work stoppage due to said Owner default, or
 - (b) cease work on the Project and vacate the Project, or
 - (c) if the Agreement is terminated by us and you request us to continue the work we shall at your request enter into a new Agreement directly with you as the "Owner" thereunder on substantially the same terms and conditions and at the same Contract Sum subject to demonstrated delay and re-procurement costs as in the original Agreement.

If you request us to stop work and vacate the Project we specifically acknowledge and agree that you shall not be liable for any damages we may be entitled to recover from the Owner or for reimbursement for change orders previously made and not approved by you and we agree to look solely to the Owner and not to you or the Project for the payment of the same.

HOS 002097

Further, the undersigned certifies as follows:

1. Attached hereto as Exhibit "A" is a complete List of the Contract Documents under which the Project is to be constructed. Said Contract Documents have been approved by both the Owner and us and incorporate all of the work including labor, materials and incidentals required for the complete construction of the Project ("Work").
2. The Contract Sum as set forth above has not been changed as of this date.
3. The Contract Documents are full and complete, are sufficient to have enabled us to determine the cost of the work, and the Contract Documents are sufficient to enable us to construct the Work for an amount not in excess of the Contract Sum on or before the date of Substantial Completion.
4. We have examined the site, examined all physical, legal and other conditions affecting the Work and are fully familiar with all of such conditions affecting the same and have satisfied ourselves as to the character of the Project, the surface conditions of the site and the surrounding area, the nature, location and character of the general area in which the Project is located, the availability of labor supply and labor costs and availability of equipment and the quality and quantity of all materials, supplies, tools, equipment, labor and professional services required to complete the Work by the date of Substantial Completion and within the Contract Sum,
5. Soil tests have been made on the subject property and the recommendations therein have been incorporated into the Contract Documents and the Contract Sum.
6. The Date of Commencement is not later than 5 days after receipt of
notice to proceed.
7. The date of Substantial Completion is August 31, 2007 *
*Based on notice to proceed 1st week of Sept. 2006.

We agree that we shall not perform work pursuant to any change order (i) which changes the scope of the work for the Project, (ii) which changes the Contract Sum together with all previous changes by more than one percent (1%), (iii) which changes any individual line item together with all previous changes by more than five percent (5%) in the aggregate, or (iv) which requires approval of the governing authority or which will change the date of Substantial Completion unless we have received your specific approval of such change order.

We shall notify you of the occurrence of any material default by the Owner in its obligations to us and any circumstance wherein we elect to exercise our rights to terminate the Construction Contract, and you shall have an opportunity to cure such default, provided that such cure is effected within thirty (30) days after we give you such notice of default.

We certify that we, as Contractor, have full authority under all state or local laws and regulations to perform all of our obligations under the above-mentioned Construction Contract with the Owner in accordance with the terms thereof and that the Project, as contemplated, complies with all local building codes and ordinances.

Dated: August 28, 2006.

HOS Bros. Construction, Inc.

By: 

John W. Gaunt

Its: President

Attachments: List of all Contract Documents

EXHIBIT 6

Barbara Rodgers

From: Richard Burrell [rburrell@barclaysnorth.com]
Sent: Monday, October 01, 2007 2:05 PM
To: Barbara Rodgers; Mike Rorem; Mike Neer; Ben Ehrich
Cc: Laura Kelly
Subject: FW: C19-1 Loan Draw

We apologize for the delay this month in getting your payment to you for Canyon Clock. We had to make an adjustment in the loan, and it required a majority vote by the participating lenders. The vote was approved last week. The below email trail shows the funding will occur tomorrow. Next month's draw should not have this issue.

Thank you for your understanding in this regard.

RICHARD BURRELL | BARCLAYS NORTH, INC.
Senior Project Manager
1819 South Lake Stevens Road, Lake Stevens, WA 98258
Corporate Phone 425.334.4040 | Fax 425.397.9162
Cell 425.293.2584
rburrell@barclaysnorth.com
www.barclaysnorth.com

****PLEASE NOTE CHANGE OF ADDRESS LISTED ABOVE****

This email is intended for the sole use of the individual and/or entity named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information is prohibited. If you have received this electronic message in error, please notify Barclays North, Inc, (425)334-4040 or by reply e-mail and delete original message.

From: Tanya Frederiksen
Sent: Monday, October 01, 2007 1:45 PM
To: Richard Burrell; Laura Kelly
Subject: FW: C19-1 Loan Draw

We should be receiving funds tomorrow.

Tanya Frederiksen | BARCLAYS NORTH, INC.
Controller
1819 South Lake Stevens Road
Lake Stevens, WA 98258
Corporate Phone 425.334.4040 | Fax 425.334.5545
Direct Line: 425.609.6833
Cell: 425.301.3045
www.barclaysnorth.com

From: Rachelle Fitzpatrick
Sent: Monday, October 01, 2007 12:46 PM
To: Tanya Frederiksen
Subject: FW: C19-1 Loan Draw

RACHELLE FITZPATRICK | BARCLAYS NORTH, INC.
Staff Accountant
Corporate Phone 425.334.4040

HOS 000301

Fax 425.334.5545
Direct Line 425.609.6834
www.barclaysnorth.com

From: Rebecca Bergin [mailto:Rebecca.Bergin@marshallgroupusa.com]
Sent: Monday, October 01, 2007 12:45 PM
To: Rachelle Fitzpatrick
Subject: RE: C19-1 Loan Draw

Good news. I just heard back from the Draw department. The participants have funded, and we are moving forward with sending the draw to title right now.

Yay!

Rebecca

From: Rachelle Fitzpatrick [mailto:rf@barclaysnorth.com]
Sent: Monday, October 01, 2007 1:35 PM
To: Rebecca Bergin
Subject: C19-1 Loan Draw

Hi Rebecca,
Thanks so much for all the hard work you have done the last couple of weeks.
Do you know if the loan draw is being funded today and has it been sent to Chicago Title?
Thanks.

RACHELLE FITZPATRICK | BARCLAYS NORTH, INC.
Staff Accountant
Corporate Phone 425.334.4040
Fax 425.334.5545
Direct Line 425.609.6834
www.barclaysnorth.com

- - - Confidential Material: This message is intended only for the person(s) to whom it is addressed and may contain confidential and/or privileged material. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others. If you received this message in error, please contact the sender immediately and delete any copies of the material from your system. Thank you.

HOS 000302

EXHIBIT 7



200711300389 4 PGS
 11/30/2007 12:07pm \$43.00
 PIERCE COUNTY, WASHINGTON

When Recorded Mail To:

Jeffrey G. Frank
 Foster Pepper PLLC
 1111 Third Ave., Suite 3400
 Seattle, WA 98101

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

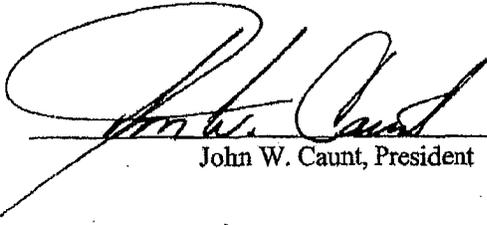
<p>Document Title(s) (or transactions contained therein): (all areas applicable to your document <u>must</u> be filled in)</p> <p>Claim of Lien</p>
<p>Reference Number(s) of Documents assigned or released:</p> <p>Additional reference #'s on page <u>N/A</u> of document</p>
<p>Grantor(s) (Last name first, then first name and initials)</p> <p>C19-1 Shotwell LLC <input type="checkbox"/> Additional names on page <u>N/A</u> of document</p>
<p>Grantee(s) (Last name first, then first name and initials)</p> <p>Hos Bros. Construction, Inc. <input type="checkbox"/> Additional names on page <u>N/A</u> of document</p>
<p>Legal description (abbreviated: i.e., lot, block, plat or section, township, range)</p> <p>17200 block, Canyon Road East, SE QTR OF SEC 25, TWN 19 N, R 3 E, AND SW QTR OF SEC 30, TWN 19 E, R 4 E, Fredrickson, Washington <input checked="" type="checkbox"/> Additional legal is attached to the <u>Claim of Lien</u> as <u>Exhibit A</u>.</p>
<p>Assessor's Property Tax Parcel/Account Number</p> <p>0319258022, 0319258023, 0319258026, 0319258027 <input type="checkbox"/> Assessor Tax # not yet assigned</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p>

50859870.1

- 6. *The last date on which labor was performed, professional services were furnished, contributions to an employee benefit plan were due, or material, or equipment was furnished: 11/29/07.*
- 7. *Principal amount for which the lien is claimed is: \$ \$771,273.15*
- 8 *If the claimant is the assignee of this claim so state here: N/A*

STATE OF WASHINGTON)
) ss.
 COUNTY OF KING)

John W. Caunt being sworn, says I am the claimant above named. I have read or heard the foregoing claim read and know the contents thereof and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause and is not clearly excessive under penalty of perjury and shall be acknowledged pursuant to Chapter 64.08.



 John W. Caunt, President

SUBSCRIBED AND SWORN TO before me this 30th day of November, 2007.



Marilyn K. Meadows

 Print Name MARILYN K. MEADOWS
 NOTARY PUBLIC in and for the State of Washington
 Residing at Woodinville, Washington
 My commission expires May 17, 2008

EXHIBIT A
LEGAL DESCRIPTION

LOTS 1, 2, 3 AND LOT 4, AS SHOWN ON SHORT PLAT NUMBER 9702110243, FILED WITH THE PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THOSE PORTIONS OF SAID LOTS CONVEYED TO PIERCE COUNTY, A MUNICIPAL CORPORATION, BY DEED RECORDED APRIL 26, 2004 UNDER RECORDING NUMBER 200404260818, AND EXCEPT THOSE PORTIONS OF SAID LOTS CONVEYED TO PIERCE COUNTY, A MUNICIPAL CORPORATION, BY DEED RECORDED AUGUST 3, 2004 UNDER RECORDING NUMBER 200408030248.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

File an answer to a motion:

08-01189-KAO Hos Bros Construction Inc et al v. C19-1 Shotwell LLC et al

Type: ap

Office: 2 (Seattle)

Lead Case: 08-14990-KAO

Judge: KAO

U.S. Bankruptcy Court Western District of Washington

Do not reply to this email. If you have questions, contact the Clerk's Office.
Notice of Electronic Filing

The following transaction was received from Cullen, Jack J entered on 1/14/2009 at 4:19 PM PST and filed on 1/14/2009

Case Name: Hos Bros Construction Inc et al v. C19-1 Shotwell LLC et al

Case Number: 08-01189-KAO

Docket Text: Declaration of Barbara Rodgers in support of Plaintiff Hos Bros. Construction, Inc.'s Motion to Amend Complaint and Lien (Related document(s)[97] Motion,)... Filed by Jack J Cullen on behalf of Hos Bros Construction Inc. (Attachments: # (1) Exhibit 1 and 2# (2) Exhibit 3 and 4# (3) Exhibit 5 - 7) (Cullen, Jack)

Document Number: 99

The above document(s) are associated with this transaction:

Document description:Main Document

Original filename:G:\CRB\ECF\CULL\HOS BROS\MOTION TO AMEND COMPLAINT\Declaration of Barbara Rodgers.pdf

Electronic document Stamp:

[STAMP WAWBStamp_ID=970851926 [Date=1/14/2009] [FileNumber=12424327-0] [5d3041ef6a552b89b32542a61572918041904bf72c4a333154fd0f54b9d898e9d0415c8ee5b0df234a3664796daed8bce4089fdd6f5fafa1dee63030b28ccfda]]

Document description:Exhibit 1 and 2

Original filename:G:\CRB\ECF\CULL\HOS BROS\MOTION TO AMEND COMPLAINT\Exhibits 1 and 2, Rogers Dec.pdf

Electronic document Stamp:

[STAMP WAWBStamp_ID=970851926 [Date=1/14/2009] [FileNumber=12424327-1] [29f6ffaf98669c4766f68e37c11633f796aaff39cacc097a9f0bee0113448e18ac4ac42dada46b6425e74d7e8839486c674f8f66a857a4198f29b0f4e725e8e]]

Document description:Exhibit 3 and 4

Original filename:G:\CRB\ECF\CULL\HOS BROS\MOTION TO AMEND COMPLAINT\Exhibits 3 and 4, Rogers Dec.pdf

Electronic document Stamp:

[STAMP WAWBStamp_ID=970851926 [Date=1/14/2009] [FileNumber=12424327-2] [26ccaf1d3c2d975639a1d1e6c6af1dd3fefab26410ce35724aed01babfc9b38c47b8f54d8817e6dc631ddb7cda1ee056fba9b201e8db63e38a7d15d13e6e4725]]

Document description:Exhibit 5 - 7

Original filename:G:\CRB\ECF\CULL\HOS BROS\MOTION TO AMEND COMPLAINT\Exhibits 5-7, Rogers Dec.pdf

Electronic document Stamp:

[STAMP WAWBStamp_ID=970851926 [Date=1/14/2009] [FileNumber=12424327-3]
[25eaaf07976c938c848b13df3647292046fb3d63703730ecd9a0f42e15892a70033
99696221cfc3e9bc70f45d4c570bd76d6d9cb9210f6763a19ba6a6e03cce]]

08-01189-KAO Notice will be electronically mailed to:

Jack J Cullen on behalf of Hos Bros Construction Inc cullj@foster.com, DeVek@foster.com,
burrc@foster.com

George E Frasier on behalf of BankFirst gfrasier@riddellwilliams.com,
srowden@riddellwilliams.com

Joseph E Shickich on behalf of BankFirst jshickich@riddellwilliams.com,
srowden@riddellwilliams.com;lwerner@riddellwilliams.com;ktyni@riddellwilliams.com

Stephen J. Sirianni on behalf of BankFirst ssirianni@sylaw.com,
theresa@sylaw.com;matt@sylaw.com

Jeffrey L Smoot on behalf of WF Capital Inc smoot@lasher.com, griffin@lasher.com

Marc Stern on behalf of C19-1 Shotwell LLC marc@hutzbah.com, shelly@hutzbah.com

08-01189-KAO Notice will not be electronically mailed to:

Bingo Investments LLC
13710 Northup Way
Bellevue, WA 98005

Richard Burrell
17025 NE 113th Ct
Redmond, WA 98052

Centurion Financial Group LLC
c/o Cameron Foster PLLC
13701 42nd Ave NE
Seattle, WA 98125

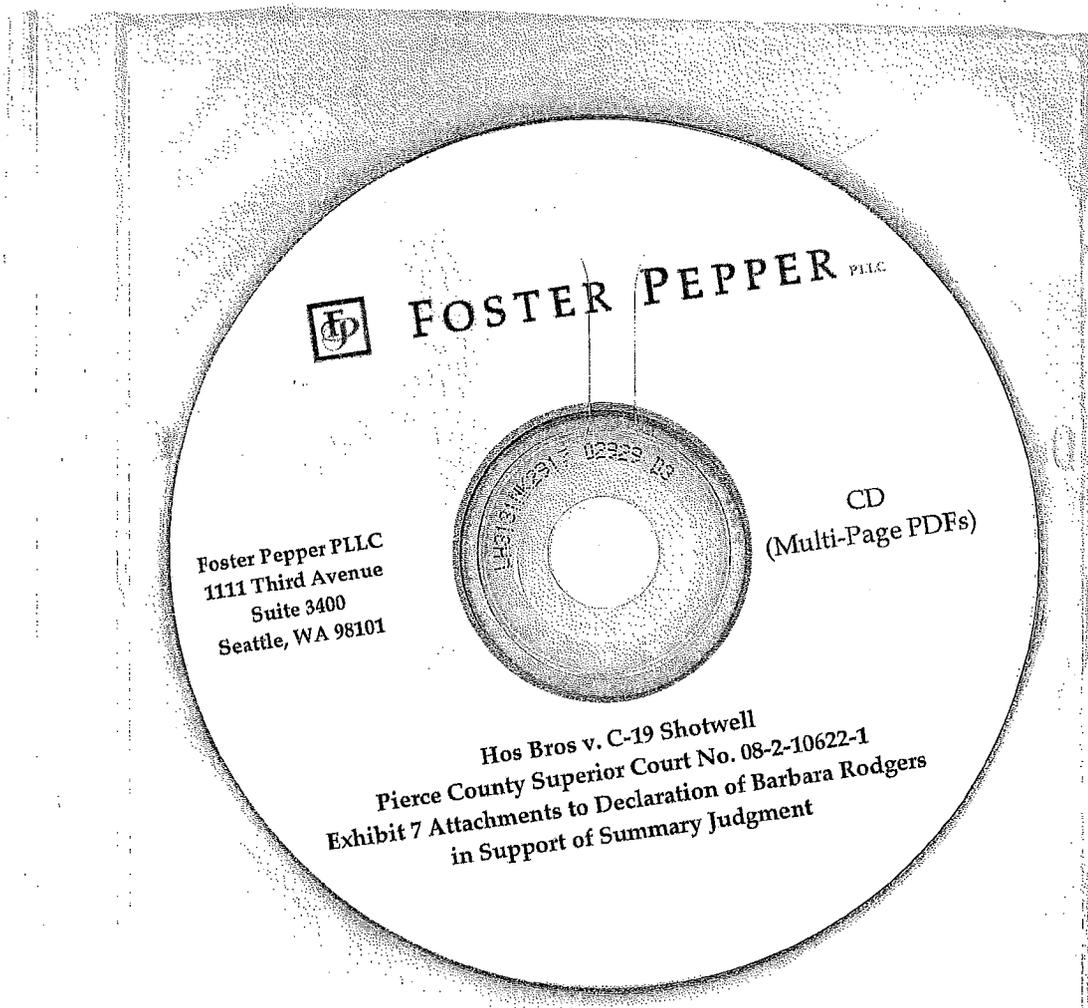
Hos Bros Construction Inc

SS Landscaping Services Inc
c/o Dean Sidor
10219 Portland Ave E #D
Tacoma, WA 98445

Sequoyah Electric LLC
c/o Cheryl Nagel
12316 134th Ct NE
Redmond, WA 98052

WF Capital Inc

c/o Glen P Garrison
1201 3rd Ave #3200
Seattle, WA 98101-3052



 **FOSTER PEPPER** PLLC

Foster Pepper PLLC
1111 Third Avenue
Suite 3400
Seattle, WA 98101

CD
(Multi-Page PDFs)

Hos Bros v. C-19 Shotwell
Pierce County Superior Court No. 08-2-10622-1
Exhibit 7 Attachments to Declaration of Barbara Rodgers
in Support of Summary Judgment

EXHIBIT 8

JC Cost and Revenue

JC Company: 1 Contract: 1543--1543- Contract Status: All
 Department: First - Last Month: First - 10/08

Contract	Description	LAB	MATL	SUBS	EQUIP	RENT	PIOPS	OTHER	CTFS	TOTAL COST	BILLED AMOUNT	GROSS MARGIN	GM %
1543-	Canyon Clock Mnt	1,171,616.48	1,368,741.64	1,691,182.43	629,814.02	53,224.35	0.00	204,353.15	6,118,934.07	5,011,055.58	-107,868.49	-2.15%	
	Grand Totals	1,171,616.48	1,368,741.64	1,691,182.43	629,814.02	53,224.35	0.00	204,353.15	5,118,934.07	5,011,055.58	-107,868.49	-2.15%	

15% 5% 5% 12% 12% 12% 12%
 175,742 68,457 94,554 75,577 63,086 24,522 = 435,223.00
 AVAILABLE MARKUP PER E-MAX AGREEMENT

\$ 52,226.76

1543

1575-Construct
FILE

C19-1 Shotwell, LLC
10515 20th Street SE, Suite 100
Everett, WA 98205
Phone: 425-348-9042
Fax: 425-609-6883

August 7, 2006

John Caunt
HOS Bros. Construction, Inc.
PO Box 1788
Woodinville, WA 98072-1788

RE: C19-1 Canyon Clock Center

Dear Mr. Caunt:

Upon execution of the G-Max contract for the Utility and Paving scope on the Canyon Clock Project it is the intent of Barclays North and Hos Bros. Construction, Inc. to further clarify the means and methods for tracking, billing and reconciling of the G-max value. During the course of construction Hos Bros. will bill the contract based on the contract unit prices and lump sums. Upon completion of the project and receipt of all costs and invoices, Hos Bros. will reconcile actual costs using agreed upon rate schedules for Labor, Equipment, Outside Rentals, and Job Overhead. (See attached schedules). Each of these schedule categories, plus Materials and Subcontracts will have negotiated markup applied to them. The total cost of the project, based on the rates/schedules mentioned above, will then be compared to the total contract value including any owner approved changes. Any savings between the actual and the contract value will be split 50/50 between Barclays North and Hos Bros. Construction.

OWNER:

C19-1 Shotwell, LLC

By:

By: Scot Becraft
Its: Authorized Agent

CONTRACTOR:

HOS Bros. Construction, Inc.

By:

By: John Caunt
Its: President

HOS 002120

Hos Bros. Construction, Inc. - Labor Rates effective June 1, 2006 through May 31, 2007

Hourly Rates	TEAMSTER CLASS I	OPERATORS				LABORERS				
		GROUP I	GROUP II	GROUP III	GROUP IV	LEAD	PIPELYR	GEN LAB	FLAGGER	
STRAIGHT TIME										
HOURLY WAGE	25.64	31.34	30.85	30.43	28.07	27.10	26.74	26.26	21.58	
EMPLOYER SHARE - FICA	1.59	1.94	1.91	1.89	1.74	1.68	1.66	1.63	1.34	
FEDERAL UNEMPLOY TAX	0.37	0.45	0.45	0.44	0.41	0.39	0.39	0.38	0.31	
STATE UNEMPLOY TAX	0.21	0.25	0.25	0.24	0.22	0.22	0.21	0.21	0.17	
STATE IND. INS.	1.67	2.04	2.01	1.98	1.83	1.77	1.74	1.71	1.41	
UNION BENEFITS	1.32	1.33	1.33	1.33	1.33	1.23	1.23	1.23	1.23	
SMALL TOOLS & SUPPLIES	11.98	11.50	11.50	11.50	11.50	8.15	8.15	8.15	8.15	
GENERAL LAB. INS.	1.93	1.93	1.93	1.93	1.93	1.93	1.93	1.93	1.93	
POLLUTION INS.	0.82	0.82	0.82	0.82	0.82	0.82	0.82	0.82	0.82	
UMBRELLA LAB. INS.	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	
STRAIGHT TIME STD RATE	45.80	51.88	51.32	50.84	48.12	43.56	43.14	42.59	37.21	

Hourly Rates	TEAMSTER CLASS I	OPERATORS				LABORERS				
		GROUP I	GROUP II	GROUP III	GROUP IV	LEAD	PIPELYR	GEN LAB	FLAGGER	
STRAIGHT TIME										
HOURLY WAGE	38.48	47.01	46.28	45.65	42.41	40.65	40.11	39.39	32.37	
EMPLOYER SHARE - FICA	2.38	2.91	2.87	2.83	2.61	2.52	2.49	2.44	2.01	
FEDERAL UNEMPLOY TAX	0.51	0.58	0.57	0.56	0.51	0.50	0.50	0.50	0.47	
STATE UNEMPLOY TAX	0.31	0.38	0.37	0.37	0.34	0.33	0.32	0.32	0.26	
STATE IND. INS.	2.51	3.07	3.02	2.98	2.76	2.65	2.62	2.57	2.11	
UNION BENEFITS	1.32	1.35	1.35	1.35	1.33	1.23	1.23	1.23	1.23	
SMALL TOOLS & SUPPLIES	11.98	11.50	11.50	11.50	11.50	8.15	8.15	8.15	8.15	
GENERAL LAB. INS.	1.93	1.93	1.93	1.93	1.93	1.93	1.93	1.93	1.93	
POLLUTION INS.	0.82	0.82	0.82	0.82	0.82	0.82	0.82	0.82	0.82	
UMBRELLA LAB. INS.	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	
STRAIGHT TIME STD RATE	60.54	69.90	69.05	68.33	64.26	59.14	58.51	57.99	49.62	

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HOS 002121

Hos Bros. Construction, Inc. - Labor Rates effective June 1, 2006 through May 31, 2007

Hourly Rates	TEAMSTER		OPERATORS				LABORERS			
	CLASS I	GROUP I	GROUP I	GROUP II	GROUP III	GROUP IV	LEAD	PIPELVR	GEN LAB	FLAGGER
DOUBLE TIME										
HOURLY WAGE	51.28	52.68	61.70	60.86	56.14	54.20	53.48	62.62	43.16	
EMPLOYER SHARE - FICA	3.18	3.89	3.83	3.77	3.48	3.36	3.32	3.26	2.66	
EMPLOYER SHARE - MEDITAX	0.74	0.91	0.89	0.88	0.81	0.79	0.78	0.76	0.63	
FEDERAL UNEMPLOY TAX	0.41	0.50	0.49	0.49	0.45	0.43	0.43	0.42	0.35	
STATE UNEMPLOY TAX	2.54	4.09	4.02	3.97	3.66	3.53	3.49	3.42	2.81	
STATE IND. INS.	1.32	1.33	1.33	1.33	1.33	1.23	1.23	1.23	1.23	
UNION BENEFITS	11.98	11.50	11.50	11.50	11.50	8.15	8.15	8.15	8.15	
SMALL TOOLS & SUPPLIES	1.93	1.93	1.93	1.93	1.93	1.93	1.93	1.93	1.93	
GENERAL LIAB. INS.	0.82	0.82	0.82	0.82	0.82	0.82	0.82	0.82	0.82	
POLLUTION INS.	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	
UMBRELLA LIAB. INS.	0.16	0.16	0.16	0.16	0.16	0.16	0.16	0.16	0.16	
DOUBLE TIME STD RATE	75.38	87.91	86.79	85.82	80.39	74.71	73.89	72.78	62.02	

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HOS 002122

HOS BROS. CONSTRUCTION, INC.
EQUIPMENT RATE WORKSHEET - August 4, 2006

ITEM #		HOURLY RATE
1	SOLO TRUCK	\$ 58.00
2	TRUCK & TRAILER	65.00
3	WATER TRUCK 3400 GALLON	70.00
4	35 TON ARTICULATED DIRT WAGON	121.00
5	KOMATSU 750 EXCAVATOR	214.00
6	KOMATSU 800 EXCAVATOR	185.00
7	KOMATSU 400 OR CAT 236 2-1/2 CY EXCAVATOR	161.00
8	KOMATSU 300 2 CY EXCAVATOR	135.00
9	HITACHI 07 OR 083 EXCAVATOR WITH HOE PAC	89.00
10	HITACHI 07, 083 OR KOMATSU 200 OR CAT 215 1-1/2 CY EXCAVATOR	58.00
11	KOMATSU 045 EXCAVATOR	31.00
12	KOM 120 WITH HUMB	36.00
13	KOMATSU 138 EXCAVATOR	40.00
14	CASE 580 OR CAT 416 BACKHOE	29.00
15	CAT 14 GRADER OR CAT 140 GRADER	61.00
16	CAT D10R WITH RIPPER	385.00
17	DBR	249.00
18	CAT D-8 WITH RIPPER	179.00
19	D7 WIDE TRACK	105.00
20	CAT D-8 OR KOMATSU D-85P WIDE TRACK DOZER	98.00
21	CAT D-8 OR KOMATSU D-85 CONVENTIONAL WITH RIPPER	98.00
22	CAT D-6 DOZER	70.00
23	KOMATSU D-31 WIDE TRACK DOZER	41.00
24	CAT D-4, IH TD-8, KOMATSU D-37 OR D-41 DOZER	41.00
25	CAT D-3, IH TD-7, JD 450 OR CASE 450 DOZER	41.00
26	KOM 450 OR TEREX 72-81 LOADER	102.00
27	380 LOADERS	72.00
28	CAT 950, 936H OR KOM 320 2-1/2 CY WHEEL LOADER	66.00
29	BOCMAG 217 COMPACTOR	90.00
30	RAYGO 410, BM 213, JR, SP-56 OR BEO HYSTER COMPACTOR	90.00
31	RAYGO 220 COMPACTOR	71.00
32	TWO AXEL 35 TON LOWBOY	67.00
33	EIGHT AXEL 700 TON LOWBOY	198.00
34	FLATBED UTILITY TRUCK	14.00

*NOTE - Above rates include all operating, owning costs (depreciation, repairs, fuel, oil, grease, insurance, tonnage, tires). Above do not include operator/teamsters.

HOS 002123

HOS BROS. CONSTRUCTION, INC.	
JOB OVERHEAD TO BE CHARGED	
Operations Managers	\$130.00
Project Managers	90.00
Project Engineers/Accountant	55.00
Project Superintendent	86.00
*Above rates include pickup/vehicle	
B&O TAX	0.00471

HOS 002124

HOS BROS. CONSTRUCTION, INC.	
OUTSIDE RENTALS RATE SCHEDULE	
DESCRIPTION:	RATE
Water trucks	
Owned \$68.00 + teamster	
Rented	\$105/HR
Street sweepers	
dump onsite	\$98/HR.
Jobsite trailer	\$300.00/WK
Street plates	
8X12	\$90.00/WK
8X20	\$116.00/WK
Trench boxes	
8X12	\$492.00/WK
8X24	\$710.00/WK
8x12 MH BOX	\$753.00/WK

HOS 002125

HOS BROS. CONSTRUCTION, INC.	
MARKUP SCHEDULE:	
LABOR	15%
EQUIPMENT	12%
SUBCONTRACTORS	5%
MATERIALS	5%
OUTSIDE RENTALS	5%
JOB OVERHEAD	0%

APPENDIX F

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7
8 SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF PIERCE

10 HOS BROS. CONSTRUCTION, INC.,

11 Plaintiff,

12 v.

13 C19-1 SHOTWELL LLC.; SEQUOYAH
14 ELECTRIC, LLC, a Washington limited liability
15 company; SS LANDSCAPING SERVICES,
16 INC., a Washington corporation; PACLAND -
17 BELLEVUE, INC., a Washington corporation;
18 BANKFIRST a South Dakota state bank;
19 CENTURION FINANCIAL GROUP, LLC, a
20 Washington limited liability company; WF
21 CAPITAL, INC., a Washington limited liability
22 company; BINGO INVESTMENTS, LLC, a
23 Washington limited liability company; and
24 RICHARD BURRELL, an individual;

25 Defendants.

Honorable Ronald E. Culpepper

No. 08-2-10622-1

DECLARATION OF JOHN CAUNT IN
SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

26 John Caunt declares as follows:

1. Declarant. I am President of Hos Bros Construction Inc. I am over the age of 18,
have personal knowledge of the facts herein and am competent to offer this declaration.

2. Hos Bros Is Owed \$1.2 Million. As company president, I am familiar with Hos
Bros' construction's work on the Canyon Clock project. Hos Bros performed approximately \$8
million dollars worth of work on Canyon Clock, of which \$1,206,496.15 is due and owing.

DECLARATION OF JOHN CAUNT - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 3. Guaranteed Price Contract. Originally, the project was supposed to be performed
2 under one contract for Phase I and Phase II. However, while the project was delayed waiting for
3 utility permitting, C19-1 Shotwell asked us to complete the remainder of the project under a new
4 guaranteed maximum price contract.

5 4. Expectation of Payment. In approximately June 2006, a Mr. Miller of BankFirst
6 called me requesting confidential financial information from Hos Bros. When I asked him why
7 he needed that information, he advised me that BankFirst would be financing the remainder of
8 our work on Canyon Clock through a loan agreement with C19-1 Shotwell. During our
9 conversation, Mr. Miller assured me that Hos Bros would be paid for our work from the loan
10 proceeds. Prior to turning over our financial records, I confirmed with C19-1 Shotwell that
11 BankFirst would be financing the construction of the project. In June 2006, I provided
12 Mr. Miller with Hos Bros financial records, with the understanding that BankFirst would be
13 making funds available to pay for our work. After speaking with Mr. Miller, BankFirst sent us
14 documents, via C19-1 Shotwell, that asked us to recognize the bank was financing construction
15 of the Project and providing a \$21 million loan for this reason. This only confirmed my
16 understanding that BankFirst would ultimately be paying for our construction.

17 5. No Knowledge Of Prior Liens. BankFirst never informed Hos Bros that the \$21
18 million loan was contingent on a sale of the property and could drop to only a \$18.6 million loan,
19 leaving available insufficient loan proceeds to pay for our work. BankFirst also never told us
20 that over \$10 million of the loan was to pay off other encumbrances on the property. In fact, Hos
21 Bros did not even know those encumbrances existed. Further, BankFirst never informed us that
22 we would not be paid the retention withheld by BankFirst, or warned us that insufficient funds
23 existed to pay for November and October's invoices and already approved retention.

24 6. Reliance on Representations of Payment. Hos Bros signed BankFirst's pay
25 applications that clearly stated that retention was being withheld from payment, executed
26 BankFirst's partial lien releases (which released lien rights except for retention), named

DECLARATION OF JOHN CAUNT - 2

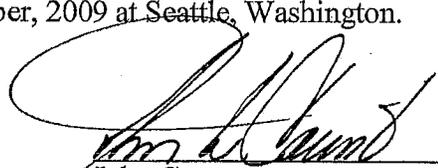
FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 BankFirst on its bond, submitted change orders pursuant to BankFirst's requirements, and
2 partially assigned to the bank its subcontract rights – all because it understood BankFirst would
3 pay for all the approved construction work performed by Hos Bros.

4 7. Lien. Because Hos Bros was not paid for its work we liened the project in
5 November 2007, and then sought to foreclose that lien in July 2008. At the time we completed
6 our lien, we did not understand that BankFirst claimed to be “equitably subrogated” to any prior
7 liens.

8 I declare under penalty of perjury under the laws of the United States of America and the
9 state of Washington that the foregoing declaration is true and correct.

10 Executed this 8 day of October, 2009 at Seattle, Washington.

11 
12 _____
13 John Caunt
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