



**CITY OF OTHELLO  
500 E MAIN  
OTHELLO, WA 99344**

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF  
OTHELLO AND SAND HILL ESTATES LLC, FOR THE SAND HILL  
ESTATES SUBDIVISION**

**THIS DEVELOPMENT AGREEMENT** is made and entered into this **26th** day of **February** 2018, between the City of Othello and Sand Hill Estates LLC, or assigns, a limited liability company organized under the laws of the State of Washington, hereinafter the "Developer".

**RECITALS**

1. RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction.
2. RCW 36.70B.170 requires a development agreement to set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of real property for the duration specified in the agreement.
3. For the purposes of this Development Agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170 (3).
4. This Development Agreement by and between the City of Othello and the Developer (hereinafter the "Development Agreement"), relates to the development known as the Sand Hill Estates Major Subdivision, which is located north of Olympia Street, between 7<sup>th</sup> and 14<sup>th</sup> Avenues.
5. The following events have occurred in the processing of the Developer's application:
  - 5.1 A public hearing on the preliminary plat for the major subdivision was held by the Hearing Examiner on September 6, 2017. The Hearing Examiner's decision approving the major subdivision was issued on September 13, 2017.
  - 5.2 After a public hearing as required by RCW 36.70B.200, by Resolution No.2017-29, the City Council authorized the Mayor to sign this Development Agreement with the Developer.



5.3 After a public hearing as required by RCW 36.70B.200, by Resolution No. 2018-05, the City Council authorized the Mayor to sign this Revised Development Agreement with the Developer.

**AGREEMENT**

The parties agree as follows:

**General Provisions**

**Section 1. The Project.** The project is the development and use of the Property, consisting of the subdivision of 30 residential lots on approximately 10 acres in the R-1 and R-2 Zone. The subdivision will be served with City sanitary sewer, City water, City irrigation, City streets and City storm water infrastructure. Streets and utilities will be extended/constructed in conformance with Public Works Design Standards and the provisions of this Development Agreement.

**Section 2. The Subject Property.** The Project site is described in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 3. Definitions.** As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

- 3.1 "Administrator" means the City's Administrator.
- 3.2 "Adopting Resolution" means the Resolution which approves this Development Agreement, as required by RCW 36.70B. 200.
- 3.3 "Budget" means the agreed budget and cost share as identified in the attached Exhibit "B". Changes, amendments, or revisions to the budget and cost share must be mutually agreed by all parties to this Development Agreement.
- 3.4 "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.
- 3.5 "Cost of Construction" means the actual cost of Construction including, but not limited to: Mobilization; Dewatering; Unsuitable Soils Removal; Imported Materials, Soil Stabilization; Erosion Control; and Installation and Materials related to Road and Utility Installation.
- 3.6 "Council" means the duly elected legislative body governing the City of Othello.
- 3.7 "Design Standards" means the City of Othello Public Works Design Standards, as adopted by the City and dated February 2017.
- 3.8 "Effective Date" means the effective date of the Adopting Resolution.
- 3.9 "Existing Land Use Regulations" means the ordinances adopted by the City of Othello in effect on the Effective Date, including the adopted ordinances that govern the



permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to, the Comprehensive Plan, the City's Official Zoning Map and development standards, the Public Works Design Standards, SEPA, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations and building standards. Existing Land Use Regulations do not include non-land use regulations, which includes taxes and impact fees.

3.10 "Landowner" is the party who has acquired any portion of the subject property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provision of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

3.11 "Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approval, and all incorporated exhibits.

**Section 4. Exhibits.** Exhibits to this Agreement are as follows:

4.1 Exhibit "A": Sand Hill Estates Preliminary Plat Map.

4.2 Exhibit "B": Estimated City Costs.

**Section 5. Parties to Development Agreement.** The parties to this Agreement are:

5.1 The "City" is the City of Othello, 500 E. Main Street, Othello, WA 99344.

5.2 The "Developer" is Sand Hill Estates, LLC, which is a private enterprise which will own the Subject Property in fee, and whose mailing address is PO Box 464, Othello WA 99344.

5.3 The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of Subject Property.

**Section 6. Project is a Private Undertaking with City of Othello Cost Share for Street and Utility Improvements as Identified Herein.** It is agreed among the parties that the Project is a private development and that the City will enter into a Cost Share Agreement with the Developer; and that the City has no interest therein except as authorized in the exercise of its government functions and this Development Agreement. The parties have agreed to the scope of work and share of costs as stipulated and identified in Sections 13, 14, 15, and 16 herein and the attached Exhibit "B".

**Section 7. Term of Agreement.** This agreement shall commence on the effective date of the Adopting Resolution approving this Agreement, and shall continue in force for period of two (2) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.



**Section 8. Vested Rights of Developer.** During the term of this Agreement unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement (in regards to the Project described herein), are fully vested in the Developer. Said development rights obligations, terms and conditions may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

**Section 9. Permitted Uses and Development Standards.** The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in (a) this Agreement, (b) the Othello Municipal Code, the City's official Design Standards and construction standards (except to the extent they conflict with this Agreement), (c) the Decision of the Hearing Examiner, (d) approvals identified herein and the Hearings Examiner's decision, and (e) all exhibits incorporated herein.

**Section 10. Minor Modifications.** Minor Modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's Code, and shall not require an amendment to this agreement.

**Section 11. Further Discretionary Actions.** Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

**Section 12. Existing Land Use Fees.** Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased from time to time. Such increased land use fees may apply to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

**Section 13. Irrigation.**

- 13.1 System. As a mutual benefit to the City and the Developer, the Developer will design and install non-potable (irrigation) system improvements within all streets bounding the Subdivision (Olympia Street, 7<sup>th</sup>, and 14<sup>th</sup> Avenues), internally within 11<sup>th</sup> Avenue, service connections to all lots within the subdivision, and service extension to 7 properties outside the plat, as shown on the construction plans. Irrigation infrastructure is not necessary within 9<sup>th</sup> and 13<sup>th</sup> Avenues. Irrigation system improvements will be installed in compliance with the City's design standards and requirements. The City will reimburse the Developer for installing the non-potable water with appurtenances and thrust blocking as show in Exhibit "B". As each house is developed and connected to the irrigation system, the Developer or Landowner will pay a connection fee to be determined later by the City Council.
- 13.2 Connection. The irrigation system will benefit both the individual homeowner and the City by conserving scarce drinking water. The Developer shall include the following written disclosures to the homeowners during the home sales:



- A. Irrigation water is provided by the City and will be billed to each property, whether that property chooses to use it or not.
- B. An approved backflow prevention device must be properly permitted and installed in the domestic water line prior to connection to or installation of any irrigation system, whether the irrigation system uses potable or non-potable water.

**Section 14: Olympia Street Improvement.** The City and the Developer have agreed that the Developer will construct Olympia Street to the Collector standard. Olympia currently exists as a half street with curb on the south side and sidewalk abutting some portions. The City will reimburse the developer for the cost to improve the existing 19' street width, including the costs to mill and remove the existing asphalt and repave, as shown in Exhibit "B", including the cost of base rock if determined to be necessary. Sidewalks will not be changed on the south side of Olympia, and the existing curb will remain. In addition, the Developer will improve stormwater collection on the south side of the existing street and install pedestrian ramps on the south side of the existing street. The City will reimburse the cost of 4 catch basins and 4 pedestrian ramps as shown in Exhibit "B".

**Section 15: 7<sup>th</sup> Avenue Improvement.** The City and the Developer have agreed to delay street surface and stormwater improvements to 7<sup>th</sup> Avenue. All other standard improvements shall be completed by the developer as plat improvements, including but not limited to non-potable water line installation and curb, gutter, and sidewalk on the east (project) side. 7<sup>th</sup> Avenue currently exists as an annexed county road and has agriculture on the west side. Future development of this street is expected to be to an Arterial standard. The developer will construct the sidewalk and curb abutting the plat (east side of 7<sup>th</sup> Avenue) but will delay asphalt so that 7<sup>th</sup> Avenue can be constructed in one large project rather than multiple small projects. The end result will be a better street with fewer joins that can allow water intrusion. The developer shall construct and pave 7<sup>th</sup> Avenue abutting the plat by October 1, 2022, or before platting of the developer's remaining property to the north fronting 7<sup>th</sup> Avenue, whichever comes first. The obligation to complete the construction of 7<sup>th</sup> Avenue shall be guaranteed by a covenant attached to the developer's remaining property to the north of the current project.

**Section 16: 14<sup>th</sup> Avenue Improvement.** The City and the Developer have agreed to delay street surface and stormwater improvements to 14<sup>th</sup> Avenue. All other standard improvements shall be completed by the developer as plat improvements, including but not limited to non-potable water line installation and curb, gutter, and sidewalk on the west (project) side. 14<sup>th</sup> Avenue currently exists as an annexed county road and has a canal on the east side. Future development of this street is expected to be to a modified Arterial standard, without on-street parking, northbound right turn lane, or sidewalk on the east side. The developer will construct the sidewalk and curb abutting the plat (west side of 14<sup>th</sup> Avenue) but will delay asphalt so that 14<sup>th</sup> Avenue can be constructed in one large project rather than multiple small projects. The end result will be a better street with fewer joins that can allow water intrusion. The developer shall construct and pave 14<sup>th</sup> Avenue abutting the plat by October 1, 2022, or before platting of the developer's remaining property to the north fronting 14<sup>th</sup> Avenue, whichever comes first. The obligation to complete the construction of 14<sup>th</sup> Avenue shall be guaranteed by a covenant attached to the developer's remaining property to the north of the current project.

**Section 17: Stormwater Pond.** Upon acceptance of the improvements, the City will be responsible for utilities, including stormwater, only within street right-of-way. The City will not be responsible for maintaining, protecting, or liability of the temporary stormwater retention pond.



Developer and/or Landowner will be responsible for all stormwater utilities on the subject property.

**Section 18: Street and Utility Construction Permit(s).** The contractor will obtain a Street and Utility Construction Permit.

18.1 **Inspection Permit Fee:** The permit fee is 2.5% of the Cost of Construction for the work that the City inspects. The Contractor shall provide a cost estimate (Construction Cost Breakdown) for the work. The fees will be addressed as part of the Plan Review process prior to construction. The Permit Fee shall be lump sum, paid prior to proceeding with construction activities by the Developer and/or Developer's Contractor. The Permit Fee costs shall not be transferred or partially transferred back to the City.

**Section 19: Testing.** Testing is the responsibility of the Developer's Contractor. Testing will be in conformance with Standard Testing Procedures in conformance with adopted City, WSDOT, and AASHTO Standards.

**Section 20. Default.**

20.1 Subject to extensions of time by mutual consent in writing, failure or delay by either party, or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or landowner notice of the default in writing, specifying the nature of the alleged default and manner in which said default may be cured. For thirty (30) days after delivery of the default notice, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

20.2 After notice of default and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the City's Code for Violations of this Development Agreement and/or the Code.

**Section 21. Termination.** This Agreement shall expire and/or terminate as provided below:

21.1 This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development of the Property.

21.2 This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and/or submits applications for development of the property that are inconsistent with such permits and approval.



21.3 This Agreement shall terminate upon either (a) the expiration of the term identified in Section 7, or (b) when the subject property has been fully developed, whichever first occurs, and all the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the County that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any dwelling unit or non-residential building and the lot or parcel upon which such residence or building is located (except for design standards and obligations to dedicate property to the City as set forth herein), when it has been approved by the City for Occupancy.

**Section 22. Effect upon Termination on Developer Obligations.** Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with (a) the City Comprehensive Plan and the terms and conditions thereof, (b) any applicable zoning codes(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, (c) any other conditions of the development specified in the Agreement to continue after the termination of this Agreement or (d) obligations to pay assessments, liens, fees or taxes.

**Section 23. Effect of Termination on City.** Upon termination of this Agreement as to the Development of the Subject Property, (or any portion thereof), the entitlements, conditions of development, limitation on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to the existing planning and zoning laws).

**Section 24. Assignment and Assumption.** The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

**Section 25. Covenants Running with the Land.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, land owner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the subject Property sold, assigned or transferred to it.

**Section 26. Amendments to Agreement: Effect of Agreement on Future Actions.** This Agreement may be amended or extended by mutual consent of all of the parties, provided that any such amendment shall be in writing and follow the process established by law for the adoption of a development agreement (see RCW 36.70B.200). However, nothing in this Agreement shall prevent the City from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map, Design Standards or development regulations affecting the Subject Property during the next 2 years, as the City Council may deem necessary to the extent required by a serious threat to the public health and safety.



**Section 27. Releases.** Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this agreement as provided herein.

**Section 28. Notices.** Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of the City Administrator. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

**Section 29. Reimbursement.**

- 29.1 Reimbursement of Developer. No reimbursement shall be paid to the Developer until the project is completed, accepted by the City Council, and the maintenance bond is in place. Reimbursement will occur as funds are available.
- 29.2 Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by the Developer as an applicant incurred by the City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application and/or permit fees. This development agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed by to the City for the subject project are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

**Section 30. Applicable Law and Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party. Venue for any action shall lie in the Washington Superior Court for Adams County or, if the dispute involves violation of federal law, the U.S. District Court for Eastern Washington.

**Section 31. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowner, shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or landowner shall not settle any lawsuit without the consent of the city. The City shall act in good faith and shall not unreasonably withhold consent to settle.

**Section 32. Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel



Agreement  
CITY OF OTHELLO  
Adams County Auditor, Heidi K. Hunt



specific performance of all material terms of this Development Agreement by any party in default hereof.

**Section 33. Severability.** If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the Resolution adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

**Section 34. Construction.** In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

**Section 35. Integration.** This Agreement contains all the terms of the agreement between the parties. No other writings, communications or representations are part of this Agreement.

The parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

**OWNER / DEVELOPER:**

Sand Hill Estates, LLC

By: Angel Garza Date 3-2-18  
(Angel Garza, Registered Agent)

State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Angel Garza, Registered Agent, signed this instrument, on oath that he was authorized to execute the instrument and acknowledged it as the Registered Agent of Sand Hill Estates LLC, or assigns, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: March 2, 2018. Rebecca P. Ozuna



Notary Public for Washington State  
My commission expires June 8, 2021

Agreement  
CITY OF OTHELLO  
Adams County Auditor: Heidi K. Hunt



City of Othello:

By Shawn R Logan Date 2/28/18  
(Mayor)

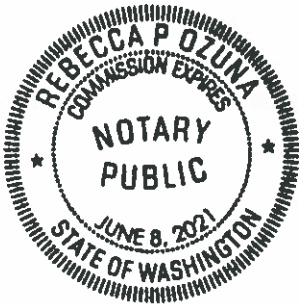
Approved As To Form

By Kelly Kunkler Date 3/12/18  
(City Attorney)

State of Washington  
County of Adams

I certify that I know or have satisfactory evidence that Shawn Logan, Mayor, signed this instrument, on oath that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Othello to be the free and voluntary act of such party for the use and purposes mentioned in this instrument.

Dated: February 28, 2018. Rebecca P. Ozuna



Notary Public for Washington State  
My commission expires June 8, 2021





## Exhibit "B"

### Estimated City Costs - REVISED

Quantity	Unit	Description	Unit Price	Amount
1	LS	Mobilization	\$4,450.00	\$4,450.00
1	LS	Mill & remove existing HMA from Olympia Street	\$9000.00	\$9000.00
58,800	SF	Install 4" depth HMA on south half of Olympia	<del>\$2.10</del> <u>2.25</u>	<del>\$123,480.00</del> <u>\$132,300.00</u>
58,800	SF	Add 5" to base rock under asphalt on south half of Olympia (if needed)	\$0.95	\$55,860.00
<u>2955</u>	<u>Tons</u>	<u>Top course and base course south side Olympia</u>	<u>\$17.45</u>	<u>\$51,564.75</u>
3828	LF	6" c900 PVC Non-potable water main with appurtenances and thrust blocking	<del>\$21.25</del> <u>\$18.94</u>	<del>\$81,345.00</del> <u>\$72,502.32</u>
4	Each	Catch Basins	<del>\$1575.00</del> <u>\$1,134.71</u>	<del>\$6,300.00</del> <u>\$4,538.84</u>
4	Each	Pedestrian Ramps	<del>\$725.00</del> <u>\$1,500.00</u>	<del>\$2,900.00</del> <u>\$6,000.00</u>
<u>58,800</u>	<u>LS</u>	<u>Subgrade prep south side Olympia St</u>	<u>\$0.37</u>	<u>\$21,756.00</u>
<u>2500</u>	<u>LF</u>	<u>Crack seal</u>	<u>\$1.50</u>	<u>\$3,750.00</u>
<u>13</u>	<u>Each</u>	<u>Utility adjustments</u>	<u>\$250.00</u>	<u>\$3,250.00</u>
			Subtotal	<u>\$283,335.00</u> <u>\$309,111.91</u>
			7.9% Sales Tax	<u>\$22,383.47</u> <u>\$24,419.84</u>
			10% Contingency	<u>\$30,571.85</u> <u>\$33,353.18</u>
			Use tax	<u>\$3,000</u>
			Design Engineering 12%	<u>\$37,093.43</u>
			Construction Services Fee 6%	<u>\$18,546.71</u>
			Total	<u>\$336,290.32</u> <u>\$425,525.07</u>