

**RESOLUTION NO. 2124**

**A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND OTV 1 LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY FOR THE DEVELOPMENT OF STREET AND STREETScape IMPROVEMENTS TO BOONES FERRY ROAD.**

WHEREAS, the City and OTV 1 LLC have a common understanding of the commitments and obligations with the development of property owned by OTV 1 LLC and adjacent street improvements owned by the City, and:

WHEREAS, OTV 1 LLC voluntarily proposes upgraded development of their property to more fully comply with the Old Town Overlay Zone; and

WHEREAS, the City proposes complimentary improvements in the Boones Ferry Road and Fifth Street rights-of-way; and

WHEREAS, the terms of the proposed Development Agreement are in the public interest.

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

1. The Wilsonville City Council hereby approves the "Development Agreement between OTV 1 LLC and the City of Wilsonville, Oregon", attached hereto as Exhibit 1 and incorporated herein as fully set forth.
2. The Council hereby authorizes the City Manager to execute the Exhibit 1 Development Agreement on behalf of the City.
3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16<sup>th</sup> day of June, 2008 and filed with the City Recorder this same date.

  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
\_\_\_\_\_  
SANDRA C. KING, MMC, City Recorder

SUMMARY OF VOTES:

|                  |         |
|------------------|---------|
| Mayor Lehan      | Yes     |
| Councilor Kirk   | Yes     |
| Councilor Knapp  | Abstain |
| Councilor Ripple | Yes     |
| Councilor Núñez  | Yes     |

Attachments: Exhibit 1 - Development Agreement between Old Town Village 1 LLC and the City of Wilsonville, Oregon

## EXHIBIT 1

### DEVELOPMENT AGREEMENT BETWEEN OTV 1 LLC AND THE CITY OF WILSONVILLE, OREGON

This Development Agreement (this "Agreement"), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, is made by and between OTV 1 LLC (the "Developer") and the City of Wilsonville, an Oregon municipal corporation (the "City").

#### RECITALS

WHEREAS, the Developer is redesigning an existing building façade with related site improvements (the "Project") in the City of Wilsonville at Tax Lot 3S-1W-23BD-102 commonly known as 30625 Boones Ferry Road (the "Project Property"); and

WHEREAS, the Project Property was developed in 1962 as an industrial facility including a 13,824 square foot building for producing hardwood moldings; and

WHEREAS, the Developer purchased the vacant property in 1986 and received Development Review Board approval, also in 1986, for interior remodeling, upgrading of mechanical systems, exterior upgrades and landscaping; and

WHEREAS, in 2000, the City Council adopted Ordinance No. 509 amending Chapter 4 of the City Code and including the Old Town Overlay Zone, a Main Street oriented zone to guide development and redevelopment in Old Town; and

WHEREAS, in 2007, the Developer applied for and received Development Review Board approval for modifications to the 1986 Site Design Review approval. No modifications to approved Stage 1 or Stage 2 Plans were requested or required. Proposed Site Design modifications included improvements to landscaping, parking lots, sidewalks, on-site drainage, site plan and exterior renovations; and

WHEREAS, the intent of this application was to upgrade the facility to more fully comply with the Old Town (Design) Overlay Zone thus becoming more compatible with earlier improvements constructed by the same Developer in the block between 4<sup>th</sup> and 5<sup>th</sup> Streets on Boones Ferry Road in Old Town; and

WHEREAS, the proposed improvements approved in 2007 do not alter the existing building footprint nor change the use from the existing tenancy by several small businesses; and

WHEREAS, since no zone change was requested and there is no increase in the building footprint, nor any change in use, the owner is not required to provide off-site improvements such as improvements within the Boones Ferry Road right-of-way; and

WHEREAS, the Developer has no obligation to expend funds for such off-site or on-site Project improvements but chooses to do so in order to produce a high quality development and facilitate creation of the streetscape called for in, and further the goals of, the Old Town Design Overlay; and

WHEREAS, the Developer and City agree to coordinate on-site and off-site improvements to improve the neighborhood and be more consistent with the Main Street concepts in the Old Town Overlay District; and

WHEREAS, the parties acknowledge that under state law, because the amount of the City's share of the cost of the Boones Ferry Road at 5<sup>th</sup> Street improvement project #4141 exceeds \$50,000, prevailing wage laws must be followed in the construction contract for the improvements; and

WHEREAS, the Developer's Project includes some elements of public improvements that require compliance with the prevailing wage provisions of ORS 279C.800 through 279C.870, and Oregon Laws 2005, Chapter 360 (see Senate Bill 477).

### AGREEMENT

#### **I. Infrastructure Improvements and Related Obligations**

##### **A. Developer Improvements**

Developer shall be responsible for making improvements as follows:

1. Improvements identified on Public Works permit drawings for the Boones Ferry Road at 5<sup>th</sup> Street improvement project #4141 approved by and on file with the City, specifically summarized on Plan 10 of 11 identified as Exhibit A to this Agreement, attached hereto and by this reference made a part herein.
2. Public lighting conduit, junction and pole boxes.
3. Tree grates to protect existing trees at sidewalks.
4. Concrete public sidewalks along Boones Ferry Road and Fifth Street as shown in Exhibit A.
5. All improvements shall comply with all applicable City standards.

##### **B. Developer Obligations**

1. Developer shall dedicate public sidewalk and utility easements along Project Property frontage on Boones Ferry Road and Fifth Street.

2. Developer paid for all design and engineering costs for City improvements incurred prior to April 11, 2008. Developer will pay all subsequent additional design and engineering costs from redesign of storm line 2 and grade adjustments at 5<sup>th</sup> Street, redesign of the driveway entrance off Boones Ferry Road, and any future redesign work that is done at the request of the Developer.

#### C. City Improvements

City shall be responsible for making improvements identified on Public Works permit drawings for the Boones Ferry Road at 5<sup>th</sup> Street improvement project #4141 approved by and on file with the City, specifically summarized on plan sheets 11 of 11 and L1 of 1 identified as Exhibits B and C respectively to this Agreement, attached hereto and by this reference made a part herein.

#### D. City Obligations

City shall be responsible for all design and engineering costs for changes to City improvements initiated by the City and excluding the items identified in Section I.B.2 of this Agreement.

## II. General Obligations

#### A. Coordination

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

#### B. Landscaping

City shall install all streetscape landscaping pursuant to Exhibit C consistent with all applicable City ordinances.

#### C. Plans and Construction

Developer is responsible for the design and construction of all Exhibit A improvements required under this Agreement. The City is responsible for all Exhibit B and C improvements required under this Agreement. The City shall be responsible for reviewing and approving all plans, and shall inspect the Project Property and all required improvements.

#### D. Schedule

Developer and City agree that all construction shall be substantially complete by December 31, 2008.

### III. Miscellaneous Provisions

#### A. Further Assurances

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

#### B. Modification or Amendment

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

#### C. Relationship

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

#### D. City Attorney

Michael E. Kohlhoff is the Wilsonville City Attorney and represents the City of Wilsonville and its City Council as a whole in this matter and does not individually represent Mr. Timothy Knapp, who is a City Council member and also manager member of OTV 1 LLC, the Developer. The document affects legal rights and responsibilities of the parties and Mr. Knapp and OTV 1 LLC should individually seek the advice and counsel from their own private attorney before entering into this agreement.

#### E. Burden and Benefit; Assignment

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

#### F. No Continuing Waiver

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

#### G. Applicable Law

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

#### H. Legal Fees

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

#### I. Time of Essence

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

#### J. Notices

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

To City: Michael S. Bowers, Community Development Director  
City of Wilsonville  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Developer: Timothy Knapp  
OTV 1 LLC  
30625-B SW Boones Ferry Road  
Wilsonville, OR 97070

#### K. Rights Cumulative

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

#### L. Counterparts

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

M. No Third Party Beneficiaries

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

N. Dispute Resolution

1. Mediation

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

2. Arbitration

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



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

**OTV 1 LLC:**

By \_\_\_\_\_

Its \_\_\_\_\_

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

**CITY:**

City of Wilsonville, an Oregon Municipal  
Corporation

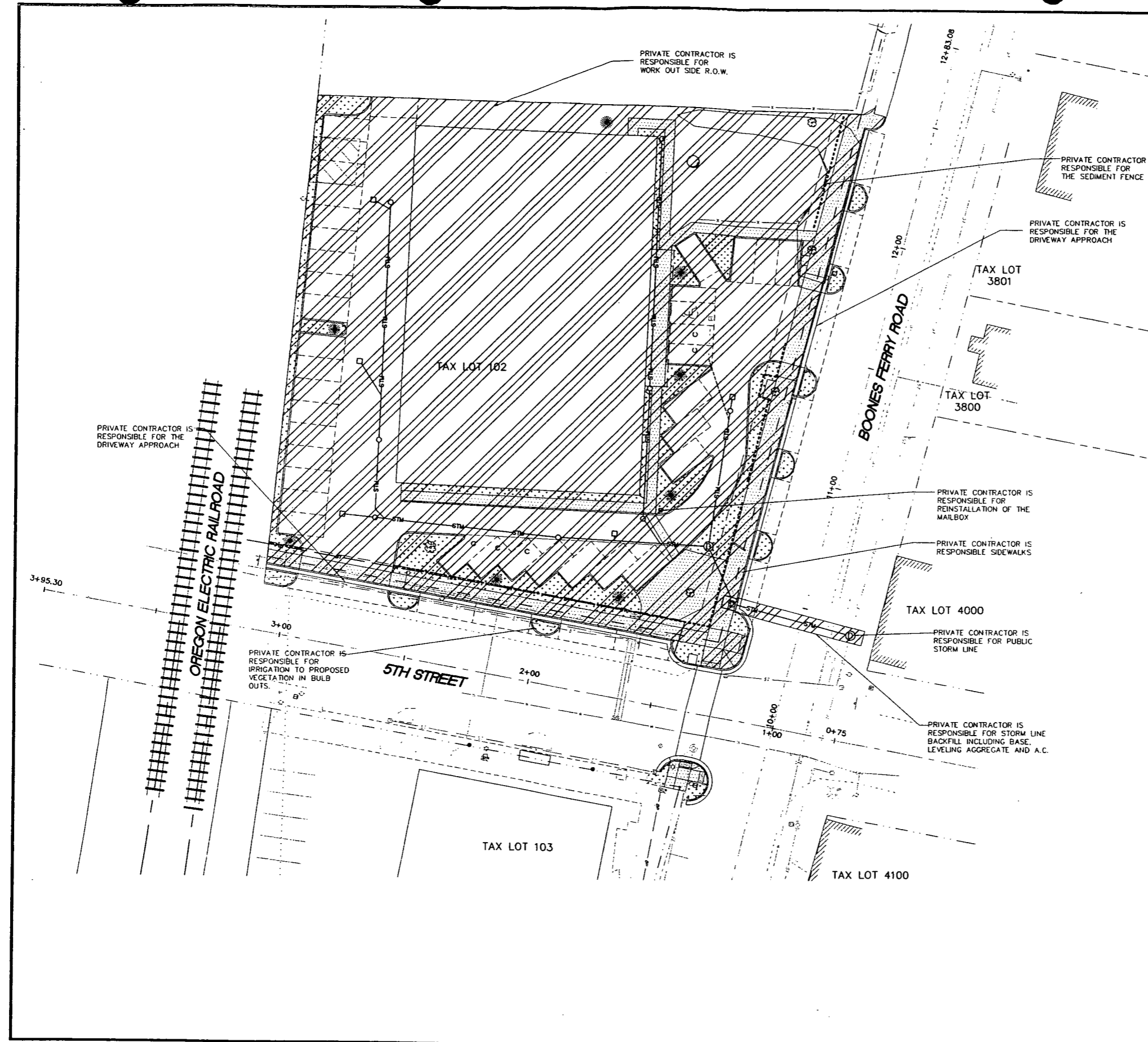
By \_\_\_\_\_

Arlene Loble

Its City Manager \_\_\_\_\_

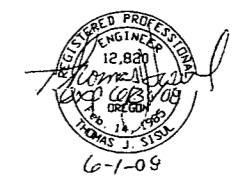
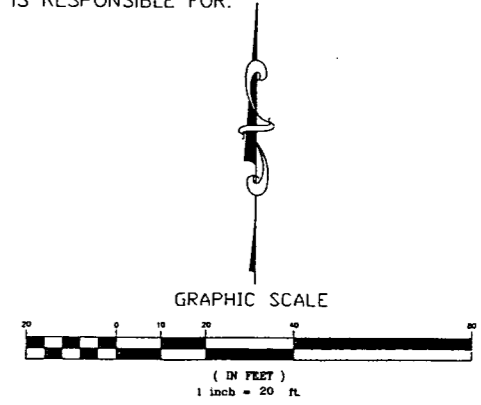
Date: \_\_\_\_\_

Exhibit A



- PRIVATE CONTRACTORS RESPONSIBILITIES:**
- 1.) DRIVEWAYS APPROACHES
  - 2.) PUBLIC STORM LINE 2 AND PUBLIC OUTFALL LINE PER SHEETS 7 AND 8 (THIS INCLUDES ALL NEW PUBLIC AND PRIVATE STRUCTURES ON THOSE LINES)
  - 3.) PRIVATE STORM LINE
  - 4.) IRRIGATION SYSTEM
  - 5.) MAILBOX REINSTALLATION
  - 6.) ALL PRIVATE WORK OUTSIDE R.O.W.
  - 7.) SEDIMENT FENCES
  - 8.) NEW AC AND BACKFILL, INCLUDING BASE LEVEL AND AGGREGATE BASE ABOVE STORM OUTFALL LINE. THIS AREA IS ASSUMING A 6.0' WIDE STRIP GOING THE WIDTH OF THE ROAD.

HATCHED AREA REPRESENTS AREA THAT THE PRIVATE CONTRACTOR IS RESPONSIBLE FOR.



| REVISIONS                               | BY  |
|---|-----|
| 1ST REVISIONS C.D.V. DATE: MAY 14, 2008 | JMF |
| 2ND REVISIONS C.D.V. DATE: MAY 29, 2008 | JMF |

BOONES FERRY ROAD AT 5TH STREET JOB #4141

PRIVATE CONTRACTOR RESPONSIBILITIES

**SISUL ENGINEERING**  
 375 PORTLAND AVENUE  
 GLADSTONE, OREGON 97027  
 (503) 657-0188  
 DRAWING: 07-53 Private Response.dwg

|       |           |
|-------|-----------|
| DATE  | MAY 2008  |
| SCALE | 1" = 20'  |
| DRAWN | JMF       |
| JOB   | 07-53     |
| SHEET | 10        |
| OF    | 11 SHEETS |

| REVISIONS                                  | BY  |
|--|-----|
| 1ST REVISIONS C.G.V.<br>DATE: MAY 14, 2008 | JMF |
| 2ND REVISIONS C.G.V.<br>DATE: MAY 21, 2008 | JMF |
|  |     |
|  |     |
|  |     |

BOONES FERRY ROAD  
AT 5TH STREET  
JOB #4141

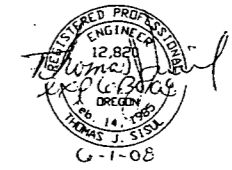
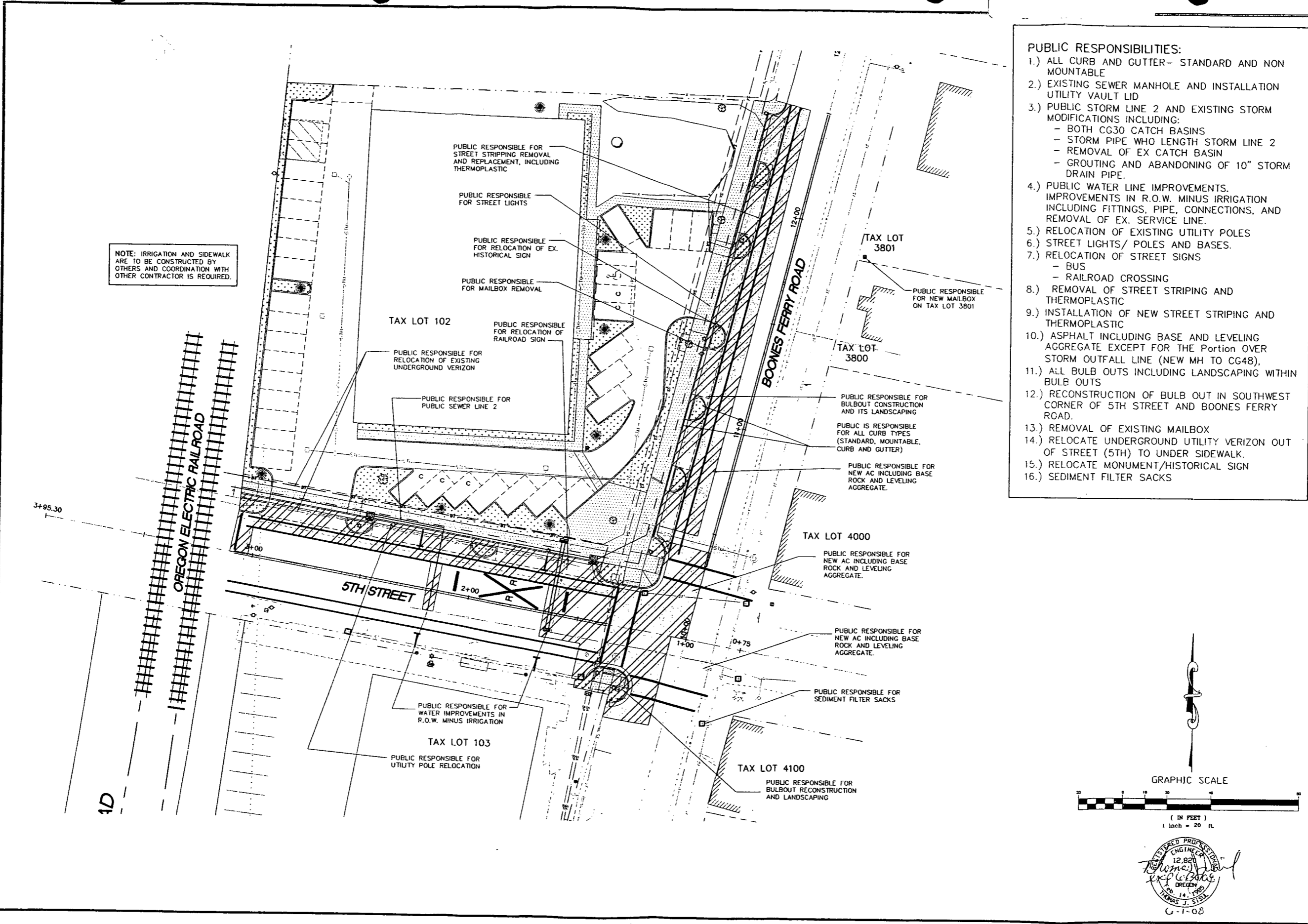
PUBLIC RESPONSIBILITIES

SISUL ENGINEERING  
375 PORTLAND AVENUE  
CLATSOP, OREGON 97027  
(503) 667-0188  
DRAWING: 07-53 Public Responsibilities.dwg

|              |          |
|--------------|----------|
| DATE         | MAY 2008 |
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| DRAWN        | JMF      |
| JOB          | 07-53    |
| SHEET        | 11       |
| OF 11 SHEETS |          |

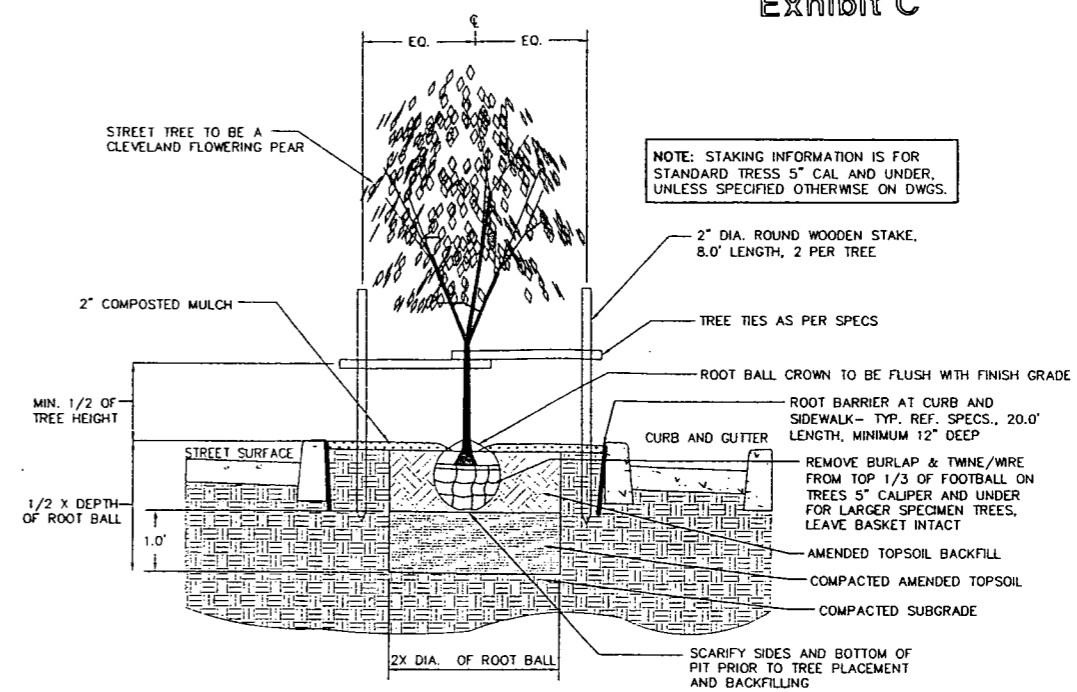
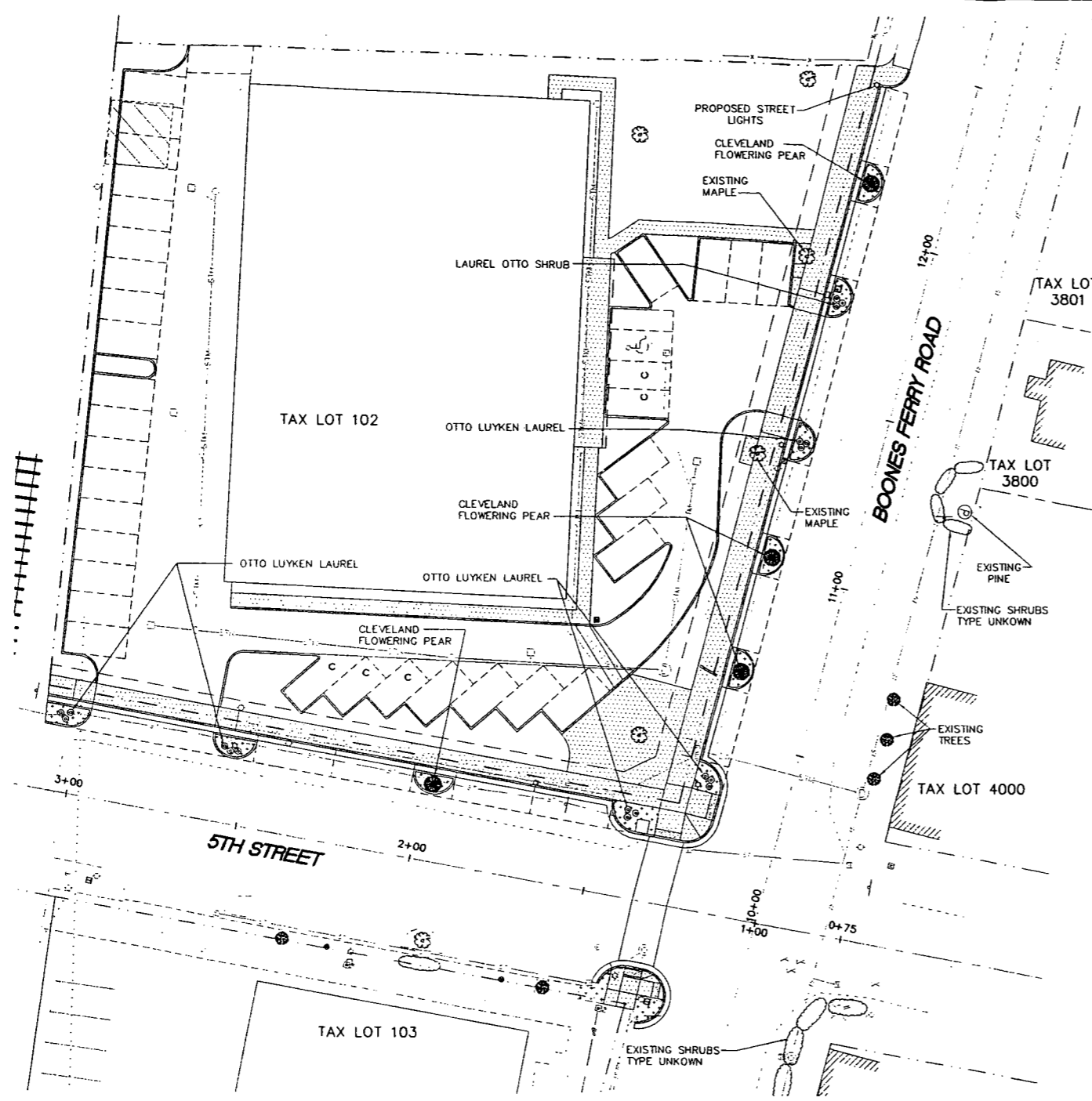
- PUBLIC RESPONSIBILITIES:**
- 1.) ALL CURB AND GUTTER- STANDARD AND NON MOUNTABLE
  - 2.) EXISTING SEWER MANHOLE AND INSTALLATION UTILITY VAULT LID
  - 3.) PUBLIC STORM LINE 2 AND EXISTING STORM MODIFICATIONS INCLUDING:
    - BOTH CG30 CATCH BASINS
    - STORM PIPE WHO LENGTH STORM LINE 2
    - REMOVAL OF EX CATCH BASIN
    - GROUING AND ABANDONING OF 10" STORM DRAIN PIPE.
  - 4.) PUBLIC WATER LINE IMPROVEMENTS, IMPROVEMENTS IN R.O.W. MINUS IRRIGATION INCLUDING FITTINGS, PIPE, CONNECTIONS, AND REMOVAL OF EX. SERVICE LINE.
  - 5.) RELOCATION OF EXISTING UTILITY POLES
  - 6.) STREET LIGHTS/ POLES AND BASES.
  - 7.) RELOCATION OF STREET SIGNS
    - BUS
    - RAILROAD CROSSING
  - 8.) REMOVAL OF STREET STRIPING AND THERMOPLASTIC
  - 9.) INSTALLATION OF NEW STREET STRIPING AND THERMOPLASTIC
  - 10.) ASPHALT INCLUDING BASE AND LEVELING AGGREGATE EXCEPT FOR THE Portion OVER STORM OUTFALL LINE (NEW MH TO CG48).
  - 11.) ALL BULB OUTS INCLUDING LANDSCAPING WITHIN BULB OUTS
  - 12.) RECONSTRUCTION OF BULB OUT IN SOUTHWEST CORNER OF 5TH STREET AND BOONES FERRY ROAD.
  - 13.) REMOVAL OF EXISTING MAILBOX
  - 14.) RELOCATE UNDERGROUND UTILITY VERIZON OUT OF STREET (5TH) TO UNDER SIDEWALK.
  - 15.) RELOCATE MONUMENT/HISTORICAL SIGN
  - 16.) SEDIMENT FILTER SACKS

NOTE: IRRIGATION AND SIDEWALK ARE TO BE CONSTRUCTED BY OTHERS AND COORDINATION WITH OTHER CONTRACTOR IS REQUIRED.

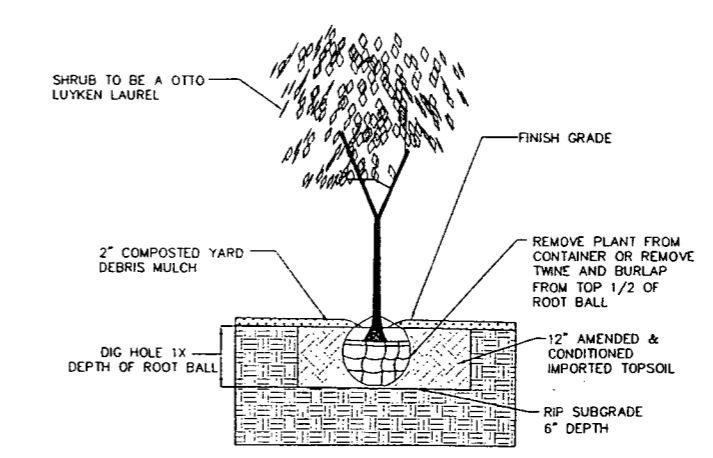


| REVISIONS                                  | BY  |
|--|-----|
| 2ND REVISIONS C.D.V.<br>DATE: MAY 29, 2008 | JMF |

Exhibit C



SECTION - TYPICAL TREE PLANTING + STAKING  
NTS

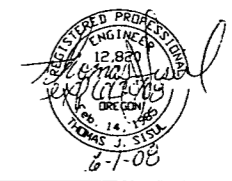
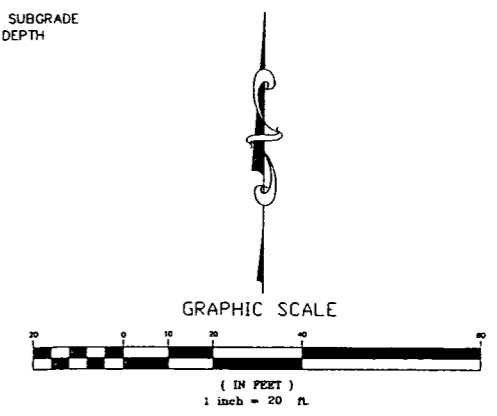


SECTION - TYPICAL SHRUB PLANTING  
NTS

LANDSCAPE LEGEND

LANDSCAPE NOTES:  
1. PROVIDE AUTOMATIC UNDERGROUND IRRIGATION SYSTEM FOR ALL PLANTING BEDS.  
2. PROVIDE MINIMUM 2" BARK MULCH COVER IN PLANTING AREAS.

| SYMBOL | NO. | COMMON NAME<br>BOTANICAL NAME | SIZE    | SPACE |
|--------|-----|-------------------------------|---------|-------|
| (P)    |     | EXISTING PINE TREE            |         |       |
| (M)    |     | EXISTING MAPLE                | 8" CAL. |       |
| (C)    | 4   | CLEVELAND FLOWERING PEAR      | 2" CAL. |       |
| (S)    | 18  | OTTO LUYKEN LAUREL            | 5 GAL.  | 3.0'  |
| (D)    |     | COMPOSTED MULCH               |         |       |



BOONES FERRY ROAD  
AT 5TH STREET  
JOB #4141

LANDSCAPING PLAN

SISUL ENGINEERING  
375 PORTLAND AVENUE  
CLATSOP COUNTY, OREGON 97027  
(503) 867-0188  
DRAWING: 07-53 Private Response.dwg

|       |          |
|-------|----------|
| DATE  | MAY 2008 |
| SCALE | 1" = 20' |
| DRAWN | JMF      |
| JOB   | 07-53    |
| SHEET | L1       |
| OF    | 1 SHEETS |