

RESOLUTION NO. 1925

A RESOLUTION OF THE CITY OF WILSONVILLE, OREGON APPROVING A DEVELOPMENT AGREEMENT BETWEEN REBCO PROPERTIES LLC AND THE CITY OF WILSONVILLE PROVIDING FOR CAPITAL INFRASTRUCTURE IMPROVEMENTS AND SYSTEM DEVELOPMENT CHARGES AND SDC CREDITS.

WHEREAS, REBCO Properties LLC has obtained land use development permit approvals to develop Phase I of an 18.1-acre service commercial center involving the retail sale and service and industrial storage of motor vehicles on Boones Ferry Road north of the Boeckman Road overpass within the City of Wilsonville; and

WHEREAS, conditions of development permit approvals were imposed specifying the construction of certain street, sewer, water, storm drainage and other public infrastructure. Some of these improvements mitigate the impacts from the subdivision, and some are not roughly proportional to development impact, a circumstance that requires a formal sharing of construction costs. City staff and REBCO Properties LLC negotiated an infrastructure development agreement covering necessary dedications of land, the kind of public infrastructure necessary to meet the conditions of approval, the responsibility for constructing the improvements, the estimated costs thereof, the relative share of the costs to be paid by REBCO Properties LLC and the City, and the provision of funding through system development charges (SDCs), credits to SDCs, and reimbursements. A copy of the proposed Development Agreement is marked "Exhibit A," attached hereto and incorporated by reference as if fully set forth; and

WHEREAS, City staff recommends the approval of the proposed Development Agreement, Exhibit A, which has been executed on behalf of REBCO Properties LLC by its authorized member Brad Tonkin;

NOW, THEREFORE THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

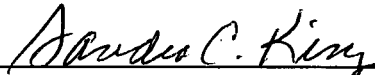
1. The City Council adopts the above recitals as findings and incorporates them by reference as if fully set forth herein;
2. The City Council approves the Development Agreement between the City and REBCO Properties LLC, attached as Exhibit A, and authorizes the City Manager to sign on behalf of the City of Wilsonville.
3. This resolution is effective upon adoption.

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



ALAN KIRK, COUNCIL PRESIDENT

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Excused
Councilor Kirk	Yes
Councilor Holt	Yes
Councilor Knapp	Yes
Councilor Scott-Tabb	Yes

**DEVELOPMENT AGREEMENT BETWEEN REBCO PROPERTIES
AND THE CITY OF WILSONVILLE, OREGON**

This Development Agreement (this "Agreement"), dated as of the 18th day of February, 2005, is made by and between REBCO Properties LLC, an Oregon limited liability company ("REBCO") and the City of Wilsonville, an Oregon municipal corporation (the "City").

RECITALS

- A. REBCO is developing an 18.1-acre service commercial center involving the retail sale and service and industrial storage of motor vehicles in the City of Wilsonville (the "Project Property") on Boones Ferry Road.
- B. REBCO submitted a land use application to the City for a Stage I Preliminary Plan approval, Stage II Final Plan Approval, Site Design Review, Master Sign Plan, and a Building Permit for development of the Project Property (together, the "Application").
- C. The Application was approved by the City for a multiple phased project. Stage II Final Plan Approval and a Building Permit have been issued only for the first phase, and REBCO is proceeding only with the initial phase at this time. It does not make economic or practical sense to phase the required street improvements with each phase but rather to construct the street all at one time with the first phase.
- D. In connection with the approval of the Application and the first phase of the proposed development of the Project Property, REBCO is required to make certain infrastructure improvements and pay a certain amount of Systems Development Charges ("SDCs") for street and stormwater improvements. Some of the improvements required as conditions of approval and as required under this Agreement are necessary due to the projected impacts created by the development to City infrastructure and improvements. Other improvements required as conditions of approval and as required under this Agreement are not roughly proportional to the impacts created by the development, and therefore REBCO is entitled to either credits against Street and Stormwater SDCs, or reimbursement from the City for making such improvements. REBCO has posted performance bonds for the Stormwater and Street SDCs in lieu of payment pending resolution of the issues outlined in this Agreement.
- E. The parties desire to set forth in this Agreement the obligations of REBCO and the City with respect to the infrastructure improvements, SDC charges, SDC credits and reimbursements.
- F. The conditions of approval impose upon REBCO the obligation to improve the section of Boones Ferry Road which fronts the Project Property with a 36-foot minor collector modified to fit the narrow Boones Ferry right-of-way. The roughly proportional impacts of development of the Project Property require REBCO to construct the west 24' of the street, defined as curb, gutter, sidewalk, landscaping, streetlights and paving. The east 12' is the obligation of the City, subject to funding from the Street SDC fund as an off site,

qualified public improvement. REBCO also is subject to paying Street SDCs for impacts to and benefits from the whole street system at the time of obtaining building permits.

- G. REBCO desires to build the entire Boones Ferry street frontage because of the economics of having the onsite contractor do all the work. Rather than trying to separate the work on the street and have the City bid the extra capacity it makes economic and practical sense to have the onsite contractor also do the extra capacity work. A public works contract exemption shall be sought by the City from the City Council, acting as the City's Local Contract Review Board. To the extent REBCO pays for the extra capacity work, it shall be entitled to Street SDC credits as set forth in the body of the Agreement. In the event the extra capacity work exceeds the credits provided in this Agreement, the City shall pay the excess as agreed in this Agreement.
- H. The parties acknowledge that under state law, because the amount of the City's share of the cost of the Boones Ferry improvements exceeds \$25,000, prevailing wage laws must be followed in the construction contract for the improvements. Submission of a certified payroll to the City shall constitute sufficient proof that REBCO has complied with this requirement.
- I. The City must delay a decision on the acquisition of a portion of the REBCO property for use as a regional stormwater detention facility pending a study of the Coffee Lake Creek drainage area and its tributaries one of which is on the REBCO property. The study is expected to be completed by April 30, 2005.

AGREEMENT

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

I. GENERAL PROVISIONS

A. Street SDCs (Boones Ferry Road)

The Street SDCs for the first phase of development of the Project Property are \$129,115, based on the Street SDCs in effect at the time of approval of the Application. Street SDCs are subject to an annual construction inflation index adjustment, and the Boones Ferry improvements could overlap the 2005 adjustment but should be completed prior to the 2006 adjustment. The City has agreed that Street SDCs for the first phase of development of the Project Property, both in terms of credits and charges, shall remain at the 2004 rate until substantial completion of the improvements, anticipated in 2006.

REBCO shall receive Street SDC credits for all improvements in excess of those required for the first phase of development of the Project Property. The improvements eligible for Street SDC credits are as set forth in Part II of this Agreement. The amount of Street SDC credits for the eligible improvements shall be based on the actual costs incurred by REBCO in the construction of such improvements, as evidenced by itemized invoices or other documentation reasonably satisfactory to determine the actual costs of construction and the appropriate credit therefor. Although not binding on the parties, the estimated Street SDC credits are in the amount of \$160,318 as set forth in the budget prepared by

REBCO's consultant, Perlo McCormack Pacific, attached hereto as Exhibit A. REBCO shall also receive Street SDC credits for design and engineering in connection with the construction of the eligible improvements in an amount equal to either 10% of the actual construction costs or, at REBCO's option, as set forth in itemized invoices properly documenting an equitable share of the design and engineering costs. The documentation of the design and engineering costs must also include documentation of the breakdown of those costs between REBCO and the City.

B. Stormwater SDCs

The Stormwater SDCs for the first phase of development of the Project Property are \$79,106.58 based on the Stormwater SDCs in effect at the time of approval of the Application. Stormwater SDCs are subject to an annual construction inflation index adjustment. The City has agreed that Stormwater SDCs for the first phase of development of the Project Property, both in terms of credits and charges, shall remain at the 2004 rate for a period of two (2) years from the date of the Agreement.

II. INFRASTRUCTURE IMPROVEMENTS ON BOONES FERRY ROAD

A. Specific Improvements

REBCO shall be responsible for making the following improvements to Boones Ferry Road between the north and south boundaries of the Project Property, as more particularly identified on Public Works permit drawings approved by and on file with the City. All improvements shall comply with all applicable City standards.

Construct a full 36-foot street section per the Transportation Systems Plan with curb and gutter, sidewalk, street trees, and street lights on the west side of the street. The east side of the street shall be a turnpike section with a roadside ditch to provide for drainage. Construct all improvements necessary to allow for an additional 12-foot travel lane. Construct tapers required to transition to existing street conditions beyond the north and south Project Property boundaries, to ensure that the new west curb line will remain in alignment with the existing curb lines north and south of the Project Property.

B. Creditable Costs

The following costs for the Boones Ferry Road improvements shall be eligible for Street SDC credits: all costs attributed to the east 12 feet of the improvements, including improvements within the west 24 feet made necessary only to accommodate the additional 12 feet, such as extra rock work; and all tapering and other costs necessary to align the improved stretch of road with existing conditions to the north and south.

C. Value of SDC Credits

The parties estimate that the cost of improvements eligible for Street SDC credits is \$160,318 as shown on Exhibit A.

III. REGIONAL STORMWATER DETENTION FACILITY

A. REBCO has constructed an on-site stormwater detention facility on the northern 125 feet of the Project Property as required by condition of approval PF 11. The City may choose to negotiate and acquire this facility for a regional detention facility. This detention area is identified in the 2001 Stormwater Master Plan as CLC-5 and Capital Project #4109.

B. The on-site detention facility shall count toward the requirement of City Zoning Code Section 4.176.03 that at least 15% of the Project Property be landscaped with plants after full development, regardless of whether or not the on-site detention facility is acquired by the City.

C. City agrees to:

1. Appraise the detention facility no later than December 31, 2005. City shall provide a copy of the appraisal to REBCO. If REBCO disputes the appraisal it shall so notify the City within 30 days of receipt, and may have a separate appraisal conducted at its own cost, which it will provide to the City within 30 days of completion. All appraisals shall be performed by MAI-certified appraisers.

2. Decide on the acquisition of the detention facility as CLC-5 no later than June 30, 2006, and close on the purchase no later than December 31, 2006. The parties shall share all closing costs equally. The current engineer's estimate for constructing CLC-5 in the 2001 Stormwater Master Plan is \$575,000. There is no timetable for construction of the detention area and the project will be considered in the context of the 2005-2010 Capital Improvement Program.

3. Bear 100% of the cost of any land use approvals necessary for REBCO to convey the detention facility to the City. REBCO shall cooperate in the City's efforts to obtain the required land use approvals.

D. If the City purchases the detention facility, REBCO shall be entitled to Stormwater SDC credits in the amount of the purchase price. The purchase price shall be the amount stated in the City's appraisal or, if REBCO prepared another appraisal, the average between the two appraisal amounts. The public benefit of the stormwater detention facility is 100% less a consideration of the area satisfying the City's open space requirements for all phases of development on the Project Property. The parties agree that in the event of the City's purchase of the detention facility, there would be no residual damage to the remainder of the Project Property.

E. REBCO shall cooperate fully with the City to allow right of entry for appraisal and inspection of the detention facility upon reasonable prior notice by the City. The City shall indemnify and hold REBCO harmless for any injury, loss or damage suffered by it or its agents while on the Project Property for purposes of such appraisal and inspection.

IV. CONTRIBUTION BY CITY

The parties acknowledge that the estimated Street SDC credit exceeds the total Street SDC charge by approximately \$31,203 as shown on Exhibit A. In order to offset this excess

credit, the City agrees to pay REBCO the difference within 30 days after acceptance of the street improvements by the City.

If the City decides not to purchase the on-site detention facility, REBCO shall pay the Stormwater SDCs within 30 days of notice of the City's decision. If the City purchases the facility, any deficit in Stormwater SDCs or surplus Stormwater SDC credits will be paid by REBCO or the City, as the case may be, within 30 days of the closing.

V. GENERAL OBLIGATIONS

A. Interconnection and Coordination

In constructing the improvements required under this Agreement, REBCO shall coordinate with all appropriate jurisdictions, including Clearwater Services, Clackamas County, BOLI and ODOT. REBCO shall also be responsible for installing all necessary interconnection equipment and interconnecting conduit along the entire Project Property to allow interconnection with utility facilities by the City or adjacent property owners.

B. Landscaping

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

C. Plans and Construction

REBCO is solely responsible for the design and construction of all improvements required under this Agreement. The City shall be responsible for reviewing and approving all plans, which approval shall occur within 30 days after the City's receipt of satisfactory plans, and shall inspect the Project Property and all required improvements. By reviewing and approving the plans and design for all improvements required under this Agreement, and issuing permits for the construction of such improvements, the City shall be deemed to have concluded that the improvements identified as eligible for SDC credits under this Agreement are in fact eligible for such SDC credits. All such approved improvements shall be deemed eligible for SDC credits. REBCO and the City shall share, in the same proportion as they share the cost of the Boones Ferry Road improvements as shown on Exhibit A, all materials testing costs, planning review fees, Public Works permit fees, and other miscellaneous costs associated with the Boones Ferry Road improvements. The City's share of these additional costs shall be treated as street SDC credits under this Agreement but are not shown in the attached Exhibit A because the amounts are uncertain at this time. Notwithstanding anything to the contrary in this Agreement, REBCO shall only be required to install asphalt pavement when making any street improvements.

D. Costs

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

VI. MISCELLANEOUS PROVISIONS

A. Road Dedication

The existing right-of-way width on Boones Ferry Road is 50 feet, which does not meet the current standard in the Transportation Systems Plan of 59 feet for a Minor Collector. However, the east side of Boones Ferry Road in this location is directly adjacent to I-5 and the City has no plans to install sidewalk on the east side of the street. Therefore, no additional right-of-way will be required of the developer.

No additional right-of-way or street improvements are required on 95th Avenue.

B. 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.

C. Modification or Amendment

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

D. Relationship

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

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. REBCO covenants and agrees that it shall notify any successor in interest or any tenant on the Project Property of REBCO's 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: David R. Waffle
City of Wilsonville
30000 SW Town Center Loop East
Wilsonville, OR 97070

To REBCO: Brad E. Tonkin
REBCO
122 NE 122nd Avenue
Portland, OR 97230

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.

O. Building Permit

The City shall issue the remaining portions of the building permit for the first phase of development immediately upon obtaining REBCO's signature on this Agreement.

P. Future Phases

Nothing in this Agreement shall be deemed to have any impact on, or to apply to, SDCs assessed in connection with building permits for the second and third phases of development of the Project Property, if any.

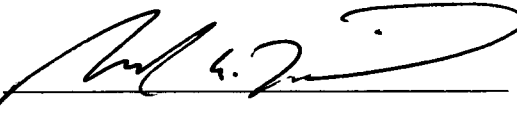
Q. Additional Concerns Regarding Exhibit A

The parties acknowledge that at the time this Agreement is executed, there is disagreement between them regarding the cost items in Exhibit A identified as Street Lights, Storm Manhole and New Area Drain. The parties shall negotiate in good faith after the execution of this Agreement to resolve these outstanding cost items.

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

REBCO:

Rebco Properties LLC, an Oregon limited liability company

By 

Its Member

Date: Feb 18, 2005

CITY:

City of Wilsonville, an Oregon Municipal Corporation

By _____

Its _____

Date: _____

Boones Ferry Improvements

2/17/2005

DESCRIPTION	QUANTITY	UNIT	COST	COST	Tonkin 1/2	Tapers	City 12'
STRIP AND DEMO	63,560	SF	0.35	\$ 22,246	14953	2996	4297
TRAFFIC CONTROL	1	LS	5,000.00	\$ 5,000	2000	1000	2000
IMPORT FILL	4,380	CY	18.00	\$ 78,840	40464	12150	26226
LANDSCAPE	6,175	SF	3.00	\$ 18,525	18525		
PLACE TOPSOIL	308	CY	10.00	\$ 3,080	3080		
PAVING BASE ROCK	1,346	CY	18.00	\$ 24,228	8712	4932	10584
ARTERIAL ROCK UPGRADE	292	CY	18.00	\$ 5,256			5256
STREET PAVING	28,090	SF	0.73	\$ 20,506	7356	4189	8961
ARTERIAL PAVING UPGRADE	28,090	SF	0.52	\$ 14,607			14607
GRIND AND OVERLAY	17,298	SF	1.25	\$ 21,623	18095	3527	
CAST IN PLACE CURB	1,075	LF	10.00	\$ 10,750	10750		
SIDEWALK	4,750	SF	4.00	\$ 19,000	19000		
DRIVEWAY	900	SF	5.00	\$ 4,500	4500		
HANDICAP RAMPS	200	SF	10.00	\$ 2,000	2000		
STREET LIGHTS	4	EA	4,500.00	\$ 18,000	13500		4500
STORM MANHOLE	3	EA	3,500.00	\$ 10,500	7000		3500
ADJUST MANHOLE TOP	1	EA	1,500.00	\$ 1,500			1500
STORM CATCH BASIN	3	EA	2,500.00	\$ 7,500	7500		
NEW AREA DRAIN	1	EA	2,500.00	\$ 2,500			2500
STORM CLEAN OUT	5	EA	38.00	\$ 190	190		
STORM LINE	600	LF	40.00	\$ 24,000	16000		8000
RAISE PHONE VAULTS	2	EA	7,500.00	\$ 15,000	15000		
STRIPING	1	LS	5,000.00	\$ 5,000	2000	1000	2000
GENERAL CONDITIONS	1.00	MO	20,000.00	\$ 20,000	7500	5000	7500
SUBTOTAL:				\$ 354,350	\$ 218,125	\$ 34,794	\$ 101,431
FEE (5%)				\$ 17,718	\$ 10,906	\$ 1,740	\$ 5,072
GENERAL LIABILITY INSURANCE (.5%)				\$ 1,860	\$ 1,145	\$ 183	\$ 533
Total Construction Costs				\$ 373,928	\$ 230,176	\$ 36,716	\$ 107,035
Design and Engineering				\$ 43,095	\$ 26,528	\$ 4,231	\$ 12,336
Total Costs by City of Wilsonville not including permits						\$ 160,318	

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B. The on-site detention facility shall count toward the requirement of City Zoning Code Section 4.176.03 that at least 15% of the Project Property be landscaped with plants after full development, regardless of whether or not the on-site detention facility is acquired by the City.

C. City agrees to:

1. Appraise the detention facility no later than December 31, 2005. City shall provide a copy of the appraisal to REBCO. If REBCO disputes the appraisal it shall so notify the City within 30 days of receipt, and may have a separate appraisal conducted at its own cost, which it will provide to the City within 30 days of completion. All appraisals shall be performed by MAI-certified appraisers.

2. Decide on the acquisition of the detention facility as CLC-5 no later than June 30, 2006, and close on the purchase no later than December 31, 2006. The parties shall share all closing costs equally. The current engineer's estimate for constructing CLC-5 in the 2001 Stormwater Master Plan is \$575,000. There is no timetable for construction of the detention area and the project will be considered in the context of the 2005-2010 Capital Improvement Program.

3. Bear 100% of the cost of any land use approvals necessary for REBCO to convey the detention facility to the City. REBCO shall cooperate in the City's efforts to obtain the required land use approvals.

D. If the City purchases the detention facility, REBCO shall be entitled to Stormwater SDC credits in the amount of the purchase price. The purchase price shall be the amount stated in the City's appraisal or, if REBCO prepared another appraisal, the average between the two appraisal amounts. The public benefit of the stormwater detention facility is 100% less a consideration of the area satisfying the City's open space requirements for all phases of development on the Project Property. The parties agree that in the event of the City's purchase of the detention facility, there would be no residual damage to the remainder of the Project Property.

E. REBCO shall cooperate fully with the City to allow right of entry for appraisal and inspection of the detention facility upon reasonable prior notice by the City. The City shall indemnify and hold REBCO harmless for any injury, loss or damage suffered by it or its agents while on the Project Property for purposes of such appraisal and inspection.

IV. CONTRIBUTION BY CITY

The parties acknowledge that the estimated Street SDC credit exceeds the total Street SDC charge by approximately \$31,203 as shown on Exhibit A. In order to offset this excess

credit, the City agrees to pay REBCO the difference within 30 days after acceptance of the street improvements by the City.

If the City decides not to purchase the on-site detention facility, REBCO shall pay the Stormwater SDCs within 30 days of notice of the City's decision. If the City purchases the facility, any deficit in Stormwater SDCs or surplus Stormwater SDC credits will be paid by REBCO or the City, as the case may be, within 30 days of the closing.

V. GENERAL OBLIGATIONS

A. Interconnection and Coordination

In constructing the improvements required under this Agreement, REBCO shall coordinate with all appropriate jurisdictions, including Clearwater Services, Clackamas County, BOLI and ODOT. REBCO shall also be responsible for installing all necessary interconnection equipment and interconnecting conduit along the entire Project Property to allow interconnection with utility facilities by the City or adjacent property owners.

B. Landscaping

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

C. Plans and Construction

REBCO is solely responsible for the design and construction of all improvements required under this Agreement. The City shall be responsible for reviewing and approving all plans, which approval shall occur within 30 days after the City's receipt of satisfactory plans, and shall inspect the Project Property and all required improvements. By reviewing and approving the plans and design for all improvements required under this Agreement, and issuing permits for the construction of such improvements, the City shall be deemed to have concluded that the improvements identified as eligible for SDC credits under this Agreement are in fact eligible for such SDC credits. All such approved improvements shall be deemed eligible for SDC credits. REBCO and the City shall share, in the same proportion as they share the cost of the Boones Ferry Road improvements as shown on Exhibit A, all materials testing costs, planning review fees, Public Works permit fees, and other miscellaneous costs associated with the Boones Ferry Road improvements. The City's share of these additional costs shall be treated as street SDC credits under this Agreement but are not shown in the attached Exhibit A because the amounts are uncertain at this time. Notwithstanding anything to the contrary in this Agreement, REBCO shall only be required to install asphalt pavement when making any street improvements.

D. Costs

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

VI. MISCELLANEOUS PROVISIONS

A. Road Dedication

The existing right-of-way width on Boones Ferry Road is 50 feet, which does not meet the current standard in the Transportation Systems Plan of 59 feet for a Minor Collector. However, the east side of Boones Ferry Road in this location is directly adjacent to I-5 and the City has no plans to install sidewalk on the east side of the street. Therefore, no additional right-of-way will be required of the developer.

No additional right-of-way or street improvements are required on 95th Avenue.

B. 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.

C. Modification or Amendment

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

D. Relationship

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

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. REBCO covenants and agrees that it shall notify any successor in interest or any tenant on the Project Property of REBCO's 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: David R. Waffle
City of Wilsonville
30000 SW Town Center Loop East
Wilsonville, OR 97070

To REBCO: Brad E. Tonkin
REBCO
122 NE 122nd Avenue
Portland, OR 97230

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.

O. Building Permit

The City shall issue the remaining portions of the building permit for the first phase of development immediately upon obtaining REBCO's signature on this Agreement.

P. Future Phases

Nothing in this Agreement shall be deemed to have any impact on, or to apply to, SDCs assessed in connection with building permits for the second and third phases of development of the Project Property, if any.

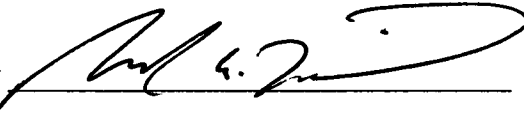
Q. Additional Concerns Regarding Exhibit A

The parties acknowledge that at the time this Agreement is executed, there is disagreement between them regarding the cost items in Exhibit A identified as Street Lights, Storm Manhole and New Area Drain. The parties shall negotiate in good faith after the execution of this Agreement to resolve these outstanding cost items.

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

REBCO:

Rebco Properties LLC, an Oregon limited liability company

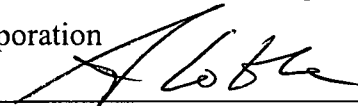
By 

Its Member

Date: Feb 18, 2005

CITY:

City of Wilsonville, an Oregon Municipal Corporation

By 

Its CITY MANAGER

Date: MARCH 8, 2005

Boones Ferry Improvements

2/17/2005

DESCRIPTION	QUANTITY	UNIT	COST	COST	Tonkin 1/2	Tapers	City 12'
STRIP AND DEMO	63,560	SF	0.35	\$ 22,246	14953	2996	4297
TRAFFIC CONTROL	1	LS	5,000.00	\$ 5,000	2000	1000	2000
IMPORT FILL	4,380	CY	18.00	\$ 78,840	40464	12150	26226
LANDSCAPE	6,175	SF	3.00	\$ 18,525	18525		
PLACE TOPSOIL	308	CY	10.00	\$ 3,080	3080		
PAVING BASE ROCK	1,346	CY	18.00	\$ 24,228	8712	4932	10584
ARTERIAL ROCK UPGRADE	292	CY	18.00	\$ 5,256			5256
STREET PAVING	28,090	SF	0.73	\$ 20,506	7356	4189	8961
ARTERIAL PAVING UPGRADE	28,090	SF	0.52	\$ 14,607			14607
GRIND AND OVERLAY	17,298	SF	1.25	\$ 21,623	18095	3527	
CAST IN PLACE CURB	1,075	LF	10.00	\$ 10,750	10750		
SIDEWALK	4,750	SF	4.00	\$ 19,000	19000		
DRIVEWAY	900	SF	5.00	\$ 4,500	4500		
HANDICAP RAMPS	200	SF	10.00	\$ 2,000	2000		
STREET LIGHTS	4	EA	4,500.00	\$ 18,000	13500		4500
STORM MANHOLE	3	EA	3,500.00	\$ 10,500	7000		3500
ADJUST MANHOLE TOP	1	EA	1,500.00	\$ 1,500			1500
STORM CATCH BASIN	3	EA	2,500.00	\$ 7,500	7500		
NEW AREA DRAIN	1	EA	2,500.00	\$ 2,500			2500
STORM CLEAN OUT	5	EA	38.00	\$ 190	190		
STORM LINE	600	LF	40.00	\$ 24,000	16000		8000
RAISE PHONE VAULTS	2	EA	7,500.00	\$ 15,000	15000		
STRIPING	1	LS	5,000.00	\$ 5,000	2000	1000	2000
GENERAL CONDITIONS	1.00	MO	20,000.00	\$ 20,000	7500	5000	7500
SUBTOTAL:				\$ 354,350	\$ 218,125	\$ 34,794	\$ 101,431
FEE (5%)				\$ 17,718	\$ 10,906	\$ 1,740	\$ 5,072
GENERAL LIABILITY INSURANCE (.5%)				\$ 1,860	\$ 1,145	\$ 183	\$ 533
Total Construction Costs				\$ 373,928	\$ 230,176	\$ 36,716	\$ 107,035
Design and Engineering				\$ 43,095	\$ 26,528	\$ 4,231	\$ 12,336
Total Costs by City of Wilsonville not including permits						\$ 160,318	



March 8, 2005

David J. Petersen
TonkonThorp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

Re: REBCO -City of Wilsonville Development Agreement

Dear David:

I have enclosed a fully signed Development Agreement between REBCO Properties and the City of Wilsonville. At the March 7, 2005 Council meeting, the Council approved Resolution No. 1925 authorizing the City Manager to enter into the agreement. Also enclosed is a certified copy of the adopted resolution for your files.

Please do not hesitate to call me if you have any questions, I can be reached at 503-570-1506.

Sincerely,

/s/

Sandra C. King, CMC
City Recorder

/sck

Enclosures





CITY OF WILSONVILLE

FEB 23 2005

RECEIVED

1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440

503.802.2054
FAX 503.972.3754
DavidP@tonkon.com

DAVID J. PETERSEN
ADMITTED TO PRACTICE IN OREGON AND CALIFORNIA

February 22, 2005

Mr. Michael E. Kohlhoff
City of Wilsonville
30000 SW Town Center Loop East
Wilsonville, OR 97070

Re: REBCO - City of Wilsonville Development Agreement

Dear Mike:

Enclosed please find two duplicate originals of the Development Agreement between REBCO Properties, LLC and the City of Wilsonville dated February 18, 2005, executed by REBCO. Please have both documents executed by the City and return one fully-executed original to me at your earliest convenience.

Thank you for your assistance in reaching an agreement acceptable to all parties.

Best regards,

A handwritten signature in black ink, appearing to read 'David J. Petersen', with a long horizontal flourish extending to the right.

David J. Petersen

DJP/mmd
Enclosures
Copy w/encs: Mr. Owen D. Blank
Mr. Jeffrey H. Keeney

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