

RESOLUTION NO. 02-2020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
APPROVING THE SUBDIVISION IMPROVEMENT AGREEMENT FOR A 1.2 ACRE
SUBDIVISION INTO THREE LOTS AT THE NORTHEAST INTERSECTION OF
CHARING CROSS WAY AND UNIMPROVED CLARENDON ROAD (APN: 016-355-150) IN
THE CITY OF PACIFICA.**

WHEREAS, on August 5, 2019, the Planning Commission of the City of Pacifica ("Planning Commission") adopted Resolution No. 2019-028, approving the Tentative Map for Subdivision SUB-234-16, prepared by Round House Industries, Inc. and dated November 21, 2018, subject to certain Conditions of Approval; and,

WHEREAS, the Conditions of Approval require that the owners of the parcel (Consult Design Build, Inc. referred to herein as "the Developer") enter into a Subdivision Improvement Agreement with the City of Pacifica providing for the construction of on-site and off-site subdivision improvements; and,

WHEREAS, the Developer has submitted plans, specifications and drawings for the improvements entitled "Tentative Map 340 Charing Cross Way" prepared by Round House Industries, Inc. dated 11/21/2018, which have been reviewed and approved by the City; and,

WHEREAS, a Subdivision Improvement Agreement, in the form attached as Exhibit A of the City Council Staff Report, has been prepared in accordance with the Subdivision Map Act and Section 10-1.007 of the Pacifica Municipal Code, and has been reviewed and approved by the City;

NOW, THEREFORE, BE IT RESOLVED, that:

The City Council hereby approves the Subdivision Improvement Agreement and authorizes the City Manager to execute said Subdivision Improvement Agreement and to hold the security described therein per the terms described in the Agreement.

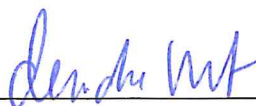
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on January 13, 2020, by the following vote:

AYES, Councilmembers: Martin, Beckmeyer, Vaterlaus, Bier, O'Neill

NOES, Councilmembers: None.

ABSENT, Councilmembers: None.

ABSTAIN, Councilmembers: None.



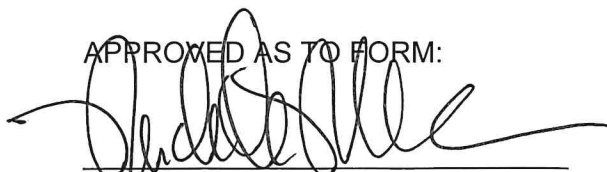
Deirdre Martin, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney

When Recorded Mail To:

City Clerk
CITY OF PACIFICA
170 Santa Maria Avenue
Pacifica, California 94044

(Space Above This Line for Recorder's Use Only)

SUBDIVISION IMPROVEMENT AGREEMENT
Charing Cross Way

THIS SUBDIVISION IMPROVEMENT AGREEMENT is made this _____ day of _____ 2020 by and between Consult Design Build, Inc., a California Corporation ("Subdivider") and the City of Pacifica, a municipal corporation ("City").

RECITALS

A. Subdivider is the owner of approximately 1.20 acres of real property generally located along Clarendon Road between Scenic Way and Charing Cross Way in the City of Pacifica, San Mateo County, California, and identified by San Mateo County Assessor Parcel Number 016-355-150, as more specifically described in **Exhibit A**, which is attached and incorporated herein by reference (the "Property"). All lots and parcels within the Project, as defined below, are included in the Property.

B. Subdivider submitted an application for City approval of a Subdivision consisting of a Tentative Map, a Site Development Permit, and a Coastal Development Permit to subdivide the Property into three residential lots (Planning Permits, collectively, the "Project").

C. On August 5, 2019, the City Planning Commission conditionally approved a Tentative Subdivision Map (SUB-239-18), Modification of Subdivision Regulations MOD-45-19, and Heritage Tree Removal Authorization (File no. 2018-047), subject to the Conditions of Approval, (collectively, the "Conditions"), a copy of which approvals are attached as **Exhibit B**, incorporated herein by reference, and included in this Subdivision Improvement Agreement ("Agreement").

D. Condition 22 of the Conditions reads:

"Alternatively, prior to final map approval the Applicant may enter into a Subdivision Improvement Agreement with the City of Pacifica to construct all on-site and off-site improvements, as depicted on the approved Tentative Map and any conditions and mitigations imposed on this project, subsequent to approval of the final map. Any subdivision improvement agreement shall be subject to the approval of the City Attorney and City Engineer. Any subdivision improvement agreement may require necessary bonds and fees in an amount determined by the City Engineer. Any bond may be in the form of cash, instrument of credit or surety bond."

E. The Municipal Code of the City of Pacifica, Section 10-1.1001, provides in part: "No final map shall be presented to the Council or parcel map to the City Engineer for approval until the Subdivider either completes the required improvements or enters into an agreement with the City agreeing to do the work."

F. The required improvements (hereinafter, "Improvements") include all those improvements indicated on the improvement plans prepared by Round House Industries, Inc., on behalf of the Subdivider, have been approved by the City Engineer, and shall be retained at the Pacifica City Hall ("City Offices") under the

collective title "Tentative Map 340 Charing Cross Way" ("the Plans") as approved by the City Engineer, that are part of or appurtenant to the Property, including, but not limited to, all grading, erosion control, streets, curbs, gutters, sidewalks, utilities, traffic safety devices, paving, pathways, sanitary sewer, water systems. Those improvements marked "Public" on the Plans as approved by the City Engineer may be referred to as the "Public Improvements".

G.

All parties agree that the installation of the Improvements are an integral part of the Subdivider's plan for development of the Project and are necessary to carry out the purpose and intent of the City's approval of the Project. All parties further agree that the Project would not have been approved without the assurance that the Improvements would be completed prior to approval of the parcel map or that this Agreement would be executed by Subdivider.

H. Subdivider has submitted, for approval and acceptance, a parcel map ("Map") for the Project.

I. Subdivider has requested approval of the Map prior to the completion of the Improvements.

J. This Agreement is entered into in accordance with the Subdivision Map Act (Government Code sections 66410 et seq.) and the ordinances, rules, regulations, and determinations of the City.

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, it is agreed between the parties as follows:

1. **Purpose.** The purpose of this Agreement is to: (a) guarantee installation of the Improvements in accordance with the Plans; and (b) ensure satisfactory performance by the Subdivider of Subdivider's obligations. The recitals set forth above are hereby made a part of this Agreement.

2. **Improvements as a Benefit.** Subdivider agrees that the Improvements, which Subdivider is obligated to provide, will materially benefit the Property and are necessary to comply with the Conditions.

3. **Duty to Install Improvements.** Subdivider agrees to construct, install and complete, or cause to be constructed, installed and completed, at the Subdivider's own expense, all of the Improvements.

4. **Performance of Work.** Subdivider agrees that the work necessary to construct and install the Improvements will be done in a good and workmanlike manner in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City's Municipal Code ("Code"). In the event that any conflict between the Plans and the Code should arise after the date of this Agreement, the provisions of the Code shall control. Further, the work will be conducted in accordance with the requirements and procedures listed in the Conditions, in accordance with all City standards, specifications and applicable laws, rules and regulations, and to the satisfaction of the City Engineer or his/her designee. It is agreed that the City Engineer or his/her designee shall have the right to reject any or all of the work performed under this Agreement if such work does not conform to the Conditions, Plans, City standards and specifications, or any applicable law, rule, or regulation. Development of individual lots or parcels within the Project may proceed simultaneously with the work to construct and install the Improvements.

5. **Commencement of Construction-Notice.** At least seven calendar days before the commencement of construction of any of the Improvements, Subdivider shall notify the City Engineer in writing of the date fixed by Subdivider for commencement so that the City Engineer is able to provide the service of inspection.

6. **Completion.** Subdivider agrees to complete the Improvements prior to the earlier of (a) the date a certificate of occupancy for any parcel within the Property is applied for, or (b) within two (2) years from the date of this Agreement.

7. **Time of Essence - Extension.** Time is of the essence under this Agreement. However, in the event

good cause is shown, the City Engineer may extend the time for completion of the Improvements. Any extensions which may be granted will not relieve Subdivider of the obligation to meet the improvement security requirements of this Agreement, or the requirements of Pacifica Municipal Code section 10-1.1008 and California Government Code section 66499, as may be amended from time to time. Before the City Engineer will grant an extension, Subdivider must show good cause satisfactory to the City Engineer for the extension and provide evidence satisfactory to the City Engineer that sufficient security will remain in place during the term of the extension to ensure the faithful performance of this Agreement. These determinations shall be made by the City Engineer in his/her sole discretion.

8. **Supplying "Record Drawing" Plans.** Upon completion of the Improvements and prior to certification of completion, Subdivider shall supply the City, at no cost to the City, one Mylar (4 mils) set of "record" drawings. These drawings shall be certified as being "record drawings" and shall reflect the Improvements as actually constructed, with all changes to the Plans incorporated therein.

9. **Notice and Certification of Completion.** Subdivider shall advise the City Engineer in writing of the completion of the Improvements herein specified and request certification of completion. Upon satisfactory completion of the Improvements by Subdivider and request for certification of completion, the City Engineer or his/her designee shall issue a certificate indicating that the required Improvements have been completed. For the purposes of this Agreement, the date of completion shall be the date that the City Engineer or his/her designee issues a certificate of completion.

10. **Acceptance of Improvements.** The City may, but is not required to, accept any Improvement at any time after the Certificate of Completion has been issued by the City Engineer or his/her designee. Acceptance of Improvements shall imply only that the Improvements have been completed satisfactorily and that the Public Improvements have been accepted for public use. Acceptance of the Improvements by the City Engineer shall not constitute acceptance of any offer of dedication made by Subdivider.

11. **Adequacy of any Revisions to Plans.** Subdivider warrants that the Plans are adequate to accomplish the Improvements. If at any time before the City Engineer certifies completion of the Improvements, the Plans prove to be inadequate in any respect, the Subdivider shall bring those inadequacies to the attention of the City Engineer or his/her designee. Similarly, if the City Engineer or his/her designee discovers that the Plans are inadequate in any respect, the City Engineer or his/her designee shall notify the Subdivider of the inadequacy/inadequacies. If such inadequacies are discovered, the Subdivider shall make changes to the Plans to remedy the inadequacies and, upon approval of the revised Plans by the City Engineer or his/her designee, complete the Improvements according to the revised Plans.

12. **Guarantee and Maintenance of Improvements.** Subdivider agrees to maintain the Improvements in good condition and repair and to guarantee the Improvements against any defective workmanship, materials or unsatisfactory performance for one (1) year after the City Engineer or his/her designee certifies completion of the Improvements. This one year period shall be referred to hereinafter as "the warranty period." Subdivider shall comply with the requirements of this Paragraph in addition to, and not in lieu of, any other legal or contractual requirements to which Subdivider may be subject pertaining to the maintenance of the Improvements during the one-year warranty period and thereafter.

13. **Repair, Replacement or Reconstruction.** If, within the warranty period, all or any portion of the Improvements fails to fulfill the requirements of this Agreement, Subdivider, without delay and without cost to the City, shall repair, replace or reconstruct the defective or otherwise unsatisfactory portion of Improvements and remedy the cause of such defect or failure. All such repair work, replacement, or reconstruction shall be completed to the satisfaction of the City Engineer or his/her designee, as expeditiously as possible but in no event more than six months after the discovery of the defect or failure.

14. **Duty to Maintain Landscaping.** Subdivider agrees to diligently maintain in good repair the landscaping that it installs for one (1) year after the City Engineer certifies completion of the landscaping. The Subdivider shall employ the standard of care necessary to prevent the landscaping from substantially deteriorating.

15. **Nonperformance and Costs.** If, within the time specified in this Agreement and any approved extension, Subdivider fails to complete the Improvements or to act promptly as required by this Agreement, or should an urgency arise that requires the repair or replacement of any portion of the Improvements, the City may, but is not required to, proceed to complete the Improvements pursuant to the Plans, by contract or otherwise, and Subdivider, immediately upon demand, shall pay the costs and charges related to said work, together with a fifteen percent (15%) overhead charge.

16. **Responsibilities for Damage.** Any damage to the sewer system, utilities, concrete work, or street paving, or to any portion of adjacent properties, that occurs during construction or during the warranty period shall be completely repaired by the Subdivider to the satisfaction of the City Engineer or his/her designee.

17. **Utility Deposits – Statement.** Subdivider shall make deposits required for utilities to be supplied and connected within the Project prior to obtaining a building permit per the City Building Official. Subdivider shall file with the City Clerk, on or before December 31, 2019, a written statement signed by Subdivider and each public utility that provides or will provide service to the Property, to the effect that Subdivider has made all deposits legally required by such public .

18. **Permits and Fee-Payments – Compliance with Law.** Subdivider shall fully comply with all federal, state and local laws, ordinances and regulations in the performance of this Agreement. Subdivider shall, at its own cost and expense, obtain all necessary permits and licenses for the work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Engineer upon request.

19. **Superintendence by Subdivider.** Subdivider shall personally supervise the work or have a competent foreman or superintendent on the work site at all times during the course of construction with the authority to act for Subdivider.

20. **Inspections – Payment of Fees.** The City is authorized to enter the Property for inspection purposes at any time. Subdivider shall at all times maintain the Property so that the City and any agency authorized to make inspections can safely access and inspect all parts of the Property. Subdivider shall pay to the City the cost of inspecting the Improvements, including the costs of staff time and any consulting services determined to be necessary by the City Engineer, as well as all the cost of all other services furnished by the City in connection with the Project. Subdivider further agrees to pay any required in-lieu fee for the undergrounding of utilities on peripheral streets, and all development fees required by Pacifica Municipal Code sections 3-13.02, including planned drainage facility fees.

21. **Security.** Subdivider shall at all times guarantee Subdivider's performance of this Agreement by furnishing to the City and maintaining good and sufficient security as required by the Subdivision Map Act and the Pacifica Municipal Code, on forms approved by the City in its sole discretion, as follows:

A. Concurrently with the execution of this Agreement, Subdivider shall furnish to the City good and sufficient security for:

I. faithful performance and guarantee of the work, and

II. payment of contractors, subcontractors and persons furnishing labor, materials or equipment.

B. The security shall be one or more of the following forms at the option of and subject to approval by, the City:

- I. A bond (or bonds) by one or more duly authorized corporate sureties; or
- II. A deposit with (1) the City or (2) a responsible escrow agent or trust company of money or negotiable bonds of the kind approved for securing deposits of public moneys, at the option of the City; or
- III. An instrument of credit from one or more financial institutions subject to regulation by the State or Federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment.

The form of the security shall be in accordance with Sections 66499-66499.2 of the Subdivision Map Act.

C. The security furnished by the Subdivider shall be in the following amounts and for the following purposes:

I. An amount equal to one hundred percent (100%) of the total estimated cost of the Improvements (which estimated amount is set forth in Exhibit C attached hereto and incorporated herein by reference), as security for the faithful performance of this Agreement ("the Faithful Performance Security"). The estimated cost of the Improvements shall include:

- a. Not less than five percent (5%) or more than ten percent (10%) of the total construction cost for contingencies;
- b. Increases for projected inflation computed to the estimated midpoint of construction;
- c. All utility installation costs or a certification acceptable to the City Engineer from the utility company that adequate security has been deposited to ensure installation; and
- d. Costs and reasonable expenses and fees, including attorney's fees, incurred in enforcing the obligation secured.

Liability upon the Faithful Performance Security shall both include, and be limited to, the matters specified in Section 66499.9 of the California Government Code; and

II. An amount equal to fifty percent (50%) of the total estimated cost of the Improvements, as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement ("the Payment Security");

D. The instruments of credit referenced above shall be special account(s), the funds of which may not be withdrawn by the Subdivider without the approval of the City; *provided*, however, that the City shall have the right to make withdrawals from such instruments of credit if the Subdivider fails to complete the work under the terms of this Agreement.

E. Upon acceptance of the Improvements by the City, the Subdivider shall provide a Warranty Security as required by Pacifica Municipal Code Section 10-1.1008(e) within 30 days after said acceptance. Reduction and release of each security by the City shall be in compliance with Pacifica Municipal Code Sections 10-1.1008(f)-(g) and California Government Code Section 66499.7 and shall not be unreasonably withheld. Any unexpended portion of the Cash Deposit shall be returned to the Subdivider when all other security has been released.

F. Subdivider further agrees that no single reduction of security shall be less than twenty-five percent (25%) of the total estimated cost of the Improvements, nor shall the total number of requests for reduction of security exceed three (3) in number nor shall the aggregate of all partial reductions exceed seventy-five percent (75%) of the original amount of the improvement security.

G. Where the performance of an obligation for which a security is required is subject to the approval of

another agency, the City shall comply with Section 66499.8 of the California Government Code.

H. The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced in this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another security approved by the City, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made part of and incorporated into this Agreement Upon filing of a replacement security with the City Clerk, the former security shall be released.

I. In addition, pursuant to Pacifica Municipal Code Section 10-1.1008(d), Subdivider shall deposit with the City not less than One Thousand Dollars (\$1,000.00) in cash, or an additional amount as required by the City Engineer, not to exceed one percent of the construction cost. The deposit may be used at the discretion of the City to correct deficiencies and conditions caused by the Subdivider or contractor which may arise during or after the construction of the subdivision. Any unexpended amount will be returned to Subdivider at the time all bonds are released.

22. **Erosion Control.** Subdivider shall take all necessary actions during the course of construction of all Improvements to prevent erosion damage to adjacent properties or improvements (including, but not limited to, City streets and other City infrastructure or property). It is understood and agreed that in the event of failure on the part of Subdivider to prevent erosions, City may do the work of the Improvement and/or erosion protection measures on an emergency basis and Subdivider shall reimburse City for the actual expenses incurred (including administrative and/or legal expenses) within thirty (30) days after City mails a billing statement for such expenses to Subdivider. If such reimbursement is not timely made, City is entitled to obtain such reimbursement from Subdivider and/or to proceed against the Faithful Performance Security to cover City's expenses.

23. **No Waiver by City.** Inspection of the work and/or materials, or approval of work and/or materials inspected, or a statement by an officer, agent or employee of the City indicating the work complies with this Agreement, or acceptance of all of these acts shall not relieve Subdivider of its obligation to fulfill the Agreement; nor is the City by these acts prohibited from bringing an action for damages or specific enforcement arising from the failure to comply with this Agreement. No action or omission by the City shall constitute a waiver of any provision of this Agreement unless expressly provided in writing. No course of dealing between Subdivider and the City, or any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any rights by the City, except to the extent these rights are expressly waived in writing by the City.

24. **Hold-Harmless Agreement.** Subdivider shall hold harmless, defend and indemnify the City, its officers, employees, and agents from and against any and all damage, injury, and/or death to persons and property, and any and all claims, demands, costs, losses, damages, injuries or liability, including attorneys' fees, howsoever caused, resulting directly or indirectly from this Agreement and the performance or nonperformance of any and all work done or to be done pursuant to this Agreement.

Subdivider shall not be required to indemnify and hold harmless the City as set forth above to the extent of liability attributable to the active negligence, willful misconduct or sole fault of the City, provided such active negligence, willful misconduct or sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction.

25. **Subdivider's Insurance.** Subdivider may not begin work under this Agreement until Subdivider obtains insurance required under this paragraph in a form acceptable to the City in its sole discretion. Subdivider shall not allow a contractor or subcontractor to begin work on its contract or subcontract until all similar insurance required of the contractor or subcontractor is obtained.

A. **Workers' Compensation Insurances.** Subdivider shall maintain, during the life of this Agreement, Workers' Compensation Insurance in accordance with the provisions of California Labor Code sections 3700, et seq., for Subdivider's employees employed at the work site. If any of the work is subcontracted, Subdivider shall require the contractor or subcontractor to provide Workers' Compensation Insurance for such contractor's or subcontractor's employees. If a class of employees is not protected under the Workers' Compensation law, Subdivider shall provide, and have each contractor and subcontractor provide, adequate insurance for the protection

of employees not otherwise protected. Subdivider agrees to indemnify the City for damage resulting to it from failure of Subdivider, contractor or subcontractor to take out or maintain such insurance.

B. Public Liability and Property Damage Insurance. Subdivider, at its expense, shall procure and maintain in full force at all times during the term of this Agreement the following insurance which shall be provided on an occurrence basis;

I. Comprehensive Liability and Broad Form Comprehensive Liability. Subdivider shall maintain limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, Subdivider shall procure and maintain a limit of liability of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. The policies are to contain, or be endorsed to contain, the following provisions:

a. The City, its officers, officials, employees, consultants and agents are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Subdivider and completed operations of Subdivider, and premises owned, occupied, or used by Subdivider. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officers, officials, employees, consultants or agents.

b. Subdivider's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, consultants and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, consultants or agents shall be in excess of Subdivider's insurance and shall not contribute to it.

c. Any failure to comply with the reporting provisions of such policies shall not affect the coverage provided to the City, its officers, officials, employees, consultants or agents.

C. Other Insurance Provisions. The policies identified above shall be issued by an insurance carrier having a rating of Best A-/7 or better and shall be delivered to the City at the time of the execution of this Agreement. In lieu of actual delivery of the policy/policies, a certificate issued by the insurance carrier showing the insurance to be in force for the period covered by this Agreement may be delivered to the City. Such policy/policies and such certificate(s) shall be in a form approved by the City Attorney. The policy/policies shall name the City, its officers, officials, employees, consultants and agents as additional insureds and provide for thirty (30) days' notice of cancellation to the City. The policy/policies shall not be canceled nor the amount of coverage be reduced earlier than thirty (30) days after the City receives notice from the insurer of the intent of cancellation or reduction.

26. Subdivider Not Agent of City. Neither Subdivider nor its agents or contractors are agents of the City in connection with the performance of Subdivider's obligations under this Agreement.

27. Notice of Breach and Default. If Subdivider refuses or fails to prosecute the work required by this Agreement with such diligence as will ensure its completion within the time specified, or fails to complete the work within such time, or if the Subdivider is adjudged as bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed in the event of Subdivider's insolvency, or if Subdivider or Subdivider's contractors, subcontractors, agents or employees, violate this Agreement, the City may serve written notice upon Subdivider of breach of this Agreement

28. Breach of Agreement-Performance by City. If the City gives notice of a breach of this Agreement, the Subdivider shall provide written confirmation to the City of its intention to correct the deficiencies or complete the work under this Agreement within thirty (30) days after the date of such notice of breach. If the Subdivider does not correct the deficiencies or complete the work within sixty (60) days after the date of the notice of breach, or such additional time as necessary and as the City reasonably deems acceptable, the Subdivider shall be deemed in default, and the City may, but is not required to, take over the work and prosecute the same to completion by contract or other method which the City considers advisable, for the account, and at the expense, of Subdivider. In this event,

the City, without liability for doing so, may take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the work site and necessary for completion of the work. The City may withdraw from the security specified in this Agreement to pay the face amount of the obligations for completion of the work, as well as any additional costs and reasonable expenses and fees, including reasonable attorney's fees and interest from the date of notice of such costs until the costs have been satisfied, incurred by the City of Pacifica in successfully enforcing the obligations under this Agreement. In the event the cost of completing the work under this contract exceeds the amount contained in the security deposits specified under Paragraph 21, the Subdivider shall be responsible for any additional costs incurred by the City.

29. **Remedies.** In addition to the remedies set forth in paragraphs 15 and 28 above, the City may bring legal action to: (1) compel performance of this Agreement; (2) ensure compliance with the Conditions; and (3) recover the costs (including the City's administrative costs) of completing the Improvements pursuant to paragraph 15. The City may also seek any and all remedies available in law or equity. The Subdivider agrees that, if legal action is brought by the City, the Subdivider shall pay all of the costs of suit and reasonable attorneys' fees and all other expenses of litigation as determined by the court having jurisdiction over such suit, if such court rules that the Subdivider has failed to carry out any of its obligations under this Agreement.

30. **Notices.** All notices required shall be in writing and delivered by registered mail, postage prepaid. A party may change its address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address. All notices shall be deemed received three (3) business days after dispatch by regular mail, or one (1) business day after dispatch by a reputable overnight courier service (such as Federal Express).

Notices to be given to the City shall be addressed as follows:

City Engineer and City Building Official
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

Notices to the Subdivider shall be addressed as follows:

Consult Design Build, Inc.
1690 Francisco Boulevard
Pacifica, CA 94044

31. **Assignment.** Subdivider may not assign this Agreement without the written consent of the City, which shall not be unreasonably withheld and which shall be given within 30 days following a written request by Subdivider unless good cause exists to disapprove. If the City does not approve an assignment requested by Subdivider, the reasons for said disapproval shall be stated in writing and provided to Subdivider within said 30 day period. The City may require submittal of new bonds or letters of credit in accordance with the Agreement (at which time the original bonds or letters of credit should be released), and a certified copy of the recorded deed. If such Assignment occurs, an assignment agreement, in a form approved by the City, shall be recorded against the Property prior to the transfer.

32. **Heirs, Successors and Assigns.** Subject to the restrictions on assignment set forth in paragraph 31 above, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

33. **Agreement Attaches to the Land-Recordation.** This Agreement pertains to and runs with the Property. This Agreement shall be recorded in the office of the County Recorder at the expense of the Subdivider and shall constitute notice to all successors and assigns of the title to the real property of the obligations set forth herein. This Agreement shall also constitute a lien on the Property, subject to foreclosure in the event of default in payment, in an amount sufficient to fully reimburse the City for any cost to the City of enforcing this Agreement, including interest

from the date of the notice of any cost or expense until paid.

34. Miscellaneous Terms and Provisions.

A. If any provision of this Agreement is adjudged illegal, inoperative, or invalid, the remaining provisions of this Agreement, to the extent practicable, shall continue in full force and effect.

B. This Agreement contains a full, final and exclusive statement of the Agreement of the parties regarding the subject matter hereof. Notwithstanding the foregoing, the Project is subject to the Conditions and all applicable law. In the event of a conflict between applicable law and the Conditions or this Agreement, applicable law shall prevail. In the event of a conflict between the Conditions and this Agreement, the Conditions shall prevail.

C. This Agreement shall be administered, interpreted and enforced under the laws of the State of California, without reference to its choice of laws principles. In case of dispute, venue shall reside in San Mateo County, California.

D. Subdivider warrants and represents that the person signing on behalf of Subdivider has the authority to execute this Agreement on behalf of Subdivider, and has the authority to bind the Subdivider and the Property to the terms and obligations set forth in this Agreement. Subdivider agrees that this Agreement, and any instrument or agreement required hereunder, are within the Subdivider's powers, and have been duly authorized and delivered, and do not conflict with Subdivider's organizational powers.

E. Subdivider agrees that the Conditions are reasonable, valid and binding. Subdivider agrees that this Agreement is a valid, legal and binding Agreement, enforceable against Subdivider in accordance with its terms, and that any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding, and enforceable. Subdivider agrees that this Agreement does not conflict with any law, agreement, or obligations by which Subdivider is bound.

subject to the Conditions and all applicable law. In the event of a conflict between applicable law and the Conditions or this Agreement, applicable law shall prevail. In the event of a conflict between the Conditions and this Agreement, the Conditions shall prevail.

C. This Agreement shall be administered, interpreted and enforced under the laws of the State of California and the City of Pacifica. In case of dispute, venue shall reside in San Mateo County, California.

D. Subdivider warrants and represents that the person signing on behalf of Subdivider has the authority to execute this Agreement on behalf of Subdivider, and has the authority to bind the Subdivider and the Property to the terms and obligations set forth in this Agreement. Subdivider agrees that this Agreement, and any instrument or agreement required hereunder, are within the Subdivider's powers, and have been duly authorized and delivered, and do not conflict with Subdivider's organizational powers.

E. Subdivider agrees that the Conditions are reasonable, valid and binding. Subdivider agrees that this Agreement is a valid, legal and binding Agreement, enforceable against Subdivider in accordance with its terms, and that any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding, and enforceable. Subdivider agrees that this Agreement does not conflict with any law, agreement, or obligations by which Subdivider is bound.

IN WITNESS WHEREOF, the parties have executed the Agreement on the day and year above written.

CITY OF PACIFICA:
A California municipal corporation.

Kevin Woodhouse, City Manager

ATTEST:

Sarah Coffey, City Clerk

APPROVED AS TO FORM:

Michelle Kenyon, City Attorney

SUBDIVIDER: Consult Design Build Inc.
A California Corporation.

By: 
Michael Panesi, President

EXHIBIT A

Legal Description of the 340 Charing Cross Way Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PACIFICA, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All of Lots 1 through 17, in Block 20 as delineated upon that certain Map entitled, "Map of Subdivision No. 1 of Brighton Beach, San Mateo County, State of California", filed in Book 5 of Maps, at page 29, San Mateo County Records, on September 16, 1907, more particularly described as follows:

Commencing at the most Northeasterly corner of said block of the lands shown on said map, said corner being the Northerly terminus of the labeled "North, 100.69 feet", shown on said Map; thence along the Easterly line of said block of said map the following two courses: South $00^{\circ} 00' 00''$ East 100.69 feet; South $00^{\circ} 00' 00''$ East 15.10 feet, to the Southerly line of Laurel Lane, 15.00 feet wide, shown on said map; thence along said lane, South $83^{\circ} 17' 00''$ West 240.00 feet to the true point of beginning; thence continuing along said Southerly line of said lane the following two courses: South $83^{\circ} 17' 00''$ West 200.24 feet; North $90^{\circ} 00' 00''$ West 245.56 feet to the Southwesterly line of Charing Cross Way, 50.00 feet wide, shown on said map; thence along said way, South $58^{\circ} 38' 00''$ West 138.69 feet to the beginning of a curve concave west to, having a radius of 15.00 feet; thence along said curve, through a central angle of $148^{\circ} 38' 00''$, an arc length of 38.91 feet; thence South $90^{\circ} 00' 00''$ East 362.04 feet; thence North $83^{\circ} 17' 00''$ East 194.34 feet; thence North $00^{\circ} 00' 00''$ East 100.69 feet to the true point of beginning.

Pursuant to the Lot Line Adjustment recorded December 12, 2017 in Instrument No. 2017-111342 of Official Records.

JPN's: 016-035-355-01 thru 016-035-355-14

EXHIBIT B

Conditions of Approval: File No. 2018-047, Subdivision SUB-239-18, Modifications of Requirements MOD-45-19 and Authorization for Heritage Tree Removal for a tentative map to subdivide one parcel into three lots northeast of the intersection of Charing Cross Way and an unimproved section of Clarendon Road (APN 016-355-150)

Planning Commission Meeting of August 5, 2019

Planning Division of the Planning Department

1. The subdivision shall be substantially in accord with the plans entitled "Tentative Map, 340 Charing Cross Way, City of Pacifica, San Mateo County, California," dated November 21, 2018, and stamped received by the City of Pacifica on July 31, 2019, except as modified by the following conditions:
2. The tentative map is valid for a period of 24 months from the date of final determination. Only one final map may be recorded. If a final map is not recorded within this time, the tentative subdivision map approval shall expire unless Applicant submits a written request for an extension, stating the reasons for requesting the extension, and applicable fee to the Planning Director at least 30 days prior to the expiration date as provided in Pacifica Municipal Code Section 10-1.412. The Planning Director shall process an extension request in accordance with Section 10-1.412 and submit it for consideration by the Planning Commission. The Planning Commission may grant an extension request for a period not exceeding three years beyond the expiration date of the original tentative map approval.

In the event of litigation filed to overturn the City's determination on the tentative subdivision map, the expiration of the tentative subdivision map may be tolled during the pendency of such litigation as provided in state law, including but not limited to section 66452.6(c) of the Government Code.

3. All outstanding and applicable fees associated with the processing of this Project shall be paid prior to final map approval.
4. Prior to final map approval, Applicant shall clearly indicate compliance with all conditions of approval on the plans and/or provide written explanations to the Planning Director's satisfaction.
5. The approval letter issued by the City and all conditions of approval attached thereto shall be included as plan sheets within the subdivision improvement plans.
6. The Applicant shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Applicant's Project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Applicant's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in

Conditions of Approval: Subdivision SUB-239-18, Modifications of Requirements MOD-45-19 and Heritage Tree Removal Authorization (Tentative Map)

Charing Cross Way and an unimproved section of Clarendon Road (APN 016-355-150)

August 5, 2019

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connection with such proceeding whether incurred by the Applicant, City, and/or parties initiating or bringing such Proceeding. If the Applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Applicant of any Proceeding and shall cooperate fully in the defense.

7. Vegetation removal for the improvements associated with the subdivision shall occur only between September 1 and January 31 of each year and shall be further restricted as required by any law governing clearing and grubbing or construction within the City of Pacifica.
8. Applicant shall construct all proposed retaining walls with a decorative veneer or decorative block, to the satisfaction of the Planning Director. Applicant shall include the details of the proposed retaining walls in the subdivision improvement plans.
9. Applicant shall include native plantings of medium to large trees on the downhill side of the retaining wall to the north of the fire apparatus turnaround on Parcel B and Parcel C in order to screen the turnaround from downslope views, to the satisfaction of the Planning Director. Applicant shall include the details of the proposed trees in the subdivision improvement plans.
10. Applicant shall include the Tree Protection Plan, as enumerated in the arborist report, dated July 30, 2019, prepared by Kiely Arborist Services LLC, within the subdivision improvement plans.
11. Prior to approval of the final map, a long-term maintenance agreement with the City shall be required for the fire apparatus turnaround improvements and associated downslope landscaping screening area on Parcel B and Parcel C of the subdivision. The agreement shall include an exhibit highlighting these improvements. The agreement shall also clarify how improvement responsibilities will be shared or allocated between the aforementioned two properties in the subdivision, to the satisfaction of the Planning Director and the City Attorney.

Building Division of the Planning Department

12. Future construction and grading, including grading not associated with building construction, on the lots subject to this subdivision shall require review and approval of a building permit and/or grading permit by the Building Official. Applicant shall apply for and receive approval of a building permit and/or grading permit prior to commencing any construction or grading activity.

Engineering Division of Public Works Department

13. Construction shall be in conformance with the City of Pacifica Storm Water Management and Discharge Control Ordinance and the San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices shall be implemented, and the construction BMPs plan sheet from the Countywide program shall be included in the Project plans.
14. The following requirements must be clearly noted on the construction plans for the Project:
 - A. Clarendon Road shall be maintained clear of construction materials, equipment, storage, debris, and soil. Dust control and daily road cleanup will be strictly enforced. A properly signed no-parking zone may be established during normal working hours only.

Conditions of Approval: Subdivision SUB-239-18, Modifications of Requirements MOD-45-19 and Heritage Tree Removal Authorization (Tentative Map)

Charing Cross Way and an unimproved section of Clarendon Road (APN 016-355-150)

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- B. All recorded survey points, monuments, railroad spikes, pins, cross cuts on top of sidewalks and tags on top of culvert headwalls or end walls whether within private property or public right-of-way shall be protected and preserved. If survey point/s are altered, removed or destroyed, the applicant shall be responsible for obtaining the services of a licensed surveyor or qualified Civil Engineer to restore or replace the survey points and record the required map prior to occupancy of the first unit.
- C. Existing public improvements within the property frontage that are damaged or displaced shall be repaired or replaced as determined by the City Engineer even if damage or displacement occurred prior to any work performed for this Project. Any damage to improvements within city right-of-way or to any private property, whether adjacent to subject property or not, that is determined by the City Engineer to have resulted from construction activities related to this Project, shall be repaired or replaced as directed by the City Engineer.
15. The proposed sanitary sewer system shall be privately maintained all the way to and including the connection to the public sewer main or manhole.
 16. All utilities shall be installed underground.
 17. The driveway approach must be ADA compliant with no more than 2% cross slope for a width of at least 48 inches. The transition from 2% out-slope to the in-slope driveway shall be sufficiently gradual to avoid vehicles to contact the pavement at the grade breaks. Driveway within City right-of-way shall not exceed 18% and portion exceeding 15% grade shall be grooved concrete. Provide structural section of the driveway within City Right of Way.
 18. The existing street pavement shall be repaved to the limits of all utility connections or to street centerline, whichever is greater. If, in the opinion of the City Engineer, damage to the pavement during construction is more extensive, a larger area may have to be repaved. All pavement markings and markers shall be replaced in kind.
 19. Improvements in the public right-of-way, including but not limited to the pavement structural section for the Clarendon Road extension, shall be according to recommendations by the "Geotechnical Investigation," dated August 28, 2017, and prepared by Earth Investigation Consultants, Inc.
 20. No private structures, including but not limited to walls or curbs, fences, mailboxes, or stairs shall encroach into the public right-of-way.
 21. The applicant shall submit a final map to the Engineering Division for approval by the City Engineer, which shall be consistent with the approved tentative map and any conditions of approval imposed on this Project. All required monumentation shall be shown on the map and shall be set prior to recordation of the map.
 22. Applicant shall complete all subdivision improvements identified in the tentative map and in these Conditions of Approval prior to approval of a final map. The subdivision improvements shall be constructed pursuant to the details contained in the subdivision improvement plans, which shall be

Conditions of Approval: Subdivision SUB-239-18, Modifications of Requirements MOD-45-19 and Heritage Tree Removal Authorization (Tentative Map)

Charing Cross Way and an unimproved section of Clarendon Road (APN 016-355-150)

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subject to review, approval, and inspection by the City Engineer. Alternatively, prior to final map approval the Applicant may enter into a Subdivision Improvement Agreement with the City of Pacifica to construct all on-site and off-site improvements, as depicted on the approved Tentative Map and any conditions of approval imposed on this Project, subsequent to approval of the final map. Any subdivision improvement agreement shall be subject to the approval of the City Attorney and City Engineer. Any subdivision improvement agreement may require necessary bonds and fees in an amount determined by the City Engineer. Any bond may be in the form of cash, instrument of credit or surety bond.

23. Prior to the execution of any subdivision improvement agreement or subdivision improvement plans, Applicant shall submit to the Engineering Division the construction plans, specifications, necessary reports, and engineering calculations describing all required on-site and off-site improvements to the satisfaction of the City Engineer. Such documentation shall include but is not limited to:
 - a. a design geotechnical report analyzing existing site conditions and providing recommendations for the proposed on-site and off-site improvements
 - b. an accurate survey plan, showing:
 - i. survey marks and identifying the reference marks or monuments used to establish the property lines;
 - ii. property lines labeled with bearings and distances;
 - iii. edge of public right-of-way;
 - iv. existing easements on the subject property
 - c. a site plan, showing:
 - i. the whole width of right-of-way of Clarendon Road, including existing and proposed improvements such as, but not limited to, pavement overlay, driveway, sidewalk, curb & gutter, street lighting, ADA compliant pedestrian crossing improvements, street monuments, lighting, all street markings and signage;
 - ii. existing fences, and any structures on adjacent properties within 10' of the property lines;
 - d. a utilities plan showing existing public utility facilities and any proposed connections, boxes for underground utility connections and meters, any ground-mounted equipment, storm drainage and sanitary sewer facilities and proposed connections
 - e. sufficient construction details to fully express how all proposed Improvements will be built or installed
 - f. all plans and reports must be signed and stamped by a California licensed professional engineer
 - g. all site improvements including utilities and connections to existing mains must be designed according to the City Standards and to the satisfaction of the City Engineer.
24. Applicant shall dedicate a Public and Private Storm Drainage Easement (PSDE) for any new storm drain facilities. The private facilities must be designed per 100-year storm, Section C.3 of the Municipal Regional Permit and to the satisfaction of the Director of Public Works or the City Engineer, and shall be privately maintained in perpetuity all the way to and including any connection to public storm drain facilities. A Maintenance Agreement for stormwater operations will be required, including a stormwater maintenance plan for each proposed stormwater treatment control (i.e.: bioretention area, detention pond, full capture devices, etc.).

Conditions of Approval: Subdivision SUB-239-18, Modifications of Requirements MOD-45-19 and Heritage Tree Removal Authorization (Tentative Map)

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25. Prior to approval of the final map, the Applicant shall verify that all public and private utilities have been provided to serve the Project. Approvals and/or agreements shall be obtained from all utilities.
26. Proposed Clarendon Road extension within existing ROW shall be privately maintained and will require a Maintenance Agreement to be recorded prior to final map approval.
27. Provide streetlight illumination across the property frontage sufficient to meet current industry standards for public roads including but not limited to IESNA American National Standard Practice for Roadway Lighting and AASHTO Roadway Lighting Design Guide. Lighting fixtures shall be per City Standards or physical appearance approved by the Planning Director.
28. Application shall include in the subdivision improvement plans one or more speed limit signs of a type and placement to the satisfaction of the City Engineer, to establish a speed limit of 15 miles per hour for the Clarendon Road extension.
29. Prior to approval of a building permit for any subdivision improvements, Applicant shall provide an erosion control plan subject to review and approval by the City Engineer.
30. Prior to approval of final map, Applicant shall include a detail of the connection of the new storm drain line to the existing storm drain outfall on the map which shall be subject to review and approval of the City Engineer.
31. Prior to approval of final map, Applicant shall provide an assessment of the existing condition of the storm drain outfall. Assessment may include photo documentation and commentary.
32. Prior to approval of the final map, Applicant shall enter into a long-term maintenance agreement with the City for maintenance of the stormwater measures (conforming to MRP C.3 requirements) as well as a separate agreement for public street, storm drainage, street lights, fire apparatus turnaround landscaping screening easement, street trees, or other public improvements that will be maintained by the property owners. The agreement shall include an exhibit highlighting the public improvements that will be privately maintained. The agreement shall also clarify how improvement responsibilities will be shared or allocated between the several properties in the subdivision. The agreement shall be subject to review and approval by the City Engineer, Planning Director, and City Attorney. Upon approval by the City, Applicant shall record the agreement prior to approval of a final map.
33. A City of Pacifica Encroachment Permit shall be obtained for all work undertaken in the public right-of-way. All work shall be done in accordance with City Standards, Caltrans Standard Specifications, Pacifica Municipal Code, Administrative Policies, the approved subdivision improvement plans, and to the satisfaction of the City Engineer or his designee, and they shall be completed prior to issuance of the Certificate of Occupancy.

Wastewater Division

34. Prior to approval of Final Map, Applicant shall submit a recorded easement for new sewer laterals connecting to private main on the easement.

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North County Fire Authority

35. Prior to approval of final map, Applicant shall obtain water flow information.

END

EXHIBIT C

**ENGINEER'S ESTIMATE
340 CHARING CROSS WAY
PACIFICA, CALIFORNIA**

340 Charing Cross - Engineer's Estimate						
ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	
1	CLEAR AND GRUB	13,572	SF	\$0.50	\$6,786	
2	DEMO CONC/AC	537	SF	\$2	\$1,074	
3	REMOVE TREE	20	EA	\$500	\$10,000	
4	DEMO CONC RET WALL	9	LF	\$80	\$720	
5	ROUGH GRADING	21,471	SF	\$1	\$21,471	
6	FINE GRADING	13,898	SF	\$0.75	\$10,424	
7	IMPORT SOIL	1,643	CY	\$45	\$73,935	
8	AC PAVEMENT	7,383	SF	\$4	\$29,532	
9	CONCRETE SIDEWALK	932	SF	\$20	\$18,640	
10	BIORETENTION AREA	586	SF	\$35	\$20,510	
11	CONCRETE DRIVEWAY	3,065	SF	\$25	\$76,625	
12	CURB AND GUTTER	245	LF	\$30	\$7,350	
13	RETAINING WALLS	450	LF	\$250	\$112,500	
14	STREET TREES	14	EA	\$500	\$7,000	
15	LANDSCAPE AND IRRIGATION	1,179	SF	\$8	\$9,432	
16	COBBLE SWALE	8	LF	\$12	\$96	
17	CONC V-DITCH	290	LF	\$15	\$4,350	
18	VALLEY GUTTER	36	LF	\$25	\$900	
19	GUARDRAIL	120	LF	\$40	\$4,800	
20	BUBBLE-UP	2	EA	\$250	\$500	
21	4" SD	50	LF	\$30	\$1,500	
22	12" CORRUGATED HDPE STORM DRAIN	540	LF	\$50	\$27,000	
23	24" CORRUGATED HDPE STORM DRAIN	137	LF	\$70	\$9,590	
24	STORM DRAIN MANHOLE	5	EA	\$5,000	\$25,000	
25	STORM DRAIN HEADWALL	1	EA	\$3,500	\$3,500	
26	STORM DRAIN CATCH BASIN	3	EA	\$2,800	\$8,400	
27	SEWER LATERALS	2	EA	\$3,500	\$7,000	
28	FIRE HYDRANTS	1	EA	\$5,000	\$5,000	
29	WATER LATERALS	2	EA	\$2,500	\$5,000	
30	JOINT TRENCH	280	LF	\$180	\$50,400	
TOTAL					\$559,035	

Notes:

1. Export soil volume is based on an in-place volume. Contractor shall make their own determination.
2. The estimate does not include utility connection fees for sewer, joint trench, or water.



Final Performance Security Amount

ITEM #	ITEM	ITEM DESCRIPTION	
I.	Original Engineer's Estimate	Estimated Cost of Improvements	\$ 559,035.00
I. a.	Construction Contingencies	5%	\$ 27,951.75
I. b.	Inflation	3% per annum / 12 months construction : At midpoint = 1.5% Inflation	\$ 8,385.53
I. c.	Utilities	\$20,000 for PG&E; \$7,000 per home (x2) for NCCWD	\$ 34,000.00
I. d.	Improvements Enforcement	\$2,500 for plan review/inspections and \$5,000 attorney's fees	\$ 7,500.00
	TOTAL		\$ 636,872.28